UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Elizabeth E. Brown

In re:	)	
	)	
MARTIN CHAJ-AJTUN,	)	Bankruptcy Case No. 10-42182 EEB
	)	Chapter 7
	)	
Debtor.	)	
_____	)	
	)	
MARTIN CHAJ-AJTUN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary Proceeding No. 11-01538 EEB
	)	
THE UNITED STATES OF AMERICA, (Internal Revenue Service)	)	
	)	
Defendant.	)	

ORDER HOLDING ADVERSARY PROCEEDING IN ABEYANCE

THIS MATTER is before the Court on the parties' Motion for Summary Judgement ("Motions"). The Motions present an issue of law concerning the interpretation of 11 U.S.C. 523(a)(1)(B)(i). The issue has been decided by another Bankruptcy Judge of this Court in *Wogoman v. IRS (In re Wogoman)*, Adversary Proceeding No. 11-1117 SBB (Bankr.D.Colo. August 19, 2011). The *Wogoman* case is currently on appeal to the Tenth Circuit Bankruptcy Appellate Panel. Oral argument in the *Wogoman* case is set for April 17, 2012. The Court wishes to consider the decision of the Bankruptcy Appellate Panel in deciding the Motions. It is accordingly

ORDERED that this adversary proceeding shall be held in abeyance, pending further order of this Court.

DATED this 3rd day of April, 2012.

BY THE COURT:

Elizabeth E. Brown
United States Bankruptcy Judge

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

IN RE: FISH & FISHER, INC., DEBTOR.	**CHAPTER 11 CASE NO. 09-02747-EE**
MERCHANTS AND FARMERS BANK	**PLAINTIFF**
V.	**ADVERSARY PROC. NO. 11-00027-EE**
FISH & FISHER, INC., DEBTOR, FRANK COXWELL, COXWELL & ASSOCIATES, PLLC, SEKCO, INC., H&E EQUIPMENT SERVICES, INC., PUCKETT MACHINERY COMPANY, WARING OIL COMPANY, LLC, MCGRAW RENTAL & SUPPLY COMPANY, INC., UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, AND PRECIOUS MARTIN	**DEFENDANTS**

SCHEDULING ORDER

THIS DAY there came on for consideration the *Motion to Amend Complaint* (Adv. Dkt. #150) and the *Motion to Reconsider Order* (Adv. Dkt. #151) (the "Motions") filed by the Plaintiff, Merchants & Farmers Bank in the above-styled adversary proceeding. The Court, having considered the same, finds as follows:

IT IS HEREBY ORDERED that the Defendants, Frank Coxwell and Coxwell & Associates, PLLC ("Defendants"), shall have until Friday, April 20, 2012, to file responses to the Motions filed by the Plaintiff. The Plaintiff shall have until Thursday, May 3, 2012, to file replies if any responses are filed by the Defendants.

SO ORDERED,

Edward Ellington
United States Bankruptcy Judge
Dated: April 3, 2012

Entered on Docket April 3, 2012

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
WESTERN DISTRICT OF WASHINGTON

In re RICHARD K. GETTY AND RHONDA L. GETTY, Debtors.	No. 10-46061 ORDER GRANTING FINAL DECREE AND CLOSING CASE **(Clerk's Action Required)**

THIS MATTER came before the Court on the Motion ("Motion") for Final Decree Closing Case filed by Richard K. Getty and Rhonda L. Getty, reorganized debtors herein ("Debtors"), seeking entry of a final decree closing this bankruptcy case in compliance with Bankruptcy Rule 3022. The Court has considered the files and records herein and finds that the Plan has been substantially consummated and fully administered. Therefore, it is hereby

ORDERED as follows:

1. The Motion is granted.

2. The Debtors' Chapter 11 case shall be, and hereby is CLOSED.

4. This Court shall retain jurisdiction over the adversary proceedings *VPG Investments, Inc. v. Richard K. Getty and Rhonda L. Getty* (Consolidated Adv. No. 10-04356, Adversary No. 10-

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04357-BDL); *Getty v. West Mountain Golf, LLC,* Adversary No. 12-04122; and *Getty v. United States,* Adversary No. 12-04124, for all purposes pending further order of the Court.

5. Upon completion of all payments under the plan, the Debtors shall file a motion to reopen the case, pay the required reopening fee (if the case is closed at the time) and contemporaneously file a motion for entry of discharge.

/ / /End of Order/ / /

Presented by:

BUSH STROUT & KORNFELD LLP

By /s/ *James L. Day*
Katriana L. Samiljan, WSBA #28672
James L. Day, WSBA #20474
Attorneys for Richard and Rhonda Getty

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Entered on Docket April 3, 2012

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
WESTERN DISTRICT OF WASHINGTON

In re RICHARD K. GETTY AND RHONDA L. GETTY, Debtors.	No. 10-46061 ORDER ALLOWING AND DISALLOWING CLAIMS

THIS MATTER came before the Court upon various objections to claims filed on behalf of Richard and Rhonda Getty, reorganized debtors herein, and in connection with the debtors' First Amended Plan of Reorganization ("Confirmed Plan"), which was confirmed by order entered January 26, 2012. The Court, having reviewed the files and records herein, including responses filed to such objections, and deeming itself fully advised, and good cause having been shown for the relief requested, now, therefore, it is hereby

ORDERED as follows:

A. The claims of the following entities are hereby ALLOWED in the amount indicated as secured claims, as detailed in and subject to the treatment set forth in the Confirmed Plan:

Columbia State Bank (Claim No. 14/Plan Class 2): $1,851,192.00

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KeyBank, N.A. (Claim Nos. 22 and 23/Class 5): $1,300,000.00

B. The claims of the following entities are hereby ALLOWED in the amount indicated as general unsecured claims, subject to the treatment set forth in the Confirmed Plan:

Banc of America Leasing & Capital (Claim No. 9):	$4,622,938.39
Bank of America (Claim No. 11)	$5,419,188.81
Columbia State Bank (Claim No. 13/Plan Class 7):	$ 626,612.00
Commerce Bank of Washington (Claim No. 1):	$2,517,119.10
Detroit Investment Fund: (Claim No. 20):	$1,000,000.00
Heritage Bank (Claim No. 4):	$1,313,234.58
K&L Tamarack Investments (Class 11/Claim No. 17):	$1,826,850.58
KeyBank, N.A. (Claim No. 12):	$1,178,394.38
Sterling Savings Bank (Claim No. 8/Plan Class 6):	$9,000,000.00
Stoel Rives LLP (Claim No. 10):	$ 19,558.10
Umpqua Bank (Claim No. 19 and 26/Class 8):	$ 980,157.81
Wells Fargo Home Mortgage (Claim No. 3):	$ 334,258.92

C. Sterling Savings Bank's Claim No. 7 shall be ALLOWED as a general unsecured claim in the amount allowed by the Court in *In re Centralia Outlets, LLC*, Case No. 10-50029-BDL, with due credit for amounts paid by the debtor in connection with that case and with treatment as set forth in Section IV.B.6.c of the Confirmed Plan in this case.

