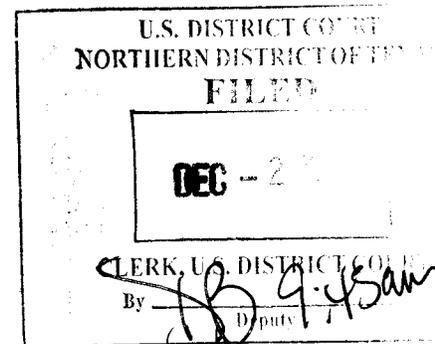


13007

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

v.
STANFORD INTERNATIONAL BANK, LTD., et al.,
Defendants.

§
§
§ CIVIL # 3:09-CV-0298-N
§

IN THE MATTER OF THE TAX LIABILITIES OF:

3-09 CV 2290 - N

JOHN DOES, United States clients of Stanford Group
Company or Stanford Trust Company, Ltd., who, at
any time during the years ended December 31, 2002
through December 31, 2008, directly or indirectly had
an interest in or signature or other authority over any
financial account maintained at, monitored by or
managed through Stanford International Bank, Ltd.,
or directly or indirectly held a beneficial ownership
interest in a corporation, trust, foundation, or other
entity formed by or managed through Stanford Trust
Company, Ltd.

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UNITED STATES' MEMORANDUM IN SUPPORT OF EX PARTE PETITION FOR
LEAVE TO SERVE "JOHN DOE" SUMMONS

SUBMITTED BY:
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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION	§	
Plaintiff,	§	
v.	§	CIVIL # 3:09-CV-0298-N
STANFORD INTERNATIONAL BANK, LTD., et al.,	§	
Defendants.	§	

IN THE MATTER OF THE TAX LIABILITIES OF	§	
	§	
	§	CIVIL # _____
JOHN DOES, United States clients of Stanford Group	§	
Company or Stanford Trust Company, Ltd., who, at	§	
any time during the years ended December 31, 2002,	§	
through December 31, 2008, directly or indirectly had	§	
an interest in, or signature or other authority over, any	§	
financial account maintained at, monitored by, or	§	
managed through Stanford International Bank, Ltd.,	§	
or directly or indirectly held a beneficial ownership	§	
interest in a corporation, trust, foundation, or other	§	
entity formed by or managed through Stanford Trust	§	
Company, Ltd.	§	

**UNITED STATES' (IRS) MEMORANDUM IN SUPPORT OF *EX PARTE* PETITION
FOR LEAVE TO SERVE "JOHN DOE" SUMMONS**

The United States of America respectfully submits the following Memorandum in support of its *Ex Parte* Petition for Leave to Serve John Doe Summons:

INTRODUCTION

This is an *ex parte* proceeding brought by the United States on behalf of its agency, the Internal Revenue Service ("IRS"), pursuant to 26 U.S.C. §§ 7609(f) and (h), for leave to serve an IRS "John Doe" summons upon Ralph S. Janvey, Receiver for Stanford Group Company ("SGC"), Stanford Trust Company, Ltd. ("STCL"), Stanford Fiduciary Investor Services, Inc., and related entities.

26 U.S.C. § 7609(f) provides that a summons which does not identify the person with respect to whose liability it is issued may be served only after a court proceeding in which the United States establishes certain factors. These types of summonses are known as “John Doe” summonses. 26 U.S.C. § 7609(h)(1) provides that a district court in which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under 26 U.S.C. § 7609(f). Ralph Janvey (“Receiver”) may be found in this judicial district at 2100 Ross, Suite 2600, Dallas, Texas 75201, and is the Court-appointed receiver for all Stanford entities including SGC, STCL, and Stanford International Bank, Ltd. (“SIB”). 26 U.S.C. § 7609(h)(2) provides that any determinations required to be made under 26 U.S.C. § 7609(f) “shall be made ex parte and shall be made solely on the petition and supporting affidavits.”

The proposed John Doe summons seeks information from the Receiver regarding United States clients of SGC or STCL who, at any time during the years ended December 31, 2002, through December 31, 2008, had an interest in, or signature or other authority over, any financial account maintained at, monitored by or managed through SIB, or directly or indirectly held a beneficial ownership interest in a foreign corporation, trust, foundation, or other entity formed by or managed through STCL.

QUESTIONS PRESENTED

Whether, as required by 26 U.S.C. § 7609(f), the United States has demonstrated (1) that the “John Doe” summons which the IRS desires to serve upon the Receiver relates to the investigation of an ascertainable group or class of persons; (2) that there is a reasonable basis for believing that such group or class of persons may fail, or may have failed, to comply with any

provision of any internal revenue law; and (3) that the information sought to be obtained from the examination of the records or testimony (and the identities of the persons with respect to whose liability the summons is issued) is not readily available from other sources.

