UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

LF 2016D (5/05)

Case Name: AmericanWest Bancorporation Case Number: 10-6097-PCW-11

ORDER AWARDING COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES PURSUANT TO 11 U.S.C. §330 or §331

THIS MATTER HAVING come before the Court on the # 3 (☑ interim ☐ final) application of FOSTER PEPPER PLLC dated 4/30/12 docket # 334 for an order allowing compensation for services rendered and reimbursement of expenses in the above entitled case; and the court being fully advised in the premises:

NOW THEREFORE the below listed amounts are hereby allowed and awarded as compensation and reimbursement pursuant to 11 USC §330 or §331 to the above-named applicant and are authorized to be disbursed or transferred from funds of the above entitled estate, subject to the availability of funds and the provision of any confirmed plan. *

Compensation in the amount	$ 47,739.00
Reimbursement in the amount of	$ 102.07
TOTAL	$ 47,841.07

* If for first application, includes compensation earned pre-petition and filing fees and other costs incurred pre-petition.

Summary of all prior award on previous applications:

Compensation	$ 220,561.50
Reimbursement	$ 7,989.43
Total	$ 228,550.93

Disbursement information for this award:

Received directly from debtor by appl (if for first application)	$
To be paid by transfer from attorney trust account:	$ 0.00
To be paid by trustee	$ 47,841.07
Total	$ 47,841.07

Presented by: /s/ Dillon E. Jackson
Name
Address: 1111 Third Avenue, #3400
Seattle, WA 98101
Telephone: 206-447-8962

Patricia C. Williams
Bankruptcy Judge

06/07/2012 08:34:01

ORDER ALLOWING COMPENSATION AND REIMBURSEMENT OF EXPENSES

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Counsel for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson,

Plaintiffs,

v.

United States of America,

Defendant & Counterclaim Plaintiff,

v.

John E. Worthen, *et al*.,

Counterclaim Defendants.

Case No. 2:08-cv-414-DN-EJF

ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT MARELKO, LLC

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Marelko, LLC ("Marelko") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

> the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. Marelko was named as a Counterclaim Defendant in the United States' initial Counterclaim, filed on September 29, 2008. *See* Doc. # 17.

3. Marelko was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Marelko was completed on May 20, 2009. *See* Doc. # 60.

5. Consequently, Marelko was required to appear and/or otherwise plead in this action no later than June 10, 2009. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Marelko has not filed an answer or otherwise responded to the United States' Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-DN.

7. On October 1, 2009, the Court entered default against Marelko. *See* Doc. # 107.

8. On June 24, 2011, the United States filed a Motion for Default Judgment against Marelko, requesting that the Court enter default judgment against Marelko, thereby extinguishing any interest it has in the Subject Property. *See* Doc. # 234.

9. Marelko has had ample opportunity to come forward and state its claim, if any, to the Subject Property, and it has failed to do so. Accordingly, it has defaulted and is subject to a

default judgment extinguishing any interest it may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because Marelko has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Marelko and finds that Marelko has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.

UNITED STATES DISTRICT JUDGE

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JOHN K. MANGUM
Assistant United States Attorney

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Counsel for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson,

Plaintiffs,

v.

United States of America,

Defendant & Counterclaim Plaintiff,

v.

John E. Worthen, *et al*.,

Counterclaim Defendants.

Case No. 2:08-cv-414-DN-EJF

ORDER GRANTING MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT ASSURANCE MORTGAGE CORPORATION OF AMERICA

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Assurance Mortgage Corporation of America ("Assurance Mortgage") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

> the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. Assurance Mortgage was named as a Counterclaim Defendant in the United States' initial Counterclaim, filed on September 29, 2008. *See* Doc. # 17.

3. Assurance Mortgage was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Assurance Mortgage was completed on May 7, 2009. *See* Doc. # 58.

5. Consequently, Assurance Mortgage was required to appear and/or otherwise plead in this action no later than May 28, 2009. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Assurance Mortgage has not filed an answer or otherwise responded to the United States' Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-DN.

7. On October 1, 2009, the Court entered default against Assurance Mortgage. *See* Doc. # 105.

8. On June 24, 2011, the United States filed a Motion for Default Judgment against Assurance Mortgage, requesting that the Court enter default judgment against Assurance Mortgage, thereby extinguishing any interest it has in the Subject Property. *See* Doc. # 235.

9. Assurance Mortgage has had ample opportunity to come forward and state its claim, if any, to the Subject Property, and it has failed to do so. Accordingly, it has defaulted and is subject to a default judgment extinguishing any interest it may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because Assurance Mortgage has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Assurance Mortgage and finds that Assurance Mortgage has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.

UNITED STATES DISTRICT JUDGE

DAVID B. BARLOW
United States Attorney
JOHN K. MANGUM
Assistant United States Attorney

LINDSAY L. CLAYTON
Trial Attorney, Tax Division
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Counsel for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson,

Plaintiffs,

v.

United States of America,

Defendant & Counterclaim Plaintiff,

v.

John E. Worthen, *et al.*,

Counterclaim Defendants.

Case No. 2:08-cv-414-DN-EJF

ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT AMERICAN MORTGAGE INSURANCE SPECIALISTS, INC.

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant American Mortgage Insurance Specialists, Inc. ("American Mortgage") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real

property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake

Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or

less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N "G" Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section

25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. American Mortgage was named as a Counterclaim Defendant in the United States' Fifth Amended Counterclaim, filed on April 25, 2011. *See* Doc. # 160.

3. American Mortgage was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon American Mortgage was completed on June 9, 2011. *See* Doc. # 227.

5. Consequently, American Mortgage was required to appear and/or otherwise plead in this action no later than June 30, 2011. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, American Mortgage has not filed an answer or otherwise responded to the United States' Fifth Amended Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-DN.

7. On August 3, 2011, the Clerk of the Court entered default against American Mortgage. *See* Doc. # 260.

8. On September 12, 2011, the United States filed a Motion for Default Judgment against American Mortgage, requesting that the Court enter default judgment against American Mortgage, thereby extinguishing any interest it has in the Subject Property. *See* Doc. # 284.

9. American Mortgage has had ample opportunity to come forward and state its claim, if any, to the Subject Property, and it has failed to do so. Accordingly, it has defaulted and is subject to a default judgment extinguishing any interest it may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because American Mortgage has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against American Mortgage and finds that American Mortgage has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than

all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.

UNITED STATES DISTRICT JUDGE

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JOHN K. MANGUM
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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson, Plaintiffs, v. United States of America, Defendant & Counterclaim Plaintiff, v. John E. Worthen, *et al*., Counterclaim Defendants.	Case No. 2:08-cv-414-DN-EJF ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT APPLIED ENGINEERING PRODUCTS COMPANY INC.

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Applied Engineering Products Company Inc. ("Applied Engineering") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

> the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. Applied Engineering was named as a Counterclaim Defendant in the United States' Fifth Amended Counterclaim, filed on April 25, 2011. *See* Doc. # 160.

3. Applied Engineering was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Applied Engineering was completed on April 28, 2011. *See* Doc. # 190.

5. Consequently, Applied Engineering was required to appear and/or otherwise plead in this action no later than May 19, 2011. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Applied Engineering has not filed an answer or otherwise responded to the United States' Fifth Amended Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-TS-BCW.

7. On August 3, 2011, the Court entered default against Applied Engineering. *See* Doc. # 256.

8. On September 12, 2011, the United States filed a Motion for Default Judgment against Applied Engineering, requesting that the Court enter default judgment against Applied Engineering, thereby extinguishing any interest it has in the Subject Property. *See* Doc. # 285.

9. Applied Engineering has had ample opportunity to come forward and state its claim, if any, to the Subject Property, and it has failed to do so. Accordingly, it has defaulted and is subject to a default judgment extinguishing any interest it may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because Applied Engineering has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Applied Engineering and finds that Applied Engineering has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.

UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson, Plaintiffs, v. United States of America, Defendant & Counterclaim Plaintiff, v. John E. Worthen, *et al*., Counterclaim Defendants.	Case No. 2:08-cv-414- DN-EJF ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT WENDY MASCARO

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Wendy Mascaro ("Ms. Mascaro") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

> the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. Ms. Mascaro was named as a Counterclaim Defendant in the United States' Fifth Amended Counterclaim, filed on April 25, 2011. *See* Doc. # 160.

3. Ms. Mascaro was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Ms. Mascaro was completed on April 27, 2011. *See* Doc. # 198.

5. Consequently, Ms. Mascaro was required to appear and/or otherwise plead in this action no later than May 18, 2011. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Ms. Mascaro has not filed an answer or otherwise responded to the United States' Fifth Amended Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-TS-BCW.

7. On August 5, 2011, the Court entered default against Ms. Mascaro. *See* Doc. # 261.

8. On September 12, 2011, the United States filed a Motion for Default Judgment against Ms. Mascaro, requesting that the Court enter default judgment against Ms. Mascaro, thereby extinguishing any interest she has in the Subject Property. *See* Doc. # 286.

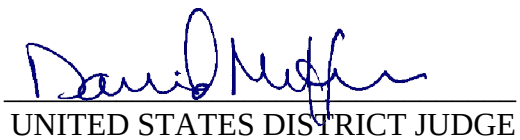
9. Ms. Mascaro has had ample opportunity to come forward and state her claim, if any, to the Subject Property, and she has failed to do so. Accordingly, she has defaulted and is subject to a default judgment extinguishing any interest she may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because Ms. Mascaro has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Ms. Mascaro and finds that Ms. Mascaro has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.



UNITED STATES DISTRICT JUDGE

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Counsel for the United States of America

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson,

Plaintiffs,

v.

United States of America,

Defendant & Counterclaim Plaintiff,

v.

John E. Worthen, *et al*.,

Counterclaim Defendants.

Case No. 2:08-cv-414-DN-EJF

ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT WAYNE D. JACKS

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Wayne D. Jacks is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

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2. Mr. Jacks was named as a Counterclaim Defendant in the United States' Fifth Amended Counterclaim, filed on April 25, 2011. *See* Doc. # 160.

3. Mr. Jacks was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Mr. Jacks was completed on June 22, 2011. *See* Doc. # 241.

5. Consequently, Mr. Jacks was required to appear and/or otherwise plead in this action no later than July 13, 2011. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Mr. Jacks has not filed an answer or otherwise responded to the United States' Fifth Amended Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-TS-BCW.

7. On August 5, 2011, the Court entered default against Mr. Jacks. *See* Doc. # 262.

8. On September 12, 2011, the United States filed a Motion for Default Judgment against Mr. Jacks, requesting that the Court enter default judgment against Mr. Jacks, thereby extinguishing any interest he has in the Subject Property. *See* Doc. # 287.

9. On November 7, 2011, Mr. Jacks filed a document styled as a Motion to Show Cause. *See* Doc. # 303. The Court denied that motion on November 14, 2011, finding that the

motion lacked support. *See* Doc. # 306. Apart from filing the motion, Mr. Jacks has not otherwise defended his claims or participated in the litigation.

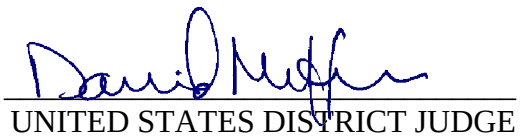
10. Mr. Jacks has had ample opportunity to come forward and state his claim, if any, to the Subject Property, and he has failed to do so. Accordingly, he has defaulted and is subject to a default judgment extinguishing any interest he may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

11. This Court has jurisdiction to grant the relief sought by the United States. Because Mr. Jacks has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Mr. Jacks and finds that Mr. Jacks has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.



UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Arlin Geophysical & Laura Olson, Plaintiffs, v. United States of America, Defendant & Counterclaim Plaintiff, v. John E. Worthen, *et al*., Counterclaim Defendants.	Case No. 2:08-cv-414-DN-EJF ORDER GRANTING UNITED STATES' MOTION FOR DEFAULT JUDGMENT AGAINST COUNTERCLAIM DEFENDANT TITLE LAND COMPANY

Under Federal Rule of Civil Procedure 55, the United States of America's ("United States'") Motion for Default Judgment against Counterclaim Defendant Title Land Company ("Title Land") is hereby GRANTED.

1. The United States filed this action, inter alia, to reduce to judgment federal tax assessments against John E. Worthen, and to foreclose federal tax liens against certain real property. The real property at issue (the "Subject Property") is listed in paragraphs 42-56 of the

United States' Fifth Amended Counterclaim, filed on April 25, 2011 (Doc. # 160), and is described as follows:

a. The real property located at 14755 S 6600 W in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-008, and is more particularly described as follows: The Southwest quarter of the Northeast quarter of the Southeast quarter of Section 10, township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

b. The real property located at 6450 W 14800 S in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-009, and is more particularly described as follows: The East half of the Northeast quarter of the Southeast quarter of Section 10, Township 4 South, range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

c. The real property located at 6425 W 14800 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-10-400-033, and is more particularly described as follows: Beginning at the Southeast corner of Section 10, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 00°00'45" West along the section line 1326.41 feet to a point on the North line of the South half of the Southeast quarter of said Section 10; thence North 89°43'26" West 810.00 feet along said Northerly line; thence South 08°27'21" East 803.610 feet; thence South 00°00'45" East 532.810 feet, more or less, to the section line; thence South 89°46'57" East 692.00 feet along the section line to the point of beginning.

d. The real property located at 6400 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-001, and is more particularly described as follows: The Southwest quarter of the Southwest quarter of Section 11, township 4 South Range 2 West, Salt Lake Base Meridian. Also: The West half of the Northwest quarter of the Southwest quarter of Section 11 Township 4 South, Range 2 West, Salt Lake Base Meridian. EXCEPTING AND RESERVING all oil, gas, and other minerals of every kind and description underlying the surface of the subject property.

e. The real property located at 6380 W 15000 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-002, and is more particularly described as follows: The East half of the Northwest Quarter of the Southwest Quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian. Subject to perimeter easements 33 feet in width to provide ingress and egress to and from adjoining parcels; and together with such rights of way as may have been and will be established over other land to provide access to the above described land. (32-11-300-002)

f. The real property located at 6531 W 14851 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-11-300-003, and is more particularly described as follows: The West half of the East half of the Southwest quarter and the South half of the Southwest quarter of the Southeast quarter of the Northwest quarter of Section 11, Township 4 South, Range 2 West, Salt Lake Base and Meridian.

g. The real property located at 6401 W 15301 W, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-002, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6401 West 15301 South (approx.), Riverton, UT 84065.

h. The real property located at 6351 W 15551 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-004, and is more particularly described as follows: The East half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 6351 West 15551 South (approx.), Riverton, UT 84065.

i. The real property located at 3651 W 15301 S, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 32-14-100-005, and is more particularly described as follows: The West half of the West half of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian. LESS AND EXCEPTING the following parcel: Commencing at a point 1193 feet South of the North quarter corner of Section 14, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence South 1307 feet; thence West 1000 feet; thence North 1307 feet; thence East 1000 feet to the point of beginning. EXCLUDING THEREFROM that portion of the Military Reservation and any property lying in Utah County. Property Address: 3651 West 15301 South (approx.), Riverton, UT 84065.

j. The real property located at 3215 S. Teton Dr., Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-025, and is more particularly described as follows: Beginning at the Southeast corner of Lot 153, PARK TERRACE SUBDIVISION No. 2; running thence East 760 feet more or less to the section line; North 160 feet; thence West 760 feet; thence South 160 feet to the point of beginning.

k. The real property located at 569 N “G” Street in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 09-31-230-008, and is more particularly described as follows: Com at NE cor Lot 1 Blk 161 Plat D SLC Sur S 55 ft W 135 ft N 55 ft E 135 ft to Beg 6000-0137 6324-1438 6485-2070 6799-0955.

l. The real property located at 8269 S 1225 E, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 22-32-428-013, and is more particularly described as follows: Lot 18 WARE SUBDIVISION NO. 4, according to the official plat thereof, recorded in Book "NN" of Plats at Page 73, Records of Salt Lake County, State of Utah.