D. The claims of the following entities are hereby DISALLOWED in their entirety, and each such claimant shall have no further rights or claims against the Debtors:

AmeriGas
Bank of America (Claim No. 16 only)
Banner Bank
Charney & Associates
Citibank, N.A. (Claim No. 24)
First Horizon Bank
Hopkins Financial
Intervest Mortgage Investment Company (as duplicate of Claim No. 7)
Making Waves Pool Service
Maricopa County Treasurer (Claim No. 2)
McCall Spa Co.
National Bank of Arizona
Northwest Commercial Bank (Claim No. 5)
Premera Blue Cross

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Son's Landscaping
Verizon Wireless (Claim No. 21)
Werner, O'Meara & Co.

/ / /End of Order/ / /

Presented by:

BUSH STROUT & KORNFELD LLP

By /s/ James L. Day
James L. Day, WSBA #20474
Attorneys for Richard and Rhonda Getty

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Honorable Bruce A. Markell
United States Bankruptcy Judge

Entered on Docket
April 03, 2012

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
TENNILLE K. PERERIA, ESQ.
Nevada Bar No. 12467
DAVID J. WINTERTON, CHTD.
211 N. Buffalo Drive, Suite A
Las Vegas, Nevada 89145
(702) 363-0317

Attorneys for Plaintiff

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE G.M.F., INC. Debtor	In the Proceedings Under Chapter 7 CASE NO. BK-S-09-31635-BAM (Lead Case)
IN RE: S.K. ENTERPRISES, INC. Debtor.	CASE NO. BK-S-09-31627-BAM (Jointly Administered with Case Number BK-S-09-31635-BAM) Date: March 6, 2012 Time: 2:30 p.m.

ORDER TO WITHDRAW AS COUNSEL OF DEBTORS

The Motion to Withdraw as Counsel of Debtors filed by David J. Winterton, Esq., of the law firm of David J. Winterton & Assoc., Ltd., came on for hearing before the above-entitled Court in the above-captioned case on the 6th day of March, 2012 at 2:30 p.m. and the Court having considered the Motion and for good cause appearing,

IT IS HEREBY ORDERED that the last known addresses and telephone numbers for

Plaintiff is as follows:

GMF MOTORS
3330 Fremont Street
Las Vegas, NV 89101
Phone: (702) 326-7478

S.K. ENTERPRISES, INC.
3330 Fremont Street
Las Vegas, NV 89101
Phone: (702) 326-7478

IT IS FURTHER ORDERED that there are no pending dates in this action.

IT IS FURTHER ORDERED that DAVID J. WINTERTON & ASSOC., LTD., Motion to Withdraw as Counsel of Record is granted.

DATED this _____ day of _____, 2012.

###

Respectfully Submitted By:

DAVID J. WINTERTON & ASSOC., LTD.

BY: _____

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
TENNILLE K. PEREIRA, ESQ.
Nevada Bar No. 12467
211 North Buffalo Drive, Suite #A
Las Vegas, Nevada 89145

Certification

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

_____ The court has waived the requirement of approval under LR 9021.

_____ No party appeared at the hearing or filed an objection to the motion.

__X__ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

_____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Party	Approve	Disapprove	Failed to Respond
U.S. Trustee's Office 300 Las Vegas Blvd., So. Suite 4300 Las Vegas, NV 89101			X
Howard C. Kim, Esq. HOWARD KIM & ASSOCIATES 400 N. Stephanie St. Suite 160 Henderson, NV 89014			X

DATED this _____ day of April, 2012

By: /s/Tennille K. Pereira
DAVID J. WINTERTON, ESQ.
Nevada Bar No. 4214
TENNILLE K. PEREIRA, ESQ.
Nevada Bar No. 12467
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211 N. Buffalo Drive, Suite A
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Attorney's for Debtor

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP HART, et al Defendants.	District Case No. 2:11-CV-00513-EJL **ORDER**

Pending before the Court in the above entitled matter is Plaintiff's Motion to Strike Affirmative Defense made pursuant to Federal Rule of Civil Procedure12(f). The parties have filed their responsive briefing and the matter is ripe for the Court's review. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this Motion shall be decided on the record before this Court without oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, United States of America, filed a Complaint in this matter seeking to reduce tax assessments to judgment and to foreclose federal tax liens on a parcel of real property located in Kootenai County, Idaho. (Dkt. 1.) The Complaint names several Defendants including one Philip L. Hart who is the subject of the instant Motion. (Dkt. 1.) Defendant Hart filed an Answer to the Complaint raising nine affirmative defenses. (Dkt. 33.) Plaintiff then filed its Motion to Strike seeking to strike the fifth affirmative defense rased by Defendant Hart which asserts legislative immunity under Article III, Section 7 of the Idaho Constitution. (Dkt. 35.) It is this Motion the Court takes up in this Order.

STANDARD OF LAW

Federal Rule of Civil Procedure 12(f) provides:

> Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:
> (1) on its own; or
> (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Fed. R. Civ. 12(f). "[T] he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Sidney–Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). However, Rule 12(f) motions are "generally regarded with disfavor because of the limited importance of pleading in federal practice, and because they are often used as a delaying tactic." *Neilson v. Union Bank of Cal., N.A.*, 290 F.Supp.2d 1101, 1152 (C.D.

Cal. 2003). Thus, courts freely grant leave to amend stricken pleadings unless it would prejudice the opposing party. *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 826 (9th Cir.1979); see also Fed. R. Civ. P. 15(a)(2).

An affirmative defense may be insufficient as a matter of pleading or as a matter of law. *Kohler v. Islands Restaurants, LP*, 2012 WL 524086, at *2 (S.D. Cal. 2012). "The key to determining the sufficiency of pleading an affirmative defense is whether it gives the plaintiff fair notice of the defense." *Id.* (quoting *Wyshak*, 607 F.2d at 827) (citations omitted). "[A]n affirmative defense is legally insufficient only if it clearly lacks merit 'under any set of facts the defendant might allege.'" *Id*. (quoting *McArdle v. AT & T Mobility, LLC*, 657 F.Supp. 1140, 1149–50 (N.D. Cal. 2009). "To strike an affirmative defense, the moving party must convince the court that there are no questions of fact, that any questions of law are clear and not in dispute, and that under no set of circumstances could the defense succeed. The grounds for the motion must appear on the face of the pleading under attack or from matter which the court may judicially notice." *SEC v. Sands*, 902 F.Supp. 1149, 1165 (C.D. Cal. 1995) (citations and internal quotation marks omitted). "[A] motion to strike which alleges the legal insufficiency of an affirmative defense will not be granted unless it appears to a certainty that plaintiffs would succeed despite any state of the facts which could be proved in support of the defense." *Barnes v. AT & T Pension Ben. Plan–Nonbargained Prog.*, 718 F.Supp.2d 1167, 1170 (N.D. Cal. 2010) (citations and internal quotation marks omitted).

DISCUSSION

Here, Defendant Hart's fifth affirmative defense states:

> The claims of the United States is barred as the 90 day letter (Notice of Deficiency) was served in violation of Idaho Constitutional Article III, Section 7 which bars Senators and representatives of Idaho from being served during the session of the legislature.

