FILED
JUN 4 2012
CLERK, U.S. DISTRICT COURT
NORFOLK, VA

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,)
)
Petitioner,) No. 2:11-cv-00599-RBS-FBS
v.)
)
DELTON L. DUNBAR,)
)
Respondent.)

AGREED ORDER TO TERMINATE THE CASE

All matters in the above-styled matter have been concluded. As there remains nothing further to be done, this civil action may be terminated and removed from the active docket.

Date: 6-4-12

/s/
Rebecca Beach Smith
Chief
United States District Judge
UNITED STATES DISTRICT JUDGE

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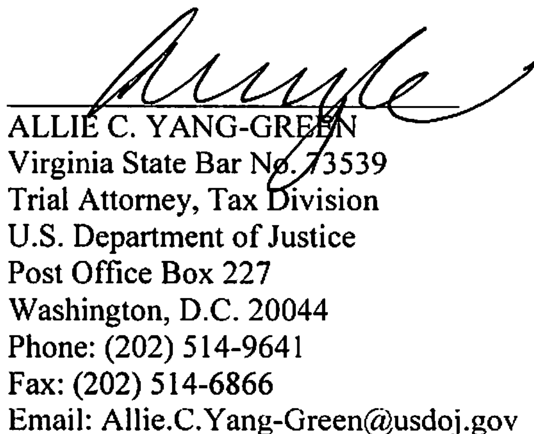
8510788.2

WE ASK FOR THIS:

Date: 6/1/2012



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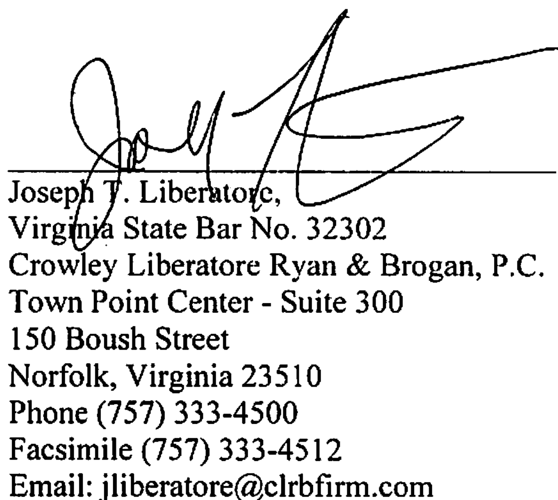
Date:



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Counsel for Respondent Delton L. Dunbar

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ECO BUILT, INC.,	)	
	)	
Plaintiff,	)	
	)	No. 3:11-cv-00342-JGH
v.	)	
	)	
MC & ASSOCIATES, LLC, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING UNITED STATES' MOTION
FOR EXTENSION OF TIME TO RESPOND

The Court, having reviewed Defendant United States' motion for extension of time to respond to Sarah Travis's motion for summary judgement and motion for judgment on the pleadings, and any opposition to the motion, determines that the motion should be granted.

Accordingly, on this ____ day of ____________________, 2012, it is

ORDERED that the United States' motion for extension of time to respond is GRANTED; and it is

ORDERED that the United States has until June 18, 2012 to respond to Sarah Travis's motion for summary judgement and motion for judgment on the pleadings (Dkt. No. 70).

____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. EDWARD B. BAKER, et al. Defendants.	)))))))))	Civil No. 4:09-cv-0126 SEB-WGH Judge Sarah Evans Barker Magistrate Judge William G. Hussmann

ORDER OF REMOVAL

The plaintiff United States of America, having requested and been granted the enforcement of its liens upon the real property located at 1111 Bluegrass Trail, Jeffersonville, Indiana (the "Property"), and the United States having requested an Order of this Court that the defendant, Edward B. Baker, and all other persons acting in concert with, or on behalf of Mr. Baker, or residing or otherwise occupying the property at issue herein, vacate and depart from the Property on or before 12:00 o'clock noon on Friday, July 6, 2012, and good cause having been found,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED THAT:

1. The defendant, Edward B. Baker, and all other persons acting in concert with, or on his behalf, or residing or otherwise occupying the property described herein, shall, no later than 12:00 o'clock noon on Friday, July 6, 2012, vacate and depart from the real property located at 1111 Bluegrass Trail, Jeffersonville, Indiana, and remove all of their personal property (but not any fixtures) or else such personal property shall be deemed abandoned.

2. The United States Marshal is authorized and directed to enforce this Order at any time that he deems appropriate after 12:00 o'clock noon on Friday, July 6, 2012, by (1) entering the real property located at 1111 Bluegrass Trail, Jeffersonville, Indiana, and any structures and vehicles

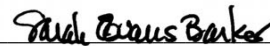
located thereon, (2) evicting any unauthorized persons from all locations on the property, including, but not limited to, the structures, vehicles, and grounds, and (3) using force as necessary to accomplish this mission. When the United States Marshal concludes that all unauthorized persons have vacated, or been evicted from, the property, he shall relinquish possession and custody of the real property located at 1111 Bluegrass Trail, Jeffersonville, Indiana, and any personal property found thereon, to the court-appointed Receiver, Walter Coppinger of Re/Max First.

3. Should Edward B. Baker, or any other person acting on his behalf, or in concert with him, or residing or otherwise occupying the property, either fail to vacate and depart from the real property located at 1111 Bluegrass Trail, Jeffersonville, Indiana, by 12:00 o'clock noon on Friday, July 6, 2012, or attempt to enter onto the real property after that date and time, that person shall be subject to being found in contempt of this order of this Court and the Court may subject that person to a fine, incarceration, or both.

4. The United States Marshal shall, within ten days of the entry of this order, provide notice of it by hand delivery of a copy of this Order to Edward B. Baker, and/or by leaving a copy of this Order posted in a prominent location at the building at the real property located at 1111 Bluegrass Drive, Jeffersonville, Indiana.

IT IS SO ORDERED.

Date: 06/04/2012



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Service will be made electronically on all ECF-registered counsel of record via email generated by the court's ECF system.
Service will be made via first-class U.S. Mail on the following party:

Edward B. Baker
1111 Bluegrass Trail
Jeffersonville, Indiana 47130

7894163.2

Below is the Order of the Court.

Karen A. Overstreet
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re: JOHN AND ELIZABETH BOSCH, Debtor(s).	Case No.: 11-14667 ORDER AUTHORIZING AWARD OF ATTORNEY FEES AND PRE-CONFIRMATION DISBURSEMENT

THIS MATTER having come on regularly notice before the undersigned Judge of the above-entitled court upon application for award of attorneys fees and pre-confirmation disbursement, and the Court having reviewed the files and records herein and being fully advised in the premises; Now, Therefore,

IT IS HEREBY ORDERED that attorney fees in the amount of $22,722.75, less the amount of $539.00 previously paid, are approved.

1904 Wetmore Ave., Suite 200
Everett, WA 98201
P 425.212.4800 || F 425.212.4802
Neeleman Law Group

IT IS FURTHER ORDERED that Neeleman Law Group is authorized to pay the sum of $5,500.00 from funds held in trust with the balance of the approved fees being paid by the debtors in monthly installments in an amount to be agreed upon by the parties.

// END OF ORDER//

Presented by:

/s/ Thomas D. Neeleman
Thomas D. Neeleman
Neeleman Law Group
1904 Wetmore Ave., Suite 200
Everett, WA 98201
425-212-4800

IN THE UNITED STATES DISTRICT COURT FOR THE

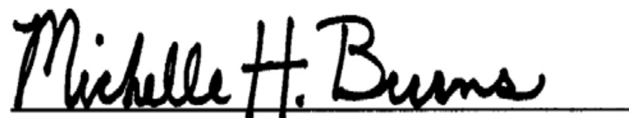
DISTRICT OF ARIZONA

JUDITH ANN BOUCHIER, Personal Representative of the Estate of Barbara Ann Jurasevich, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Civil No. 2:12-cv-01146-MHB ORDER

Upon motion of the United States (Doc. 4), and for good cause shown,

IT IS HEREBY ORDERED that the United States' Motion for Extension of Time Respond to Petition is GRANTED. The United States' time for responding to the Petition is extended to July 2, 2012.

Dated this 4th day of June, 2012.



Michelle H. Burns
United States Magistrate Judge

8546953.1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

EMERGING MONEY CORP., ET AL., EMERGING ADMINISTRATIVE SERVICES, LLC, & EMERGING ACTUARIAL DESIGNS, LLC, Plaintiffs, v. UNITED STATES OF AMERICA, Defendant.	3:09-cv-1502 (CSH)

RULING ON MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION AND RELEVANT FACTS

Plaintiffs Emerging Money Corporation (EMC), Emerging Administrative Services, LLC and Emerging Actuarial Designs, LLC allege that the Internal Revenue Service (IRS) wrongfully disclosed information when it asserted to certain taxpayers that the transactions that Plaintiffs had promoted to them were "sham transactions" and part of a "Ponzi scheme." Defendant, the United States of America, filed a Motion for Summary Judgment (the "Motion") [Doc. 24] asserting that the IRS was permitted to make those statements under the Internal Revenue Code. Plaintiffs oppose the Motion. The parties do not disagree about any of the relevant facts; they disagree only about the law. Thus, this issue is ripe for summary judgment.

It is justifiably assumed that for the most part, the IRS may not reveal a taxpayer's returns or related information to third parties without his or her permission. The governing statute, 26 U.S.C. § 6103, provides: "Returns and return information shall be confidential," and except as

authorized by the statute, "no officer or employee of the United States . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." § 6103(a). However, the statute contains a considerable number of exceptions. "Revised section 6103 represents a legislative balancing of the right of taxpayers to the privacy of tax information in the hands of the IRS and the legitimate needs of others for access to that information." *Stokwitz v. United States*, 831 F.2d 893, 895 (9th Cir. 1987). This case presents the question whether the IRS's disclosure of certain information related to Plaintiffs fell under one or more of the statutory exceptions.

The Court assumes familiarity with the parties' briefs, and provides only a summary of the relevant facts here. The three plaintiff entities, all of which were controlled by one Robert Strauss and have been dissolved, provided various financial services. In or about the 2002-07 period, Plaintiffs promoted to their clients a program called "Stock to Cash" or "the 90% loan program." A client would transfer shares of stock to the lender, Alexander Capital Markets (ACM), and ACM would give him an upfront cash payment styled a "loan."

