

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WILLIAM B. BARNETT and)	
AMELIA BARNETT,)	
Plaintiffs,)	
	)	CASE NO. 2:10-cv-1928-ILRL-ALC
v.)	
	)	JUDGE LEMELLE
FRANK J. D'AMICO, JR., INDIVIDUALLY,)	
and/or FRANK J. D'AMICO, JR., APLC,	)	MAGISTRATE JUDGE CHASEZ
CAPITELLI & WICKER, APLC,)	
THE DISCON FIRM, APLC,)	
FOWLER, RODRIGUEZ & CHALOS, LLP,)	
CLEMENT DENNIS, LINDA SHARPE,	)	Formerly No. 2010-13239, Div. "H"
RS MEDICAL, BLUE CROSS BLUE SHIELD	)	22nd Judicial District Court
OF LOUISIANA, and THE UNITED STATES	)	St. Tammany Parish
OF AMERICA, and/or THE INTERNAL	)	State of Louisiana
REVENUE SERVICE,)	
Defendants.)	

ORDER EXTENDING DISCOVERY DEADLINE

IN CONSIDERATION of the Unopposed Motion of the United States to Extend
Discovery Deadline, and for good cause shown therein, it is **ORDERED** that the deadline to
complete discovery is extended from March 30, 2012, through April 25, 2012.

New Orleans, Louisiana, this 2nd day of April, 2012.


UNITED STATES DISTRICT JUDGE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

IN RE:	:	
JOSEPH CASANO	:	Chapter 7
Debtor.	:	Case No. 11 - 79018 - dte
<hr/> JOSEPH CASANO	:	
Plaintiff,	:	
vs.	:	Adv. Pro. No.: 12 - 08005 - dte
INTERNAL REVENUE SERVICE AS	:	
AGENT OF U.S.A. and NYS DEPART-	:	
MENT OF TAXATION AND FINANCE,	:	
Defendant.	:	
<hr/>	:	

**STIPULATION AND AGREED ORDER
EXTENDING TIME TO RESPOND TO MOTION**

The plaintiff, Joseph Casano, and the defendant, United States of America, sued herein as Internal Revenue Service as Agent of the U.S.A., jointly move the Court, pursuant to Fed.R.Bankr.P. 9006(b), for an extension of time to April 16, 2012, for the defendant United States to respond to the plaintiff's motion for summary judgment (Docket No. 9). In support thereof, the parties state:

1. Plaintiff Joseph Casano moved for summary judgment, on March 14, 2012, for a determination that his income tax liabilities for the 2001 and 2002 taxable years are dischargeable. *See* Docket No. 9.
2. Pursuant to agreement of the parties, orally approved by the Court at a February 14, 2012, pre-trial conference, the government's response to plaintiff's motion is due on April 1, 2012. Unless the Court determines it would be helpful, the parties have agreed that the motion may be determined upon the written submissions, without oral argument. On February 17, 2012,

plaintiff's counsel settled a proposed order setting forth this schedule, as directed by the Court. Docket No. 7. However, this proposed order has never been signed.

3. The government requests, with the consent of plaintiff's counsel, an additional two weeks, from April 1, 2012, to April 16, 2012 (April 14, 2012 falling upon a Saturday), to submit its response to plaintiff's motion for summary judgment.

4. This extension of time is necessary due to counsel's commitments in other cases and due to recent decisions concerning the legal question at issue in this case: whether a debt for an income tax assessed by the Internal Revenue Service pursuant to a deficiency notice prior to the submission of a Form 1040 by the taxpayer is excepted from discharge pursuant to 11 U.S.C.

§ 523(a)(1)(B)(i) as a tax with respect to which a return was not filed.

CONSENTED TO:

Executed this 30th day of March, 2012
in Woodbury, New York

HEATH S. BERGER
Attorney for Debtor/Plaintiff Joseph Casano

/s/ Heath S. Berger

Heath S. Berger, Esquire
Steinberg, Fineo, Berger & Fischhoff, P.C.
40 Crossways Park Drive
Woodbury, New York 11797
Tel.: (516) 747-1136
Fax: (516) 747-0382
Email: hberger@sfbblaw.com

Executed this 30th day of March, 2012
in Washington, D.C.

JOHN A. DiCICCO
Principal Deputy Assistant Attorney General
Tax Division, U.S. Department of Justice

/s/ Sarah T. Mayhew

SARAH T. MAYHEW
Trial Attorney
Tax Division, U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, DC 20044
Tel: 202-616-1929
Fax: 202-514-5238
Email: Sarah.T.Mayhew@usdoj.gov

IT IS SO ORDERED.

**Dated: Central Islip, New York
April 2, 2012**



Dorothy Eisenberg
Dorothy Eisenberg
United States Bankruptcy Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-80122-MC-MIDDLEBROOKS**

UNITED STATES OF AMERICA,

Petitioner,

v.

LOIS CASTALDO,

Respondent.

_____ /

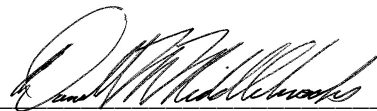
ORDER

THIS CAUSE is before the Court upon Respondent's Request for an Extension of Time to Respond to Order to Show Cause (DE 6) ("Request"), filed March 28, 2012.¹ I have reviewed the Request, the record in this case, and am otherwise fully advised in the premises.

Defendant requests an extension of the Response deadline, and, in support thereof, states that he needs an extension because he only recently retained counsel. (*See* DE 6 at ¶ 1). I find that Defendant established good cause for an extension, and, it is hereby

ORDERED AND ADJUDGED that Respondent's Request for an Extension of Time to Respond to Order to Show Cause (DE 6) is **GRANTED**. Defendant shall file a Response to this Court's Order to Show Cause **on or before April 4, 2012**.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 2nd day of March, 2012.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

¹The Motion is incorrectly identified as the Required Response to Show Cause on CM/ECF. In the future, Defense counsel must properly identify filings.

APR -2 2012

For The Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CLASTON, LLC by and through
SUNSET HOLDINGS, LLC

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

) CIVIL CASE NO. 08-0048
)
)
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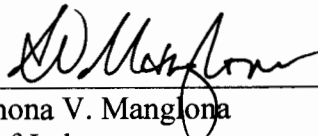
) ORDER GRANTING JOINT MOTION TO
) SET BRIEFING SCHEDULE AND ORAL
) ARGUMENT FOR UNITED STATES'
) MOTION TO EXCLUDE HENRY
) DUNPHY AS FACT WITNESS
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)
)

The Court, having reviewed the parties' Joint Motion to set the briefing schedule and oral argument date for the United States' Motion to Exclude Henry Dunphy as a Fact Witness, and good cause appearing therefore, hereby **GRANTS** the Joint Motion. The briefing schedule is set as follows:

- a. Plaintiff's response to the United States' Motion to Exclude Henry Dunphy as a Fact Witness shall be served and filed by April 26, 2012.
- b. United States' Reply shall be served and filed by May 10, 2012.

1 Furthermore, oral argument on the United States' Motion to Exclude Henry Dunphy as a
2 Fact Witness shall be set for hearing on May 24, 2012.
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4 SO ORDERED this 24 day of April, 2012.

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7 Ramona V. Mangione
8 Chief Judge
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APR -2 2012

For The Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CLASTON, LLC by and through
SUNSET HOLDINGS, LLC

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

) CIVIL CASE NO. 08-0048
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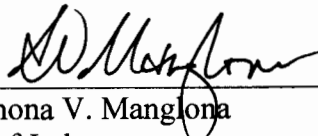
) ORDER GRANTING JOINT MOTION TO
) SET BRIEFING SCHEDULE AND ORAL
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

STEVEN COHEN and MORTGAGEE,

Defendants.

[illegible]

CIVIL ACTION № 11-cv-6110

FILED

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★

APR - 2 2012

★

UNITED STATES' NOTICE OF DISMISSAL

LONG ISLAND OFFICE

Pursuant to Federal Rule of Civil Procedure Rule 41(a)(1), the plaintiff United States of America, by its undersigned attorney, dismisses its complaint in the instant action.

Respectfully submitted,

Of Counsel:
LORETTA A. LYNCH
United States Attorney

JOHN A. DiCICCO
Principal Deputy Assistant Attorney General
Tax Division

/s/ Julie C. Avetta

JULIE C. AVETTA (JCA9255)

Trial Attorney, Tax Division

U.S. Department of Justice

Post Office Box 55

Washington, DC 20044

Telephone: (202) 616-2743

Facsimile: (202) 514-5238

Email: Julie.C.Avetta@usdoj.gov

So Ordered

~~SECRET~~
Hon. Leonard D. Wyler, U.S.D. of

Dated: General Slip, NY
4/2/12

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 29, 2012.

/s/ Julie C. Avetta

MOVANT'S COUNSEL IS DIRECTED TO SERVE A COPY
OF THIS ORDER ON ALL PARTIES UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

ALVIN D. CRAIGHEAD,

Plaintiff,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Defendant.

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Case No. CIV-11-621-D

ORDER

Before the Court is Defendant's Motion to Dismiss for Lack of Subject-Matter Jurisdiction [Doc. No. 19]. By Order of January 23, 2012, the Court ruled that the issue presented – whether Plaintiff's claim under 26 U.S.C. § 7433 is barred by a lack of administrative exhaustion – is not jurisdictional, and the Motion was converted to one for summary judgment under Fed. R. Civ. P. 56. Plaintiff, who appears *pro se*, filed a response within the time period set by the January 23 Order, consisting solely of legal argument and Plaintiff's affidavit regarding the merits of his claim. Plaintiff does not address the issue of administrative exhaustion. Accordingly, because Plaintiff has failed to oppose Defendant's Motion in the manner required by Rule 56, the Court considers all material, properly-supported facts presented by Defendant to be undisputed. *See* Fed. R. Civ. P. 56(e)(2). Further, for the reasons stated herein, the Court finds that Defendant is entitled to summary judgment based on Plaintiff's failure to exhaust administrative remedies.

Undisputed Facts

Plaintiff has filed suit against the United States of America *ex rel.* the Commissioner of Internal Revenue, seeking relief under 26 U.S.C. § 7433 for alleged violations of Internal Revenue

Service (“IRS”) collection procedures. Specifically, Plaintiff alleges he has been a target of IRS collection activities since 2004 or 2005 that have been mistakenly directed at him but concern inheritance taxes for “a decedent coincidentally named Alvin D. Craighead.” *See* Compl. [Doc. No. 1], ¶ 5. Plaintiff alleges that “the IRS levies and ongoing demands for this Alvin D. Craighead to file tax returns” are fraudulent and that the repeated collection attempts “were and are outrageous due to the fact that Alvin D. Craighead is not deceased and therefore it is impossible for Alvin D. Craighead to owe a tax on the transfer of property from his estate to his heirs requiring both a tax return and the payment of inheritance taxes.” *Id.* ¶¶ 6-7.

As previously stated, Defendant asserts that Plaintiff cannot bring this action because a claimant under § 7433 must exhaust administrative remedies before asserting a claim for damages. *See* 26 U.S.C. § 7433(d)(1). Defendant contends the administrative process is governed by federal regulations that require a claimant to submit a written claim containing certain information “to the Area Director, Attn: Compliance Technical Support Manager of the area in which the taxpayer resides.” *See* 26 C.F.R. § 301.7433-1(e). Defendant notes that Plaintiff alleges in his pleading the filing of an administrative complaint “with the then acting Commissioner of Internal Revenue,” rather than the proper recipient. *See* Compl. [Doc. No. 1], ¶ 2. Also, Defendant presents a copy of a document received by the IRS. This document is addressed to numerous individuals, including “Christie Jacobs or current Area Director for the Internal Revenue Service for Oklahoma” in Oklahoma City, Oklahoma. *See* Green Decl., Ex. A [Doc. No. 20-2]. It is entitled “Complaint Under Authority of 26 U.S.C. § 7433 and 26 U.S.C. § 7214(A).” *Id.* However, it makes no reference to a mistake of identity or any mistaken efforts to collect inheritance or estate taxes.

Standard of Decision

Summary judgment is proper “if the movant shows there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A material fact is one that “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine if the evidence is such that a reasonable jury could return a verdict for either party. *Id.* at 255. All facts and reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.*

The movant bears the initial burden of demonstrating the absence of a dispute of material fact warranting summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If the movant carries this burden, the nonmovant must then go beyond the pleadings and “set forth specific facts” that would be admissible in evidence and that show a genuine issue for trial. *See Anderson*, 477 U.S. at 248; *Celotex*, 477 U.S. at 324; *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998); *see also* Fed. R. Civ. P. 56(c). “To accomplish this, the facts must be identified by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein.” *Adler*, 144 F.3d at 671; *see also* Fed. R. Civ. P. 56(c)(1)(A). The Court’s inquiry is whether the facts and evidence identified by the parties present “a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

Discussion

Regardless whether administrative exhaustion is viewed as jurisdictional, federal appellate courts agree that it is a mandatory prerequisite to the recovery of damages under § 7433. *See Hoogerheide v. IRS*, 637 F.3d 634, 636 (6th Cir. 2011); *see also Kim v. United States*, 632 F.3d 713,

720 (D.C. Cir. 2011); *Carter v. United States*, 389 F. App'x 809, 812 (10th Cir. 2010); *Galvez v. IRS*, No. 11-10659, 2011 WL 4348328 (11th Cir. Sept. 19, 2011) (unpublished).¹ The statute requires the court to determine “that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Internal Revenue Service.” *See* 26 U.S.C. § 7433(d)(1). The Tenth Circuit has explained: “In order to exhaust his administrative remedies, [the plaintiff is] required to comply with 26 C.F.R. § 301.7433-1(e)(1)-(2)(i)-(v), which sets forth the manner and form for perfecting an administrative claim.” *Carter*, 389 F. App'x at 812 n.2. In addition to sending a written claim to the proper recipient, the claimant must provide certain information. The applicable regulation provides:

(2) Form. The administrative claim shall include:

- (i) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the taxpayer making the claim;
- (ii) The grounds, in reasonable detail, for the claim (include copies of any available substantiating documentation or correspondence with the Internal Revenue Service);
- (iii) A description of the injuries incurred by the taxpayer filing the claim (include copies of any available substantiating documentation or evidence);
- (iv) The dollar amount of the claim, including any damages that have not yet been incurred but which are reasonably foreseeable (include copies of any available substantiating documentation or evidence); and
- (v) The signature of the taxpayer or duly authorized representative. For purposes of this paragraph, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the taxpayer before the Internal Revenue Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the taxpayer.