DISCUSSION

The IRS is conducting an investigation into United States taxpayers¹ who had an interest in or authority over, offshore accounts at SIB or directly or indirectly held a beneficial ownership interest in any foreign entity formed or managed by STCL, for the period of 2002-2008. In furtherance of this investigation, the United States is requesting authorization for the IRS to serve a “John Doe” summons on the Receiver. As explained in detail below, the proposed summons meets the necessary elements of a “John Doe” summons.

I. The Summons for Which the Government Seeks Authorization Meets the Requirements of a “John Doe” Summons

26 U.S.C. § 7601 requires the Secretary of the Treasury to “cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax.” 26 U.S.C. § 7602 authorizes the Secretary to summon records and testimony for that purpose. Specifically, 26 U.S.C. § 7602 authorizes the Secretary “[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax . . . [t]o summon . . . any

¹ The term “United States taxpayer” refers to all persons subject to tax in the United States. All United States citizens and resident aliens are liable for federal income taxes on income received from sources within or without the United States; nonresident aliens are only liable for taxes on income from sources within the United States. Pursuant to 26 U.S.C. § 7701(b)(1), an alien may be treated as a resident for purposes of income taxation if he (1) is a lawful permanent resident of the United States, (2) meets the substantial presence test (this is an objective test in which the number of days the alien is present in the United States are counted), or (3) makes an election to be treated as a resident. See *Lujan v. Comm’r*, T.C. Memo 2000-365, 2000 WL 1772503 (2000).

person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax . . . , or any other person the Secretary may deem proper, to appear . . . and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry.”

For the IRS, 26 U.S.C. § 7602 is the principal information-gathering authority and courts have broadly construed the statute in light of its intended purpose of furthering the effective conduct of tax investigations.² Thus, the courts have repeatedly rejected attempts to circumscribe or thwart the effective exercise of the IRS summons power.³

In *Bisceglia*, the Supreme Court held that 26 U.S.C. §§ 7601 and 7602 empowered the IRS to issue a “John Doe” summons to a bank to discover the identity of a person who had engaged in certain bank transactions. This authority was explicitly codified in Section 7609(f) of the Internal Revenue Code, as added by the Tax Reform Act of 1976. 26 U.S.C. § 7609(f) provides as follows:

Any summons . . . which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that –

- (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,
- (2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

² See *La Mura v. United States*, 765 F.2d 974, 979 (11th Cir. 1985), quoted in, *Nero Trading LLC v. United States*, 507 F.3d 1244 (11th Cir., June 10, 2009); *United States v. Davis*, 636 F.2d 1028, 1038 (5th Cir. 1981).

³ See, e.g., *United States v. Euge*, 444 U.S. 707, 715-716 (1980); *United States v. Bisceglia*, 420 U.S. 141 (1975); *Couch v. United States*, 409 U.S. 322, 338 (1973).

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

As demonstrated below and in the declarations of Daniel Reeves and Paul Rolli,⁴ the “John Doe” summons for which the United States seeks authorization in the instant case meets the three requirements of 26 U.S.C. § 7609(f).

A. The Investigation Is Related to an Ascertainable Class

As required by 26 U.S.C. § 7609(f)(1), the group or class of persons to be investigated here is ascertainable—United States taxpayers who were clients of SGC or STCL, and who, at any time during the years beginning January 1, 2002 and ending December 31, 2008, directly or indirectly had an interest in, or signature or other authority over, any financial account maintained at, monitored by, or managed through SIB, or directly or indirectly held a beneficial ownership interest in a foreign corporation, trust, foundation, or other entity formed by or managed through STCL. The Receiver can ascertain and readily determine the identities of the underlying account holders from the records he has from SGC, STCL, and SIB. Indeed, in his pleadings, the Receiver determined that as of February 16, 2009, there were 50,000 brokerage accounts at SGC and 1,438 accounts at STCL,⁵ and 21,500 holders of SIB CDs.⁶

⁴ With the filing of its Petition for Leave to Serve the John Doe Summons and its Memorandum of Law, the United States has also filed an Appendix (“APP”) that included the Declaration of Daniel Reeves, found at APP 1-36 with exhibits A through U at APP 37-224. The Declaration of Paul Rolli is located at APP 225-227.

⁵ Receiver’s Report Dated April 23, 2009, Doc. # 336 at 14.

⁶ *Id.* at 12.

