

1 immunity by directing the Plaintiff's to resolve the matter "in either the United States District Court or the United
2 States Court of Federal Claims."

3 2. The Plaintiff's in this matter has previously sought relief from this Court in the initial complaint (case:
4 1:11-cv-01690-LJO-MJS) that was filed on Oct 07, 2011. This is an amendment to the initial complaint filed on
5 October 07, 2011 as is being allowed by Judge Lawrence J. O'Neill's conclusion and order, dated February 01,
6 2012, to grant the Government's motion to dismiss "WITH LEAVE TO AMEND."

7 3. The United States of America through the Department of Treasury, Internal Revenue Service disallowed
8 the Plaintiff's (Stephen Noret and Rita Kay Noret) submitted 1040X amended tax claims for the tax years of 1998,
9 1999, 2000, 2001, 2002, and 2003. The tax claims were submitted after what the IRS claims to be the end of the
10 timely filing period, even though on appeal to the IRS it was explained by the Plaintiff to the IRS that the lateness of
11 the amended tax returns included in this complaint was a result of a 'retroactive' Department of Veterans Affairs
12 Service Connected Disability Award made in May 2008, which made Uniformed Service Retirement Pay that was
13 previously taxed, now non-taxable. Upon appeal to the IRS by the Plaintiff's, the IRS appeals staff quoted 26
14 USCA § 6511 to state there was a limitation of 'only' 5 tax years that could be corrected in arrears, to support the
15 IRS disallowance of the Plaintiff's claims for amended taxes for the tax years 1998, 1999, 2000, 2001, 2002, and
16 2003. The Plaintiff pointed out to the IRS supervisor in the Appeals Office, located at Ogden, UT that the
17 'Transition Rules' of 26 USCA 6511(c) (1) state that taxable years before the enactment of the act, which would be
18 prior to January 1, 2001 were exempt from the 5 year limitation. It is the Plaintiff's contention that the application
19 of 26 USCA § 6511(a), (b) and (c) are not being properly applied.

20 4. The Plaintiff's have IRS Letters 105C dated October 8, 2009 and August 23, 2010 that cover the
21 disallowed amended tax years 1998, 1999, 2000, 2001, 2002, and 2003. The Plaintiff's have met the 2 year timely
22 submission requirement in order for the United States District Court to consider this complaint.

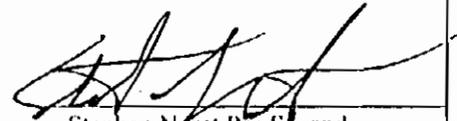
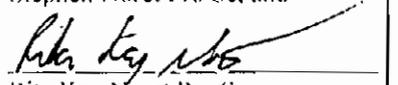
23 5. The Plaintiff's respectfully request the following RELIEF:

- 24 a. Tax year 1998 - \$75.00 plus IRS calculated interest to present as allowed by law
- 25 b. Tax year 1999 - \$854.00 plus IRS calculated interest to present as allowed by law
- 26 c. Tax year 2000 - \$323.00 plus IRS calculated interest to present as allowed by law

- d. Tax year 2001 - \$341.68 plus IRS calculated interest to present as allowed by law
- e. Tax year 2002 - \$300.00 plus IRS calculated interest to present as allowed by law
- f. Tax year 2003 - \$261.00 plus IRS calculated interest as allowed by law

6. In consideration of the Courts valuable time, both of the Plaintiff's, Rita Noret and Stephen Noret, filed Consent to Jurisdiction of the United States Magistrate Judge forms, dated 10/21/2011. The Plaintiff's are resubmitting the Consent to Jurisdiction of the United States Magistrate Judge forms, dated 10/21/2011 for the Courts consideration of assignment of this case.

Dated this 7th day of October, 2011


Stephen Noret Pro Se, and

Rita Kay Noret Pro Se
2351 Morris Avenue
Clovis, CA 93611
(209) 617-5489

FILED

FEB 09 2012

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

1 andre paul provost, jr., non-resident alien, *non-corporate real party*
2 C/O EVANGELINA M. VELASCO, NOTARY PRESENTER
3 992 E. NILES
4 Fresno, California [93720]

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA

7 ANDRE PAUL PROVOST, JR)
8 U.S. Trust Account, Counter) PETITION FOR DECLARATORY
9 Claimant (decedent)) JUDGMENT AND RECORD
10 vs.)
11 UNITED STATES OF AMERICA) Civil Case No. 1:11-cv-02080-LJO-DLB
12 Plaintiff)
13)
14)
15 andre paul, jr.: Provost, Affiant, non-resident)
alien, Real Party in Interest)

16 **PETITION FOR DECLARATORY JUDGMENT AND RECORD**

17
18 **NOW COMES, Counter Claimant's Petition for Declaratory Judgment under**
19 **authority of 28 USC 2201 for A determination on the matter of the UNITED STATES OF**
20 **AMERICA versus ANDRE PAUL PROVOST JR., shall be given treatment under the**
21 **doctrine of *lex locus delicti*. The cause of justice as well as regard for the ideals of fair play**
22 **require this Petition for Declaratory Judgment be determined immediately by the court.**

23
24 **JURISDICTION**

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26 Declaratory judgments are provided for by both federal and state law. 28 U.S.C. §§2201-02,
27 Calif.Code.Civ.Proc. § 1060-1062.5 (and see also the Uniform Declaratory Judgment Act).