m. The real property located at 4485 S. Abinadi Road, Salt Lake City, Utah, which is also known as Salt Lake County parcel number 22-01-405-009 & 010, and is more particularly described as follows: Parcel 1: Lot 1212, Mt. Olympus Cove No. 12, according to the official plat thereof, filed in book "75-08" of Plats at Page 125 of the Official Records of the Salt Lake County Recorder. EXCEPTING THEREFROM: Beginning at a point which is North 71.738 feet from the Southeast corner of Lot 1212, Mt. Olympus Cove No. 12, and running thence North 17°07'04" West 58.413 feet to a point on a non-tangent curve to left (with a radius of 233.194 feet and a delta of 3°52'20"); thence Northeasterly along said curve 15.76 feet to a point of tangency; thence North 44°30' East 8.24 feet, to the Northeast corner of said lot; thence South along the East line of said Lot, 72.562 feet to the point of beginning. Parcel 2: Beginning at the Southwest corner of Lot 204, Mount Olympus Cove No. 2, according to the official plat recorded in book "Z" of Plats at page 52 of the official records of the Salt Lake county Recorder's office; and running thence along Southerly line of said Lot North 44°30' East 24.0 feet; thence North 17°07'04" West 57.152 feet, more or less, to a point of intersection with the West Line of said Lot; thence South along said West line 71.738 feet to the point of beginning.

n. The real property located at 3281 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-376-008, and is more particularly described as follows: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North Northerly along curve to the left 38.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. 20.07 AC 4653-355, 4806-557, 553. 5017-0302 5722-1573.

o. The real property located at 3249 S Teton Drive, in Salt Lake County, Utah, which is also known as Salt Lake County parcel number 16-25-327-023, and is more particularly described as follows: Parcel 1: Beginning at the South quarter corner of Section 25, Township 1 South, Range 1 East, Salt Lake Meridian and running thence West 100 feet more or less to the East line of Eastwood Hills; thence Northwesterly along said East line to the Southeast corner of lot 33; thence North 46°30' West 210 feet; thence North 53° West 272.86 feet; thence North 18°37' East 270 feet; thence North 79°29'10" West 498.74 feet; thence North 15°50 East 77.15 feet; thence North 40° West 81.5 feet Northerly along curve to

> the left 58.64 feet; thence Northerly along a curve to the right 41.89 feet; thence North 26° East 246.37 feet to the North line of the Southeast quarter of the Southwest quarter of said Section 25; thence East 900 feet, more or less; thence South 1320 feet to beginning. Parcel 2: Beginning at the Southeast corner of Lot 153, Park Terrace No. 2 Subdivision and running thence East 760 feet; thence South 270 feet; thence West 900 feet Northerly to the Southwest corner of Marvin A. Melville Tract; thence South 87°40' East 136.68 feet; thence North 6°40' West 155 feet to beginning.

2. Title Land was named as a Counterclaim Defendant in the United States' initial Counterclaim, filed on September 29, 2008. *See* Doc. # 17.

3. Title Land was named as a Counterclaim Defendant in this matter solely to fulfill the requirements of 26 U.S.C. § 7403(b) that "[a]ll persons having liens upon or claiming any interest in the property involved in such action [to enforce a tax lien] shall be made parties thereto."

4. Service of process upon Title Land was completed on May 14, 2009. *See* Doc. # 62.

5. Consequently, Title Land was required to appear and/or otherwise plead in this action no later than June 4, 2009. *See* Fed. R. Civ. P. 12(a)(1)(B).

6. To date, Title Land has not filed an answer or otherwise responded to the United States' Counterclaim, or appeared in any other manner before the Court in this matter. *See generally* Docket for Case No. 2:08-cv-414-DN.

7. On October 1, 2009, the Court entered default against Title Land. *See* Doc. # 106.

8. On June 24, 2011, the United States filed a Motion for Default Judgment against Title Land, requesting that the Court enter default judgment against Title Land, thereby extinguishing any interest it has in the Subject Property. *See* Doc. # 233.

9. Title Land has had ample opportunity to come forward and state its claim, if any, to the Subject Property, and it has failed to do so. Accordingly, it has defaulted and is subject to

a default judgment extinguishing any interest it may have in the Subject Property. *See Palmer*, 2010 WL 3771154, at * 7; *see also United States v. Kageyama*, 06-cv-00266, 2007 WL 1080092, at ** 2-3 (D. Hawaii April 6, 2007).

10. This Court has jurisdiction to grant the relief sought by the United States. Because Title Land has failed to appear in these proceedings after proper service, the relief sought by the United States is hereby GRANTED.

WHEREFORE for the foregoing reasons, the Court enters default judgment against Title Land and finds that Title Land has no interest in the Subject Property.

This order adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties to this case, and does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

DATED this 6th day of June, 2012.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:12-CR-49
	)	
BEVERLY S. BEAVERS, and JAMES E. BEAVERS,	)	(VARLAN/SHIRLEY)
	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case came before the Court on June 6, 2012, for a scheduled pretrial conference. Assistant United States Attorney Charles E. Atchley, Jr., and United States Department of Justice Attorney Jed Michael Silversmith appeared on behalf of the Government. Attorneys Bobby E. Hutson, Jr., and Jonathan A. Moffatt represented Defendant Beverly S. Beavers, who was present. Attorney A. Philip Lomonaco represented Defendant James E. Beavers, who was also present.

At the pretrial conference, the Defendants made an oral motion to continue the June 26, 2012 trial date in this case. In support of their request, Attorney Lomonaco asserted that this is a complex case, with a significant amount of discovery involved and many issues to investigate. Attorney Lomonaco further represented that he is a sole practitioner and that given the complex nature of the charges and circumstances in this case, he does not have the time necessary to

adequately defend Defendant James E. Beavers by the current trial date. Attorney Lomonaco stated that he believes that it is in the interest of justice for the Defendants to have additional time to prepare for trial. Attorney Hutson reiterated the large amount of discovery in this case and represented that the Defendants are continuing to receive additional discovery. Attorney Hutston stated that he needs additional time to properly advise Defendant Beverly S. Beavers about possible motions to be filed and trial strategy.

The Government advised the Court that there are two unindicted co-conspirators named in the Indictment [Doc. 1] in this case, who have been indicted in the Southern District of Florida. The Government represented that the amount of electronic discovery obtained related to those co-conspirators is significant. The Defendants have been provided with three terabytes of discovery data (although the Government estimated the actual discovery data information is somewhat less than one terabyte). The attorneys for the Government and Defendant Beverly S. Beavers also informed the Court that a coordinating discovery attorney is being utilized in this case to convert and distribute the large amount of discovery. The attorneys for both Defendants stated that the Defendants understand their speedy trial rights with regard to this extension. Each Defendant was questioned by the Court, and both expressed a full understanding of the reason for the requested continuance and represented that they would like for their case be continued. The Government had no objection to the requested continuance. The parties agreed to a new trial date of January 15, 2013. All attorneys agreed that the time between the oral motion to continue and the new trial date would be fully excludable time under the Speedy Trial Act.

The Court finds the oral motion for a continuance to be well-taken and that the ends of justice served by granting a continuance outweigh the interest of the Defendants and the public

in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Both Defendants initially appeared for arraignment in this case on April 18, 2012, and the Defendants were released on conditions [Docs. 4, 7, 10]. Counsel for each Defendant received a significant amount of discovery at the arraignment and received additional documents and information afterward. The attorneys for both Defendants continue to review the discovery and analyze the legal issues in this case at this time. The Court also notes that this case involves an alleged conspiracy dealing with complex tax issues and unindicted co-conspirators from outside of the District.

The Court finds that counsel for each Defendant requires additional time to review discovery, prepare for trial, and properly advise their respective clients as to possible pretrial motions and trial strategy. The Court finds that this cannot take place before the current trial date. In light of the amount of preparation remaining in this case, the Court finds that the Defendants could not be ready for trial by June 26, 2012, or in less than six months. Thus, the Court finds that the failure to grant a continuance would deprive counsel for the Defendants of the reasonable time necessary to prepare for trial despite the use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).

Accordingly, the oral motion for a trial continuance is **GRANTED**. The trial of this matter is reset to **January 15, 2013.** The Court also finds that all of the time between the oral motion to continue at the pretrial conference on **June 6, 2012**, and the new trial date of **January 15, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(D) & -(7)(A)-(B). The deadline for reciprocal discovery in this case is set as **November 14, 2012**. A final pretrial conference before the undersigned will take place on **December 14, 2012, at 1:30 p.m.** That date will also serve as the plea agreement deadline. Finally, the Court instructs the parties that all motions *in limine* must be filed no later than **December 27,**

2012. Special requests for jury instructions shall be submitted to the District Court no later than **January 4, 2013**, and shall be supported by citations to authority pursuant to Local Rule 7.4. All other deadlines will remain in place at this time.

Accordingly, it is **ORDERED**:

(1) The Defendants' oral motion to continue is **GRANTED**;

(2) The trial of this matter is reset to commence on **January 15, 2013**, **at 9:00 a.m.**, before the Honorable Thomas A. Varlan, United States District Judge;

(3) All time between the oral motion to continue on **June 6, 2012**, and the new trial date of **January 15, 2013**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;

(4) The deadline for reciprocal discovery in this case is **November 14, 2012**;

(5) A final pretrial conference before the undersigned will take place on **December 14, 2012, at 1:30 p.m.**;

(6) The plea agreement deadline in this case is **December 14, 2012**;

(7) Motions *in limine* must be filed no later than **December 27, 2012**; and

(8) Special requests for jury instructions with the appropriate citations to authority shall be submitted to the District Court no later than **January 4, 2013**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BNSF RAILWAY COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:12-CV-598 CAS
	)	
LAWRENCE MICKEY, INTERNAL REVENUE SERVICE, and UNITED STATES RAILROAD RETIREMENT BOARD,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL

This matter is before the Court on plaintiff BNSF Railway Company's ("BNSF") motion to dismiss this interpleader action. BNSF states that it has paid the disputed amount to the U.S. Treasury and is no longer the stakeholder of the disputed amount of $12,820.80. See Receipt at Doc. 25, Ex. 1. Because it is no longer the stakeholder, plaintiff can no longer maintain this interpleader action. Defendants Internal Revenue Service and United States Railroad Retirement Board have no objection to plaintiff's dismissal of this action. See Doc. 24. Defendant Lawrence Mickey has not responded to plaintiff's motion, and the time for doing so has passed. For the reasons stated in plaintiff's motion, the motion to dismiss will be granted.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to dismiss interpleader is **GRANTED**. [Doc. 23]

IT IS FURTHER ORDERED that this action is **DISMISSED without prejudice as moot**.

IT IS FURTHER ORDERED that defendant Lawrence Mickey's motion to dismiss is **DENIED as moot**. [Doc. 21]

IT IS FURTHER ORDERED that plaintiff's motion to deposit funds is **DENIED as moot**. [Doc. 2]

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 7th day of June, 2012.

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, filed a response in opposition. Having now considered the parties' filings, the court concludes that the motion should be granted. Therefore,

The court ORDERS that plaintiff's motion to amend scheduling order be, and is hereby, granted, and that the deadline to disclose experts be, and is hereby, extended until July 30, 2012.

SIGNED June 7, 2012.

JOHN McBRYDE
United States District Judge

Dated: June 7, 2012

The following is ORDERED:

TOM R. CORNISH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

IN RE JAMES RICHARD BOLT	)	
	)	
Debtor.	)	Bk. No. 11-80159
	)	
	)	Chapter 7

ORDER

It is hereby ORDERED the United States' Unopposed Request to Extend the Deadline to Respond to Debtor's Motion (Document 158) is GRANTED.

It is further ORDERED the United States shall submit its response to Debtors' Motion to Determine Tax Liability (Doc. 150) no later than July 23, 2012.

The Movant shall notify all interested parties of this Order.

###

Order Prepared by:
Erin Lindgren, Trial Attorney, Tax Division, U.S. Department of Justice
Pennsylvania Bar No. 307201
Post Office Box 7238, Ben Franklin Station, Washington, D.C. 20044,
Telephone: (202) 353-0013, Email: Erin.Lindgren@usdoj.gov

8572866.1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PRIORITY SEND

CIVIL MINUTES -- GENERAL

Case No. **CV 11-6084-JFW (MANx)** Date: June 7, 2012

Title: United States of America -*v*- Cheryl L. Cowles-Reed, et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER GRANTING UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT UNDER RULE 56 OF THE FED. R. CIV. P. AGAINST CHERYL COWLES-REED AND MICHAEL COWLES [filed 4/23/2012; Docket No. 31]**

On April 23, 2012, Plaintiff United States of America (the "United States") filed a Motion for Summary Judgment under Rule 56 of the Fed. R. Civ. P. Against Cheryl Cowles-Reed and Michael Cowles. On May 11, 2012, Defendant Michael L. Cowles filed his Opposition. On May 14, 2012, Defendant Cheryl L. Cowles-Reed filed her Opposition. On May 21, 2012, the United States filed a Reply. On May 30, 2012, the Court issued an Order requiring the parties to file Supplemental Briefs. Pursuant to the Court's Order, on June 4, 2012, the United States, Defendant Michael L. Cowles, and Cheryl Cowles-Reed each filed Supplemental Briefs. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for June 11, 2012 is hereby vacated and the matter taken off calendar. After considering the moving, opposing, reply papers, supplemental briefs, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

This is an action to recover unpaid estate taxes from the three children of the decedent,

[1]To the extent any of these facts are disputed, they are not material to the disposition of this motion. In addition, to the extent that the Court has relied on evidence to which the parties have objected, the Court has considered and overruled those objections. As to the remaining objections, the Court finds that it is unnecessary to rule on those objections because the disputed evidence was not relied on by the Court.

Initials of Deputy Clerk sr

Andrew Cowles.

Andrew Cowles died on April 5, 2000. He was survived by three children: Defendants Cheryl Cowles-Reed, Michael L. Cowles, and Russell H. Cowles. In his will, he nominated Cheryl Cowles-Reed to serve as executor of his estate. However, after Andrew Cowles' death, no probate proceeding was initiated in any court regarding his estate nor was any person appointed by a court to serve as the executor or administrator of the Estate of Andrew L. Cowles.

At the time of Andrew Cowles' death, he held the following Proctor & Gamble Stock in joint tenancy with each of his three children:

Child	Amount of Proctor & Gamble Stock	Value
Cheryl Cowles-Reed	8,672 shares	$542,813
Michael L. Cowles	8,656 shares	$541,813
Russell Cowles	8,656 shares	$541,813

Cheryl Cowles-Reed assumed the responsibility for filing the estate tax return and she retained James Sherlock, a C.P.A. to prepare the return. On January 3, 2001, Mr. Sherlock filed the return (Form 706) on behalf of the Estate of Andrew L. Cowles. Cheryl Cowles-Reed was identified as the executor and signed the return. The value of the gross estate of Andrew Cowles reported on the return was $1,713,354, which included the value of the Proctor & Gamble stock. Based on the return, on March 19, 2001, the IRS assessed an estate tax in the amount of $347,653 against "Andrew L. Cowles Estate, Michael L. Cowles, Per. Rep.". Cheryl Cowles-Reed submitted a payment of $126,198 to the Internal Revenue Service to be applied to the estate tax liability. Michael Cowles and Russell Cowles made no payments toward the tax liability.

On January 6, 2004, the IRS sent a Final Notice of Intent to Levy and Notice of Right to a Hearing to the Estate of Andrew L. Cowles and Cheryl Cowles-Reed. On January 27, 2004, Paul Shimoff, as the authorized representative of the Estate of Andrew L. Cowles and Cheryl Cowles-Reed, submitted a request for a collection due process hearing. On May 6, 2004, the IRS sent its Notice of Determination Concerning Collection Action to the Estate of Andrew Cowles, which became final on June 5, 2004. The request for a collection due process hearing was denied and the proposed levy was sustained in full.

On July 22, 2011, the United States filed its Complaint seeking to recover the unpaid estate taxes from Defendants Cheryl Cowles-Reed, Michael L. Cowles, and Russell H. Cowles. The United States now moves for summary judgment against Cheryl Cowles-Reed and Michael L. Cowles[2] and contends that the total unpaid tax liability as of January 25, 2012, which includes the failure to pay penalty and interest, is $473,992.44.