Starting in 2007, the IRS investigated the Stock to Cash program and concluded that these transactions were not in fact loans, but rather were sales of stock disguised as loans, evading the capital gains tax. In addition, the IRS determined that the Stock to Cash program was a Ponzi scheme, using money coming in from new investors to pay obligations to existing investors. *See* Declaration of Revenue Agent Judy Steiner ("Steiner Decl.") [Doc. 28-3], attached to the Motion, at ¶ 6. Plaintiffs, as promoters of the Stock to Cash program, came under investigation by the IRS and the Oklahoma Department of Securities.

In January 2008, the IRS obtained from Plaintiffs a list of clients who had participated in

Stock to Cash transactions. It then launched audits of twenty-two such clients. On or about October 1, 2008, the IRS sent "preliminary notice letters" (the "Letters") to those clients (the "Recipients"), explaining its position on the Stock to Cash program and asking the Recipients to file amended tax returns on that basis. *See* Letter dated 10/01/2008 [Doc. 31-2], attached to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment ("Opp. Memo.") as Ex. 2. In the Letters, the IRS gave the Recipients certain information that Plaintiffs believe should have been kept confidential (collectively, the "Information"). The Information included (1) identification of Plaintiffs as possible "lenders" or administrators of the Stock to Cash program (the "identification of Plaintiffs"); (2) the statement that the IRS was conducting an investigation of the Stock to Cash program (the "investigation assertion");[1] (3) the IRS's position that the Stock to Cash transactions were "sham transactions" (the "sham-transaction assertion") and (4) the assertion that those transactions were "built into a Ponzi scheme" (the "Ponzi-scheme assertion").

The IRS agent in charge, Judy Steiner, says that the Ponzi-scheme allegation was added because the IRS had in the past received resistance from taxpayers who had been involved in similar transactions. "The 'Ponzi scheme' language was included in the model notice letters to emphasize to the taxpayers that the transactions were not, in fact, valid, and that the transactions were a Ponzi scheme requiring new 'borrowers' to stay afloat." Declaration of Judy Steiner ("Steiner Decl."), Ex. 3 to Defendant's Motion for Summary Judgment [Doc. 28-3], ¶ 25. Nevertheless, when the IRS later sent versions of the Letters to two more taxpayers, the "Ponzi scheme" language was deleted. Steiner gives two reasons for the deletion: (1) after she consulted an IRS attorney, she decided that

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[1] Plaintiffs repeatedly and inaccurately assert that the Letters said that Plaintiffs themselves were under investigation. *See, e.g.,* Opp. Memo. at 1, 8. The Letters in fact said that the IRS was investigating the "'90% Loan' transaction."

the "Ponzi scheme" language was not necessary to convince the Recipients that the Stock to Cash "loans" were invalid; and (2) some Recipients felt they should be entitled to favorable tax treatment as "victims" of the scheme. Steiner Decl. ¶ 26.

On September 23, 2009, Plaintiffs filed the present action. The First Amended Complaint [Doc. 17] contains a single claim, for unlawful disclosure of Plaintiffs' return information. The claim is based on 26 U.S.C. § 7431, which permits plaintiffs to recover damages when an officer of the United States knowingly or negligently discloses returns or return information in violation of Section 6103. Plaintiffs seek, *inter alia*, $1,000 for each unauthorized disclosure of their return information.

II. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the burden of demonstrating that no genuine issue exists as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25 (1986). In moving for summary judgment against a party who will bear the ultimate burden of proof at trial, the movant's burden of establishing that there is no genuine issue of material fact in dispute will be satisfied if he or she can point to an absence of evidence to support an essential element of the non-moving party's claim. *Celotex* at 322-23. The non-moving party, in order to defeat summary judgment, must then come forward with evidence that would be sufficient to support a jury verdict in his or her favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986). In this case, the parties disagree about the law but are not in disagreement about any fact that is relevant to the resolution of this Motion.

III. DISCUSSION

Plaintiffs assert that the Information is Plaintiffs' "return information" and thus subject to Section 6103, and Defendant does not dispute that point. First Amended Complaint ¶ 12; Memorandum of Law in Support of the United States' Motion for Summary Judgment ("Supp. Memo.") [Doc. 28-1] at 6-7. Defendant's failure to argue that the Information is not Plaintiffs' "return information" is justified by the extremely broad definition of "return information" in the statute, which includes, for example, "any other data ... collected by the Secretary [of the Treasury or his delegate] with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense." 26 U.S.C. § 6103(b)(2)(A). Defendant, however, argues that the IRS was nevertheless permitted to disclose the Information under three exceptions to the general rule against disclosure. Supp. Memo. at 5. The Court considers each of these exceptions in turn.

A. The "Own Information" Exception

Defendant argues that it was entitled to disclose the Information to the Recipients because it was their own return information. Supp. Memo. at 7-8. Defendant relies on 26 U.S.C. § 6103(e)(7): "Return information with respect to any taxpayer may be open to inspection by or disclosure to any person authorized by this subsection to inspect any return of such taxpayer, if the Secretary determines that such disclosure would not seriously impair Federal tax administration." The statute elsewhere states that a taxpayer's return "shall, upon written request, be open to inspection by or disclosure to (A) in the case of an individual–(i) that individual." 26 U.S.C. § 6103(e)(1). The taxpayer is thus authorized to inspect his own return. Those courts that have

addressed the issue have concluded that these provisions permit the INS to disclose to a taxpayer his own return information, in addition to the return itself. *See, e.g., Millennium Mktg. Gp., LLC v. United States*, No. H-06-962, 2010 WL 1768235, at *13 (S.D. Tex. Feb. 9, 2010) and cases cited therein.

The substantive question arising from these circumstances is whether all of the Information was the Recipients' "own" return information in addition to being Plaintiffs' return information. Because the statute itself does not define a taxpayer's "own" return information, and because the Second Circuit has not spoken on this issue, Defendant cites three decisions from other circuits to show that the Information was the Recipients' own return information. Supp. Memo. at 7-10. In *Mid-South Music Corp. v. United States*, 818 F.2d 536 (6th Cir. 1987), the IRS sent a letter to taxpayers who had invested in plaintiff Mid-South's tax shelter, telling them that deductions based on the tax shelter would be disallowed, and that a taxpayer who claimed such a deduction might be subjecting himself to a penalty. The court held that the fact that a deduction for Mid-South's tax shelter would be disallowed was information with respect to the taxpayers' own returns and thus disclosable. *Id* at 539. That case, however, did not involve any statements that, like the Ponzi-scheme allegation here, went beyond the facts necessary to explain the disallowance.

In *Balanced Financial Management, Inc. v. Fay*, 662 F.Supp. 100 (D.Utah 1987), with facts similar to those in *Mid-South*, the court found that the identification of the plaintiff and reference to investigation of the plaintiff did not constitute "return information" under Section 6103, and that in any case such information was disclosable under Section 6103 exceptions. The court's favorable citation to a concurring opinion in *Mid-South* suggests that the court considered those facts to be the recipients' own return information. *Id.* at 106. Again, there was no assertion in that case comparable

to the Ponzi-scheme assertion here.

In *Solargistic Corp. v. United States*, 921 F.2d 729 (7th Cir. 1991), the IRS had sent a letter to taxpayers who had invested in the plaintiff, Solargistic, telling them that Solargistic was under audit. The court held that this information was the return information of each Solargistic investor, because the letters "were mailed as the initial step in adjusting the tax liability of the investors for the year in question" and the resolution of the audit "would directly impact the investors' taxes payable." *Id.* at 731. The disclosures that were at issue before the Seventh Circuit did not include any that were analogous to the Ponzi-scheme assertion.

Finally, in *Millennium Mktg. Gp., LLC v. United States*, No. H-06-962, 2010 WL 1768235, at *12-13 (S.D. Tex. Feb. 9, 2010), the IRS, in the course of audits of taxpayers who had invested in the plaintiff's Millennium Plan, characterized the Plan to the investors as, *inter alia*, a "scheme," "abusive," "noncompliant," "bad" and "illegitimate." *Id.* at *12. The court held that the IRS was entitled to make those statements to the investors because that information was the participants' own return information as well as Millennium's.

> The IRS's investigation of Plaintiffs directly impacted the amount of the investors' payable taxes, the propriety of proposed penalties, and whether they could participate in [a settlement]. It was therefore "data ... prepared by ... the Secretary .. with respect to the determination of the ... possible existence' of tax liability of the investors." 26 U.S.C. § 6103(b)(2)(A). Thus, the information revealed by the agents is the return information of each of the [investors] as well.

Id. at *14. *Millennium*, though not binding authority on this Court, suggests that in the present case the sham-transaction assertion was the Recipients' own return information. But it is not clear whether any of the disclosures in *Millennium* included statements that were contextual rather than directly relevant to the recipients' tax liability, as is the case of the Ponzi-scheme assertion.

The precedents cited suggest that the Information was the Recipients' own return information if it consisted of facts that directly impacted the Recipients' tax liabilities. *See, e.g., Solargistic* at 731. By this standard, the Recipients' own return information included the identification of Plaintiffs, the disclosure that the Stock to Cash program was under investigation, and the sham-transaction assertion. Each of these pieces of information played a role in explaining to the Recipients why their tax liability was being adjusted and why they were expected to file amended returns. The identification of Plaintiffs occurs in a list of names of possible lenders or administrators of a Recipient's Stock to Cash transaction; it served to identify to the Recipients the transactions at issue. Both the investigation and sham-transaction assertions explain to the Recipients that transactions they had treated as "loans" were not loans, and hence explained the tax adjustment and the request for amended returns.

But the Ponzi-scheme assertion did not directly impact the Recipients' tax liabilities. Their "loans" would have been considered sales of stock whether or not the program was a Ponzi scheme. The fact that the transactions were "shams" was enough to establish to the Recipients that they were invalid, without a contextual reference to a larger Ponzi scheme. Indeed, as noted above, Steiner asserts that the Ponzi-scheme assertion was included in the Letters (but not in two later letters on the same subject) to deter taxpayer resistance to the IRS's finding. Steiner Decl. ¶¶ 26-27. The IRS evidently did not consider it necessary to give the Recipients that information to explain the tax adjustment, because they deleted it from later editions of the preliminary notice letters. In fact, Defendant, explaining in its Memorandum in Support why the IRS needed to disclose this information, said nothing about the Ponzi-scheme allegation. Supp. Memo. at 9. Whether or not the inclusion and then deletion of that allegation was reasonable in a larger sense, Defendant has not

established that the Ponzi-scheme assertion was the Recipients' own return information.