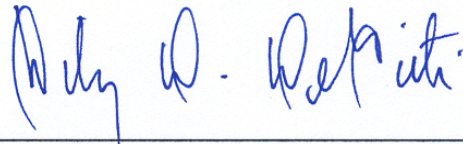
¹ Unpublished opinions cited pursuant to Fed. R. App. P. 32.1(a) and 10th Cir. R. 32.1.

26 C.F.R. § 301.7433-1(e)(2). A document submitted in substantial compliance with the regulations might be sufficient if the “defects did not prevent the IRS from considering the merits of [the plaintiff’s] claim. *See Carter*, 389 F. App’x at 812 n.2; *but see Hoogerheide*, 637 F.3d at 639 (expressing doubt about the existence of such an exception “in view of the specificity of the Treasury regulations”).

In this case, the record fails to show that Plaintiff sent a written claim to the proper recipient or that he submitted it in a form that would satisfy the regulations. More importantly, if the document that Plaintiff sent might be considered an administrative complaint, the document is silent concerning the grounds for relief now asserted in Plaintiff’s judicial complaint. It says nothing about mistaken attempts to collect inheritance taxes from the wrong person due to a similarity of names. Accordingly, the Court finds that Plaintiff has failed to establish the exhaustion of administrative remedies for his claim. Therefore, Plaintiff’s claim for damages under § 7433 is procedurally barred, and Defendant is entitled to summary judgment on this ground.

IT IS THEREFORE ORDERED that Defendant’s Motion to Dismiss for Lack of Subject-Matter Jurisdiction [Doc. No. 19], which was converted to a motion for summary judgment under Fed. R. Civ. P. 56, is GRANTED. Judgment shall be entered accordingly.

IT IS SO ORDERED this 2nd day of April, 2012.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

Case No. CIV-11-621-D

TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Civil No. 1:11-cv-187
)	
THOMAS R. DABBS,)	
DIANE K. DABBS,)	
LEE COUNTY,)	
)	
Defendants.)	

DECREE OF FORECLOSURE AND ORDER OF SALE

This Court entered a final judgment in this action on March 19, 2012 (Docket Entry No. 16), in favor of the plaintiff United States of America and against the defendants Thomas R. and Diane K. Dabbs for unpaid federal income tax liabilities. The judgment also ordered that the federal tax liens associated with those liabilities be enforced with a judicial sale of the land with the buildings situated thereon now known as and numbered 944 County Road 1205, Nettleton, Mississippi (the "Property"), and more fully described as follows:

The North ½ of the South half of the Northwest Quarter of Section
17, Township 11, Range 7 East, Lee County, Mississippi.

The Court now ORDERS that the Property shall be sold under 26 U.S.C. §§ 7402(a) and 7403, and 28 U.S.C. §§ 2001 and 2002, to satisfy those liens, as follows:

1. The Internal Revenue Service ("IRS") Property Appraisal and Liquidation Specialists ("PALS") is authorized to offer for public sale and to sell the Property.
2. The terms and conditions of the sale are as follows:
 - a. The sale of the Property shall be free and clear of all rights, titles, claims, liens,

and interests of all parties to this action, including the plaintiff United States and the defendants Thomas R. and Diane K. Dabbs.

b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Property, and easements, restrictions, and reservations of record, if any.

c. The sale shall be held either at the courthouse of the county or city in which the Property is located or on the Property's premises.

d. The PALS shall announce the date and time for sale.

e. Notice of the sale shall be published once a week for at least four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in Lee County, and, at the discretion of the PALS, by any other notice that the PALS deems appropriate. The notice shall contain a description of the property and shall contain the terms and conditions of sale in this order of sale.

f. The Property shall be offered for sale "as is," with all faults and without any warranties either express or implied, and the sale shall be made without any right of redemption.

g. The PALS shall set and adjust the minimum bid. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid.

h. At the time of the sale, the successful bidder(s) shall deposit with the PALS, by money order or by certified check or cashier's check drawn payable to the Clerk of the

United States District Court for the Northern District of Mississippi, a deposit in an amount between five (5) and twenty (20) percent of the minimum bid as specified by the PALS in the published Notice of Sale. Before being permitted to bid at the sale, potential bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be accepted from any person(s) who have not presented proof that, if they are the successful bidder(s), they can make the deposit required by this order of sale. The United States may bid as a creditor against its judgment without any tender of cash.

i. The successful bidder(s) shall pay the balance of the purchase price for the Property to the clerk of this Court within sixty (60) days following the date of the sale. The money order, certified check or cashier's check drawn payable to the United States District Court for the Northern District of Mississippi shall be given to the PALS who will deposit the funds with the Clerk of this Court. If the bidder fails to fulfill this requirement, the sale shall be treated as null and void, and the deposit shall be forfeited as damages and applied to the judgment for the federal tax liabilities against Thomas R. and Diane K. Dabbs entered in this case. The Clerk shall distribute the deposit as directed by the PALS by check drawn payable to the "United States Treasury." The Property shall be again offered for sale under the terms and conditions of this order of sale or, in the alternative, sold to the second highest bidder. The successful bidder(s) at the new sale or second highest bidder, as the case may be, shall receive the Property free and clear of all rights, titles, claims, liens, and interests of the defaulting bidder(s).

j. The Clerk of the United States District Court for the Northern District of

Mississippi is directed to accept the deposits and proceeds of the sale and deposit them into the Court's registry for distribution as provided for herein or pursuant to further Order of this Court.

k.. The sale of the Property shall be subject to confirmation by this Court. On confirmation of the sale, ownership and possession of the Property shall transfer to the successful bidder(s) and all interests in, liens against, and titles and claims to, the Property that are held or asserted by all parties to this action are discharged and extinguished. After the confirmation of the sale, the IRS shall execute and deliver a deed under the authority of this Court conveying the Property, effective as of the date of the confirmation of the sale, to the successful bidder(s). The successful bidder(s) shall pay, in addition to the amount of the bid, any documentary stamps and registry fees as provided by law.

l. The successful bidder(s) may elect to record in the local registry of deeds the order confirming the sale of the Property. The recording of a certified copy of an order of this Court confirming the sale of the Property shall be conclusive evidence of the conveyance of the Property, effective as of the date of the confirmation of the sale, to the successful bidder(s) free and clear of all rights, titles, claims, liens, and interests of all parties to this action. If the successful bidder(s) make(s) this election, the IRS may still execute and deliver a deed under the authority of this Court conveying the Property to the successful bidder(s) as a confirmation of the conveyance.

m. All rights to rents of or from the Property arising after the final judgment in this action and before the confirmation of the sale of the Property shall constitute

proceeds of the Property and such rents shall be turned over to, and paid to, the PALS for deposit and distribution in the same manner as the proceeds of the sale of the Property.

On confirmation of the sale of the Property, all rights to product, offspring, rents, and profits of or from the Property arising thereafter shall transfer to the successful bidder(s) and all risks of losses associated with the Property shall transfer to the successful bidder(s)

n. The United States may withdraw the Property from sale up until the time the sale is confirmed. If the Property is withdrawn from sale, the entire deposit shall be returned and the PALS may, without further permission of this Court, and under the terms and conditions in this order of sale, and hold a new public auction.

3. Until the sale of the Property is confirmed, Thomas R. and Diane K. Dabbs shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures, and appurtenances on the Property) in its current condition including, without limitation, maintaining fire and casualty insurance policies on the Property, and Thomas R. and Diane K. Dabbs and all occupants of the Property shall neither commit waste against the Property nor cause or permit anyone else to do so. The defendants shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any such action (such as running newspaper advertisements, posting signs, or making internet postings) that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

4. All persons occupying the Property shall vacate the Property permanently within 120 days of the date of this order of sale, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the Property). If any person fails or refuses to vacate the Property by the date specified in this order of sale, the PALS are authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the Property after 30 days of the date of this order of sale is deemed forfeited and abandoned, and the PALS are authorized to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of the sale and the balance to be paid into the Court for further distribution. Checks for the purchase of the personal property shall be drawn payable to the Clerk of the United States Court for the Northern District of Mississippi.

5. No later than two business days after vacating the Property pursuant to the deadline set forth in paragraph 4 above, defendants Thomas R. and Diane K. Dabbs shall notify counsel for the United States of a forwarding address where they can be reached. Notification shall be made by contacting the Department of Justice Tax Division Financial Litigation Unit at (202) 514-6674.

6. Until the confirmation of the sale of the Property, the PALS is authorized to have free and full access to the Property in order to take any and all actions necessary to preserve the Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Property.

7. After the Court confirms the sale of the Property, the sale proceeds deposited with the Clerk of this Court should be applied to the following items, in the order specified below:

a. First, to the United States Treasury for the costs and expenses of the sale, including any costs and expenses incurred to secure or maintain the Property pending sale and confirmation by the Court;

b. Second, to the plaintiff United States of America for application to the liability then outstanding in connection with unpaid federal income tax liabilities of the defendants Thomas R. and Diane K. Dabbs including all accrued statutory penalties, additions, and interest, until fully paid for the the 1997, 1998, 1999, and 2000 tax years:

c. Any further remaining sale proceeds shall be held in the Court's registry pending further order of the Court.

IT IS SO ORDERED:

Signed this 2nd day of April, 2012.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

March 19, 2012

Clerk, U.S. Bankruptcy Court

Below is an order of the Court.


U.S. Bankruptcy Judge


OADS (12/1/09) ksw

UNITED STATES BANKRUPTCY COURT
District of Oregon

In re
Lori Diane Diaz
Debtor(s)

) Case No. **11-30383-elp11**

)
)
) ORDER APPROVING DISCLOSURE STATEMENT
) AND FIXING TIME FOR FILING ACCEPTANCES OR
) REJECTIONS OF PLAN; **AND NOTICE OF**
) **CONFIRMATION HEARING**

The Court finds after hearing on notice that the final form of disclosure statement required by Chapter 11 of the Bankruptcy Code as filed by **the debtor**, and dated **2/27/2012**, contains adequate information. The debtor's address is 3499 SW Hillsboro Hwy, Hillsboro, OR 97123, and Taxpayer ID# (last 4 digits) is xxx-xx-

IT IS ORDERED AND NOTICE IS GIVEN that:

1. The disclosure statement mentioned above is approved;
2. Written ballots accepting or rejecting the plan or amended plan dated **2/27/2012** must be received by the proponent of the plan **Robert J Vanden Bos**, whose service address is **319 SW Washington #520, Portland, OR 97204**, no less than seven days before the hearing date set in point 4.
3. Objections to the proposed plan must be in writing, setting forth the specific grounds and details of objection, and must be filed, no less than seven days before the hearing date set in point 4, with the Clerk of Court, 1001 SW 5th Ave #700, Portland, OR 97204, and a copy simultaneously served on the plan's proponent; debtor(s); trustee; and creditor committee chairperson; and each attorney for any of those parties.
4. The hearing on confirmation of the plan, at which testimony will be received if offered and admissible, will be held on **5/21/12 at 09:30 AM**, in **US Bankruptcy Court, Courtroom #1, 1001 SW 5th Ave, 7th Floor, Portland, OR 97204**.
5. A notice, if appropriate, must be prepared in accordance with Fed. Bankruptcy Rule 2002(c)(3) and must describe all acts enjoined by the plan that are not otherwise enjoined under the Bankruptcy Code. The notice must be separately filed and served with this order.

6. Complaints objecting to the debtor's full discharge pursuant to 11 U.S.C. §1141(d)(3) and Fed. Bankruptcy Rule 4004(a) must be filed no later than the date fixed in point 4.
7. No later than 14 days after the "FILED" date on page 1 the plan proponent must both: (a) serve, as provided in Fed. Bankruptcy Rule 3017(d), a copy of this order and any notice prepared and filed under point 5, together with a copy of the plan, disclosure statement, and a ballot; and (b) complete and file the "Certificate of Service" below (without any attachments).
8. A Summary of the Ballots by Class (LBF #1181), and a Report of Administrative Expenses (LBF #1182) must be filed with the Clerk's Office no less than three business days before the hearing date in point 4. A copy of the Summary must be contemporaneously served on any Creditors' Committee. The plan proponent must comply with the requirements in LBF #1181 with regard to the actual ballots.

###

CERTIFICATE OF SERVICE

I certify that on 04/02/2012 copies of all documents required by point 7 above were served on the U.S. Trustee, debtor(s), any trustee, and their respective attorneys; all creditors and interested parties; the S.E.C. at the address provided on the court's Internet site at www.orb.uscourts.gov; and any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Bankruptcy Code.