II. LEGAL STANDARD

[2]The Clerk entered default against Defendant Russell Cowles, and the United States will separately move for default judgment against him.

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party meets its burden, a party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but must set out specific facts showing a genuine issue for trial. *Id.* at 250; Fed. R. Civ. P. 56(c), (e); *see also Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) ("A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data."). In particular, when the non-moving party bears the burden of proving an element essential to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "An issue of fact is not enough to defeat summary judgment; there must be a genuine issue of material fact, a dispute capable of affecting the outcome of the case." *American International Group, Inc. v. American International Bank*, 926 F.2d 829, 833 (9th Cir. 1991) (Kozinski, dissenting).

An issue is genuine if evidence is produced that would allow a rational trier of fact to reach a verdict in favor of the non-moving party. *Anderson*, 477 U.S. at 248. "This requires evidence, not speculation." *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1225 (9th Cir. 1999). The Court must assume the truth of direct evidence set forth by the opposing party. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir. 1992). However, where circumstantial evidence is presented, the Court may consider the plausibility and reasonableness of inferences arising therefrom. *See Anderson*, 477 U.S. at 249-50; *TW Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is entitled to the benefit of all reasonable inferences, "inferences cannot be drawn from thin air; they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party." *American International Group*, 926 F.2d at 836-37. In that regard, "a mere 'scintilla' of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997).

III. DISCUSSION

Pursuant to 26 U.S.C. § 2001, a tax is "imposed on the transfer of the taxable estate of every decedent who is a citizen or the resident of the United States." 26 U.S.C. § 2001(a). Under 26 U.S.C. § 2002, the tax "shall be paid by the executor." "[I]f there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent" is considered an executor. 26 U.S.C. § 2203. Accordingly, because no probate proceeding was initiated in any court regarding the Estate of Andrew L. Cowles and no person has been appointed by any court to serve as the executor of the Estate of Andrew L. Cowles, Defendants Cheryl Cowles-Reed, Michael L. Cowles, and Russell H. Cowles are considered executors of the estate for the purposes of paying the federal estate tax.

It is undisputed that the value of Andrew Cowles' gross estate includes the entire value of the Proctor & Gamble stock which each child held in joint tenancy with Andrew Cowles. *See* 26 U.S.C. § 2040(a) ("The value of the gross estate shall include the value of all property to the extent

of the interest therein held as joint tenants with right of survivorship by the decedent and any other person . . . .”). Pursuant to 26 U.S.C. § 6324(a)(2):

> If the estate tax . . . is not paid when due, then the . . . surviving tenant . . . who receives or has on the date of the decedent’s death, property included in the gross estate under sections 2034 to 2042 . . . to the extent of the value, at the time of the decedent’s death, of such property, shall be personally liable for such tax.

Accordingly, because the estate tax was not paid when due, Defendants Cheryl Cowles-Reed, Michael L. Cowles, and Russell H. Cowles are personally liable for the unpaid estate tax up to the value of the stock that they held in joint tenancy with their father.

Cheryl Cowles-Reed opposes the United States’ motion for summary judgment on a variety of grounds, including that: (1) the United States has failed to establish that it made an assessment; (2) the purported assessment, if valid, fails to name her as a personal representative, and is therefore insufficient to establish personal liability against her; (3) the United States failed to make a transferee assessment as required by 26 U.S.C. § 6901; (4) it is not proper or equitable to hold her liable for interest and the failure to pay penalty on the underpayments due from her brothers; (5) in calculating the tax due, the transferees are entitled to deduct as administrative expenses the litigation fees paid to determine transferee liability; and (6) to the extent she is personally liable for any portion of the unpaid estate tax, she is entitled to a credit for the amount of federal and California estate tax paid by her.[3]

Michael L. Cowles opposes the United States’ motion for summary judgment on the grounds that: (1) there is a genuine issue of material fact whether the statute of limitations bars this action; (2) the failure to pay the estate taxes was due to reasonable cause and not willful neglect; (3) the estate is entitled to a deduction of post-filing administrative expenses; and (4) the IRS acted with unclean hands.

Based on the undisputed facts and viewing the evidence in the light most favorable to the defendants, the Court concludes that there are no genuine issues of material fact and that the United States is entitled to summary judgment as a matter of law.

A. This action is not barred by the statute of limitations.

---

[3]Cheryl Cowles-Reed also improperly raised a new argument in her Supplemental Brief filed on June 4, 2012, claiming that there was no transfer of assets upon the death of the decedent. The Court only ordered the parties to file supplemental briefs addressing two discrete issues, and did not invite new argument. Accordingly, the Court need not address this new argument. *See, e.g., Adriana Internat’l Corp. v. Thoeren*, 913 F.2d 1406, 1417 n.12 (9th Cir. 1990) (declining to address an argument raised for the first time in the reply brief). Moreover, even if this argument had been properly presented, it would not affect the Court’s ruling on this motion. *See* 26 U.S.C. §§ 2040(a); 6324(a)(2).

26 U.S.C. § 6502(a) provides that any action to collect an assessed tax by a court proceeding must be commenced within ten years after the tax is assessed. This period is extended from the time that a collection due process hearing is requested and continued until the IRS's determination on the collection due process hearing becomes final.

Michael L. Cowles contends that there is a genuine issue of material fact regarding whether the IRS sent its Notice of Determination Concerning Collection Action on May 6, 2012, arguing that the date on the notice does not necessarily mean it was mailed on that date. In support of his argument, he submits a declaration by his counsel's paralegal that she has on one isolated occasion in an unrelated case received a letter from the IRS that was dated later than when it was mailed, and points out that the Appeals Officer's activity log has no mailing date entry. However, this evidence, based on speculation, is insufficient to create a genuine issue of material fact with respect to when the IRS sent its determination notice.

In this case, the undisputed facts demonstrate that the ten-year period was extended by 129 days. Thus, the United States was not required to file its Complaint until July 26, 2011. The United States filed this action on July 22, 2011, and thus this action is not barred by the applicable statute of limitations.

B. The United States has established that it made an assessment.

Cheryl Cowles-Reed contends that the United States has failed to establish that an assessment was made because the Certificate of Assessment does not bear a seal or a copy of a seal as required by Federal Rule of Evidence 902(1).

The Certificate of Assessment in fact does bear a seal as required by Federal Rule of Evidence 902(1), as demonstrated by the United States' Exhibit No. 10, filed under seal with the Court on June 6, 2012.

C. The IRS was not required to make a transferee assessment under 26 U.S.C. § 6901.

Cheryl Cowles-Reed argues that she is not personally liable for the unpaid estate tax because the United States failed to make the required assessment against her as a transferee under 26 U.S.C. § 6901.

However, for the reasons stated in *United States v. Geniviva*, 16 F.3d 522 (3rd Cir. 1994) and *United States v. Russell*, 461 F.2d 605 (10th Cir. 1972), the Court concludes that an individual assessment under 26 U.S.C. § 6901 is not a prerequisite to an action to impose transferee liability under 26 U.S.C. § 6324(a)(2). *See also United States v. Bevan*, 2008 WL 5179099, at *6 (E.D. Cal. Dec. 10, 2008) ("Personal liability, assessed pursuant to 26 U.S.C. § 6324(a)(2), may be asserted without a transferee assessment under 26 U.S.C. § 6901 . . . ."). Indeed, "the collection procedures [applying to transferees] contained in § 6901 are not exclusive and mandatory, but are cumulative and alternative to other methods of tax collection recognized and used prior to the enactment of § 6901 and its statutory predecessors." *Russell*, 461 F.2d at 606; *see also United States v. DeGroft*, 539 F. Supp. 42, 44 (D. Md. 1981).

In an action to impose transferee liability under 26 U.S.C. § 6324(a)(2), the United States may rely on the assessment against the estate and is not required to make an individual assessment under 26 U.S.C. § 6901.

D. The assessment against the estate, even though it failed to name Cheryl Cowles-Reed as a personal representative, is sufficient to establish personal liability against Cheryl Cowles-Reed.

Cheryl Cowles-Reed argues that the assessment against "Andrew Cowles Estate, Michael L. Cowles, Per. Rep." is insufficient to establish personal liability against her because it fails to name her as a personal representative of the estate, especially given that she assumed the responsibility for filing the estate tax return and identified herself as executor of the estate on the return.

There is no requirement that the executor or personal representative of the estate be identified in the assessment. Pursuant to 26 C.F.R. § 301.6203-1, an assessment shall provide "identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment." Accordingly, the Court concludes that the assessment in this case is proper because it identified the Andrew Cowles Estate as the taxpayer.[4]

E. Tax assessments may not be collaterally attacked by third parties.

Defendants Cheryl Cowles-Reed and Michael L. Cowles collaterally attack the assessment made against the estate, arguing in relevant part that: (1) the estate tax should be reduced because of unclaimed administrative-expense deductions; and (2) the estate should be excused from late payment penalties because the failure to pay was due to reasonable cause and not willful neglect.

However, it is well settled that third parties may not contest the merits of a tax assessment. *See Graham v. United States*, 243 F.2d 919, 922 (9th Cir. 1957) ("We believe that only the taxpayer may question the assessment for taxes . . . ."); *Al-Kim, Inc. v. United States*, 650 F.2d 944, 947 (9th Cir. 1981) ("Neither the Internal Revenue Code nor the decisions of this court support any right of third parties to contest the merits of a tax assessment."). Notwithstanding Cheryl Cowles-Reed and Michael L. Cowles' arguments to the contrary, the Court finds no basis to distinguish the Ninth Circuit's decisions in *Graham* and *Al-Kim, Inc.* on the grounds that this action involves personal liability instead of the enforcement of a tax lien.

Because neither Cheryl Cowles-Reed or Michael L. Cowles have been sued in their representative capacities and the estate is not a party to this action, Cheryl Cowles-Reed and Michael L. Cowles cannot challenge the tax assessment in this proceeding. Although this may appear to be a harsh result, as discussed in the United States' Supplemental Brief, the estate is not without a remedy because the estate may file an administrative refund claim to recover any overpayment. *See* 26 C.F.R. § 301.6402-2; 26 U.S.C. § 6511(a).

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[4]The term "taxpayer" means any person subject to any internal revenue tax, which includes an estate. *See* 26 U.S.C. § 7701.

F. Pursuant to 26 U.S.C. § 6324(a)(2), Cheryl Cowles-Reed is liable for interest and the failure to pay penalty on the underpayments due from her brothers.

Cheryl Cowles-Reed claims that it would be inappropriate and inequitable to impose personal liability on her for the interest and the failure to pay penalty on the underpayments due from her brothers based on state apportionment law. However, pursuant to the express terms of 26 U.S.C. § 6324(a)(2), a surviving joint tenant, whose property is included in the gross estate, is liable for the estate tax up to the value of the property received. Accordingly, Cheryl Cowles-Reed is liable for the interest and the failure to pay penalty on the underpayments due from her brothers, so long as it does not exceed the value of the property received by her.

G. Cheryl Cowles-Reed is entitled to a credit for her payment toward the federal estate tax, but not for her payment to the state taxing authority.

Pursuant to 26 U.S.C. § 6324(a)(2), a transferee's liability is limited to the value of the property received. Accordingly, Cheryl Cowles-Reed's total liability is limited to $542,813. Because she already paid a total of $126,198 toward the estate tax, Cheryl Cowles-Reed's maximum liability in this action is $416,615.

Nothing in 26 U.S.C. § 6324(a)(2) supports a credit for payments Cheryl Cowles-Reed made to state taxing authorities, nor has Cheryl Cowles-Reed provided the Court with any other authority that would entitle her to such a credit.

H. Michael L. Cowles fails to present a genuine issue of material fact as to unclean hands or equitable estoppel.

Michael L. Cowles fails to demonstrate that the unclean hands defense is applicable in this action or that there is a genuine issue of material fact that would permit the Court to apply the doctrine of equitable estoppel against the IRS.

IV. CONCLUSION

For the foregoing reasons, the United States' Motion for Summary Judgment under Rule 56 of the Fed. R. Civ. P. Against Cheryl Cowles-Reed and Michael Cowles is **GRANTED.**

The Court hereby enters an order shortening time, and orders the United States to re-file its Motion for Default Judgment against Russell Cowles on or before June 8, 2012, with the hearing noticed for June 18, 2012 at 1:30 p.m. The Opposition, if any, shall be filed on or before June 15, 2012.

If the Motion for Default Judgment against Russell Cowles is granted, the parties are ordered to meet and confer and prepare a joint proposed Judgment which is consistent with the Court's Order. The parties shall lodge the joint proposed Judgment with the Court on or before **June 21, 2012.** In the unlikely event that counsel are unable to agree upon a joint proposed Judgment, the parties shall each submit separate versions of a proposed Judgment along with a declaration outlining their objections to the opposing party's version no later than **June 21, 2012.**

Initials of Deputy Clerk sr

IT IS SO ORDERED.

Below is an Order of the Court.

ELIZABETH PERRIS
U.S. Bankruptcy Judge

LAW OFFICE OF STEPHEN T. BOYKE
806 SW Broadway, Suite 1200
Portland, OR 97205
(503) 227-0417 • steve@boykelaw.com

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re Lori Diane Diaz, Debtor,	Case No. 11-30383-elp11
In re Louis Juan Diaz Debtor,	Case No. 11-30410-tmb7
Lori Diane Diaz, Plaintiff, vs. United States of America by and through its agency the Internal Revenue Service; and State of Oregon by and through its agency the Oregon Department of Revenue, Defendants.	Adversary Proceeding No. 11-3290-elp **LEAD CASE**

Louis Juan Diaz, Plaintiff, vs. United States of America by and through its agency the Internal Revenue Service; and State of Oregon by and through its agency the Oregon Department of Revenue Defendants.	) Adversary Proceeding No. 11-3291-elp)))) ORDER GRANTING MOTION TO) EXTEND TIME TO FILE JUDGMENT)) (AFFECTS BOTH ACTIONS))))

This matter is before the Court on the parties' stipulated motion to extend time to file judgment ("Motion"). Based on the Motion and the court record herein, it is hereby

ORDERED:

1) The Motion is granted.

2) These consolidated adversary proceedings will be dismissed, without further Court order, unless a stipulated judgment or proposed judgment, whichever applies, is filed with the Clerk of Court on or before July 19, 2012. Any subsequent motion required to reopen the proceedings shall be accompanied by an affidavit averring substantial reasons why these proceedings should be reopened.

3) The Clerk shall file this order in Case 11-3290 and file it in Case 11-3291.

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Submitted by:

/s/ Stephen T. Boyke
Stephen T. Boyke, OSB # 881628
Attorney For Lori Diaz and Louis Diaz

cc: Alexis V. Andrews
Carolyn G. Wade

/Users/Steve/Documents/Law Office/Clients/Diaz, Lori/Chapter 11 Case/IRS Adv Proc/P Order Extending time to File judgment wo cert of service.pages

LAW OFFICE OF STEPHEN T. BOYKE
806 SW Broadway, Suite 1200
Portland, OR 97205
(503) 227-0417 • steve@boykelaw.com

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 APPROVING AGREEMENT RE:
	)	VASSAL INVESTMENTS, LLC
Debtor-in-Possession.	)	

Based on Debtor's Motion for Approval of Agreement Re: Vassal Investments, LLC ("Motion"), Notice of Motion for Approval of Agreement Re: Vassal Investments, LLC ("Notice," a copy of which is attached hereto as **Exhibit A**), the Declaration of Nonreceipt of Objections and the Court being otherwise fully advised, it is

ORDERED that Debtor's Motion is granted pursuant to the terms set forth in the Agreement attached hereto as **Exhibit B**.