Plaintiffs argue that the "own information" exception does not apply to any of the three components of the Information. Opp. Memo. at 10-18. Since the Court has concluded that the exception applies to the identification of Plaintiffs, the investigation assertion, and the sham-transaction assertion, the Court here considers each of their three arguments.

1. The absence of a written request

Plaintiffs argue that the IRS was not entitled to disclose the Information because none of the Recipients made a written request for it. Opp. Memo. at 11-12. However, the law they cite does not establish that a written request is necessary for the disclosure to a taxpayer of that taxpayer's own return information. They cite the phrase "upon written request" in 26 U.S.C. § 6103(e)(1). But that subsection refers to returns, not return information. They also cite 26 C.F.R. § 301.6103(c)-1(e)(5). But that regulation defines who may request information on behalf of a taxpayer; it does not impose a request requirement on the INS.

2. No effect on the Recipients' tax liability

Plaintiffs distinguish this action from *Solargistic* by arguing that the Recipients were not partners or investors in the Emerging Money entities, and therefore "any fine, penalty or adjustment in tax imposed against EMC would have zero effect on the [Recipients'] return[s]." Opp. Memo. at 13. However, the facts agreed to by the parties show that the disclosure of the Information was directly related to potential adjustments in the Recipients' tax liabilities. The IRS's conclusion that the Stock to Cash scheme had illegally shielded the Recipients from capital-gains tax resulted in an upward adjustment of the Recipients' tax liabilities and the demand that they file amended tax returns in that regard. Nothing in *Solargistic* suggests that its holding is dependent on the fact that

the taxpayers were partners or investors in Solargistic.

3. The disclosure was unnecessary

Plaintiffs distinguish this case from *Mid-South* and *Balanced Financial* by arguing that here, Defendant disclosed more information than was necessary to inform the Recipients that there might be adjustments on their tax returns. Opp. Memo. at 15-17. As noted *supra*, most of the Information was necessary for that purpose, but the Ponzi-scheme assertion was not. Defendant replies that when the information in question is the recipient's own information, there is no requirement that the disclosure be necessary. Reply to Plaintiffs' Opposition to United States' Motion for Summary Judgment ("Reply Memo.") [Doc. 34] at 7. The point, however, is that the necessity of disclosing information to a recipient to explain his own tax liabilities is the justification for defining that information as his own return information.

Thus, the "own information" exception permitted the IRS to include in the Letters the identification of Plaintiffs, the investigation assertion, and the sham-transaction assertion, but did not cover the Ponzi-scheme assertion.

B. The "Administrative Proceeding" Exception

Defendant also asserts that the IRS was entitled to disclose the Information under the Section 6103 exception for administrative proceedings. Supp. Memo. at 10-14. "A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only ... (C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding." 26 U.S.C. § 6103(h)(4). Defendant argues that the audit of Plaintiffs was an "administrative proceeding" and that the Stock to Cash

transaction was a "transactional relationship" between Plaintiffs and the Recipients. Plaintiffs argue that this situation fails to meet three requirements for the "adminstrative proceeding" exception. Opp. Memo. at 18-28.

1. The "judicial or administrative proceeding" requirement

Plaintiffs first argue that an audit is not an "administrative proceeding." Opp. Memo. at 19-24. The Second Circuit has not decided whether an IRS audit is an "administrative proceeding," and the two circuits that have decided the issue have split. *Mallas v. United States*, 993 F.2d 1111, 1121-24 (4th Cir. 1993) (an audit is not an administrative proceeding); *First Western Gov't Sec., Inc. v United States,* 796 F.2d 356, 360-61 (10th Cir. 1986) (an audit *is* an administrative proceeding).[2] *See also Norman E. Duquette, Inc. v. Comm'r of Internal Revenue Serv.*, 110 F.Supp.2d 16, 20 (D.D.C. 2000) (adopting the *First Western* position); *Balanced Fin. Mgmt., Inc. v. Fay*, 662 F.Supp. 100, 106 (D.Utah 1987) (apparently assuming that an audit is an administrative proceeding).

The *First Western* court provided no explanation for its holding. *Duquette*, however, did explain its holding that an audit is an administrative proceeding for Section 6103 purposes. The court there reasoned that if the exception in Section 6103(h)(4) does not apply to audits, the broad definition of "tax return information" in Section 6103(b)(2) would prevent the IRS from telling audited taxpayers why their personal tax liabilities are being adjusted or might be adjusted. *Duquette* at 20. However, the existence of the "own information" exception discussed *supra* establishes that the IRS would, nevertheless, be able to provide such information to taxpayers.

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[2] The Ninth Circuit on one occasion appears to have assumed that an audit is an administrative proceeding. *Delpit v. Comm'r Internal Revenue Serv.*, 18 F.3d 768, 770 (9th Cir. 1994). However, that court later considered the matter to be undecided. *Abelein v. United States*, 323 F.3d 1210, 1214 (9th Cir. 2003).

The Fourth Circuit's decision in *Mallas* contains a more extensive consideration of this question. As Defendant rightly observes, parts of its textual analysis do not carry water. Reply Memo. at 13-14. For example, *Mallas* asserts that if audits are administrative proceedings, the provision authorizing disclosures where necessary to obtain information in investigations, Section 6103(k)(6), would be rendered superfluous. *Mallas* at 1124. But in fact Section 6103(k)(6) is another matter, involving disclosures necessary to obtain information. However, *Mallas* makes more a persuasive point: "A review of a tax audit's mechanics reinforces the conclusion that an audit is merely an investigation. A revenue agent conducting a tax audit performs quintessentially investigative functions, such as examining a taxpayer's books, papers, records, and other materials, and deposing witnesses." *Id.* at 1123 n. 13. There is a provision for appeals of audits in the governing regulations, 26 C.F.R. § 601.106, but while the appeal is an administrative proceeding, that does not necessarily mean that the audit is also an administrative proceeding.

The observation in *Mallas* that an agent in an audit performs quintessentially investigative functions is the most plausible argument that has been advanced. The Court finds that the audits of the Recipients were not administrative proceedings. Although this finding is enough to establish that the administrative proceeding exception does not apply, the Court considers the parties' arguments on the other two requirements.

2. The "transactional relationship" requirement

Defendant argues that there was a "transactional relationship" in the form of a "promoter/promotee relationship" between Plaintiffs and the Recipients. Supp. Memo. at 12-14. Plaintiffs say they had no transactional relationship with the Recipients because they only referred the Recipients to ACM, the lender, and did not fund the loans. Opp. Memo. at 25. The term

"transactional relationship" is certainly vague. However, the courts that have spoken on the subject found that promoters have a transactional relationship with the persons to whom they promote alleged tax shelters. *First Western Gov't Sec., Inc. v United States,* 796 F.2d 356, 360-61 (10th Cir. 1986); *First Western Gov't Sec., Inc. v United States,* 578 F.Supp. 212, 217 (D.Colo. 1984). At least in the present case, that makes sense. Plaintiffs and the Recipients were all importantly involved in the Stock to Cash transactions and dealt with each other, so in that sense they have a "relationship." Plaintiffs concede that they promoted the Stock to Cash program to the Recipients. Opp. Memo. at 3-4, 25. Thus, the necessary "transactional relationship" existed.

3. The effect requirement

Plaintiffs further argue that Section 6103(h)(4)(C) does not apply because the alleged transactional relationship did not directly affect the resolution of an issue in the IRS's audits of the Recipients. Opp. Memo. at 27-28. In *First Western*, the Tenth Circuit reasonably treated the question of whether the relationship directly affects an issue in the proceedings as equivalent to the question of whetherdoes the *disclosed information* directly affects an issue in the proceedings. *First Western*, 578 F.2d at 360-61. Here, as explained *supra*, most of the Information directly affected the audits of the Recipients, but the Ponzi-scheme assertion did not. Thus, even if the administrative proceeding exception *did* apply to the rest of the Information, it would not apply to the Ponzi-scheme assertion.

Nevertheless, as noted *supra*, the administrative proceeding exception does not apply here because there was no administrative proceeding.

C. The "Investigative Purposes" Exception

Defendant also argues that the IRS's disclosure of the Information falls under the exception

in Section 6103(k)(6) for cases in which such disclosure is necessary to obtain information in investigations like the audits of the Recipients. Supp. Memo. at 14-18. Plaintiffs disagree. Opp. Memo. at 29-33. The dispute between the parties about this exception comes down to one issue: was it necessary for the IRS to disclose the Information to carry out its investigations? This question is closely similar to that of whether it was necessary for the IRS to disclose the Information to inform the Recipients about the change in their tax liabilities. In order to obtain the information it wanted from the Recipients, especially in the form of amended tax returns, the IRS needed to inform the Recipients about the identities of Plaintiffs, about the investigation of the Stock to Cash program, and about its finding that the "loans" were sham transactions. The IRS could not expect the Recipients to file amended tax returns without telling them what amendment to make and why. But Defendant has not explained why the IRS, in order to obtain the information it was looking for, needed to provide the Ponzi-scheme assertion. The "investigative purposes" exception applies to the rest of the Information, but not to the Ponzi-scheme assertion.

D. The "Erroneous Information" Issue

The parties devote sections of their briefs to arguments on the question of whether the Ponzi-scheme allegation was erroneous and whether erroneousness is relevant. Supp. Memo. at 18-19, Opp. Memo. at 33-37, Reply Memo. at 17-18. Usefully, the parties are in agreement that the issue of erroneousness is irrelevant to the question of whether the IRS violated Section 6103. Opp. Memo. at 33, Reply Memo. at 17. They are correct. In consequence, the Court need not address this issue further.

IV. CONCLUSION

The Court finds that the IRS did not violate Section 6103 when it included in the Letters the identification of Plaintiffs, the investigation assertion, and the sham-transaction assertion. It was permitted to do so under both the "own information" exception and the "investigatory purposes" exception. However, the Court finds that these exceptions did not cover the IRS's assertion that the Stock to Cash program was a Ponzi scheme. Defendant's explanation for the IRS's reason for including that assertion is weak, and is contradicted by the fact that the IRS did not find it necessary to include that assertion in later versions of the preliminary notification letter.