1 Declaratory judgments permit parties to a controversy to determine rights, duties, obligations or
2 status.

3
4 The operation of the Declaratory Judgment Act is procedural only. Relief under the Act is
5 available only if the requisites of jurisdiction, in the sense of a federal right or diversity, provide
6 foundation for resort to the federal courts. The Declaratory Judgment Act allowed relief to be
7 given by way of recognizing the plaintiff's right even though no immediate enforcement of it was
8 asked. But the requirements of jurisdiction - the limited subject matters which alone Congress had
9 authorized the District Courts to adjudicate - were not impliedly repealed or modified. Skelly Oil
10 Co. v. Phillips Petroleum Co., 339 U.S. 667, 70 S.Ct. 876, 94 L.Ed. 1194 (1950).

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CASE OR CONTROVERSY

The United States Constitution (Article III, Section 2) limits the exercise of the judicial power to
'cases' and 'controversies.' The Declaratory Judgment Act in its limitation to 'cases of actual
controversy,' refers to the constitutional provision and is operative only in respect to controversies
which are such in the constitutional sense. A justiciable controversy is thus distinguished from a
difference or dispute of a hypothetical or abstract character; from one that is academic or moot.
The controversy must be definite and concrete, touching the legal relations of parties having
adverse legal interests. It must be a real and substantial controversy admitting of specific relief
through a decree of a conclusive character, as distinguished from an opinion advising what the
law would be upon a hypothetical state of facts. Aetna Life Insurance Co. v. Haworth, 300 U.S.
227, 57 S.Ct. 461, 81 L.Ed. 617 (1937). For adjudication of constitutional issues 'concrete legal
issues, presented in actual cases, not abstractions' are requisite. The power of courts to pass upon
the constitutionality of acts of Congress arises only when the interests of litigants require the use

1 litigant." Wilton v. Seven Falls Co. ___ U.S. ___, 115 S.Ct. 2137, 132 L.Ed.2d 214 (1995). The
2 Declaratory Judgment Act states only that a court may declare the rights and other legal relations
3 of any interested party seeking such declaration. Where it is uncertain that declaratory relief will
4 benefit the party alleging injury, the court will normally refrain from exercising its equitable
5 powers.
6

7 California state) it is true
8)
9 Fresno county)

10 I, a man, appearing as andre paul, jr; provost, Affiant, do state that I am over the age of twenty-
11 one years, competent with first hand knowledge, and that:

12
13 **JURISDICTION AND VENUE**

- 14 1. Affiant (non-resident alien) has out of necessity conducting business as ANDRE
15 PAUL PROVOST, JR. from time to time.
- 16 2. The IMF, diverse from andre paul, jr; provost and foreign to ANDRE PAUL
17 PROVOST, JR. also does business within the jurisdiction and venue of this Court, and
18 that
19
- 20 3. Jurisdiction is granted to the USDC in this matter, restricted to this petition, by Affiant,
21 and that
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- 23 4. The Court is indemnified by the bond of andre paul, jr; provost (Unlimited Indemnity
24 Bond attached), and that
- 25 5. Affiant has the right to petition for declaratory judgment on issues related to this
26 matter, and that
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6. The judgment on this Petition will not harm the public, and that

FACTS

- 7. andre paul, jr; provost is a man, sentient being on the land, and that
- 8. andre paul, jr; provost has a proprietary right to “ANDRE PAUL PROVOST, JR.”, and that
- 9. andre paul, jr; provost is the only Real Party in Interest, acting as Contributing Beneficiary (Settlor), who has put any value into ANDRE PAUL PROVOST, JR., and that
- 10. andre paul, jr; provost is the only legitimate claimant to any equity attached to ANDRE PAUL PROVOST, JR. (see attached UCC-1 Financing Statement), and that
- 11. andre paul, jr; provost is entitled to any interpleaded funds relating to ANDRE PAUL PROVOST, JR., and that

THEREFORE

- 12. Affiant denies that the Plaintiff(s) has any proprietary right to “ANDRE PAUL PROVOST, JR.” and that
- 13. There is not any evidence that Plaintiff(s) has any proprietary right to “ANDRE PAUL PROVOST, JR.”, and Affiant believes that not any exists, and that
- 14. Affiant denies that the Plaintiff(s) has put any value into ANDRE PAUL PROVOST, JR., and that
- 15. There is not any evidence that Plaintiff(s) has put any value into ANDRE PAUL PROVOST, JR., and Affiant believes that not any exists, and that

1 16. Affiant denies that the Plaintiff(s) has any equitable claim to ANDRE PAUL
2 PROVOST, JR., and that

3 17. There is not any evidence that Plaintiff(s) has any equitable claim to ANDRE PAUL.
4 PROVOST, JR., and Affiant believes that not any exists, and that

5 18. Affiant denies that Plaintiff(s) is entitled to any interpleaded funds relating to ANDRE
6 PAUL PROVOST, JR., and that