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

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

First Class Mail:

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

Clay and Shari Swanson
6955 SW68th Ave.
Portland, OR 97223-9401

Vassal Investments, LLC
c/o Robert Pitman, Manager
210 SE 4th Ave.
Hillsboro, OR 97123

Robert Pitman
14406 W. Redwick Dr.
Boise, ID 83713

Ashton Tenly Company, LLC
c/o Lori D. Diaz, Manager
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Electronic Mail:

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

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re	)	Case No. 11-30383-elp11
	)	
Lori D. Diaz,	)	NOTICE OF MOTION FOR APPROVAL OF
	)	AGREEMENT RE: VASSAL INVESTMENTS,
Debtor-in-Possession.	)	LLC

TO: **Creditors and Interest Parties**

YOU ARE HEREBY NOTIFIED THAT: Debtor-in-Possession Lori D. Diaz ("Debtor") filed a Motion for Approval of Agreement re: Vassal Investments, LLC ("Motion") on May 8, 2012. An explanation of the Motion is as follows:

Debtor holds 50% of the membership interest in Vassal Investments, LLC ("Vassal"). Robert Pitman ("Pitman") holds the remaining 50% membership interest. Pitman is a former employee of Ashton Tenly Company, L.L.C. ("Ashton Tenly"). Debtor owns 100% of the membership interest in Ashton Tenly. In April 2005, Vassal purchased 18 rental homes from Shari Swanson and Clay Swanson on a land sale contract ("Vassal-Swanson Sale Contract"). Shari Swanson is the widow of Debtor's deceased brother and is now married to Clay Swanson. Ashton-Tenly has had a management and maintenance contract with Vassal concerning the properties ("Ashton Tenly Contract")

Under the terms of the Vassal Swanson Sale Contract, Vassal agreed to pay the Swansons $2,393,961 ("Swanson Debt"). Vassal has since sold 13 of the properties, leaving five remaining. Vassal no longer has the ability to service the mortgage debt, real property taxes and the balance of the Swanson Debt. Debtor believes she is not personally liable for any of this debt.

The Swansons, Vassal, Ashton Tenly, Pitman and Debtor have reached the following agreement:

1. All of Vassal's interest in the five remaining real properties, including tenant leases, will be transferred to the Swansons. The Swansons will have sole responsibility for paying the secured debt of the five properties and shall pay all unpaid real property taxes from the 2009-10 tax year forward. Rental income from November 1, 2011 forward will be the property of the Swansons.

2. The Vassal-Swanson Sale Contract shall be terminated and Vassal's obligations thereunder shall be discharged.

3. The Ashton Tenly Contract concerning the five real properties will be terminated.

4. The Swansons, on the one hand, and Vassal, Ashton Tenly and Pitman, on the other hand, will mutually release all claims against each other relating to

the Vassal-Swanson Sale Contract and the Ashton Tenly Contract. Debtor is not a party to the mutual release.

Upon closing of the Settlement Agreement, the bankruptcy estate will realize a capital gain of $39,042. The estate's 2011 tax return contains sufficient capital loss carry-forwards to absorb these capital gains without prejudice to the other proposed uses of the capital loss carry-forwards.

A copy of the Motion is on file with the Court. A copy of the Motion may be obtained from Debtor's attorney's office by contacting Sara Parker at Vanden Bos & Chapman, LLP, 319 SW Washington St., Ste. 520, Portland, OR 97204; Telephone: 503-241-4869; email: sara@vbcattorneys.com.

YOU ARE FURTHER NOTIFIED THAT unless, **within 21 days of the date of mailing shown below**, you file written objections with the Clerk of the Bankruptcy Court, 1001 SW Fifth Ave., Ste. 700, Portland, OR 97204, and you serve a copy on the attorney for Debtor, Robert J Vanden Bos, Vanden Bos & Chapman, LLP, 319 SW Washington St., Ste 520, Portland, OR 97204, setting forth in detail the basis for your objections to the Motion, the Court may enter an Order approving the Motion and it will become final without further hearing. **If objections are filed, a hearing on the Motion will be set by the Court in normal course. If no objections are filed, the Court may grant the Motion without further notice or hearing**.

/s/ Robert J Vanden Bos
ROBERT J VANDEN BOS, OSB #78100
319 SW Washington Street, Suite 520
Portland, OR 97204
Telephone: (503) 241-4869

On 05/08/2012 , I served copies of the above Notice on all creditors, parties requesting special notice, their attorneys, Chairperson of the Official Committee of Unsecured creditors, if any, attorney(s) for the Chairperson of the Official Committee of Unsecured Creditors, if any, and the U.S. Trustee by serving a copy of the above Notice on each of them via U.S. mail, postage prepaid, at their addresses listed in the matrix of creditors maintained by the Clerk of the Court.

/s/ Robert J Vanden Bos
ROBERT J VANDEN BOS, OSB #78100
Of Attorneys for Debtor-in-Possession,
Party Giving Notice

AGREEMENT

PARTIES

Shari Swanson ("Shari Swanson")
6955 SW68th Ave.
Portland, OR 97223-9401

Clay Swanson ("Clay Swanson")
6955 SW68th Ave.
Portland, OR 97223-9401

Vassal Investments, LLC ("Vassal")
c/o Robert Pitman, Manager
210 SE 4th Ave.
Hillsboro, OR 97123

Ashton Tenly Company, LLC ("Ashton Tenly")
c/o Lori D. Diaz, Manager
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Lori D. Diaz ("Diaz")
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Robert Pitman ("Pitman")
14406 W. Redwick Dr.
Boise, ID 83713

RECITALS

A. Shari Swanson and Clay Swanson are individuals residing in the State of Oregon.

B. Vassal is an Oregon limited liability company owned by Pitman (50%) and Diaz (50%) and managed by Pitman.

C. Ashton Tenly is an Oregon limited liability company owned (100%) and managed by Diaz.

D. Diaz is an individual residing in the State of Oregon.

E. Pitman is an individual residing in the State of Idaho.

F. On or about April 1, 2005, Shari Swanson and Clay Swanson, as Seller, and Vassal, as Buyer, entered into that certain Contract of Sale, a copy of which is attached as Exhibit 1 and incorporated by this reference ("Sale Contract").

G. Ashton Tenly has provided under contract certain management and maintenance services to Vassal pertaining to the properties described in the Sale Contract.

H. On January 19, 2011, Diaz commenced a chapter 11 bankruptcy case in the case entitled In re Lori D. Diaz, US Bankruptcy Court (Oregon) Case No. 11-30383-elp11 ("Bankruptcy Case").

I. The Parties wish to memorialize their agreement to effectuate the discharge of the Sale Contract and other matters, which is the purpose of this Agreement.

AGREEMENT

1. Recitals Part of Agreement. The above recitals are part of this Agreement.

2. Modification and Discharge of Sale Contract. At Closing (defined below) the Sale Contract shall be terminated, all of Vassal's right, title and interest in the Real Properties (defined below) shall be transferred to Shari Swanson and Clay Swanson, and all of Vassal's obligations under the Sale Contract shall be discharged.

On or before closing, Vassal shall execute and deliver to Shari Swanson and Clay Swanson quit claim deeds, in such form as mutually agreeable to Vassal, Shari Swanson and Clay Swanson (collectively, the "Deeds"), transferring all of Vassal's interest in the following real properties ("Real Properties"), the legal descriptions of which are attached as Exhibit 2:

(a) 2022 SE Hemlock Ave., Hillsboro, OR 97123;

(b) 17780 SW Corona Ln., Aloha, OR 97006;

(c) 20836 SW Parker Ct., Aloha, OR 97007;

(d) 20658 SW Parker Ct., Aloha, OR 97007; and

(e) 306 NW Denton St., Dallas, OR 97338.

3. Past Real Property Taxes. Shari Swanson and Clay Swanson acknowledge that the real property taxes for the Real Properties are unpaid for the 2010-2011 tax year and the 2011-2012 tax year. After Closing, all real property taxes concerning the Real Properties for the tax years 2010-2011 forward shall be the responsibility of Shari Swanson and Clay Swanson.

4. Real Properties Leases; Tenant Deposits. Effective November 1, 2011, Vassal shall assign all leases of the Real Properties to Shari Swanson and Clay Swanson ("Tenant Leases") and Shari Swanson and Clay Swanson shall be solely responsible for all landlord obligations under such leases. Shari Swanson and Clay Swanson shall collect all tenant payments made with respect to rent due under the Tenant Leases on or after November 1, 2011 and to the

extent such rent is received by any other party it shall be promptly delivered, with proper endorsement, to Shari Swanson and Clay Swanson. At Closing, Vassal shall turn over an amount equal to the sum of all rents payments previously received by Vassal and any of its agents for the period on and after November 1, 2011, and all tenant deposits previously given to Vassal with respect to the Tenant Leases in force at that time. At Closing, Vassal will provide to Shari Swanson and Clay Swanson a letter, in a form and with content mutually agreeable to Vassal, Shari Swanson, and Clay Swanson, informing the tenants under the Tenant Leases of the assignment of the Tenant Leases to Shari Swanson and Clay Swanson and directing all further payment on such leases to Shari Swanson and Clay Swanson (the "Tenant Letter"). Any possible sale of any of the Real Properties to any respective tenant is the responsibility of Shari Swanson and Clay Swanson.

5. Underlying Indebtedness on Real Properties; Insurance. Effective November 1, 2011, Shari Swanson and Clay Swanson shall be solely responsible for paying any mortgages or other encumbrances that were of record as of the date of the Sale Contract against the Real Properties (the "Existing Mortgages").

Effective November 1, 2011, Shari Swanson and Clay Swanson shall be solely responsible for the procurement and payment of all insurance with respect to the Real Properties.

6. Bank Letters. At Closing or earlier, Vassal, Sherri Swanson and Clay Swanson shall send joint letters, mutually acceptable to the parties, to Sterling Savings Bank and Chase Bank requesting that all future statements and correspondence pertaining to the Existing Mortgages be sent to Shari Swanson and Clay Swanson at their address above (the "Bank Letters").

7. Termination of Ashton Tenly and Vassal Contracts. Effective November 1, 2011, all management and maintenance contracts between Ashton Tenly and Vassal are deemed terminated, discharged and fully performed.

8. Representations of Vassal. Vassal represents and warrants to Shari Swanson and Clay Swanson as follows:

(a) As of October 31, 2011, there are no monetary defaults which have not been cured with respect to any mortgage or trust deed indebtedness concerning the Real Properties;

(b) Vassal has no knowledge of any environmental or structural problems with any of the Real Properties;

(c) Vassal has no knowledge of any liens or assessments against the Real Properties except the Existing Mortgages and unpaid real property taxes;

(d) None of the Real Properties are subject to a contract to sell or purchase option except as otherwise previously disclosed in writing to Shari Swanson and Clay Swanson;

(e) All utility payments for the Real Properties, or any part thereof, are current or the responsibility of an existing tenant;

(f) The leases pertaining to the Real Property or any part thereof are not in default; and

(g) The obligations secured by the Existing Mortgages are not in default as of October 31, 2011.

9. Closing; Failure to Close. The transactions identified in Section 2 in this Agreement shall occur simultaneously (unless earlier effective) at the later of November 1, 2011 or once all Closing Conditions (defined in Section 9.1) have been satisfied (such later date being "Closing"), provided however that in no event may Closing occur later than April 15, 2012, unless extended by written consent of all the Parties. If Closing does not timely occur, to the extent that the rents received by Shari Swanson and Clay Swanson exceed the amount paid by Shari Swanson and Clay Swanson for insurance, taxes, maintenance, and on the Existing Mortgages, such excess shall be provided to Vassal; to the extent that rents received are less than the amounts so paid, Shari Swanson and Clay Swanson shall have a claim against Vassal for such shortfall.

10. Closing Conditions. The following conditions must be satisfied before Closing can occur:

10.1 Bankruptcy Court Approval. An order must be entered in the Bankruptcy Case approving this Agreement and the transactions contemplated herein and must give Diaz for herself and as owner of Vassal and Ashton Tenly, authority to tender performance to and accept performance from the Parties pursuant to this Agreement ("Approval Order"). Upon the complete execution of this Agreement, Diaz shall file a motion seeking the Approval Order in the Bankruptcy Case and shall use her best efforts to obtain it ("Approval Motion"). Should a creditor or party in interest within the Bankruptcy Case lodge objection to the Approval Motion, the Parties hereto shall cooperate where necessary and provide such assistance as Diaz may require obtaining entry of the Approval Order. All Parties to this Agreement agree they will not, individually or collectively, lodge an objection to the Approval Motion. The Approval Motion and Approval Order must be reasonably acceptable to Shari Swanson and Clay Swanson.

10.2 Representations, Covenants and Warranties. The representations and warranties made by any Vassal shall remain true and accurate at Closing and shall survive closing were applicable.

10.3 Delivery of Documents. Vassal has delivered to Shari Swanson and Clay Swanson the original Tenant Leases with all amendments, copies of the books and records pertaining to the Tenant Leases, and the executed original Deeds in Lieu, Tenant Letter, and Bank Letters.

11. Mutual Release; Exception.

11.1 Mutual Release. Effective at Closing, Shari Swanson and Clay Swanson, on the one hand, and Vassal, Ashton Tenly, and Pitman, on the other hand, shall mutually

release, acquit and forever discharge the other, the other's respective partners, officers, owners, shareholders, members, agents, employees, employers, or attorneys, from any and all actions, causes of actions, claims, injuries, damages, demands, expenses, attorney's fees or other fees or compensation ("Claims") which the other, either individually or collectively, ever had, now have or later may have arising out of any event or occurrence prior to the date of this Agreement pertaining or relating to the Sale Contract or the properties described therein.

Each party acknowledges that they have received independent legal advice with regard to their respective rights or asserted rights arising out of matters among the parties and also with regard to the advisability of making and executing this Agreement. The parties further acknowledge they have not relied upon any statements or representations, oral or written, made by any other party as to the facts involved in this matter other than the statements or representations made in this Agreement.

Each party represents and warrants that it/he/she has not conveyed, assigned or otherwise transferred any Claims to any other person or entity. Each party further represents and warrants that it/he/she holds, free of any encumbrance, all Claims, if any, which may exist against the other party.

Each party expressly assumes the risk of any mistake of fact and of any facts proven to be other than or different from any facts now known to either party to this release or believed by either of them to exist. It is the expressed intent of the parties to this Agreement to settle and adjust all controversies, finally and forever, without regard to who may or may not be correct in any understanding of fact or law.

11.2 Exceptions. Section 11.1 shall not apply to any of the following:

11.2.1 Any Claims between Shari Swanson and Clay Swanson;

11.2.2 Any Claims between or among Vassal, Ashton Tenly, Diaz and Pitman;

11.2.3 Any Claims between Shari Swanson and any party not signing this Agreement (including any affiliate of a party signing this agreement including but not limited to Tenly Properties Corp.); and

11.2.4 Any claims arising out of or related to representations or warranties set forth in this Agreement or the documents delivered pursuant to this Agreement or breaches of this Agreement.

12. Miscellaneous Provisions.

12.1 Successor Interests. No interest, duty or obligation under this Agreement shall be assigned, subcontracted or otherwise transferred voluntarily or involuntarily without the prior written consent of the other Parties. This Agreement shall also be binding upon, enforceable by, and inure to the benefit of the Parties hereto and their respective personal or legal representatives, executors, administrators, successors, heirs, distributes, devises and legatees.

12.2 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed received on receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested to the addresses listed above, which notices and communications shall be deemed received three days after deposit in the United States mail; (c) sent by overnight delivery using a nationally recognized overnight courier service to the addresses listed above, which notices and communications shall be deemed received one business day after deposit with such courier (d) or sent by facsimile, and also confirm by email to the number/email address listed above, which notices and communications shall be deemed received upon receipt of confirmation of delivery.

12.3 Applicable Law. This Agreement has been entered into in the State of Oregon. This Agreement shall in all respects be interpreted, enforced and governed under the laws of Oregon, or applicable federal law, without respect to any choice of law statutes or other provisions.

12.4 Consultation with Counsel. The Parties represent that they have read this Agreement, understand the terms of this Agreement, and have had the opportunity to consult with their respective legal counsel and tax advisors regarding this Agreement prior to signing it. The Parties further represent that they are competent to execute this Agreement, and are voluntarily signing this Agreement without any undue pressure, duress, stress, influence or manipulation.

12.5 Construction. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. In the case of any ambiguity of any language, this Agreement shall not be construed against any of the Parties.

12.6 Survival of Representations, Covenants and Warranties. All representations, covenants and warranties which are not fully performed or deemed moot at Closing shall survive Closing in accordance with their terms.

