IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

BNSF RAILWAY COMPANY, formerly The Burlington Northern and Santa Fe Railway Company, as successor by merger to Burlington Northern Railroad Company and The Atchison Topeka and Santa Fe Railway Company,	§	
Plaintiff,	§	
VS.	§	NO. 4:11-CV-455-A
UNITED STATES OF AMERICA,	§	
Defendant.	§	

O R D E R

Came on for consideration the motion of plaintiff, BNSF Railway Company, to amend the scheduling order to extend the expert disclosure deadline. Defendant, United States of America, opposes the motion. Thus, the court concludes it would benefit from an expedited response by defendant. Therefore,

The court ORDERS that by June 13, 2012, defendant file her response to plaintiff's above-described motion.

SIGNED June 6, 2012.

JOHN McBRYDE
United States District Judge

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF ALABAMA

IN RE:	*	**CASE NO:**
CHARLES K. BRELAND, JR.	*	**09-11139**
Debtor	*	**CHAPTER 11**

* *

ORDER

The Court, having considered the Application to Appear Pro Hac Vice of Victoria W. Baudier, as special counsel for Charles K. Breland, Jr., Debtor in Possession, finds that said Application should be granted.

IT IS THEREFORE ORDERED that Victoria W. Baudier shall be allowed to appear before this Court as special counsel on behalf of Charles K. Breland, Jr., Debtor in Possession.

Dated: June 6, 2012

Margaret A. Mahoney

MARGARET A. MAHONEY
CHIEF U.S. BANKRUPTCY JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. 10-CV-14146-MOORE/LYNCH

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEBORAH CAMPA, ET AL.,

Defendants.

_____/

ORDER GRANTING THE UNITED STATES' UNOPPOSED MOTION TO VACATE ORDER OF SALE

THIS CAUSE came before the Court upon the United States' Unopposed Motion to Vacate Order of Sale (ECF No. 38). On February 24, 2012, the Court entered the Order of Sale (ECF No. 37). Prior to the sale of the real property located at 5155 St Andrews Island Dr., Vero Beach, FL 32967 (the "Subject Property") by the IRS Property Appraisal and Liquidation Specialist, Deborah Campa entered into a contract to sell the Subject Property. The United States approved the purchase price between Campa and the buyer, and the sale closed on April 27, 2012. UPON CONSIDERATION of the Motion, the pertinent portions of the Record, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the United States' Motion is GRANTED. It is further

ORDERED AND ADJUDGED that the Order of Sale (ECF No. 37) dated February 24, 2012 is VACATED.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th day of June, 2012

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff	:	
vs.	:	Civil Action No. 4:09-cv-40134
ALFRED F. CHAREST, SHIRLEY M. CHAREST; WEBSTER BANK, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; TERRY A. KING; CYNTHIA A. KING, Defendants	:	

ORDER OF DISTRIBUTION

This matter is before the Court on Defendants, Webster Bank, N.A. ("Webster") and Mortgage Electronic Registration Systems, Inc. as nominee for Webster Bank, N.A. ("MERS") (collectively, "Defendants") Motion to Distribute Funds in the above-captioned proceeding, filed on April 30, 2012. Pursuant to that motion, the Court's Order granting the United States' Motion for Summary Judgment (Docket No. 47) and the Court's Order Approving Sale (Docket No. 59), the motion is GRANTED, and it is hereby ORDERED as follows:

1. That the Receiver, Christa Jaillet (or her agency ERA Key Realty Services) shall distribute the net proceeds of the receivership and the Court-ordered sale (in the total amount of $805,246.13), as follows:

a. The Receiver shall distribute $788,589.04 to Webster Bank, N.A. with respect to its construction loan secured by a mortgage against the property located at 72 Wilderness Drive in Sutton, Massachusetts made on or about August 30, 2006, by check payable to Webster Bank, N.A. and mailed to counsel for Webster:

Linda Rekas Sloan, Esq.
Salter McGowan Sylvia & Leonard, Inc.
321 South Main Street, Suite 301
Providence, RI 02903

b. The Receiver shall distribute the remaining $16,657.09 to the United States Treasury, to be applied to the unpaid federal income tax liabilities of the defendants, Terry A. King and Cynthia A. King, for the taxable years 1999 through 2006, by check payable to the United States Treasury and directed to:

William E. Thompson
U.S. Department of Justice, Tax Division
P.O. Box 310
Ben Franklin Station
Washington, D.C. 20044

2. There will be no funds remaining to disburse to the defendant Webster Bank, N.A. with respect to its mortgage granted on or about May 12, 2008, to secure a home equity line of credit.

3. The Receiver shall continue to hold in escrow the $50,000 deposit made by John and Jeanne Esler, to which the United States asserts it is entitled as its liquidated damages for the Eslers' alleged breach of a prior sale agreement with the Receiver, pending instructions mutually given in writing by the United States and the Eslers, or a further Order of this Court.

IT IS SO ORDERED.

Dated: June 6, 2012

HONORABLE F. DENNIS SAYLOR, IV
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 10MC60240-CIV-MARTINEZ-MCALILEY

POLENBERG COOPER, P.A., a Florida professional association,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.
_____/

FINAL ORDER OF DISMISSAL WITHOUT PREJUDICE AND ORDER DENYING ALL PENDING MOTIONS AS MOOT

THIS MATTER is before the Court upon the parties' Stipulation of Dismissal **(D.E. No. 13)**. It is:

ADJUDGED that this action is **DISMISSED without prejudice**, with each part to bear its own costs and fees. It is also:

ADJUDGED that all pending motions in this case are **DENIED as moot**, and this case is **CLOSED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 5 day of June, 2012.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge McAliley
All Counsel of Record

Below is an Order of the Court.

ELIZABETH PERRIS
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re	)	Case No. 11-30383-elp11
	)	
Lori D. Diaz,	)	ORDER EXTENDING "FINAL ORDER
	)	AUTHORIZING USE OF CASH COLLATERAL
	)	OF DEBTOR-IN-POSSESSION AND
	)	GRANTING ADEQUATE PROTECTION"
	)	(Sterling Savings Bank) (for the period 05/01/12
Debtor-in-Possession.	)	through 07/31/2012)

Based on Paragraph 2 of this Court's prior Order (Docket No. 57) authorizing Debtor's use of the cash collateral of Sterling Savings Bank ("Secured Creditor") which permits an extension of the use of Secured Creditor's cash collateral without further motion or notice upon stipulation of Debtor and Secured Creditor, and based on the stipulation of Debtor and counsel for Secured Creditor, endorsed hereon, it is

ORDERED that Debtor's right to use cash collateral is extended from May 1, 2012 *nunc pro tunc* through and including July 31, 2012 or the Effective Date of the Debtor's First Amended Plan of Reorganization, whichever is earlier, under the same terms and conditions of this Court's Order authorizing Debtor's use of cash collateral

VANDEN BOS & CHAPMAN, LLP
Attorneys at Law
319 SW Washington Street, Suite 520
Portland, Oregon 97204-2690
(503) 241-4869

entered February 8, 2011 (Docket No. 57) in accordance with the budget attached to this Order marked **Exhibit 1**.

###

PRESENTED BY:

/s/Douglas R. Ricks for Robert J Vanden Bos
Robert J Vanden Bos OSB #78100
VANDEN BOS & CHAPMAN, LLP
319 S.W. Washington, Suite 520
Portland, Oregon 97204
Telephone: (503) 241-4869
Fax: (503) 241-3731

Of Attorneys for Debtor-in-Possession

IT IS SO STIPULATED:

VANDEN BOS & CHAPMAN, LLP

By:/s/Douglas R. Ricks for Robert J Vanden Bos
Robert J Vanden Bos, OSB #78100
Of Attorneys for Debtor-in-Possession

WITHERSPOON KELLEY

By:/s/Christopher G. Varallo
Christopher G. Varallo, OSB #060145
Of Attorneys for Sterling Savings Bank

First Class Mail:

Lori D. Diaz
3491 SW Hillsboro Highway
Hillsboro, OR 97123

Christopher B. Varallo
422 W Riverside Avenue
#1100
Spokane, WA 99201

Electronic Mail:

The foregoing was served on all CM/ECF participants through the Court's Case Management/Electronic Case File system.

Lori Diaz Property
2011 Budget
STERLING SAVINGS BANK PROPERTIES
CUMMULATIVE 3 MONTH BUDGET - May 1 - July 31, 2012

	May	June	July	Total
Total # of Properties	**18**	**18**	**18**	
Total Scheduled Rents	**23,216**	**23,216**	**23,216**	**46,432**
Income				
Collection	179	179	179	358
Damage Withholdings	416	416	416	832
FED Fee Income	16	16	16	31
Late Fee Income	127	127	127	253
NSF Check Fee	7	7	7	15
Pet Rent Income	480	480	480	960
Rent Income (95% Occupancy)	21,978	21,978	21,978	43,956
Total Income	23,204	23,204	23,204	46,408
Expenses				
Advertising	49	49	49	98
Appliances	148	148	148	296
Carpet Cleaning	34	34	34	68
Eviction Fees	40	40	40	80
Flooring Repair	178	178	178	356
HOA Dues	236	236	236	473
Insurance	569	569	569	1,138
Janitorial	43	43	43	86
Mortgage Interest	10,893	10,893	10,893	21,785
Landscaping	19	19	19	38
Management Fee	1,612	1,612	1,612	3,223
Maintenance Labor	1,478	1,478	1,478	2,957
New Tenant Fee	230	230	230	460
Painting	76	76	76	152
Plumbing	36	36	36	71
Property Taxes	4,092	4,092	4,092	8,184
Repairs and Maintenance	894	894	894	1,787
Utilities				
Electricity	28	28	28	57
Garbage	22	22	22	45
Natural Gas	67	67	67	133
Sewer	48	48	48	96
Water	18	18	18	36
Total Expenses	20,809	20,809	20,809	41,618
Net Income	2,395	2,395	2,395	4,790
* Debtor represents that the monthly income and expense figures do not fluxuate seasonally therefore this 4 month budget is based on identical repeating monthly budgets				

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

TIMOTHY K. DOUGLASS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MARY ADAMS BEAKLEY, et al.,	)	
	)	
Defendants.	)	Civil Action No. 5:12-CV-038-C

ORDER

On this date, the Court considered:

(1) Plaintiffs' Motion to Prohibit Further Interference with Service or Other Appropriate Procedural Process, filed March 9, 2012;

(2) Receiver's Motion for Contempt Against Defendant John William Beakley, filed March 9, 2012;

(3) Plaintiffs' Emergency Motion for Contempt and Sanctions, filed April 4, 2012;

(4) Plaintiff Scott P. Douglass' Motion to Quash Subpoena and for Protective Order, filed April 11, 2012; and

(5) Defendants' Motion for Attorney [sic] Fees and Costs Subject to Motion to Dismiss, for Rule 11 Sanctions, filed April 12, 2012.

Plaintiffs' Motion to Prohibit Further Interference with Service or Other Appropriate Procedural Process is **DENIED**.

Receiver's Motion for Contempt Against Defendant John William Beakley is **DENIED**.

Plaintiffs' Emergency Motion for Contempt and Sanctions is **DENIED**.

Plaintiff Scott P. Douglass' Motion to Quash Subpoena and for Protective Order is **DENIED** as moot.

Defendants' Motion for Attorney [sic] Fees and Costs Subject to Motion to Dismiss, for Rule 11 Sanctions is **DENIED**.

SO ORDERED.

Dated this 6th day of June, 2012.

SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

TIMOTHY K. DOUGLASS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MARY ADAMS BEAKLEY, et al.,	)	
	)	
Defendants.	)	Civil Action No. 5:12-CV-038-C

ORDER

On May 16, 2012, the Court ordered the parties to show cause why the instant case should not be transferred to the Dallas Division of the Northern District of Texas. In response, Plaintiffs filed a brief arguing against transfer.[1] After considering the factual allegations of the complaint, the record evidence, and the relevant factors regarding transfer of venue, the Court is of the opinion that, for the convenience of the parties and witnesses, as well as in the interest of justice, good cause exists to transfer the above-styled and -numbered cause to the Dallas Division of the Northern District of Texas.

I. BACKGROUND

On March 1, 2012, Plaintiffs, Sam Douglass, Timothy Douglass, Scott Douglass, and Mark Douglass[2] ("Plaintiffs"), filed the instant case alleging, inter alia, violations of federal securities laws against individual Defendants John Beakley ("Beakley"), Mary Beakley, Meghan

[1]Defendants did not file a response. Therefore, Defendants are presumed not to be opposed to transfer.

[2]Sam Douglass is the father of Timothy, Scott, and Mark Douglass.

Beakley, David Beakley, Joel Beakley, Michael Beakley, and Amy Beakley ("Beakley Defendants"),[3] along with over one hundred entity Defendants. The Court entered a temporary restraining order, appointed a receiver, and has on multiple occasions received evidence, through both live witness testimony and exhibits, in relation to Plaintiffs' motions to extend the temporary restraining order and to convert the temporary restraining order into a preliminary injunction. In the midst of the Court's taking of evidence on Plaintiffs' motion for a preliminary injunction, the parties submitted and the Court signed an order that, with a few exceptions primarily regarding the individual defendants, in effect extended the TRO into a preliminary injunction and continued the receivership order.

Because the Court's inquiry is fact-intensive, the Court will discuss the particulars of the case in greater detail in the analysis section below. Nevertheless, a general overview of the case is as follows:

In 2001 Plaintiffs came into roughly $10 million as a result of a settlement from the death of Sam Douglass's wife and the Douglass boys' mother. Plaintiffs invested the money with John Beakley, who was a long-time friend and personal accountant of Plaintiffs. While Beakley initially invested the money in stocks and similar instruments, he soon poured the money into various entities of his creation, forming a complicated structure of interrelated financial arrangements among the many entities.

In 2011 Sam Douglass approached Beakley about getting a buyout of their investment. In essence, the buyout never happened and Plaintiffs filed a state-court action against Beakley in

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[3]John Beakley is married to Mary Beakley, and the two are the parents of David, Joel, Michael, and Amy Beakley. Meghan Beakley is married to Michael Beakley.