7 19. There is not any evidence that Plaintiff(s) is entitled to any interpleaded funds relating
8 to ANDRE PAUL PROVOST, JR., and Affiant believes that not any exists, and that
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11 **CAVEAT AND NOTICE**

12 20. Notwithstanding any assumed contracts, implied, constructed, invisible, adhesion,
13 signed or unsigned, the Plaintiff(s) is in breach of any such alleged contract for **failure**
14 **of consideration**, and that
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16 21. Plaintiff(s) is liable to andre paul, jr; provost for the breach, and that
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18 **CONCLUSION**

19 22. Therefore, Counter Claimant request a declaratory determination on the following; or
20 in the alternate that this Court ought on its own motion to rule that:

21
22 A. andre paul, jr; provost is the only party who has put any value into ANDRE
23 PAUL PROVOST, JR., and that

24 B. andre paul, jr; provost is entitled to any equity attached to ANDRE PAUL
25 PROVOST, JR., and that
26

1 C. andre paul, jr; provost is entitled to any interpleaded funds related to ANDRE
2 PAUL PROVOST, JR., and that

3 D. The Plaintiff(s) are barred from any collection of any alleged debts from andre
4 paul, jr; provost relating to ANDRE PAUL PROVOST, JR., the Plaintiff(s)
5 having no claim in fact.
6

7 E. That this court supports and upholds the Law and the United States
8 Constitution as Article III Section II of the Constitution requires legal standing
9 be established before commencement of ANY PROCEEDING.

10 F. That this court supports and upholds the Law and the United States
11 Constitution and prior Supreme Court Decisions as The "Supreme Court"
12 wrote about the elements of standing: "The requirement of standing, however,
13 has a core component derived directly from the Constitution. A plaintiff must
14 allege personal injury fairly traceable to the defendant's allegedly unlawful
15 conduct and likely to be redressed by the requested relief." *Allen v. Wright,*
16 *468 U.S. 737, 751 (1984)*

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18 This of course references Article III § 2 of the "United States" "Constitution"
19 which requires a plaintiff to present a case or controversy **before a court may**
20 **proceed**: "The Judicial power shall extend to all cases and controversies." If a
21 plaintiff lacks standing, then courts, all courts, are legally/constitutionally
22 incapable of proceeding because: "courts only adjudicate justiciable
23 controversies. *United States v. Interstate Commerce Commission, 337 U.S.*
24 *426 430.*
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- 1 G. That this court supports and upholds the Law and the United States
2 Constitution, that Subject matter jurisdiction and in personam jurisdiction does
3 have to be established before this can court proceeds.
- 4 H. That this court supports and upholds the Law and the United States Constitution
5 and holds its officers' to their oaths of office, to California constitution and the
6 U.S. Constitution before proceeding or is there no law and this venue is an
7 admiralty military trihunal and this court rules on behalf of the plaintiff without
8 any proof of claim or forensic evidence?
- 9 I. That this court supports and upholds the Law and the United States
10 Constitution and that Evidence File is easily made available to all parties in a
11 court case.
- 12 J. That this court supports and upholds the Law and the United States
13 Constitution and pursuant to Law, 44 U.S.C. § § 1504-1507 before a private
14 man (non-resident alien) can be bound by, or adversely effected by a law or
15 regulation, having gncral applicability to a private citizen, it must be published
16 in the Federal Register. See Federal Register 2Z September 7, 1943: page
17 12266 section 404.102.
- 18 K. That this court supports and upholds the Law and the United States Constitution
19 which requires the Plaintiff(s) Delegation of Authority filed and published in the
20 Federal Register regarding any claim be submitted before commencement of
21 ANY PROCEEDING. (see Exhibit A attached).
- 22 L. That this court supports and upholds the Law and the United States Constitution,
23 that UNITED STATES OF AMERICA a corporation operating in Bankruptcy
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1 since 1933, which requires Plaintiff(s) to fill out a Form B-10, signed under
2 penalty of perjury regarding any Claim to an alleged debt be submitted, before
3 commencement of ANY PROCEEDINGS.

4 M. That this court supports and upholds the Law and the United States Constitution,
5 which requires the Plaintiff(s) to fill out a IRS Form 4490 Proof of Claim For
6 Internal Revenue Taxes under penalty of perjury, regarding any alleged debt be
7 submitted before commencement of ANY PROCEEDINGS.
8

9 N. That this court supports and upholds the Law and the United States Constitution
10 and pursuant to Law, 26 C.F.R. § 301.6501(A)(-1) the Statute of Limitations
11 upon ASSESSMENT AND COLLECTION of previously filed returns for the
12 IRS is limited to the previous three (3) years and such fact should be proven to
13 the court before commencement of ANY PROCEEDINGS.
14

15 O. That this court supports and upholds the Law and the United States Constitution
16 and pursuant to Law, The Fair Debt Collection Practices Act 15 U.S.C. Chapter
17 41 § 1692g(a), the debt collector has an obligation to validate any imputed debts
18 before commencement of ANY PROCEEDINGS.

