

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TOM J. KUECHENMEISTER,	)	Civ. 12-4003-KES
)	
Plaintiff,)	
)	
vs.	)	ORDER SCHEDULING
	)	HEARING
IRS,)	
)	
Defendant.)	

The court wishes to hear oral argument on the following motions:

Docket 4 United States' Motion to Dismiss

Docket 11 Motion to Amend Complaint

It is

ORDERED that oral argument on these motions will be held on

Monday, March 12, 2012, at 11 a.m., in Courtroom 2 of the United States
Courthouse, 400 South Phillips Avenue, Sioux Falls, South Dakota.

Dated February 10, 2012.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
CHIEF JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,)	CIV. 11-5027-JLV
)	
Plaintiff,)	
	)	SCHEDULING ORDER
vs.)	
)	
DENNIS R. WICKS,)	
FRANK C. OZAK, and)	
M. DEAN JORGENSEN, as)	
trustees of FREDA JOHNSON)	
TRUST,)	
)	
Defendants.)	

Counsel for the parties held a planning meeting in compliance with Fed. R. Civ. P. 26(f) and submitted a report. Now, therefore,

IT IS ORDERED THAT:

1. The Local Civil Rules of Practice of the United States District Court for the District of South Dakota ("Local Civil Rules") apply to this case where not inconsistent with the Federal Rules of Civil Procedure. Counsel are expected to read the Local Civil Rules and be mindful of the underlying purpose of the Federal Rules of Civil Procedure, as set forth in Rule 1 of those Rules, "to secure the just, speedy, and inexpensive determination of every action and proceeding."

2. All prediscovery disclosures required by Rule 26(a)(1) shall be exchanged by the parties, but not filed with the court, on or before **February 24, 2012**.
3. The parties shall have until **February 29, 2012**, to move to join additional parties and to amend the pleadings.
4. All discovery, including expert discovery, shall be commenced in time to be completed by **May 31, 2012**. A maximum of twenty-five (25) interrogatories by each party shall be allowed, and responses thereto shall be due thirty (30) days after service. Discovery responses must be supplemented within fourteen (14) days as additional information becomes available. Any evidence responsive to a discovery request which has not been disclosed on or before that date, except for good cause shown, shall be excluded from evidence at trial. Disputes with regard to discovery shall be called immediately to the court's attention by the making of an appropriate motion and shall not be relied upon by any party as a justification for not adhering to this pretrial schedule.
5. Motions to compel discovery shall be filed no later than fourteen (14) days after the failure of the good faith efforts of the parties to resolve the dispute under D.S.D. LR 37.1.

6. There will be a maximum of five (5) depositions for each party, excluding depositions of experts.
7. The identity of and reports from retained experts under Rule 26(a)(2) shall be due from plaintiff by **April 2, 2012**, and from defendants by **May 1, 2012**; any supplementations thereto under Rule 26(e) shall be due thirty (30) days prior to trial. Any expert not so designated will not be permitted to testify at trial. Disclosures and reports under Rule 26(a)(2) are not filed with the Clerk.
8. Each party's disclosure shall identify each expert and state the subject matter on which the expert is expected to testify. The disclosure shall be accompanied by a written report prepared and signed by the witness. As required by Fed. R. Civ. P. 26(a)(2)(B), the report shall contain:
 - a. a complete statement of all opinions the witness will express and the basis and reasons for them;
 - b. the facts or data considered by the witness in forming them;
 - c. any exhibits that will be used to summarize or support them;
 - d. the witness's qualifications, including a list of all publications authored in the previous 10 years.
 - e. a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

- f. a statement of the compensation to be paid for the study and testimony in the case.
9. All motions, other than motions *in limine*, together with supporting briefs, shall be filed and served on or before **July 2, 2012**.

Opposing parties shall file and serve answering materials and briefs within twenty-one (21) days. Reply briefs shall be filed and served within fourteen (14) days.
10. The parties shall promptly contact a magistrate judge so that the possibility of settlement discussion with the assistance of a magistrate judge can be pursued.
11. The schedule herein will be modified by the court only upon formal motion and upon a showing of good cause.

Dated February 10, 2012.

BY THE COURT:

/s/ Jeffrey L. Viken

JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ALAN J. DUGAS
Plaintiff(s)

v.)
)
)
) CIVIL NO. 2:12-cv-06-DBH
)
)
WARREN TURNER, et al.
Defendant(s))

SCHEDULING ORDER with incorporated Rule 26(f) Order

In accordance with Fed.R.Civ.P. 16(b) and the Cost and Delay Reduction Plan for the District of Maine, the Court proposes this Order as the Scheduling Order in this case and hereby forwards it to counsel or unrepresented parties for consultation. Counsel and unrepresented parties shall confer as required by Fed.R.Civ.P. 26(f). Unless an objection to this Order and a proposed discovery plan are filed by **March 2, 2012**, the Court will conclude that the required Rule 26(f) conference has taken place and that the terms and deadlines established in this proposed scheduling order have been agreed to. An objection to this Order shall contain a detailed explanation of the reasons for each requested alteration of this Order. If no objection is timely filed, this Order shall constitute the Court's Scheduling Order under Fed.R.Civ.P. 16(b).

Track Assignment: This case has been assigned to the Standard Track. Discovery is limited to not more than 30 interrogatories per opposing side (subparts not permitted); 30 requests for admission per opposing side; 2 sets of requests for production per opposing side; and 5 depositions per side.

Subject Matter Jurisdiction: **U.S. Government Defendant**

Jury Trial: **None Demanded**

Deadline for Conference of Parties Pursuant to Fed.R.Civ.P.26(f): **February 24, 2012**

Inadvertent disclosure of privileged or trial preparation material shall be governed by the principles of Federal Rule of Evidence 502, effective September 22, 2008.

Deadline for Initial Disclosure Pursuant to Fed.R.Civ.P.26(a)(1): **March 9, 2012**

Deadline for Amendment of the Pleadings and Joinder of Parties: **April 27, 2012**

Plaintiff(s) shall designate experts required to be disclosed by Fed.R.Civ.P. 26(a)(2)(A) (including treating physicians and other non-retained or specially employed experts) and, with respect to each of them, provide a complete statement of all opinions to be expressed and the basis and reasons therefor by: **April 27, 2012**

Defendant(s) shall designate experts required to be disclosed by Fed.R.Civ.P. 26(a)(2)(A) (including treating physicians and other non-retained or specially employed experts) and, with respect to each of them, provide a complete statement of all opinions to be expressed and the basis and reasons therefor by: **June 1, 2012**

If the expert is retained or specially employed to provide expert testimony in the case or the expert's duties as an employee of a party regularly involve giving expert testimony, the disclosure shall also include the other categories of information specified in Fed.R.Civ.P. 26(a)(2)(B). All required information may, but need not, be provided in the form of a written report prepared and signed by the expert.

Deadline to Complete Discovery: **July 13, 2012**

Deadline to Identify and Produce Local Rule 44 Records: **July 13, 2012**

Deadline to file Notice of Intent to file Motion for Summary Judgment and Need for a Pre-Filing Conference Pursuant to Local Rule 56(h):**July 20, 2012**

Counsel are advised that absent some excusable circumstance, discovery initiatives must be undertaken so that the response of the opposing party is filed prior to the discovery deadline.