Defendant's Motion for Summary Judgment [Doc. 28] is GRANTED as to all disclosed information other than the assertion that the purported loans in the Stock to Cash program were "built into a Ponzi scheme," and DENIED as to that assertion. Plaintiffs are instructed to file, no later than July 3, 2012, a statement as to whether they intend to pursue to trial the claim with respect to the "Ponzi scheme" assertion, which is now the only claim remaining in this action, and if so, a statement and explanation of the damages they seek.

It is SO ORDERED.
Dated: New Haven, Connecticut
June 4, 2012

/s/ Charles S. Haight, Jr.
Charles S. Haight, Jr.
Senior United States District Judge

FILED

JUN 04 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ESTATE OF GERTRUDE H. SAUNDERS, Deceased; et al., Petitioners - Appellants, v. COMMISSIONER OF INTERNAL REVENUE, Respondent - Appellee.	No. 12-70323 Tax Ct. No. 10957-09 ORDER

Appellants' motion for an extension of time to file the opening brief is granted. The opening brief is due August 29, 2012. The answering brief is due September 28, 2012. The optional reply brief is due within 14 days after service of the answering brief.

For the Court:

MOLLY C. DWYER
Clerk of the Court

Linda K. King
Deputy Clerk
Ninth Cir. R. 27-7/Advisory Note to Rule 27
and Ninth Circuit Rule 27-10

Lking/5.28.12/lkk/Pro Mo

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF LOUISIANA

IN RE: REGINALD L. FRANCIS, JR.
TANESHA B. FRANCIS
DEBTORS

CASE NO. 12-10126
CHAPTER 13

ORDER

Considering the debtors' motion to withdraw Objection to Claim #4 of the Internal Revenue Service,

IT IS ORDERED that the debtor's Objection to Claim #4 is withdrawn.

Baton Rouge, Louisiana, June 4, 2012.

s/ Douglas D. Dodd
DOUGLAS D. DODD
UNITED STATES BANKRUPTCY JUDGE

Notice Recipients

District/Off: 053N−3	User: rcal	Date Created: 6/4/2012
Case: 12−10126	Form ID: pdf801	Total: 9

Recipients of Notice of Electronic Filing:

ust	U.S. Trustee	ustp.region05@usdoj.gov
tr	Annette C. Crawford	crawfordtrustee@annettecrawford.com
aty	Cris Jackson	cjackson@jacksonmcpherson.com
aty	Derren S. Johnson	derrenjohnson@aol.com
aty	James P. Thompson	jay.thompson@usdoj.gov
aty	John C. Morris, IV	ljacob@creditorlawyers.com

TOTAL: 6

Recipients submitted to the BNC (Bankruptcy Noticing Center):

db	Reginald L. Francis, Jr.	5147 Salinger Drive	Darrow, LA 70725
db	Tanesha Bledsoe Francis	5147 Salinger Drive	Darrow, LA 70725
cr	Dept of Treas/IRS United States of America	James Thompson, AUSA	777 Florida Blvd., Ste. 208 Baton Rouge, LA 70801

TOTAL: 3

NOT FOR PUBLICATION **CLOSED**

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CLYDE FRASER,	Hon. Faith S. Hochberg, U.S.D.J.
Plaintiff,	Civil Case No. 12-1129 (FSH) (PS)
v.	**ORDER**
INTERNAL REVENUE SERVICE,	Date: May 4, 2012
Defendant.	

HOCHBERG, District Judge:

This matter having come before the Court upon *pro se* Plaintiff's application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915; and

this Court having denied Plaintiff's application to proceed *in forma pauperis* for failure to file a supporting affidavit; and

this Court having ordered Plaintiff to pay the $350 filing fee required by 28 U.S.C. § 1914(a) to the Clerk's office by June 1, 2012, and the Court having cautioned Plaintiff that failure to pay the fee would result in the Court deeming the Complaint withdrawn; and

it appearing that Plaintiff has not paid the filing fee;

IT IS on this 4th day of June, 2012,

ORDERED that Plaintiff's Complaint is deemed withdrawn; and it is further

ORDERED that this case is **DISMISSED**; and it is further

ORDERED that this case is **CLOSED**.

/s/ Faith S. Hochberg___________
Hon. Faith S. Hochberg, U.S.D.J.

ENTERED
06/04/2012

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE)
FROSENI PROPERTIES, INC.,) CASE NO. 12-32265-H3-11
)
Debtor)

ORDER TRANSFERRING CASE

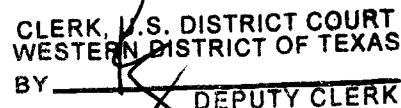
The above captioned bankruptcy proceeding is transferred to Judge Karen K. Brown, per her request, and the involvement of Judge Letitia Z. Paul is terminated.

It is so ORDERED.

SIGNED at Houston, Texas this 4th day of June, 2012.

LETITIA Z. PAUL
UNITED STATES BANKRUPTCY JUDGE

FILED



JUN -4 2012
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ANA NILA GARCIA DeBECK, Individually And as Owner and Officer; AGB ENTERPRISES, INC.; SAN ANTONIO DENTAL MANAGEMENT GROUP; and SAN ANTONIO DENTAL LABORATORY, Plaintiff and Third-Party Defendants,	§	
v.	§	
UNITED STATES OF AMERICA, Defendant, Counter-Plaintiff and Third-Party Plaintiff,	§	**CIVIL NO. SA-11-CA-45-FB**
v.	§	
DR. ROBERT LEE BECK, D.M.D., M.D.; McFADIN FAMILY LIMITED PARTNERSHIP; JB VEGA CORPORATION; INTERVEST INTERNATIONAL FOUNDATION OF STOCKHOLM, SWEDEN; and BEXAR COUNTY, Third-Party Defendants	§	

ORDER GRANTING
THIRD-PARTY DEFENDANT, J.P. VEGA, UNOPPOSED MOTION TO EXTEND DEADLINE TO RESPOND TO DEFENDANT AND THIRD PARTY'S PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND INCREASE PAGE LIMIT FOR ITS RESPONSE

Before the Court is the ~~unopposed~~ Third Party Defendant, J.P. Vega, Unopposed Motion to Extend Deadline to Respond to Defendant/Third-Party Plaintiff's Motion for Partial Summary Judgment and Increase Page Limit to extend the deadline to June 22, 2012 and to increase to 35 pages the page limit for its response to Defendant/Third Party Plaintiff's Motion for Partial Summary Judgment [Docket #114]. The Court is of the opinion that the motion should be GRANTED.

IT IS THEREFORE ORDERED that the deadline for the response of Third-Party Defendant Vega, to Defendant/Third Party Plaintiff's Motion for Partial Summary Judgment is extended to and including Friday, June 22, 2012, and the page limit for its response is increase to thirty-five pages, exclusive of any appendix with the response.

SIGNED this 4 day of June, 2012

UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES F. GORDON, et al.,

Plaintiffs,

v. **Case No. 8:11-cv-2852-T-30TGW**

UNITED STATES OF AMERICA,

Defendant.
_______________________________________/

ORDER

THIS CAUSE comes before the Court upon the United States of America's motion to dismiss (Dkt. 6), plaintiffs' response in opposition (Dkt. 9), plaintiffs' amended motion for leave to file second amended complaint (Dkt. 12), and the United States' response in opposition to plaintiffs' motion to amend (Dkt. 13). The Court, having considered the motions, responses, and being otherwise advised of the premises, concludes that the United States' motion to dismiss should be granted, and plaintiffs' claims dismissed with prejudice.

BACKGROUND

On December 28, 2011, plaintiffs James F. Gordon and Christine S. Gordon filed their original complaint in this matter. They asserted that they were entitled to a refund of federal income taxes paid for the year 2010 by virtue of a joint income tax return they filed for that year. That return claimed that a refund of $2,513 was due to them but had not been paid by the IRS. The Gordons purported to bring the case as a class action. On January 9, 2012, the IRS refunded the amount the Gordons claimed on their 2010 return, plus accrued interest.

On February 3, 2012, the Gordons, joined by an additional plaintiff, Crystal Lake, filed their first amended complaint. Lake claimed that she had filed a federal income tax return for the year 2010 showing a refund of $1,204 due to her, but the IRS had not paid her the refund to which she was entitled. All three plaintiffs purported to maintain the case as a class action. On February 15, 2012, the IRS refunded the amount due to Lake for the 2010 tax year, plus accrued interest.

On March 27, 2012, plaintiffs filed a motion to certify class. The allegations in support of plaintiffs' class-action is that they have been victims of identity theft, whereby persons unknown had filed fraudulent tax returns in their names before they filed their own, valid returns. As a result, they assert that the IRS has improperly delayed the payment of refunds to which they are entitled and has unreasonably required them to submit documentation to multiple federal agencies in support of their claims.

This case is at issue upon the United States' dispositive motion to dismiss. The United States argues that the claims of the named plaintiffs are moot; the refunds they claimed have been paid in full. The Court agrees.

DISCUSSION

Courts do not have jurisdiction to hear tax refund claims unless there exists an actual case or controversy at all stages of the case. *Christian Coalition of Florida, Inc. v. U.S.*, 662 F.3d 1182, 1188-90 (11th Cir. 2011).

Plaintiffs do not dispute in their response to the United States' motion to dismiss that their claims are moot. Rather, plaintiffs attempt to survive dismissal of this case by moving

to amend their complaint to add new representative plaintiffs. Plaintiffs contend that each of these new representative plaintiffs are in the identical situation as the current plaintiffs, in that each attempted to file their tax return, each of their returns were rejected, the cause of each rejection was the fraudulent filing of a tax return by a third party, each plaintiff is due a refund, and the IRS is refusing to pay the refund. Plaintiffs argue that each time a plaintiff is named in this action, the United States "fast-tracks" the income tax refund, thereby attempting to make the action moot. (Dkt. 9). Plaintiffs contend that Rule 15(a) of the Federal Rules of Civil Procedure allows plaintiffs to amend their complaint "by leave of court" and directs that "leave shall be freely given when justice so requires."

