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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,) No. 04-2585-PHX-EHC
10 Plaintiff,) **ORDER**
11 vs.)
12)
13 Tony S. Dutson and Micaela R. Dutson,)
14 Defendants.)
15 _____)
16

17 Background

18 The Clerk entered default against the defendants on March 28, 2005. (Dkt. 29). On
19 April 11, 2005, the defendants filed a Motion to Set Aside Default. (Dkt. 44). On April 28,
20 2005, the Court denied Defendants' Motion to Set Aside Entry of Default. (Dkt. 51).
21 Pending before the Court is Plaintiff's Motion for Default Judgment (Dkt. 35) and
22 Defendants' Motion for Leave to Amend Answer to Complaint (Dkt. 58).

23 Legal Standard

24 Facts alleged in the complaint are admitted for purposes of entering a default
25 judgment. Benny v. Pipes, 799 F.2d 489, 495 (9th Cir. 1986). Application to the Court for
26 entry of default judgment shall be made if the plaintiff's claim is not for a sum certain. Fed.
27 R. Civ. P. 55(b)(2). "A judgment by default shall not be different in kind from . . . that
28 prayed for in the demand for judgment" contained in the complaint. Fed. R. Civ. P. 54(c).

1 Rule 55 does not preclude a party from obtaining a default judgment in a case where it is
2 seeking injunctive relief. See SEC v. Worthen, 98 F.3d 480, (9th Cir. 1996) (affirming entry
3 of default judgment including permanent injunction ordering defendant not to violate federal
4 securities laws); Playboy Enterprises Intern., Inc. v. Muller, 314 F.Supp.2d 1037, 1040 (D.
5 Nev. 2004) (granting permanent injunctive relief upon entry of default judgment).

6 Pleadings, motions, and other memoranda submitted to the Court shall "not [be]
7 presented for any improper purpose, such as to harass or cause unnecessary delay or needless
8 increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1).

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10 Discussion

11 Defendants' Motion for Leave to Amend Answer

12 On May 25, 2005, the Court granted Defendants leave to file a motion to amend their
13 "Answer."¹ Order (Dkt. 56). The defendants filed a Motion to Amend their Answer to the
14 Complaint; the defendants' proposed Amended Answer was attached as an exhibit. (Dkt. 58).
15 The defendants' Motion to Amend Answer as well as their proposed Amended Answer
16 continues to include nonsensical, frivolous material the Court has already deemed
17 inappropriate for legal memoranda. For instance, the Amended Answer asserts a "Motion
18 to Dismiss" and an affirmative defense of "accord and satisfaction" that the Court already
19 held to be inappropriate. See Order dated April 28, 2005 (Dkt. 51). The Amended Answer
20 includes a specious "Affirmative Defense" that the Court lacks subject matter jurisdiction to
21 hear this case, *i.e.*, "Section 7402 of 26 U.S.C. specifically expresses to which court it and
22 28 U.S.C. §1340 refer. That court is the district court of the United States. The charges in
23 this case were not brought in a District Court of the United States, but were brought in the
24 United States District Court; . . . thus, United States District Court lacks subject matter
25 jurisdiction, and this case should be dismissed with prejudice." Motion to Amend, Exhibit
26

27 ¹The Court held that Defendants' original Answer "[was] legally frivolous and [did]
28 not respond to the Complaint." Order dated April 28, 2005 (Dkt. 51).

1 A, p. 5 (Dkt. 58). The Court has already ruled that the "Court has jurisdiction under 28
2 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a) and 7408, and Defendants' arguments are
3 legally frivolous." Order dated April 28, 2005 (Dkt. 51). Defendants, in their proposed
4 Amended Answer, again allege that "[t]here has never been a controversy regarding
5 Plaintiff's complaint or Plaintiff's demands," despite this Court's order that their first Answer
6 failed to adequately respond to the Complaint. See Order dated April 28, 2005 (Dkt. 51).

7 Defendants' proposed Amended Answer is titled, "AMENDED ANSWER TO
8 COMPLAINT and MOTION TO DISMISS (FRCP 12(b)(6)) and NOTICE OF REMOVAL
9 TO District Court of the United States – Arizona and NOTICE OF CLAIM within the
10 admiralty." Motion to Amend, Exhibit A (Dkt. 58). The Defendants have been previously
11 warned about attaching foolish headings on their pleadings.² The defendants have lifted text
12 and argument directly from their previous "Petition in the Nature of A Motion to Dismiss For
13 Lack of Jurisdiction And Petition In the Nature of A Motion for Settlement and Closure of
14 the Escrow" (Dkt. 34), which the Court previously denied (Dkt. 51), and included them in
15 their proposed Amended Answer.³ As this Court previously ruled, "[i]t would serve no
16 useful purpose to attempt to otherwise summarize the materials filed by Defendants." Order
17 dated March 9, 2005 (Dkt. 25). Defendants will be denied leave to amend their Answer.

18 Motion for Default Judgment

19 The Clerk entered default against the defendants on March 28, 2005. (Dkt. 29). On
20 April 28, 2005, the Court denied Defendants' Motion to Set Aside Entry of Default (Dkt. 51).

22 ²Excerpt from May 24, 2005 hearing: "The Court: . . . And stamping things 'In
23 Admiralty'—that's foolishness. . . . this is serious business, and if you don't think so, you
24 should be aware of that." Transcript, May 24, 2005 Hearing.

25 ³Text, such as, "The United States District Court is not a true United States court
26 established under [A]rticle 3 of the Constitution to administer the judicial powers of the
27 United States therein conveyed. It is created by virtue of the sovereign congressional faculty,
28 granted under [A]rticle 4, 3, of that instrument, of making all needful rules and regulations
respecting the territory belonging to the United States." Motion to Amend, Exhibit A, p. 7
(Dkt. 58).