Deadline for Filing of All Dispositive Motions and All *Daubert* and *Kumho* Motions¹

Challenging Expert Witnesses with Supporting Memoranda: **August 3, 2012**

Expected Trial Date: This case shall be ready for trial by **November 5, 2012**.

Further Matters in Aid of Disposition: The plaintiff(s) shall make a written settlement demand upon the defendant(s) by **June 15, 2012**. The defendant(s) shall respond in writing by **June 29, 2012**.

So ORDERED.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated this 10th day of February, 2012.

¹ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999). Such motions shall include any challenges to lack of qualifications, scope of testimony and any other issues addressed by these decisions.

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

CONSENT TO PROCEED BEFORE THE MAGISTRATE JUDGE

Pursuant to the provisions of Title 28 United States Code, Section 636(c)(1), Magistrate Judge Margaret J. K has been designated with the authority to conduct all proceedings in jury and non-jury civil cases. It is the practice of Magistrate Judge Margaret J. Kravchuk to endeavor to specifically assign for trial the consent cases, whereas cases assigned to be tried before a district judge will ordinarily be placed on a trailing trial list.

If it is the intention of all counsel that this case be tried before Magistrate Judge Margaret J. Kravchuk, counsel must sign and file a Consent to Proceed form which is located in the Forms section of the Court's web page (www.med.uscourts.gov). The Consent form is to be filed only if it is executed by all counsel.

The trial of any Bangor case will be conducted by Magistrate Judge Margaret J. Kravchuk in Bangor; the trial of any Portland case will be conducted by Magistrate Judge Margaret J. Kravchuk in Portland.

Form CGFD85 (7/7/11)



ORDERED in the Southern District of Florida on February 10, 2012

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball
United States Bankruptcy Judge

United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

In re:

Name of Debtor(s): Kane & Kane, a Partnership

Case Number: 09-15556-EPK

-----/
Michael R. Bakst

Plaintiff(s)

VS.

Adversary Number: 10-01022-EPK

United States of America

Defendant(s)
-----/

ORDER CONTINUING PRETRIAL CONFERENCE

The pretrial conference in the above-captioned adversary proceeding is continued and will be held on **April 12, 2012**, at **09:30 AM**, at the United States Bankruptcy Court, Flagler Waterview Building, 1515 N Flagler Dr Room 801 Courtroom B, West Palm Beach, FL 33401. This Court's Order Setting Filing and Disclosure Requirements for Pretrial and Trial shall remain in full force and effect, and all deadlines set in such order shall be calculated based on the continued pretrial conference, except that no deadline to file a motion to dismiss or motion for summary judgment shall be extended by this order.

###

Copy furnished to: G Steven Fender

Attorney G Steven Fender is directed to serve a conformed copy of this Order on all appropriate parties and to file a certificate of service.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA CHARLESTON
DIVISION

UNITED STATES OF AMERICA,	)	CIVIL ACTION NO. 2:10-2816-RMG-BHH
)	
Plaintiff,)	
)	
v.)	
)	
DAVID POPOWSKI and)	
MINDY B. POPOWSKI,)	
)	
Defendants.)	
_____)	

FOURTH AMENDED SCHEDULING ORDER

On motion of the United States, Plaintiff, and with the consent of David Popowski, on his own behalf and Michael Evan Lacke, as attorney for Mindy Popowski, Defendants, and for good cause shown,

IT IS HEREBY ORDERED that the Consent Amended Scheduling Order entered May 19, 2011, be amended, in part, as follows:

10. All other motions, except those to complete discovery, those nonwaivable motions made pursuant to Fed. R. Civ.P. 12, and those relating to the admissibility of evidence at trial, shall be filed on or before April 16, 2012 (Fed.R. Civ. P. 16(b)(3)(A)).

All other terms of the aforesaid Consent Amended Scheduling Order shall remain in effect.

s/Bruce Howe Hendricks
United States Magistrate Judge

February 10, 2012
Charleston, South Carolina

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.2
Eastern Division**

United States of America

Plaintiff,

v.

Case No.: 1:12-cv-00563

Honorable Samuel Der-Yeghiayan

James Ming-Fang Chen, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Friday, February 10, 2012:

MINUTE entry before Honorable Samuel Der-Yeghiayan: Initial status hearing set for 03/01/12 at 9:00 a.m. At least four working days before the initial status hearing, the parties shall conduct a FRCP 26(f) conference and file a joint written Initial Status Report, not to exceed five pages in length, and file the Court's Joint Jurisdictional Status Report and deliver courtesy copies to this Court's Courtroom Deputy in Room 1908. The Court's standing orders on the Initial Status Report and Joint Jurisdictional Status Report maybe obtained from Judge Der-Yeghiayan's web page or from this Court's Courtroom Deputy. Counsel for the Government is warned that failure to serve summons and complaint on all Defendants will result in a dismissal of the action and/or a dismissal of that Defendant not properly served pursuant to FRCP 4. Counsel for the Government is further directed to file with the Clerk of Court, the appropriate returns of service and/or waivers of service. Mailed notice (mw,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-01930-WYD-KLM

BRIAN AND JILL FLANAGAN,

Plaintiffs,

v.

DEPARTMENT OF THE TREASURY and
FIRSTBANK VAIL,

Defendants.

FINAL JUDGMENT

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Order Affirming and Adopting Magistrate Judge's Recommendation, filed on February 8, 2012, by the Honorable Wiley Y. Daniel, Chief United States District Judge, and incorporated herein by reference as if fully set forth, it is

ORDERED that the Recommendation of United States Magistrate Judge dated January 5, 2012, is affirmed and adopted. It is further

ORDERED that judgment is hereby entered in favor of Defendants, Department of the Treasury and FirstBank Vail, and against Plaintiffs, Brian and Jill Flanagan, on Defendants' Motion to Dismiss for Mootness (ECF Doc. No. 4), filed October 21, 2011. It is further

ORDERED that plaintiff's complaint and action are dismissed with prejudice.

DATED at Denver, Colorado this 10th day of February, 2012.

FOR THE COURT:

GREGORY C. LANGHAM, CLERK

s/ Edward P. Butler
Edward P. Butler,
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DIANE K. BURDEN,

Plaintiff(s),

v.

UNITED STATES OF AMERICA,

Defendant(s).

Case No. 3:11-cv-05445-BHS

MINUTE ORDER SETTING
BENCH TRIAL AND
PRETRIAL DATES AND
ORDERING MEDIATION

Now, on February 10, 2012, the Court directs the Clerk to enter the following Minute Order:

I. TRIAL, PRETRIAL, AND MEDIATION DATES

THREE DAY BENCH TRIAL set for 09:00 AM	October 16, 2012
Deadline for the FILING of any motion to join parties	March 12, 2012
Deadline for amending pleadings	March 22, 2012
Disclosure of expert testimony under FRCP 26(a)(2)	April 9, 2012
Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	May 9, 2012
All motions related to discovery must be FILED by	May 21, 2012
Discovery COMPLETED by	June 18, 2012
All dispositive motions must be FILED by	July 18, 2012
Settlement conference per Local Rule CR 39.1(c)(2) HELD no later than	August 17, 2012
Mediation per Local Rule CR 39.1(c) HELD no later than	September 6, 2012

1	Letter of compliance as to Local Rule CR 39.1 FILED	September 17, 2012
2	<i>A roster of Local Rule CR 39.1 mediators can</i>	
3	<i>be located on the Internet at www.wawd.uscourts.gov.</i>	
4	<i>If you do not have access to the Internet, please</i>	
5	<i>contact the Clerk's Office at (253) 882-3800.</i>	
6	Motions in limine should be FILED by the date in the	September 10, 2012
7	right hand column. Pursuant to Local Rule CR 7(d)(4),	
8	all motions in limine SHALL be filed as ONE motion	
9	and SHALL be NOTED on the motions calendar no	
10	earlier than the third Friday after filing. Any response	
11	SHALL be filed no later than the Monday before the	
12	noting date. No reply papers shall be filed.	
13	Agreed pretrial order FILED with the Court by	September 24, 2012
14	Pretrial conference will be HELD at on	
15	(COUNSEL SHALL REPORT TO	
16	COURTROOM E)	
17	Trial briefs and proposed findings and conclusions due	September 25, 2012

18 If any of the dates identified in this order or the Local Civil Rules fall on
19 a weekend or federal holiday, the act or event shall be performed on the next
20 business day. These are firm dates that can be changed only order of the Court.