(Dkt. 33 at 7.) Plaintiff argues there are no facts under which Defendant Hart can assert legislative immunity for failing to pay his federal income taxes and, therefore, the fifth affirmative defense should be stricken. (Dkt. 35 at 2.) In particular, Plaintiff asserts Federal law, not state law, determines the scope of any legislative immunity in this federal-law cause of action. In response, Defendant Hart challenges the service of process and argues Plaintiff is estopped from claiming Article III, Section 7 of the Idaho Constitution does not apply. (Dkt. 40.) The Court finds as follows.

1. Legislative Immunity

Plaintiff challenges the fifth affirmative defense as being legally insufficient in that Plaintiff Hart enjoys no legislative immunity in this case. (Dkt. 35 at 3.) The fifth affirmative defense is based on state law which, Plaintiff argues, is misplaced because Federal law controls the scope of any legislative immunity in this federal cause of action. Defendant Hart argues his fifth affirmative defense is not seeking legislative immunity to block a Federal law cause of action but, instead, challenges the sufficiency of the service of the IRS 90-day letter on him during his service in the Idaho legislature. (Dkt. 40 at 3.)

As Plaintiff points out, the "elements of, and the defenses to, a federal cause of

action are defined by federal law." (Dkt. 35 at 3-4) (quoting *Hewlett v. Rose*, 496 U.S. 356, 375 (1990).) Thus, Defendant Hart can only raise a legislative immunity defense if it is available under Federal law. *See Martinez v. California*, 444 U.S. 277, 284 and n. 8 (1980) (recognizing that state law cannot provide immunity from a suit for federal civil rights violations under § 1983); *Wallis v. Spencer*, 202 F.3d 1126, 1144 (9th Cir. 2000). He has not done so here.

Legislative immunity arises under Federal law where the action involves "legitimate legislative activity." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998); *see e.g. Timmon v. Wood*, 633 F.Supp.2d 453, 459-461 (W.D. Mich. 2008) (discussing the scope of legislative immunity). The claims raised in this case are in regard to Defendant Hart's private actions in allegedly failing to pay his federal income taxes. (Dkt. 1.) As such, it is certain in this case that Defendant Hart cannot succeed on his fifth affirmative defense despite any facts which could be proved in support of the defense; i.e. Defendant Hart is not entitled to legislative immunity under Federal law. *See Barnes*, 718 F.Supp.2d at 1170. The Plaintiff's Motion will be granted.

As to Defendant Hart's argument that the fifth affirmative defense should survive, the Court finds otherwise. Defendant Hart maintains the fifth affirmative defense seeks to enforce Article III, Section 7 of the Idaho Constitution which, he argues, affords him legislative immunity from being served civil process while the Idaho legislature is in session. (Dkt. 40 at 3.) The 90-Day letter, he argues, is the process used by the IRS to bring a taxpayer to Tax Court and, therefore, is the same as an issuance of a summons and

complaint and precluded by the Idaho constitution. (Dkt. 40 at 5.) The Court disagrees.

Again, Federal law controls the scope of any immunity raised as a defense in this federal cause of action. *See Wallis*, 202 F.3d at 1144. Under Federal law, legislative immunity does not bar service of civil process upon a legislator while the legislature is in session. *See Long v. Ansell*, 293 U.S. 76, 81-82 (1934). Furthermore, the full faith and credit statute, 28 U.S.C. § 1738 does not require otherwise. This statue demands the Court give the same treatment in federal court to a state-court's records as would be given in courts of the state from which it came. *United States v. Towne*, 997 F.2d 537, 541 (9th Cir. 1993). It does not require this Court to apply state law in a cause brought before it based on Federal law.

2. Estoppel

Defendant Hart argues Plaintiff is estopped from raising this Motion because it issued a second summons when he was not in an Idaho legislative session; thus, acknowledging the legislative immunity in 2006. (Dkt. 40 at 6.) Plaintiff counters that the issuance of the second summons does not operate to estopped it from raising this Motion. (Dkt. 43 at 4-5.)

In order to demonstrate that the Federal government should be estopped, Defendant Hart "must establish that the government engaged in affirmative misconduct, and that the government's conduct has caused a serious injustice." *United States v. Bell*, 602 F.3d 1074, 1082 (9th Cir. 2010) (citation and quotations omitted). Neither is present here nor has Defendant Hart alleged as such. Accordingly, the Court finds Plaintiff is not

estopped from raising their Motion.

3. Conclusion

Based on the foregoing and the Court being fully advised in the premises, the Court finds the Plaintiff's Motion to Strike is well taken and will grant the same. Though such motions are generally disfavored, granting the Motion in this case will avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. Defendant Hart's fifth affirmative defense clearly lacks merit under any set of facts that he might allege. As such and for the reasons stated herein, the Court will grant the Motion.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Plaintiff's Motion to Strike Affirmative Defense (Dkt. 35) is **GRANTED**. Defendant Philip L. Hart's Fifth Affirmative Defense is **STRICKEN**.

DATED: **April 3, 2012**

Honorable Edward J. Lodge
U. S. District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP HART, et al Defendants.	District Case No. 2:11-CV-00513-EJL **ORDER**

Before the Court in the above entitled matter is Defendant's Jon Lafferty, Trustee of Sarah Elizabeth Hart, Motion to Dismiss pursuant to Rule 12(b)(6). The parties have filed their responsive briefing and the matter is ripe for the Court's review. Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this Motion shall be decided on the record before this Court without oral argument.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff, United States of America, filed a Complaint in this matter seeking to reduce tax assessments to judgment and to foreclose federal tax liens on a parcel of real property located in Kootenai County, Idaho. (Dkt. 1.) The Complaint names several Defendants including Philip L. Hart who is the primary subject of the Complaint as well as the trustee of the Sarah Elizabeth Hart Trust, Jon Lafferty, which may allege an interest in the particular real property at issue. (Dkt. 1.) Defendant Lafferty has filed the instant Motion to Dismiss arguing the Plaintiff's claims are barred by certain statutes of limitations. (Dkt. 39.) It is this Motion the Court takes up in this Order.

STANDARD OF LAW

A motion to dismiss made pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of a party's claim for relief. Rule 12(b)(6) provides for dismissal of a claim for failure to state a claim upon which relief can be granted. When considering such a motion, the Court's inquiry is whether the allegations in a pleading are sufficient under applicable pleading standards. Federal Rule of Civil Procedure 8(a) sets forth minimum pleading rules, requiring only a "short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* In considering such motion, the Court accepts as true the allegations in the Complaint. *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006) (citing *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir.1988). In the context presented here, the Court must determine whether "the running of the statute is apparent on the face of the complaint." *Id.* (quoting *Jablon v. Dean Witter & Co.*, 614

F.2d 677, 682 (9th Cir. 1980) and citing *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 (9th Cir.1995) ("[A] complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim.")).

DISCUSSION

Defendant asserts two statutes of limitations bar the Plaintiff from pursuing a fraudulent conveyance claim against it as Plaintiffs failed to timely file this claim under Idaho Code § 55-918 and 28 U.S.C. § 3306. (Dkt. 39.) Plaintiff maintains neither statute applies to this foreclosure of a federal tax lien action because the fraudulent transfer claim accrued prior to the running of the statutes of limitations. (Dkt. 42.)