12.7 Prior Agreements. The Parties represent and agree that no promises, statements or inducements have been made to them that caused them to sign this Agreement other than those expressly stated in this Agreement. The Parties understand and acknowledge that this Agreement constitutes the full and complete agreement between the Parties and supersedes any and all express or implied prior agreements, Agreements, or understandings between the Parties relating to its subject matter. Notwithstanding the foregoing, the TENLY Operating Agreement shall remain in full force and effect except as modified herein.

12.8 Further Assurances. The Parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement at their own cost.

12.9 Counterparts. This Agreement consists of seventeen (17) pages (including the signature pages and exhibits), and may be executed by facsimile and in counterparts. The Agreement will be binding on the Parties once it has been fully executed by all of the Parties.

Thereafter, the Parties shall exchange hard copies, and all the counterparts together shall constitute a single original agreement.

12.10 STATUTORY DISCLAIMER. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Shari Swanson

Shari Swanson

Date: March 21, 2012

Clay Swanson

Clay Swanson

Date: March 21, 2012

VASSAL INVESTMENTS, LLC:

By: _____
Robert Pitman, Member and Manager

Date: _____, 2012

By: _____
Lori D. Diaz, Member

Date: _____, 2012

Thereafter, the Parties shall exchange hard copies, and all the counterparts together shall constitute a single original agreement.

12.10 STATUTORY DISCLAIMER. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

_____
Shari Swanson

Date: _____, 2012

_____
Clay Swanson

Date: _____, 2012

VASSAL INVESTMENTS, LLC:

By: _____
Robert Pitman, Member and Manager

Date: 3/23, 2012

By: _____
Lori D. Diaz, Member

Date: 3/22, 2012

ASHTON TENLY, LLC:

By: _____
Lori D. Diaz, Member and Manager

Date: 3/22, 2012

_____
Lori D. Diaz, individually and as Debtor-in-Possession in the Bankruptcy Case

Date: 3/22, 2012

_____
Robert Pitman, individually

Date: 3/23, 2012

CONTRACT OF SALE

DATED: April 1, 2005

BETWEEN: Shari Swanson and Clay Swanson ("Seller")
6965 SW 68th, Portland, OR 97223

AND: Vassal Investments, LLC ("Purchaser")
1055 NE 25th Ave, Suite A, Hillsboro, OR 97123

Seller owns or is the contract purchaser of the real property located in Washington and Polk County, Oregon, and described in attached Exhibit A (the "Real Property").

Seller agrees to sell the Property to Purchaser and Purchaser agrees to buy the Property from Seller for the price and on the terms and conditions set forth below:

Section 1. **Purchase Price; Payment**

1.1 **Total Purchase Price.** Purchaser shall pay the sum of $2,393,961.00 for the 18 parcels of Property as set forth on Exhibit A.

1.2 **Payment of Total Purchase Price.** The total purchase price shall be paid as follows:

1.2.1 **Interest Rate and Scheduled Payment Dates.**

Loan Schedule One: $500,000.00 shall be paid over 15 years (180 months) with payments of interest only and a balloon payment of the entire balance due at the end of the 15 year term. The unpaid balance of the loan under Schedule One shall be paid in monthly installments of interest only at 5% per annum in the amount of $2,083.33 with the first installment due on the 5th day of the first month following closing and with subsequent installments due on the 5th day of each month thereafter. All unpaid principal and all accrued but unpaid interest on Loan Schedule One shall be paid in full on or before April 5, 2020.

Loan Schedule Two: $1,893,961.00 shall be amortized over a 25-year period and shall be payable in equal monthly installments with interest thereon at the rate of 6.379% per annum until paid in full. The unpaid balance of the loan under Schedule Two shall be paid in monthly installments of $12,645.33. Any prepayment of principal in excess of $50,000 shall result in a recalculation of the amount necessary to maintain equal monthly payments over a 25 year amortization, but shall not extend the maturity date of the Schedule Two loan. All unpaid principal and all accrued but unpaid interest on Loan Schedule Two shall be paid in full on or before April 5, 2030.

1.2.2 **Proceeds of parcel sales applied to Loans.** Seller is the Grantor under certain Trust Deeds and the Borrower on certain loans that encumber the 18 parcels of real property being purchased by Purchaser. Those Trust Deeds and Loan amounts currently due are as set forth on the attached exhibit "A" as if fully incorporated herein. Each party recognizes that it is intended that Seller shall pay the existing loans from the funds received above. Further, that Purchaser shall not be liable for the debt on the loans listed in Exhibit, "A" which shall remain the obligation of Seller. Upon refinance or sale of any of the parcels of property, Purchaser shall pay such sum to Seller as is required to pay off any existing liens on the parcel in order to obtain clear title to the parcel of property. It shall be the obligation of both parties to avoid any due on sales clause that may be triggered as a result of this transfer.

1.3 **Prepayments.** Purchaser may prepay all or any portion of the unpaid balances due on Loan Schedule One and Loan Schedule Two without penalty at any time. All prepayments shall be applied first to accrued but unpaid interest to date, then to amounts due Seller under this Contract.

1.4 **Place of Payments.** All payments to Seller shall be made to Seller at the address of Seller shown above or to such other place or person as Seller may designate by written notice to Purchaser.

Section 2. Taxes and Liens

2.1 **Obligation to Pay.** All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current tax year shall be prorated between Seller and Purchaser as of the Closing Date. Purchaser shall pay when due all taxes and assessments that are levied against the Property after the Closing Date, but Purchaser may elect to pay taxes and assessments in accordance with any available installment method.

2.2 **Right to Contest.** If Purchaser objects in good faith to the validity or amount of any tax, assessment, or lien, Purchaser, at Purchaser's sole expense, may contest the validity or amount of the tax or assessment or lien, provided that Seller's security interest in the Property is not jeopardized and as long as the same does not constitute a default under the Prior Lien. Purchaser shall otherwise keep the Property free from all liens that may be lawfully imposed upon the Property after closing, other than the lien of current taxes not yet due.

2.3 **Tax Statements.** Purchaser shall provide Seller with written evidence reasonably satisfactory to Seller that all taxes and assessments have been paid before delinquency. Purchaser shall submit this evidence upon the request of Seller, which request shall be made no more frequently than after each required payment of taxes and assessments.

2.4 **Tax Statement:**
Until a change is requested, all tax statements shall be sent to: Ashton Tenly, C/o Bob Pitman, P.O. Box 927, Hillsboro, OR 97123.

Section 3. Closing

3.1 **Closing Date.** This transaction shall be closed on April 1, 2005. As used in this Contract the "Closing Date" means the date on which this Contract or a memorandum of this Contract is executed by all parties.

Section 4. Possession; Existing Tenancies

4.1 **Possession.** Purchaser shall be entitled to possession of the Property from and after closing, subject to the existing leases and tenancies affecting the Property. In no event shall Seller or Seller's agent interfere with the rights of any tenant of all or part of the Property.

4.2 **Assignment and Assumption of Leases; Existing Tenancies.** Purchaser shall take possession of the Property subject to existing tenancies and leases on the Property. As long as Purchaser is not in default under this Contract, Purchaser shall be entitled to receive directly from the tenants all rents coming due after closing. Purchaser has examined such leases and tenancies and hereby assumes and agrees to perform all obligations of the lessor under such leases and tenancies (arising from and after the Closing Date).

Section 5. Maintenance

5.1 **Maintenance.** Purchaser shall not commit or suffer any waste of the Property and shall maintain the Property in good and safe condition and repair.

5.2 **Compliance with Laws.** Purchaser shall promptly comply and shall cause all other persons to comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the Property and in this connection Purchaser shall promptly make all required repairs, alterations, and additions.

Section 6. Insurance

6.1 **Property Damage Insurance.** Purchaser shall procure and maintain policies of all-risk insurance with standard extended coverage endorsements on a replacement cost basis covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to the holder of the existing encumbrance, Seller (under a standard mortgagee's clause) and Purchaser as their respective interests may appear. The policies shall be primary with respect to all covered risks, and shall be written in such form with such terms and by such insurance companies reasonably acceptable to Seller and the holders of the Prior Liens. Purchaser shall deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller and the holder of the existing encumbrances. In the event of loss, Purchaser shall give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within 15 days of the casualty.

Section 7. Indemnification

7.1 **Purchaser's Indemnification of Seller.** Purchaser shall forever indemnify and hold Seller harmless and, at Seller's election, defend Seller from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with Purchaser's possession or use of the Property, Purchaser's conduct with respect to the Property, or any condition of the Property to the extent the same arises from or after the Closing Date and is not caused or contributed to by Seller or Purchaser's breach of any warranty or representation made by Purchaser in this Contract, with the exception of any tax liabilities of Seller. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Purchaser agrees to defend Seller, Purchaser shall, upon notice from Seller, vigorously resist and defend such actions or proceedings in consultation with Seller through legal counsel reasonably satisfactory to Seller.

7.2 **Seller's Indemnification of Purchaser.** Seller shall forever indemnify and hold Purchaser harmless and, at Purchaser's election, defend Purchaser from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with Seller's possession or use of the Property, Seller's conduct with respect to the Property, or any condition of the Property to the extent the same exists on the Closing Date and is not caused or contributed to by Purchaser, or Seller's breach of any warranty or representation made by Seller in this Contract. In the event of any litigation or proceeding brought against Purchaser and arising out of or in any way connected with any of the above events or claims, against which Seller agrees to defend Purchaser, Seller shall, upon notice from Purchaser, vigorously resist and defend such actions or proceedings in consultation with Purchaser through legal counsel reasonably satisfactory to Purchaser.

7.3 **Indemnification Scope.** Wherever this Contract obligates a party to indemnify, hold harmless, or defend the other party, the obligations shall run to the directors, officers, agents, partners, and employees of such other party and shall survive any termination or satisfaction of this contract. Such obligations with respect to the acts or omissions of either party shall include the acts or omissions of any director, officer, partner, agent, employee, contractor, tenant, invitee, or permittee of such party.

Section 8. Representations, Warranties, and Covenants of Seller

8.1 **Covenants of Title.** Seller warrants that Seller is the owner of good and marketable title to the Property free of all liens and encumbrances except those referred to on exhibit "A" and referred to in this Contract and will defend such title from the lawful claims of persons claiming superior title.

8.2 **No Brokers.** Seller has not employed any broker or finder in connection with the transactions contemplated by this Contract and has taken no action, which action would give rise to a valid claim against Purchaser for a brokerage commission, finder's fee, or other like payment.

8.3 **Litigation.** There are no pending claims or litigation or threats of claims or litigation or other matters of which Seller is aware or by the exercise of reasonable diligence of which Seller should be aware that could adversely affect Purchaser's title, use, or enjoyment of the Property.

8.4 **Hazardous Substances.** To the best of Seller's knowledge, no Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from property adjacent to or in the immediate vicinity of the Property. No wastes, including without limitation garbage and refuse, have been disposed of on the Property and there are no underground storage tanks on the Property. The term Hazardous Substance means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any law pertaining to the protection of human health or the environment, and includes without limitation petroleum oil and its fractions.

8.5 **Compliance with Laws.** The Property and every portion thereof, and all activities conducted on the Property, are in compliance with all applicable federal, state, and local statutes, regulations, and ordinances.

8.6 **Non-foreign Status.** Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

8.7 **No Warranties; As Is.** Seller makes no other warranties, express or implied, as to the Property or the condition or state of repair thereof, it being understood by all parties that the Property will be conveyed to the Buyer AS IS, except such warranties as may arise by law under the Deed.

Section 9. **Title Insurance (Purchaser's Policy).** Purchaser acknowledges that there are existing policies of title insurance on the Property and that Seller need not furnish additional policies of title insurance.

Section 10. **Existing Encumbrances**

10.1 **Obligation to Pay.** The Property is currently subject to encumbrances as set forth on the attached exhibit "A". Seller represents, warrants, and covenants to Purchaser (1) that no default exists under the Prior Liens and to the best of Seller's knowledge no event has occurred or failed to occur and no condition exists or does not exist that, with or without notice and the passage of time could ripen into such a default.

10.2 **Failure to Pay.** In the event Seller fails to perform any obligation or fails to make any payment required by the Prior Liens when due, Purchaser shall have the right to correct the default or to make any part or all of the payment payable to Seller under this Contract directly to the holder of the Prior Lien or third party to whom such payment is required to be made under the Prior Lien until Seller's obligation is satisfied. In that event, then Purchaser shall be entitled to deduct any amounts paid from the next payment(s) due to Seller under this Contract.

10.3 **Obligations of Purchaser.** Purchaser shall not cause or suffer any act or failure to act that if attributed to Seller might cause a default under any of the provisions of the Prior Lien.

Section 11. **Sale of Individual Parcels.** Purchaser shall have the right to sell off individual parcels of the referenced 18 parcels of property in which event, the loans encumbering said parcel or parcels sold shall be paid in full. The balance of any proceeds may be applied to the Purchaser's obligations under this contract at the discretion of Purchaser. (covered in other areas of contract)

Section 12. **Deed**

Upon payment of the total purchase price for each parcel of property as set forth on Exhibit "A" as provided in this Contract and performance by Purchaser of the terms, conditions, and provisions of this Contract, Seller shall forthwith deliver to Purchaser a good and sufficient statutory warranty deed conveying the individual parcel(s) of the Property free and clear of all liens and encumbrances, except for encumbrances suffered by or placed upon the Property by Purchaser subsequent to the date of this Contract.

Section 13. **Default**

13.1 **Events of Default.** Time is of the essence of this Contract. A default shall occur under any of the following circumstances:

(1) Failure of Purchaser to make any payment within 15 days after it is due.

(2) Any default under the Prior Lien attributable to Purchaser.

(3) Failure of Purchaser to perform any other obligations contained in this Contract within 30 days after notice from Seller specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence.

(4) Dissolution, termination of existence, insolvency on a balance sheet basis, or business failure of Purchaser; the commencement by Purchaser of a voluntary case under the federal bankruptcy laws or under other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Purchaser in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Purchaser to the appointment of receiver, trustee, or custodian of Purchaser or of any of Purchaser's property; an assignment for the benefit of creditors by Purchaser or Purchaser's failure generally to pay its debts as such debts become due.

13.2 **Remedies of Default.** In the event of a default, Seller may take any one or more of the following steps:

(1) Seller may declare the entire balance of the purchase price and interest immediately due and payable.

(2) Seller may foreclose this Contract by suit in equity.

(3) Seller may specifically enforce the terms of this Contract by suit in equity.

(4) Seller shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the balance due under this Contract, and any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the Property, the receiver may:

(a) Use, operate, manage, control, and conduct business on the Property and make expenditures for all maintenance and improvements as in its judgments are proper;

(b) Collect all rents, revenues, income, issues, and profits (the "Income") from the Property and apply such sums to the necessary expenses of use, operation, and management;

(5) Purchaser hereby assigns to Seller all the Income from the Property, whether now or hereafter due. Before default, Purchaser may operate and manage the Property and collect the Income from the Property. In the event of default and at any time hereafter, Seller may revoke Purchaser's right to collect the Income from the Property and may, either itself or through a receiver, collect the same. To facilitate collection, Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Purchaser irrevocably designates Seller as Purchaser's attorney in fact with full power of substitution and coupled with an interest to endorse instruments received in payment thereof in the name of Purchaser and to negotiate the same and collect the proceeds. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the Seller's reasonable expenses of renting or collection and the balance (if any) to the payment of sums due from Purchaser to Seller under this Contract.

13.3 **Remedies Not Exclusive.** The remedies provided above shall be nonexclusive and in addition to any other remedies provided by law.

Section 14. Waiver

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Section 15. Successor Interests

This Contract shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

Section 16. Prior Agreements

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties of their representatives relating to the Property.

Section 17. Notice

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, return-receipt requested, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

Section 18. Applicable Law

This Contract has been entered into in the state of Oregon and the laws of the state of Oregon shall be used in construing the Contract and enforcing the rights and remedies of the parties.

Section 19. Costs and Attorney Fees

19.1 **No Suit or Action Filed.** If this Contract is placed in the hands of an attorney due to a default in the payment or performance of any of its terms, the defaulting party shall pay, immediately upon demand, the other party's reasonable attorney fees, collection costs, costs of either a litigation or a foreclosure report (whichever is appropriate), even though no suit or action is filed thereon, and any other fees or expenses incurred by the non-defaulting party.