21 If this case is not settled, it will go to trial on the date set or as soon
22 thereafter as the Court is available.

23 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 Where appropriate, the parties are encouraged to work together in the
25 creation of proposed findings of fact and conclusions of law. On or before
26 the deadline for filing proposed findings and conclusions the parties shall
email their proposed findings and conclusions in Word or WordPerfect format
to settleorders@wawd.uscourts.gov.

III. PRIVACY POLICY

Pursuant to the General Order of the Court regarding Public Access to Electronic Case Files (filed 5/29/03), parties are to redact the following information from documents and exhibits before they are filed with the Court:

- * Dates of Birth – redact to the year of birth
- * Names of Minor Children – redact to the initials
- * Social Security Numbers – redact to the last four digits
- * Financial Accounting Information – redact to the last four digits
- * Passport Numbers and Driver License Numbers – redact in their entirety

The General Order was issued pursuant to the official policy on privacy adopted by the Judicial Conference of the United States. This order can be found on the Court's website at www.wawd.uscourts.gov/ReferenceMaterials. All documents filed in the above-captioned matter must comply with the Privacy Policy and the General Order.

IV. SETTLEMENT

If this case is settled, please advise Gretchen Craft, Courtroom Deputy to Judge Settle, immediately at (253) 882–3825.

The foregoing Minute Order was authorized by the THE HONORABLE BENJAMIN H. SETTLE, UNITED STATES DISTRICT JUDGE.

s/ Gretchen Craft

Gretchen Craft
Courtroom Deputy

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

DAVID O. THOMAS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

OPINION AND ORDER

11-cv-682-wmc

In this action, plaintiff David Thomas seeks abatement as well as the refund of his partial payment of a trust fund recovery penalty (“TFRP”) which was assessed against him pursuant to 26 U.S.C. § 6672 as a “responsible person” of the Izatys Group, LLC. After Thomas filed this refund action against the United States, the government filed a collection action against Thomas and Diane Cash, a business associate of Thomas who was also assessed a TFRP, in the District of Minnesota. *United States v. Diane Cash and David O. Thomas*, No. 11-3612 (D. Minn. filed Dec. 15, 2011). The government now moves to suspend the proceedings in this action pending resolution of that collection action. (Dkt. #11.) For the reasons that follow, the court will deny the motion and order the government to show cause as to why the court should not enjoin it from pursuing the collection action now pending against Thomas in the District of Minnesota pursuant to 26 U.S.C. § 6331(i).

BACKGROUND

The government alleges that the Izatys Group failed to pay over the income taxes and federal employment taxes withheld from its employees for the fourth quarter of 2007. On January 3, 2011, the IRS assessed Thomas and Cash as responsible persons of the Izatys Group with a TFRP for this period pursuant to 26 U.S.C. § 6672 in the amount of \$29,375.32. On July 1, 2011, Thomas paid \$50 toward the unpaid balance, and on August 19, 2011, the IRS applied a credit of \$3,844.42 toward the TFRP assessment obtained through a levy on Thomas's property. Having paid a portion of the taxes due, Thomas filed this complaint on October 6, 2011 seeking abatement and a refund of the funds levied and paid.

The government answered the complaint on December 13, 2011. Two days later, on December 15, 2011, the government filed a complaint in the District of Minnesota to reduce to judgment the TFRP assessed against Thomas and Cash. Thomas was not served with this complaint until January 13, 2012. On February 3, 2012, Thomas filed a motion to dismiss the complaint or in the alternative sever and transfer the claims against him to this court.

OPINION

The government seeks a stay of this action, arguing reasonably enough that a stay will serve judicial economy. Since the government represents that Cash is a citizen of Minnesota and the events which gave rise to her assessment of the TFRP also took place in Minnesota, the government contends that this court lacks personal jurisdiction over

Cash, precluding the government from pursuing a claim against her except in Minnesota, while Thomas is also subject to that court's jurisdiction. If this case is not suspended, therefore, the government reasons that "two federal courts will be required to preside over two trials regarding who is responsible for the Izatys Group TFRP, in which each court will hear testimony from the same witnesses and evaluate the same evidence." (Def.'s Opening Br. (dkt. #12) 3.) The government rightly points out the risk of conflicting judgments.¹

Most of the cases addressing whether a stay of a first-filed refund action pending resolution of a second-filed collection action is appropriate are from the United States Court of Federal Claims. In that court, at least in earlier opinions, motions to suspend a refund action pending resolution of a responsible person or collection action under 26 U.S.C. § 6672 were "usually granted routinely." *Klein v. United States*, 31 Fed. Cl. 614, 616 (Fed. Cl. 1994), *aff'd* 60 F.3d 839, 1995 WL 408195 (Fed. Cir. 1995) (unpublished); *see also Walker v. United States*, 43 Fed. Cl. 519, 521 (Fed. Cl. 1999) (granting stay and noting "[i]n responsible person cases similar to the instant case, this court generally has departed from the 'first-filed rule' and has suspended the first-filed

¹ Thomas may only file a refund suit in the district where he resides, because he is as a non-corporate taxpayer. 28 U.S.C. § 1402(a)(1); *see also Ciccotelli v. United States*, 545 F. Supp. 2d 609, 611 (W.D. Tex. 2008) (holding that "[t]he proper venue for a civil action brought by an individual for [a refund of a tax] under 28 U.S.C. § 1346 (a)(1) is the judicial district where the plaintiff resides"). The government concedes this point, but argues that the efficiencies favor a stay since Thomas will still have his day in court albeit exclusively in the District of Minnesota -- the final judgment in that action likely having preclusive effect on this case.