Dallas County Court-at-Law in December 2011. Plaintiffs then filed the instant case on March 1, 2012, alleging various federal securities violations as well as a multitude of state-law claims.

After Plaintiffs filed the instant case, Roundtable Corporation ("Roundtable"), a named entity defendant, filed for bankruptcy in the Sherman Division of the Eastern District of Texas, which holds court in Plano, Texas. Then, following Roundtable's bankruptcy filing, John Beakley filed for bankruptcy in the Dallas Division of the Northern District of Texas. The Court has severed both of these Defendants from the instant case in light of their bankruptcy filings.

II. STANDARD

Change of venue is governed by 28 U.S.C. § 1404, which provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district court or division where it might have been brought." 28 U.S.C. § 1404(a). The court's inquiry into the propriety of transfer is two-pronged.

The first question in applying the provisions of § 1404(a) is whether the case could have been brought in the proposed transferee district. *In re Volkswagen AG* (*Volkswagen I*), 371 F.3d 201, 203 (5th Cir. 2004). Then, if the transferee district is a proper venue, the court must weigh several public and private factors relating to the current venue against the transferee venue. *Id.* No one factor is given dispositive weight. *Id.*

The private interest factors include (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious, and inexpensive. *In re Volkswagen of Am., Inc.* (*Volkswagen II*), 545 F.3d 304, 315 (5th Cir. 2008). The public interest factors include (1) the administrative difficulties

flowing from court congestion, (2) the local interest in having localized interests decided at home, (3) the familiarity of the forum with the law that will govern the case, and (4) the avoidance of unnecessary problems of conflict of laws in the application of foreign law. *Id.*

III. ANALYSIS

A. The Case Could Have Been Filed in Dallas

As an initial matter, the instant case could have been filed in the Dallas Division of the Northern District of Texas. Plaintiffs do not dispute this fact. Therefore, the Court will continue its analysis and weigh the public and private factors relevant to the transfer inquiry.

B. Private Interest Factors

While speculation as to a number of relevant facts runs high, the facts of which the Court is aware reveal that good cause exists to transfer the instant case to the Dallas Division of the Northern District of Texas because it is clearly a more convenient venue.

1. The Relative Ease of Access to Sources of Proof

With John Bèakley and Roundtable now in bankruptcy, the posture of this case has changed dramatically since it was filed, and the nature and location of the evidence Plaintiffs might use to support their claims against the remaining Defendants are not readily apparent. Plaintiffs argue that the majority of relevant documents and witnesses are probably located in Lubbock because all of the entity Defendants maintain their principal places of business in Lubbock. While Plaintiffs' argument is not only highly speculative, the evidence is also unclear

as to whether every entity Defendant is actually headquartered in Lubbock.[4] Nevertheless, the Court is of the opinion that this is not the proper inquiry.

A fair reading of Plaintiffs' complaint reveals that Plaintiffs' claims are in essence directed at John Beakley and the Beakley Defendants for alleged misrepresentations and other culpatory actions. Putting aside John Beakley, who is in bankruptcy, all of the Beakley Defendants, who are presumably in possession of some type of evidence that may be relevant to Plaintiffs' claims, are located in and around Dallas. Moreover, the Court has received evidence that many of the potentially relevant corporate books and records are stored on servers located in or near Dallas. And finally, more than 50,000 documents have been produced as a result of the state-court action in Dallas County.[5] These documents are likely relevant to the instant case and are presumably located in or near Dallas. Therefore, this factor weighs in favor of transfer.

2. The Availability of Compulsory Process to Secure the Attendance of Witnesses

Federal Rule of Civil Procedure 45(b)(2) allows a federal court to compel a witness's attendance at a trial or hearing by subpoena; however, the court's subpoena power is limited to those witnesses who live within the district or those who work or reside fewer than 100 miles

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[4]Plaintiffs repeatedly refer to the 100-plus entity Defendants that are supposedly headquartered in Lubbock. Yet, Plaintiffs ignore the fact that most of the entities initially named as Defendants—specifically, many of the Dairy Queens—supposedly have been rolled up into Roundtable's bankruptcy. Therefore, the extent to which the location of these entities is relevant to the Court's consideration is tenuous at best.

[5]While some courts have held that documents that have been moved to a particular venue in anticipation of a venue dispute should not be considered, *see In re Hoffman-La Roche Inc.*, 587 F.3d 1333, 1336-37 (Fed. Cir. 2009), the Court draws a distinction with regard to the documents produced in the state-court action in Dallas County. Plaintiffs initiated the action in Dallas County and requested production of the documents months before they filed the instant case. Therefore, the location of these documents is a relevant and permissible consideration.

from the issuing courthouse. *See id.* at 316. Both Lubbock and Dallas are in the Northern District of Texas. Therefore, both divisions' intra-district subpoena power is equal.

Plaintiffs complain that should the case be transferred to Dallas, witnesses living within 100 miles of Lubbock but outside the Northern District of Texas would be outside of the transferee court's subpoena power. Plaintiffs, however, do not suggest any person who may fit into this group, much less identify a potential witness in this group with relevant knowledge of the case. The same limitation, however, would be equally true in Lubbock for the hypothetical witness living outside the District but within 100 miles of the Dallas courthouse. And Roundtable, which is headquartered in Dallas, has filed for bankruptcy in Plano, Texas, which is within 100 miles of the Dallas courthouse. Therefore, to the extent any witness with relevant information is located in or near Plano but outside of the Northern District, that witness may be subject to the Dallas Court's subpoena.[6] Nevertheless, Plaintiffs concede that there is no evidence of any particularized inconvenience or refusal to testify by any third-party witness such that compulsion by either the Lubbock or the Dallas Court would be necessary.

Therefore, because there are no identified witnesses living outside of the Northern District but within 100 miles of either the Lubbock or the Dallas courthouse, much less any evidence that such a witness would be unwilling to testify in the case, this factor is neutral.

3. The Cost of Attendance for Willing Witnesses

Next, the Court must weigh the cost for witnesses to travel and attend trial in the Lubbock Division versus the Dallas Division. The Fifth Circuit has explained:

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[6]The Court expresses no opinion as to the Dallas Court's ability to subpoena any witness involved with the Roundtable bankruptcy.

> [T]he factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled. Additional distance means additional travel time; additional travel time increases the probability for meal and lodging expenses; and additional travel time with overnight stays increases the time which these fact witnesses must be away from their regular employment.

Volkswagen I, 371 F.3d at 205. The Court must consider the convenience of both the party and non-party witnesses. *See id.* at 204 (requiring courts to "contemplate consideration of the parties and witnesses").

The only non-party witness Plaintiffs have identified is Josh Savage, who lives near Lubbock. The Court takes judicial notice of the fact that both Lubbock and Dallas are served by major airports; therefore, it would be of no great difficulty or expense for Savage to travel to Dallas in the event this case goes to trial. Plaintiffs also note that Beth and William Parsley, individuals that have identified themselves as potential intervenors in this case, are residents of Levelland, Texas, which is approximately 30 miles west of Lubbock. Yet, the Court has not granted the Parsleys leave to intervene in the case. Therefore, their geographical location is irrelevant.

Of greatest import is the fact that all of the Beakley Defendants live in or near the Dallas area.[7] Moreover, Sam Douglass lives in Rockwall County, Texas, which is in the Dallas Division. 28 U.S.C. § 124(a)(1). Timothy and Mark Douglass both live in Brazos County, Texas, which, despite the fact that Brazos County is in the Southern District of Texas, § 124(b)(2), is much closer to Dallas than to Lubbock. Scott Douglass lives in Casablanca, Morocco, so his location is irrelevant to the Court's inquiry. Thus, almost all of the identified

[7]Plaintiffs state in their brief that Mary Beakley lives in Lubbock. However, the Court has heard evidence that she in fact resides in Dallas.

witnesses live closer to Dallas than to Lubbock. And despite the fact that the one identified non-party witness lives near Lubbock, the fact that all of the Beakley Defendants live in or near Dallas tips the balance toward Dallas as the more convenient forum. Therefore, this factor weighs in favor of transfer.

4. All Other Practical Problems that Make Trial of a Case Easy, Expeditious, and Inexpensive

Plaintiffs point to the fact that the Court-appointed Receiver in this case is located in Lubbock as a reason weighing against transfer. Yet, the tail should not wag the dog; that is, the venue of the case should not be controlled by the location of the Receiver, which is merely a function of the case. Nonetheless, the Court is confident that the Receiver could ably perform his duties in either the Lubbock or the Dallas Division.

Moreover, former Defendants John Beakley and Roundtable have filed for bankruptcy in Dallas and Plano,[8] respectively. Ongoing efforts have been made by Plaintiffs and the Receiver to bring these Defendants out of bankruptcy and back into the instant case or, in the alternative, to participate in the bankruptcy proceedings in some way as to protect their interests. It would be beneficial, then, for the instant case to be either in the same division as or closer to the ongoing bankruptcy proceedings.[9] Therefore, this factor weighs in favor of transfer.

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[8]Again, Plano is geographically located near Dallas.

[9]Plaintiffs argue that the locations of Beakley's and Roundtable's bankruptcy proceedings do not support transfer. They request, however, that should the Court transfer this case, that it be transferred to the Eastern District of Texas so as to be near the Roundtable bankruptcy. Therefore, Plaintiffs implicitly concede that there is some value in this case being near the ongoing bankruptcy proceedings.

C. Public Interest Factors

1. The Administrative Difficulties Flowing from Court Congestion

Plaintiffs cite statistics comparing the number of new civil filings this year in the Lubbock Division versus the number of filings in the Dallas Division and argue that, because Dallas has received many more filings than Lubbock, the case could conceivably go to trial more quickly in Lubbock than in Dallas. Plaintiffs, however, ignore the fact that the undersigned is the sole judge presiding over all the civil cases in the Lubbock, Abilene, and San Angelo Divisions, while eight active judges and two senior judges preside over the Dallas Division. Nonetheless, the Court is confident that this case could go to trial in either Division with nearly equal speed. Therefore, this factor is neutral.

2. The Local Interest in Having Localized Interests Decided at Home

The Court must consider local interest in the litigation because "[j]ury duty is a burden that ought not be imposed upon the people of a community which has no relation to the litigation." *Volkswagen I*, 371 F.3d at 206 (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09 (1947)) (internal quotation marks omitted). Plaintiffs contend that the true "home" of this case is in Lubbock because most of the entity Defendants are located in Lubbock. This ignores the fact, however, that no flesh and blood parties live in Lubbock. Instead, the Beakley Defendants live in or near Dallas. Sam Douglass also lives in the Dallas Division. And while the situs of the alleged injury in a case of this nature is difficult to pinpoint, the Court is of the opinion that, given the fact that most of the flesh and blood parties live in or near the Dallas Division, the Dallas community would have the most interest in deciding this case. Therefore, this factor weighs in favor of transfer.

3. The Familiarity of the Forum with the Law That Will Govern the Case

This case involves federal securities laws and other Texas state-law causes of action. Both the Lubbock and Dallas Divisions are equally familiar with the governing law in the case. Therefore, this factor is neutral.

4. The Avoidance of Unnecessary Problems of Conflict of Laws in the Application of Foreign Law

This factor is neutral.

D. Plaintiffs' Request for Transfer to the Eastern District

Plaintiffs suggest that, should the Court decide that transfer is appropriate, the more convenient forum would be the Eastern District of Texas, where Roundtable and other related entities are currently in bankruptcy. Yet, based on the above analysis, the Court is of the opinion that Dallas would be the more appropriate venue.

IV. CONCLUSION

On balance, both the private and public factors favor the Dallas Division as the clearly more convenient venue. Therefore, for the convenience of parties and witnesses and in the interest of justice, the above-styled and -numbered case is **TRANSFERRED** to the Dallas Division of the Northern District of Texas. The Clerk of Court is directed to effect the transfer according to the usual procedure.

SO ORDERED this 6th day of June, 2012.

SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE

Phillips, Harris J. (TAX)

From: neb_bkecf@neb.uscourts.gov
Sent: Wednesday, June 06, 2012 11:16 AM
To: Courtmail@neb.uscourts.gov
Subject: Ch-12 11-42253-TLS Todd Eugene Gartner and Andrea Jean Gartner Order on Objection to Claim

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.**

U.S. Bankruptcy Court

District of Nebraska

Notice of Electronic Filing

The following transaction was received from law entered on 6/6/2012 at 10:15 AM CDT and filed on 6/6/2012
Case Name: Todd Eugene Gartner and Andrea Jean Gartner
Case Number: 11-42253-TLS
Document Number: 48

Docket Text:
Order Continuing (RE: related document(s)[31] Objection to Claim of Nebraska Department of Revenue filed by Debtor Todd Eugene Gartner, Joint Debtor Andrea Jean Gartner, [34] Resistance filed by Creditor Nebraska Department Of Revenue). The June 13, 2012 hearing is Canceled. By agreement of the parties, this matter is continued. Parties shall filed a Status Report by July 11, 2012. HEREBY ORDERED by Judge Thomas L. Saladino. (Text Only Order) (law)

The following document(s) are associated with this transaction:

11-42253-TLS Notice will be electronically mailed to:

Patricia Fahey
ustpregion13.om.ecf@usdoj.gov

Joe M. Hawbaker on behalf of Debtor Todd Gartner
mjbaker@radiks.net

James A. Overcash
12trustee@woodsaitken.com, jlechner@woodsaitken.com

Harris J. Phillips on behalf of Creditor United States of America
harris.j.phillips@usdoj.gov, central.taxcivil@usdoj.gov;seth.g.heald@usdoj.gov

James M. Woodruff on behalf of Creditor Nebraska Department Of Revenue
jim.woodruff@nebraska.gov

11-42253-TLS Notice will not be electronically mailed to:

Phillips, Harris J. (TAX)

From: neb_bkecf@neb.uscourts.gov
Sent: Wednesday, June 06, 2012 12:33 PM
To: Courtmail@neb.uscourts.gov
Subject: Ch-12 11-42253-TLS Todd Eugene Gartner and Andrea Jean Gartner Order on Objection to Claim

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30-page limit do not apply.**

U.S. Bankruptcy Court

District of Nebraska

Notice of Electronic Filing

The following transaction was received from law entered on 6/6/2012 at 11:32 AM CDT and filed on 6/6/2012
Case Name: Todd Eugene Gartner and Andrea Jean Gartner
Case Number: 11-42253-TLS
Document Number: 49

Docket Text:
Order Continuing (RE: related document(s)[30] Objection to Claim of Internal Revenue Service filed by Debtor Todd Eugene Gartner, Joint Debtor Andrea Jean Gartner, [40] Resistance filed by Creditor United States of America). The June 13, 2012 hearing is Canceled. By agreement of the parties, this matter is continued. Parties shall filed a Status Report by July 11, 2012. HEREBY ORDERED by Judge Thomas L. Saladino. (Text Only Order) (law)

The following document(s) are associated with this transaction:

11-42253-TLS Notice will be electronically mailed to:

Patricia Fahey
ustpregion13.om.ecf@usdoj.gov

Joe M. Hawbaker on behalf of Debtor Todd Gartner
mjbaker@radiks.net

James A. Overcash
12trustee@woodsaitken.com, jlechner@woodsaitken.com

Harris J. Phillips on behalf of Creditor United States of America
harris.j.phillips@usdoj.gov, central.taxcivil@usdoj.gov;seth.g.heald@usdoj.gov

James M. Woodruff on behalf of Creditor Nebraska Department Of Revenue
jim.woodruff@nebraska.gov

11-42253-TLS Notice will not be electronically mailed to:

Phillips, Harris J. (TAX)

From: neb_bkecf@neb.uscourts.gov
Sent: Wednesday, June 06, 2012 11:14 AM
To: Courtmail@neb.uscourts.gov
Subject: Ch-12 11-42253-TLS Todd Eugene Gartner and Andrea Jean Gartner Order on Objection to Claim

U.S. Bankruptcy Court

District of Nebraska

Notice of Electronic Filing

The following transaction was received from law entered on 6/6/2012 at 10:13 AM CDT and filed on 6/6/2012
Case Name: Todd Eugene Gartner and Andrea Jean Gartner
Case Number: 11-42253-TLS
Document Number: 47

Docket Text:
Order Continuing (RE: related document(s)[31] Objection to Claim of Nebraska Department of Revenue filed by Debtor Todd Eugene Gartner, Joint Debtor Andrea Jean Gartner, [34] Resistance filed by Creditor Nebraska Department Of Revenue). By agreement of the parties, this matter is continued. Parties shall filed a Status Report by July 11, 2012. HEREBY ORDERED by Judge Thomas L. Saladino (Text Only Order) (law)

The following document(s) are associated with this transaction:

11-42253-TLS Notice will be electronically mailed to:

Patricia Fahey
ustpregion13.om.ecf@usdoj.gov

Joe M. Hawbaker on behalf of Debtor Todd Gartner
mjbaker@radiks.net

James A. Overcash
12trustee@woodsaitken.com, jlechner@woodsaitken.com

Harris J. Phillips on behalf of Creditor United States of America
harris.j.phillips@usdoj.gov, central.taxcivil@usdoj.gov;seth.g.heald@usdoj.gov

James M. Woodruff on behalf of Creditor Nebraska Department Of Revenue

jim.woodruff@nebraska.gov

11-42253-TLS Notice will not be electronically mailed to:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-80334–Civ-Middlebrooks/Brannon

GEOSYNTEC CONSULTANTS, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.
_____/

ORDER OF REFERRAL TO MEDIATION

THIS CAUSE is before the Court for the purpose of setting pre-trial deadline dates. Trial having been set in this matter, pursuant to Federal Rule of Civil Procedure 16 and Local Rule 16.2, it is ORDERED AND ADJUDGED as follows:

1. All parties are required to participate in mediation. The mediation shall be completed no later than 60 days before the scheduled trial date.
2. Plaintiff's counsel, or another attorney agreed upon by all counsel of record and any unrepresented parties, shall be responsible for scheduling the mediation conference. The parties are encouraged to avail themselves of the services of any mediator on the List of Certified Mediators, maintained in the office of the Clerk of the Court, but may select any other mediator. The parties shall agree upon a mediator within 14 days from the date hereof. If there is no agreement, lead counsel shall promptly notify the Clerk of the Court in writing and the Clerk of the Court shall designate a mediator from the List of Certified Mediators, which designation shall be made on a blind rotation basis.

3. A place, date, and time for mediation convenient to the mediator, counsel of record, and unrepresented parties shall be established. If the parties cannot agree to a place, date, and time for the mediation, they may file a motion asking the Court for an order dictating the place, date, and time.
4. The appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. If insurance is involved, an adjuster with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.
5. All proceedings of the mediation shall be confidential and privileged.
6. At least 14 days prior to the mediation date, each party shall present to the mediator a confidential brief written summary of the case identifying issues to be resolved.
7. The Court may impose sanctions against parties and/or counsel who do not comply with the attendance or settlement authority requirements herein who otherwise violate the terms of this Order. The mediator shall report non-attendance and may recommend imposition of sanctions by the Court for non-attendance.
8. The mediator shall be compensated in accordance with the standing order of the Court entered pursuant to Local Rule 16.2(b)(6), or on such basis as may be agreed to in writing by the parties and the mediator selected by the parties. The cost of mediation shall be shared equally by the parties unless otherwise ordered by the Court. All payments shall be remitted to the mediator within 45 days of the date of the bill. Notice to the mediator of cancellation or settlement prior to the scheduled mediation conference must be given at least 3 full business days in advance. Failure to do so will result in imposition of a fee for 2 hours.

9. If a full or partial settlement is reached in this case, counsel shall promptly notify the Court of the settlement in accordance with Local Rule 16. 2(f), by filing a notice of settlement signed by counsel of record within 14 days of the mediation conference. Thereafter the parties shall forthwith submit an appropriate pleading concluding the case.

10. Within 7 days following the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present. The report shall also indicate whether the case settled (in full or in part), was adjourned, or whether the case did not settle.

11. If mediation is not conducted, the case may be stricken from the trial calendar, and other sanctions may be imposed.

DONE AND ORDERED this 6th day of June, 2012.

DAVE LEE BRANNON
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-80334-Civ-Middlebrooks/Brannon

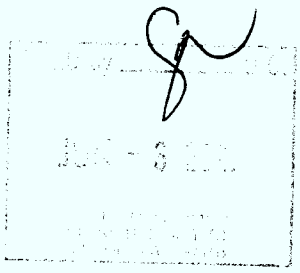
GEOSYNTEC CONSULTANTS, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.
_____/



PRETRIAL SCHEDULING ORDER

THIS CAUSE is before the Court following a Scheduling Conference that took place before the undersigned U.S. Magistrate Judge. In accordance with this Scheduling Conference and pursuant to S.D. Fla. L. R. 16.1(b), the Court ORDERS the following:

1. Trial: This case is set for trial before U.S. District Judge Middlebrooks during the two-week trial period commencing November 5, 2012. This Court has advised the parties of the opportunity to consent to a specially set trial before a U.S. Magistrate Judge pursuant to 28 U.S.C. § 636(c). A fully executed consent form should be filed within 30 days from this Order's date if the parties wish to consent to trial before a U.S. Magistrate Judge.

2. Pretrial Discovery and Conference: Pretrial discovery shall be conducted in accordance with S.D. Fla. L.R. 16.1 and 26.1, and the Federal Rules of Civil Procedure. No pretrial conference shall be held in this action, unless the parties so request or the Court determines, *sua sponte*, that a pretrial conference is necessary. Should a pretrial conference be set, the deadlines set forth in this Order shall remain unaltered.

3. Pretrial Stipulation: Counsel must meet at least 45 days prior to the beginning of the trial calendar to confer on the preparation of a Joint Pretrial Stipulation. The Joint Pretrial Stipulation shall be filed by the date set forth below and shall conform to S.D. Fla. L.R. 16.1(e). The Court will not accept unilateral pretrial stipulations, and will strike *sua sponte* any such submissions. Should any of the parties fail to cooperate in preparing the Joint Pretrial Stipulation, all other parties shall file a certification with the Court stating the circumstances. Upon receipt of such certification, the Court will issue an order requiring the non-cooperating party or parties to show cause why such party or parties (and their respective attorneys) should not be held in contempt for failure to comply with the Court's order. The pretrial disclosures and objections required under Fed. R. Civ. P. 26(a)(3) should be served, but not filed with the Clerk's Office, as the same information is required to be attached to the parties' Joint Pretrial Stipulation.

4. Cases Tried Before A Jury: In cases tried before a jury, at least ONE WEEK prior to the beginning of the trial calendar, the parties shall submit A SINGLE JOINT SET of proposed jury instructions and verdict form, though the parties need not agree on the proposed language of each instruction or question on the verdict form. Where the parties do agree on a proposed instruction or question, that instruction or question shall be set forth in Times New Roman 14 point typeface. Instructions and questions proposed only by the plaintiff(s) to which the defendant(s) object shall be italicized. Instructions and questions proposed only by defendant(s) to which plaintiff(s) object shall be bold-faced. Each jury instruction shall be typed on a separate page and, except for Eleventh Circuit Pattern instructions clearly identified as such, must be supported by citations to authority. In preparing the requested jury instructions, the parties shall use as a guide the Pattern Jury Instructions for civil cases approved by the Eleventh Circuit, including the directions to counsel

contained therein. A copy of the proposed jury instructions and verdict form shall be sent in Word or WordPerfect format to: Middlebrooks@flsd.uscourts.gov.

5. Cases Tried Before The Court: In cases tried before the Court, at least ONE WEEK prior to the beginning of the trial calendar, a copy of the proposed Findings of Fact and Conclusions of Law shall be sent in Word or WordPerfect format to: Middlebrooks@flsd.uscourts.gov. Proposed Conclusions of Law must be supported by citations to authority.

6. Exhibits: All exhibits must be pre-marked. A typewritten exhibit list setting forth the number, or letter, and description of each exhibit must be submitted at the time of trial. The parties shall submit said exhibit list on Form AO 187, which is available from the Clerk's office.

7. Motions to Continue Trial: A Motion to Continue Trial shall not stay the requirement for the filing of a Pretrial Stipulation and, unless an emergency situation arises, such Motion will not be considered unless it is filed at least 20 days before the date on which the trial calendar is scheduled to commence.

8. Pretrial Motions: Any party filing a pretrial motion shall submit a proposed order granting the motion.

9. Mediation: The Court will refer this case to mediation by separate order.

10. Non-compliance With This Order: Non-compliance with any provision of this Order may subject the offending party to sanctions or dismissal. It is the duty of all counsel to enforce the timetable set forth herein in order to ensure an expeditious resolution of this cause.

11. Pretrial Schedule: The parties shall adhere to the following schedule, which shall not be modified absent compelling circumstances. Any motions to modify this schedule shall be directed to the attention of U.S. District Judge Donald M. Middlebrooks.

June 13, 2012	Joinder of Additional Parties and Amend Pleadings.
June 18, 2012	Plaintiff shall provide opposing counsel with a written list with the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. Within the 14 day period following this disclosure (on or before July 2, 2012), Plaintiff shall make its experts available for deposition by Defendant. The experts' depositions may be conducted without further Court order.
July 2, 2012	Defendant shall provide opposing counsel with a written list with the names and addresses of all expert witnesses intended to be called at trial and only those expert witnesses listed shall be permitted to testify. Within the 14 day period following this disclosure (on or before July 16, 2012), the defendant shall make its experts available for deposition by the plaintiff. The experts' depositions may be conducted without further Court order.
Note:	The above provisions pertaining to expert witnesses do not apply to treating physicians, psychologists or other health providers.
July 16, 2012	Parties shall furnish opposing counsel with a written list containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
August 2, 2012	Parties shall furnish opposing counsel with expert reports or summaries of their expert witnesses' anticipated testimony in accordance with Fed. R. Civ. P. 26(a)(2).
August 13, 2012	All discovery shall be completed.
August 27, 2012	All Pretrial Motions and Memoranda of Law shall be filed.
October 9, 2012	Joint Pretrial Stipulation shall be filed. Designations of deposition testimony shall be made.
October 22, 2012	Objections to designations of deposition testimony shall be filed. Late designations shall not be admissible absent exigent circumstances.
October 29, 2012	Jury Instructions or Proposed Findings of Fact and Conclusions of Law shall be filed.
October 31, 2012	Status Conference/Calendar Call.

12. Settlement: If the case is settled, counsel shall promptly inform the Court by calling the chambers of U.S. District Judge Donald M. Middlebrooks at (561) 514-3720 and, within 10 days of notification of settlement to the Court, submit an appropriate Motion and proposed order for dismissal, pursuant to Fed. R. Civ. P. 41(a). The parties shall attend all hearings and abide by all time requirements unless and until an order of dismissal is filed.

DONE and ORDERED in Chambers at West Palm Beach in the Southern District of Florida, this 6th day of June, 2012.

DAVE LEE BRANNON
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NOTICE OF RIGHT TO CONSENT TO DISPOSITION OF A CIVIL CASE
BY A UNITED STATES MAGISTRATE JUDGE

All counsel are directed to review this notice with their client(s) before the execution of any written consent to trial before a United States Magistrate Judge.

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that the full-time United States Magistrate Judges of this District Court, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any and all proceedings in a civil case, including a jury or non jury trial, and order the entry of a final judgment. Moreover, upon consent, the Magistrate Judge may rule on case dispositive motion(s). Copies of appropriate consent forms for these purposes are attached and are also available from the Clerk of the Court.