Section 20. Number, Gender, and Captions

As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires.

Section 21. Condition of Property

Purchaser accepts the land, buildings, improvements, and all other aspects of the Property in their present condition, AS IS, WHERE IS, including latent defects, without any representations or warranties from Seller or any agent or representative of Seller, expressed or implied, except to the extent expressly set forth in this Contract. Purchaser agrees that Purchaser has ascertained, from sources other than Seller or any agent or representative of Seller, the condition of the Property and its suitability for Purchaser's purposes, the applicable zoning, building, housing, and other regulatory ordinances and laws, and that Purchaser accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property, and Seller has made no representations with respect to such condition or suitability of the Property or such laws or ordinances.

Section 22. Memorandum of Contract

Upon Closing the parties may cause a memorandum of this contract to be recorded in the real property records of Washington and Polk County, Oregon, provided that recordation will not result in the immediate acceleration of any of the underlying loans referenced on Exhibit B.

The following disclaimer is made pursuant to ORS 93.040:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate as of the day and year first above written.

"Seller"

Shari Swanson

Clay Swanson

"Purchaser"
Vassal Investments, LLC

By

Bob Pitman, Member

By

Lori Diaz, Member

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of ~~Washington~~ MULTNOMAH)

This instrument was acknowledged before me on April 1, 2005, by Shari Swanson and Clay Swanson, Sellers.

OFFICIAL SEAL
JERI MC NULTY
NOTARY PUBLIC - OREGON
COMMISSION NO. 381119
MY COMMISSION EXPIRES OCTOBER 1, 2006

Notary Public for Oregon
My Commission expires: OCT. 1, 2006

STATE OF OREGON)
) ss:
County of ~~Washington~~ MULTNOMAH)

STATE OF OREGON,
County of Washington } ss.

FORM No. 23—ACKNOWLEDGMENT.
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Portland, OR 97204 © 1992

BE IT REMEMBERED, That on this 1st *day of* April, ~~19~~2005 *before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named* Bob Pitman and Lori D. Diaz

known to me to be the identical individual s described in and who executed the within instrument and acknowledged to me that they *executed the same freely and voluntarily.*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

OFFICIAL SEAL
DEBORAH MILLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 350359
MY COMMISSION EXPIRES SEPT. 30, 2005

Deborah Miller
Notary Public for Oregon
My commission expires 9/30/05

Exhibit A

Prpty #	Address		Legal Description	Mortgagee	Loan #	Rate	Maturity	Mortgage Balance
249	1725 NE Thomas St	Hillsboro,OR 97124	Jonesfield No.2, Amended. Lot 110	Sterling Savings	11-512850-9	6.400%	1/1/2033	101,334
1004	1850 NE 15th Ave	Hillsboro,OR 97124	Jonesfield No.2, Amended. Lot 131	Sterling Savings	11-512851-7	6.400%	1/1/2033	106,011
1007	2022 SE Hemlock Ave	Hillsboro,OR 97124	Hughes Park, Lot 13	Sterling Savings	11-512852-5	6.400%	1/1/2033	99,775
1076	17766 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 22, Acres .12	Washington Federal	97200-996819	7.250%	2/1/2021	50,645
1077	17780 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 23, Acres .12	Washington Mutual	063989997-0	6.375%	5/5/2034	138,672
1085	950 SW 178th Pl	Beaverton, OR 97006	Corona Park, Lot 13, Acres .15	Sterling Savings	11-512853-3	6.400%	1/1/2033	126,278
1091	17799 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 19, Acres .16	Sterling Savings	11-512854-1	6.400%	1/1/2033	124,719
1101	17437 SW Hurrell Ln	Beaverton, OR 97006	Pacifica Park No.2, Lot 20, Acres .12	Sterling Savings	11-506129-6	7.250%	12/1/2028	111,004
1102	17459 SW Hurrell Ln	Beaverton, OR 97006	Pacifica Park No.2, Lot 21, Acres .12	Sterling Savings	11-506214-6	7.250%	12/1/2028	111,005
1154	20836 SW Parker Ct	Beaverton, OR 97007	Nicholas Acres, Lot 24, Acres .10	Sterling Savings	11-512855-8	6.400%	1/1/2033	124,583
1182	20658 SW Parker Ct	Beaverton, OR 97007	Nicholas Acres No.2, Lot 30, Acres .11	Sterling Savings	11-512856-6	6.400%	1/1/2033	136,263
1287	313 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-5	Sterling Savings	11-512857-4	6.400%	1/1/2033	97,437
1289	325 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-7	Sterling Savings	11-506127-0	7.250%	12/1/2028	91,024
1302	342 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-20	Sterling Savings	11-512858-2	6.400%	1/1/2033	94,319
1304	330 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-22	Sterling Savings	11-512859-0	6.400%	2/1/2033	92,760
1306	318 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-24	Washington Mutual	063990005-9	6.375%	5/5/2034	99,051
1307	312 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-25	Sterling Savings	11-512860-8	6.400%	2/1/2033	95,098
1308	306 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-26	Sterling Savings	11-506128-8	7.250%	12/1/2028	93,984
	Totals							1,893,961

4/1/2005

2022 S.E. Hemlock
Hillsboro, Oregon

Lot 13, HUGHES PARK, in the City of Hillsboro, County of Washington, and State of Oregon

17780 S.W. Corona Lane
Aloha, Oregon

Lot 23, CORONA PARK, County of Washington, State of Oregon

20836 S.W. Parker
Aloha, Oregon

Lot 24, NICHOLAS ACRES, in the County of Washington, State of Oregon

20658 S.W. Parker
Aloha, Oregon

Lot 30, NICHOLAS ACRES NO. 2, in the County of Washington, State of Oregon

306 Denton Street, N.W.
Dallas, Oregon

Lot 26, SUNSET RIDGE, in the City of Dallas, County of Polk, State of Oregon

Below is an Order of the Court.

ELIZABETH PERRIS
U.S. Bankruptcy Judge

LAW OFFICE OF STEPHEN T. BOYKE
806 SW Broadway, Suite 1200
Portland, OR 97205
(503) 227-0417 • steve@boykelaw.com

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re Lori Diane Diaz, Debtor,	Case No. 11-30383-elp11
In re Louis Juan Diaz Debtor,	Case No. 11-30410-tmb7
Lori Diane Diaz, Plaintiff, vs. United States of America by and through its agency the Internal Revenue Service; and State of Oregon by and through its agency the Oregon Department of Revenue, Defendants.	Adversary Proceeding No. 11-3290-elp **LEAD CASE**

Louis Juan Diaz, Plaintiff, vs. United States of America by and through its agency the Internal Revenue Service; and State of Oregon by and through its agency the Oregon Department of Revenue Defendants.	) Adversary Proceeding No. 11-3291-elp)))) ORDER GRANTING MOTION TO) EXTEND TIME TO FILE JUDGMENT)) (AFFECTS BOTH ACTIONS))))

This matter is before the Court on the parties' stipulated motion to extend time to file judgment ("Motion"). Based on the Motion and the court record herein, it is hereby

ORDERED:

1) The Motion is granted.

2) These consolidated adversary proceedings will be dismissed, without further Court order, unless a stipulated judgment or proposed judgment, whichever applies, is filed with the Clerk of Court on or before July 19, 2012. Any subsequent motion required to reopen the proceedings shall be accompanied by an affidavit averring substantial reasons why these proceedings should be reopened.

3) The Clerk shall file this order in Case 11-3290 and file it in Case 11-3291.

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Submitted by:

/s/ Stephen T. Boyke
Stephen T. Boyke, OSB # 881628
Attorney For Lori Diaz and Louis Diaz

cc: Alexis V. Andrews
Carolyn G. Wade

/Users/Steve/Documents/Law Office/Clients/Diaz, Lori/Chapter 11 Case/IRS Adv Proc/P Order Extending time to File judgment wo cert of service.pages

LAW OFFICE OF STEPHEN T. BOYKE
806 SW Broadway, Suite 1200
Portland, OR 97205
(503) 227-0417 • steve@boykelaw.com

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 APPROVING AGREEMENT RE:
	)	VASSAL INVESTMENTS, LLC
Debtor-in-Possession.	)	

Based on Debtor's Motion for Approval of Agreement Re: Vassal Investments, LLC ("Motion"), Notice of Motion for Approval of Agreement Re: Vassal Investments, LLC ("Notice," a copy of which is attached hereto as **Exhibit A**), the Declaration of Nonreceipt of Objections and the Court being otherwise fully advised, it is

ORDERED that Debtor's Motion is granted pursuant to the terms set forth in the Agreement attached hereto as **Exhibit B**.

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

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

First Class Mail:

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

Clay and Shari Swanson
6955 SW68th Ave.
Portland, OR 97223-9401

Vassal Investments, LLC
c/o Robert Pitman, Manager
210 SE 4th Ave.
Hillsboro, OR 97123

Robert Pitman
14406 W. Redwick Dr.
Boise, ID 83713

Ashton Tenly Company, LLC
c/o Lori D. Diaz, Manager
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Electronic Mail:

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

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re	)	Case No. 11-30383-elp11
	)	
Lori D. Diaz,	)	NOTICE OF MOTION FOR APPROVAL OF
	)	AGREEMENT RE: VASSAL INVESTMENTS,
Debtor-in-Possession.	)	LLC

TO: **Creditors and Interest Parties**

YOU ARE HEREBY NOTIFIED THAT: Debtor-in-Possession Lori D. Diaz ("Debtor") filed a Motion for Approval of Agreement re: Vassal Investments, LLC ("Motion") on May 8, 2012. An explanation of the Motion is as follows:

Debtor holds 50% of the membership interest in Vassal Investments, LLC ("Vassal"). Robert Pitman ("Pitman") holds the remaining 50% membership interest. Pitman is a former employee of Ashton Tenly Company, L.L.C. ("Ashton Tenly"). Debtor owns 100% of the membership interest in Ashton Tenly. In April 2005, Vassal purchased 18 rental homes from Shari Swanson and Clay Swanson on a land sale contract ("Vassal-Swanson Sale Contract"). Shari Swanson is the widow of Debtor's deceased brother and is now married to Clay Swanson. Ashton-Tenly has had a management and maintenance contract with Vassal concerning the properties ("Ashton Tenly Contract")

Under the terms of the Vassal Swanson Sale Contract, Vassal agreed to pay the Swansons $2,393,961 ("Swanson Debt"). Vassal has since sold 13 of the properties, leaving five remaining. Vassal no longer has the ability to service the mortgage debt, real property taxes and the balance of the Swanson Debt. Debtor believes she is not personally liable for any of this debt.

The Swansons, Vassal, Ashton Tenly, Pitman and Debtor have reached the following agreement:

1. All of Vassal's interest in the five remaining real properties, including tenant leases, will be transferred to the Swansons. The Swansons will have sole responsibility for paying the secured debt of the five properties and shall pay all unpaid real property taxes from the 2009-10 tax year forward. Rental income from November 1, 2011 forward will be the property of the Swansons.

2. The Vassal-Swanson Sale Contract shall be terminated and Vassal's obligations thereunder shall be discharged.

3. The Ashton Tenly Contract concerning the five real properties will be terminated.

4. The Swansons, on the one hand, and Vassal, Ashton Tenly and Pitman, on the other hand, will mutually release all claims against each other relating to

the Vassal-Swanson Sale Contract and the Ashton Tenly Contract. Debtor is not a party to the mutual release.

Upon closing of the Settlement Agreement, the bankruptcy estate will realize a capital gain of $39,042. The estate's 2011 tax return contains sufficient capital loss carry-forwards to absorb these capital gains without prejudice to the other proposed uses of the capital loss carry-forwards.

A copy of the Motion is on file with the Court. A copy of the Motion may be obtained from Debtor's attorney's office by contacting Sara Parker at Vanden Bos & Chapman, LLP, 319 SW Washington St., Ste. 520, Portland, OR 97204; Telephone: 503-241-4869; email: sara@vbcattorneys.com.

YOU ARE FURTHER NOTIFIED THAT unless, **within 21 days of the date of mailing shown below**, you file written objections with the Clerk of the Bankruptcy Court, 1001 SW Fifth Ave., Ste. 700, Portland, OR 97204, and you serve a copy on the attorney for Debtor, Robert J Vanden Bos, Vanden Bos & Chapman, LLP, 319 SW Washington St., Ste 520, Portland, OR 97204, setting forth in detail the basis for your objections to the Motion, the Court may enter an Order approving the Motion and it will become final without further hearing. **If objections are filed, a hearing on the Motion will be set by the Court in normal course. If no objections are filed, the Court may grant the Motion without further notice or hearing**.

/s/ Robert J Vanden Bos
ROBERT J VANDEN BOS, OSB #78100
319 SW Washington Street, Suite 520
Portland, OR 97204
Telephone: (503) 241-4869

On 05/08/2012 , I served copies of the above Notice on all creditors, parties requesting special notice, their attorneys, Chairperson of the Official Committee of Unsecured creditors, if any, attorney(s) for the Chairperson of the Official Committee of Unsecured Creditors, if any, and the U.S. Trustee by serving a copy of the above Notice on each of them via U.S. mail, postage prepaid, at their addresses listed in the matrix of creditors maintained by the Clerk of the Court.

/s/ Robert J Vanden Bos
ROBERT J VANDEN BOS, OSB #78100
Of Attorneys for Debtor-in-Possession,
Party Giving Notice

AGREEMENT

PARTIES

Shari Swanson ("Shari Swanson")
6955 SW68th Ave.
Portland, OR 97223-9401

Clay Swanson ("Clay Swanson")
6955 SW68th Ave.
Portland, OR 97223-9401

Vassal Investments, LLC ("Vassal")
c/o Robert Pitman, Manager
210 SE 4th Ave.
Hillsboro, OR 97123

Ashton Tenly Company, LLC ("Ashton Tenly")
c/o Lori D. Diaz, Manager
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Lori D. Diaz ("Diaz")
210 S.E. 4th Avenue
Hillsboro, Oregon 97123

Robert Pitman ("Pitman")
14406 W. Redwick Dr.
Boise, ID 83713

RECITALS

A. Shari Swanson and Clay Swanson are individuals residing in the State of Oregon.

B. Vassal is an Oregon limited liability company owned by Pitman (50%) and Diaz (50%) and managed by Pitman.

C. Ashton Tenly is an Oregon limited liability company owned (100%) and managed by Diaz.

D. Diaz is an individual residing in the State of Oregon.

E. Pitman is an individual residing in the State of Idaho.

F. On or about April 1, 2005, Shari Swanson and Clay Swanson, as Seller, and Vassal, as Buyer, entered into that certain Contract of Sale, a copy of which is attached as Exhibit 1 and incorporated by this reference ("Sale Contract").

G. Ashton Tenly has provided under contract certain management and maintenance services to Vassal pertaining to the properties described in the Sale Contract.

H. On January 19, 2011, Diaz commenced a chapter 11 bankruptcy case in the case entitled In re Lori D. Diaz, US Bankruptcy Court (Oregon) Case No. 11-30383-elp11 ("Bankruptcy Case").

I. The Parties wish to memorialize their agreement to effectuate the discharge of the Sale Contract and other matters, which is the purpose of this Agreement.

AGREEMENT

1. Recitals Part of Agreement. The above recitals are part of this Agreement.

2. Modification and Discharge of Sale Contract. At Closing (defined below) the Sale Contract shall be terminated, all of Vassal's right, title and interest in the Real Properties (defined below) shall be transferred to Shari Swanson and Clay Swanson, and all of Vassal's obligations under the Sale Contract shall be discharged.

On or before closing, Vassal shall execute and deliver to Shari Swanson and Clay Swanson quit claim deeds, in such form as mutually agreeable to Vassal, Shari Swanson and Clay Swanson (collectively, the "Deeds"), transferring all of Vassal's interest in the following real properties ("Real Properties"), the legal descriptions of which are attached as Exhibit 2:

(a) 2022 SE Hemlock Ave., Hillsboro, OR 97123;

(b) 17780 SW Corona Ln., Aloha, OR 97006;

(c) 20836 SW Parker Ct., Aloha, OR 97007;

(d) 20658 SW Parker Ct., Aloha, OR 97007; and

(e) 306 NW Denton St., Dallas, OR 97338.