In his declaration, Revenue Agent Daniel Reeves explained that SGC had an electronic database that included SIB account information including SIB CDs for each of SGC's clients.⁷ With this SIB information, SGC sent periodic, consolidated account statements to its clients. Reeves stated that STCL should have records for management services and entity formation for each of its clients as well.⁸ Finally, Reeves included the SIB reference manual that required U.S. residents to be an "accredited investor" and that promoted the "know your client" policies typically found in private banking, leading him to conclude that evidence of U.S. residency can be found in SIB and SGC records.⁹

Plainly, the IRS investigation and the summons seeks documents to identify U.S. residents, clients of SGC, who had an interest in or signature or other authority over offshore accounts at SIB, especially those who held certificates of deposit, or who might have held a beneficial ownership interest in a foreign entity created by STCL to conceal otherwise taxable income. Where the identities of the taxpayers are not yet known, no greater specificity can be expected in defining the group or class of persons.

B. Reasonable Basis Exists for the Belief That the Unknown Persons May Fail, or May Have Failed to Comply with the Internal Revenue Laws

With respect to the second requirement, set forth in 26 U.S.C. § 7609(f)(2), the Reeves Declaration at paragraphs 11-73 reflects a reasonable basis for believing that the unknown

⁷ Reeves Declaration at APP 5, ¶ 9. Reeves also discussed the sharing of client account information between SIB and SGC and stated that records of "all U.S. sales of CDs at Stanford International Bank...were maintained at SGC Headquarters in Houston." Reeves Declaration at APP 29, ¶ 65(i).

⁸ Reeves Declaration at APP 5, ¶ 9, and APP31, ¶ 68.

⁹ Reeves Declaration at APP 5, ¶ 10; at APP 27, ¶ 65; and at APP 115 of Ex. T.

persons whose identities are sought by the summonses may fail, or may have failed, to comply with one or more provisions of the internal revenue laws.

As a preliminary matter, Reeves, as an IRS Offshore Compliance Initiative technical advisor and supervisory revenue agent, brings his specialized expertise and training in offshore investigations since 2000 to the table.¹⁰ In preparing his declaration, Reeves reviewed records of Stanford entities and interviewed confidential sources including SGC financial advisors and Stanford customers. Reeves also summarized several studies that provide context to the IRS's reasonable belief here that it is likely that the persons in the John Doe class may not have disclosed foreign assets, may not have reported all of their income, and may not have complied completely with internal revenue laws.¹¹

United States taxpayers must report their various items of income to comply with applicable internal revenue laws.¹² Aided by confidential sources, Reeves reviewed evidence in which Stanford entities—including SGC, STCL and SIB—promoted financial secrecy, non-disclosure of accounts, and non-reporting of income earned on those accounts.¹³ For instance, the informants who were SGC financial advisors for investors, revealed that SGC and

¹⁰ Reeves Declaration at APP 1-2. *See, e.g., United States v. Island Trade Exchange, Inc.*, 535 F.Supp.993, 997 (E.D. N.Y. 1982)(court may not ignore the considerable expertise of IRS agent that provided affidavit for John Doe summons).

¹¹ Reeves Declaration at APP 4, ¶ 6, and at APP 8-10, ¶¶ 14-21. Studies by the United Nations, various Congressional committees and the Federal Reserve, confirm for the IRS that maintaining an account in any offshore jurisdiction with a widely-known reputation for protecting the identity of its account holders and for not reporting the assets held there for taxation purposes, is inherently suggestive of tax avoidance. Stanford's advertising promoted the advantages of an SIB or STCL offshore account by telling its customers not to worry about tax or domestic bank reporting.

¹² *See* 26 U.S.C. § 6012(a) (imposing a duty to file tax returns reporting income).

¹³ Reeves Declaration at APP 11, ¶ 23.

STCL generally did not advise its customers to file required annual reports with the Internal Revenue Service on Treasury Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts ("FBAR").¹⁴ Reeves' declaration pointed out that while some 15,000-17,500 FBARs should have been filed annually by U.S. owners of SIB CDs, only 5,000 FBARs were filed in three years.¹⁵ This fact suggests significant non-compliance by U.S. owners of offshore accounts at SIB.