Court of Federal Claims action pending completion of the later-filed district court action involving all of the potential ‘responsible persons’”).²

More recently, however, courts routinely have denied motions to stay and enjoined later-filed collection actions pursuant to 26 U.S.C. § 6331(i). *See, e.g., Beard v. United States*, 99 Fed. Cl. 147 (Fed. Cl. 2011) (providing extensive discussion of the statutory language and legislative history in finding that the government’s later-filed action to determine TFRP liability was a “collection action” under 26 U.S.C. § 6331(i) and enjoining the government’s action); *Nickell v. United States*, No. 4:08CV319, 2009 WL 2031915 (E.D. Tex. Apr. 2, 2009); *Conway v. United States*, No. 4:04CV201, 2009 WL 2031856 (E.D. Tex. Mar. 26, 2009); *Rineer v. United States*, 79 Fed. Cl. 765 (Fed. Cl. 2007); *Swinford v. United States*, No. 5:05CV-234-R, 2007 WL 496376 (W.D. Ky. Feb. 9, 2007), *vacated on other grounds*, 2008 WL 4682273 (W.D. Ky. Jun. 20, 2008); *cf. Kennedy v. United States*, 95 Fed. Cl. 197, 206-07 (Fed. Cl. 2010) (declining to enjoin collection action as to one tax period where that action covered seventeen tax periods and was already underway).³

² For his part, Thomas cites to one case -- *United States v. Thomas*, No. 08-788-GPM, 2009 WL 792571 (S.D. Ill. Mar. 24, 2009) which is readily distinguishable from the facts at issue here and therefore does not particularly aid the court in determining whether to grant the stay. Unlike here, the assessment had already been paid in full in that case and, therefore, the government’s collection action was deemed “an action that serve[d] no purpose.” *Id.* at *2.

³ The court notes that the Motion to Suspend Proceedings is signed by Erin Lindgren, a trial attorney with the Tax Division of the U.S. Department of Justice in Washington, D.C. Several of the cases cited above where the courts have applied § 6331(i) to bar collection actions have counsel of record also *from* the Justice Department’s Tax Division. The court is troubled by the government’s counsel’s failure to bring this statute to the court’s attention. This omission falls far below the level of professionalism and ethics the

Section 6331(i) was added to the tax code in 1998 as part of the “Taxpayer Bill of Rights 3” title of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3433, 112 Stat. 685, 759-60. It provides in pertinent part:

(i) No levy during pendency of proceedings for refund of divisible tax.--

(1) In general.--No levy may be made under subsection (a) on the property or rights to property of any person with respect to any unpaid divisible tax during the pendency of any proceeding brought by such person in a proper Federal trial court for the recovery of any portion of such divisible tax which was paid by such person if--

(A) the decision in such proceeding would be res judicata with respect to such unpaid tax; or

(B) such person would be collaterally estopped from contesting such unpaid tax by reason of such proceeding.

(2) Divisible tax.--For purposes of paragraph (1), the term “divisible tax” means--

(A) any tax imposed by subtitle C; and

(B) the penalty imposed by section 6672 with respect to any such tax.

...

(4) Limitation on collection activity; authority to enjoin collection.--

(A) Limitation on collection.--*No proceeding in court for the collection of any unpaid tax to which paragraph (1) applies shall be begun by the Secretary during the pendency of a proceeding under such paragraph.* This subparagraph shall not apply to--

(i) any counterclaim in a proceeding under such paragraph; or

court regularly receives from the local United States Attorney’s Office. The court will continue to expect and will receive better from the government’s counsel going forward in this case as well.

(ii) any proceeding relating to a proceeding under such paragraph.

(B) Authority to enjoin.--Notwithstanding section 7421(a), a levy or collection proceeding prohibited by this subsection may be enjoined (during the period such prohibition is in force) by the court in which the proceeding under paragraph (1) is brought.

...

26 U.S.C. § 6331(i) (emphasis added).

In light of this provision as well as the caselaw interpreting it to *bar* collection actions like that filed by the government against Thomas in the District of Minnesota pending resolution of his earlier-filed refund action, the court will deny the government's motion for a stay and, absent dismissal of Thomas as a defendant in the District of Minnesota proceeding, order the government to show cause as to why this court should not enjoin the government from pursuing Thomas in the collection action proceeding resolution of this refund action.

ORDER

IT IS ORDERED that:

- 1) The United States' motion to suspend proceedings (dkt. #11) is DENIED; and
- 2) The United States is ordered to show cause as to why this court should not enjoin the government from proceeding in *United States v. Diane Cash and David O. Thomas*, No. 11-3612 (D. Minn. filed Dec. 15, 2011) pursuant to 26 U.S.C. § 6331(i). The United States shall submit proof of Thomas's dismissal from that action or a brief and any supporting materials addressing its failure to do so on or before March 1, 2012.

Entered this 10th day of February, 2012.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge


Roger L. Efremsky
U.S. Bankruptcy Judge

Case: 06-42425 Doc# 264 Filed: 02/09/12 Entered: 02/10/12 09:53:51 Page 1 of 4

1 That the Law Offices of James T. Cois and Anthony S. Gasaway, Esq. will act in the
2 capacity of attorneys, and will be representing Debtor-In-Possession on all matters.

3
4 **END OF ORDER**
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SERVICE LIST

Via E-mail

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(Attorney for Creditor World Savings Bank, FSB)

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Marguerite C. Stricklin, Esq.
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1 Via U.S. Mail

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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
9

10 STEVEN BOOTH, et al.,

11 Plaintiff,

12 vs.

13 MICHAEL SCOTT IOANE, et al.,

14 Defendants.
15 _____/

16 AND RELATED CROSS-ACTION.
17 _____/

CASE NO. CV F 12-0171 LJO DLB

New Case No. CV F 12-0171 AWI GSA

**ORDER TO RELATE ACTIONS AND TO
ASSIGN NEW DISTRICT JUDGE AND
MAGISTRATE JUDGE**

18 Review of the above-captioned action reveals that it is related under this Court's Local Rule 123
19 to the actions entitled *Halliday, et al. v. Spjute, et al*, Case No. CV F 07-0620 AWI GSA, *Acacia*
20 *Corporate Management, LLC v. United States*, Case No. CV F 07-1129 AWI GSA, and *United Sates*
21 *v. Booth*, Case No. CV F 09-1689 AWI GSA. The actions involve the same or similar parties,
22 properties, claims, events and/or questions of fact or law. Accordingly, assignment of the actions to the
23 same district judge and magistrate judge will promote convenience, efficiency and economy for the
24 Court and parties. An order relating cases under this Court's Local Rule 123 merely assigns them to the
25 same district judge and magistrate judge, and no consolidation of cases is effected.

26 On the basis of good cause, this Court ORDERS that the above-captioned action is reassigned
27 to U.S. District Judge Anthony W. Ishii and U.S. Magistrate Judge Gary S. Austin with a new **CASE**
28 **NO. CV F 12-0171 AWI GSA**. All documents shall bear the new **CASE NO. CV F 12-0171 AWI**

1 **GSA** and the reassignment to U.S. District Judge Anthony W. Ishii and U.S. Magistrate Judge Gary S.
2 Austin.

3 IT IS SO ORDERED.

4 **Dated: February 9, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In Re:	)	Chapter 11
)	
CHARLES K. BRELAND, JR.,	)	Case No. 09-11139
)	
<u>Debtor.</u>	)	Honorable Margaret A. Mahoney

ORDER

This matter is before the Court on the **(1)** Emergency Motion for Stay Pending Appeal (Doc. 616); and **(2)** Emergency Motion To Expedite Hearing on Emergency Motion of United States for Stay Pending Appeal (Doc. 617) filed by the claimant, United States of America. Upon consideration of the motions, and based upon the debtor's representation that he does not oppose the relief requested in the claimant's motions but does not consent to or agree to the reasons articulated in the motions requesting the stay, the motions are **GRANTED**.

IT IS THEREFORE ORDERED that the **(1)** Emergency Motion for Stay Pending Appeal (Doc. 616); and **(2)** Emergency Motion To Expedite Hearing on Emergency Motion of United States for Stay Pending Appeal (Doc. 617) are **GRANTED**.