The Court concludes that the United States' motion to dismiss must be granted because plaintiffs' claims against it are moot. Although the Court is well-aware of the dictates of Rule 15 and Eleventh Circuit law that a district court should allow liberal amendment to facilitate determinations of claims on the merits, plaintiffs overlook the fact that, upon their dismissal, this Court does not have subject matter jurisdiction over this case. Notably, the Eleventh Circuit has held that when a plaintiff loses his standing to assert a claim, he does not retain standing to control the litigation by substituting new plaintiffs. *See Wright v. Dougherty County, Ga.*, 358 F.3d 1352, 1356 (11th Cir. 2004); *see also Summit Office Park, Inc. v. United States Steel Corp.,* 639 F.2d 1278, 1282 (5th Cir.1981); *TXCAT v. Phoenix Group Metals*, *LLC*, 2010 WL 5186824, at *3 (S.D. Tex. 2010) (citing cases holding that a plaintiff's "lack of standing precludes him from amending the complaint to substitute new plaintiffs" and "divests [the district court] of subject matter jurisdiction

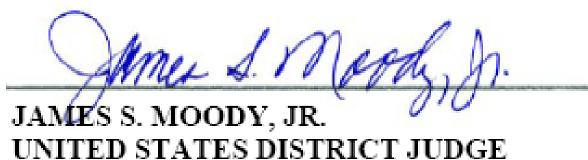
necessary to even consider such a motion"); *Lawrence v. Household Bank (SB), N.A.*, 505 F. Supp. 2d 1279, 1285 (M.D. Ala. 2007).

Simply put, the dismissal of plaintiffs divests the Court of subject matter jurisdiction and divests plaintiffs of the ability to request amendment of the complaint to add additional plaintiffs.[1]

It is therefore ORDERED AND ADJUDGED that:

1. The United States of America's motion to dismiss (Dkt. 6) is GRANTED. Plaintiffs' claims are dismissed with prejudice.
2. Plaintiffs' Amended Motion for Leave to File Second Amended Complaint (Dkt. 12) is DENIED.
3. This action is dismissed and the Clerk of Court is directed to CLOSE this case.
4. Plaintiffs' Motion to Certify Class (Dkt. 5) and the Joint Motion for Miscellaneous Relief (Dkt. 14) are terminated as MOOT.

DONE and **ORDERED** in Tampa, Florida on June 4, 2012.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

S:\Even\2011\11-cv-2852.mtdismiss6.frm

[1] Notably, plaintiffs filed their motion to certify the class after each one of them had received their refund, including interest, from the IRS.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SAM MATRANGA,

Plaintiff, No. CIV S-11-1604 MCE DAD PS

v.

INTERNAL REVENUE SERVICE, FINDINGS AND RECOMMENDATIONS

Defendant.

_______________________________/

This matter came before the court on November 18, 2011, for hearing of defendant's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.[1] Attorney Aaron Bailey appeared telephonically on behalf of the defendant. Plaintiff, Sam Matranga, proceeding pro se and in forma pauperis, appeared on his own behalf. Oral argument was heard, and defendant's motion was thereafter taken under submission.

/////

/////

[1] Though plaintiff has named the Internal Revenue Service as the defendant in this action, the United States is the proper defendant in an action seeking the recovery of a civil tax refund. See, e.g., Grossman v. C.I.R., 687 F. Supp. 1401, 1402 (N.D. Cal. 1987) (citing 26 U.S.C. § 7422(f)(1)), aff'd, 852 F.2d 1289 (9th Cir. 1998).

BACKGROUND

Plaintiff commenced this action on June 14, 2011, by filing his complaint. (Compl. (Doc. No. 1)). Therein, plaintiff alleges that the defendant is improperly withholding from him a tax refund in the amount of $11,704 "on non taxable disability income." (Id. at 1.[2])

On September 29, 2011, defendant filed the motion to dismiss now pending before the court pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) on the grounds that this court lacks jurisdiction over the subject matter of this suit and that plaintiff has failed to state a cognizable claim upon which relief can be granted. (MTD (Doc. No. 8-1) at 3.) Specifically, defendant argues that plaintiff has failed to allege that the defendant has waived its sovereign immunity. (Id. at 3-4.) Moreover, counsel for defendant argues that plaintiff's complaint is so sparse with respect to its factual allegations as to fail to state a claim upon which relief can be granted. (Id. at 4-6.)

On November 3, 2011, plaintiff filed an opposition stating that he opposes defendant's motion and claiming to have evidence in support of his refund claim, but failing to address the specific arguments raised by defendant's motion. (Pl.'s Opp'n. (Doc. No. 13) at 1.) At the November 18, 2011 hearing before the undersigned, plaintiff claimed to have a letter from the Internal Revenue Service that was relevant to the resolution of defendant's motion. Plaintiff was ordered to serve a copy of the letter on counsel for defendant and to file the letter with the court forthwith. Plaintiff filed a copy of the letter the same day. (Doc. No. 15.) On December 1, 2011, defendant filed a supplemental brief addressing the letter filed by plaintiff. (Doc. No. 16.)

LEGAL STANDARDS APPLICABLE TO DEFENDANT'S MOTION

I. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(1)

In moving to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), the challenging party may either make a facial attack on the

[2] Page number citations such as this one are to the page number reflected on the court's CM/ECF system and not to page numbers assigned by the parties.

1 allegations of jurisdiction contained in the complaint or can instead take issue with subject matter
2 jurisdiction on a factual basis. Thornhill Publ'g Co. v. Gen. Tel. & Elect. Corp., 594 F.2d 730,
3 733 (9th Cir. 1979); Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3rd Cir.
4 1977). If the motion constitutes a facial attack, the court must consider the factual allegations of
5 the complaint to be true. Williamson v. Tucker, 645 F.2d 404, 412 (5th Cir. 1981); Mortensen,
6 549 F.2d at 891. If the motion constitutes a factual attack, however, "no presumptive
7 truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will
8 not preclude the trial court from evaluating for itself the merits of jurisdictional claims."
9 Thornhill, 594 F.2d at 733 (quoting Mortensen, 549 F.2d at 891). The court may properly
10 consider extrinsic evidence in making that determination. Velasco v. Gov't of Indon., 370 F.3d
11 392, 398 (4th Cir. 2004).[3]
12 II. Legal Standards Applicable to Motions to Dismiss Pursuant to Rule 12(b)(6)
13 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
14 sufficiency of the complaint. N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir.
15 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of
16 sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901
17 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege "enough facts to state a claim to
18 relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A
19 defendant's Rule 12(b)(6) motion challenges the court's ability to grant any relief on the
20 plaintiff's claims, even if the plaintiff's allegations are true.
21 In determining whether a complaint states a claim on which relief may be granted,
22 the general rule is that the court accepts as true the allegations in the complaint and construes the
23 allegations in the light most favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69,
24 73 (1984); Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court need
25

26 [3] Here defendant has mounted a facial attack on plaintiff's complaint.

1 not assume the truth of legal conclusions cast in the form of factual allegations. W. Mining
2 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). The court is permitted to consider material
3 which is properly submitted as part of the complaint, documents not physically attached to the
4 complaint if their authenticity is not contested and the plaintiff's complaint necessarily relies on
5 them, and matters of public record. Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir.
6 2001). Finally, pro se complaints may be held to less stringent standards than formal pleadings
7 drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

8 ANALYSIS

9 Jurisdiction is a threshold inquiry that must precede the adjudication of any case
10 before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization,
11 858 F.2d 1376, 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may
12 adjudicate only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511
13 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992).[4] "Federal courts are
14 presumed to lack jurisdiction, 'unless the contrary appears affirmatively from the record.'"
15 Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch.
16 Dist., 475 U.S. 534, 546 (1986)).

17 Lack of subject matter jurisdiction may be raised by the court at any time during
18 the proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th
19 Cir. 1996). A federal court "ha[s] an independent obligation to address sua sponte whether [it]
20 has subject-matter jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It
21 is the obligation of the district court "to be alert to jurisdictional requirements." Grupo Dataflux
22 v. Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court
23 cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.
24

25 [4] Congress has conferred jurisdiction upon the federal district courts as limited by the
United States Constitution. U.S. Const. Art. III, § 2; 28 U.S.C. § 132; see also Ankenbrandt v.
26 Richards, 504 U.S. 689, 697-99 (1992).

The burden of establishing jurisdiction rests upon plaintiff as the party asserting jurisdiction. Kokkonen, 511 U.S. at 377; see also Hagans v. Lavine, 415 U.S. 528, 543 (1974) (acknowledging that a claim may be dismissed for lack of jurisdiction if it is "so insubstantial, implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court"); Bell v. Hood, 327 U.S. 678, 682-83 (1946) (recognizing that a claim is subject to dismissal for want of jurisdiction where it is "wholly insubstantial and frivolous" and so patently without merit as to justify dismissal for lack of jurisdiction); Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th Cir. 1984) (holding that even "[a] paid complaint that is 'obviously frivolous' does not confer federal subject matter jurisdiction . . . and may be dismissed sua sponte before service of process.").

Here, plaintiff's entire complaint consists of one paragraph. That allegations found in that paragraph fail to address any basis for this court's jurisdiction. However, the Civil Cover Sheet filed with the complaint indicates that the claimed basis of subject matter jurisdiction for this action is the presence of the U.S. Government as a party.[5] (Doc. No. 1-1 at 1.) The undersigned notes that plaintiff has sued a federal agency of the United States.

However, "[t]he basic rule of federal sovereign immunity is that the United States cannot be sued at all without the consent of Congress." Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands, 461 U.S. 273, 287 (1983). Similarly, no federal agency can be sued unless Congress has explicitly revoked that agency's immunity. Gerritsen v. Consulado General de Mexico, 989 F.2d 340, 343 (9th Cir. 1993); City of Whittier v. U.S. Dep't of Justice, 598 F.2d 561, 562 (9th Cir. 1979). Put another way, no court has jurisdiction to award relief against the United States or a federal agency unless the requested relief is expressly and unequivocally authorized by federal statute. United States v. King, 395 U.S. 1, 4 (1969) (citing United States v. Sherwood, 312 U.S. 584, 586-87 (1941)).

---

[5] Plaintiff's Civil Cover Sheet erroneously indicates that the U.S. Government is the plaintiff, as opposed to the defendant, in this action.