/s/Robert J Vanden Bos

Signature

Robert J Vanden Bos - Of Attorneys for Debtor

Name and Relation to Case **OSB #78100**

Label Matrix for local noticing
0979-3
Case 11-30383-elp11
District of Oregon
Portland
Mon Apr 2 09:20:53 PDT 2012

(c)A & W PROPERTIES, LLC
ATTN: CHUCK ALDRINK
560 SE 4TH AVE STE 250
HILLSBORO OR 97123-5155

(p) INLAND PACIFIC COMPANIES
2861 W 120TH AVE
SUITE 250
WESTMINSTER CO 80234-2996

RICHARD T ANDERSON JR
8625 SW Cascade Ave #450
Beaverton, OR 97008-7593

A & E Security
PO Box 179
McMinnville, OR 97128-0179

AT Commons (TIC)
c/o Kami Fraley
60580 Gosney Rd
Bend, OR 97702-9657

Action Mortgage
PO Box 19247
Spokane, WA 99219-9247

Aldrich Investments
3893 SE Andrews Loop SE
Salem, OR 97302

Alfonso Sanchez
20836 SW Celebrity Ln
Beaverton, OR 97007-8604

Amended & Restated Revocable Trust
of Thomas and Anne McDonald Thomas
606 Willington Ave
Seattle, WA 98122-6470

Ashton Tenly Company, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

JESSE A BAKER
POB 17933
San Diego, CA 92177-7921

R. BRENT BERSELLI
1001 SW 5th Ave #2000
Portland, OR 97204-1136

Bradford W. Fraley & Kami L. Fraley
60580 Gosney Rd
Bend, OR 97702-9657

Brian Matlock
5896 Westlake Loop
Keizer, OR 97303-3775

Brooke S. Ford
919 Sagra Circle N
Keizer, OR 97303-3779

Burnside International, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

GREGORY D CALDWELL
1925 NW Amberglen Pkwy #230
Beaverton, OR 97006-6966

BRADLEY S COPELAND
POB 1758
Eugene, OR 97440-1758

CONDE T COX
1515 SW 5th Ave #600
Portland, OR 97201-5449

Cache Construction, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

Cache Investments, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

Capital Pacific Bank
805 SW Broadway Suite 780
Portland, OR 97205-3344

Capital Pacific Bank
c/o Richard Alexander-Chairman
805 SW Browadway #780
Portland, OR 97205-3344

CitiMortgage, Inc
PO Box 689196
De Moines, IA 50368-9196

CitiMortgage, Inc.
P.O. Box 140609
Irving TX 75014-0609

Citimortgage, Inc.
c/o CT Corporation Systems - RA
388 State St #420
Salem, OR 97301-3581

(p)COLUMBIA COMMUNITY BANK
314 E MAIN ST
HILLSBORO OR 97123-4068

Cowlitz Bank
927 Commerce Ave
Longview, WA 98632-2511

Cowlitz Bank
nka Heritage Bank
927 Commerce Ave
Longview, WA 98632-2511

Cowlitz Bank
nka Heritage Bank
c/o Brian L. Vance, CEO
927 Commerce Ave
Longview, WA 98632-2511

Cynthia Bowman
907 Sagrada Circle N
Keizer, OR 97303-3778

D & R Oregon Properties, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

JACQUELINE DESOUZA
1615 Hopkins St
Berkeley, CA 94707-2712

DNK Properties, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

Dean Amorim
20596 SW Celebrity Ln
Beaverton, OR 97007-8602

Derek Bristow
2738 13th Pl
Forest Grove, OR 97116-3197

Lori Diane Diaz
3499 SW Hillsboro Hwy
Hillsboro, OR 97123-9274

Dorane Pederson
943 Sagrada Circle N
Keizer, OR 97303-3782

AMY EDWARDS
900 SW 5th Ave #2600
Portland, OR 97204-1229

Estate of Doug Wetter
Wetter Family Jt. Revocable Living Trust
c/o Karnopp Peterson LLP
1201 NW Wall St. #200
Bend, OR 97701-1991

Federal Home Loan Bank
1501 4th Ave Ste 1800
Seattle, WA 98101-1693

Federal Home Loan Bank of Seattle
1501 4th Ave., Suite 1800
Seattle, WA 98101-1693

Fidelity Investment Grade Bond
82 Devonshire Street
Boston, MA 02109-3614

Fidelity Investment Grade Bond
PO Box 770001
Cincinnati, OH 45277-0001

Fidelity OTC Port
82 Devonshire Street
Boston, MA 02109-3614

Fidelity OTC Port
PO Box 770001
Cincinnati, OH 45277-0001

Fidelity Value Strategies Fund
82 Devonshire Street
Boston, MA 02109-3614

First Horizon Home Loans
4000 Horizon Way Suite 100
Irving, TX 75063-2260

First Savings Bank Northwest
201 Wells Ave. South
Renton, WA 98057-2131

First Savings Bank Northwest
nka Columbia State Bank
201 Wells Ave. South
Renton, WA 98057-2131

First Savings Bank Northwest
nka Columbia State Bank
c/o Melanie J Dressel, Pres & CEO
1301 A Street
Tacoma, WA 98402-4200

Francis, Hansen & Martin LLP
1148 NW Hill St
Bend, OR 97701-1914

Frontier
PO Box 2951
Phoenix, AZ 85062-2951

Gerald Jackson
20848 SW Parker Ct
Beaverton, OR 97007-1094

Glenda Davila
989 Sagrada Circle N
Keizer, OR 97303-3784

HFF
PO Box 840637
Dallas, TX 75284-0637

Heritage Bank
PO Box 9188
Tacoma, WA 98490-0188

Heritage Bank
c/o Rich Alright - Special Assets
927 Commerce Ave
Longview, WA 98632-2511

Heritage Bank, formerly known as Cowlitz/Bay
Lee C. Nusch
Lane Powell PC
601 SW Second Avenue, Suite 2100
Portland, OR 97204-3158

Heritage Christian School
c/o Charles Starr, Chairman of the Board
8330 SW River Rd
Hillsboro, OR 97123-9131

Hillsboro Garbage & Disposal
PO Box 99
Hillsboro, OR 97123-0099

Home Federal Bancorp
500 12th Ave South
Nampa, ID 83651-4250

Home Federal Bank
Arnold Gallagher Percell, et al
800 Willamette Street #800
PO Box 1227
Eugene, OR 97440-1227

Home Federal Bank
Arnold Gallagher Percell, et al.
800 Willamette Street, #800
Eugene, OR 97401-2996

Homeward Bound
4978 SW 208th Terrace
Beaverton, OR 97007-1091

Homeward Bound
5002 SW 208th Terrace
Beaverton, OR 97007-1091

IRS
By Dwight Holton, Acting US Atty
1000 SW 3rd Ave Ste 600
Portland, OR 97204-2936

(p) INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

IRS
Centralized Insolvency Operations
PO Box 7346
Philadelphia, PA 19101-7346

Inland Pacific
PO Box 251979
Westminster, CO 80035

Insco Insurance Services, Inc.
Developers Surety & Indemnity Co.
17780 Fitch, Ste 200
Irvine, CA 92614-6060

James Niebergall
1514 NE Parkside Dr
Hillsboro, OR 97124-3924

Jeffery Gilley
20724 SW Celebrity Ln
Beaverton, OR 97007-8603

CHRISTINE A KOSYDAR
900 SW 5th Ave #2600
Portland, OR 97204-1229

Kami Fraley
c/o Conde T. Cox
Greene & Markley, P.C.
1515 SW 5th Ave #600
Portland OR 97201-5492

L & B Development, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

Larry (Phil) Jayne
5877 Westlake Loop
Keizer, OR 97303-3775

Lauren Lancial
946 Sagrada Circle N
Keizer, OR 97303-3782

Lincoln County Tax Collector
225 W Olive St. Rm 205
Newport, OR 97365-3811

Louis J. Diaz
3499 SW Hillsboro Hwy
Hillsboro, OR 97123-9274

CHARLES R MARKLEY
1515 SW 5th Ave #600
Portland, OR 97201-5492

ANGELA M MICHAEL
19735 10th Ave NE #N200
Poulsbo, WA 98370-7478

JOHN CASEY MILLS
111 SW 5TH AVE #3400
PORTLAND, OR 97204-3614

Marion County Tax Assessor
PO Box 14500
Salem, OR 97309-5036

Marion County Tax Collector
POB 2511
Salem OR 97308-2511

Mark Hamilton
20733 SW Celebrity Ln
Beaverton, OR 97007-8607

Markel, LLC
1001 Mollala Ave Ste 200
Oregon City, OR 97045

Markel, LLC
c/o Timothy Ramis - RA
2 Center Pointe, 6th Fl
Lake Oswego, OR 97035-8618

Nardos Atnafu
4983 SW 208th Terrace
Beaverton, OR 97007-1092

National Mortgage
15862 SW 72nd Suite 200
Portland, OR 97224-8054

Ned Baker Real Estate, Inc.
2339 State St.
Salem, OR 97301-4541

New 500 Bond, LLC
10710 Westminster Blvd Ste 130
Broomfield, CO 80020-4182

ODR
ATTN: Bankruptcy Unit
955 Center St NE
Salem, OR 97301-2555

ODR Bkcy
955 Center St NE
Salem OR 97301-2555

Ocean House TIC
210 SE 4th Ave
Hillsboro, OR 97123-4159

ANDREW P PARKS
800 Willamette St #800
Eugene, OR 97401-2996

Paul A Brown
17775 SW Corona Ln
Beaverton, OR 97006-7512

Portland General Electric
PO Box 4438
Portland, OR 97208-4438

Premier West Bank
875 SW Rimrock #100
Redmond, OR 97756-2565

Premier West Bank
Premier West Bancorp
503 Airport Rd
Medford, OR 97504-4159

Premier West Bank
c/o John Casey Mills
Miller Nash LLP
111 SW 5th Ave Ste 3400
Portland, OR 97204-3614

SHAWN P RYAN
620 SW Main St #612
Portland, OR 97205-3024

Retha Wetter
1518 NE Jackson School Rd
Hillsboro, OR 97124-2426

Robert W. Thomas and
Anne McDonald Thomas
606 Willington Ave
Seattle, WA 98122-6470

Rodrigo Pinacho
20708 SW Celebrity Ln
Beaverton, OR 97007-8603

Runway Properties, LLC
210 SW 4th Ave
Hillsboro, OR 97123

(c)RUNWAY, LLC
C/O CHARLES ALDRINK, RA
560 SE 4TH AVE STE 250
HILLSBORO OR 97123-5155

CHAD M STOKES
1001 SW 5th Ave #2000
Portland, OR 97204-1136

Schwabe, Williamson & Wyatt
1211 SW 5th Ave., Suite 1900
Portland, OR 97204-3719

Shari Wetter Swanson
6965 SW 68th St
Portland, OR 97223-9401

Stephanie Guel
1672 NE Glen Ellen Dr
Hillsboro, OR 97124-4086

Sterling Savings Bank
111 N Wall
Spokane, WA 99201-0696

Sterling Savings Bank
Christopher G. Varallo
422 W. Riverside Ave #1100
Spokane, WA 99201-0302

Sterling Savings Bank
PO Box 2128
Spokane, WA 99210-2128

Sterling Savings Bank
c/o J. Gregory Seibly, Pres & CEO
111 N Wall St
Spokane, WA 99201-0696

Swift Twenty, LLC
c/o Bob Pitman, RA
210 SE 4th Ave
Hillsboro, OR 97123-4159

Tenly Company, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

Tenly Properties Corp
210 SE 4th Ave
Hillsboro, OR 97123-4159

Tenly Properties Corp.
210 SE 4th
Hillsboro, OR 97123-4159

Tenly Properties Corp.
c/o Kami Fraley
60580 Gosney Road
Bend, OR 97702-9657

The Bank of New York Mellon
c/o McCarthy & Holthus, LLP
19735 10th Ave NE, Suite N200
Poulsbo, WA 98370-7478

Tim Ramis
2 Center Pointe, 6th Fl
Lake Oswego, OR 97035-8618

Timothy O'Byrne
40 Beaver St
Albany, NY 12207-1530

Timothy O'Byrne
c/o Christine A Kosydar
Stoel Rives LLP
900 SW 5th Ave Ste 2600
Portland, OR 97204-1268

Timothy O'Byrne
c/o Inland Pacific Companies
POB 351979
Westminster CO 80035-1979

Tyee Lodge (TIC)
210 SE 4th Ave
Hillsboro, OR 97123-4159

US Bank
111 SW 5th Ave Ste 600
Portland, OR 97204-3611

(p)US BANK
PO BOX 5229
CINCINNATI OH 45201-5229

US Trustee, Portland
620 SW Main St #213
Portland, OR 97205-3026

Umpqua Bank
Attn.: Legal Department
1 S.W. Columbia Street, Suite 1200
Portland, Oregon 97258-2013

Umpqua Bank
PO Box 1580
Roseburg, OR 97470-0367

Umpqua Bank
PO Box 1820
Roseburg, OR 97470-0417

Umpqua Bank
c/o Ray Davis, President & CEO
445 SE Main St
Roseburg, OR 97470-4900

Upland Park Holdings, LLC
c/o Brad Fraley
60580 Gosney Rd
Bend, OR 97702-9657

ROBERT J VANDEN BOS
319 SW Washington #520
Portland, OR 97204-2620

CHRISTOPHER G VARALLO
422 W Riverside Ave #1100
Spokane, WA 99201-0302

Vacation Internationale Ltd
1417 - 116th Ave NE
Bellevue, WA 98004-3821

Vassal Investments, LLC
210 SE 4th At
Hillsboro, OR 97123

Vassal Investments, LLC
210 SE 4th Ave
Hillsboro, OR 97123-4159

PATRICK W WADE
POB 1475
Eugene, OR 97440-1475

J STEPHEN WERTS
1001 SW 5th Ave #2000
Portland, OR 97204-1136

KATHARINE L WEST
621 SW Morrison St #1300
Portland, OR 97205-3816

Washington County Tax Assessor
155 N First Ave #130 MS8
Hillsboro, OR 97124-3001

Washington Federal Savings
c/o Patrick W. Wade
Hershner Hunter LLP
P.O. Box 1475
Eugene, OR 97440-1475

Washington Federal Savings & Loan Assoc
c/o Mr. Roy Whitehead, CEO
425 Pike St
Seattle, WA 98101-2399

Washington Federal Savings & Loan Assoc.
425 Pike Street
Seattle, WA 98101-2399

Wells Fargo
PO Box 6427
Carol Stream, IL 60197-6427

Wetter Family Joint Revocable
Living Trust U/T/A date 4/28/2004
210 SE 4th Ave
Hillsboro, OR 97123-4159

Wilfrido Salgado
2908 13th Pl
Forest Grove, OR 97116-3194

William Victor Ramis Trust
Guardian Services Seattle
200 1st Ave W Ste 308
Seattle, WA 98119-4219

SEC
Attn: Bankruptcy Counsel
5670 Wilshire Blvd 11th Flr
Los Angeles CA 90036

Case 11-30383-elp11 Doc 544 Filed 04/02/12

XET Holding Co., LLC
Jacqueline deSouza
Desouza Law Offices PC
1615 Hopkins St
Berkeley, CA 94707-2712

End of Label Matrix
Mailable recipients 153
Bypassed recipients 20
Total 173

Zurbrugg Development
380 SE Washington St
Hillsboro, OR 97123-4025

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 1:11-cv-00060-MP-GRJ

WILLIAM J DICKERT,

Defendant.

_____ /

ORDER

Pending before the Court is Defendant's Renewed Motion For An Enlargement of Time In Which To Complete Discovery. (Doc. 55.) The United States has filed a response in opposition (Doc. 59) and therefore the matter is ripe for review.