You should be aware that your decision to consent or not to consent to the referral of your case to a United States Magistrate Judge for disposition is your decision and yours alone after consulting with your lawyer, that your lawyer cannot make this decision for you, that this decision is entirely voluntary on your part and should be communicated solely to the Clerk of the District Court. You should be aware that you have a right to trial by a United States District Judge. Only if all parties to the case consent to the reference to a Magistrate Judge will either a District Judge or Magistrate Judge be informed of your decision. Once consent is given by the parties it cannot be waived. Only the District court may, for good cause shown on its own motion, or under extraordinary circumstances shown by a party, vacate a reference of a civil matter to a Magistrate Judge. Appeals in rulings from consent cases are decided by the Eleventh Circuit Court of Appeals.

UNITED STATES DISTRICT OF FLORIDA
SOUTHERN DISTRICT OF FLORIDA

Case No. [ ]-Civ-Middlebrooks/Vitunac

[ ],

Plaintiff(s),

v.

[ ],

Defendant(s).
_____/

NOTICE, CONSENT, AND ORDER OF REFERENCE -
EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

Notice of Availability of a United States Magistrate Judge
to Exercise Jurisdiction

In accordance with the provisions of 28 U.S.C. §636(c), and Federal Rule of Civil Procedure 73, you are notified that a United States Magistrate Judge of this District Court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the Court's jurisdiction from being exercised by a Magistrate Judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any Magistrate Judge or to the District Judge to whom the case has been assigned.

An appeal from a judgment entered by a Magistrate Judge shall be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as a appeal from any other judgment of this District Court.

Consent to the Exercise of Jurisdiction by
a United States Magistrate Judge

In accordance with provisions of 28 U.S.C. §636(c) and Federal Rule of Civil Procedure 73, the parties in this case consent to have a United States Magistrate Judge conduct any and all proceedings in this case, including the trial, order the entry of a final judgment and conduct all post-judgment proceedings.

Party Represented	Signatures	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Order of Reference

IT IS ORDERED that this case be referred to _____, United States Magistrate Judge, to conduct all proceedings and order the entry of judgment in accordance with 28 U.S.C. §636(c) and Federal Rule of Civil Procedure 73.

_____ Date

_____ United States District Judge

NOTE: SEND ORIGINAL FORM TO THE CLERK OF COURT AND A COPY TO THE DISTRICT JUDGE.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	3:12-cv-242
	)	
JASON K. MAUPIN, individually and d/b/a Jason's Recycling,	)	
	)	
	)	
Defendant.	)	

ORDER

Defendant's Motion to Continue [DE 7'] is **GRANTED** and the hearing set for June 7, 2012 is **VACATED**. A separate forthcoming order will set a briefing schedule for Plaintiff's Motion for Preliminary Injunction and an expedited discovery schedule..

SO ORDERED.

ENTERED: June 6, 2012.

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

MELINDA HAAG (CABN 132612)
United States Attorney
THOMAS MOORE
Assistant United States Attorney
Chief, Tax Division
CYNTHIA STIER (DCBN 423256)
Assistant United States Attorney
11th Floor Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7000

Attorneys for United States of America

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **NICHOLAS A. MUNOZ, Jr., individually and d/b/a Professional Tax Services, LLC, and its successor, First Tax Firm, Inc.,** **Defendants.**	**No. C-12-2545-HRL** **STIPULATED ~~[PROPOSED]~~ ORDER OF PERMANENT INJUNCTION**

The United States of America has filed a Complaint for a Permanent Injunction against Nicholas A. Munoz, individually and d/b/a Professional Tax Services, LLC. and its successor, First Tax Firm, Inc.

Without admitting or denying the allegations of the complaint, except as to personal and subject matter jurisdiction, which Nicholas Munoz admits, Nicholas Munoz has consented to entry of this Stipulated Order of Permanent Injunction, and waives the entry of findings of fact and conclusions of law. Munoz further understands that this permanent injunction constitutes the final judgment in this matter, and he waives any rights he may have to appeal from this judgment.

The parties agree that entry of this Stipulated Order of Permanent Injunction resolves only the civil injunction action, and neither precludes the government from pursuing any other current

or future civil injunction action, and neither precludes the government from pursuing any other current or future civil or criminal matters or proceedings, nor precludes the defendant from contesting his liability in any matter or proceeding.

NOW, THEREFORE, and for good cause shown, it is accordingly ORDERED, ADJUDGED and DECREED that:

Pursuant to 26 U.S.C. ("I.R.C.") §§ 7402, 7407 and 7408, Nicholas Munoz, individually and doing business as Professional Tax Services, LLC. and/or First Tax Firm, Inc. (hereafter collectively, "Munoz"), and his representatives, agents, servants, and employees, are permanently enjoined from directly or indirectly:

(1) Acting as a federal tax return preparer, or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person other than himself or his legal spouse, or appearing as a representative on behalf of any person or entity whose tax liability is under examination or investigation by the Internal Revenue Service;

(2) Instructing, advising, or assisting, either directly or indirectly, others to violate the tax laws, including to evade the payment of taxes;

(3) Engaging in activity subject to penalty under I.R.C. § 6694, i.e., preparing federal income tax returns that improperly understate customers' tax liabilities;

(4) Engaging in activity subject to penalty under I.R.C. § 6695, *i.e.*, failing to file correct information returns;

(5) Engaging in activity subject to penalty under I.R.C. § 6701, *i.e.*, aiding, assisting in, procuring, or advising with respect to the preparation of any portion of a return, affidavit, claim or other document, when Munoz knows or has reason to believe that portion will be used in connection with a material matter arising under the federal tax law, and Munoz knows that the relevant portion will result in the material understatement of the liability for the tax of another person;

(6) Representing, either directly or indirectly, any person other than himself or his legal spouse before the Internal Revenue Service;

(7) Assisting, either directly or indirectly, in the representation of any person other than himself or his legal spouse before the Internal Revenue Service;

(8) Engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

IT IS FURTHER ORDERED that Munoz is prohibited from owning, controlling, or managing any business involving tax return preparation and/or the provision of tax advice, or maintaining a presence in any premises, whether an office, place of business, dwelling, or other abode, where tax returns are being prepared for a fee or professional tax services are being provided;

IT IS FURTHER ORDERED that Munoz shall cause a copy of the permanent injunction to be provided to every employee of PTS and First Tax Firm, Inc. and shall cause a copy of this Order of Permanent Injunction to be placed in a conspicuous location at Professional Tax Services, LLC. and First Tax Firm, Inc. to be displayed there for a period of three years and that he shall file with the Office of the United States Attorney for the Northern District of California, Tax Division, located in San Francisco, within 30 days of the date the permanent injunction is entered, a certification signed under penalty of perjury stating that a copy of the permanent injunction has been provided to every employee of PTS and First Tax Firm, Inc. and a copy of this Order of Permanent Injunction has been placed in a conspicuous location at Professional Tax Services, LLC. and First Tax Firm, Inc.

IT IS FURTHER ORDERED that the United States is permitted to engage in post-judgment discovery to ensure compliance with this permanent injunction;

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action for purposes of implementing and enforcing this permanent injunction; and

//

//

//

IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 65(d)(2), counsel for the United States is authorized to arrange for personal service of this order on the defendant.

SO ORDERED this 6th day of June, 2012.

Lucy H. Koh
UNITED STATES DISTRICT JUDGE

Consented to and submitted by:

MELINDA HAAG
United States Attorney

/s/ Cynthia Stier
CYNTHIA STIER
Assistant United States Attorney
Tax Division

William H. Kimball
803 Hearst Avenue
Berkeley, CA 94710
Attorney for Nicholas Munoz

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MINUTES

CASE NO: 11-14392-CIV-GRAHAM/LYNCH

UNITED STATES OF AMERICA,

Plaintiff,

-v-

GARY REDICK and
PAMELA HUSMAN,

Defendant(s),
_____/

In Re: **Settlement conference (reconvened) before Magistrate Judge Lynch United States Courthouse- Fort Pierce division**

Date: **Tuesday, June 5, 2012, Courtroom #4074 at 1:30 p.m.**

Time in session: Hours 45 Minutes

APPEARANCES: Both pro se Dfts; Pascale Guerrier, Esq.; David Katinsky, Esq.

DISPOSITION: Tentative Settlement. Parties are to work out the documents and exchange them. Parties have 30 days to submit signed documents.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERRY REEVES and DIANE D. REEVES,	)	
Plaintiffs,	)	
	)	No. 3:11-1236
v.	)	JUDGE HAYNES
UNITED STATES OF AMERICA,	)	
Defendant.	)	

CASE MANAGEMENT ORDER No. 2

The jury trial in this action is set for **Tuesday, January 15, 2013 at 9:00 a.m.** before Judge Haynes. Counsel for the parties shall appear for a Pretrial Conference in this Court on **Friday, January 4, 2013 at 10:00 a.m.,** in the United States Courthouse in Nashville, Tennessee, Courtroom A859. **All attorneys who will participate in the trial must appear in person at the final pretrial conference.**

Pursuant to Fed. R. Civ. P. 26(a)(3), except for evidence to be introduced solely for impeachment, the parties shall make the following disclosures at least thirty (30) days prior to the scheduled trial date:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony together with an appropriate designation of the portions to be

introduced; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those who which the party may offer if the need arises.

Counsel shall submit a Joint Proposed Pretrial Order to the Court by **Friday, December 21, 2012.** The Pretrial Order shall contain: (1) a recitation that the pleadings are amended to conform to the Pretrial Order and that the Pretrial Order supplants the pleadings; (2) a statement of the basis for jurisdiction in this Court; (3) a short summary of the Plaintiff's theory (no more than one page); (4) a short summary of the Defendant's theory (no more than one page); (5) a statement of the issues, including a designation of which issues are for the jury and which are for the Court; (6) a succinct statement of the relief sought; (7) a summary of any anticipated evidentiary disputes; and (8) an estimate of the anticipated length of the trial.

The parties shall also submit to the Court, by **Friday, December 21, 2012**, the following:

(1) joint proposed jury instructions and verdict forms:

(2) Counsel shall exchange proposed jury instructions and verdict forms and confer to reach agreement. Thereafter, counsel shall jointly prepare and file a set of agreed proposed jury instructions and verdict forms. Counsel shall separately file any disputed jury instruction or verdict forms. Each proposed jury instruction shall begin on a new page and shall include citations to supporting authorities. **The parties shall submit a WordPerfect 7.0 compatible computer disk of the agreed proposed jury instructions and verdict forms with the hard copy; and**

(3) stipulations of facts.

By **Friday, December 7, 2012**, the parties shall file any motions in limine and any motions objecting to expert testimony. Any responses to such motions shall be filed by **Friday, December 21, 2012.**

Expert witness disclosures shall be made in accordance with Fed.R.Civ.P. 26(a)(2) or as has been otherwise ordered by the Court. No expert witness shall testify beyond the scope of his or her expert witness disclosure. The Court may exclude or strike the testimony of an expert witness, or order other sanctions provided by law, for violation of the expert witness disclosure requirements. There shall be no rebuttal expert witnesses absent leave of Court.

In addition, the parties shall file, on or before **Friday, December 21, 2012**, briefs on the following issues: (1) what type of damages are recoverable in this case (under federal and state law) and, for each, whether the Court or the jury determines the amount; (2) how front pay, if any, will be reduced to present value; (3) whether there is any "cap" on the amount of damages; and (4) whether the trial should be bifurcated regarding punitive damages.

Counsel shall be prepared, at the Final Pretrial Conference, to identify and discuss :

(1) undisputed facts and issues;

(2) expert testimony;

(3) motions in limine;

(4) proposed jury instructions and verdict forms;

(6) settlement prospects; and

(7) the necessity of pretrial briefs.

If this action is to be settled, the Law Clerk should be notified by noon, **Friday, January 11, 2013.**

If settlement is reached after jurors have been summoned, resulting in the non-utilization of the jurors, the costs of summoning the jurors may be taxed to the parties.

The Court's staff is not authorized to entertain any telephonic requests for a

continuance or excuse attendance or grant an extension of any deadlines in this Order or set by a Local Rule of Court. Such a request shall be considered only upon a motion made in open court or by a written motion of a party or joint motion of the parties.

It is so **ORDERED**.

ENTERED this the 5th day of June, 2012.

WILLIAM J. HAYNES, JR.
United States District Judge

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

In Re:	:	
	:	
	:	Bankruptcy No. 11-25529
GEORGE RETOS	:	
	:	Doc. No. 12
	:	
Debtor(s),	:	Chapter 7
	:	
	X	
GEORGE RETOS	:	
	:	
Plaintiff(s),	:	
	:	
- vs -	:	Adversary No. 12-02070-JAD
UNITED STATES OF AMERICA	:	
Defendant(s).	:	
	X	

ORDER OF COURT APPROVING JOINT DISCOVERY PLAN AND STATEMENT OF ESTIMATED TIME OF TRIAL DATED: May 2, 2012

AND NOW, this 5th day of June, 2012, upon consideration of the Joint Discovery Plan and Statement of Estimated Time of Trial Dated May 2, 2012 submitted by plaintiff(s) and defendant(s), the Court hereby **ORDERS, ADJUDGES** and **DECREES** that:

1. The above Joint Discovery Plan and Statement of Estimated Time of Trial Dated 5/2/12 is approved.

2. The parties are directed to comply with the Joint Discovery Plan and Statement of Estimated Time of Trial, and the schedule set forth in the Joint Discovery Plan and Statement of Estimated Time of Trial shall not be modified except by leave of this Court upon a showing of good cause.

3. Settlement of disputes for the mutual benefit of both parties is encouraged by this Court and the parties should make their best efforts to resolve this matter without litigation. Should the parties desire a settlement conference, the parties shall make a written application to the Court.

4. Other: N/A

Dated: June 5, 2012

Honorable Jeffery A. Deller
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH NORTHERN DIVISION

JON H. ROBERTSON, **Plaintiff,** **vs.** **UNITED STATES OF AMERICA,** **Defendant.**	**ORDER ADMINISTRATIVELY CLOSING CASE** **Case No. 1:09-CV-76 TS**

IT IS HEREBY ORDERED that the above captioned case filed be **administratively** closed and removed from the list of active pending cases. Pursuant to the Court's Order Granting Stay,[1] the case may be reopened upon motion by the Plaintiff or by the Defendant once the criminal matters against John Robertson and Scott Robertson are resolved.