1 "The question whether the United States has waived its sovereign immunity
2 against suits for damages is, in the first instance, a question of subject matter jurisdiction."
3 McCarthy, 850 F.2d at 560. Absent a waiver of sovereign immunity, a claim against the United
4 States or a federal agency must be dismissed for lack of subject matter jurisdiction. See
5 Gerritsen, 989 F.2d at 343; Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985). If
6 conditions are attached to legislation that waives the sovereign immunity of the United States, the
7 conditions must be strictly observed by the courts, and exceptions are not to be readily implied.
8 Block, 461 U.S. at 287. See also Cato v. United States, 70 F.3d 1103, 1107 (9th Cir. 1995)
9 ("The terms of the United States' consent to be sued in any court define that court's jurisdiction
10 to entertain the suit.").
11 Accordingly, in order to bring an action against the United States, there must be:
12 (1) statutory authority vesting a district court with subject matter jurisdiction; and (2) a waiver of
13 sovereign immunity. United States v. Park Place Associates, Ltd., 563 F.3d 907, 923-24 (9th Cir.
14 2009); see also Alvarado v. Table Mountain Rancheria, 509 F.3d 1008, 1016 (9th Cir. 2007).
15 Even where a statute creates subject matter jurisdiction over a case, that statute may not
16 necessarily waive sovereign immunity. Park Place Associates, 563 F.3d at 924 (citing Arford v.
17 United States, 934 F.2d 229, 231 (9th Cir. 1991) (holding that 28 U.S.C. § 1340 created subject
18 matter jurisdiction, but "[did] not constitute a waiver of sovereign immunity.")) Waivers of
19 sovereign immunity cannot be implied, must be unequivocally expressed, and are to be strictly
20 construed in favor of the sovereign. Dunn & Black P.S.v. United States, 492 F.3d 1084, 1088
21 (9th Cir. 2007). The burden is on the party bringing the action against the United States to
22 establish both elements of subject matter jurisdiction; where it has failed to do so, "dismissal of
23 the action is required." Id.
24 Here, as noted above, plaintiff's complaint is one paragraph and reads in its
25 entirety as follows:
26 /////

> I, Sam Matranga, wish to file a complaint to the United States District Court. This complaint is to appeal a decision made by the Internal Revenue Service regarding an amount paid to the IRS of $11,704 on non taxable disability income. An amended return was filed as soon as the County of Sacramento SCERS informed Service Connected retroactive Disability Retirement recipients. The IRS issued a letter to taxpayer, myself Sam Matranga, accepting the amended return as filed and promising a refund to be paid within three to four weeks of May 26, 2010. The refund was never sent. After numerous attempts to collect the monies from IRS I was informed that my claim for refund was now denied.
>
> I am filing this claim within the two year period.

(Compl. (Doc. No. 1) at 1.)

Thus, the allegations of plaintiff's complaint do not address, let alone establish, either element of subject matter jurisdiction. The undersigned notes that plaintiff's November 3, 2011 opposition to defendant's motion to dismiss also fails to address the issue of subject matter jurisdiction. Accordingly, defendant's motion to dismiss could be granted for this reason alone.

Moreover, even viewing the allegations found in the complaint in the light most favorable to plaintiff as a claim for a tax refund, it appears this court would still lack subject matter jurisdiction over the action. In this regard, although 28 U.S.C. § 1346(a)(1) waives the sovereign immunity of the United States with respect to suits seeking recovery of a tax refund, Imperial Plan, Inc. v. United States, 35 F.3d 25, 26 (9th Cir. 1996), that waiver is subject to certain conditions. One such condition is set forth in 26 U.S.C. § 7422(a), which states that:

> No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected . . . until a claim for refund or credit has been duly filed with the Secretary or his delegate, according to the provisions of law in that regard and the regulations of the Secretary or his delegate established in pursuance thereof.

26 U.S.C. § 7422(a). See also United States v. Clintwood Elkhorn Mineral Co., 553 U.S. 1, 4 (2008) (citing 26 U.S.C. § 7422(a) and stating that "a claim for a refund must be filed with the Internal Revenue Service (IRS) before suit can be brought"). Moreover, under 26 U.S.C. § 6511(a), an action for a refund must be "must be filed within three years of the filing of a return

or two years of payment of the tax, whichever is later." Clintwood Elkhorn Mining Co., 553 U.S. at 4.

In short, a taxpayer seeking a tax refund must submit a claim for a refund before filing a lawsuit. Such a claim must be filed within three years after the return was filed or two years after the tax was paid. See United States v. Dalm, 494 U.S. 596, 602 (1990) ("Read together, the import of these sections is clear: unless a claim for refund of a tax has been filed within the time limits imposed by § 6511(a), a suit for refund . . . may not be maintained in any court.").

Here, plaintiff's complaint does not address when the tax return at issue was filed or when the tax at issue was paid. In moving to dismiss, however, defendant contends that plaintiff is seeking a refund with respect to his 2004 tax liability. That contention is consistent with the November 18, 2011 letter plaintiff has filed with the court, which concerns plaintiff's 2004 tax liability.[6] (Doc. No. 15 at 1.) However, according to defendant's records, plaintiff filed his original return for the 2004 tax year on June 1, 2005, made his last payment on his 2004 tax liability on October 16, 2006, and filed his amended 2004 federal income tax return (claiming a refund) on April 10, 2009. (Gradillas Decl. (Doc. No. 8-2) at 2.) In this regard, plaintiff's April 10, 2009 amended 2004 federal income tax return, which asserted a claim for a refund, was neither filed within three years of the filing of his 2004 tax return nor within two years after the

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[6] When considering a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), the district court is not restricted to the face of the pleadings and "may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (collecting cases), cert. denied, 489 U.S. 1052, (1989); see also Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003) ("A jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or by presenting extrinsic evidence.").

last payment on that tax liability was made.[7]

Accordingly, for the reasons stated above, defendant's motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(1) should be granted.[8]

LEAVE TO AMEND

The court has carefully considered whether plaintiff may amend his complaint to establish a jurisdictional basis for proceeding in federal court and to state a cognizable federal claim upon which relief could be granted. "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to allow futile amendments). In light of the nature of the allegations and the deficiency noted above, the undersigned finds that it would be futile to grant plaintiff leave to amend. Accordingly, the undersigned will recommend that this action be dismissed with prejudice.

---

[7] The court notes that the letter filed by plaintiff with the court on November 18, 2011, is a letter dated May 18, 2011, from an Appeals Officer with the Internal Revenue Service. That letter states that with respect to plaintiff's 2004 tax liability, "there is no basis to allow any part" of plaintiff's claim "for abatement and/or refund of taxes," but that plaintiff "may pursue this matter further by filing suit in . . . the United States District Court . . ." (Doc. No. 15 at 1.) While it is understandable that this statement could lead plaintiff to conclude that he could proceed with this action without facing any jurisdictional hurdles, the statement by the Appeals Officer does not constitute a waiver of the sovereign immunity of the United States. See United States v. Dalm, 494 U.S. 596, 610 (1990) ("If any principle is central to our understanding of sovereign immunity, it is that the power to consent to such suits is reserved to Congress."); United States v. Michel, 282 U.S. 656, 659 (1931) ("But it is also well established that suit may not be maintained against the United States in any case not clearly within the terms of the statute by which it consents to be sued."); Dunn & Black P.S.v. United States, 492 F.3d 1084, 1088 (9th Cir. 2007) (the party asserting a waiver of sovereign immunity bears "the burden of establishing that its action falls within an unequivocally expressed waiver of sovereign immunity by Congress . . ."); Committee for Immigrant Rights of Sonoma County v. County of Sonoma, 644 F. Supp.2d 1177, 1192 (N.D. Cal. 2009) ("It is well-established that the United States is entitled to sovereign immunity from any claim for damages unless immunity has been explicitly waived by Congress.").

[8] In light of this recommendation the court need not address defendant's other argument in support of dismissal of plaintiff's complaint.

1 CONCLUSION

2 For the reasons set forth above, IT IS RECOMMENDED that:

3 1. Defendant's September 29, 2011 motion to dismiss (Doc. No. 8) be granted

4 pursuant to Federal Rule of Civil Procedure 12(b)(1); and

5 2. This action be dismissed for lack of subject matter jurisdiction.

6 These findings and recommendations are submitted to the United States District

7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within twenty-

8 one days after being served with these findings and recommendations, any party may file written

9 objections with the court and serve a copy on all parties. Such a document should be captioned

10 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

11 shall be served and filed within seven days after service of the objections. The parties are

12 advised that failure to file objections within the specified time may waive the right to appeal the

13 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: June 1, 2012.

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DISTRICT OF OREGON
FILED
June 04, 2012
Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.

TRISH M. BROWN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re Stephen Miles Munson, Debtor.	Case No. 10-39795-tmb11 ORDER SHORTENING OBJECTION PERIOD ON PRECAUTIONARY NOTICE OF INTENT TO SELL TRAILER

This matter came before the Court on Stephen Miles Munson's ("Debtor") Motion to Shorten Objection Period on Precautionary Notice of Intent to Sell Trailer. After reviewing the Motion and Declaration of Tara J. Schleicher, and the Court being fully advised in the premises, it is hereby

ORDERED that the objection period on the Precautionary Notice of Intent to Sell Trailer is shortened to ten (10) days.

# # #

PRESENTED BY:

FARLEIGH WADA WITT

By: /s/ Tara J. Schleicher
Tara J. Schleicher, OSB #954021
tschleicher@fwwlaw.com
(503) 228-6044
Of Attorneys for Debtor

cc: Interested Parties

FARLEIGH WADA WITT
Attorneys at Law
121 SW Morrison Street, Suite 600
Portland, Oregon 97204-3136
Telephone: (503) 228-6044
Facsimile: (503) 228-1741

DISTRICT OF OREGON
FILED
June 04, 2012
Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.

TRISH M. BROWN
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re Stephen Miles Munson, Debtor.	Case No. 10-39795-tmb11 ORDER SHORTENING OBJECTION PERIOD ON PRECAUTIONARY NOTICE OF INTENT TO SELL TRAILER

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# # #

PRESENTED BY:

FARLEIGH WADA WITT

By: /s/ Tara J. Schleicher
Tara J. Schleicher, OSB #954021
tschleicher@fwwlaw.com
(503) 228-6044
Of Attorneys for Debtor

cc: Interested Parties

FARLEIGH WADA WITT
Attorneys at Law
121 SW Morrison Street, Suite 600
Portland, Oregon 97204-3136
Telephone: (503) 228-6044
Facsimile: (503) 228-1741

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

UNITED STATES OF AMERICA, Plaintiff, v. PAYSOURCE LLC, et al., Defendants.	ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT DOUGLAS MORBY Case No. 2:03-cv-306 TC District Judge Tena Campbell Magistrate Judge Brooke Wells

Before the Court is attorney Addison Larreau's Motion to Withdraw as Counsel for Defendant Douglas C. Morby.[1] Mr. Larreau filed the motion on May 8, 2012, there has been no opposition filed and the time to do so has now passed.[2] Mr. Larreau states that the reason for this motion is his inability to contact Mr. Morby despite repeated efforts via email and phone calls. "Counsel has not heard from Mr. Morby since April, 2011."[3]

Having considered Mr. Larreau's motion and finding good cause appearing therefore, and on account of no opposition being filed, it is hereby

ORDERED that the Motion to Withdraw is GRANTED.