Defendant again requests an extension of the January 20, 2012 discovery deadline, this time until April 20, 2012. On January 20, 2012 the Defendant requested the Court to extend the discovery deadline until March 20, 2012 contending that the Plaintiff's responses to Defendant's discovery requests were incomplete. (Doc. 42.) The Court denied the motion because the Court concluded that the Defendant has had ample time to conduct discovery in this case. (Doc. 45.) In the current renewed motion the Defendant again points to the Plaintiff's responses to his discovery requests as a reason for extending the discovery deadline. Defendant has been in possession of Plaintiff's responses to Defendant's discovery requests since January 11 and 20, 2012. The United States represents that it has produced all documents within its possession, custody and control and that it has provided complete responses to Defendant's

interrogatories to the extent the interrogatories were not objectionable. Further, as the Court pointed out in previous orders the Defendant represented at the case management conference that he did not intend to take any discovery. While the Defendant has the right to conduct discovery the Defendant has failed to point to any particular discovery that is necessary that he has been unable to obtain despite due diligence. Instead, Defendant's approach to this case has been to file repeated requests to extend deadlines in effort to further delay resolution of this case.

Accordingly, upon due consideration, it is **ORDERED**:

Defendant's Renewed Motion For An Enlargement of Time In Which To Complete Discovery (Doc. 55) is **DENIED**.

DONE AND ORDERED this 2nd day of April, 2012.

s/ Gary R. Jones

GARY R. JONES
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 1:11-cv-00060-MP-GRJ

WILLIAM J DICKERT,

Defendant.

_____ /

ORDER

Pending before the Court is Defendant's Unopposed Motion For Enlargement of Time to File Motion For Summary Judgment. (Doc. 56.) Defendant requests a further extension of time to April 20, 2012 within which to file a motion for summary judgment. Defendant represents that he has been unable to prepare his motion for summary judgment because of health issues and because he needs further responses to his discovery requests. Although the Defendant has received responses to the discovery requests, and therefore this is not a sufficient reason to extend the deadline for filing a motion for summary judgment, Defendant's health reasons are a sufficient reason. The Defendant represents that the Plaintiff does not oppose his request.

Accordingly, upon due consideration, it is **ORDERED**:

1. Defendant's Unopposed Motion For Enlargement of Time to File Motion For Summary Judgment (Doc. 56) is **GRANTED**.
2. Defendant shall have until **April 20, 2012** to file a motion for summary

judgment. No further extensions will be granted absent extraordinary circumstances.

DONE AND ORDERED this 2nd day of April, 2012.

s/ Gary R. Jones

GARY R. JONES
United States Magistrate Judge

In the United States Court of Federal Claims

No. 12-66 T
(Filed: April 2, 2012)

TOM GONZALES, as Personal *
Representative for the Estate of Thomas J. *
Gonzales, II; Thomas J. Gonzales, II, *
Administrative Trust, *

Plaintiff, *

v. *

THE UNITED STATES, *

Defendant. *

ORDER

Before the court is defendant's unopposed motion for an enlargement of time ("motion"), wherein it seeks a forty-five day enlargement, to and including May 17, 2012, within which to respond to the complaint. Defendant's response is currently due by April 2, 2012. Its motion is unopposed. According to defendant, its counsel has yet to receive the relevant administrative files and litigation recommendation from the Internal Revenue Service ("IRS"). Additional time, defendant states, will permit the IRS to transmit the necessary files to counsel so that defendant can file an appropriate response. Defendant's request is reasonable, and the motion is **GRANTED**. Defendant shall respond to the complaint by no later than **Thursday, May 17, 2012**.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 1:11CV62HSO-JMR

DAVID E GRIFFIN, ET AL

DEFENDANTS

ORDER

This matter is before the Court on the motions of Defendants, David E Griffin and Julie Griffin , for Leave to Answers and Amended Answers [51-1] and [52-1] . The Court finds that good cause exists for this Court to grant leave to file Amend their Answers and Amended Answers.

Defendants assert that they retained counsel after the deadline to file Amended Answers and that Answer which was filed did not address all issues before the Court . Plaintiff acknowledges that Rule 15 of Federal Rules of Civil Procedure allows this Court to give leave to a party to amend when justice requires. Plaintiff asserts that the amendment at issue will allow Defendants to deny allegations that at least one of the Defendant has allegedly admitted to in the pending matter. The Court finds that Defendants may amend their Answers and Amended Answer in light of their representation by counsel and to more accurately address all issues before the Court. The Plaintiff may file the appropriate dispositive, if relevant. In light of the late amendments, should the parties need additional time for discovery, parties should contact the Court to set a status conference. motions of Defendants, David E Griffin and Julie Griffin, for Leave to Amend Answers and Amended Answers [51-1] and [52-1] should be granted.

SO ORDERED this the 2ndday of April, 2012

S/John M Roper, Sr.

UNITED STATES MAGISTRATE JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: CHRISTOPER LAWRENCE HAYES,)	
)	
Debtor.	)	Bankruptcy No. 10-58136
	)	Honorable Steven W. Rhodes
)	
CHRISTOPHER LAWRENCE HAYES,)	
)	
Plaintiff,	)	Adversary No. 10-06573
	)	Honorable Steven W. Rhodes
)	
v.)	
)	
INTERNAL REVENUE SERVICE,)	
DEPARTMENT OF TREASURY,)	
)	
Defendant.)	

JUDGMENT

Pursuant to the Court's Opinion Regarding Cross-Motions For Summary Judgment (Dock. # 122), entered on December 27, 2011, and the Stipulation To Entry Of Judgment, Without Prejudice To Rights Of Appeal, filed on March 30, 2012, the Court enters the following judgment in the above-captioned adversary proceeding:

1. The assessments by the Internal Revenue Service ("IRS") of penalties under 26 U.S.C. § 6672, against the plaintiff-debtor Christopher L. Hayes, for the quarters ended September 30, 2006, and December 31, 2006, were correct. Neither Christopher Hayes nor his bankruptcy estate is entitled to any refund of the amounts credited in satisfaction of those assessments.

2. The IRS's assessment of a penalty under 26 U.S.C. § 6672, against the plaintiff-debtor Christopher L. Hayes, for the quarter ended March 31, 2007, should have been in the amount of \$3,088.26, and not in the amount of \$5,616.77. The IRS shall partially abate its

assessment against the plaintiff-debtor Christopher L. Hayes for that quarter (by \$2,528.51). The IRS shall refund \$2,528.51 of the \$5,616.77 overpayment credit from Christopher Hayes's 2008 income tax that was applied to the IRS's assessment under 26 U.S.C. § 6672 for the quarter ended March 31, 2007, plus overpayment interest from March 29, 2010 (the date the 2008 return was late-filed), subject to any offset rights of the IRS under 26 U.S.C. § 6402(a).

3. The IRS's assessments of penalties under 26 U.S.C. § 6672, against the plaintiff-debtor Christopher L. Hayes, for the 7 quarters ended June 30, 2007, through and including December 31, 2008, were incorrect. The IRS shall abate those assessments against the plaintiff-debtor Christopher L. Hayes. The IRS shall refund the \$4,709.61 overpayment credit from the plaintiff-debtor Christopher Hayes's 2008 income tax that was applied to the IRS's assessments against him under 26 U.S.C. § 6672 for the quarter ended June 30, 2007, plus overpayment interest from March 29, 2010 (the date the 2008 return was late-filed), subject to any offset rights of the IRS under 26 U.S.C. § 6402(a).

4. In accordance with the debtor Christopher Hayes's amended claims of exemption (at Bankr. Dock. # 29, p. 10), to which no objections have been filed, and the Order for Partial Abandonment (at Bankr. Dock. # 40), the refunds payable as described in paragraphs 2 and 3, above, shall be paid to the plaintiff-debtor Christopher Hayes.

5. The IRS's Proof of Claim (Claim # 1-1) against the Chapter 7 estate of the

plaintiff-debtor Christopher L. Hayes, in Case no. 10-58136, is hereby DISALLOWED.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Signed on April 02, 2012

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DAVID O. HENDRICKSON; LORI R.
HENDRICKSON; LORI R.
HENDRICKSON AND DENZEL G.
WILLIAMS AS TRUSTEES FOR D.L.
FAMILY TRUST; ZIONS FIRST
NATIONAL BANK; WELLS FARGO
BANK,

Defendants.

ORDER

Case No. 1:09-CV-166-TC

For the reasons stated at the hearing on April 2, 2012, the court DENIES Defendant David O. Hendrickson's Motion for a Temporary Restraining Order (Dkt. No. 56). The court finds that there is neither a legal nor a factual reason to stay the execution of the judgment that the court ordered on February 6, 2012.

As of April 6, 2012, the United States may take control of the property located at 1660 E Wasatch Drive, Ogden, Utah 84403 and begin the sale process. Through its Property and Appraisal Liquidation Specialist ("PALS"), Douglas McDonald, the United States may change the locks on Mr. Hendrickson's house and make any other necessary arrangements that the law allows. But in light of the health of both Mr. and Mrs. Hendrickson, and due to the factual circumstances surrounding the eviction, the court orders the United States to provide reasonable

access to Mr. Hendrickson to his home for the period of one week from the date of eviction (until April 13). During this time, Mr. Hendrickson may arrange to enter his home for the sole purpose of cleaning out his belongings in a timely and expeditious manner.

SO ORDERED this 2nd day of April, 2012.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION

v. :

ANTHONY DENNIS JACKSON : NO. 09-1745

O'NEILL, J.

APRIL 2, 2012

MEMORANDUM

The United States has moved for relief from my Order of February 17, 2012.

Since the parties have been unable to agree on facts relevant to that Order and it does not appear that further attempts will succeed I will vacate that Order and neither party need comply with it.

On February 17, 2010 I entered judgment against Jackson in connection with his income tax liabilities for the 1992, 1993, 1994, 1995, 1996, 1997 and 1998 tax years in the amount of \$469,323.11 plus statutory interest and additions accruing after July 2009. On December 12, 2011 I filed an Order denying Jackson's motion to compel plaintiff to satisfy that judgment. Thereafter on December 22, 2011 defendant moved for reconsideration of the Order of December 12, 2011 and also for relief from final judgment pursuant to Rule 60(b).¹ Given my vacation of the Order of February 17, 2012 defendant's motions are now ready for disposition.

¹Presumably, 60(b)(5) "the judgment has been satisfied."

As part of his opposition papers to the Government's motion to vacate, defendant filed a proposed joint stipulation of facts which states that he made three payments totaling \$41,729.76 toward his 1992, 1993 and 1994 income tax liabilities and that these payments were the only payments made toward those liabilities. The government represents that defendant's liabilities as of March 19, 2012, were \$403,572.32. Thus, it is clear that he has not paid the judgment in full.

The sole basis for defendant's position that he has paid the judgment in full is the fact that on May 23, 2011 the Internal Revenue Service abated his tax liability, interest and penalties due for the tax years 1992 and 1994 and that on June 6, 2011 the Service abated his tax liability, interest and penalties due for the tax year 1993, all abatements being without the authorization of the Attorney General of the United States. On April 16, 2009 the Service had referred the collection of Mr. Jackson's income tax liabilities for the tax years 1992 through 1998 to the Department of Justice. Pursuant to 26 U.S.C. §7122, after a Federal tax case has been referred to the Department of Justice only the Attorney General can authorize a compromise of the underlying tax liability. As a consequence, if what the Service did was to compromise defendant's tax liabilities for the three years in question the action of the Internal Revenue Service in abating those liabilities was of no effect.²

If, on the other hand, the abatements made by the Service were merely clerical errors, as seems likely from the record in this case, obviously defendant cannot rely upon them to eliminate his tax liabilities.

²On November 7, 2011, the Service reversed the abatements for 1992 and 1993 and as of November 10, 2011, was in the process of reversing the abatement for 1994.

The only authority defendant cites in support of his position is United States v. Pound, 2010 WL 2803918 (E.D. Okl. Feb. 2, 2010), a case first drawn to my attention by the Government in its brief in opposition to defendant's motion to compel the United States to mark the judgment satisfied. To the extent that that case supports defendant's position, I decline to follow it.³

³As the Pound Court noted, "*Crompton-Richmond* is merely a district court decision which this court may consider for its persuasive value."

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION

v. :

ANTHONY DENNIS JACKSON : NO. 09-1745

ORDER

AND NOW, this 2nd day of April, 2012,

1. Plaintiff's motion to vacate my Order of February 17, 2012 is GRANTED and that Order is VACATED.

2. Defendant's motion for reconsideration of the Order of December 12, 2011 is DENIED.

3. Defendant's motion for relief from final judgment pursuant to Rule 60(b) is DENIED.

4. The Clerk is directed to close this case statistically.

/s/ Thomas N. O'Neill, Jr.

THOMAS N. O'NEILL, JR., J.

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6 Attorneys for the United States of America

7
8 IN THE DISTRICT COURT OF GUAM

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 FRED S. JACKSON, MARILYN N. JACKSON,
13 BANK OF AMERICA,

14 Defendants.

CIVIL CASE NO. 11-00017

ORDER

Granting Stipulation to Extend Deadline for
Bank of Guam to Respond to
Subpoena *Duces Tecum*

15
16 The court, having reviewed the parties Stipulated Motion to Extend Deadline for Bank of
17 Guam to Respond to the United States' Subpoena *Duces Tecum*, finds good cause and hereby
18 GRANTS the Stipulated Motion. As agreed, the Bank of Guam has until April 30, 2012 to
19 provide a response to the United States' Subpoena *Duces Tecum*.

20 IT IS SO ORDERED.



/s/ Joaquin V.E. Manibusan, Jr.
U.S. Magistrate Judge
Dated: Apr 02, 2012

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN LLOYD KIRK, individually and
d/b/a INDIAN NATIONS ADVOCATE
LAW OFFICE, THE KIRK OF YAHH
HAVA, and YAHH HAVAH 508 LLC,

Defendant.

CASE NO. C11-1075 MJP

ORDER GRANTING SUMMARY
JUDGMENT

This matter comes before the Court on Plaintiff's motion for summary judgment. (Dkt. No. 18.) Having reviewed the motion, the response (Dkt. No. 22), the reply (Dkt. No. 23), the surreply (Dkt. No. 24), and all related filings, the Court GRANTS Plaintiff's motion for summary judgment.