3. Past Real Property Taxes. Shari Swanson and Clay Swanson acknowledge that the real property taxes for the Real Properties are unpaid for the 2010-2011 tax year and the 2011-2012 tax year. After Closing, all real property taxes concerning the Real Properties for the tax years 2010-2011 forward shall be the responsibility of Shari Swanson and Clay Swanson.

4. Real Properties Leases; Tenant Deposits. Effective November 1, 2011, Vassal shall assign all leases of the Real Properties to Shari Swanson and Clay Swanson ("Tenant Leases") and Shari Swanson and Clay Swanson shall be solely responsible for all landlord obligations under such leases. Shari Swanson and Clay Swanson shall collect all tenant payments made with respect to rent due under the Tenant Leases on or after November 1, 2011 and to the

extent such rent is received by any other party it shall be promptly delivered, with proper endorsement, to Shari Swanson and Clay Swanson. At Closing, Vassal shall turn over an amount equal to the sum of all rents payments previously received by Vassal and any of its agents for the period on and after November 1, 2011, and all tenant deposits previously given to Vassal with respect to the Tenant Leases in force at that time. At Closing, Vassal will provide to Shari Swanson and Clay Swanson a letter, in a form and with content mutually agreeable to Vassal, Shari Swanson, and Clay Swanson, informing the tenants under the Tenant Leases of the assignment of the Tenant Leases to Shari Swanson and Clay Swanson and directing all further payment on such leases to Shari Swanson and Clay Swanson (the "Tenant Letter"). Any possible sale of any of the Real Properties to any respective tenant is the responsibility of Shari Swanson and Clay Swanson.

5. Underlying Indebtedness on Real Properties; Insurance. Effective November 1, 2011, Shari Swanson and Clay Swanson shall be solely responsible for paying any mortgages or other encumbrances that were of record as of the date of the Sale Contract against the Real Properties (the "Existing Mortgages").

Effective November 1, 2011, Shari Swanson and Clay Swanson shall be solely responsible for the procurement and payment of all insurance with respect to the Real Properties.

6. Bank Letters. At Closing or earlier, Vassal, Sherri Swanson and Clay Swanson shall send joint letters, mutually acceptable to the parties, to Sterling Savings Bank and Chase Bank requesting that all future statements and correspondence pertaining to the Existing Mortgages be sent to Shari Swanson and Clay Swanson at their address above (the "Bank Letters").

7. Termination of Ashton Tenly and Vassal Contracts. Effective November 1, 2011, all management and maintenance contracts between Ashton Tenly and Vassal are deemed terminated, discharged and fully performed.

8. Representations of Vassal. Vassal represents and warrants to Shari Swanson and Clay Swanson as follows:

(a) As of October 31, 2011, there are no monetary defaults which have not been cured with respect to any mortgage or trust deed indebtedness concerning the Real Properties;

(b) Vassal has no knowledge of any environmental or structural problems with any of the Real Properties;

(c) Vassal has no knowledge of any liens or assessments against the Real Properties except the Existing Mortgages and unpaid real property taxes;

(d) None of the Real Properties are subject to a contract to sell or purchase option except as otherwise previously disclosed in writing to Shari Swanson and Clay Swanson;

(e) All utility payments for the Real Properties, or any part thereof, are current or the responsibility of an existing tenant;

(f) The leases pertaining to the Real Property or any part thereof are not in default; and

(g) The obligations secured by the Existing Mortgages are not in default as of October 31, 2011.

9. Closing; Failure to Close. The transactions identified in Section 2 in this Agreement shall occur simultaneously (unless earlier effective) at the later of November 1, 2011 or once all Closing Conditions (defined in Section 9.1) have been satisfied (such later date being "Closing"), provided however that in no event may Closing occur later than April 15, 2012, unless extended by written consent of all the Parties. If Closing does not timely occur, to the extent that the rents received by Shari Swanson and Clay Swanson exceed the amount paid by Shari Swanson and Clay Swanson for insurance, taxes, maintenance, and on the Existing Mortgages, such excess shall be provided to Vassal; to the extent that rents received are less than the amounts so paid, Shari Swanson and Clay Swanson shall have a claim against Vassal for such shortfall.

10. Closing Conditions. The following conditions must be satisfied before Closing can occur:

10.1 Bankruptcy Court Approval. An order must be entered in the Bankruptcy Case approving this Agreement and the transactions contemplated herein and must give Diaz for herself and as owner of Vassal and Ashton Tenly, authority to tender performance to and accept performance from the Parties pursuant to this Agreement ("Approval Order"). Upon the complete execution of this Agreement, Diaz shall file a motion seeking the Approval Order in the Bankruptcy Case and shall use her best efforts to obtain it ("Approval Motion"). Should a creditor or party in interest within the Bankruptcy Case lodge objection to the Approval Motion, the Parties hereto shall cooperate where necessary and provide such assistance as Diaz may require obtaining entry of the Approval Order. All Parties to this Agreement agree they will not, individually or collectively, lodge an objection to the Approval Motion. The Approval Motion and Approval Order must be reasonably acceptable to Shari Swanson and Clay Swanson.

10.2 Representations, Covenants and Warranties. The representations and warranties made by any Vassal shall remain true and accurate at Closing and shall survive closing were applicable.

10.3 Delivery of Documents. Vassal has delivered to Shari Swanson and Clay Swanson the original Tenant Leases with all amendments, copies of the books and records pertaining to the Tenant Leases, and the executed original Deeds in Lieu, Tenant Letter, and Bank Letters.

11. Mutual Release; Exception.

11.1 Mutual Release. Effective at Closing, Shari Swanson and Clay Swanson, on the one hand, and Vassal, Ashton Tenly, and Pitman, on the other hand, shall mutually

release, acquit and forever discharge the other, the other's respective partners, officers, owners, shareholders, members, agents, employees, employers, or attorneys, from any and all actions, causes of actions, claims, injuries, damages, demands, expenses, attorney's fees or other fees or compensation ("Claims") which the other, either individually or collectively, ever had, now have or later may have arising out of any event or occurrence prior to the date of this Agreement pertaining or relating to the Sale Contract or the properties described therein.

Each party acknowledges that they have received independent legal advice with regard to their respective rights or asserted rights arising out of matters among the parties and also with regard to the advisability of making and executing this Agreement. The parties further acknowledge they have not relied upon any statements or representations, oral or written, made by any other party as to the facts involved in this matter other than the statements or representations made in this Agreement.

Each party represents and warrants that it/he/she has not conveyed, assigned or otherwise transferred any Claims to any other person or entity. Each party further represents and warrants that it/he/she holds, free of any encumbrance, all Claims, if any, which may exist against the other party.

Each party expressly assumes the risk of any mistake of fact and of any facts proven to be other than or different from any facts now known to either party to this release or believed by either of them to exist. It is the expressed intent of the parties to this Agreement to settle and adjust all controversies, finally and forever, without regard to who may or may not be correct in any understanding of fact or law.

11.2 Exceptions. Section 11.1 shall not apply to any of the following:

11.2.1 Any Claims between Shari Swanson and Clay Swanson;

11.2.2 Any Claims between or among Vassal, Ashton Tenly, Diaz and Pitman;

11.2.3 Any Claims between Shari Swanson and any party not signing this Agreement (including any affiliate of a party signing this agreement including but not limited to Tenly Properties Corp.); and

11.2.4 Any claims arising out of or related to representations or warranties set forth in this Agreement or the documents delivered pursuant to this Agreement or breaches of this Agreement.

12. Miscellaneous Provisions.

12.1 Successor Interests. No interest, duty or obligation under this Agreement shall be assigned, subcontracted or otherwise transferred voluntarily or involuntarily without the prior written consent of the other Parties. This Agreement shall also be binding upon, enforceable by, and inure to the benefit of the Parties hereto and their respective personal or legal representatives, executors, administrators, successors, heirs, distributes, devises and legatees.

12.2 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed received on receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested to the addresses listed above, which notices and communications shall be deemed received three days after deposit in the United States mail; (c) sent by overnight delivery using a nationally recognized overnight courier service to the addresses listed above, which notices and communications shall be deemed received one business day after deposit with such courier (d) or sent by facsimile, and also confirm by email to the number/email address listed above, which notices and communications shall be deemed received upon receipt of confirmation of delivery.

12.3 Applicable Law. This Agreement has been entered into in the State of Oregon. This Agreement shall in all respects be interpreted, enforced and governed under the laws of Oregon, or applicable federal law, without respect to any choice of law statutes or other provisions.

12.4 Consultation with Counsel. The Parties represent that they have read this Agreement, understand the terms of this Agreement, and have had the opportunity to consult with their respective legal counsel and tax advisors regarding this Agreement prior to signing it. The Parties further represent that they are competent to execute this Agreement, and are voluntarily signing this Agreement without any undue pressure, duress, stress, influence or manipulation.

12.5 Construction. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. In the case of any ambiguity of any language, this Agreement shall not be construed against any of the Parties.

12.6 Survival of Representations, Covenants and Warranties. All representations, covenants and warranties which are not fully performed or deemed moot at Closing shall survive Closing in accordance with their terms.

12.7 Prior Agreements. The Parties represent and agree that no promises, statements or inducements have been made to them that caused them to sign this Agreement other than those expressly stated in this Agreement. The Parties understand and acknowledge that this Agreement constitutes the full and complete agreement between the Parties and supersedes any and all express or implied prior agreements, Agreements, or understandings between the Parties relating to its subject matter. Notwithstanding the foregoing, the TENLY Operating Agreement shall remain in full force and effect except as modified herein.

12.8 Further Assurances. The Parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement at their own cost.

12.9 Counterparts. This Agreement consists of seventeen (17) pages (including the signature pages and exhibits), and may be executed by facsimile and in counterparts. The Agreement will be binding on the Parties once it has been fully executed by all of the Parties.

Thereafter, the Parties shall exchange hard copies, and all the counterparts together shall constitute a single original agreement.

12.10 STATUTORY DISCLAIMER. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Shari Swanson

Shari Swanson

Date: March 21, 2012

Clay Swanson

Clay Swanson

Date: March 21, 2012

VASSAL INVESTMENTS, LLC:

By: _____
Robert Pitman, Member and Manager

Date: _____, 2012

By: _____
Lori D. Diaz, Member

Date: _____, 2012

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_____
Shari Swanson

Date: _____, 2012

_____
Clay Swanson

Date: _____, 2012

VASSAL INVESTMENTS, LLC:

By: _____
Robert Pitman, Member and Manager

Date: 3/23, 2012

By: _____
Lori D. Diaz, Member

Date: 3/22, 2012

ASHTON TENLY, LLC:

By: _____
Lori D. Diaz, Member and Manager

Date: 3/22, 2012

_____
Lori D. Diaz, individually and as Debtor-in-Possession in the Bankruptcy Case

Date: 3/22, 2012

_____
Robert Pitman, individually

Date: 3/23, 2012

CONTRACT OF SALE

DATED: April 1, 2005

BETWEEN: Shari Swanson and Clay Swanson ("Seller")
6965 SW 68th, Portland, OR 97223

AND: Vassal Investments, LLC ("Purchaser")
1055 NE 25th Ave, Suite A, Hillsboro, OR 97123

Seller owns or is the contract purchaser of the real property located in Washington and Polk County, Oregon, and described in attached Exhibit A (the "Real Property").

Seller agrees to sell the Property to Purchaser and Purchaser agrees to buy the Property from Seller for the price and on the terms and conditions set forth below:

Section 1. **Purchase Price; Payment**

1.1 **Total Purchase Price.** Purchaser shall pay the sum of $2,393,961.00 for the 18 parcels of Property as set forth on Exhibit A.

1.2 **Payment of Total Purchase Price.** The total purchase price shall be paid as follows:

1.2.1 **Interest Rate and Scheduled Payment Dates.**

Loan Schedule One: $500,000.00 shall be paid over 15 years (180 months) with payments of interest only and a balloon payment of the entire balance due at the end of the 15 year term. The unpaid balance of the loan under Schedule One shall be paid in monthly installments of interest only at 5% per annum in the amount of $2,083.33 with the first installment due on the 5th day of the first month following closing and with subsequent installments due on the 5th day of each month thereafter. All unpaid principal and all accrued but unpaid interest on Loan Schedule One shall be paid in full on or before April 5, 2020.

Loan Schedule Two: $1,893,961.00 shall be amortized over a 25-year period and shall be payable in equal monthly installments with interest thereon at the rate of 6.379% per annum until paid in full. The unpaid balance of the loan under Schedule Two shall be paid in monthly installments of $12,645.33. Any prepayment of principal in excess of $50,000 shall result in a recalculation of the amount necessary to maintain equal monthly payments over a 25 year amortization, but shall not extend the maturity date of the Schedule Two loan. All unpaid principal and all accrued but unpaid interest on Loan Schedule Two shall be paid in full on or before April 5, 2030.

1.2.2 **Proceeds of parcel sales applied to Loans.** Seller is the Grantor under certain Trust Deeds and the Borrower on certain loans that encumber the 18 parcels of real property being purchased by Purchaser. Those Trust Deeds and Loan amounts currently due are as set forth on the attached exhibit "A" as if fully incorporated herein. Each party recognizes that it is intended that Seller shall pay the existing loans from the funds received above. Further, that Purchaser shall not be liable for the debt on the loans listed in Exhibit, "A" which shall remain the obligation of Seller. Upon refinance or sale of any of the parcels of property, Purchaser shall pay such sum to Seller as is required to pay off any existing liens on the parcel in order to obtain clear title to the parcel of property. It shall be the obligation of both parties to avoid any due on sales clause that may be triggered as a result of this transfer.

1.3 **Prepayments.** Purchaser may prepay all or any portion of the unpaid balances due on Loan Schedule One and Loan Schedule Two without penalty at any time. All prepayments shall be applied first to accrued but unpaid interest to date, then to amounts due Seller under this Contract.

1.4 **Place of Payments.** All payments to Seller shall be made to Seller at the address of Seller shown above or to such other place or person as Seller may designate by written notice to Purchaser.

Section 2. Taxes and Liens

2.1 **Obligation to Pay.** All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current tax year shall be prorated between Seller and Purchaser as of the Closing Date. Purchaser shall pay when due all taxes and assessments that are levied against the Property after the Closing Date, but Purchaser may elect to pay taxes and assessments in accordance with any available installment method.

2.2 **Right to Contest.** If Purchaser objects in good faith to the validity or amount of any tax, assessment, or lien, Purchaser, at Purchaser's sole expense, may contest the validity or amount of the tax or assessment or lien, provided that Seller's security interest in the Property is not jeopardized and as long as the same does not constitute a default under the Prior Lien. Purchaser shall otherwise keep the Property free from all liens that may be lawfully imposed upon the Property after closing, other than the lien of current taxes not yet due.

2.3 **Tax Statements.** Purchaser shall provide Seller with written evidence reasonably satisfactory to Seller that all taxes and assessments have been paid before delinquency. Purchaser shall submit this evidence upon the request of Seller, which request shall be made no more frequently than after each required payment of taxes and assessments.

2.4 **Tax Statement:**
Until a change is requested, all tax statements shall be sent to: Ashton Tenly, C/o Bob Pitman, P.O. Box 927, Hillsboro, OR 97123.

Section 3. Closing

3.1 **Closing Date.** This transaction shall be closed on April 1, 2005. As used in this Contract the "Closing Date" means the date on which this Contract or a memorandum of this Contract is executed by all parties.

Section 4. Possession; Existing Tenancies

4.1 **Possession.** Purchaser shall be entitled to possession of the Property from and after closing, subject to the existing leases and tenancies affecting the Property. In no event shall Seller or Seller's agent interfere with the rights of any tenant of all or part of the Property.