IT IS FURTHER ORDERED that Mr. Morby is to have new counsel enter an appearance on the record within twenty-one (21) days from the date of this order. If no substitution of counsel is filed within that time Mr. Morby must personally enter an appearance on the record

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[1] Docket no. 351.

[2] *See* DUCivR. 7-1(d) (2011) ("Failure to respond timely to a motion may result in the court's granting the motion without further notice.").

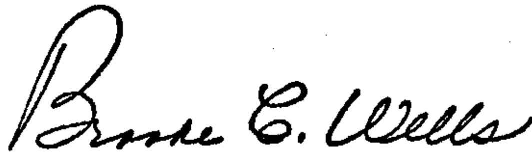
[3] Mtn p. 2.

within that same time frame or be subject to sanction pursuant to Federal Rule of Civil Procedure 16(f)(1), including but not limited to fines, dismissal or default judgment.

In addition to acting individually, it appears Mr. Morby is also acting as trustee for Omega Resources Group Trust and Timpview Marketing Trust. Pursuant to local Rule 83-1.3, no corporation, associating, partnership, limited liability company or other artificial entity may appear pro se; rather, they must be represented by an attorney who is admitted to practice in this Court. Therefore, if necessary, Mr. Morby is FURTHER ORDERED to obtain the services of an attorney on behalf of these entities within twenty-one (21) days from the date of this order.

IT IS SO ORDERED.

DATED this 1 June 2012.



Brooke C. Wells
United States Magistrate Judge

ORDERED in the Southern District of Florida on May 31, 2012.

Laurel M. Isicoff, Judge
United States Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MICHAEL L. PETERSEN	)	
	)	
Debtor.	)	Bk. No. 10-26600-LMI
	)	
	)	Chapter 7
______________________________	)	
	)	
MICHAEL L. PETERSEN	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 10-03795-LMI
	)	
UNITED STATES OF AMERICA,	)	
DEPARTMENT OF TREASURY,	)	
INTERNAL REVENUE SERVICE	)	
	)	
Defendant.	)	

FINAL JUDGMENT

On March 29-30, 2012, the Court held a non-jury trial in this matter to determine whether debtor/plaintiff Michael Petersen's tax liabilities for the 1994 through 2001 tax years were excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(C). For the reasons set forth in the

Court's Memorandum Opinion on Final Judgment in Favor of the Defendant (Doc. 75) dated May 25, 2012, it is hereby

ORDERED AND ADJUDGED that judgment is entered in favor of the defendant United States of America. Accordingly, Michael Petersen's tax liabilities for the 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001 tax years are excepted from discharge pursuant to 11 U.S.C. § 523(a)(1)(C).

# # #

Submitted by:

Thomas K. Vanaskie
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Copies furnished to:

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Washington, D.C. 20044

Attorney for Debtor/Plaintiff:
James B. Miller
19 West Flagler Street, Suite 416
Miami, FL 33130

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2012 JUN 4 AM 11 04
STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHOENIX FUEL CORPORATION *et al.*,

Defendants.

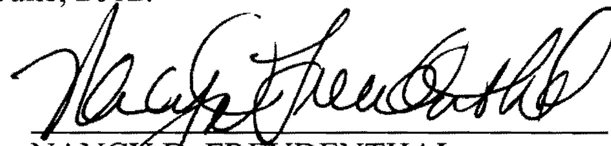
Case No. 11-CV-132-F

ORDER GRANTING ADMISSION PRO HAC VICE

This matter is before the Court on a motion filed by John Kuker, seeking permission for Mark L. Bryant to appear pro hac vice on behalf of Defendants Thomas L. Perkins and Phoenix Fuel Corporation. The Court has reviewed the motion and is fully informed.

Mr. Bryant has complied with the requirements of U.S.D.C.L.R. 83.12.2. Accordingly, IT IS ORDERED that Mr. Bryant is admitted to practice before this Court, subject to all the conditions provided in U.S.D.C.L.R. 83.12.2.

Dated this 4 day of June, 2012.



NANCY D. FREUDENTHAL
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, Plaintiff, vs. James Leslie Reading, et al., Defendants.	No. CV 11-00698-PHX-FJM **ORDER**

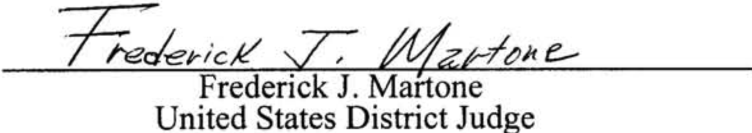
We have before us James Leslie Reading, Clare L. Reading, and Fox Group Trust's unopposed motion to extend time to respond to complainant's motion for summary judgment and for leave to exceed page limits (doc. 69). The moving defendants request an additional three weeks to respond to plaintiff's motion for summary judgment, but one week should be sufficient.

Defendants also seek an unspecified number of additional pages. LRCiv 7.2 limits the length of motions, responses, and replies for a good reason. Brevity promotes clarity. We rely on lawyers to present us only with what is absolutely essential for us to understand the issue.

IT IS ORDERED GRANTING in part and **DENYING** in part defendants' motion to extend time and for leave to exceed page limits (doc. 69). Defendants shall file their

response to plaintiff's motion for summary judgment on or before June 21, 2012. Defendants' response shall not exceed 17 pages.

DATED this 1st day of June, 2012.



Frederick J. Martone
United States District Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

GREGORY C. ROCHE, D.O., P.C.[1],	Chapter 11 Case No. 10-65749-SWR Honorable Steven W. Rhodes
Debtor.	(Jointly Administered)

ORDER APPROVING FIRST AND FINAL FEE APPLICATION OF COUNSEL OF DEBTORS-IN-POSSESSION
FOR THE PERIOD AUGUST 1, 2010 THROUGH MARCH 22, 2012

Steinberg Shapiro & Clark filed and served on interested parties a first and final application for attorney fees and expenses. No objections were timely filed. The court has reviewed the application and is satisfied that benefits were conferred on the estate by the services rendered.

IT IS ORDERED as follows:

A. Steinberg Shapiro & Clark's first and final fee application is approved in the following amounts:

Fees $119,985.50
Expenses $5,530.13

B. Under this Court's Order dated 10/7/10, Steinberg Shapiro & Clark has already been paid $81,446.12 of the $119,985.50 in fees owed to it.

C. As a result, the Debtor-In-Possession may now pay the balance of $38,539.38 for fees.

D. Under this Court's Order dated 10/7/10, Steinberg Shapiro & Clark has already been paid $5,465.38 of the $5,530.13 in expenses owed to it.

[1]The Debtors in these jointly administered proceedings are: Gregory C. Roche and Bonnie L. Roche, Case No. 10-65754-SWR and Gregory C. Roche, D.O., P.C.

E. As a result, the Debtor-In-Possession may now pay the balance of $64.75 for expenses.

Signed on June 04, 2012

/s/ Steven Rhodes

Steven Rhodes
United States Bankruptcy Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

VANESSA SHAW,

Petitioner,

-vs- **Case No. 2:11-cv-481-FtM-99SPC**

UNITED STATES OF AMERICA,

Respondent.
_______________________________________/

JUDGMENT IN A CIVIL CASE

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order entered on June 1, 2012, judgment is entered for Respondent.

Date: June 4, 2012

SHERYL L. LOESCH, CLERK

By: /s/ Dianne Nipper, Deputy Clerk

c: All parties and counsel of record

CIVIL APPEALS JURISDICTION CHECKLIST

1. **Appealable Orders**: Courts of Appeals have jurisdiction conferred and strictly limited by statute:

 (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291**: Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge's report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).

 (b) **In cases involving multiple parties or multiple claims**, a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys' fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy's Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).

 (c) **Appeals pursuant to 28 U.S.C. Section 1292(a)**: Appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and from "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed." Interlocutory appeals from orders denying temporary restraining orders are not permitted.

 (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court's denial of a motion for certification is not itself appealable.

 (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541,546,69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass'n v. Blythe Eastman Paine Webber, Inc., 890 F. 2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).

2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:

 (a) **Fed.R.App.P. 4(a)(1)**: A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.

 (b) **Fed.R.App.P. 4(a)(3)**: "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later."

 (c) **Fed.R.App.P.4(a)(4)**: If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.

 (d) **Fed.R.App.P.4(a)(5) and 4(a)(6)**: Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.

 (e) **Fed.R.App.P.4(c)**: If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

3. **Format of the notice of appeal**: Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant

4. **Effect of a notice of appeal**: A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

Below is the Order of the Court.

Brian D. Lynch
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re:

SCOTT EDWARD SHERA

Debtor.