Background

The United States of America is suing Defendant John Kirk ("Kirk"), for promoting and selling a fraudulent tax scheme. (Compl. ¶ 10.)

1 In 2008 and 2009, Kirk held several seminars entitled the “1099-OID Workshop” in
2 Washington and Nevada. (Dkt. No. 4, Answer, ¶ 10.) The seminars offered attendees templates
3 and instructions on how to properly implement the scheme. (Id.; Lopez Decl., ¶¶ 4, 9, 12, 13.)
4 Under Kirk’s 1099-OID process, a customer gets a credit card, spends money, and incurs interest
5 on the credit card. (Lopez Decl., Ex. 1.) Rather than pay the credit card balance, however, the
6 customer files a Form 1099-OID with the IRS claiming that the credit card company withheld
7 income tax equal to the principal and interest on the credit card. (Id.) Next, the customer sends
8 in a return asking for a refund of the amount listed on the Form 1099-OID to pay off the credit
9 card balance. (Id.) At least thirty-one of Kirk’s customers filed returns based on the 1099-OID
10 scheme, the result of which was approximately \$8 million in requests for fraudulent refunds.
11 (Lopez Decl. ¶ 6.)

12 In addition, through his organization the Indian Nations Advocate Law Office, Kirk
13 offered to personally prepare the OID forms for his customers for a \$500 fee. (Lopez Decl., Ex.
14 2.) In the offer, Kirk acknowledges the IRS may assess customers with a \$5,000 penalty for
15 filing a frivolous return but that he will assist customers in reversing the frivolous filing penalty
16 for \$175/hour. (Id.) At least one of Kirk’s customers, Thomas Haggerty, took Kirk up on his
17 offer. (Haggerty Decl. ¶ 6.)

18 Discussion

19 I. Standard

20 Summary judgment is proper if the pleadings, depositions, answers to interrogatories,
21 admissions on file, and affidavits show that there are no genuine issues of material fact for trial
22 and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c).
23 Material facts are those “that might affect the outcome of the suit under the governing law.”
24

1 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The underlying facts are viewed in
 2 the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith
 3 Radio Corp., 475 U.S. 574, 587 (1986). The party moving for summary judgment has the burden
 4 to show initially the absence of a genuine issue concerning any material fact. Adickes v. S.H.
 5 Kress & Co., 398 U.S. 144, 159 (1970). Once the moving party has met its initial burden, the
 6 burden shifts to the nonmoving party to establish the existence of an issue of fact regarding an
 7 element essential to that party's case, and on which that party will bear the burden of proof at
 8 trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323–24 (1986).

9 II. Injunction under § 7408

10 The Government requests the Court enjoin Kirk from promoting the 1099-OID tax
 11 scheme pursuant to 26 U.S.C. §§ 7408.

12 To enjoin Kirk under § 7408, the Government must show: (1) that Kirk has engaged in
 13 specified conduct (defined in 26 U.S.C. § 7408(c)) and (2) that injunctive relief is appropriate to
 14 prevent recurrence of such conduct. 26 U.S.C. § 7408(b). “Specified conduct” includes any
 15 action that violates §§ 6700 and 6701. Section 6700 penalizes any person who organizes or
 16 participates in the sale of a plan or arrangement and in so doing makes a statement with respect
 17 to the securing of any tax benefit which he knows or has reason to know is false or fraudulent as
 18 to any material matter. 26 U.S.C. § 6700(a). Similarly, § 6701 penalizes any person who aids
 19 and abets an understatement of tax liability. 26 U.S.C. § 6701(a).

20 Here, there is no factual dispute that Kirk violated §§ 6700 and 6701. Kirk’s promotion
 21 of the 1099-OID scheme was a “plan or arrangement” and Kirk knew or had reason to know the
 22 scheme undermined the Government’s ability to collect taxes—Kirk, in fact, warned his
 23
 24

1 customers that they could face frivolous filing penalties. In addition, Kirk aided and abetted
2 others who understated their tax liability when he offered to prepare returns for a \$500 fee.

3 The closer call is whether the second prong is met—i.e., whether an injunction is
4 necessary and appropriate to prevent the specified conduct. To determine this, courts consider
5 (1) the gravity of the harm caused by the offense; (2) the extent of the defendant’s participation;
6 (3) the defendant’s degree of scienter; (4) the isolated or recurrent nature of the infraction; (5) the
7 defendant’s recognition (or non-recognition) of his culpability, and; (6) the likelihood that the
8 defendant’s occupation would place him in a position where future violations could be
9 anticipated. U.S. v. Estate Preservation Services, 202 F.3d 1093, 1105 (9th Cir. 2000).

10 In Kirk’s case, the Court finds an injunction is appropriate. Although Kirk is apparently
11 seventy-one years old and possibly, based on his improperly filed surreply, in prison on unrelated
12 charges, the Court observes Kirk caused at least 31 customers to submit \$8 million worth of
13 fraudulent claims and knew the 1099-OID scheme may lead to penalties. It also appears based
14 on Kirk’s response that Kirk does not seem to recognize his own culpability; instead, arguing it
15 is the IRS’s fault for creating confusion over the 1099-OID process. Since the Court is not
16 convinced Kirk will not continue to promote his tax scheme, the Court finds a permanent
17 injunction is appropriate.

18 III. Permanent Injunction under § 7402

19 The Government also requests the Court enjoin Kirk from promoting the 1099-OID tax
20 scheme pursuant to 26 U.S.C. §§ 7402.

21 Section 7402(a) allows the Court to issue an injunction “as may be necessary to prevent
22 interference with internal revenue laws.” Specifically, the Government requests the Court use its
23 power (1) to enjoin Kirk from aiding and abetting customers in understating their tax liability, (2)
24

1 to order Kirk contact by mail (and also by e-mail, if an address is known) all persons who have
 2 purchased any products, services or advice associated with the false or fraudulent tax scheme
 3 described in this complaint and inform those persons of the Court's findings concerning the
 4 falsity of Kirk's prior representations and attach a copy of the permanent injunction against Kirk;
 5 and (3) to provide to the United States a list of all persons who have purchased products, services
 6 or advice from Kirk in connection with the 1099-OID Workshop in the past three years.

7 The Court agrees to the Government's first request only. While it may be useful for the
 8 Government to have access to Kirk's list of customers, the customer information is not necessary
 9 to prevent future interference with internal revenue laws. The Court observes Kirk already
 10 canceled one of his workshops in California in 2009 and has expressed a willingness to enter into
 11 some form of an injunction. Therefore, the Court will not fashion an injunction that possibly
 12 exceeds that which is necessary to prevent further tax fraud.

13 **Conclusion**

14 Pursuant to 26 U.S.C. §§ 7402 and 7408, the Court enjoins Defendant and his
 15 representatives, agents, servants, employees, attorneys, independent contractors, and anyone in
 16 active concert or participation with him from the following activities by means of false,
 17 deceptive, or misleading commercial speech:

- 18 1. Directly or indirectly organizing, promoting, marketing or selling any plan or
 19 arrangement that advises or assists taxpayers to attempt to violate the internal revenue
 20 laws or unlawfully evade the assessment or collection of their federal tax liabilities,
 21 including promoting, selling or advocating the use of false tax returns and Forms 1099-
 22 OID or claiming false OID income based on the false claim that:
 23
 24

- a. Taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099-OID or other documents;
 - b. Taxpayers can issue false Forms 1099-OID to a creditor and report the amount on the false Forms 1099-OID as income taxes withheld on their behalf;
 - c. Taxpayers have a secret account with the Treasury Department, which they can use to pay their debts or which they can draw on for tax refunds through a process that is often termed “redemption” or “commercial redemption” by promoters of this tax-fraud scheme.
2. Engaging in conduct subject to penalty under 26 U.S.C. § 6700, i.e., by making or furnishing, in connection with the organization or sale of a plan or arrangement, a statement about the securing of a tax benefit that Kirk knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
 3. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing tax returns and other documents that understate the tax liabilities of others;
 4. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any other person or entity;
 5. Giving tax advice or assistance to anyone for compensation;
 6. Representing anyone other than himself before the Internal Revenue Service;
 7. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, and;
 8. Engaging in any activity subject to penalty under the Internal Revenue Code.

1 Pursuant to 26 U.S.C. § 7402, the Court also enjoins Defendant, individually and doing
2 business as Indian Nations Advocate Law Office, the Kirk of Yahh Hava, and Yahh Havah 508
3 LLC, and anyone in active concert or participation with him from directly or indirectly preparing
4 Kirk's own federal income tax returns claiming false income tax withholding and refunds based
5 on amounts shown in false Forms 1099-OID issued to his creditors.

6 The clerk is ordered to provide copies of this order to all counsel.

7 Dated this 2nd day of April, 2012.

8 

9 Marsha J. Pechman
10 United States District Judge
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United States District Court

EASTERN DISTRICT OF NORTH CAROLINA

SOUTHERN DIVISION

NO. 7:11-CV-246-D

ELIA KOTLER,
Plaintiff,

v.

JAMES W. LEA, III, ET AL.,
Defendants.

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)

ORDER FOR DISCOVERY PLAN

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Court will enter a scheduling order in this case. **The Rule 26(f) meeting must occur by May 3, 2012.** The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference and for attempting in good faith to agree on the proposed discovery plan. **The discovery plan must be submitted to the Court within fourteen (14) days after the 26(f) meeting.**

Please confer with opposing counsel and present to the court a discovery plan. Pursuant to Rule 16(b), the planning meeting required by F.R.Civ.P.26(f) and the discovery plan contemplated by this request are a mandatory part of the process of formulating a scheduling order. If counsel cannot agree on a discovery plan, please submit your respective positions to The Clerk of Court, and the Court will resolve the disputed issues. Following court approval, modifications of the scheduling order will be allowed only by motion for good cause shown.

Mandatory initial disclosures must be made within fourteen (14) days after the Rule 26(f) conference unless (1) a different time is set by stipulation of the parties or court order, or (2) a party objects during the 26(f) conference and states the objection and the response thereto in the discovery plan. Absent a stipulation or court order, any party first served or otherwise joined after the 26(f) conference must make these disclosures within thirty (30) days after being served or joined. Failure to disclose information required by Rule 26(a) or 26(c)(1) may subject the offending party or parties to sanctions pursuant to Rule 37, F.R.Civ.P.

Note that Local Rule 7.1 requires that all motions (except those relating to the admissibility of evidence at trial) must be filed within 30 days after the conclusion of discovery. Untimely motions may be summarily denied. Also note that cases are currently being docketed for trial 60 to 90 days after discovery expires, with a final pre-trial conference scheduled approximately two weeks prior to trial.

This district now mandates, pursuant to Local ADR Rule 101, for civil cases in specified categories. Refer to Local ADR Rule 101.1a and other relevant rules to determine the applicability of the mediation requirement to this case. **The parties in cases subject to mandatory mediation must discuss mediation plans at the 26(f) conference and report their plans in the discovery plan, pursuant to Local ADR Rule 101.1a(b).**

SO ORDERED THIS 2nd day of April 2012.

/s/ JULIE A. RICHARDS
Clerk of Court

UNITED STATES DISTRICT COURT

for the

DISTRICT OF _____

NO. _____

Plaintiff(s),

Defendant(s).

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)
)
)

DISCOVERY PLAN

1. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on [date] at [place] and was attended by:

 (name) for plaintiff(s)
 (name) for defendant(s) (Party name)
 (name) for defendant(s) (Party name)

2. **Pre-Discovery Disclosures.** The parties [have exchanged] [will exchange] by [date] the information required by [Fed. R. Civ. P. 26(a)(1)] [local rule ____].

3. **Discovery Plan.** The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree].

Discovery will be needed on the following subjects:

 (brief description of subjects on which discovery will be needed)

Disclosure or discovery of electronically stored information should be handled as follows:

 (brief description of parties' proposal)

 The parties have agreed to an order regarding claims of privilege or of protection as trial preparation material asserted after production, as follows: (brief description of provisions of proposed order)

All discovery commenced in time to be completed by (date) . [Discovery on issue for early discovery to be completed by date].

Maximum of interrogatories by each party to any other party. [Responses due days after service].

Maximum of requests for admission by each party to any other party. [Responses due days after service].

Maximum of ____ depositions by plaintiff(s) and ____ by defendant(s).

Each deposition [other than of _____] limited to maximum of __ hours unless extended by agreement of parties.

Reports from retained experts under Rule 26(a)(2) due: from plaintiff(s) by (date) from defendant(s) by (date) .

Supplementations under Rule 26(e) due _____ (times(s) or interval(s)).

4. **Other Items.** [Use separate paragraphs or subparagraphs as necessary if parties disagree].

The parties [request/do not request] a conference with the court before the entry of the scheduling order.

The parties request a pretrial conference in [month and year].

Plaintiff(s) should be allowed until [date] to join additional parties and until [date] to amend the pleadings.

Defendant(s) should be allowed until [date] to join additional parties and until [date] to amend the pleadings.

All potentially dispositive motions should be filed by [date].

Settlement [is likely] [is unlikely] [cannot be evaluated prior to date] [may be enhanced by use of the following alternative dispute resolution procedure]: [_____].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from plaintiff(s) by [date] and from defendant(s) by [date].

_____ Parties should have _____ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by [date] and at this time is expected to take approximately [length of time] .

Other matters.

This the _____ day of _____ 2012.

Attorney for plaintiff(s)

Address

E-mail Address

Telephone Number

Attorney for defendant(s)

Address

E-mail Address

Telephone Number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

UNITED STATES OF AMERICA,)	4:11CV4170
)	
Plaintiff,)	
)	
v.	)	ORDER
)	
DUANE L. KUYPER individually)	
and as Trustee of KUYPER FAMILY)	
LIVING TRUST; MARY L.)	
KUYPER individually and as Trustee)	
of KUYPER FAMILY LIVING)	
TRUST; KUYPER FAMILY)	
LIVING TRUST; VISION)	
UNLIMITED; and CURTIS)	
CAVETT as Trustee of VISION)	
UNLIMITED,)	
)	
Defendants.)	
_____)	

IT IS ORDERED:

1. Defendants' motion to dismiss and strike complaint (filing [25](#)) is denied.
2. Plaintiff's motion for leave to file first amended complaint (filing [27](#)) is granted.