19 P. That this court supports and upholds the Law and The United States Constitution
20 and pursuant to Law, 5 U.S.C. §552(a)(6)(a)(i) Plaintiff(s) have no more than
21 twenty (20) days to respond with proof of claim and all the certified assessment
22 documentation required before commencement of ANY PROCEEDINGS.
23

24 Q. That this court supports and upholds the Law, The United States Constitution
25 and Public Policy and pursuant to Public Policy the Plaintiff(s) have a Fiduciary
26 obligation to certify all documents, or have them certified as true and correct,
27
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1 with Form 2866 Certificate of Official Record and Form 4340 Certificate of
2 Assessment, or in the event requested proof of claim documents do not exist,
3 certify that they don't with Form 3050, Certificate of Lack of Records as
4 required by IRM 11.3.6.

5
6 R. That this court supports and upholds the Law and the United States Constitution
7 and determines that there being no statute, rule, or law empowering federal
8 officials to commit the criminal act of trespass, extortion and perjury. Immunity,
9 so-called absolute or qualified, is unavailable as a defense of an act which is
10 clearly unlawful and outside the jurisdiction of the United States Corporate
11 venue without a Letter of Marquee and Reprisal.

12
13 S. That this court supports and upholds the Law, the United States Constitution,
14 and Public Policy and will continue to MAINTAIN integrity by recognizing that
15 personal collateral attacks have been abolished in federal district courts pursuant
16 to Law, 11 USC 9014.

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18 T. That this court supports and upholds the Law, the United States Constitution and
19 will maintain that the U.S. Attorney(s), Department of Justice and the Internal
20 Revenue Service are not an exception to the Federal Rules of Civil Procedure
21 10a and 17 and cannot proceed as a fictitious plaintiff(s). For it is not fair for the
22 fictitious plaintiff(s) to be allowed to proceed in this matter with an alleged
23 claim with no proof and that is not bonded nor surety revealed.

24
25 U. That this court supports and upholds the Law, the United States Constitution and
26 the Federal Rules of Civil Procedure Rule 11. Which requires no statements,
27 motions, pleadings, etc. be entered without a Notice of Appearance by
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1 Plaintiff(s)'s attorney(s) as ALL pleadings, written motions, and other
2 paper must be signed by at least one attorney of record in the attorney's
3 name and the Department of Justice and United States Attorney(s) Service
4 are not an exception to rule.
5

6 V. That this court supports and upholds the Law, the United States Constitution,
7 that it is already decided, DC (district court) of Pennsylvania, 1964, 229 fed
8 supp 647. Trinsey vs. Pageliario: “statements of counsel in brief or in argument
9 are not facts before the court and are therefore insufficient for a motion to
10 dismiss or for summary judgment.”

11
12 W. That this court supports and upholds the Law, the United States Constitution,
13 that it is already decided, see DIVERSIFIED METALS, INC., vs. T-BOW
14 COMPANY TRUST, INTERNAL REVENUE SERVICE, AND STEVE
15 MORGAN, CIVIL NO. 93-405-E-EJL, In THE UNITED STATE DISTRICT
16 COURT FOR THE DISTRICT OF IDAHO. The United States Attorney,
17 BETTY RICHARDSON and Trial Attorney, Tax Division, U.S. Department of
18 Justice RICHARD R. WARD denies the INTERNAL REVENUE SERVICE is
19 an agency of the United States Government
20
21

22 **THEREFORE PETITIONER REQUESTS**

- 23 1. andre paul, jr; provost is declared for the Record to be the only party who has put any
24 value into ANDRE PAUL PROVOST, JR., and that
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26 2. andre paul, jr; provost is declared for the Record to be the only party entitled to any
27 equity attached to ANDRE PAUL PROVOST, JR., and that
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3. andre paul, jr; provost is declared for the Record to be entitled to any interpleaded funds related to ANDRE PAUL PROVOST, JR., and that

4. The Plaintiff(s) is declared for the Record to be barred from any collection of any alleged debts from andre paul, jr; provost relating to ANDRE PAUL PROVOST, JR., the Plaintiff(s) having no claim in fact

I, andre paul, jr; provost , on my own unlimited commercial liability do say that I have read the above Petition and do know the contents to be true, correct, and complete, and not misleading, the truth, the whole truth, and nothing but the truth, addressing this matter under Threat, Duress, and Coercion.



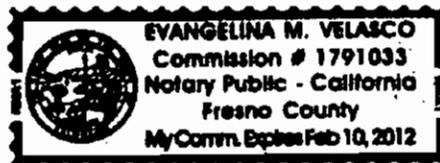
andre paul,jr.; provost, Affiant, non-assumpsit, real party in interest, non-resident alien, without the United States.

State of California County of
FRESNO

Subscribed and sworn to (or affirmed)
Before me on this 8th day of FEB., 2012, by
andre paul provost, jr.
personally known to me or proved to me on
the basis of satisfactory evidence to be the
person(s) who appeared before me.