CASE NO. 09-42427

ORDER APPROVING APPLICATONS FOR ADMINISTRATIVE EXPENSES AND AUTHORIZING THIRD INTERIM DISBURSEMENTS

THIS MATTER came on for hearing before the Honorable Brian D. Lynch upon Notice of Filing Third Interim Report and Applications for Compensation; the Trustee, Michael D. Hitt, appeared at the hearing. The court heard the testimony of all persons in appearance; it appearing that the Trustee's Interim Report and Accounting is correct and reasonable in all respects, and that the same should be approved; and, it appearing that the fees requested by the attorney for the estate, and special counsel for the estate are justified and reasonable, and the Court being fully informed; now, therefore, it is hereby,

ORDERED that the disbursements made by the Trustee as set forth in this report are approved and the Third Interim Report and Account of the Trustee is hereby allowed, approved and confirmed; and it is further,

MICHAEL D. HITT, Trustee
P.O. Box 65530
University Place, WA 98464-5530
(253) 212-1130

ORDERED that the fees and expenses of Michael D. Hitt, Trustee, Bankruptcy Trustee, attorneys for the Trustee, and Paul Heneghan, Accountant for Trustee, are approved; and it is further,

ORDERED that the Trustee, Michael D. Hitt, may make the following disbursements:

TOTAL AMOUNT AVAILABLE $236,073.47

100.00% Disbursement to Chapter 7 Costs of Administration

MICHAEL D. HITT, Trustee Compensation	19,898.63
MICHAEL D. HITT, Trustee Expenses	149.81
CLERK OF THE COURT, Clerk of the Court Costs	543.00
MICHAEL HITT, Attorney for Trustee Fees	12,120.00
PAUL HENEGHAN, Accountant for Trustee Fees	825.00
Total Costs of Administration	$33,536.44

TOTAL AMOUNT AVAILABLE $202,537.03
General Unsecured
14.21% Disbursement to Unsecured Claims

Claim No.	Claimant	Allowed Amount	Pro Rata Disbursement
6	GREYSTONE CONDOMINIUM ASSOCATION	1,499.00	212.93
10	HILLIS CLARK MARTIN & PETERSON PS	36,454.50	5,178.55
8A	INTERNAL REVENUE SERVICE	55,310.25	7,857.12
9	PHYSICIANS & DENTISTS CREDIT BUREAU	1,272.05	180.71
11	PUGET SOUND COLLECTIONS	207.50	29.48
1	PUGET SOUND ENERGY	8,878.89	1,261.29
4	RONALD H AND ELIZABETH I COOPER	7,139.00	1,014.14
28	SYDNEY & LESLIE SHERA	1,315,000.00	186,802.81

MICHAEL D. HITT, Trustee
P.O. Box 65530
University Place, WA 98464-5530
(253) 212-1130

Total Allowed General Unsecured Claims:	$1,425,761.19	
Total Disbursement to General Unsecured Creditors:		$202,537.03

/////END OF ORDER/////

Presented by:

/s/ Michael Hitt
Michael D. Hitt, Trustee

MICHAEL D. HITT, Trustee
P.O. Box 65530
University Place, WA 98464-5530
(253) 212-1130

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

ADRIANO TISINO, ET AL.	§	
	§	
V.	§	CIVIL ACTION NO. G-10-244
	§	
DANILO BECERRA, ET AL.	§	

ORDER

On May 16, 2012, the Tisino Plaintiffs filed their "Application for Accounting, or Alternatively, Motion to Compel Discovery" (Instrument no. 469).

It is, therefore, **ORDERED** that any Party opposed to the Motion **SHALL** file a response thereto on or before **June 8, 2012**,

It is further **ORDERED** that any replies to any responses **SHALL** be filed on or before **June 15, 2012**.

It is further **ORDERED** that this Court **WILL** conduct a **Hearing on the Motion on Tuesday, June 26, 2012 at 10:00 a.m.**, at the United States Courthouse, 601 Rosenberg (25th Street), 7th Floor Courtroom, Galveston, Texas.

DONE at Galveston, Texas, this 4th day of June, 2012.

John R. Froeschner
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

WELLS FARGO & COMPANY, et al.,	)	
	)	
Plaintiff,	)	Civil No. 09-cv-02764-PJS-TNL
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

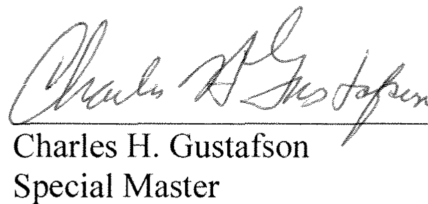
ORDER

WHEREAS, the United States, having requested leave to file a reply in support of its motion to depose Mr. Raymond J. Ruble; and

WHEREAS, there being good cause shown for the granting of such motion;

IT IS HEREBY ORDERED, that the *United States' Unopposed Motion for Leave to File a Reply to Plaintiff's Opposition to Defendant's Motion for Leave to Depose an Inmate* shall be granted and Defendant shall have the right to file a reply in support of its motion to depose Mr. Ruble, no later than Wednesday, June 6, 2012.

Date: June 4, 2012



Charles H. Gustafson
Special Master

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

Heath Alexander Main Case No. **11-02923-als7**

Debtor(s)

Heath Alexander Main Adv. Pro. No. **11-30078-als**

Plaintiff(s)

v.

United States of America

Defendant(s)

**ORDER APPROVING STIPULATION
(date entered on docket: June 4, 2012)**

Having reviewed the stipulation submitted by the Parties in this adversary proceeding at docket number 17, the Court hereby ORDERS that:

(1) The stipulation is approved, and

(2) Judgment shall enter accordingly.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Order from the Clerk of Court:
☒ Electronic Filers in this Adversary Proceeding
☐ Others:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In re:	)	
	)	
HEATH ALEXANDER MAIN,	)	
	)	
Debtor.	)	Bankruptcy No. 11-02923-als7
	)	
	)	Chapter 7
HEATH ALEXANDER MAIN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. No. 11-30078-als
	)	
UNITED STATES OF AMERICA	)	
(INTERNAL REVENUE SERVICE),	)	
	)	
Defendants.	)	
	)	***Date entered on docket: June 4, 2012***

JUDGMENT

THIS MATTER comes before the Court upon plaintiff Heath Alexander Main's Complaint to Determine Dischargeability of Debt, in which the plaintiff requests the Court to determine the dischargeability of his federal income tax debts.

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

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

FURTHER ORDERED as follows:

1. The plaintiff's 1997 and 1999 federal income tax accounts show no balance due. Thus, a dischargeability determination regarding the tax liabilities for 1997 and 1999 is moot.

2. The plaintiff's 2002, 2003, 2004, 2005, 2006, and 2007 federal income tax liabilities are dischargeable pursuant to 11 U.S.C. § 727(a). The pre-petition Notices of Federal Tax Lien filed against the plaintiff for 2002, 2003, 2004, 2005, 2006 and 2007 continue in effect and attach to all the plaintiff's existing pre-petition property and rights to property, including exempt property. 11 U.S.C. § 522(c)(2)(B); 26 U.S.C. § 6322.

3. The plaintiff's 2009 federal income tax liability is a priority claim under 11 U.S.C. § 507(a)(8)(A)(i) and thus nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(A).

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

/s/ Anita L. Shodeen

ANITA L. SHODEEN
UNITED STATES BANKRUPTCY JUDGE

Approved by:

NICHOLAS A. KLINEFELDT
United States Attorney

/s/ LaQuita Taylor-Phillips Dated: May 31, 2012

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Attorney for defendant United States

/s/ David A. Morse Dated: May 31, 2012

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Attorney for Debtor/Plaintiff

Parties receiving this Order from the Clerk of Court:
Electronic Filers in this Adversary Proceeding

1
2
IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF PUERTO RICO

3 IN RE:

4 JOSE A BENITEZ GORBEA — CASE NO. 12-01909 BKT

5

6 LARISSA I RIVERA ROCAFORT — Chapter 13

7

8

9 XXX-XX- b6

10 XXX-XX- b6

11

12 FILED & ENTERED ON 06/04/2012

13 Debtor(s)

14

15 ORDER

16 Debtor's Motion Requesting Joint Administration as to Limited Activity with

17 Case No. 12-01917 ESL (docket #42) is hereby granted. The Case No. 12-01917

18 should be transfer to the undersigned docket.

19 IT IS SO ORDERED.

20 San Juan, Puerto Rico this 04 day of June, 2012.

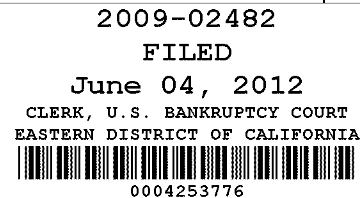
21

22

23 Brian K. Tester
U.S. Bankruptcy Judge

24

25 CC: DEBTOR(S)
OTTO E LANDRON PEREZ
ALEJANDRO OLIVERAS RIVERA



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Attorneys for Plaintiffs, John and Judith Reynen,
and Christo and Sara Bardis

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re: JOHN D. REYNEN and JUDITH M. REYNEN, Debtors.	Case No.: 08-25145 Chapter 11
JOHN D. REYNEN and JUDITH M. REYNEN, *et al.* Plaintiffs, vs. COMMISSIONER OF THE INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA, Defendant.	A.P. No. 09-02482 (Consolidated) **ORDER DISMISSING ADVERSARY PROCEEDING WITH PREJUDICE**

RECEIVED
May 25, 2012
CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0004253776

John and Judith Reynen (the "Reynen Debtors") and Christo and Sara Bardis (the "Bardis Debtors"), the plaintiffs in the above-captioned consolidated adversary proceeding (collectively, the "Plaintiffs"), and the United States of America, the defendant herein (the "Defendant", collectively with the Plaintiffs, the "Parties") have entered into a settlement agreement (the "Settlement Agreement") whereby they have agreed to fully and forever settle all matters raised in the above-captioned adversary proceeding (the "Adversary Proceeding").

As the Parties have fully performed their respective obligations under the terms of the Settlement Agreement, they have entered into and filed with the Court their *Stipulation Dismissing Adversary Proceeding With Prejudice*. Accordingly, in light of the parties' stipulation, IT IS HEREBY ORDERED AND DECREED that the Adversary Proceeding shall be, and is hereby, DISMISSED with PREJUDICE, with each party to bear its own fees and costs, including attorneys' fees and expenses.

Dated: June 04, 2012

United States Bankruptcy Judge

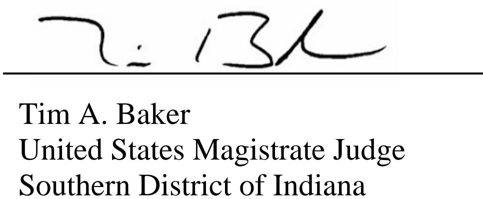
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

ORDER ON MAY 31, 2012, TELEPHONIC STATUS CONFERENCE

Parties appeared by counsel May 31, 2012, for a telephonic status conference. Discussion held regarding Plaintiff's request for additional time to file dismissal paperwork. [Document No. 29.] The record reveals, and counsel confirmed, that Defendants have failed to satisfy the financial obligations of the settlement reached in this matter. The Court grants Plaintiff's request [Docket No. 29] and enlarges to July 16, 2012, the deadline for the parties to file a stipulation of dismissal. If no stipulation of dismissal is timely filed, Plaintiff shall promptly file a status report. If that report indicates Defendants still have not satisfied the financial obligations of the settlement, the Court anticipates issuing an order requiring the Defendants to appear in Court in person and by counsel to show cause why they have failed to satisfy their financial obligations and why Defendants should not reimburse Plaintiff for all resulting costs and fees, in addition to any other appropriate relief.

Dated: 06/04/2012



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

Copies to:

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