April 2, 2012.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

SO ORDERED



Paul Mannes

PAUL MANNES
U. S. BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
at Greenbelt**

IN RE:	:	
	:	
MARTIN STORAGE COMPANY, INC.	:	Case No. 11-17230PM
	:	Chapter 11
Debtor	:	
-----	:	

**ORDER DENYING APPROVAL
OF AMENDED DISCLOSURE STATEMENT
AND AMENDED PLAN OF REORGANIZATION**

Upon consideration of the Amended Disclosure Statement, the opposition of the United States Trustee and the opposition of CIT Small Business Lending Corporation, and the argument of counsel at the hearing held on March 21, 2012, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED That approval of the Amended Disclosure Statement is DENIED; and it is further

ORDERED That confirmation of Debtor's Amended Plan of Reorganization filed February 23, 2012, is DENIED; and it is further

ORDERED That the Debtor file a Second Amended Disclosure Statement and Second Amended Plan of Reorganization **on or before April 23, 2012**; and it is further

ORDERED That if a satisfactory Second Amended Disclosure Statement and Second Amended Plan of Reorganization are filed on or before April 23, 2012, the court will enter an Order conditionally approving the Second Amended Disclosure Statement, setting a hearing on final approval of the Second Amended Disclosure Statement and confirmation of the Second

Amended Plan of Reorganization for **June 14, 2012, at 10:30 a.m., in Courtroom 3-D**, and fixing **June 5, 2012**, as the time for filing acceptances or rejection of the Second Amended Plan of Reorganization.

cc:

Lynn A. Kohen, Ofc of United States Trustee, 6305 Ivy Lane, #600, Greenbelt MD 20770

John D. Burns, Esq., 6303 Ivy Lane, Suite 102, Greenbelt, Md 20770

Joel S. Aronson, Esq., 7501 Wisconsin Avenue, Suite 400E, Bethesda, MD 20814

End of Order

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

NATIONAL WOOD PRODUCTS, INC.

Plaintiff,

v.

DESIGN HOUSE CABINETRY, et al.,

Defendants.

ORDER

Case No. 2:09-CV-0512-CW

Judge Clark Waddoups

On March 23, 2012, the court ordered Plaintiff to show cause why this case should not be dismissed. The court instructed Plaintiff to respond to the order on or before March 30, 2012, or face dismissal. Because Plaintiff has failed to so reply, the action is hereby DISMISSED.

DATED this 2nd day of April, 2012.

BY THE COURT:



Clark Waddoups
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
NEGUS-SONS, INC.,)	
)	
Debtor(s).	)	CASE NO. BK09-82518-TJM
	)	A11-8081-TJM
<u>RICK D. LANGE, Chapter 7 Trustee,</u>)	
)	
Plaintiff,	)	CHAPTER 7
)	
vs.)	
)	
WELLS FARGO EQUIPMENT FINANCE,)	
INC., and UNITED STATES TREASURY,)	
INTERNAL REVENUE SERVICE,)	
)	
Defendants.)	

ORDER

This matter is before the court on the joint motion for partial summary judgment by the plaintiff trustee and the defendant Internal Revenue Service (Fil. No. 24) and resistance by Wells Fargo Equipment Finance, Inc. ("WFEFI") (Fil. No. 33). Brian S. Kruse represents the Chapter 7 trustee, Mark C. Milton represents the United States, and David J. Skalka represents WFEFI. Evidence and briefs were filed and, pursuant to the court's authority under Nebraska Rule of Bankruptcy Procedure 7056-1, the motion was taken under advisement without oral arguments.

The motion is granted.

The debtor owned a vehicle described as a "mechanic's truck." WFEFI claims a purchase money security interest in the truck, as well as an equitable lien arising from the debtor's alleged fraud in failing to note WFEFI's lien on the certificate of title and in representing on its Nebraska title application that no liens existed. The IRS claims a right to the truck arising from a priority claim and/or a tax lien for unpaid taxes. The truck was sold, and the competing liens have attached to the proceeds, which are in the possession of the Chapter 7 trustee. The trustee filed this adversary proceeding to avoid WFEFI's lien and to determine the priority of the remaining interests in the proceeds. The trustee and the IRS have now moved for summary judgment on the issue of WFEFI's lien, requesting an order determining that WFEFI has no lien or claim to the truck or its proceeds because WFEFI's lien was not noted on the vehicle's certificate of title as required by Nebraska law.

The debtor, Negus-Sons, Inc., was a company in the construction business, primarily involved in performing earth-moving work for commercial construction projects. The company's work required the use of large construction equipment, such as bulldozers, scrapers, backhoes, and front

loaders (both rubber-tired and track). Maintenance and repairs to this equipment often had to be performed at job sites, so Negus-Sons purchased the mechanic's truck at issue here essentially as a repair shop on wheels in order to service the equipment. It was a heavy-duty truck, with storage to carry tools and parts, and a crane attachment to lift equipment and provide the mechanics with access to otherwise unreachable areas where repairs were needed.

The truck was a customized vehicle, purchased from Service Trucks International ("STI") in Sioux Center, Iowa. Negus-Sons selected and paid for a 2008 Kenworth T-300 truck chassis from a Sioux Falls, S.D., dealer, at a cost of \$55,366, and STI mounted a 14' service body and a 21' crane with an 11,000-pound lift capacity to the chassis for \$60,220.46. To assemble the truck, STI attached the service body and crane to the chassis, hooked up the wiring for all of the electrical components of the service body and crane, and added a power take-off and hydraulic fluid pump to the chassis' transmission.¹

Negus-Sons ordered the truck on August 1, 2007, and took delivery on or about September 24, 2007. The total cost for the truck, after STI's discounts and rebates and including the chassis, which was purchased separately, was \$115,586.46. Negus-Sons traded in a Ford F650 service truck, receiving a credit of \$15,586.46, which left a purchase price of \$100,000.

WFEFI and Negus-Sons executed a revolving loan agreement on September 11, 2007, to establish a \$4,000,000 line of credit secured by 425 pieces of Negus-Sons' equipment, vehicles, and other personal property. The collateral listed in the schedule attached to the loan agreement included the Ford F650 service truck² and a Bobcat welder. It did not list the Kenworth truck, the service body, or the crane. WFEFI filed a U.C.C. financing statement with the Nebraska Secretary of State on October 1, 2007.

When the mechanics' truck was delivered, Negus-Sons issued checks to the Kenworth dealer for the price of the chassis and to STI for the balance due for the service body and crane and their installation. Negus-Sons then asked WFEFI to wire \$100,000 of the line of credit to its bank account to cover those checks. In support of its request, Negus-Sons provided WFEFI with a copy of the STI statement with handwritten notations to show that the \$60,220.46 cost of the service body and crane, less the \$15,586.46 value of the collateral truck traded in, plus the \$55,366.00 cost of the Kenworth chassis equaled the \$100,000 requested. WFEFI wired the funds on October 3, 2007. It prepared a letter memorializing the amendment of the revolving loan agreement by adding three pieces of collateral, including the Kenworth truck. Negus-Sons accepted and agreed to the amendment on

¹Some of the evidence suggests, but does not state, that a Miller Bobcat 225 welder/generator owned by Negus-Sons was also added to the truck. WFEFI had a perfected security interest in this item.

²STI's invoice lists the trade-in as a 1999 model year, while WFEFI's schedule lists the truck as a 2000 model year. Both references appear to be to the same vehicle, as the same VIN is used on each document.

October 3, 2007. It is unclear why the amendment lists the value of the Kenworth as \$55,366.00, the price of the chassis, rather than the price of the completed vehicle. WFEFI filed an amended U.C.C. financing statement on May 15, 2008, to add collateral, including the Kenworth and “all attachments, replacements, substitutions, additions and accessions thereof, plus the proceeds of all the foregoing.”

Negus-Sons applied for a certificate of title for the truck. In the section of the application requesting lien information, the Negus-Sons employee wrote “none.” The State of Nebraska issued a certificate of title for the truck to Negus-Sons on November 19, 2007.³ The title certificate did not list WFEFI as a lienholder.

The IRS filed a tax lien on Negus-Sons’ assets in July 2009, securing approximately \$586,000 of a \$799,216.37 claim for unpaid taxes, interest, and penalties.

Negus-Sons filed a Chapter 11 bankruptcy petition on September 23, 2009. The debtor eventually ceased operations and the case was converted to Chapter 7 at the request of the United States Trustee. WFEFI obtained relief from the automatic stay, repossessed the truck, and sold it at public auction with the consent of the bankruptcy trustee and the IRS. The bankruptcy trustee is holding the net proceeds of \$75,000.

Summary judgment is appropriate only if the record, when viewed in the light most favorable to the non-moving party, shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings in bankruptcy by Fed. R. Bankr. P. 7056); see, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986). On a motion for summary judgment, “facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.” Ricci v. DeStefano, 557 U.S. 557, 129 S. Ct. 2658, 2677 (2009) (quoting Scott v. Harris, 550 U.S. 372, 380 (2007)). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” Id. (quoting Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)). “Although the burden of demonstrating the absence of any genuine issue of material fact rests on the movant, a nonmovant may not rest upon mere denials or allegations, but must instead set forth specific facts sufficient to raise a genuine issue for trial.” Wingate v. Gage Cnty. Sch. Dist., No. 34, 528 F.3d 1074, 1078–79 (8th Cir. 2008). See also Celotex Corp., 477 U.S. at 324 (where the nonmoving party “will bear the burden of proof at trial on a dispositive issue,” the nonmoving party bears the burden of production under Rule 56 to “designate specific facts showing that there is a genuine issue for trial”).

The following facts are uncontroverted or established by the evidence:

³The application is dated September 24, 2007, which was the date the truck was delivered. The records of the Nebraska Department of Motor Vehicles indicate the application was received on November 19, 2007, and the title was issued the same day. The discrepancy in the dates and the delay between vehicle delivery and titling are not explained in this record.

1. Rick D. Lange is the duly appointed and qualified Chapter 7 bankruptcy trustee for the bankruptcy case of Negus-Sons, Inc., which the debtor filed as a Chapter 11 case on September 23, 2009, and which was converted to a Chapter 7 case on February 18, 2010.

2. This action concerns the following property and the net proceeds (as defined in the Stipulation filed at BK09-82518, Filing No. 175) derived from the sale thereof:

2008 Kenworth Model T300, Series T30, Diesel Truck, VIN# 2NKMHN7X18M223381, equipped with STI 14' service body, Tiger 1061 11,000# 21' crane, and a Miller Bobcat 225 welder/generator.

3. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 544, 550, and 551. This court has the authority to grant the relief requested herein. This is a core proceeding pursuant to, without limitation, 28 U.S.C. §157(b)(2)(A), (B), (F), (K), and (O).

4. No security interest or lien of any party was notated on the Kenworth's certificate of title.

5. Any interests of the trustee, WFEFI, and/or the IRS attached to the net proceeds of the sale of the Kenworth as defined in and per the stipulation at Filing No. 175 in the underlying bankruptcy case at Case No. BK09-82518.

6. WFEFI is the successor in interest to the CIT Group/Equipment Financing, Inc., by reason of merger.

7. On September 11, 2007, the debtor as borrower and WFEFI as lender entered into a revolving loan agreement and security agreement (the "WFEFI Agreement").

8. At the time the WFEFI Agreement was entered, the debtor already owned the Miller Bobcat 225 welder/generator at issue in this matter.

9. On October 1, 2007, WFEFI filed a UCC-1 Financing Statement (#9907527935-8) with the Nebraska Secretary of State.

10. The debtor received an initial advance from WFEFI pursuant to the WFEFI Agreement of at least \$300,000.

11. On October 3, 2007, WFEFI wired the debtor \$100,000.00.

12. On October 3, 2007, WFEFI and the debtor entered into a written amendment to the WFEFI Agreement.

13. On May 15, 2008, WFEFI filed a UCC-3 amendment (#9908559953-6) to its October

1, 2007, UCC-1 Financing Statement #9907527935-8 referenced above with the Nebraska Secretary of State.

14. The debtor applied to the State of Nebraska for a certificate of title for the Kenworth. The application was signed by Bob Hayworth, on behalf of the debtor.

15. The State of Nebraska issued a certificate of title for the Kenworth to the debtor on November 19, 2007.

The dispute between the parties raises two issues: whether WFEFI had a perfected lien on the truck, and whether WFEFI had a perfected lien on the service body and crane installed on the truck.

It is clear that WFEFI did not have a perfected lien on the truck because its lien was not noted on the certificate of title. The version of the Nebraska Motor Vehicle Title Certificate Act in effect at the time the truck was delivered and titled provides that a lien must be noted on the certificate of title to be valid against creditors:

Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made by the county clerk, designated county official, or department on the face thereof, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them[.]

Neb. Rev. Stat. § 60-164(1) (effective date Sept. 1, 2007).

WFEFI's lien was not noted on the title, and there is no way around that fact. Negus-Sons' officers say they intended to put WFEFI's lien on the title and the failure to list the lien on the title application was a mistake. Regardless, WFEFI's lien was not listed. It is worth noting that two years passed between the delivery and financing of the truck and the filing of the bankruptcy petition. Negus-Sons presumably had possession of the title certificate during that time and did not take steps to correct it. Nevertheless, and despite WFEFI's argument about the debtor's contractual duty, it was not Negus-Sons' responsibility to make sure the lien was noted. "One holding a lien upon a motor vehicle must, insofar as he can reasonably do so, protect himself and others thereafter dealing in good faith, by complying and requiring compliance with applicable laws concerning certificates of title to motor vehicles." Cornhusker Bank of Omaha v. McNamara, 288 N.W.2d 287, 290 (Neb. 1980). The motor vehicle titling statute also provided for that. Neb. Rev. Stat. § 60-164(3) (2007) (stating that the holder of a security agreement may submit it and the title certificate to the proper official to have its lien placed on the title). WFEFI knew it held a security interest in Negus-Sons' vehicles; one

would expect that standard loan file management practices would require the verification of title certificates on all titled collateral. WFEFI's failure to do so renders its security interest in the truck unperfected.

WFEFI argues that its purchase money security interest is statutorily protected by this sentence: "A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches." This provision was added to § 60-164(2) in 2008, as part of a bill intended to require the issuance of a certificate of title for manufactured or mobile homes affixed to real estate. Little legislative discussion was devoted to the amendment to § 60-164(2). Its purpose evidently was to clarify that lienholders who advance funds for the purchase of a motor vehicle are protected between the lien's attachment and its perfection.