Signature Evangelina M. Velasco

(Seal)



CERTIFICATE OF SERVICE

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I, EVANGELINA M. VELASCO over the age of twenty-one years, competent to witness, do swear under penalty of perjury do say that on the ^{9th 2/9/12 EMV} ~~8th~~ day of February, 2012 , I did mail via U.S. **Certified Mail No. 7011 0470 0003 5276 4216** (postage paid) the above PETITION FOR DECLARATORY JUDGMENT AND RECORD to the below listed party(ies) within the USA:

Colin C. Sampson,
Trial Attorney, Tax Division
Civil Trail Section, Western Division
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044

g 2/9/12 EMV
Feb. 8, 2012
Date

Evangelina M. Velasco

NOTARY PUBLIC

My commission expires: February 10, 2012
EVANGELINA M. VELASCO, NOTARY PRESENTER
992 E.NILES
Fresno, California [93720]

NOTICE OF NOTARY PRESENTMENT FOR CASE NO. 1:11-cv-02080-LJO-DLB

On, February ^{9 2/9/12 EMV} ~~8~~, 2012 for the purpose of verification, I, the undersigned NOTARY PRESENTER, being commissioned in the County of Fresno and State of California, do certify that a man, andre paul.jr; provost, presented me with the following document listed below for PRESENTMENT UNDER NOTARY SEAL to the United States District Court, Eastern District of California, Case No. 1:11-CV-02080-LJO-DLB

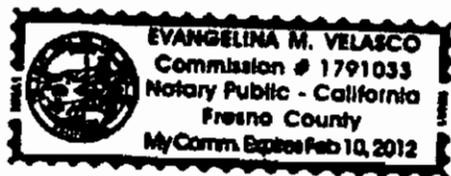
1. PETITION FOR DECLARATORY JUDGMENT AND RECORD

Notary Public EVANGELINA M. VELASCO is not an attorney licensed to practice law in the state of California and has not given legal advice or accepted fees for legal advice; provided no assistance in the preparation of the above referenced document, and has no interest in any issue referenced therein. EVANGELINA M. VELASCO is NOT a party to this action and is ONLY acting in an authorized capacity as a third party witness to communications between the parties. This document is not intended to harass, intimidate, offend, conspire, blackmail, coerce, or cause anxiety, alarm or distress. It is presented with honorable and peaceful intentions to facilitate settlement and closure of this account.

WITNESS my hand and official seal.

Evangelina M. Velasco ^{aka 2/9/12 EMV} This ~~8~~⁹th day of February 2012 (Seal)
NOTARY PUBLIC

My commission expires: February 10, 2012
EVANGELINA M. VELASCO, NOTARY PRESENTER
992 E. NILES
Fresno, California [93720]



**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SMOKY MOUNTAIN BAKERY)
PRODUCTS, BAKE CRAFTERS)
FOOD COMPANY,)**

Plaintiffs,)

v.)

**REGIONS FINANCIAL)
CORPORATION, REGIONS)
BANK, et. al.)**

Defendants.)

Civil No.: 2:12-cv-00098-KOB

JURY DEMAND

PLAINTIFFS’ FIRST AMENDED COMPLAINT¹

COME NOW the Plaintiffs, Smoky Mountain Bakery Products (Declaration of Trust) and Bake Crafters Food Company, by and through their attorneys, and file this First Amended Complaint and state as follows:

PARTIES

1. Plaintiff, Smoky Mountain Bakery Products (“Trust”) is a trust established, interpreted and construed under the laws of the State of Texas.

¹

Plaintiffs file this First Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(1)(B) within twenty-one (21) days from Regions Bank and Regions Financial Corp.’s Answer and Counterclaim for Interpleader. Plaintiffs further state that any request for injunctive relief related to a preliminary injunction as stated herein is consistent with Plaintiffs’ Motion for Preliminary Injunctive Relief and Memorandum of Law in Support and does not seek to alter or amend the Court’s briefing schedule and hearing related to Plaintiffs’ Motion for Preliminary Injunctive Relief.

2. Plaintiff, Bake Crafters Food Company is a Texas joint-stock company that is the beneficiary of the Trust.

3. Defendant Regions Financial Corporation is a foreign corporation organized and existing under the laws of the State of Delaware and is a necessary party as complete relief cannot be awarded in its absence. Regions Financial Corporation's principal place of business and assets are located in Jefferson County, Alabama.

4. Defendant Regions Bank is a domestic corporation organized and existing under the laws of the State of Alabama and is a necessary party as complete relief cannot be awarded in its absence. Regions Bank's principal place of business and assets are located in Jefferson County, Alabama (Defendant Regions Financial Corporation and Defendant Regions Bank may sometimes be collectively referred to herein as the "Regions Defendants" and collectively with the United States as "Defendants").

5. Intervenor/Defendant the United States of America has alleged in its Motion to Intervene (which was granted) that it is a necessary party as complete relief cannot be awarded in its absence.

VENUE AND JURISDICTION

6. This Court has subject matter jurisdiction over this action on multiple

grounds including, but not limited to, 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 26 U.S.C. § 7426 and Rule 65 of the Federal Rules of Civil Procedure.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and because the parties have consented to this venue.

FACTUAL ALLEGATIONS

8. Plaintiff, Smoky Mountain Bakery Products (the “Trust”), is a trust established, interpreted and construed under the laws of the State of Texas. Attached as Exhibit A is a copy of the Declaration of Trust for the Trust. The attached copy is a true, accurate and complete reproduction of the original and is kept and maintained by the Trust in its ordinary and regular course of business.