According to Reeves, another indicator of non-compliance with the Internal Revenue Code is that interest income earned by U.S. customers on SIB accounts may not have been included in the Form 1099 reports sent by SGC to the IRS.¹⁶ One SGC financial advisor stated that only 1 in 7 of his U.S. clients may have been fully compliant with respect to Schedule B, FBAR or income reporting requirements for SIB accounts.¹⁷

Based on the foregoing, the IRS has a reasonable basis to believe that members of the John Doe class here may not have complied with internal revenue laws. In *United States v. Pittsburgh Trade Exchange, Inc.*, 644 F.2d 302, 306 (3d Cir. 1981), the court held that the "reasonable basis" test had been met based upon a revenue agent's testimony that barter transactions of the type arranged by the Pittsburgh Trade Exchange were "inherently susceptible to tax error." In *United States v. Ritchie*, 15 F.3d 592, 601 (6th Cir. 1994), the court held that the

¹⁴ Reeves Declaration at APP 19-22, ¶¶ 45-52.

¹⁵ Reeves Declaration at APP 26, ¶ 63.

¹⁶ Reeves Declaration at APP 24, ¶ 60. An SGC customer with SIB accounts disclosed his consolidated statements and Form 1099 from SGC to the IRS to confirm that no interest income from SIB was included in his Form 1099.

¹⁷ Reeves Declaration at APP 25, ¶62.

mere payment for legal services with large amounts of cash is a reasonable basis for the issuance of a “John Doe” summons. The legislative history of the statute regarding the specificity of factual allegations needed to satisfy the “reasonable basis” test is clear:

It is enough for the Service to reveal to the court evidence that a transaction has occurred, or may have occurred, and that the transaction (in the context of such facts as may be known to the Service at that time) is of such a nature as to be reasonably suggestive of the possibility that the correct tax liability with respect to that transaction may not have been reported (or might not be reported in the case of a current year transaction, with respect to which a return is not yet due).

S.Rep.No. 94-938, 94th Cong., 2nd Sess. at 373, reprinted in (1976) U.S.Code Cong. & Ad.News, pp. 3439 at 3802. On the record here, the summons requested is necessary to the IRS investigation and consonant with the Congressional purpose behind 26 U.S.C. §§ 7601, 7602 and 7609.¹⁸

C. The Identity of Persons in the Class Is Not Readily Available from Other Sources

With respect to the third and final requirement set forth in 26 U.S.C. § 7609(f)(3), Reeves declares that the information sought (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) is not readily available to the IRS from other sources, but is available from the Receiver.¹⁹

The attached Declaration of Paul Rolli²⁰ (the IRS Large & Mid-Size Business Division supervisory representative in the Office of Deputy Commissioner, International) explains that the

¹⁸ *United States v. Bisceglia*, 420 U.S. 141 (1975)(the IRS has statutory authority to issue a John Doe summons to a bank in order to ascertain the identity of a person whose transactions with that bank strongly suggest liability for unpaid taxes).

¹⁹ Reeves Declaration at APP 34-35, ¶¶74-77.

²⁰ See APP 225-227.

IRS cannot utilize the "Agreement between the Government of the United States of America and the Government of Antigua and Barbuda for the Exchange of Information with Respect to Taxes" ("TIEA"), nor the United States' Mutual Legal Assistance Treaty ("MLAT") with Antigua and Barbuda, to provide the needed information directly from STCL or SIB in Antigua. The TIEA requires the United States to identify the taxpayer and specify allegations of fraud in order to validate a request for information to Antigua under the TIEA. Obviously, this is a "Catch-22" because the identity of the U.S. taxpayer is the exact information the IRS lacks and seeks through this summons. The MLAT is specifically for criminal tax matters, again requiring identification of the taxpayer and exact allegations of criminal tax behavior; in this civil summons context, an IRS request under the MLAT is not effective.²¹

Here, the IRS seeks taxpayer identification and information held by the U.S. based Receiver, from records of a U.S. entity, SGC, based in Houston, and its affiliate, STCL, based in Antigua. The proposed summons will request, and the Receiver will be able to provide, detailed information about the identity and accounts of the U.S. taxpayers. That information is entirely relevant to the IRS investigation. Once the taxpayer's identity is discovered, the IRS can verify an FBAR filing and conduct an actual inspection of a particular taxpayer's return that may reveal understatements or misstatements of income resulting from offshore SIB transactions which may have been concealed through the offshore deposit and transfer of funds. The IRS will be better able to match account deposits, earnings and basis with that reported (or not) by the U.S.

²¹ Rolli Declaration at APP 226-227.

taxpayer on his or her federal income tax return. As a result, the IRS can determine the proper tax liability for each Stanford investor.²²

Additionally, the requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964), have been or will be met: (1) there is a legitimate purpose for the investigation; (2) the inquiry may be relevant to the investigation; (3) the information sought is not already in the possession of the Commissioner; and, (4) the administrative steps required by the Internal Revenue Code have been followed. First, the IRS is issuing the summons for the legitimate purpose of ensuring compliance with reporting requirements for offshore accounts. Second, the summons is relevant to its investigation because the records identifying these United States taxpayers may reveal hidden assets or unreported income. Third, the information is not already within the Commissioner's possession. The very nature of a John Doe summons means that the IRS does not have information identifying the targeted United States taxpayers. Instead, the SGC and STCL customers' account information at issue is in the Receiver's possession. Fourth, the IRS will comply with all steps required by the Internal Revenue Code in issuing the summons.