"In noncriminal cases, substantive statutes are generally not given retroactive effect unless the Legislature has clearly expressed an intention that the new statute is to be applied retroactively." Soukop v. ConAgra, Inc., 653 N.W.2d 655, 657 (Neb. 2002); Abboud v. Papio-Missouri River Natural Res. Dist., 571 N.W.2d 302, 306 (Neb. 1997) (stating that "a legislative act operates only prospectively and not retrospectively" unless a legislative intent to the contrary is clearly disclosed). The purchase and titling of the truck, and the granting of a security interest in it, occurred in the latter part of 2007, prior to and therefore unaffected by the purchase-money amendment to the statute.

The second issue is whether WFEFI's security interest in the crane and service body affords it any right to the proceeds. WFEFI's position is that it perfected its security interest in the Kenworth, the service body, the crane, and the welder on October 1, 2007, when it filed its UCC-1 financing statement because the schedule of collateral filed with the financing statement included "attachments, replacements, substitutions, additions and accessions [to the listed collateral], plus the proceeds of all the foregoing." While Neb. Rev. Stat. U.C.C. § 9-335(d) states that a security interest in an accession⁴ is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute, WFEFI asserts that the truck was not subject to perfection under the titling statutes on that date because no such title had been issued and no valid title application had been delivered to the proper authorities. See Neb. Rev. Stat. U.C.C. § 9-303. WFEFI argues that the subsequent titling of the vehicle did not affect its perfected security interest, but that argument is unpersuasive in light of the official comment to U.C.C. § 9-335. Comment 7 clarifies that a security interest in the whole, perfected by compliance with a certificate-of-title statute, takes priority over a security interest in the accession, regardless of whether the security interest in the accession is perfected before or after the security interest in perfected in the vehicle:

7. Goods Covered by Certificate of Title. This section does govern the priority

⁴"Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost. Neb. Rev. Stat. U.C.C. § 9-102(a)(1) (Reissue 2007).

Both sides acknowledge that the service body and crane are accessions. For purposes of this motion, the court will assume that to be the case.

of a security interest in an accession that is or becomes part of a whole that is subject to a security interest perfected by compliance with a certificate of title statute. Subsection (d) provides that a security interest in the whole, perfected by compliance with a certificate of title statute, takes priority over a security interest in the accession. It enables a secured party to rely upon a certificate of title without having to check the UCC files to determine whether any components of the collateral may be encumbered. The subsection imposes a corresponding risk upon those who finance goods that may become part of goods covered by a certificate of title. In doing so, it reverses the priority that appeared reasonable to most pre-UCC courts.

Example 4: Debtor owns an automobile subject to a security interest in favor of SP-1. The security interest is perfected by notation on the certificate of title. Debtor buys tires subject to a perfected-by-filing purchase-money security interest in favor of SP-2 and mounts the tires on the automobile's wheels. If the security interest in the automobile attaches to the tires, then SP-1 acquires priority over SP-2. **The same result would obtain if SP-1's security interest attached to the automobile and was perfected after the tires had been mounted on the wheels.**

Neb. Rev. Stat. U.C.C. § 9-335, cmt. 7 (emphasis added).

WFEFI's interest is essentially the same as SP-2 in the last sentence of comment 7. There has been no judicial interpretation of this statute, so its meaning must be derived from its plain language. Because the vehicle was titled after the installation of the accessions, any perfection by title controls so that subsequent creditors need check only the title records, rather than the title records and the U.C.C. records. In this case, with no lien noted on the title, the trustee's rights as a lien creditor take priority. The trustee's hypothetical lien under 11 U.S.C. § 544 is superior to any lien that is unperfected on the date the petition was filed. Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.), 306 B.R. 624, 628-29 (B.A.P. 8th Cir. 2004); Timberland Bancshares, Inc. v. Garrison (In re Garrison), 462 B.R. 666, 687 (Bankr. W.D. Ark. 2011).

WFEFI argues that the court should recognize the equitable remedy of a constructive trust in WFEFI's favor, in light of the debtor's "fraud" in failing to record the lien on the title certificate.

Under Nebraska law, a constructive trust is a relationship, with respect to property, subjecting the person who holds title to the property to an equitable duty to convey it to another on the ground that his or her acquisition or retention of the property would constitute unjust enrichment. To establish a constructive trust, the court must find by clear and convincing evidence that legal title was obtained by fraud, misrepresentation, or an abuse of an influential or confidential relationship, and that, under the circumstances, the party holding legal title is not equitably entitled to hold and enjoy the property.

Lange v. Schropp (In re Brook Valley IV Joint Venture), 347 B.R. 662, 676-77 (B.A.P. 8th Cir.

2006) (citations omitted).

WFEFI has not established the necessary elements of a constructive lien on these facts, but even if it had, its interest would still be unperfected and subordinate to the trustee's interest. Lone Oak Farm Corp., v. Riverside Fertilizer Co., 428 N.W.2d 175, 180 (Neb. 1988).

WFEFI also argues that a resulting trust was created when WFEFI funded the purchase of the service truck. "[A] resulting trust has been defined to be one raised by implication of law and presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction, but not expressed in deed or instrument of conveyance." Campbell v. Kirby, 239 N.W.2d 792, 796 (Neb. 1976) (quoting Reetz v. Olson, 20 N.W.2d 687 (Neb. 1945)). "The presumption of a purchase money trust arises in favor of a person from whom the consideration comes for a conveyance of property to another. Since men in their affairs seldom give consideration to receive nothing, the intent to make a trust is presumed." Campbell, 239 N.W.2d at 796. Like a constructive trust, it is an equitable remedy. Brtek v. Cihal, 515 N.W.2d 628, 633 (Neb. 1994); Entergy Arkansas, Inc. v. Nebraska, 226 F. Supp. 2d 1174, 1181 (D. Neb. 2002). Where an adequate remedy at law exists, the court need not resort to equity. Teadtke v. Havranek, 777 N.W.2d 810, 818 (Neb. 2010). WFEFI's dissatisfaction with the remedy provided by the law does not make the remedy inadequate. Mason v. Mayberry, Case No. A-97-1309, 1999 WL 248559, at *2 (Neb. Ct. App. Apr. 27, 1999).

The trustee's hypothetical lien status is superior to WFEFI's unperfected liens in the Kenworth chassis and in the service body and crane installed on the chassis. Therefore, WFEFI's interest in the proceeds of the sale of the mechanics' truck is subordinate to other valid interests in those proceeds. WFEFI did hold a perfected security interest in the Miller Bobcat welder/generator and is entitled to the portion of the proceeds attributable to the value of that item.

IT IS ORDERED: The joint motion for partial summary judgment by the plaintiff trustee and the defendant Internal Revenue Service (Fil. No. 24) is granted.

DATED: April 2, 2012

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:

*Brian S. Kruse	*Mark C. Milton
David J. Skalka	U.S. Trustee

*Movant is responsible for giving notice to other parties if required by rule or statute.

Dated: April 2, 2012



George B. Nielsen, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re

N'GENUITY ENTERPRISES CO.,

Debtor.

Chapter 11

Case No. 2:11-bk-28705-GBN

**ORDER AUTHORIZING RETENTION
OF ODYSSEY CAPITAL GROUP, LLC
AS FINANCIAL ADVISOR TO
CHAPTER 11 TRUSTEE
RETROACTIVE TO JANUARY 9, 2012**

This matter came before the Court on the application dated January 18, 2012 (the “**Application**”),¹ of Michael W. Carmel, Chapter 11 Trustee (“**Trustee**”) for the above-captioned Debtor for an order authorizing the retention of Odyssey Capital Group, LLC (“**Odyssey**”) as the Trustee’s financial advisor. This Court held a hearing on the Application on March 22, 2012 (the “**Hearing**”) and the following pleadings were filed with regard to the Application:

- (a) *the Verified Statement of Lawrence X. Taylor in Support of Application For Retention Of Odyssey Capital Group, LLC As Financial Advisor to Chapter 11 Trustee Retroactive to*

¹ Capitalized terms not defined in this Order have the meanings given to them in the Application.

January 9, 2012 filed on January 18, 2012 (the “**Taylor Statement**”) [D.E.156];

- (b) the *Debtor’s Statement of Position Regarding Application for Retention of Odyssey Capital Group, LLC as Financial Advisor to the Chapter 11 Trustee* dated February 8, 2012 (the “**Debtor Statement**”) [D.E. 179];
- (c) the *Jackson’s Statement of Position on the Employment of Odyssey Capital* filed on February 8, 2012 (the “**Jackson Statement**”) [D.E. 181];
- (d) the *Chapter 11 Trustee’s Response to Debtor’s Statement of Position Regarding Application for Retention of Odyssey Capital Group, LLC as Financial Advisor to the Chapter 11 Trustee* dated February 8, 2012 (the “**Response**”) [D.E. 192];
- (e) the *Debtor’s Objection to Application of Odyssey Capital Group, LLC as Financial Advisor to the Chapter 11 Trustee* filed on March 15, 2012 (the “**Debtor Objection**”) [D.E. 256];
- (f) the *Joinder in the Debtor’s Objection to Application for Retention of Odyssey Capital Group, LLC as Financial Advisor to the Chapter 11 Trustee* filed on March 15, 2012 (the “**LittleChief Joinder**”) [D.E. 257];
- (g) the *Chapter 11 Trustee’s Brief in Support of Application for Retention of Odyssey Capital Group, LLC as Financial Advisor to Chapter 11 Trustee Retroactive to January 9, 2012* filed on March 15, 2012 (the “**Brief**”) [D.E. 254];
- (h) the *Declaration of Chapter 11 Trustee Regarding Retention of Odyssey Capital Group, LLC* filed on March 15, 2012 (the “**Trustee Declaration**”) [D.E. 255]; and
- (i) the *Jackson’s Joinder with the Trustee Regarding the Employment of Odyssey Capital* filed on March 19, 2012 (the “**Jackson Joinder**”) [D.E. 259].

Having reviewed the Application, Taylor Statement, Debtor Statement, Jackson Statement, Response, Debtor Objection, LittleChief Joinder, Brief, Trustee Declaration, and Jackson Joinder, and upon the evidence and argument presented at the Hearing, this Court finds and concludes that: (i) it has jurisdiction over the matters raised in the Application under

28 U.S.C. §§ 157 and 1334; (ii) venue of this matter is proper under 28 U.S.C. §§ 1408 and 1409; (iii) this matter is a core proceeding under 28 U.S.C. § 157(b)(2); (iv) the relief requested in the Application is in the best interest of the estate, its creditors, and other parties-in-interest; (v) adequate and proper notice of the Application and the hearing on it has been given and no other or further notice is necessary; and (vi) good and sufficient cause exists for granting the relief requested in the Application. In light of the foregoing,

IT IS ORDERED THAT:

1. The Application is granted.
2. The Debtor Statement, Debtor Objection, and LittleChief Joinder are overruled.
3. Under 11 U.S.C. § 327(a), the Trustee is authorized to employ Odyssey as his financial advisor and Odyssey is authorized to perform the financial-advisory services set forth in the Application.
4. The Trustee's separate employment of Odyssey to provide certain non-professional office management services as described in the Application and the Brief is approved. The non-professional office management services provided by Odyssey need not be presented to this Court for consideration under 11 U.S.C. §§ 327 or 330. Odyssey is, however, required to keep and make available to the Court and the parties as requested time records and narratives associated with Odyssey's non-professional services.
5. Odyssey is a "disinterested person," and will be compensated in accordance with 11 U.S.C. § 330 and all applicable Bankruptcy Rules, Local Rules, and Orders of this Court.
6. The Trustee is authorized to take all actions necessary to effectuate the relief granted by this Order in accordance with the Application.
7. This Court retains jurisdiction with respect to all matters arising from or related to

the implementation of this Order.

DATED AND SIGNED ABOVE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62478-CIV-ZLOCH

RELIABLE TELECARD CORPORATION,

Plaintiff,

**ORDER OF REFERRAL
TO MEDIATION**

vs.

THE UNITED STATES OF AMERICA,

Defendant.

The pretrial conference having been set in this matter by separate order, and pursuant to Federal Rule of Civil Procedure 16 and the Southern District Local Rule 16.2, it is hereby

ORDERED AND ADJUDGED as follows:

1) That all Parties are required to participate in mediation. The mediation shall be completed no later than sixty (60) days prior to the pretrial conference;

2) That Counsel for the Plaintiff, or another attorney agreed upon by all counsel of record and any unrepresented Parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the list of Certified Mediators, maintained in the office of the Clerk of this Court, but they may also select any other mediator of their choosing. The Parties shall agree upon a mediator within fifteen (15) days from the date hereof, and file a Notice of Selection with the Clerk reflecting the same, within (5) days of said selection. If there is no agreement, Counsel for the Plaintiff shall promptly notify the Clerk in writing and the Clerk shall designate a mediator from the list of Certified Mediators, which designation shall be made on a blind rotation basis;

3) That a place, date, and time for mediation convenient to the mediator, counsel of record, and unrepresented Parties shall be established no later than ten (10) days after a mediator is selected. Further, within five (5) days of said selection the Parties shall file a notice with the Court as to the date of said mediation;

4) That the personal appearance of counsel and each Party or representatives of each Party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend. The Court does not allow any appearance at mediation to be made by telephone;

5) That all discussions, representations, and statements made at the mediation conference shall be confidential and privileged;

6) That at least ten (10) days prior to the mediation date,

all Parties shall present to the mediator a brief written summary of the case identifying issues to be resolved. Copies of these summaries shall simultaneously be served on all other Parties;

7) That the Court may impose sanctions against Parties and/or counsel who do not comply with attendance or settlement authority requirements herein or who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance;

8) That the mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Rule 16.2.B.7, or on such basis as may be agreed to in writing by the Parties and the mediator selected by the Parties. The cost of mediation shall be shared equally by the Parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within thirty (30) days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least two (2) full business days in advance. Failure to do so will result in imposition of a fee for one hour of the mediator's time;

9) That if a total or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16.2.F, by the filing a notice of settlement signed by counsel of record within ten (10) days of the mediation conference. Within five (5) days of notifying the Court of any such settlement the Parties shall submit a stipulation of dismissal thereby concluding the case;

10) That within five (5) days following the mediation conference, the mediator shall file a Mediation Report indicating whether all Parties were present. The report shall also indicate whether the case settled (in full or in part), was continued with the consent of the Parties, or whether the mediator declared an impasse; and

11) That if mediation is not conducted, or the Parties otherwise fail to abide by the terms of this Order the Court may impose an appropriate sanction upon the Parties including but not limited to the dismissal of the above-styled cause without further notice or hearing.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of April, 2012.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62478-CIV-ZLOCH

RELIABLE TELECARD CORPORATION,

Plaintiff,

vs.