IT IS FURTHER ORDERED that the Order Denying Motion of Internal Revenue Service To Amend Its Priority Claim and Declaring That Any Rights To Amend Its General Unsecured Claim Remain Intact and Granting Motion To Compel on a Limited Basis (Docs. 603 and 604) entered by this Court on December 20, 2011 ("order"), is stayed pending the outcome of the appeal of the above-referenced order ("stay").

3374008.1

IT IS FURTHER ORDERED that any further proceedings involving the debtor's objection to the IRS claim (Doc. 287), including any discovery remaining to be conducted in connection therewith, are suspended pending the outcome of the appeal of the above-referenced order ("suspension").

IT IS FURTHER ORDERED that by entering this order, the Court does not make any findings of fact or conclusions of law with regard to any factors or standards regarding the stay.

Notwithstanding the above, the Court reserves the right to review periodically the continued validity of the stay and suspension, and make any other appropriate orders of relief that it deems necessary to protect the rights of all parties in interest; provided, however, that such orders shall remain subject to the power of the district court and court of appeal as reserved to them in the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and the Federal Rules of Appellate Procedure.

Dated: February 8, 2012


MARGARET A. MAHONEY
CHIEF U.S. BANKRUPTCY JUDGE

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Principal Deputy Assistant Attorney General

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Attorneys for the United States

FLORENCE NAKAKUNI
United States Attorney
District of Hawaii
Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ASSOCIATION OF APARTMENT OWNERS
OF MAKAHA VALLEY, a Hawaii
nonprofit corporation, by its
Board of Directors,

Plaintiff,
v.

JOHN THOMAS GUINAN, JR.; LEIGH
POLHAMUS; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
solely as nominee for AMBER
FINANCIAL GROUP, LLC, a Delaware
limited liability company;
DEPARTMENT OF TAXATION, STATE OF
HAWAII; JOHN DOES 1-20; JANE DOES
1-20; DOE PARTNERSHIPS 1-20; DOE
CORPORATIONS 1-20; and DOE
GOVERNMENTAL UNITS 1-20,

Defendants

Case No. 1:12-cv-0070-HG-RLP

ORDER GRANTING UNITED
STATES' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO RESPOND
TO COMPLAINT AND CONTINUE
THE RULE 16 SCHEDULING
CONFERENCE

ORDER GRANTING UNITED STATES' UNOPPOSED MOTION FOR FIRST
EXTENSION OF TIME TO RESPOND TO COMPLAINT AND CONTINUE
THE RULE 16 SCHEDULING CONFERENCE

Based on the United States' Unopposed Motion for Extension of Time to Respond to the Complaint and Continue the Rule 16 Scheduling Conference and good cause having been shown, the Court orders that the United States shall have up to an including March 5, 2012, to answer or otherwise respond to the Complaint in this case. It is further ordered that the Rule 16 Scheduling Conference is continued to April 4, 2012, at 9:30 a.m.

IT IS SO ORDERED.

DATED: HONOLULU, HAWAII, FEBRUARY 10, 2012.




Richard L. Puglisi
United States Magistrate Judge

**AOAO OF MAKAHA VALLEY V. GUINAN, ET AL.,; CIVIL NO. 12-00070 HG-
RLP; ORDER GRANTING UNITED STATES' UNOPPOSED MOTION FOR EXTENSION
OF TIME TO RESPOND TO COMPLAINT AND CONTINUE THE RULE 16
SCHEDULING CONFERENCE**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAIANAE COMMUNITY	)	CIVIL NO. 11-00733 SOM-KSC
DEVELOPMENT PROJECT)	
ASSOCIATION, by its Board of)	
Directors,	)	RULE 16 SCHEDULING ORDER
)	
Plaintiff,)	
)	
vs.)	
)	
LINDA FAYE ABBOTT; RONNIE)	
ABBOTT; AMERICAN SAVINGS)	
BANK, FSB; UNITED STATES OF)	
AMERICA, Department of Treasury,)	
Internal Revenue Service; JOHN)	
DOES 1-10; JANE DOES 1-10;)	
DOE PARTNERSHIPS 1-10; DOE)	
CORPORATIONS 1-10; DOE)	
ENTITIES 1-10; DOE)	
GOVERNMENTAL UNITS 1-10,)	
)	
Defendants.)	
)	

RULE 16 SCHEDULING ORDER

Pursuant to Fed. R. Civ. P. 16 and LR 16.2, a scheduling conference was held on February 10, 2012, before the Honorable Kevin S. C. Chang, United States Magistrate Judge. Appearing at the conference were Kurt Leong on behalf of the Plaintiff and Rickey Watson (by telephone) on behalf of the Defendants.

Pursuant to Fed. R. Civ. P. 16(e) and LR 16.3, the Court enters this scheduling conference order:

TRIAL AND PRETRIAL CONFERENCE SCHEDULING:

1. **NON-JURY** trial in this matter will commence before the Honorable Susan Oki Mollway, Chief United States District Judge on February 12, 2013, at 9:00 am.
2. A final pretrial conference shall be held on January 2, 2013, at 9:00 am before the Honorable Kevin S. C. Chang, United States Magistrate Judge.
3. (RESERVED)
4. Pursuant to LR 16.6, each party herein shall serve and file a separate final pretrial statement by December 26, 2012.

MOTIONS:

5. All motions to join additional parties or to amend the pleadings shall be filed by July 13, 2012.
6. Other non-dispositive motions, except for motions in limine and discovery motions, shall be filed by November 14, 2012.
7. Dispositive motions shall be filed by September 12, 2012.
8. Motions in limine shall be filed by January 22, 2013.

Any opposition memorandum to a motion in limine shall be filed by January 29, 2013.

DISCOVERY:

9. Unless and until otherwise ordered by the Court, the parties shall follow the discovery plan agreed to by the parties herein pursuant to Fed. R. Civ. P. 26(f).
10. (RESERVED)

11. Pursuant to Fed. R. Civ. P. 26(a)(2), each party shall disclose to each other party the identity and written report of any person who may be used at trial to present expert evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. The disclosures pursuant to this paragraph shall be according to the following schedule:

a. All plaintiffs shall comply by August 13, 2012.

b. All defendants shall comply by September 12, 2012.

Disclosure of the identity and written report of any person who may be called solely to contradict or rebut the evidence of a witness identified by another party pursuant to subparagraphs a and b hereinabove shall occur within thirty (30) days after the disclosure by the other party.

12. Pursuant to Fed. R. Civ. P. 16(b)(3) and LR 16.2(a)(6), the discovery deadline shall be December 14, 2012. Unless otherwise permitted by the Court, all discovery pursuant to Federal Rules of Civil Procedure, Rules 26 through 37 inclusive must be completed by the discovery deadline. Unless otherwise permitted by the Court, all discovery motions and conferences made or requested pursuant to Federal Rules of Civil Procedure, Rules 26 through 37 inclusive and LR 26.1, 26.2 37.1 shall be heard no later than thirty (30) days prior to the discovery deadline.

SETTLEMENT:

13. A settlement conference shall be held on October 24, 2012, at 10:00 am before the Honorable Kevin S. C. Chang, United States Magistrate Judge.

14. Each party shall deliver to the presiding Magistrate Judge a confidential settlement conference statement by October 17, 2012. The parties are directed to LR 16.5(b) for the requirements of the confidential settlement conference statement.

15. The parties shall exchange written settlement offers and meet and confer to discuss settlement before the date on which settlement conference statements are due.