9. Michael Byrd (“Byrd”) is the trustee of the Trust and has acted in that capacity since the Trust was formed on or about May 11, 2011.

10. Plaintiff, Bake Crafters Food Company, JSC (the “Company”), is a Texas joint-stock company recognized under the laws of the state of Texas and is the sole beneficiary of the Trust. The Company is a wholly owned subsidiary of Bake Crafters Food Company, Private Company Trust (“BCFC, PCT”). BCFC, PCT is a wholly owned subsidiary of Bakerview Management Fund, which is a wholly owned subsidiary of Gospel Ministries International, Inc.

11. Byrd is the General Manager of the Company and has acted in that

capacity since the Company was formed on or around December 23, 2008. The Company is generally involved in the business and industry of wholesale bakery products and commercial food sales and has been since its inception.

12. On Tuesday, May 3, 2011, Byrd applied for and received a federal tax identification number for the Trust, number .

13. On or about Wednesday, May 11, 2011, Byrd obtained a Hamilton County, Tennessee business license for the Trust (the “Business License”).

14. On Wednesday, May 11, 2011, acting solely as trustee of the Trust, Byrd went to the Collegedale Branch of Regions Bank and finalized the formation and organization of the Trust by executing the Trust documents in the presence of Kristy R. Morton, in her capacity as a notary public. Ms. Morton was the manager of the Collegedale Branch of Regions Bank at the time, and she knew that any and all of Byrd’s actions related to the Trust were solely as trustee of the Trust.

15. After Ms. Morton notarized the applicable Trust document, Byrd requested, on behalf of the Trust, that she open a business checking account in the name of the Trust.

16. Ms. Morton and Byrd discussed the fact that this would be a business account, and that he was only acting as trustee related to the funds contained therein, for the benefit of the Trust’s beneficiary, namely the Company.

17. Byrd provided Ms. Morton with a copy of the Business License and the federal tax identification number for the Trust, and she made copies of the same and the executed Trust documents. She opened a business account for the Trust with account number ending in and then Byrd, in his capacity as trustee, funded the Trust's bank account (the "Trust Account") that same day with a \$5,000 check from the Company.

18. After opening the account, Ms. Morton, acting as the manager for the Collegedale Branch of Regions Bank, represented to Byrd that the account was opened for use by the Trust and in the Trust's name.

19. Since May 2011, Byrd, as trustee of the Trust, has managed the Trust assets, including the funds in the Trust Account, for the benefit of the beneficiary, the Company. In the course of carrying out these duties, Byrd has made substantial deposits of funds that were the property and assets of the Company.

20. The funds Byrd has deposited into the Trust Account were the property and assets of the Company, and not his individually.

21. On or about November 14, 2011, a notice of levy was issued by the Internal Revenue Service to Regions Bank related to Byrd personally, against his Social Security Number ending in (the "Notice of Levy").

22. The Notice of Levy is related to Byrd personally as a taxpayer, and is not

in any way related to the Trust or the Company.

23. Even though the Notice of Levy related only to Byrd personally, and had nothing to do with the Trust, the Company or the Trust Account, on or about November 14, 2011, Regions Bank froze the approximately \$423,000 that was in the Trust Account in response to the Notice of Levy.

24. Regions Bank's actions directly caused thirteen (13) checks written for approximately \$120,000 to the Company's suppliers and vendors to be returned for insufficient funds, which has materially affected the Company's reputation among its suppliers, vendors and customers.

25. Regions Bank's improper actions have further caused the Company to lose credibility throughout its industry as a result of the returned checks, have deprived the Company of the ability to meet its financial obligations on a day to day basis, and are causing the company to lose its goodwill associated with the operation of its business because the company cannot operate its business at sustainable levels without the ability to meet its financial obligations.

26. The overall cash flow disruption has caused and is continuing to cause a severe downturn in the Company's business, such that it is losing credit standing with its suppliers as a result of Regions Bank's actions. This lowered credit standing with the suppliers will turn into higher costs for the Company which will cause the

Company to lose customers.

27. Unless the funds are returned immediately so that the Company can meet its short-term financial obligations, the Company is in imminent danger of losing its goodwill and its customer base.

28. Based on the actions and behavior of Regions Bank in refusing to release the funds to the account holder (the Trust), the reputation of the Company and the Trust has suffered and will continue to suffer immediate and irreparable harm.

COUNT I - DECLARATORY JUDGMENT

29. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

30. There is a justiciable controversy between Plaintiffs and Defendants regarding, among other things, the ownership interests with respect to the funds in the Trust Account being held by the Regions Defendants, the ownership of the assets in the Trust Account, and Plaintiffs' and Defendants' various rights with respect to those assets.

31. Plaintiffs seek a declaration from this Court regarding the rights, responsibilities, and liabilities by and between Plaintiffs and Defendants.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that this Court enter an Order (a) declaring the funds of the Trust Account to be assets of the Trust,

or in the event the Trust collapses or dissolves, the Company and not Byrd, individually and (b) awarding Plaintiffs all costs and reasonable attorneys' fees related to this matter.