DATED June 6, 2012.

BY THE COURT:

TED STEWART
United States District Judge

[1]Docket No. 31.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

ENTERED 06/06/2012

IN RE:	)	
LANCE J. ROSMARIN and	)	CASE NO. 11-32011-H5-13
VALERIE D. ROSMARIN,	)	
	)	
Debtors.	)	

ORDER GRANTING UNITED STATES' UNOPPOSED MOTION TO CONTINUE DEADLINE FOR ITS RESPONSE TO DEBTORS' MOTION FOR SUMMARY JUDGMENT

Pending before this Court is the United States' Unopposed Motion to Continue the Deadline for Filing its Response to Debtors' Motion for Summary Judgment ("Motion to Continue.") Good cause having been shown, the Motion is granted. It is

ORDERED that the Motion to Continue is granted. It is further

ORDERED that the United States files its Response to Debtors' Motion for Summary Judgment on or before June 14, 2012.

Signed: June 06, 2012

Karen K. Brown
United States Bankruptcy Judge

Phillips, Harris J. (TAX)

From: KSD_CMECF@ksd.uscourts.gov
Sent: Wednesday, June 06, 2012 6:31 PM
To: ksd_nef@ksd.uscourts.gov
Subject: Activity in Case 6:11-cv-01168-KHV-GLR ServiceMaster of Salina, Inc. et al v. United States of America Order on Motion to Amend Scheduling Order

U.S. District Court

DISTRICT OF KANSAS

Notice of Electronic Filing

The following transaction was entered on 6/6/2012 at 5:31 PM CDT and filed on 6/6/2012
Case Name: ServiceMaster of Salina, Inc. et al v. United States of America
Case Number: 6:11-cv-01168-KHV-GLR
Filer:
Document Number: 62(No document attached)

Docket Text:
ORDER granting [61] Joint Motion to Extend One Motion-to-Compel Deadline from June 8 to June 25. The deadline for Plaintiffs to file a motion to compel related to their second set of discovery requests is hereby extended to June 25, 2012. Signed by Magistrate Judge Gerald L. Rushfelt on 6/6/2012. (This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (bw)

6:11-cv-01168-KHV-GLR Notice has been electronically mailed to:

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6:11-cv-01168-KHV-GLR Notice has been delivered by other means to:

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

WILLIAM R. SHORE, Plaintiff/Counterdefendant, v. UNITED STATES OF AMERICA, Defendant/Counterclaimant, v. THOMAS M. LEWIS and MAUREEN A. LEWIS, Additional Counterdefendants	Case No. 1:11-cv-00567 **CASE MANAGEMENT ORDER**

Pursuant to the scheduling conference held between the Court and counsel for the parties on June 6, 2012, in accordance with the agreements reached by the parties in their stipulated Litigation Plan (Docket No. 15), and in the interest of expedient resolution of this case,

IT IS HEREBY ORDERED that:

1. Initial Disclosures shall be exchanged no later than May 22, 2012.

2. Motions to join parties and/or amend pleadings shall be filed no later than August 17, 2012.

3. Discovery deadlines are as follows:

   a. Factual discovery shall be completed on or before October 31, 2012.

   b. The parties shall follow District of Idaho Local Civil Rule 30.1 when scheduling depositions and Local Rule 33.1 for limitations on interrogatories.

c. The Plaintiff/Counterclaimant shall make expert witness disclosures, and provide copies of expert reports, pursuant to District of Idaho Local Civil Rule 26.2(b) and Federal Rule of Civil Procedure 26(a)(2)(B), on or before July 31, 2012.

d. The Defendant/Counterdefendant shall make expert witness disclosures, and provide copies of expert reports, pursuant to District of Idaho Local Civil Rule 26.2(b) and Federal Rule of Civil Procedure 26(a)(2)(B), on or before July 31, 2012.

e. Rebuttal expert witness disclosures shall be provided on or before August 31, 2012.

f. All discovery relevant to experts shall be completed by October 31, 2012.

4. All dispositive motions[1] shall be filed on or before December 14, 2012.

5. Pursuant to the Litigation Plan, the parties have elected to participate in mediation. Therefore, this matter is referred to Susie Boring-Headlee, the ADR Coordinator, for the purpose of assisting the parties in the selection of a mediator. Counsel for the parties shall be responsible for contacting Ms. Boring-Headlee at 208-334-9067 regarding selection of a mediator and scheduling of this matter. The mediation shall be completed by September 28, 2012. A mediation case status report is due no later than 10 days after any mediation. See D. Idaho L. Civ. R. 16.5(k).

[1] This Court's policy is to accept only one dispositive motion per party. If it becomes necessary, due to the complexity or number of issues presented by some cases, and counsel is unable to address all issues within the twenty-page limit for briefs, Dist. Idaho Loc. Civ. R. 7.1(a)(2) & (b)(1), then counsel should file a motion seeking permission to file an over-length brief, rather than filing separate dispositive motions for each issue in an effort to avoid the twenty-page limit.

6. Plaintiff's counsel shall contact courtroom deputy Lynette Case at (208) 334-9023 within one week following the entry of a decision on all pending dispositive motions to make arrangements for a telephone scheduling conference in which the trial and pretrial conference shall be set. If no dispositive motion is filed by the deadline set forth above, Plaintiff's counsel shall contact courtroom deputy Lynette Case one week after the dispositive motion filing deadline expires to set a telephone scheduling conference. If this case is reassigned for any reason, counsel shall contact the deputy clerk for the assigned judge instead of Ms. Case.

IT IS SO ORDERED.

DATED: June 6, 2012.

Honorable Ronald E. Bush
U. S. Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDITH SCHLAIN WINDSOR,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

10 Civ. 8435 (BSJ)

Order

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

This case arises from Plaintiff's constitutional challenge to section 3 of the Defense of Marriage Act ("DOMA"), the operation of which required Plaintiff to pay federal estate tax on her same-sex spouse's estate, a tax from which similarly situated heterosexual couples are exempt. Plaintiff claims that section 3 deprives her of the equal protection of the laws, as guaranteed by the Fifth Amendment to the United States Constitution. For the following reasons, Defendant-Intervenor's motion to dismiss is DENIED and Plaintiff's motion for summary judgment is GRANTED.

I. BACKGROUND

A. DOMA

DOMA was enacted and signed into law in 1996. The challenged provision, section 3, defines the terms "marriage" and "spouse" under federal law. It provides:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7.

In large part, DOMA was a reaction to the possibility that states would begin to recognize legally same-sex marriages. Specifically, Congress was spurred to action by a 1993 decision by the Hawaii Supreme Court, which suggested that same-sex couples might be entitled to marry. Baehr v. Lewin, 852 P.2d 44 (Haw. 1993). The House Judiciary Committee's Report on DOMA ("House Report") discussed Baehr at length, describing it as a "legal assault . . . against traditional heterosexual marriage." H.R. Rep. No. 104-664, at 3 (1996). The Report noted that, if homosexuals were permitted to marry, "that development could have profound practical implications for federal law," including making homosexual couples "eligible for a whole range of federal rights and benefits." Id. at 10. A federal definition of marriage was seen as necessary because, the Committee reasoned, never before had the words "marriage" (which, at the time, appeared in 800 sections of federal statutes and regulations) or "spouse" (appearing more than 3,100 times) meant anything other than a union between a man and a woman—an implicit assumption

upon which Congress had relied in enacting these statutes and regulations. Id. at 10.

In addition to this notion of "mak[ing] explicit what has always been implicit," id. at 10, the House Report justified DOMA as advancing government interests in: "(1) defending and nurturing the institution of traditional, heterosexual marriage; (2) defending traditional notions of morality; (3) protecting state sovereignty and democratic self-governance;[1] and (4) preserving scarce government resources." Id. at 12.

B. The Parties

In 1963, Plaintiff in this action, Edie Windsor, met her late-spouse, Thea Spyer, in New York City. Shortly thereafter, Windsor and Spyer entered into a committed relationship and lived together in New York. In 1993, Windsor and Spyer registered as domestic partners in New York City, as soon as that option became available. In 2007, as Spyer's health began to deteriorate due to her multiple sclerosis and heart condition, Windsor and Spyer decided to get married in another jurisdiction that permitted gays and lesbians to marry. They were married in Canada that year.

Spyer died in February 2009. According to her last will and testament, Spyer's estate passed for Windsor's benefit.

[1] This interest was not addressed to section 3, therefore the Court does not consider it. See Massachusetts v. U.S. Dep't of Health & Human Servs., et al., Nos. 10-2207 & 10-2214, slip op. at 25 (1st Cir. May 31, 2012).

Because of the operation of DOMA, Windsor did not qualify for the unlimited marital deduction, 26 U.S.C. § 2056(a), and was required to pay $363,053 in federal estate tax on Spyer's estate, which Windsor paid in her capacity as executor of the estate.

On November 9, 2010, Windsor commenced this suit, seeking a refund of the federal estate tax levied on Spyer's estate and a declaration that section 3 of DOMA violates the Equal Protection Clause of the Fifth Amendment.

In February 2011, Attorney General Holder announced that the Department of Justice would no longer defend DOMA's constitutionality because the Attorney General and the President believed that a heightened standard of scrutiny should apply to classifications based on sexual orientation, and that section 3 is unconstitutional under that standard. Letter from Eric H. Holder, Jr., Attorney Gen., to John A. Boehner, Speaker, U.S. House of Rep., at 5 (Feb. 23, 2011). Given the Executive Branch's decision not to enforce DOMA, the Bipartisan Legal Advisory Group of the U.S. House of Representatives ("BLAG") moved to intervene to defend the constitutionality of the statute. BLAG's motion was granted on June 2, 2011.

On June 24, 2011, Windsor moved for summary judgment, arguing that DOMA is subject to strict constitutional scrutiny because homosexuals are a suspect class. She contends that DOMA

fails under that standard of constitutional review because the government cannot establish that DOMA is narrowly tailored to serve a compelling or legitimate government interest. In the alternative, she argues that DOMA has no rational basis.

On August 1, 2011, BLAG moved to dismiss Plaintiff's complaint. It argues that the weight of the precedent compels the Court to review DOMA only for a rational basis and, under that standard, there are ample reasons that justify the legislation. Because the motion to dismiss turns on the same legal question as the motion for summary judgment, the Court will address the two motions simultaneously.

II. DISCUSSION

A. Legal Standard

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant a motion for summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Bessemer Trust Co., N.A. v. Branin, 618 F.3d 76, 86 (2d Cir. 2010) (quoting Fed. R. Civ. P. 56(c)). "The party seeking summary judgment bears the burden of establishing that no genuine issue of material fact exists and that the undisputed facts establish her right to judgment as a matter of

law." Rodriguez v. City of New York, 72 F.3d 1051, 1060-61 (2d Cir. 1995).

To survive a motion to dismiss pursuant to Rule 12(b)(6), "the operative standard requires the plaintiff [to] provide the grounds upon which [her] claim rests through factual allegations sufficient to raise a right to relief above the speculative level." Goldstein v. Pataki, 516 F.3d 50, 56 (2d Cir. 2008) (citation and internal quotation marks omitted). That is, a plaintiff must assert "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007); see Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

B. Windsor's Standing to Pursue this Suit

As a threshold matter, the Court addresses whether Windsor has standing to pursue this action. "[T]he irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (citations and internal quotation marks omitted). Second, the plaintiff must present a "causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the

challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court." Id. (internal quotation marks and alterations omitted). Finally, "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" Id. at 561.

There is no question that Windsor meets the first and third requirements. BLAG seeks to undermine the second factor by arguing that Windsor has not proved that her marriage was recognized under New York law in 2009, the relevant tax year. In support of this argument, it points to a 2006 case where the New York Court of Appeals held that the "New York Constitution does not compel recognition of marriages between members of the same sex." Hernandez v. Robles, 855 N.E.2d 1, 5 (N.Y. 2006).

While the Court acknowledges the Court of Appeals' decision in Hernandez, in light of subsequent state executive action and case law, the Court ultimately finds BLAG's argument unpersuasive. In 2009, all three statewide elected executive officials—the Governor, the Attorney General, and the Comptroller—had endorsed the recognition of Windsor's marriage. See Godfrey v. Spano, 13 N.Y.3d 358, 368 n.3 (N.Y. 2009) (describing 2004 informal opinion letters of the Attorney General and the State Comptroller which respectively concluded that "New York law presumptively requires that parties to such

[same-sex] unions must be treated as spouses for purposes of New York law" and "[t]he Retirement System will recognize a same-sex Canadian marriage in the same manner as an opposite-sex New York marriage, under the principle of comity"); Dickerson v. Thompson, 73 A.D.3d 52, 54-55 (N.Y. App. Div. 2010) (citing a 2008 directive by the Governor to recognize same-sex marriages from other jurisdictions).

In addition, every New York State appellate court to have addressed the issue in the years following Hernandez has upheld the recognition of same-sex marriages from other jurisdictions. See In re Estate of Ranftle, 917 N.Y.S.2d 195 (N.Y. App. Div. 2011) (holding that a Canadian same-sex marriage is valid in New York); Lewis v. N.Y. State Dep't of Civil Serv., 60 A.D.3d 216 (N.Y. App. Div. 2009), aff'd on other grounds sub nom. Godfrey, 13 N.Y.3d 358 (affirming the lower court's holding that New York's marriage recognition rule requires the recognition of out-of-state same-sex marriages); Martinez v. Cnty. of Monroe, 850 N.Y.S.2d 740 (N.Y. App. Div. 2008) (holding that plaintiff's same-sex Canadian marriage is entitled to recognition in New York).

Finally, although the Court of Appeals has yet to readdress the question of same-sex marriage recognition directly, its 2009 opinion in Godfrey v. Spano said nothing to cast doubt on the

uniform lower-court authority recognizing the validity of same-sex marriages. 13 N.Y.3d at 377.