1. Idaho Statute of Limitations - Idaho Code § 55-918

Idaho's statute of limitations for fraudulent conveyance actions is found in Idaho Code § 55-918 which extinguishes such action unless it is brought within four years after the transfer was made or the obligation incurred or within one year after the obligation or transfer was or could reasonably have been discovered by the claimant. Defendant argues the obligation arose at the time of the assignment and, therefore, two options exist being that Plaintiff had to file its claim either by August 8, 2001 or March 12, 2002. (Dkt. 39 at 6-7.) Because Plaintiff's claim was not filed until October 27, 2011, Defendant argues both possible statutes of limitations have been exceeded and the claim is barred. (Dkt. 39 at 6-7.) Plaintiff counters that Idaho state law cannot extinguish the rights of the federal government. (Dkt. 42 at 3.) Defendant makes no reply to this argument. (Dkt. 45.)

The law is clear that the United States is not subject to state statutes of limitations except in limited situations not applicable here. *See Bresson v. C.I.R.*, 213 F.3d 1173, 1175 (9th Cir. 2000) (discussing *United States v. Summerlin*, 310 U.S. 414 (1940) and *Guaranty Trust Co. v. United States*, 304 U.S. 126 (1938)); *see also Phillips v. Commissioner of Internal Revenue*, 283 U.S. 589, 602–03 (1931) ("[T]he United States is not bound by state statutes of limitation unless Congress provides that it shall be."). As such, the Court agrees with Plaintiff that the statute of limitations found in Idaho Code § 55-918 does not bar the fraudulent transfer claim raised here.

2. Federal Statue of Limitations - 28 U.S.C. § 3306

Defendant next argues § 3306 precludes this action because it was not filed within either six or two years of the fraudulent conveyance. (Dkt. 39 at 7-8.) Plaintiff asserts § 3306 does not limit its ability to collect taxes under the Internal Revenue Code, under which this case is brought. (Dkt. 42 at 5-6.) Instead, Plaintiff contends, the applicable federal statute of limitations is found in the Internal Revenue Code at 26 U.S.C. § 6502(a)(1) allowing a claim to be brought by the United States within ten years of the assessment. (Dkt. 42 at 6.) Defendant maintains § 3306's statute of limitation applies here as it is the exclusive procedure for the United States' to recover a judgment on a debt through a court action to enforce a lien. (Dkt. 45 at 3-7.)

Section 3306 is found within the Federal Debt Collection Procedures Act ("FDCPA") , 28 U.S.C. §§ 3001 et seq., and states:

> (a) In general.--In an action or proceeding under this subchapter for relief against a transfer or obligation, the United States, subject to section 3307 and to applicable principles of equity and in accordance with the Federal Rules of Civil Procedure, may obtain--
>
> (1) avoidance of the transfer or obligation to the extent necessary to satisfy the debt to the United States;
> (2) a remedy under this chapter against the asset transferred or other property of the transferee; or
> (3) any other relief the circumstances may require.
>
> (b) Limitation.--A claim for relief with respect to a fraudulent transfer or obligation under this subchapter is extinguished unless action is brought–
>
> (1) under section 3304(b)(1)(A) within 6 years after the transfer was made or the obligation was incurred or, if later, within 2 years after the transfer or obligation was or could reasonably have been discovered by the claimant;
> (2) under subsection (a)(1) or (b)(1)(B) of section 3304 within 6 years after the transfer was made or the obligation was incurred; or
> (3) under section 3304(a)(2) within 2 years after the transfer was made or the obligation was incurred.

28 U.S.C. § 3306. Defendant maintains § 3306 applies because this action is brought to collect taxes through a civil procedure and, therefore, the language in § 3001 applies; to-wit the FDCPA is the "exclusive civil procedures of the United States to recover a judgment on a debt." (Dkt. 45 at 4-5.) Contrary to Defendant's position, however, § 3001 is not the only means for recovering funds owed to the government. "Collection under FDCPA is an alternative means of collecting money due the United States, independent of the tax lien provisions." *United States v. Novak*, 476 F.3d 1041, 1045 n. 6 (9th Cir. 2007). The Internal Revenue Code provides two tools for the United States to use in enforcing the collection of unpaid taxes in the case of a federal tax lien including a lien-foreclosure

suit, 26 U.S.C. § 7403, and administrative levy, 26 U.S.C. §§ 6331-6344. *Id.* Here, Plaintiff has brought the fraudulent conveyance claim under the Internal Revenue Code. (Dkt. 1.) As such, § 3306 does not apply to this case as it is restricted to actions brought under "this subchapter," meaning brought under the FDCPA. (Dkt. 42 at 5-6.) Instead, the statute of limitations applicable to claims made in this case under the Internal Revenue Code are found in 26 U.S.C. § 6502(a)(1) which states in relevant part:

> (a) Length of period.--Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun–
>
> (1) within 10 years after the assessment of the tax
> ...

26 U.S.C. § 6502(a)(1). Thus, suits brought subject to this provision must be raised within ten years of the assessment.

This case was initiated on October 27, 2011. (Dkt. 1.) Pursuant to 26 U.S.C. §§ 6321 and 6322, the Complaint alleges tax liens arose in favor of the United States on all property and rights to property belonging to Defendant Hart as of the date of each assessment. (Dkt. 1 at 4-10 ¶¶ 12-13.) The assessment dates for Defendant Hart's tax liabilities, as alleged in the Complaint, began on March 12, 2001 and extend into the year 2011. (Dkt. 1 at 4 ¶ 12.) As to the real property relevant to this Motion, the Notices of Federal Tax Lien concerning unpaid assessments were recorded on March 23, 2004 and on April 28, 2008. (Dkt. 1 at 14 ¶ 32.) Accordingly, the Motion is denied as the assessments relevant to the Motion were filed within the ten year statute of limitations.

See 26 U.S.C. § 6502(a)(1). As to the other claims not raised in this Motion, the Court finds it will allow only those claims that fall within the ten year statute of limitations unless some other exception applies.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Defendant's Motion to Dismiss (Dkt. 39) is **DENIED**.

DATED: **April 3, 2012**

Honorable Edward J. Lodge
U. S. District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP HART, et al Defendants.	District Case No. 2:11-CV-00513-EJL **ORDER**

Pending before the Court in the above entitled matter are two Motions to Extend Discovery Deadline filed by the Defendants in this action. Plaintiff opposes the Motions. The matters are ripe for the Court's consideration.[1] Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by

[1] Though Defendants have not filed a reply brief, the Court finds it appropriate to rule upon the Motions expeditiously. This matter has been pending for some time and the instant Motions were filed only immediately before or after the discovery responses at issue were due. Further, the briefing submitted is sufficient upon which the Court can rule. Failing to rule on this matter now will only serve to further unduly delay these proceedings.

oral argument, the Motions shall be decided on the record before this Court without oral argument.