1 Plaintiff seeks injunctive relief prohibiting Defendants from selling or distributing
2 their trust program that assists or otherwise encourages its customers to violate the internal
3 revenue laws. Plaintiff also seeks an order requiring Defendants to produce a list identifying
4 all persons who have purchased their tax plans, or programs.

5 26 U.S.C. § 6701 imposes a penalty for "any person . . . (1) who aids or assists in,
6 procures, or advises with respect to, the preparation or presentation of any portion of a return,
7 affidavit, claim, or other document, (2) who knows (or has reason to believe) that such
8 portion will be used in connection with any material matter arising under the internal revenue
9 laws, and (3) who knows that such portion (if so used) would result in an understatement of
10 the liability for tax of another person." 26 U.S.C. § 6701(a). Section 6700 of the Internal
11 Revenue Code imposes liability for promoting abusive tax shelters. Liability results for:

12 (a) [a]ny person who . . .

13 (1)(A) organizes (or assists in the organization of) – (iii) any . . . plan or
14 arrangement, or (B) participates . . . in the sale of any interest in an entity or
plan or arrangement . . . , and

15 (2) . . . causes another person to make or furnish . . . (A) a statement with
16 respect to the allowability of any deduction or credit, the excludability of any
17 income, or the securing of any other tax benefit by reason of holding an
interest in the entity . . . which the person knows or has reason to know is false
or fraudulent as to any material matter, or (B) a gross valuation overstatement
as to any material matter.

18 26 U.S.C. § 6700(a). Part (c) of § 6700 and part (f) of § 6701 provide that "the penalty
19 imposed by the section shall be in addition to any other penalty provided by law." 26 U.S.C.
20 §§ 6700(c), 6701(f). The Internal Revenue Code (IRC) provides that the "district courts of
21 the United States . . . shall have such jurisdiction to **make and issue** in civil actions . . .
22 **orders of injunctions** . . . as may be necessary and appropriate for the enforcement of the
23 internal revenue laws." 26 U.S.C. § 7402(a) (emphasis added). "The remedies hereby
24 provided are in addition to and not exclusive of any and all other remedies of the United
25 States in such courts or otherwise to enforce such laws." Id. Section 7408 of the IRC is
26 titled, "Actions to enjoin specified conduct related to tax shelters and reportable
27 transactions." 26 U.S.C. § 7408. It provides that

28 if the court finds–

1 (1) that the person has engaged in any specified conduct, and
2 (2) that injunctive relief is appropriate to prevent recurrence of such conduct,
3 the **court may enjoin such person from engaging in such conduct** or in any
other activity subject to penalty under this title.

4 26 U.S.C. § 7408. (emphasis added). The statute provides that "the term 'specified conduct'
5 means any action or failure to take action, which is—(1) **subject to penalty under section**
6 **6700, 6701, 6707, 6708**, or (2) in violation of any requirement under regulations issued under
7 section 330 of title 31, United States Code." 26 U.S.C. § 7408(c) (emphasis added).

8 In this case, Plaintiff is seeking injunctive relief based on violations of the Internal
9 Revenue Code. Default has been entered against Defendants. The facts alleged in the
10 complaint are deemed admitted. Benny, 799 F.2d at 495. The facts alleged in the Complaint
11 violate the Internal Revenue Code and warrant injunctive relief.

12 Accordingly,

13 **IT IS ORDERED** denying Defendants' Motion for Leave to Amend Answer. (Dkt.
14 58).

15 **IT IS FURTHER ORDERED** granting Plaintiff's Motion for Default Judgment (Dkt.
16 35).

17 **IT IS FURTHER ORDERED** that Defendants and their representatives, agents,
18 servants, employees, attorneys, and those persons in active concert or participation with
19 them, are prohibited from directly or indirectly:

20 (1) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement,
21 including their trust program, that assists, advises, or encourages customers to attempt to
22 violate the internal revenue laws or unlawfully evade the assessment or collection of their
23 federal tax liabilities;

24 (2) Making false statements about the allowability of any deduction or credit, the
25 excludability of any income, or the securing of any tax benefit by reason of participating in
26 such tax shelters, plans or arrangements;

27 (3) Encouraging, instructing, advising, or assisting others to violate the tax laws,
28 including to evade the payment of taxes;

1 (4) Engaging in conduct subject to penalty under Code § 6700, *i.e.*, by making or
2 furnishing, in connection with the organization or sale of a shelter, plan or arrangement, a
3 statement the defendants know or have reason to know to be false or fraudulent as to any
4 material matter under the federal tax laws;

5 (5) Engaging in conduct subject to penalty under Code §6701, *i.e.*, preparing or
6 assisting others in preparing any tax forms or other documents to be used in connection with
7 any material matter arising under the internal revenue laws and which the defendants know
8 will (if so used) result in the understatement of tax liability;

9 (6) Engaging in any conduct that interferes with the administration and enforcement
10 of the internal revenue laws.

11 **IT IS FURTHER ORDERED** that Defendants produce to the United States a list
12 identifying (with names, mailing and e-mail addresses, phone numbers and social security
13 and any other tax-identification numbers) all persons who have purchased their tax plans,
14 arrangements, or programs, and to file with the Court, within 20 days of the date of this
15 Order, a certification that they have done so;

16 **IT IS FURTHER ORDERED** that the United States may engage in post-judgment
17 discovery to ensure compliance with the injunction;

18 **IT IS FURTHER ORDERED** that this Court retains jurisdiction over this action for
19 purposes of implementing and enforcing the final judgment.

20 DATED this 7th day of March, 2006.

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Earl H. Carroll
27 United States District Judge
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