For all of these reasons, since the State, through its executive agencies and appellate courts, uniformly recognized Windsor's same-sex marriage in the year that she paid the federal estate taxes, the Court finds that she has standing.

C. The Effect of Baker v. Nelson

The Court next considers BLAG's argument that the Supreme Court's holding in Baker v. Nelson, 409 U.S. 810 (1972), requires it to dismiss Windsor's case. There, the Supreme Court summarily affirmed a challenge to a Minnesota state law that denied a marriage license to a same-sex couple. The plaintiffs challenged the law in state court on equal protection grounds, arguing that "the right to marry without regard to the sex of the parties is a fundamental right," and that "restricting marriage to only couples of the opposite sex is irrational and invidiously discriminatory." Baker v. Nelson, 191 N.W.2d 185, 186 (Minn. 1971). The Supreme Court dismissed the challenge for "want of a substantial federal question." Baker, 409 U.S. 810. BLAG now argues that Baker is dispositive of the issue before this Court and, as binding precedent, compels the Court to find that "defining marriage as between one man and one woman comports with equal protection." (BLAG Mot. to Dismiss at 12.)

Summary judgments from the Supreme Court are binding on the lower courts only with regard to the precise legal questions and facts presented in the jurisdictional statement. Ill. State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 182 (1979). The case before the Court does not present the same issue as that presented in Baker. DOMA defines marriage for federal purposes, with the effect of allocating federal rights and benefits. It does not preclude or otherwise inhibit a state from authorizing same-sex marriage (or issuing marriage licenses), as did the Minnesota statute in Baker. Indeed, BLAG agrees that DOMA does not preclude or inhibit same-sex marriage and Windsor does not argue that DOMA affects the fundamental right to marry.

Accordingly, after comparing the issues in Baker and those in the instant case, the Court does not believe that Baker "necessarily decided" the question of whether DOMA violates the Fifth Amendment's Equal Protection Clause. Accord, e.g., Smelt v. Cnty. of Orange, 374 F. Supp. 2d 861, 872-73 (C.D. Cal. 2005), aff'd in part, rev'd in part on other grounds, 447 F.3d 673 (2006) (declining to find that Baker controlled in an equal protection challenge to DOMA); see also In re Kandu, 315 B.R. 123, 137 (Bankr. W.D. Wash. 2004) (same). The Court will not rest its decision on such a "slender reed" of support. Morse v. Republican Party of Va., 517 U.S. 186, 203 n.21 (1996).

Having decided that Baker does not require a decision in BLAG's favor as a matter of law, the Court turns to the parties' equal protection arguments.

D. Equal Protection

Equal protection requires the government to treat all similarly situated persons alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). It prohibits the government from drawing "distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objective." Lehr v. Robertson, 463 U.S. 248, 265 (1983).

Of course, not all legislative classifications violate equal protection. See Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). The "promise [of] equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." Romer v. Evans, 517 U.S. 620, 631 (1996). With that reality in view, "[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." City of Cleburne, 473 U.S. at 440. That general rule, embodied in the "rational basis" test, applies in the mine-run of cases involving "commercial, tax and like regulation." Massachusetts

v. U.S. Dep't of Health & Human Servs., et al., Nos. 10-2207 & 10-2214, slip op. at 13 (1st Cir. May 31, 2012).

Rational basis review is the "paradigm of judicial restraint." FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 314 (1993). The burden of proving a statute unconstitutional falls on the party attacking the legislation. Heller v. Doe, 509 U.S. 312, 321 (1993); Baker v. Carr, 369 U.S. 186, 266 (1962) (Stewart, J., concurring). "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." McGowan v. Maryland, 366 U.S. 420, 426 (1961). Accordingly, courts must accept as constitutional those legislative classifications that bear a rational relationship to a legitimate government interest.

Courts review with greater scrutiny classifications that disadvantage a suspect class or impinge upon the exercise of a fundamental right. Plyler v. Doe, 457 U.S. 202, 216-17 (1982). Pursuant to a court's "strict scrutiny," a classification violates equal protection unless it is "precisely tailored to serve a compelling governmental interest." Id. at 217; see Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995). Classifications that disadvantage a quasi-suspect class are also subject to a heightened standard of constitutional review. Courts review those classifications with an intermediate level of scrutiny. Under "heightened" or "intermediate scrutiny," the

classification must be "substantially related to a legitimate state interest" to survive constitutional attack. Mills v. Habluetzel, 456 U.S. 91, 99 (1982).

There are few classifications that trigger strict or heightened scrutiny. See, e.g., Clark v. Jeter, 486 U.S. 456, 461 (1988) (illegitimacy subject to intermediate scrutiny); Miss. Univ. for Women v. Hogan, 458 U.S. 718, 723-24 (1982) (gender subject to intermediate scrutiny); Loving v. Virginia, 388 U.S. 1, 11 (1967) (race subject to strict scrutiny); Korematsu v. United States, 323 U.S. 214, 216 (1944) (national ancestry and ethnic origin subject to strict scrutiny). "And because heightened scrutiny requires an exacting investigation of legislative choices, the Supreme Court has made clear that 'respect for the separation of powers' should make courts reluctant to establish new suspect classes." Thomasson v. Perry, 80 F.3d 915, 928 (1996) (quoting City of Cleburne, 473 U.S. at 441); see also Lyng v. Castillo, 477 U.S. 635, 638 (1986) (declining to extend strict scrutiny to "[c]lose relatives"); Mass. Bd. of Retirement v. Murgia, 427 U.S. 307, 313 (1976) (per curiam) (declining to extend strict scrutiny to the elderly).

Windsor now argues that DOMA should be subject to strict (or at least intermediate) scrutiny because homosexuals as a class present the traditional indicia that characterize a

suspect class: a history of discrimination, an immutable characteristic upon which the classification is drawn, political powerlessness, and a lack of any relationship between the characteristic in question and the class's ability to perform in or contribute to society.

In making this claim, Windsor asks the Court to distinguish the precedent in eleven Courts of Appeals that have applied the rational basis test to legislation that classifies on the basis of sexual orientation. See Massachusetts v. HHS, Nos. 10-2207 & 10-2214; Citizens for Equal Protection v. Bruning, 455 F.3d 859 (8th Cir. 2006); Lofton v. Sec'y of Dep't of Children & Family Servs., 358 F.3d 804 (11th Cir. 2004); Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004); Equality Found. v. City of Cincinnati, 128 F.3d 289 (6th Cir. 1997); Thomasson, 80 F.3d 915; Steffan v. Perry, 41 F.3d 677 (D.C. Cir. 1994); High Tech Gays v. Def. Indus. Sec. Clearance Office, 895 F.2d 563 (9th Cir. 1990); Ben-Shalom v. Marsh, 881 F.2d 454 (7th Cir. 1989); Woodard v. United States, 871 F.2d 1068 (Fed. Cir. 1989); Nat'l Gay Task Force v. Bd. of Educ., 729 F.2d 1270 (10th Cir. 1984). She invites this Court to decide, as a matter of first impression in the Second Circuit, whether homosexuals are a suspect class.

Though there is no case law in the Second Circuit binding the Court to the rational basis standard in this context, the Court is not without guidance on the matter. For one, as the

Supreme Court has observed, "courts have been very reluctant, as they should be in our federal system," to create new suspect classes. City of Cleburne, 473 U.S. at 442. Moreover, the Supreme Court "conspicuously" has not designated homosexuals as a suspect class, even though it has had the opportunity to do so. See Massachusetts v. HHS, Nos. 10-2207 & 10-2214, slip op. at 15 (noting that "[n]othing indicates that the Supreme Court is about to adopt this new suspect classification when it conspicuously failed to do so in Romer"). Against this backdrop, this district court is not inclined to do so now. In any event, because the Court believes that the constitutional question presented here may be disposed of under a rational basis review, it need not decide today whether homosexuals are a suspect class.

The Court will, however, elaborate on an aspect of the equal protection case law that it believes affects the nature of the rational basis analysis required here. The Supreme Court's equal protection decisions have increasingly distinguished between "[l]aws such as economic or tax legislation that are scrutinized under rational basis review[, which] normally pass constitutional muster," and "law[s that] exhibit[] . . . a desire to harm a politically unpopular group," which receive "a more searching form of rational basis review . . . under the Equal Protection Clause . . . ." Lawrence v. Texas, 539 U.S.

558, 579-80 (2003) (O'Connor, J., concurring); see Romer, 517 U.S. 620; City of Cleburne, 473 U.S. 432; U.S. Dep't of Agric. v. Moreno, 413 U.S. 528 (1973). It is difficult to ignore this pattern, which suggests that the rational basis analysis can vary by context.

At least one Court of Appeals has considered this pattern as well. As the First Circuit explains, "Without relying on suspect classifications, Supreme Court equal protection decisions have both intensified scrutiny of purported justifications where minorities are subject to discrepant treatment and have limited the permissible justifications." See Massachusetts v. HHS, Nos. 10-2207 & 10-2214, slip op. at 15. And, "in areas where state regulation has traditionally governed, the Court may require that the federal government interest in intervention be shown with special clarity." Id.

Regardless whether a more "searching" form of rational basis scrutiny is required where a classification burdens homosexuals as a class and the states' prerogatives are concerned, at a minimum, this Court must "insist on knowing the relation between the classification adopted and the object to be attained." Romer, 517 U.S. at 632. "The search for the link between classification and objective gives substance to the [equal protection analysis]." Id. Additionally, as has always been required under the rational basis test, irrespective of the

context, the Court must consider whether the government's asserted interests are legitimate. Pursuant to these established principles, and mindful of the Supreme Court's jurisprudential cues, the Court finds that DOMA's section 3 does not pass constitutional muster.[2]

E. Congress's Justifications

Contemporaneous with its enactment, Congress justified DOMA as: defending and nurturing the traditional institution of marriage; promoting heterosexuality; encouraging responsible procreation and childrearing; preserving scarce government resources; and defending traditional notions of morality. In its motion to dismiss and memorandum in opposition to summary judgment, BLAG advances some, but not all of these interests as rational bases for DOMA. It additionally asserts that Congress passed DOMA in the interests of caution, maintaining consistency in citizens' eligibility for federal benefits, promoting a social understanding that marriage is related to childrearing, and providing children with two parents of the opposite sex. The Court considers all of these interests to determine whether

[2] Any additional discussion of heightened or intermediate scrutiny would be "wholly superfluous to the decision" and contrary to settled principles of constitutional avoidance. City of Cleburne, 473 U.S. at 456 (Marshall, J., concurring in part, dissenting in part); Spector Motor Serv., Inc. v. McLaughlin, 323 U.S. 101, 105 (1944); see also Miss. Univ. for Women, 458 U.S. at 724 n.9 (declining to address strict scrutiny when heightened scrutiny was sufficient to invalidate the challenged action); Hooper v. Bernalillo Cnty. Assessor, 472 U.S. 612, 618 (1985) (declining to reach heightened scrutiny in reviewing classifications that failed the rational basis test).

Windsor has "negative[d] every conceivable basis which might support [the statute]." Heller, 509 U.S. at 320-21 (citation and internal quotation marks omitted).

1. Caution and The Traditional Institution of Marriage

BLAG submits that "caution" was a rational basis for DOMA insofar as Congress wanted time to consider whether it should embrace (some of) the states' "novel redefinition" of marriage. As BLAG describes it, caution justified DOMA because altering the social concept of marriage would undermine Congress's goal of nurturing the foundational institution of marriage. (BLAG Mot. to Dismiss at 29-31.) By that account, Congress's putative interest in "caution" seems, in substance, no different than an interest in nurturing the traditional institution of marriage. See H.R. Rep. No. 104-664, at 12. The Court therefore considers both of these interests together.

With respect to traditional marriage, BLAG argues that Congress believed DOMA would promote it by "maintain[ing] the definition of marriage that was universally accepted in American law." (BLAG Mot. to Dismiss at 28). That interest may be legitimate.[3] However, it is unclear how DOMA advances it.

[3] While tradition as an end in itself may not be a legitimate state interest in this case, see Heller, 509 U.S. at 326 (noting that the "[a]ncient lineage" of a tradition does not necessarily make its preservation a legitimate government goal), the Court acknowledges that an interest in maintaining the traditional institution of marriage, when coupled with other legitimate interests, could be a sound reason for a legislative classification, see Lawrence, 539 U.S. at 585 (O'Connor, J., concurring)

DOMA does not affect the state laws that govern marriage. (BLAG Mot. to Dismiss at 20 (noting that DOMA does not "directly and substantially interfere with the ability of same-sex couples to marry").) Precisely because the decision of whether same-sex couples can marry is left to the states, DOMA does not, strictly speaking, "preserve" the institution of marriage as one between a man and a woman. The statute creates a federal definition of marriage. But that definition does not give content to the fundamental right to marry—and it is the substance of that right, not its facial definition, that actually shapes the institution of marriage. Cf. De Sylva v. Ballentine, 351 U.S. 570, 580 (1956) (noting that "[t]he scope of a federal right is, of course, a federal question, but that does not mean that its content is not to be determined by state, rather than federal law, [which] is especially true where a statute deals with a familial relationship [because] there is no federal law of domestic relations").

To the extent Congress had any other independent interest in approaching same-sex marriage with caution, for much the same reason, DOMA does not further it. A number of states now permit

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(stating that "preserving the traditional institution of marriage" would be a legitimate state interest in an equal protection analysis). To the extent Congress had an interest in defending traditional notions of morality in furtherance of an interest in traditional marriage, H.R. Rep. No. 104-664, at 16, the Court agrees that "[p]reserving th[e] institution [of traditional marriage] is not the same as mere moral disapproval of an excluded group, and that is singularly so in this case given the range of bipartisan support for [DOMA]." Massachusetts v. HHS, Nos. 10-2207 & 10-2214, slip op. at 29, 30 (citation and internal quotation marks omitted).

same-sex marriages. DOMA did not compel those states to "wait[] for evidence spanning a longer term before engaging in . . . a major redefinition of a foundational social institution." (BLAG Mot. to Dismiss at 29.) Thus, whatever the "social consequences" of this legal development ultimately may be, DOMA has not, and cannot, forestall them.[4]

2. Childrearing and Procreation

Promoting the ideal family structure for raising children is another reason Congress might have enacted DOMA. Again, the Court does not disagree that promoting family values and responsible parenting are legitimate governmental goals. The Court cannot, however, discern a logical relationship between DOMA and those goals.