Discussion

1. Motions to Extend Discovery Deadline

Defendants have filed two Motions seeking to extend the discovery deadline in this case. The first Motion is filed by Defendant Lafferty asking to extend time to respond to the Plaintiff's discovery request for a period of thirty days until after he has filed an Answer in this case. (Dkt. 46.) The Motion was filed one day before his responses to the same were due. The Plaintiffs does not oppose a limited extension of time but opposes the request of thirty days following the filing of his Answer. The Court has reviewed the Motion and denies the same. The Motion effectively seeks to unduly delay this matter. The filing of Rule 12(b)(6) motion does not automatically stay discovery. Furthermore, the Defendant is not prejudiced by having to respond to the particular discovery in this matter as the Interrogatories do not pertain to his anticipated answer and only two of the Requests for Production relate to the answer. (Dkt. 48.) To the extent a particular discovery request may pertain to his forthcoming answer, Defendant could simply object to that particular request. *See* Fed. R. Civ. P. 26(e)(1). Failing to respond entirely is unacceptable. Accordingly, the Court denies the Defendant's Motion and orders Defendant Lafferty to respond to the Plaintiff's discovery requests immediately and in accordance with the applicable rules and under no circumstances any later than April 12, 2012.

As to the second Motion filed by Defendant Hart, he requests an extension until thirty days following the end of the Idaho legislative session.[2] (Dkt. 47.) The basis for the request is much the same as his ill-fated fifth affirmative defense that this Court has rejected. In addition, Defendant Hart argues having to answer during the session would interrupt his work as a legislature. This Motion was filed after the discovery responses were due. Plaintiff opposes this Motion noting ample time has been provided for him to respond including the fact that Plaintiff already agreed to a thirty-day extension. (Dkt. 49.) The Court agrees with Plaintiff. More than enough time has been granted to Defendant Hart to respond to discovery in this case. Accordingly, the Court denies the Motion and orders Defendant Hart to respond to the Plaintiff's discovery requests immediately and in accordance with the applicable rules and under no circumstances any later than April 12, 2012.

2. Amending the Scheduling Order

Having now reviewed the Motions resolved in this Order and considering the entire record in this case, the Court finds this matter is appropriate to a more expedited schedule than is currently set. In particular, the Court finds that advancing the schedule in this case is necessary in order to avoid further arguments that the trial date unduly interferers with Defendant Hart's ability to prepare for the 2013 legislative session. Accordingly, the Court will amend its Scheduling Order as detailed below. (Dkt. 37.)

[2] Idaho's legislative session ended on March 29, 2012.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Defendants' Motions to Extend Discovery Deadline (Dkt. 46, 47) are **DENIED**. Defendants are HEREBY ORDERED to respond to the Plaintiff's discovery requests immediately and in accordance with the applicable rules and under no circumstances any later than **April 12, 2012**.

IT IS FURTHER ORDERED that the Court's Scheduling Order is HEREBY AMENDED as follows:

1) Final Discovery shall be completed on or before **June 4, 2012**.

2) Any and all Pre-Trial Motions are due on or before **July 2, 2012**. Responses to such motions are due no later than **July 23, 2012** and reply briefs must be filed on or before **August 6, 2012**.

3) The Trial date is set for **Tuesday, November 5, 2012** at 9:30 a.m. in Coeur d'Alene, Idaho. Witness lists, exhibits and exhibit lists, pre-trial briefs, and court trial requirements are due as specified in the original Scheduling Order. (Dkt. 37.)

4) The referral to United States Magistrate Judge Ronald E. Bush is **WITHDRAWN**.

5) The deadlines set in the original Scheduling Order regarding disclosure of experts and ADR remain the same as directed in that Order. (Dkt. 37.)

DATED: **April 3, 2012**

Honorable Edward J. Lodge
U. S. District Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. PHILIP HART, et al Defendants.	District Case No. 2:11-CV-00513-EJL **AMENDED* ORDER**

Pending before the Court in the above entitled matter are two Motions to Extend Discovery Deadline filed by the Defendants in this action. Plaintiff opposes the Motions. The matters are ripe for the Court's consideration.[1] Having fully reviewed the record herein, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, the Motions shall be decided on the record before this Court without oral argument.

[1] Though Defendants have not filed a reply brief, the Court finds it appropriate to rule upon the Motions expeditiously. This matter has been pending for some time and the instant Motions were filed only immediately before or after the discovery responses at issue were due. Further, the briefing submitted is sufficient upon which the Court can rule. Failing to rule on this matter now will only serve to further unduly delay these proceedings.

Discussion

1. Motions to Extend Discovery Deadline

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Having now reviewed the Motions resolved in this Order and considering the entire record in this case, the Court finds this matter is appropriate to a more expedited schedule than is currently set. In particular, the Court finds that advancing the schedule in this case is necessary in order to avoid further arguments that the trial date unduly interferers with Defendant Hart's ability to prepare for the 2013 legislative session. Accordingly, the Court will amend its Scheduling Order as detailed below. (Dkt. 37.)

[2] Idaho's legislative session ended on March 29, 2012.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the Defendants' Motions to Extend Discovery Deadline (Dkt. 46, 47) are **DENIED**. Defendants are HEREBY ORDERED to respond to the Plaintiff's discovery requests immediately and in accordance with the applicable rules and under no circumstances any later than **April 12, 2012**.

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2) Any and all Pre-Trial Motions are due on or before **July 2, 2012**. Responses to such motions are due no later than **July 23, 2012** and reply briefs must be filed on or before **August 6, 2012**.

3) The Trial date is set for ***Tuesday, November 6, 2012** at 9:30 a.m. in Coeur d'Alene, Idaho. Witness lists, exhibits and exhibit lists, pre-trial briefs, and court trial requirements are due as specified in the original Scheduling Order. (Dkt. 37.)

4) The referral to United States Magistrate Judge Ronald E. Bush is **WITHDRAWN**.

5) The deadlines set in the original Scheduling Order regarding disclosure of experts and ADR remain the same as directed in that Order. (Dkt. 37.)

DATED: **April 3, 2012**

Honorable Edward J. Lodge
U. S. District Judge

LAVAN LAW
11 East Main Street, 2nd Floor
Moorestown, NJ 08057
856-235-4079 (Phone)
856-235-4018 (Fax)
Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JULIE LAVAN PETITIONER, v. UNITED STATES OF AMERICA, DOUGLAS H. SHULMAN, COMMISSIONER, AND ANGELA L. KIRCHNER, REVENUE OFFICER RESPONDENTS	:	Civil No. 2:12-cv-476-JHR-JS

ORDER

And now, this 3rd day of April, 2012, it is

ORDERED that the Respondent's Motion to Dismiss for Lack of Subjection Matter Jurisdiction shall be set for April 16, 2012.

Joseph H. Rodriguez
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs. Case No. 2:09-cv-216-FtM-29SPC

JOSEPH A. LEEMON; NATALIE J. LEEMON,

Defendants.

ORDER

This matter comes before the Court on documents submitted by defendants. These documents include an order of dismissal from the Eleventh Circuit Court of Appeals and a handwritten note referring to "a mailing error". The Court will direct that the documents be filed, but since the case has been dismissed by the Eleventh Circuit will take no further action.

Accordingly, it is now

ORDERED:

The documents submitted by defendants will be filed, but no further action will be taken by the district court.

DONE AND ORDERED at Fort Myers, Florida, this 2nd day of April, 2012.

John E. Steele

JOHN E. STEELE
UNITED STATES DISTRICT JUDGE

Copies:
Eleventh Circuit Court of Appeals
Counsel of record
Joseph A. Leemon
Natalie J. Leemon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03405-BNB

RONALD J. NAGIM, and
JANET SARMIENTO,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant.