II. Courts Have Approved "John Doe" Summonses in a Similar Investigation

During the IRS Offshore Compliance Initiative, the IRS has sought and gained permission to serve John Doe summons in a number of cases. To identify United States taxpayers holding offshore payment cards for which transactional data was obtained from the card associations and merchants, the IRS focused upon U.S. based third-party processors of card

²² Reeves noted that the IRS recently provided that some members of the John Doe class may be entitled to tax losses on their investments as Ponzi victims, but the summoned records will more quickly enable the IRS to evaluate and allow claims...to those that followed the tax laws in the first instance. Reeves Declaration at APP 35-36, ¶ 78.

transactions, who sometimes maintain records on a contract basis for card issuing banks, including offshore banks.

In this context, on August 2, 2004, the United States District Court for the District of Colorado in Case No. 04-F-1548 (OES), issued an order approving the service of a “John Doe” summons upon a third-party processor for a number of banks in tax haven or financial privacy jurisdictions. On September 11, 2003, the United States District Court for the Southern District of Florida in Case No. 03-22177 CIV-MARTINEZ, issued an order approving the service of a “John Doe” summons upon Credomatic of Florida, Inc., another third-party processor for a number of banks in tax haven or financial privacy jurisdictions. The court subsequently entered an order approving service of a modified “John Doe” summons on Credomatic of Florida, Inc., on April 2, 2004. Next, on August 5, 2004, the United States District Court for the Southern District of Florida in Case No. 04-21986 CIV-UNGARO-BENAGES, issued an order approving the service of a “John Doe” summons upon TecniCard, Inc., also a third-party processor for banks in tax haven or financial privacy jurisdictions. Finally, on August 15, 2004, the United States District Court for the Middle District of Georgia in Case No. 4:04CV94-1(CDL), issued an order approving the service of a “John Doe” summons upon Total Systems Services, Inc., an additional third-party processor for a number of banks in tax haven or financial privacy jurisdictions.

Similarly, courts have also approved the issuance of “John Doe” summonses to credit card companies for the identities of United States taxpayers using offshore credit cards as a means of tax evasion. For example, on October 30, 2000, the Southern District of Florida in Case No. 00-3919 CIV-JORDAN issued an order approving the service of “John Doe”

summonses upon American Express and MasterCard International, Inc. Based on the results of the continuing analysis of information obtained from MasterCard, the IRS sought approval for additional summonses and on March 27, 2002, the Northern District of California in Case No. 02-MC-49, issued an order approving the service of a “John Doe” summons upon VISA International. Further, on August 20, 2002, the Southern District of Florida in Case No. 02-22404-CIV-UNGARO-BENAGES issued an order approving the service of a second “John Doe” summons upon MasterCard International. This second summons reflected the larger time period and increased number of offshore jurisdictions the investigation had grown to include since the first “John Doe” summons. Most recently, on February 21, 2006, the United States District Court for the Northern District of California in Case No. C 05-04167 JW issued an order approving service of a “John Doe” summons on PayPal, Inc., an internet-based money transfer service which enables any person with an email address and a bank account or a MasterCard, VISA, or American Express card issued by, through, or on behalf of a bank, to transfer money to any person with an email address.

CONCLUSION

The summons for which the government seeks authorization meets the requirements of a “John Doe” summons. The records at issue are in the possession of the Receiver. Persons in the “John Doe” class are ascertainable and may have filed tax returns with the IRS, but their names are unknown, and an inspection of a particular taxpayer’s return is not likely to reveal understatements or misstatements of income resulting from transactions possibly concealed through the use of offshore accounts. The only readily available means for the IRS to identify these taxpayers and obtain the records is pursuant to a “John Doe” summons. Accordingly, the

Court should enter an order granting the IRS leave to serve a “John Doe” summons upon Ralph S. Janvey, Receiver of the assets and records of Stanford Group Company, Stanford Trust Company, Ltd., Stanford Fiduciary Investor Services, Inc., and related entities, in substantially the form as attached to the Declaration of Revenue Agent Daniel Reeves as Exhibit A, located at APP 38-56.

DATED this 30th day of November, 2009.



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