TRIAL SUBMISSIONS:

16. (RESERVED)

17. (RESERVED)

18. (RESERVED)

19. (RESERVED)

20. (RESERVED)

WITNESSES:

21. By January 22, 2013, each party shall serve and file a final comprehensive witness list indicating the identity of each witness that the party will call at trial and describing concisely the substance of the testimony to be given and the estimated time required for the testimony of the witness on direct examination.

22. The parties shall make arrangements to schedule the attendance of witnesses at trial so that the case can proceed with all due expedition and without any unnecessary delay.

23. The party presenting evidence at trial shall give notice to the other party the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

EXHIBITS:

24. By January 15, 2013, the parties shall premark for identification all exhibits and shall exchange or, when appropriate, make available for inspection all exhibits to be offered, other than for impeachment or rebuttal, and all demonstrative aids to be used at trial.

25. The parties shall meet and confer regarding possible stipulations to the authenticity and admissibility of proposed exhibits by January 22, 2013.

26. By January 29, 2013, the parties shall file any objections to the admissibility of exhibits. Copies of any exhibits to which objections are made shall be attached to the objections.

27. The original set of exhibits and two copies (all in binders) and a list of all exhibits shall be submitted to the Court the Thursday before trial.

DEPOSITIONS:

28a. By January 22, 2013, the parties shall serve and file statements designating excerpts from depositions (specifying the witness and page and line referred to) to be used at trial other than for impeachment or rebuttal.

b. Statements counter-designating other portions of depositions or any objections to the use of depositions shall be served and filed by January 29, 2013.

TRIAL BRIEFS:

29. By January 29, 2013, each party shall serve and file a trial brief on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's position and the supporting arguments and authorities.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

30. Each party shall serve and file proposed findings of fact and conclusions of law by January 29, 2013.

OTHER MATTERS:

None.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, February 10, 2012.




Kevin S.C. Chang
United States Magistrate Judge

WAIANAE COMMUNITY DEVELOPMENT PROJECT ASSOCIATION, by its Board of Directors vs. LINDA FAYE ABBOTT; RONNIE ABBOTT; AMERICAN SAVINGS BANK, FSB; UNITED STATES OF AMERICA, Department of Treasury, Internal Revenue Service; JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; DOE GOVERNMENTAL UNITS 1-10; CIVIL NO. 11-00733 SOM-KSC; Rule 16 Scheduling Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHIRLEY WALLACE,) Civil No. 11-CV-978-DMS (WVG)
)
Plaintiff,)
) ORDER SETTING RULE 26
v.) COMPLIANCE AND NOTICE OF CASE
) MANAGEMENT CONFERENCE
INTERNAL REVENUE SERVICE *et*)
al.,)
)
Defendants.)
_____)

The Court orders as follows:

1. The Rule 26(f) conference shall be completed before
February 20, 2012;

2. The date of initial disclosure pursuant to Rule
26(a)(1)(A-D) shall occur before March 2, 2012;

3. A discovery plan shall be lodged with Magistrate Judge
Gallo on or before March 7, 2012^{1/} and,

4. A Case Management Conference, pursuant to Federal Rule
of Civil Procedure 16(b) shall be held on March 14, 2012, at 8:30
a.m., in the chambers of Magistrate Judge William V. Gallo. Counsel

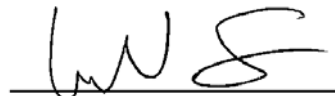
¹ Counsel are invited to review the undersigned's Chambers
Rules for guidance on completing the proposed discovery
plan.

1 shall participate by telephone. The Court will initiate the
2 conference call.

3 Failure of any counsel or party to comply with this Order
4 will result in the imposition of sanctions.

5 IT IS SO ORDERED.

6 DATED: February 10, 2012

7
8 

Hon. William V. Gallo
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENERAL ELECTRIC CAPITAL CORPORATION; CEF FUNDING II, LLC; and CEF FUNDING V, LLC,	)	Case No. 2:09-CV-03296-JAM-EFB
)	
Plaintiffs,	)	<u>ORDER GRANTING COUNTER-</u>
	)	<u>CLAIMANT EQUITY LENDERS, LLC'S</u>
v.	)	<u>MOTION FOR LEAVE OF COURT TO</u>
	)	<u>FILE AND SERVE SUPPLEMENTAL</u>
	)	<u>COUNTERCLAIMS</u>
TEN FORWARD DINING, INC.; et al.;)	
)	
Defendants.)	
)	

This matter is before the Court on Equity Lenders, LLC's ("Counter-Claimant"), an Indiana corporation, Motion For Leave of Court To File and Serve Supplemental Counterclaims (Doc. #112), which is supported by a Memorandum of Points and Authorities (Doc. #116).¹ Plaintiffs/Counter-Defendants General Electric Capital Corporation, a Delaware Corporation; CEF Funding II, LLC, a Delaware company; and CEF Funding V, LLC, a Delaware company, (collectively "Counter-Defendants") oppose the motion (Doc. #121). Counter-Claimant filed a reply to the opposition (Doc. #122).

¹This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was originally scheduled on January 25, 2012.

I. FACTUAL ALLEGATIONS & PROCEDURAL BACKGROUND

This action originated when Counter-Defendants filed their complaint on November 29, 2009. The complaint alleges that several defendants, not including Counter-Claimant, defaulted on or breached seven written loan contracts made with Counter-Defendants. The loans were allegedly secured by real and personal property generally associated with restaurants. Counter-Defendants' complaint also seeks declaratory relief against Counter-Claimant because Counter-Claimant may have liens against a subset of the Properties known as the "19373 Kobra Properties" and Counter-Defendants seek to establish the superiority of their own liens to Counter-Claimant's.

Counter-Claimant alleges that the owners of the 19373 Kobra Properties, also defendants in this action, defaulted on their obligations to Counter-Claimant in 2009, and Counter-Claimant foreclosed on November 19 or 20, 2009. In early 2010, Counter-Claimant alleges that it negotiated a pay-off amount for Counter-Defendants' interest in the 19373 Kobra Properties, but that there was a dispute as to the final pay-off amount. Counter-Claimant paid the pay-off amount demanded by Counter-Defendants under protest, and now seeks to supplement its existing counterclaims with three new counterclaims: 1) a counter-claim for an accounting of the actual amount due to Counter-Defendants after the default on the 19373 Kobra Properties, 2) a counter-claim for declaratory relief as to the parties' interests in the 19373 Kobra Properties, and 3) a counter-claim for restitution of any overpayments made by Counter-Claimant to Counter-Defendants in relation to the 19373 Kobra Properties. Counter-Claimant alleges that \$338,800 in

1 default interest was overpaid to Counter-Defendants and \$49,225.12
2 in attorney fees were also paid, but the fees were not specifically
3 attributed to matters involving the 19373 Kobra Properties.

4 This Court has jurisdiction pursuant to 28 U.S.C. § 1332
5 because the lawsuit is between citizens of different states and the
6 amount in controversy exceeds \$75,000.

7
8 II. OPINION

9 A. Legal Standard

10 The circumstances under which a party may amend and supplement
11 their pleadings is governed by Federal Rule of Civil Procedure
12 15(d) which provides, "On motion and reasonable notice, the court
13 may, on just terms, permit a party to serve a supplemental pleading
14 setting out any transaction, occurrence, or event that happened
15 after the date of the pleading to be supplemented." Fed.R.Civ.P.
16 15(d).