ORDER OF DISMISSAL

On February 21, 2012, Magistrate Judge Boyd N. Boland instructed Plaintiffs to show cause why the action should not be dismissed for failure to exhaust administrative remedies in keeping with 26 U.S.C. § 7422(a) and for lack of subject matter jurisdiction.

Plaintiffs' Response to Magistrate Judge Boland's Order to Show Cause is, for the most part, unintelligible and unresponsive. Plaintiffs also do not address their failure to exhaust remedies under § 7422(a) and the lack of subject matter jurisdiction as the Court had directed. The instant action, therefore, will be dismissed.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status is denied for the purpose of appeal. *See Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiffs file a notice of appeal they must also pay the full $455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Complaint and the action are dismissed without prejudice for failure to exhaust and for lack of subject matter jurisdiction. It is

FURTHER ORDERED that Defendant's Motion to Dismiss, Doc. No. 9, is denied as moot. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 3rd day of April, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-03405-LTB

RONALD J. NAGIM, and
JANET SARMIENTO,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant.

JUDGMENT

Pursuant to and in accordance with the Order of Dismissal entered by Lewis T. Babcock, Senior District Judge, on April 3, 2012, it is hereby

ORDERED that Judgment is entered in favor of Defendant and against Plaintiffs.

DATED at Denver, Colorado, this 3 day of April, 2012.

FOR THE COURT,

GREGORY C. LANGHAM, Clerk

By: s/L. Gianelli
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DIANE L. RHODES−LYONS,

Plaintiff(s),

vs.

UNITED STATES OF AMERICA, et al.,

Defendant(s).

2:11−cv−01906−LRH −CWH

MINUTES OF THE COURT

April 3, 2012

PRESENT:
The Honorable Larry R. Hicks, U.S. District Judge

Deputy Clerk: Aaron Blazevich Recorder/Reporter: None Appearing

Counsel for Plaintiff(s): None Appearing Counsel for Defendant(s): None Appearing

MINUTE ORDER IN CHAMBERS
REGARDING THE REQUIREMENTS OF
***Klingele v. Eikenberry* and *Rand v. Rowland*: XXX**

A party or parties have filed a motion to dismiss, motion for judgment on the pleadings, or a motion for summary judgment. These are known as "dispositive motions," for they may terminate either some portion or all of this lawsuit, if granted. This notice is given to all parties to this litigation, and particularly to the party against whom the above referenced motion has been filed, pursuant to the requirements of *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

Pursuant to the last sentence in Fed. R. Civ. P. 12(b), if evidence is submitted with a motion to dismiss and considered by the court, then the motion will be treated as a motion for summary judgment. The same is true regarding a motion for judgment on the pleadings. *See* Fed. R. Civ. P. 12(c). **This notice is issued, in part, to alert the plaintiff that if defendants have submitted evidence in support of a motion to dismiss or a motion for judgment on the pleadings, then the court may treat the pending motion as a motion for summary judgment. If the court grants summary judgment, then judgment may be entered against plaintiff and this lawsuit will end without trial.** This notice contains important information about what you need to do to oppose the motion. Please read it carefully.

Motion to Dismiss-Fed. R. Civ. P. 12(b)(6)

If the party or parties which filed the motion (hereinafter the "moving party") have filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the party or parties against whom that motion is filed (hereinafter, the "non-moving party") must file points and authorities in opposition to that motion within fourteen (14) days after service of the motion. Local Rule 7-2(b). The failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The court may then grant the motion and dismiss the non-moving party's claims. If the non-moving party does not agree that its claims should be dismissed, it must file and serve points and authorities in opposition within fourteen (14) days from the date the moving party served the non-moving party with the motion.

Motion for Judgment on the Pleadings-Fed. R. Civ. P. 12(c)

If the moving party has filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), the non-moving party must file points and authorities in opposition to that motion for judgment within fourteen (14) days after service of the motion. Local Rule 7-2(b). The failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The court may then grant the motion and dismiss the non-moving party's claims. If the non-moving party does not agree that its claims should be dismissed, the non-moving party must file and serve points and authorities in opposition within fourteen (14) days from the date the moving party served the non-moving party with the motion.

Motion for Summary Judgment-Fed. R. Civ. P. 56

If the moving party has filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) and attached admissible evidence to the motion, or if it has filed a motion for summary judgment under Fed. R. Civ. P. 56, then the non-moving party must properly oppose the motion, by filing opposing points and authorities, admissible evidence, and a statement of facts under Local Rule 56-1, within twenty−one (21) days after service of the motion. *See* Fed. R. Civ. P. 56, Local Rules 7-2(e) and 56-1. The standards governing motions for summary judgment are stated in Rule 56 of the Federal Rules of Civil Procedure. All parties should read that rule and be familiar with it.

The Ninth Circuit Court of Appeals has directed that the following notice be given to you:

> A motion for summary judgment is a means through which the defendants seek to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.
>
> Federal Rule of Civil Procedure 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in the form of admissible evidence (such as affidavits, declarations, depositions, answers to interrogatories, or properly authenticated documents as provided in Rule 56(e)), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.
>
> Rule 56-1 of the Local Rules for the United States District Court for the District of Nevada also requires, in addition, that you file with your opposition to a motion for summary judgment a statement of facts which you contend are or are not genuinely in issue in this summary judgment procedure. If you are opposing a summary judgment motion, you should review the opposing party's Local Rule 56-1 statement of facts not genuinely in issue, and you should set forth in writing those facts (supported by specific citation to evidence in the record which you have attached to your motion or statement) which contradict the claims of the opposing party. In other words, you must provide the court a statement of facts supported by attached admissible evidence that demonstrates that the opposing party is not entitled to judgment against you.

If you are the party moving for summary judgment, you should set forth, in writing, a statement of material facts, not genuinely in issue (supported by specific citation to evidence in the record which you have attached to your motion or statement) which supports your claim for summary judgment. In so doing, you must show the court those material facts which can be proven with admissible evidence that demonstrate that you are entitled to have judgment entered in your favor at this time.

If the non-moving party fails to oppose the motion within twenty−one (21) days, or if the non-moving party fails to submit evidence supporting its opposition, and if the motion for summary judgment has merit, that failure to file points and authorities in response to any motion shall constitute a consent to the granting of the motion. Local Rule 7-2(d). The court may then grant the motion and enter judgment. Local Rule 7-2(d).

IT IS THEREFORE ORDERED that non-moving party or parties shall have fourteen (14) days, or twenty−one (21) days for a motion for summary judgment, from the date of this Minute Order within which to file and serve points and authorities (and any other required documents) in opposition to the pending dispositive motion pursuant to the instructions herein, and the moving party shall thereafter have seven (7) days, or fourteen (14) days for a motion for summary judgment, after filing of the opposing points and authorities within which to file and serve reply points and authorities (and any other required documents). The pending motion(s) shall then be submitted to the court for decision.