BLAG argues that Congress enacted DOMA to avoid a social perception that marriage is not linked to childrearing. In furtherance of that interest, it argues, Congress might have

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[4] Congress also expressed "a corresponding interest in promoting heterosexuality" as "closely related to the interest in protecting traditional marriage." H.R. Rep. No. 104-664, at 15 n.53. BLAG does not contend that this is a rational basis for DOMA's classification; nonetheless, the Court briefly considers it, as a "conceivable" basis that "might" support it. Heller, 509 U.S. at 320.

A permissible classification must at least "find some footing in the realities of the subject addressed by the legislation." Id. at 321. Here, such footing is lacking. DOMA affects only those individuals who are already married. The Court finds it implausible that section 3 does anything to persuade those married persons (who are homosexuals) to abandon their current marriages in favor of heterosexual relationships. Thus, the stated goal of promoting heterosexuality is so attenuated from DOMA's classification that it "render[s] the distinction arbitrary or irrational." City of Cleburne, 473 U.S. at 446.

passed DOMA to deter heterosexual couples from having children out of wedlock, or to incentivize couples who are pregnant to get married. (BLAG Mot. to Dismiss at 36.) BLAG also claims that Congress had an interest in promoting the optimal social (family) structure for raising children—that is, households with one mother and one father. (BLAG Mot. to Dismiss at 38.) These concerns appear related to Congress's contemporaneously stated interest in "responsible procreation." H.R. Rep. No. 104-664, at 12-13.

These are interests in the choices that heterosexual couples make: whether to get married, and whether and when to have children. Yet DOMA has no direct impact on heterosexual couples at all; therefore, its ability to deter those couples from having children outside of marriage, or to incentivize couples that are pregnant to get married, is remote, at best. It does not follow from the exclusion of one group from federal benefits (same-sex married persons) that another group of people (opposite-sex married couples) will be incentivized to take any action, whether that is marriage or procreation. See In re Levenson, 587 F.3d 925, 934 (9th Cir. 2009).

Conceivably, Congress could have been interested more generally in maintaining the societal perception that a primary purpose of marriage is procreation. However, even formulated as such, the Court cannot see a link between DOMA and childrearing.

DOMA does not determine who may adopt and raise children. Nor could it, as these matters of family structure and relations "belong[] to the laws of the States and not to the laws of the United States." Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004).

At most, then, DOMA has an indirect effect on popular perceptions of what a family "is" and should be, and no effect at all on the types of family structures in which children in this country are raised. And so, although this Court must "accept a legislature's generalizations even when there is an imperfect fit between means and ends," Heller, 509 U.S. at 320, here, Congress's goal is "so far removed" from the classification, it is impossible to credit its justification. Romer, 517 U.S. at 635; see Lewis v. Thompson, 252 F.3d 567, 584 n.27 (2d Cir. 2001) (noting that the justification for the law cannot rely on factual assumptions that are beyond the "limits of 'rational speculation'" (quoting Heller, 509 U.S. at 320)).

3. Consistency and Uniformity of Federal Benefits

Additionally, BLAG explains that Congress was motivated to define marriage at the federal level to ensure that federal benefits are distributed consistently. In other words, Congress might have enacted DOMA to avoid a scenario in which "people in different States . . . have different eligibility to receive Federal benefits," depending on the state's marriage laws.

(BLAG Mot. to Dismiss at 34 (quoting 142 Cong. Rec. S10121 (daily ed. Sept. 10, 1996) (statement of Sen. Ashcroft)).)

Here, the Court does discern a link between the means and the end. It is problematic, though, that the means used in this instance intrude upon the states' business of regulating domestic relations. That incursion skirts important principles of federalism and therefore cannot be legitimate, in this Court's view.

In the first instance, it bears mention that this notion of "consistency," as BLAG presents it, is misleading. Historically the states—not the federal government—have defined "marriage." Cf. United States v. Lopez, 514 U.S. 549, 583 (1995) (Kennedy, J., concurring) (noting that the states have enjoyed the latitude to "experiment[] and exercis[e] their own judgment in an area to which [they] lay claim by right of history and expertise"). For that reason, before DOMA, any uniformity at the federal level with respect to citizens' eligibility for marital benefits was merely a byproduct of the states' shared definition of marriage. The federal government neither sponsored nor promoted that uniformity. See In re Levenson, 587 F.3d at 933 (noting that the relevant status quo prior to DOMA was the federal government's recognition of any marriage declared valid according to state law); Gill v. Office of Pers. Mgmt., 699 F. Supp. 2d 374, 393 (D. Mass. 2010) (same).

Yet even if Congress had developed a newfound interest in promoting or maintaining consistency in the marital benefits that the federal government provides, DOMA is not a legitimate method for doing so. To accomplish that consistency, DOMA operates to reexamine the states' decisions concerning same-sex marriage. It sanctions some of those decisions and rejects others. But such a sweeping federal review in this arena does not square with our federalist system of government, which places matters at the "core" of the domestic relations law exclusively within the province of the states. See Ankenbrandt v. Richards, 504 U.S. 689, 716 (1992) (Blackmun, J., concurring); Sosna v. Iowa, 419 U.S. 393, 404 (1975); see also Massachusetts v. U.S. Dep't of Health & Human Servs., 698 F. Supp. 2d 234, 249-50 (D. Mass. 2010) (discussing the history of marital status determinations as an attribute of state sovereignty).

The states may choose, through their legislative or constitutional processes, to preserve traditional marriage or to redefine it. See Golinski v. Office of Pers. Mgmt., 824 F. Supp. 2d 968, 988 (N.D. Cal. 2012) (noting that thirty states have passed constitutional amendments banning same-sex marriage). But generally speaking, barring a state's inability to assume its role in regulating domestic relations, the federal government has not attempted to manage those processes and

affairs. See id. at 1000 n.10 (observing that, historically, the federal government has only legislated in this area where there has been a failure or absence of state government). BLAG has conceded this historical fact. See Transcript of Oral Argument at 10:15-20, 18:2-5, Golinski, 824 F. Supp. 2d 968 (No.10-257) (conceding that BLAG's "research hasn't shown that there are historical examples which [sic] Congress has legislated on behalf of the federal government in the area of domestic relations"). This is the "virtue of federalism." Massachusetts v. HHS, Nos. 10-2207 & 10-2214, slip op. at 30.

4. Conserving the Public Fisc

Lastly, Congress also justified DOMA as a means of conserving government resources. (BLAG Mot. to Dismiss at 32.) An interest in conserving the public fisc alone, however, "can hardly justify the classification used in allocating those resources." Plyler, 457 U.S. at 227. After all, excluding any "arbitrarily chosen group of individuals from a government program" conserves government resources. Dragovich v. U.S. Dep't of the Treasury, 764 F. Supp. 2d 1178, 1190 (N.D. Cal. 2011). With no other rational basis to support it, Congress's interest in economy does not suffice. Accord, e.g., Dragovich v. U.S. Dep't of the Treasury, No. C 10-01564, slip op. at 26 (N.D. Cal. May 24, 2012); Golinski, 824 F. Supp. 2d at 994-95.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for summary judgment is GRANTED and Defendant-Intervenor's motion to dismiss is DENIED. The Court declares that section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, is unconstitutional as applied to Plaintiff. Plaintiff is awarded judgment in the amount of $353,053.00, plus interest and costs allowed by law. Each party shall bear their own costs and fees.

This case is CLOSED. The clerk of the court is directed to terminate the motions at docket numbers 28, 49, and 52.

SO ORDERED:

Barbara S. Jones

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
June 6, 2012

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

SK FOODS, L.P., a California limited partnership,

Debtors.

_____/

BRADLEY D. SHARP, et al.,

Plaintiffs,

v. CIV. NO. S-11-1839 LKK

FRED SALYER IRREVOCABLE TRUST, et al.,

Defendants.

_____/

In re:

SK FOODS, L.P., a California limited partnership,

Debtors.

_____/

BRADLEY D. SHARP, et al.,

Plaintiffs,

v. CIV. NO. S-11-1840 LKK

SKF AVIATION, LLC, et al.,

Defendants.

_____/

In re:

SK FOODS, L.P., a California limited partnership,

Debtors.
_____/
BRADLEY D. SHARP, et al.,

Plaintiffs,

v. CIV. NO. S-11-1841 LKK

SCOTT SALYER, as trustee of the Scott Salyer Revocable Trust, et al.,

Defendants.
_____/
In re:

SK FOODS, L.P., a California limited partnership,

Debtors.
_____/
BRADLEY D. SHARP, et al.,

Plaintiffs,

v. CIV. NO. S-11-1842 LKK

SSC FARMS 1, LLC, et al.,

Defendants.
_____/
In re:

SK FOODS, L.P., a California limited partnership,

Debtors.
_____/
BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co.,

Appellant,

v. CIV. NO. S-11-1845 LKK

SCOTT SALYER, et al.,

Appellees.
_____/
In re:

SK FOODS, L.P., a California limited partnership,

Debtors.
_____/
BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co.,

Appellant,

v. CIV. NO. S-11-1846 LKK

INTERNAL REVENUE SERVICE, et al.,

Appellees.
_____/
In re:

SK FOODS, L.P., a California limited partnership, et al.,

Debtors.

BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co., CIV. NO. S-11-1847 LKK

Appellant,

v.

CSSS, L.P.,

Appellee.
_____/
In re:

SK FOODS, L.P., a California limited partnership, et al.,

Debtors.

BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co., CIV. NO. S-11-1849 LKK

Appellant,

v.

CALIFORNIA FRANCHISE TAX BOARD, et al.,

Appellees.
_____/
In re:

SK FOODS, L.P., a California limited partnership, et al.,

Debtors.

BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co., CIV. NO. S-11-1850 LKK

Appellant,

v.

CALIFORNIA FRANCHISE TAX BOARD, et al.,

Appellees.
_____/

In re:

SK FOODS, L.P., a California limited partnership, et al.,

Debtors.

BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co., CIV. NO. S-11-1853 LKK

Appellant,

v.

CARY SCOTT COLLINS, et al.,

Appellees.
_____/

In re:

SK FOODS, L.P., a California limited partnership, et al.,

Debtors.

BANK OF MONTREAL, as Administrative Agent, successor by Assignment to Debtors SK Foods, L.P. and RHM Industrial Specialty Foods, Inc, a California corporation, d/b/a Colusa County Canning Co., CIV. NO. S-11-1855 LKK

Appellant,

v.

CARY SCOTT COLLINS, et al.,

Appellees. O R D E R
_____/

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I. BACKGROUND

On June 28, 2011, the Bankruptcy Court implemented this court's December 10, 2010 and April 14, 2011 remand orders[1] by issuing stays in the above-referenced adversary proceedings. This court's remand order, in turn, was predicated upon the pendency of the federal criminal prosecution against F. Scott Salyer,[2] and the factors set forth in Keating v. Office of Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995).

Salyer has now pled "guilty" in his criminal case, although the case is still pending, with sentencing yet to be determined. The Keating factors therefore do not appear to weigh in favor of a continued stay, especially those factors relating to the public interest in protecting the constitutionally protected right of presumed innocence, and the obligation of proof, which falls only on the prosecution.

The court is aware that Salyer pled guilty under a procedure that permits him to withdraw his guilty plea if this court rejects the plea agreement reached by the prosecution and the defense.[3] The court is also aware, however, that both the government and Salyer are represented by highly competent counsel who know far more about this criminal case than does the court, including the respective likelihoods of success at trial. The remote chance that

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[1] See SSC Farms I, LLC v. Sharp, 11-cv-1492-LKK (Dkt. Nos. 56 and 74).

[2] See U.S. v. Salyer, 10 Cr. 61 (E.D. Cal.).

[3] See Fed. R. Crim. P. 11(c)(3) & 11(c)(5)(B).

this court would reject the sentencing range under these conditions does not appear sufficient to justify a continued stay of the Bankruptcy Court proceedings.

Accordingly, these matters are remanded to the Bankruptcy Court with instructions to vacate the stays, or to explain why the stays should remain in place in light of Salyer's guilty pleas.

IT IS SO ORDERED.

DATED: June 6, 2012.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Thomas L. Spear, Plaintiff, v. United States of America, Defendant.	CIV. 11-1742-PHX-PGR **ORDER**

Before the Court is Plaintiff's Motion for Summary Judgment. (Doc. 23.) Plaintiff contends that he is entitled to summary judgment on his quiet titled claim based on the doctrine of equitable subrogation. The United States asks the Court to refuse the motion or grant a continuance under Rule 56(d) of the Federal Rules of Civil Procedure so that it can conduct discovery before responding to the motion. (Doc. 25.)

Background

At issue is real property located in Maricopa County. Dennis Carlson owned the property at the time of his death in 2007. He had a loan on the property with TCF Bank ("TCF Loan"). The TCF loan was recorded on June 22, 2006. On August 15, 2008, Plaintiff purchased the property from Carlson's estate for $800,000. To fund the purchase, Plaintiff obtained a loan of $417,000 ("Taylor Loan"). The Taylor Loan was used to satisfy the TCF Loan. On December 10, 2009, Plaintiff refinanced the Taylor Loan with a loan from Imortgage.com ("ICOM Loan"). The ICOM Loan was used to satisfy the Taylor Loan. On May 10, 2010, Plaintiff received a notice from the IRS that it was going to seize the property

in order to satisfy the tax liability of the Carlson estate. Carlson's estate had a tax liability of $2.2 million at the time of his death, on July 2, 2007, at which point an estate tax lien was automatically created. On September 2, 2011, Plaintiff filed a complaint to quiet title. (Doc. 1.) He filed an amended complaint on March 5, 2012. (Doc. 20.)