17 Rule 15(d) is a tool that gives district courts broad
18 discretion to allow supplemental pleadings. Keith v. Volpe, 858
19 F.2d 467, 473 (9th Cir. 1988). It is also a rule intended to
20 promote judicial economy. San Luis & Delta-Mendota Water Auth. v.
21 U.S. Dept. of Interior, 236 F.R.D. 491, 496 (E.D. Cal. 2006). Rule
22 15(d) does not require supplemental claims to be part of the same
23 transaction or occurrence associated with the original lawsuit.
24 Volpe, 858 F.2d at 474. The rule merely requires "some
25 relationship . . . between the newly alleged matters and the
26 subject of the original action. . . ." Id.; but see Planned
27 Parenthood of S. Ariz. v. Neely, 130 F.3d 400, 402-403 (9th Cir.
28 1997) (Rule 15(d) should not be used to introduce an entirely new

1 and separate cause of action). Thus, in the absence of bad faith
2 or undue delay, leave should be given to supplement a pleading with
3 a related cause of action that accrued after the filing of the
4 original complaint. San Luis & Delta-Mendota Water Auth., 236
5 F.R.D. at 496 (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

6 When ruling on a rule 15(d) motion, courts consider a number
7 of factors to determine whether leave to file supplemental
8 pleadings is proper. In San Luis & Delta-Mendota Water Auth. v.
9 U.S. Dep't of Interior, the court collected nine factors that are
10 used in the Ninth Circuit to determine whether supplementation is
11 appropriate:

- 12 (1) The relatedness of the original and supplemental
- 13 complaints;
- 14 (2) Whether allowing supplementation would serve the
- 15 interests of judicial economy;
- 16 (3) Whether there is evidence of delay, bad faith or
- 17 dilatory motive on the part of the movant, or
- 18 evidence of repeated failure to cure deficiencies by
- 19 amendments previously allowed;
- 20 (4) Whether amendment would impose undue prejudice upon
- 21 the opposing party;
- 22 (5) Whether amendment would be futile;
- 23 (6) Whether final judgment had been rendered;
- 24 (7) Whether the district court retains jurisdiction over
- 25 the case;
- 26 (8) Whether any prior court orders imposed a future
- 27 affirmative duty upon defendant; and
- 28 (9) Whether the proposed supplemental complaint alleges
- that defendants defied a prior court order.

23 San Luis & Delta-Mendota Water Auth., 236 F.R.D. at 497.

24 1. Discussion

25 In this case, Counter-Claimant argues that its supplemental
26 counterclaims are appropriate because they arose from events that
27 occurred after Counter-Defendants filed their complaint. Namely,
28 Counter-Claimant alleges that when they bought out Counter-

1 Defendants' position in the 19373 Kobra Properties subsequent to
2 the filing of this lawsuit, they overpaid and are now seeking an
3 accounting of the actual amount due and restitution of any amount
4 overpaid. Counter-Defendants respond that supplemental
5 counterclaims should not be allowed because the counterclaims are
6 not part of the same transaction or occurrence that gave rise to
7 the allegations in their complaint, as required by Federal Rule of
8 Civil Procedure 13(a). Counter-Defendants also argue that the
9 supplemental pleading lacks a logical relationship to the claims
10 alleged in their complaint.

11 Counter-Defendants' first argument in opposition to Counter-
12 Claimant's motion fails because it applies the incorrect legal
13 standard to a Rule 15(d) motion. Counter-Defendants' argument
14 relies on a transactional requirement, but Rule 15(d) does not
15 contain a transactional requirement. Volpe, 858 F.2d at 474.
16 Thus, whether or not the supplemental counterclaims are part of the
17 same transaction or occurrence alleged in the original complaint is
18 irrelevant.

19 Counter-Defendants' second argument that the supplemental
20 counter-claims are not logically related to the claims in the
21 original complaint bears closer scrutiny because that is a factor
22 that courts should consider when deciding a Rule 15(d) motion. San
23 Luis & Delta-Mendota Water Auth., 236 F.R.D. at 497. The gist of
24 Counter-Defendants' argument is that since the original claims in
25 this lawsuit deal with the default on loans in 2008 and 2009 but
26 the proposed supplemental counterclaims deal with the 2011 pay-off
27 and request for an accounting by Counter-Claimant, the proposed
28 counterclaims are not sufficiently related to the ongoing

1 litigation to merit inclusion. Counter-Claimant responds that its
2 already-pleaded counterclaims contain both a claim for an
3 accounting and a claim for declaratory relief that alleges improper
4 accounting of the amount due on the 19373 Kobra Properties. Each
5 claim was pleaded against Counter-Defendants in a timely answer.
6 Counter-Claimant also argues that Counter-Defendants sought to
7 strip Counter-Claimant of its rights to the 19373 Kobra Properties
8 in the original complaint. Thus, it is Counter-Claimant's position
9 that the supplemental counterclaims are related not only to their
10 already pleaded counterclaims, but also to the claims in the
11 original complaint.

12 In this case, Counter-Claimant's argument is more persuasive.
13 The original action was filed to protect Counter-Defendants'
14 interest in the properties, and to that end they sought declaratory
15 relief that would strip Counter-Claimant of any rights in the 19373
16 Kobra Properties. The lawsuit was not limited to a mere
17 foreclosure action, but was instead designed to obtain a
18 declaration as to the rights of all parties to the subject
19 properties. Thus, the proposed supplemental counterclaims, seeking
20 a similar resolution, bear a logical relationship to this lawsuit,
21 and this factor favors granting Counter-Claimant's motion.

22 The next factor, whether the supplemental pleading serves
23 judicial economy, favors Counter-Claimant. The Court sees little
24 reason to require a separate action to litigate this closely
25 related issue when all claims can be resolved in the present
26 litigation.

27 There is no evidence of delay, bad faith, or dilatory motive
28 on the part of Counter-Claimant. This factor favors granting the

1 Rule 15(d) motion.

2 The Court next considers whether granting the motion would
3 create undue prejudice to Counter-Defendants. Counter-Defendants
4 claim that they will experience hardship if the motion is granted,
5 but they do not say what that hardship will be. Without more
6 specificity as to hardship, the Court cannot find that Counter-
7 Defendants will be prejudiced. This factor favors granting the
8 motion.

9 The remaining factors all favor granting the motion. There is
10 no evidence that the supplemental counterclaims are futile. No
11 final judgment has been rendered. There is no indication that the
12 supplemental claims will affect the Court's jurisdiction in any way
13 because jurisdiction is predicated on diversity of citizenship,
14 which is not affected by the supplemental counterclaims. Finally,
15 there are no prior orders at issue in this motion.

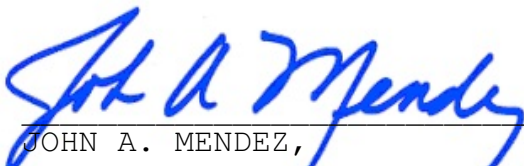
16 In summary, all of the factors considered by the Court support
17 granting Counter-Claimant's Rule 15(d) motion to supplement the
18 pleadings. Accordingly, leave to file and serve the supplemental
19 pleading should be granted.

20 III. ORDER

21 The Court has carefully reviewed all of the papers filed in
22 support of and in opposition to this motion. For the reasons
23 stated above, Counter-Claimant's motion is GRANTED. The
24 supplemental counterclaims (Doc. #112) shall be deemed filed as of
25 the date of this order. Counter-Defendants shall respond to this
26 supplemental pleading within 20 days of this order.