LANCE S. WILSON, CLERK

By: /s/ Aaron Blazevich

Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KEITH ROBERTSON *
*
v. *
* Civil Action No. WMN-11-1035
DEBRA HURST *
*

* * * * * * * * * * * * * * * *

MEMORANDUM AND ORDER

Plaintiff, proceeding pro se, filed this action to contest a levy against his wages initiated by the Internal Revenue Service. On October 6, 2011, this Court dismissed the Complaint on a number of grounds. See ECF No. 12. Plaintiff has filed a motion asking for reconsideration of that decision, ECF No. 14, continuing to argue that his federal income tax liability for the years 1997, 1998, and 1999 was discharged in his 2001 bankruptcy case. The Court denied that motion on January 3, 2012. See ECF No. 18.

Plaintiff then filed a "Motion to Amend and Alter Judgement," ECF No. 19, followed shortly thereafter by an "Amend Motion to Amend and Alter Judgement to Release Lien." ECF No. 20. These pleadings raise essentially the same arguments raised in Plaintiff's prior pleadings and addressed in this Court's prior decisions. Accordingly, for the reasons stated in this Court's previous memoranda, it is this 3rd day of April, 2012,

by the United States District Court for the District of Maryland, ORDERED:

(1) That Plaintiff's "Motion to Amend and Alter Judgement," ECF No. 19, and "Amend Motion to Amend and Alter Judgement to Release Lien," ECF No. 20 are DENIED; and

(2) That the Clerk of the Court shall mail or transmit a copy of this Memorandum and Order to Plaintiff and all counsel of record.

_____/s/_____
William M. Nickerson
Senior United States District Judge

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. 3:10-272
v.	)	JUDGE KIM R. GIBSON
	)	
R.S. CARLIN, INC. *and* JANUM MANAGEMENT, LLC,	)	
	)	
	)	
Defendants.	)	

ORDER

AND NOW, this 3rd day of April 2012, this matter comes before the Court on the "Response to Motion for Entry of Default Judgment" (Doc. No. 31) filed by Defendant Janum Management LLC ("Janum"). Janum's response was sent by mail and ultimately received by the Clerk's Office on March 23, 2012, but it was not docketed until April 3, 2012. On April 2, 2012, this Court entered an Order (Doc. No. 30) granting the Government's "Motion for Entry of Judgment" (Doc. No. 28) against Janum, which noted that Janum had not responded to the Government's motion because no response had been docketed.

At this time, the Court will confirm its prior order entering judgment against Janum. Although Janum did mail a response opposing the Government's motion within the allotted time to respond, the Court will strike this response (Doc. No. 31) from the docket. The Court previously struck the Answer filed by Peter Shah on behalf of Janum pursuant to Federal Rule of Civil Procedure 11(a) because it was not signed by a party or an attorney; Mr. Shah is not an attorney and may not represent a corporate entity *pro se*. (See Doc. No. 21). The Court also ordered Janum to either obtain counsel within sixty days or show cause why default judgment

should not be entered against it. (Doc. No. 25). Janum failed to do either, and Janum's present *pro se* filing suffers from the same procedural deficiencies as its Answer.

Accordingly, **IT IS HEREBY ORDERED** that Janum's response (Doc. No. 31) is **STRICKEN** and the Court's previous order (Doc. No. 30) is **CONFIRMED**.

BY THE COURT:

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Signed: April 03, 2012

SO ORDERED

PAUL MANNES
U. S. BANKRUPTCY JUDGE

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

In re: Case No.: 09−24353 − PM Chapter: 13

Kevin D Rusten
14917 Lear Lane
Silver Spring, MD 20905

Cynthia M Rusten
14917 Lear Lane
Silver Spring, MD 20905

ORDER UPON REQUEST TO MODIFY CHAPTER 13 PLAN AFTER CONFIRMATION

TO: the party requesting modification of the Plan:

You have filed a request to modify the Chapter 13 Plan that has been confirmed in the instant case. Therefore, pursuant to Federal Bankruptcy Rule 3015(g), it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED, that within seven (7) days after this Order is entered, you shall give Notice by first−class mail that a proposed Plan modification has been filed, that there is a right to object to the requested modification within thirty (30) days after the date of the Notice, and that in the event an objection is filed, a hearing will be held on May 22, 2012, at 2:00 P.M. , in Courtroom **3D**,

U.S. Courthouse
Greenbelt Division
6500 Cherrywood Lane, Ste. 300
Greenbelt, MD 20770

The Notice shall be given to the Debtor(s), the Trustee and all creditors who have filed claims, and a copy of the proposed modification or a summary thereof shall be sent with the Notice; and it is further

ORDERED, that within fourteen (14) days you shall file a certificate that the Notice and proposed modification were mailed in accordance with the preceding ORDERED paragraph.

cc: Party Requesting Modification −Debtor

8.3 − *kgoodwin*

End of Order

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SCHAFER GROUP LTD.	)	
	)	
Plaintiff,	)	
	)	Civil No. 09-7675
v.	)	
	)	Sec. C, Mag. 2
	)	
UNITED STATES OF AMERICA, et al.	)	
	)	
Defendants.	)	

ORDER AMENDING JUDGMENT

The motion of the United States to amend this Court's judgment of March 29, 2012, pursuant to Rule 59(e), Fed. R. Civ. P., is GRANTED, and the judgment is amended to the extent set out herein. The plaintiff shall pay over the funds it holds that were at issue in this matter, $224,340.09, directly to the United States, to the attention of its counsel of record, instead of into the Registry of the Court.

Done at New Orleans, Louisiana, this 2nd day of April, 2012.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEBRASKA

DAVID M. SIMON and MARGARET S. SIMON,	)	
Plaintiffs,	)	8:10CV201
v.	)	
I.R.S.,	)	ORDER AND JUDGMENT
Defendant.	)	

Pursuant to the parties' Joint Stipulation of Dismissal (Filing No. 23) and Fed. R. Civ. P. 41,

IT IS ORDERED that this matter is dismissed with prejudice, with each party to pay its own attorney fees and costs.

DATED this 3rd day of April, 2012.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARY R. SWEETWOOD,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CASE NO. 10-CV-2189 W (AJB)

ORDER (1) ADOPTING REPORT & RECOMMENDATION (DOC. 40), (2) GRANTING MOTION FOR TERMINATING SANCTIONS (DOC. 36) AND (3) ENTERING DEFAULT JUDGMENT AGAINST CHARLES R. McHAFFIE

On January 11, 2012, Counter Claimant United States of America filed a motion for terminating sanctions against Counter Defendant Charles R. McHaffie. (*See* Doc. 36.) On February 6, 2012, Magistrate Judge Mitchell D. Dembin issued a Report and Recommendation ("Report"), recommending that the Court grant the motion and enter default judgment against McHaffie. (*See* Doc. 40.) The Report also ordered that any objections were to be filed by February 29, 2012, and any reply filed on March 12, 2012. To date, no objection has been filed, nor has there been a request for additional time in which to file an objection.