COUNT II - REQUEST FOR PRELIMINARY INJUNCTION

32. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

33. Plaintiffs aver that the Regions Defendants are holding funds, monies and/or assets that rightfully belong to the Plaintiffs.

34. Plaintiffs respectfully request this Honorable Court to grant Plaintiffs a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, restraining and enjoining the Regions Defendants as requested in Plaintiffs' Motion for Preliminary Injunction as follows: (1) directing and further ordering the Regions Defendants to release the funds being held in the account ending in to the Trust as the account holder, (2) enjoining the Regions Defendants from further withholding any of the funds in the account from the Trust, (3) enjoining the Regions Defendants from transferring any of the funds in the account to the United States of America or the Internal Revenue Service, (4) to the extent the Trust is collapsed or disregarded, directing and further ordering the Regions Defendants to release the funds being held in the account ending in to the Company, (5)

awarding Plaintiffs costs and reasonable attorneys' fees related to this motion and the relief requested herein, and (6) awarding such further relief as the Court deems necessary and just.

35. Plaintiffs will suffer immediate and irreparable injury if this preliminary injunction is not granted.

36. Plaintiffs have a reasonable chance of success on the ultimate merits of the case which is being filed herewith. Plaintiffs aver that the threatened hardship and injury to Plaintiffs and their clients, the public and others if this injunction is not granted outweighs the harm that would result to Defendants from an issuance of an injunction in this case as the Regions Defendants' wrongful acts are occurring daily and worsening the injury to Plaintiffs to an extent that is irreparable.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that this Court enter an Order (1) directing and further ordering the Regions Defendants to release the funds being held in the account ending in to the Trust as the account holder, (2) enjoining the Regions Defendants from further withholding any of the funds in the account from the Trust, (3) enjoining the Regions Defendants from transferring any of the funds in the account to the United States of America or the Internal Revenue Service, (4) to the extent the Trust is collapsed or disregarded, directing and further ordering the Regions Defendants to release the funds being

held in the account ending in to the Company, (5) awarding Plaintiffs costs and reasonable attorneys' fees related to this motion and the relief requested herein, and (6) awarding such further relief as the Court deems necessary and just.

COUNT III - NEGLIGENCE / WANTONNESS

37. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

38. The Regions Defendants owed to the Plaintiffs a duty to exercise reasonable care related to the handling, managing and maintaining of the Trust Account.

39. The Defendants willfully, wantonly, recklessly and negligently breached their duties to the Plaintiffs by failing to exercise reasonable care related to the handling, managing and maintaining of the Trust Account.

40. As a direct and proximate result of Regions Defendants' failure to exercise reasonable care related to the Trust Account, Plaintiffs suffered damages.

41. The reckless, wanton and/or intentional manner in which the Regions Defendants breached their duties to the Plaintiffs make appropriate an award of compensatory and punitive damages against the Regions Defendants and in favor of the Plaintiffs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as

follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled, and (B) award such other, further legal or equitable relief that this Court deems just.

COUNT IV - BREACH OF CONTRACT

42. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

43. As set forth above, the Regions Defendants entered into a contract with Plaintiffs related to the Trust Account.

44. The Regions Defendants breached the contract, and Plaintiffs have been damaged as a result.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled, and (B) award such other, further legal or equitable relief that this Court deems just.

**COUNT V - FRAUD / MISREPRESENTATION / SUPPRESSION /
PROMISSORY FRAUD**

45. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

46. As more particularly set forth above, the Regions Defendants

intentionally, willfully, wantonly, recklessly, negligently, and/or innocently misrepresented material facts to and suppressed information from Plaintiffs to induce them to act or refrain from acting. The Regions Defendants made these misrepresentations with knowledge that they were false or with reckless disregard for whether they were true or not. Further, the Regions Defendants suppressed information from Plaintiffs despite being under a duty to disclose that information to Plaintiffs.

47. The above representations and suppressions were made with the intent to deceive and with no intent to perform as promised.

48. In reliance upon the representations made by the Regions Defendants and their authorized agents and representatives, Plaintiffs deposited substantial sums of money with the Regions Defendants to which the Regions Defendants were not entitled, and the Regions Defendants improperly held said money and funds in the Trust Account.

49. As a direct and proximate result of the Regions Defendants' unlawful and fraudulent conduct, Plaintiffs have been and continue to be damaged.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled,

and (B) award such other, further legal or equitable relief that this Court deems just.

COUNT VI - UNJUST ENRICHMENT AND UNLAWFUL TAKING AND CONTROL OF FUNDS

50. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

51. The Regions Defendants' conduct has led to their holding money which in equity and good conscience belongs to the Plaintiffs.

52. Equity and good conscience require restitution to the Plaintiffs in the form of repayment of all money wrongfully held by the Regions Defendants (plus accrued pre-judgment interest).

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled, and (B) award such other, further legal or equitable relief that this Court deems just.

COUNT VII - NEGLIGENT HIRING / TRAINING / SUPERVISION

53. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

54. The Regions Defendants had a duty to ensure that their agents, employees and/or representatives were properly trained and supervised.