27 IT IS SO ORDERED.

28 Dated: February 9, 2012


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

SO ORDERED



A handwritten signature in cursive script that reads "Paul Mannes".

PAUL MANNES
U. S. BANKRUPTCY JUDGE

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

IN RE:	:	
	:	
JANICE M. JACKSON	:	Case No. 11-30506PM
	:	Chapter 7
Debtor	:	
-----	:	

**MEMORANDUM AND ORDER
FOLLOWING STATUS CONFERENCE**

Following the entry of this court's Orders on February 6, 2012, with respect to Debtor's complaint for the violation of the automatic stay by the Internal Revenue Service and by the Maryland Comptroller of the Treasury, and the court's abstention from the exercise of jurisdiction as to the Debtor's motion to avoid statutory liens held by the Internal Revenue Service, the court finds that all matters pending in this case are concluded.

The Trustee filed a report of No distribution. The Clerk is instructed to close this case when the time has run for the filing of complaints objecting to Debtor's discharge or the dischargeability of a debt, if none such has been filed, the Debtor has completed the course in personal financial management required by 11 U.S.C. § 727(a)(11), and the Maryland Comptroller of the Treasury files evidence of the payment of \$250.00 to the Debtor as required by this court's Order.

SO ORDERED.

cc:

Andrew C. Strelka, Esq., Tax Division, U.S. Dept of Justice, POB 227, Washington DC 20044
Kimberly B. Stephens, Maryland Comptroller of the Treasury, Compliance Division, Room 410,
301 W. Preston Street, Baltimore, MD 21201

Cara Devoy Chasney, Esq., Attorney for NCO Financial Systems, Inc., Whiteford Taylor,
7 Saint Paul Street, Baltimore, MD 21202

Merrill Cohen, Trustee, 7910 Woodmont Avenue, Suite 1103, Bethesda, MD 20814

Janice M. Jackson, 5532 Keyworth Court, Capitol Heights, Md 20743

End of Memorandum and Order

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 4.2
Eastern Division**

Marshall D Katzman

Plaintiff,

v.

Case No.: 1:11-cv-01441
Honorable Joan H. Lefkow

United States of America

Defendant.

**ORDER REFERRING A CIVIL CASE TO THE
DESIGNATED MAGISTRATE JUDGE**

Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of Honorable Jeffrey Cole for the purpose of holding proceedings related to: settlement conference.(mad,)Mailed notice.

Dated: February 10, 2012

/s/ Joan H. Lefkow

United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PEOPLE'S UNITED EQUIPMENT
FINANCE CORP.,

Plaintiff,

-VS-

DESERT ROCK EXCAVATION, INC. and
M.J. HUGHES CONSTRUCTION, INC.,

Defendants.

NO. CV-11-0036-LRS

ORDER GRANTING CREDITOR ODELL
CRITTENDEN'S MOTION TO INTERVENE

BEFORE THE COURT is Odell Crittenden's ("Crittenden") motion to intervene (ECF. No. 52). Having considered the motion, and the absence of any opposition, it is hereby

ORDERED that Crittenden's motion, ECF No. 52, is GRANTED. Crittenden is permitted to intervene as a party in this matter. Crittenden is DIRECTED to file the intervenor complaint (ECF No. 52-1).

IT IS SO ORDERED. The District Court Executive is directed to file this Order and provide copies to counsel.

DATED this 10th day of February, 2012.

s/Lonny R. Suko

LONNY R. SUKO
 UNITED STATES DISTRICT JUDGE

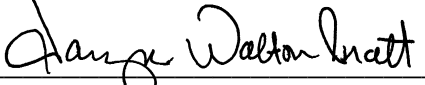
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	NO. 1:11-cv-00194-TWP-TAB
)	
EMANUEL S. RHODES SR,)	
MAURIO RHODES,)	
M&D TRUCKING, INC,)	
)	
Defendants.)	

ORDER

The Court extends the time frame for parties to file their dismissal paperwork up to and including May 21, 2012. Failure to file the dismissal paperwork or a request for an extension of time will result in dismissal with prejudice pursuant to Fed. R. Civ. P. 41(b).

Date: 02/10/2012



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

Distribution to:

Christina Medzius Bixby
UNITED STATES DEPARTMENT OF JUSTICE
Christina.M.Bixby@usdoj.gov

Vincent L. Scott
THE LAW OFFICE OF VINCENT L. SCOTT, P.C.
vls-law@um.att.com

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLAN ROSALSKY and
JOAN ROSALSKY,

Defendants.

Civil No. 9:11-cv-81117-KAM

**ORDER OF DEFAULT JUDGMENT AGAINST
ALLAN AND JOAN ROSALSKY**

This matter comes before the Court on the United States' Motion for Default Judgment Against Allan and Joan Rosalsky (the "Rosalskys"). Upon consideration of the motion, the memorandum of law in support thereof, the Declaration Thomas K. Vanaskie and exhibits attached thereto, and the Declaration of Elmer Davis and exhibits attached thereto, it is hereby

ORDERED and ADJUDGED that the motion is GRANTED; it is further

ORDERED that default judgment shall be entered against the Rosalskys and in favor of the United States; and it is further

ORDERED that the Rosalskys are liable to the United States in the amount of \$529,501.60, as of February 6, 2012, for their unpaid joint federal income taxes for the 1999, 2000, 2001, 2002, and 2006 tax years, plus interest pursuant to 26 U.S.C. §§ 6621 and 6622 until paid.

SO ORDERED this 9th day of FEBRUARY, 2012.


KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA**

In Re:
Wade Thompson and Betty L. Thompson

Bankruptcy No:
11-02576

Debtor(s).

Chapter 7

Wade Thompson
Betty L. Thompson
Plaintiff(s)

Adversary No. 12-09001

vs.

United States of America Internal Revenue Service
Defendant(s)

ORDER SETTING TELEPHONIC SCHEDULING CONFERENCE

TO:
Donald H. Molstad, Attorney for Plaintiff(s)
Tax Attorney U.S. Department of Justice, Attorney for Defendant(s)
United States Trustee

712-255-8036
202-305-7945

IT IS ORDERED that a telephonic scheduling conference will be held on:

February 24, 2012 at 10:45 AM (CENTRAL TIME)

All parties shall be prepared and available at the above date and time to accept a conference call *to be placed by plaintiff's attorney*. The telephone number for Chambers is 319-286-2230.

Prior to the date set for the conference, counsel shall, pursuant to F.R.Civ.P. 26(f), confer as to the nature and basis of their claims and defenses, the need for and scheduling of discovery, to make or arrange for disclosures required by F.R.Civ.P. 26(a)(1), to develop a discovery plan pursuant to F.R.Civ.P. 26(f) and to discuss the possibility of a prompt settlement or resolution of the case. Except as limited by F.R.Civ.P. 30(a), the parties may engage in discovery before the scheduling conference. The parties shall also discuss any issues about preserving, disclosing, and discovering electronically stored information.

Counsel shall orally report the discovery plan to the court at the scheduling conference.

At the scheduling conference, counsel shall be prepared to discuss the merits of claims and defenses. At the scheduling conference, the court may consider any motion filed and served at least 14 days prior to the conference.

DATED and ENTERED February 10, 2012



William L. Edmonds
Bankruptcy Judge