ORDER ON TRIAL INSTRUCTIONS

THE UNITED STATES OF AMERICA,

Defendant.

-----/

SUA SPONTE, the Court hereby enters trial instructions to counsel of record. The Order is necessitated both by the Court's observations and the Court's hope that this Order will inform the lawyers what will be expected of them in the courtroom. It is hereby

ORDERED AND ADJUDGED:

1. The Court expects counsel to stand when addressing the Court unless excused by the Court. Counsel will not approach the bench without permission of the Court. Counsel are also to obtain permission before approaching the witness stand. Counsel shall stand no closer to the witness than edge of the counsel table.

2. Redirect and rebuttal are not to be a repetition of direct or the case-in-chief.

3. Recross examination will not be permitted unless a clear showing is made that manifest injustice would otherwise occur.

4. Objections to questions shall succinctly state the basis for the objection, e.g., leading, repetitive, ambiguous. No explanations of objections in the presence of the jury will be permitted. If further explanation is necessary, counsel is to request a sidebar conference.

5. Sidebar conferences are held at the discretion of the Court; requests are not automatically granted.

6. The Court prefers that counsel use the lectern as much as practicable in order to help the jury hear all of the questions.

7. In all jury cases the Court expects requested jury instructions, together with verdict forms in civil cases, to be submitted no later than the date of the Pretrial Conference on a 3.5 diskette or CD-ROM formatted in WordPerfect.

8. In all non-jury/bench trials, the Parties are required to provide the Court with proposed Findings of Fact and Conclusions of Law no later than the date of the Pretrial Conference on a 3.5 diskette or CD-ROM formatted in WordPerfect. The Parties shall also provide the Court with memoranda of law concerning any unique issues of law or fact involved in their case.

9. The following instructions will govern voir dire:

(a) The Court will conduct the general questioning of the jury following, in large part, the Federal Judicial Center's suggested questions. If counsel have proposed voir dire questions, they must be submitted to the Court at least one (1) full working day prior to the start of the Trial. Counsel may be permitted to ask questions of prospective jurors during the jury selection process at the discretion of the Court.

(b) Counsel are instructed to excuse any juror the earliest possible opportunity. There will be no "striking back" allowed. For example, if you strike jurors numbered 2, 4, 6, and 8, the Court assumes you have accepted jurors numbered 1, 3, 5, 7, 9, 10, 11, and 12.

(c) Each Party shall have the number of challenges provided by 28 U.S.C. § 1870, unless determined otherwise at the pretrial conference.

10. All Parties are to premark the exhibits they intend to introduce with Exhibit Stickers, these stickers must bear the case number. Also, the Exhibit

numbers must conform to the pretrial exhibit list. Further, any portions of depositions to be used at trial should be premarked and identified. Except for impeachment purposes, only the exhibits individually listed in the Pretrial Stipulation or Unilateral Pretrial Catalog shall be permitted for use at trial. Designating general categories of documents or other materials as exhibits (i.e. "All correspondence between the parties") is insufficient. Any objection to an exhibit and the reason for the objection must be filed in writing by Noon on the Friday prior to the Pretrial Conference or it shall be deemed waived.

11. Do not advise the jury in opening or closing statement that it may ask to have testimony "read back," as the Court ordinarily does not allow courtroom testimony to be repeated by the court reporter.

12. Do not request the court reporter to read back testimony without prior permission of the Court.

13. Counsel are reminded of Local Rule 11.1E which states, in pertinent part, as follows:

Before, during, and after trial, a lawyer should avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. Provided, however, after the jury has been discharged, upon application in writing and for good cause shown, the Court may allow counsel to interview jurors to determine whether their verdict is subject to legal challenge. In this event, the Court shall enter an Order limiting the time, place, and circumstances under which the interviews shall be conducted.

S.D. Fla. L.R. 11.1E; see also Code of Professional Responsibility DR 7-108(D) and EC 7-29.

14. The Court's trial days routinely run past five o'clock in the evening. Parties are instructed to have their witnesses present at the courthouse, available to testify when called.

15. The Parties remain under a continuing obligation to inform the Court of any settlement in the case.

16. Any Stipulation entered into by the Parties shall be in writing and signed by all Parties, corporate representatives and counsel.

17. If a case is settled, counsel are directed to inform the Court promptly at (954) 769-5480 and to submit an appropriate Stipulation Of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1). Such a Stipulation must be filed within ten (10) calendar days of notification of the Court.

18. If a Daubert hearing is required, counsel are directed to inform the Court at least fourteen (14) days prior to the Pre-Trial Conference.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of April, 2012.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-62478-CIV-ZLOCH

RELIABLE TELECARD CORPORATION,

Plaintiff,

**ORDER FOR PRE-TRIAL
CONFERENCE**

vs.

THE UNITED STATES OF AMERICA,

Defendant.

_____/

The above-styled cause is hereby set for Pre-Trial Conference on **January 11, 2013**, at **9:30 a.m.** at the United States Courthouse, Courtroom A, 299 East Broward Boulevard, Fort Lauderdale, Broward County, Florida. Pursuant to Local Rule 16.1.M of this Court, **THE PARTIES SHALL ABIDE BY THE FOLLOWING TIME SCHEDULE UNDER PENALTY OF DISMISSAL OR OTHER SANCTION.**

TIME SCHEDULE

BY NOON, SEVEN days prior to P-T Conf.	-	Attorneys can request to appear at the P-T Conf. telephonically
BY NOON, EIGHT days prior to P-T Conf.	-	All Motions In Limine must be filed
BY NOON, FOURTEEN days prior to P-T Conf.	-	Pre-Trial Stipulation or Unilateral Pre-Trial Catalogues must be filed
SEVENTEEN days prior to P-T Conf.	-	Attorneys must comply with S.D. Fla. L.R. 16.1.D
TWENTY days prior to P-T Conf.	-	All Discovery must be completed
SIXTY days prior to P-T Conf.	-	All Motions for Summary Judgment and Motions for Judgment on the Pleadings must be filed
SEVENTY days prior to P-T Conf.	-	Resume of experts and their reports must be exchanged
120 days prior to P-T Conf.	-	Cut-off date for filing Amendments to the Complaint

EXCEPT AS OTHERWISE MODIFIED HEREIN, THE PARTIES MUST COMPLY IN FULL WITH LOCAL RULE 16.1 OF THIS COURT. THE PROVISIONS OF THIS ORDER SHALL SUPERSEDE ANY DEADLINES OR SCHEDULES AGREED UPON BY THE PARTIES.

TRIAL DATE: PARTIES MUST BE READY FOR TRIAL AT ANY TIME AFTER THE PRE-TRIAL CONFERENCE. THERE WILL BE NO CALENDAR CALL.

A PRE-TRIAL STIPULATION or UNILATERAL PRE-TRIAL CATALOGUES must be filed by noon, December 28, 2012.

IF A PRE-TRIAL STIPULATION IS NOT FILED, THEN THE PARTIES MUST FILE UNILATERAL PRE-TRIAL CATALOGUES BY THE TIME PRESCRIBED ABOVE. UPON THE FAILURE OF PLAINTIFF TO FILE A UNILATERAL PRE-TRIAL CATALOGUE, THE COURT SHALL DISMISS THE CASE WITHOUT PREJUDICE. IF A DEFENDANT FAILS TO FILE A UNILATERAL PRE-TRIAL CATALOGUE WITHIN THE TIME PRESCRIBED ABOVE, DEFENDANT WILL BE PRECLUDED FROM ENTERING ANY PHYSICAL OR DOCUMENTARY EVIDENCE AND MAY CALL NO WITNESSES OTHER THAN THE DEFENDANT, OR IF A DEFENDANT IS A CORPORATE PARTY, IT MAY CALL ONLY THE CORPORATE REPRESENTATIVE WITH THE MOST KNOWLEDGE OF THE CASE.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 2nd day of April, 2012.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:
All Counsel of Record

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

Civ. No. 11-556 (RHK/LIB)

v.

ORDER

Eugene E. Rivetts, *et al.*,

Defendants.

This matter is before the Court on the parties' agreement at hearing to have the Government submit additional documentation—namely, the full contents of IRS mailings—into the record in connection with the Government's Motion for Summary Judgment.

One issue that the pending Motion addresses is whether Defendants received adequate notice that the Government had properly assessed tax deficiencies against them. The Government submitted excerpts of the Notices of Assessment that it sent Defendants as attachments to its reply brief. (Doc. No. 63, Exs. 4A, 4B, 4C, and 4D.) At oral argument, Defendants requested the rest of the excerpted documents. Here, because the contents of the Notices that are presently at issue were briefed and argued, the Court perceives no prejudice that would result by adding the full contents of the Notices to the record. Even if the submission is untimely, it is appropriately considered at this juncture. See Fed. R. Civ. P. 61 (“At every stage of the proceeding, the court must disregard all errors and effects that do not affect any party’s substantial rights.”).

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED:**

1. On or before April 6, the Government shall supplement the record with the full contents of the documents excerpted in Doc. No. 63, Exhibits 4A – 4D;
2. On or before April 13, Defendant may serve and file a memorandum not exceeding 10 pages, addressing any issues that the contents of the Notices of Assessment present;
3. On or before April 20, the Government may serve and file a memorandum not exceeding 10 pages responding to Defendants’ memorandum; and
4. No further submissions – whether by memorandum, affidavit, letter, or otherwise – shall be filed absent further Order of the Court.

Date: April 2, 2012

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

EMIL SCHULTZ, AS TRUSTEE OF THE
M.A.C. LIVING TRUST U/T/D 1/15/91

CIVIL ACTION NO. 10-CV-00540

VERSUS

JUDGE S. MAURICE HICKS, JR.

UNITED STATES OF AMERICA

MAGISTRATE JUDGE HANNA

ORDER

Based on the foregoing Memorandum Ruling,

IT IS ORDERED that the United States' Motion to Dismiss (Record Document 35) be and hereby is **DENIED** as it applies to the timeliness of Mardelle Claitor's January 12, 2012 counterclaim.

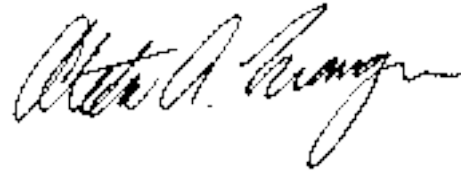
IT IS FURTHER ORDERED that the United States' Motion to Dismiss (Record Document 35) be and hereby is **GRANTED** as it applies to the permanent injunction requested in Mardelle Claitor's January 12, 2012 counterclaim.

THUS DONE AND SIGNED, in Shreveport, Louisiana on this 2nd day of April, 2012.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION



UNITED STATES OF AMERICA,	)	Case No. 3:06-cv-175
)	
Plaintiff,	)	Judge Robert Echols
)	
v.	)	Magistrate Judge John Bryant
)	
SUSAN ANN SPERL)	
aka SUSAN ANN BOYER;)	
RANDALL E. THOMPSON; and)	
SUSANSTAX, INC.,)	
)	
Defendants.)	

UNITED STATES' MOTION TO REOPEN CASE

In accordance with the Court's July 30, 2010 order, the United States respectfully moves the Court to reopen this proceeding. The Court previously denied the United States' motions to reopen, first because defendant Susan Ann Sperl had not been sentenced and a judgment of conviction had not been entered against her in a criminal matter (Doc. #117), and again because Sperl's appeal of her criminal conviction was pending (Doc. #121). The Sixth Circuit affirmed Sperl's conviction on February 6, 2012. *United States v. Sperl*, No. 10-5753 (6th Cir. filed Feb. 6, 2012).

This is an injunction case brought by the United States pursuant to Sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) against defendants Susan Ann Sperl, Randall Thompson, and Susanstax, Inc., to restrain and enjoin them from acting as federal tax return preparers and promoting the SusanTax Membership Plan. Defendants prepare federal tax returns for customers that appear valid and correct on their face but actually falsely claim

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

In Re:)	
)	
MARK A. TURNER and)	
ROBBIE A. TURNER,)	
)	
Debtors.	)	Bankruptcy No. 11-13083
	)	Chapter 7
MARK A. TURNER and)	
ROBBIE A. TURNER,)	
)	
Plaintiffs,)	
)	
v.	)	Adversary No. 11-01203
)	
UNITED STATES OF AMERICA,)	
INTERNAL REVENUE SERVICE,)	
)	
Defendants.)	
)	

JUDGMENT

THIS MATTER comes before the Court upon the plaintiffs' Complaint to Determine Dischargeability of the Indebtedness to the Internal Revenue Service, in which the plaintiffs request the Court to determine the dischargeability of their federal income tax liabilities.

WHEREFORE it appearing to the Court that the plaintiffs and the United States are in agreement as to the disposition of this adversary proceeding pursuant to the stipulation filed herein, it is

ORDERED AND ADJUDGED that the stipulation between the plaintiffs and the United States is hereby APPROVED and ADOPTED by the Court, and it is


FURTHER ORDERED as follows:

1. The plaintiffs' 2002 and 2006 federal income tax liabilities are dischargeable

pursuant to 11 U.S.C. §§ 727.

2. The pre-petition Notice of Federal Tax Lien filed against the plaintiffs continues in effect and attaches to all the plaintiffs' existing pre-petition property and rights to property, including exempt property. 11 U.S.C. § 522(c)(2)(B); 26 U.S.C. § 6322.

3. Each party shall bear its own costs and attorney's fees.


Audrey R. Evans
United States Bankruptcy Judge
Dated: 04/02/2012

CC: Attorney for Plaintiff(s)
Plaintiff(s)
Attorney for Defendant(s)
Defendant(s)
Trustee
US Trustee