Equitable subrogation

"The doctrine of equitable subrogation allows a person who pays off an encumbrance to assume the same priority position as the holder of the previous encumbrance." *Mort v. United States*, 86 F.3d 890, 893 (9th Cir. 1996). Plaintiff contends that the ICOM loan is subrogated to the TCF loan, which had priority over the estate tax lien. (Doc. 23 at 2–3.) The United States argues that equitable subordination does not apply because the ICOM Loan did not pay off the TCF Loan, which had been discharged and was no longer in existence when the ICOM Loan was recorded. (Doc. 25 at 5.)

"Equitable subrogation is a state-law doctrine," so whether the doctrine applies in this case is a matter of Arizona law. *Mort*, 86 F.3d at 893. In *Sourcecorp, Inc. v. Norcutt*, 229 Ariz. 270, 274 P.3d 1204, 1207 (2012), the Arizona Supreme Court, acknowledging that "[t]here is thus some ambiguity in Arizona case law regarding the test for equitable subrogation,"adopted the test set forth in the Restatement (Third) of Property, § 7.6.[1] "Under the Restatement test, a person who 'fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment.'" *Id.* (quoting Restatement § 7.6). The court explained that "equitable relief may be appropriate, for example, if the person seeking subrogation expected to receive a security interest in the real estate with the priority of the

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[1] Previous formulations of the test in Arizona stated that subrogation occurs if (1) a third person discharges an encumbrance on the property of another, (2) the person is not a volunteer, and (3) there is an express or implied agreement "that he will be substituted in place of the holder of the encumbrance." *Peterman-Donnelly Eng'rs & Contractors Corp. v. First Nat'l Bank of Ariz.*, 2 Ariz.App. 321, 325, 408 P.2d 841, 845 (1965); see *Lamb Excavation, Inc. v. Chase Manhattan Mortg. Corp.*, 208 Ariz. 478, 480–82, 95 P.3d 542, 544–46 (App. 2004).

mortgage being discharged." *Id.* The court held that application of equitable subrogation does not depend whether on the person invoking the doctrine is a "volunteer" and does not require an express or implied agreement. *Id.* at 1208. The court recognized that "equitable subrogation depends on the facts of the particular case." *Id.* at 1206 (quoting *Mosher v. Conway*, 45 Ariz. 463, 468, 46 P.2d 110, 112 (1935)).

Rule 56(d)

Under Rule 56(d) (formerly Rule 56(f)), when a "nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition" to a motion for summary judgment, the court may "(1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." The party opposing summary judgment must make a timely request and clearly show "what information is sought and how it would preclude summary judgment." *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998). The requesting party must set forth in affidavit form the specific facts it hopes to elicit from further discovery and show that the facts sought exist are essential to oppose summary judgment. *Family Home and Finance Center, Inc. v. Federal Home Loan Mortgage Corp.*, 525 F.3d 822, 827 (9th Cir. 2008).

Discussion

The United States's request is timely. Where a summary judgment motion is filed early in the litigation before a party has had a realistic opportunity to pursue discovery relating to its theory of the case, district courts should grant a Rule 56(d) motion "fairly freely." *Burlington Northern Santa Fe R. Co. v. Assiniboine and Sioux Tribes of Fort Peck Reservation*, 323 F.3d 767, 773 (9th Cir. 2003); *see Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir. 2001) ("Although Rule 56(f) facially gives judges the discretion to disallow discovery when the non-moving party cannot yet submit evidence supporting its opposition, the Supreme Court has restated the rule as requiring, rather than merely permitting, discovery 'where the non-moving party has not had the opportunity to discover

information that is essential to its opposition.'") (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986)).

Plaintiff filed its First Amended Complaint on March 5, 2012. The United States filed its Answer on March 19. (Doc. 21.) Plaintiff filed his Motion for Summary Judgment 10 days later, on March 29. (Doc. 23.) The deadline for the completion of discovery is September 24, 2012. (Doc. 17.) Dispositive motions are due by October 19. (*Id.*)

The United States has submitted a declaration by its counsel, Kaycee Sullivan. (Doc. 25, Ex. 1.) The declaration indicates that the only discovery completed in this case is the exchange of initial disclosures. (*Id.*, ¶ 6.) This disclosure included documents from the escrow files of the real estate transactions at issue, along with documents from related litigation in Minnesota, in which Plaintiff is suing Bryon Bequette, the representative of the Carlson estate, for failing to pay the estate tax lien on the property. *Id.*

The Sullivan declaration sets forth the facts the United States hopes to elicit and why they are essential to its defense. (Doc. 25, Ex. 1.) According to the declaration, the United States has a good faith belief that further discovery will reveal relevant facts concerning the "applicability of the doctrine of equitable subrogation in the case." (*Id.*, ¶ 13.) The sought-after information "is necessary in evaluating the parties' knowledge of potentially competing lien priority claims and the equitable remedies available." (*Id.*, ¶ 12.)

The United States seeks copies of the escrow files of the underlying real estate transactions and intends to depose Plaintiff regarding his knowledge of the estate tax lien prior to entering into the real estate transactions at issue. (*Id.*, ¶¶ 6, 11.) It will also depose Plaintiff about his efforts to obtain damages from Bequette, as well as his efforts to file a claim or receive proceeds from a title insurance policy. (*Id.*, ¶ 9.) The United States also intends to depose Bequette and subpoena documents from the title insurance company. (*Id.*, ¶¶ 8, 12.)

The United States asserts that this information is necessary for a determination of the equities of the case and to rebut factual allegations made by Plaintiff. For example, Plaintiff

contends that he purchased the property without knowledge of the tax lien and that he and his lenders intended the deeds to maintain a first position secured interest in the property, as evidenced by loan documents and escrow instructions. (Doc. 23 at 5–6.)

In *Sourcecorp*, the Arizona Supreme Court held that neither the plaintiff's status as a "volunteer" nor the absence of an agreement is a categorical bar to application of equitable subrogation. 274 P.3d at 1208. Nevertheless, application of the doctrine depends on the specific facts of the case, *id.* at 1206, and the United States has identified questions relevant to the equities involved, particularly questions concerning Plaintiff's intent and expectations when purchasing the property. *See In re Mortgages Ltd.*, 459 B.R. 739, 742 (Bkrtcy.D.Ariz. 2011) (denying summary judgment based on conflicting facts as to the existence of an agreement to subrogate).

Conclusion

Plaintiff's motion for summary judgment was filed just 10 days after the United States answered the First Amended Complaint. The parties are still involved in discovery. Because the United States has identified specific, material facts that it may elicit from discovery, which are essential to its opposition to the motion for summary judgment, *see Family Home & Finance Center*, 525 F.3d at 827, the court will grant the United States' request for relief under Rule 56(d).[2]

Accordingly,

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[2] Plaintiff asserts that pursuant to LRCiv. 56.1(b)(1), the Court must accept as true the facts set forth in his statement of facts because the United States did not controvert them in its response to the summary judgment motion. (Doc. 26 at 6–7.) This argument is not well taken, given that the United States is seeking relief under Rule 56(d). Without having conducted discovery, the United States is not in a position to contest Plaintiff's factual assertions. (*See* Doc. 25 at 3 n.1.)

IT IS HEREBY ORDERED granting the United States' request for relief under Rule 56(d) (Doc. 25). The United States shall respond to Plaintiff's motion for summary judgment no later than September 24, 2012.

DATED this 6th day of June, 2012.

Paul G. Rosenblatt
United States District Judge

United States District Court

WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiffs,

v.

TERRY L. SMITH, both individually and as trustee for the TERRY L. SMITH AND LOUISE A.SMITH FAMILY REVOCABLE LIVING TRUST; LOUISE A. SMITH, both individually and as trustee for the TERRY L. SMITH AND LOUISE A. SMITH FAMILY REVOCABLE LIVING TRUST; BLUE BEAR COMPANY; HSBC BANK NEVADA, N.A.; and JEFFERSON COUNT,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: C11-5101RJB

____ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X__ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

The Motion for Summary Judgment against Terry L. Smith and Louise A. Smith, both individually and as Trustees of the Living Trust (Dkt. 70) is **GRANTED**;

1. Judgment is entered in favor of the United Sates and against Mr. Terry L. Smith in the amount of $626,814.32 as of April 26, 2012, which represents the unpaid balance of the federal income tax liabilities assessed against Mr. Smith together with accrued but unassessed interest and other statutory additions, together with statutory interest and other additions accruing thereafter;

2. The United States has valid and subsisting federal liens on all property and rights to property of Mr. Smith as well as the marital community of Mr. Terry L. and Mrs. Louise A. Smith;

3. Mrs. Smith has no independent right to any proceeds from the sale of the Subject Properties;

4. The Living Trust is the alter-ego/nominee of Mr. Smith and the marital community of Mr. and Mrs. Smith and that the transfers of the Subject Properties were fraudulent and of no effect to the lien claims of the United States;

5. The United States' tax liens encumbering the Subject Properties are foreclosed and that the Subject Properties shall be sold pursuant to 26 U.S.C. § 7403 and 28 U.S.C. § 2001, and that the net proceeds be applied toward the satisfaction of the federal tax liens; AND

6. Once every named defendant's interest in the Subject Properties is resolved in this case, the United States will submit an order of Sale of the Subject Properties for Court approval.

June 6, 2012

WILLIAM M. McCOOL
Clerk

/s/ Dara L. Kaleel
By Dara L. Kaleel, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. KENNETH ALLEN TESCH, Defendant.	**No. 4:11-cv-00055-JEG** **O R D E R**

Before the Court is a motion brought by the Government to find Defendant Kenneth Tesch (Tesch) in contempt of Court. On April 24, 2012, the Court ordering Tesch to appear before the Court for a Show Cause hearing on June 6, 2012, at 1:30 p.m. ECF No. 25. At the hearing, on behalf of the United States, Assistant United States Attorney Gary Hayward appeared in the courtroom and Department of Justice Trial Attorney Sherra Wong appeared telephonically. Tesch failed to appear. The Deputy Clerk of Court made a public announcement of the hearing and paged Tesch. Tesch failed to respond to the page or otherwise defend against the order to show cause. The matter is fully submitted and ready for disposition.

On December 22, 2011, the Court entered an Order requiring Tesch to disclose within thirty days from the date of the Court's Order, either to the Court or to the United States, any fictitious legal documents that Tesch had filed against federal employees. In support of its Motion to Hold Tesch in Contempt, the Government has filed copies of correspondence between the Government and Tesch. The correspondence includes a certified letter dated February 2, 2012, sent by the U.S. Department of Justice, Tax Division, to Tesch explaining that as of January 23, 2012, Tesch had not complied with the Court's Order to disclose all fictitious legal documents that Tesch had caused to be prepared or filed against the person or property of any federal employee and warned that if Tesch did not comply, Tesch would be held in contempt of court. In response to the Government's letter, Tesch sent notarized documents attesting to

Tesch's belief that this Court did not have the authority to order Tesch to make any disclosures. The Government submitted other exhibits documenting subsequent and similar communications with Tesch urging compliance with the Court's December 22, 2011, Order to avoid being found in contempt of court. As of the date of the hearing, Tesch failed to comply with the Court's Order. Instead, on June 5, 2012, one day before the hearing, Tesch filed with the Court a document entitled "Motion to Dismiss and Motion for Rule 60 Relief From Judgment." ECF No. 30. Therein, Tesch submitted notarized documents that reiterated Tesch's belief that this Court did not have authority to order Tesch to make any disclosures.

The Court finds the Government has met its "burden of proving, by clear and convincing evidence, that [Tesch] violated a court order." Chi. Truck Drivers v. Bhd. Labor Leasing, 207 F.3d 500, 505 (8th Cir. 2000). Tesch has been repeatedly advised, both by this Court and by the Government, that compliance with the Court's order simply required Tesch to reveal information clearly within Tesch's capacity to disclose. By failing to make this disclosure and by failing to appear for the Show Cause Hearing on June 6, 2012, Tesch is found to be in contempt of this Court's Orders of December 22, 2011, and April 24, 2012. See IBEW, Local Union No. 545 v. Hope Elec. Corp., 293 F.3d 409, 418 (8th Cir. 2002).

Accordingly, the Court **grants** the Government's Motion, ECF No. 21, and orders the Clerk of Court to issue a bench warrant authorizing the United States Marshal Service to arrest Defendant Kenneth Allen Tesch, who resides at 2548 Woodcrest Drive, Chaska, Minnesota, 55318.

IT IS SO ORDERED.

Dated this 6th day of June, 2012.

JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

CLERK'S COURT MINUTES

PRESIDING: HONORABLE James E. Gritzner
Case No. 4:11-cv-00055 : Court Reporter: Terri Martin
: Interpreter: None
: Civil Matters Video Recorded: ☐

Plaintiff(s)	: Defendant(s)
United States of America	: Kenneth Allen Tesch

Plaintiff(s) Counsel: Sherra Wong; Gary Hayward

Defendant(s) Counsel: Pro Se

Issues before the Court: Motion to Hold Tesch in Contempt; Order to Show Cause Hearing

Motion(s) for Ruling:	Ruling / Ruling Reserved
[21] Motion to Hold Tesch in Contempt	Granted

Proceedings:

Asst. U.S. Attorney Gary Hayward is present; Asst. DOJ Attorney Sherra Wong participates telephonically; phone call placed by the Court. Tesch is not present. Court orders the clerk to publicly announce the hearing and to page Tesch in the courthouse. Tesch does not respond to the page. The hearing proceeds. Ms. Wong states that Tesch has not complied with the Court's order of Dec. 22, 2011, and should be held in contempt of Court. The Court finds Tesch in Contempt of Court and orders that the Clerk of Court issue a bench warrant for Tesch's arrest.

Time Start: 1:30 pm
Time End: 1:35 pm
Date: June 06, 2012

/s/ Cheryl Murad
Deputy Clerk