A district court's duties concerning a magistrate judge's report and recommendation and a respondent's objections thereto are set forth in Rule 8(b) of the Rules Governing Section 2254 Cases in the United States District Courts. See Mayle v. Felix, 545 U.S. 644, 654 (2005) (Acknowledging that a "discrete set of Rules governs federal habeas proceedings launched by state prisoners.") Rule 8(b) provides that a

district judge "must determine de novo any proposed finding or recommendation to which objection is made." In United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003), the Ninth Circuit interpreted identical language in 28 U.S.C. 636(b)(1)(c) as making clear that "the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made,* but not otherwise." (emphasis in original); see also Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005) ("Of course, de novo review of a R & R is *only* required when an objection is made to the R & R.") (emphasis added) (citing Renya-Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F. Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopted Report without review because neither party filed objections to the Report despite the opportunity to do so, "accordingly, the Court will adopt the Report and Recommendation in its entirety."); see also Nichols v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

In light of McHaffie's failure to file any objections, as well as his apparent concession that default could and should be entered against him for repeated failures to comply with court orders and his discovery obligations (*see* Doc. 40 at 3:12–4:1, 5:20–6:5), the Court accepts Judge Dembin's recommendation, and **ADOPTS** the Report (Doc. 40) in its entirety. For the reasons stated in the Report, which is incorporated herein by reference, the Court **GRANTS** the motion for sanctions (Doc. 36) and **ORDERS** that default judgment be entered against Counter Defendant Charles R. McHaffie.

IT IS SO ORDERED.

DATED: April 2, 2012

Hon. Thomas J. Whelan
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

USA Petitioner	)	
v.	)	CIVIL NO. 2:12-cv-89-GZS
Louis C. Talarico, III Respondent	)	

ORDER APPROVING LEVY UPON PRINCIPAL RESIDENCE

This Court, having determined, upon the petition and supporting declaration filed herein, that the petitioner, United States of America, made a *prima facie* case for the approval of a levy upon a principal residence by the Internal Revenue Service, issued its Notice and Order to Show Cause that was properly served, and Louis C. Talarico, II, having filed a written objection to the Order to Show Cause, and the Court having determined that the objection fails to show any cause whatsoever why the Court should not permit a levy as requested,

IT IS HEREBY ORDERED THAT, pursuant to 26 U.S.C. § 6334(e)(1), the Court grants the Petition for Judicial Approval of Levy Upon Principal Residence and approves the execution of a levy upon Louis C. Talarico, II's interest in the property located at 114 Hatch Road, New Gloucester, Maine 04260. Accordingly, any authorized officer of the Internal Revenue Service may execute the levy upon the property to satisfy all or part of Louis C. Talarico, II's liabilities for unpaid federal income taxes, for the years 2001, 2003, and 2004.

8204394.1

It is FURTHER ORDERED that the Clerk of the Court shall mail a copy of this ORDER to:

Andrea A. Kafka
Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044

Louis C. Talarico, II
114 Hatch Road
New Gloucester, Maine 04260

DATE: April 3, 2012

/s/ George Z. Singal
George Z. Singal
U.S. District Judge

8204394.1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
Sacramento Division

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES JOHN TINGLER, VICTORIA MARIE TINGLER Defendants.	Civ. No. 2:10-CV-03061-WBS-KJN **AMENDED ORDER OF EXPUNGEMENT AND PERMANENT INJUNCTION**

The United States Motion for Amended Order (Rec. Doc. 24), the motion is GRANTED. This Order supercedes the order of expungement previously issued by the Court on May 6, 2011 (Rec. Doc. 22). For the reasons set forth in the Order (Doc. No. 21) granting the United States' Motion for Default Judgment, the Court hereby finds as follows:

(1) Defendants have failed to plead or otherwise defend this case. The Court deems them to have admitted the allegations in the United States' Amended Complaint (Doc. No. 4).

(2) Facts presented in the Declaration of Dean Prodromos clearly show that defendants Charles and Victoria Tingler ("the Tinglers") have filed UCC Financing statements against an officer of the United States with the Secretary of State for the State of California.

(3) Facts presented in the Declaration of Dean Prodromos demonstrate that he, as an officer of the United States, has no relationship with the Tinglers that would give rise to a legitimate notice of lien. It therefore clearly appears that the lien is frivolous. Furthermore, it clearly appears that the lien was filed solely to retaliate against her for her good-faith efforts to enforce the tax laws against the Tinglers.

(4) Plaintiff has demonstrated that the entry of this injunction is necessary and

appropriate to the enforcement of the internal revenue laws. 26 U.S.C. § 7402(a).

(5) In addition, Plaintiff has demonstrated that continued filings of frivolous liens against its officers would cause it irreparable harm, because federal officers who face personal reprisal through encumbrance of their property and damage to their credit record may be unable to enforce the internal revenue laws vigorously and evenhandedly.

(6) Furthermore, Plaintiff has demonstrated that it has no adequate remedy at law with respect to future frivolous lien filings, because it would suffer the irreparable harm described above during the time in which it would be required to apply to a court to have the lien filings stricken.

(7) The equities weigh in favor of Plaintiff because Defendants have no basis for filing nonconsensual liens against federal officers. Furthermore, an injunction is in the public interest because it will help ensure that federal officers can apply the internal revenue laws free of retaliation and harassment by Defendants.

WHEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

(1) It is hereby ORDERED that Charles Tingler and Victoria Tingler, as well as any person acting on their behalf, shall be, and hereby is, PERMANENTLY ENJOINED from filing any notices of lien, recording any documents, or otherwise taking any action in the public records which purports to name a federal officer as a debtor, appoint a federal officer as a trustee, or encumber the rights or the property of any federal officer. The injunction in this paragraph shall not apply if Charles Tingler or Victoria Tingler shall first have prior permission to record the document from a United States District Court, which permission shall also be recorded.

(2) For the purposes of the preceding paragraph, "federal officer" shall mean any officer, employee, or agent of the United States or any of the agencies of the United States, or any judge, magistrate judge, judicial officer, or judicial employee of the United States, regardless of whether the officer, employee, or agent is named personally, in his or her official capacity, or in any other capacity.

(3) The Defendants, Charles Tingler and Victoria Tingler, are cautioned and advised that any violation of this injunction imposed by this Judgment may result in the imposition of appropriate civil or criminal sanctions as well as constituting contempt of court.

(4) It is hereby ORDERED that the UCC Financing Statements Filing Numbers 10-7220769408 and 10-7220770319 as well as associated "maritime lien" notices, filed by the Defendant Victoria Tingler with the Secretary of State for the State of California on January 25, 2010, are declared NULL, VOID, and of NO LEGAL EFFECT and shall be stricken and permanently EXPUNGED from the records of the Secretary of State for the State of California.

(5) It is hereby ORDERED that the UCC Financing Statements Filing Numbers 09-7195629432, 09-72155185, 10-7220758113 and 10-7220759629 and associated "maritime lien" notices, filed by the Defendant Charles Tingler with the Secretary of State for the State of California on May 6, 2009, November 30, 2009, January 25, 2010 and January 25, 2010, respectively, are declared NULL, VOID, and of NO LEGAL EFFECT and shall be stricken and permanently EXPUNGED from the records of the Secretary of State for the State of California.

(6) The United States may record this Judgment in the public records as necessary in order to effectuate paragraphs (1) through (5) of this Judgment.

IT IS SO ORDERED. The hearing date of May 7, 2012 is vacated.

DATED: April 2, 2012

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

Presented on March 30, 2012 by:

/s/ Aaron M. Bailey

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