55. As more particularly set forth above, the Regions Defendants breached this duty.

56. As a direct and proximate result of the Regions Defendants' conduct, Plaintiffs have been and continue to be damaged.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled, and (B) award such other, further legal or equitable relief that this Court deems just.

COUNT VIII - WRONGFUL LEVY (26 U.S.C. § 7426)

57. Plaintiffs adopt and incorporate the prior paragraphs and allegations of their First Amended Complaint as if fully set forth herein.

58. The Defendants improperly placed a notice of levy on assets and funds that are the property of the Plaintiffs, not the taxpayer Byrd as specified on the notice.

59. As provided above, the taking of the assets by levy irreparably injures the rights in the property of the Plaintiffs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request relief as follows: (A) award Plaintiffs all compensatory damages, special, consequential and incidental damages, punitive damages and other damages to which they are entitled,

(B) award all damages and relief allowed under 26 U.S.C. § 7426, and ©) award such other, further legal or equitable relief that this Court deems just.

JURY DEMAND

Plaintiffs demand a trial struck by jury on all issues so triable.

Respectfully submitted on this the 8th day of February, 2012.

/s/ J. Brannon Maner

J. BRANNON MANER (ASB-4616-S71M)

/s/ Matthew I. Goforth

MATTHEW I. GOFORTH (ASB-5672-A41G)

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ J. Brannon Maner

OF COUNSEL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HELEN ROBIN,

Plaintiff

2:11-cv-3056

(JURY DEMANDED)

versus

UNITED STATES OF AMERICA,

Defendant

AMENDED COMPLAINT

Plaintiff, Helen Robin, through undersigned counsel herein files this Amended Complaint against the United States of America ("United States") in accordance with Rule 15 of the Federal Rules of Civil Procedure and respectfully asserts as follows:

THE PARTIES

1. Plaintiff is an individual currently residing in New Orleans, Louisiana.
2. The Defendant is the United States.

JURISDICTION AND VENUE

3. Plaintiff brings this action in accordance with 26 U.S.C. § 7422 for the recovery of federal taxes erroneously assessed and collected by the Defendant.
4. This Court has jurisdiction over this civil action by reason of 28 U.S.C. § 1346(a)(1).
5. Venue of this matter is proper pursuant to 28 U.S.C. § 1402 as Plaintiff is a resident of Orleans Parish and Defendant is the United States.

FACTUAL BASIS

6. Pursuant to its authority under 26 U.S.C. § 6020 the Internal Revenue Service prepared a substitute personal income tax return for Plaintiff for calendar year ending December 31, 2005 and erroneously assessed federal income taxes for this same year.

7. On or about November 18, 2009 a federal levy was issued by the Internal Revenue Service against Plaintiff.

8. On or about December 28, 2009 funds in the amount of approximately \$15,000 were levied and erroneously seized from Plaintiff's bank account and received by the Internal Revenue Service.

9. These funds were applied by the Internal Revenue Service to Plaintiff's assessed income tax liability for calendar year ending December 31, 2005.

10. On or about February 22, 2010, the Internal Revenue Service Center at Austin, Texas received Plaintiff's personal federal income tax return, IRS Form 1040, for calendar ending December 31, 2005 (the "2005 tax return").

11. Specifically, Plaintiff's 2005 tax return showed \$201,462.00 in income earned, of which \$201,450.00 were gambling winning received by the Plaintiff during calendar year 2005 from various casinos located along the gulf coast of the United States.

12. Plaintiff's 2005 tax return likewise showed \$206,619.00 in itemized deductions, of which \$6,834.00 were state and local income taxes paid and \$201,450.00 were gambling losses incurred by the Plaintiff during calendar year 2005 from various casinos located along the gulf coast of the United States.

13. Plaintiff's 2005 tax return claims a refund of all taxes paid, including Defendant's erroneous levy of approximately \$15,000.00.

14. The Internal Revenue Service has received and processed Plaintiff's 2005 tax return but erroneously disallowed her refund claimed.

JURY DEMAND

15. Plaintiff hereby demands that this matter be heard before a jury of her peers on all issues which may be tried before a jury.

WHEREFORE, Plaintiff prays as follows:

- i. That the United States, named Defendant herein, be duly cited to appear and answer this complaint;
- ii. After legal delay and due proceedings are had there be a Judgment in favor of Plaintiff and against Defendant, finding that a refund for taxes are due to Plaintiff for the erroneously or illegally collected taxes by Defendant, plus interest as allowed by law;
- iii. That the Court award damages, costs and fees to Plaintiff as authorized pursuant to 26 U.S.C. § 7430; and
- iv. Such other further relief to which Plaintiff show that she is entitled to and the Court deems appropriate.

Dated: February 9, 2012

Respectfully submitted,

/s/ Christian N. Weiler

John J. Weiler, La. Bar No. 13327

Christian N. Weiler, La. Bar No. 30116

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2012 I emailed and mailed a copy of the foregoing amended complaint properly addressed and postage prepaid to Michael W. May, of the US Department of Justice Tax Division, counsel for the United States.

/s/ Christian N. Weiler