4.2 **Assignment and Assumption of Leases; Existing Tenancies.** Purchaser shall take possession of the Property subject to existing tenancies and leases on the Property. As long as Purchaser is not in default under this Contract, Purchaser shall be entitled to receive directly from the tenants all rents coming due after closing. Purchaser has examined such leases and tenancies and hereby assumes and agrees to perform all obligations of the lessor under such leases and tenancies (arising from and after the Closing Date).

Section 5. Maintenance

5.1 **Maintenance.** Purchaser shall not commit or suffer any waste of the Property and shall maintain the Property in good and safe condition and repair.

5.2 **Compliance with Laws.** Purchaser shall promptly comply and shall cause all other persons to comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the Property and in this connection Purchaser shall promptly make all required repairs, alterations, and additions.

Section 6. Insurance

6.1 **Property Damage Insurance.** Purchaser shall procure and maintain policies of all-risk insurance with standard extended coverage endorsements on a replacement cost basis covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to the holder of the existing encumbrance, Seller (under a standard mortgagee's clause) and Purchaser as their respective interests may appear. The policies shall be primary with respect to all covered risks, and shall be written in such form with such terms and by such insurance companies reasonably acceptable to Seller and the holders of the Prior Liens. Purchaser shall deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller and the holder of the existing encumbrances. In the event of loss, Purchaser shall give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within 15 days of the casualty.

Section 7. Indemnification

7.1 **Purchaser's Indemnification of Seller.** Purchaser shall forever indemnify and hold Seller harmless and, at Seller's election, defend Seller from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with Purchaser's possession or use of the Property, Purchaser's conduct with respect to the Property, or any condition of the Property to the extent the same arises from or after the Closing Date and is not caused or contributed to by Seller or Purchaser's breach of any warranty or representation made by Purchaser in this Contract, with the exception of any tax liabilities of Seller. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Purchaser agrees to defend Seller, Purchaser shall, upon notice from Seller, vigorously resist and defend such actions or proceedings in consultation with Seller through legal counsel reasonably satisfactory to Seller.

7.2 **Seller's Indemnification of Purchaser.** Seller shall forever indemnify and hold Purchaser harmless and, at Purchaser's election, defend Purchaser from and against any and all claims, losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with Seller's possession or use of the Property, Seller's conduct with respect to the Property, or any condition of the Property to the extent the same exists on the Closing Date and is not caused or contributed to by Purchaser, or Seller's breach of any warranty or representation made by Seller in this Contract. In the event of any litigation or proceeding brought against Purchaser and arising out of or in any way connected with any of the above events or claims, against which Seller agrees to defend Purchaser, Seller shall, upon notice from Purchaser, vigorously resist and defend such actions or proceedings in consultation with Purchaser through legal counsel reasonably satisfactory to Purchaser.

7.3 **Indemnification Scope.** Wherever this Contract obligates a party to indemnify, hold harmless, or defend the other party, the obligations shall run to the directors, officers, agents, partners, and employees of such other party and shall survive any termination or satisfaction of this contract. Such obligations with respect to the acts or omissions of either party shall include the acts or omissions of any director, officer, partner, agent, employee, contractor, tenant, invitee, or permittee of such party.

Section 8. Representations, Warranties, and Covenants of Seller

8.1 **Covenants of Title.** Seller warrants that Seller is the owner of good and marketable title to the Property free of all liens and encumbrances except those referred to on exhibit "A" and referred to in this Contract and will defend such title from the lawful claims of persons claiming superior title.

8.2 **No Brokers.** Seller has not employed any broker or finder in connection with the transactions contemplated by this Contract and has taken no action, which action would give rise to a valid claim against Purchaser for a brokerage commission, finder's fee, or other like payment.

8.3 **Litigation.** There are no pending claims or litigation or threats of claims or litigation or other matters of which Seller is aware or by the exercise of reasonable diligence of which Seller should be aware that could adversely affect Purchaser's title, use, or enjoyment of the Property.

8.4 **Hazardous Substances.** To the best of Seller's knowledge, no Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from property adjacent to or in the immediate vicinity of the Property. No wastes, including without limitation garbage and refuse, have been disposed of on the Property and there are no underground storage tanks on the Property. The term Hazardous Substance means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any law pertaining to the protection of human health or the environment, and includes without limitation petroleum oil and its fractions.

8.5 **Compliance with Laws.** The Property and every portion thereof, and all activities conducted on the Property, are in compliance with all applicable federal, state, and local statutes, regulations, and ordinances.

8.6 **Non-foreign Status.** Seller is not a "foreign person" as defined in Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.

8.7 **No Warranties; As Is.** Seller makes no other warranties, express or implied, as to the Property or the condition or state of repair thereof, it being understood by all parties that the Property will be conveyed to the Buyer AS IS, except such warranties as may arise by law under the Deed.

Section 9. **Title Insurance (Purchaser's Policy).** Purchaser acknowledges that there are existing policies of title insurance on the Property and that Seller need not furnish additional policies of title insurance.

Section 10. **Existing Encumbrances**

10.1 **Obligation to Pay.** The Property is currently subject to encumbrances as set forth on the attached exhibit "A". Seller represents, warrants, and covenants to Purchaser (1) that no default exists under the Prior Liens and to the best of Seller's knowledge no event has occurred or failed to occur and no condition exists or does not exist that, with or without notice and the passage of time could ripen into such a default.

10.2 **Failure to Pay.** In the event Seller fails to perform any obligation or fails to make any payment required by the Prior Liens when due, Purchaser shall have the right to correct the default or to make any part or all of the payment payable to Seller under this Contract directly to the holder of the Prior Lien or third party to whom such payment is required to be made under the Prior Lien until Seller's obligation is satisfied. In that event, then Purchaser shall be entitled to deduct any amounts paid from the next payment(s) due to Seller under this Contract.

10.3 **Obligations of Purchaser.** Purchaser shall not cause or suffer any act or failure to act that if attributed to Seller might cause a default under any of the provisions of the Prior Lien.

Section 11. **Sale of Individual Parcels.** Purchaser shall have the right to sell off individual parcels of the referenced 18 parcels of property in which event, the loans encumbering said parcel or parcels sold shall be paid in full. The balance of any proceeds may be applied to the Purchaser's obligations under this contract at the discretion of Purchaser. (covered in other areas of contract)

Section 12. **Deed**

Upon payment of the total purchase price for each parcel of property as set forth on Exhibit "A" as provided in this Contract and performance by Purchaser of the terms, conditions, and provisions of this Contract, Seller shall forthwith deliver to Purchaser a good and sufficient statutory warranty deed conveying the individual parcel(s) of the Property free and clear of all liens and encumbrances, except for encumbrances suffered by or placed upon the Property by Purchaser subsequent to the date of this Contract.

Section 13. **Default**

13.1 **Events of Default.** Time is of the essence of this Contract. A default shall occur under any of the following circumstances:

(1) Failure of Purchaser to make any payment within 15 days after it is due.

(2) Any default under the Prior Lien attributable to Purchaser.

(3) Failure of Purchaser to perform any other obligations contained in this Contract within 30 days after notice from Seller specifying the nature of the default or, if the default cannot be cured within 30 days, failure within such time to commence and pursue curative action with reasonable diligence.

(4) Dissolution, termination of existence, insolvency on a balance sheet basis, or business failure of Purchaser; the commencement by Purchaser of a voluntary case under the federal bankruptcy laws or under other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Purchaser in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Purchaser to the appointment of receiver, trustee, or custodian of Purchaser or of any of Purchaser's property; an assignment for the benefit of creditors by Purchaser or Purchaser's failure generally to pay its debts as such debts become due.

13.2 **Remedies of Default.** In the event of a default, Seller may take any one or more of the following steps:

(1) Seller may declare the entire balance of the purchase price and interest immediately due and payable.

(2) Seller may foreclose this Contract by suit in equity.

(3) Seller may specifically enforce the terms of this Contract by suit in equity.

(4) Seller shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the balance due under this Contract, and any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the Property, the receiver may:

(a) Use, operate, manage, control, and conduct business on the Property and make expenditures for all maintenance and improvements as in its judgments are proper;

(b) Collect all rents, revenues, income, issues, and profits (the "Income") from the Property and apply such sums to the necessary expenses of use, operation, and management;

(5) Purchaser hereby assigns to Seller all the Income from the Property, whether now or hereafter due. Before default, Purchaser may operate and manage the Property and collect the Income from the Property. In the event of default and at any time hereafter, Seller may revoke Purchaser's right to collect the Income from the Property and may, either itself or through a receiver, collect the same. To facilitate collection, Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Purchaser irrevocably designates Seller as Purchaser's attorney in fact with full power of substitution and coupled with an interest to endorse instruments received in payment thereof in the name of Purchaser and to negotiate the same and collect the proceeds. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the Seller's reasonable expenses of renting or collection and the balance (if any) to the payment of sums due from Purchaser to Seller under this Contract.

13.3 **Remedies Not Exclusive.** The remedies provided above shall be nonexclusive and in addition to any other remedies provided by law.

Section 14. Waiver

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Section 15. Successor Interests

This Contract shall be binding upon and inure to the benefit of the parties, their successors, and assigns.

Section 16. Prior Agreements

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties of their representatives relating to the Property.

Section 17. Notice

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, return-receipt requested, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

Section 18. Applicable Law

This Contract has been entered into in the state of Oregon and the laws of the state of Oregon shall be used in construing the Contract and enforcing the rights and remedies of the parties.

Section 19. Costs and Attorney Fees

19.1 **No Suit or Action Filed.** If this Contract is placed in the hands of an attorney due to a default in the payment or performance of any of its terms, the defaulting party shall pay, immediately upon demand, the other party's reasonable attorney fees, collection costs, costs of either a litigation or a foreclosure report (whichever is appropriate), even though no suit or action is filed thereon, and any other fees or expenses incurred by the non-defaulting party.

Section 20. Number, Gender, and Captions

As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires.

Section 21. Condition of Property

Purchaser accepts the land, buildings, improvements, and all other aspects of the Property in their present condition, AS IS, WHERE IS, including latent defects, without any representations or warranties from Seller or any agent or representative of Seller, expressed or implied, except to the extent expressly set forth in this Contract. Purchaser agrees that Purchaser has ascertained, from sources other than Seller or any agent or representative of Seller, the condition of the Property and its suitability for Purchaser's purposes, the applicable zoning, building, housing, and other regulatory ordinances and laws, and that Purchaser accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property, and Seller has made no representations with respect to such condition or suitability of the Property or such laws or ordinances.

Section 22. Memorandum of Contract

Upon Closing the parties may cause a memorandum of this contract to be recorded in the real property records of Washington and Polk County, Oregon, provided that recordation will not result in the immediate acceleration of any of the underlying loans referenced on Exhibit B.

The following disclaimer is made pursuant to ORS 93.040:

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed in duplicate as of the day and year first above written.

"Seller"

Shari Swanson

Clay Swanson

"Purchaser"
Vassal Investments, LLC

By

Bob Pitman, Member

By

Lori Diaz, Member

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of ~~Washington~~ MULTNOMAH)

This instrument was acknowledged before me on April 1, 2005, by Shari Swanson and Clay Swanson, Sellers.

OFFICIAL SEAL
JERI MC NULTY
NOTARY PUBLIC - OREGON
COMMISSION NO. 381119
MY COMMISSION EXPIRES OCTOBER 1, 2008

Notary Public for Oregon
My Commission expires: OCT. 1, 2008

STATE OF OREGON)
) ss:
County of ~~Washington~~ MULTNOMAH)

STATE OF OREGON,
County of Washington } ss.

FORM No. 23—ACKNOWLEDGMENT.
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BE IT REMEMBERED, That on this 1st *day of* April, ~~19~~2005 *before me, the undersigned, a Notary Public in and for the State of Oregon, personally appeared the within named* Bob Pitman and Lori D. Diaz

known to me to be the identical individual s described in and who executed the within instrument and acknowledged to me that they *executed the same freely and voluntarily.*

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

OFFICIAL SEAL
DEBORAH MILLER
NOTARY PUBLIC-OREGON
COMMISSION NO. 350359
MY COMMISSION EXPIRES SEPT. 30, 2005

Deborah Miller
Notary Public for Oregon
My commission expires 9/30/05

Exhibit A

Prpty #	Address		Legal Description	Mortgagee	Loan #	Rate	Maturity	Mortgage Balance
249	1725 NE Thomas St	Hillsboro,OR 97124	Jonesfield No.2, Amended. Lot 110	Sterling Savings	11-512850-9	6.400%	1/1/2033	101,334
1004	1850 NE 15th Ave	Hillsboro,OR 97124	Jonesfield No.2, Amended. Lot 131	Sterling Savings	11-512851-7	6.400%	1/1/2033	106,011
1007	2022 SE Hemlock Ave	Hillsboro,OR 97124	Hughes Park, Lot 13	Sterling Savings	11-512852-5	6.400%	1/1/2033	99,775
1076	17766 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 22, Acres .12	Washington Federal	97200-996819	7.250%	2/1/2021	50,645
1077	17780 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 23, Acres .12	Washington Mutual	063989997-0	6.375%	5/5/2034	138,672
1085	950 SW 178th Pl	Beaverton, OR 97006	Corona Park, Lot 13, Acres .15	Sterling Savings	11-512853-3	6.400%	1/1/2033	126,278
1091	17799 SW Corona Ln	Beaverton, OR 97006	Corona Park, Lot 19, Acres .16	Sterling Savings	11-512854-1	6.400%	1/1/2033	124,719
1101	17437 SW Hurrell Ln	Beaverton, OR 97006	Pacifica Park No.2, Lot 20, Acres .12	Sterling Savings	11-506129-6	7.250%	12/1/2028	111,004
1102	17459 SW Hurrell Ln	Beaverton, OR 97006	Pacifica Park No.2, Lot 21, Acres .12	Sterling Savings	11-506214-6	7.250%	12/1/2028	111,005
1154	20836 SW Parker Ct	Beaverton, OR 97007	Nicholas Acres, Lot 24, Acres .10	Sterling Savings	11-512855-8	6.400%	1/1/2033	124,583
1182	20658 SW Parker Ct	Beaverton, OR 97007	Nicholas Acres No.2, Lot 30, Acres .11	Sterling Savings	11-512856-6	6.400%	1/1/2033	136,263
1287	313 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-5	Sterling Savings	11-512857-4	6.400%	1/1/2033	97,437
1289	325 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-7	Sterling Savings	11-506127-0	7.250%	12/1/2028	91,024
1302	342 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-20	Sterling Savings	11-512858-2	6.400%	1/1/2033	94,319
1304	330 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-22	Sterling Savings	11-512859-0	6.400%	2/1/2033	92,760
1306	318 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-24	Washington Mutual	063990005-9	6.375%	5/5/2034	99,051
1307	312 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-25	Sterling Savings	11-512860-8	6.400%	2/1/2033	95,098
1308	306 NW Denton St	Dallas, OR 97338	Sunset Ridge B-L-26	Sterling Savings	11-506128-8	7.250%	12/1/2028	93,984
	Totals							1,893,961

4/1/2005

2022 S.E. Hemlock
Hillsboro, Oregon

Lot 13, HUGHES PARK, in the City of Hillsboro, County of Washington, and State of Oregon

17780 S.W. Corona Lane
Aloha, Oregon

Lot 23, CORONA PARK, County of Washington, State of Oregon

20836 S.W. Parker
Aloha, Oregon

Lot 24, NICHOLAS ACRES, in the County of Washington, State of Oregon

20658 S.W. Parker
Aloha, Oregon

Lot 30, NICHOLAS ACRES NO. 2, in the County of Washington, State of Oregon

306 Denton Street, N.W.
Dallas, Oregon

Lot 26, SUNSET RIDGE, in the City of Dallas, County of Polk, State of Oregon

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below.

/S/ RUSS KENDIG

Russ Kendig
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	CHAPTER 7
	CASE NO. 05-65317
MELINDA LOUISE ELKINS,	JUDGE RUSS KENDIG
Debtor.	**ORDER RE: ORDER GRANTING MOTION FOR ORDER COMPELLING CITY OF BARBERTON TO PRODUCE DOCUMENTS FOR IN CAMERA INSPECTION**
IN RE:	CHAPTER 7
	CASE NO. 05-69543
CLARENCE ARNOLD ELKINS, II,	JUDGE RUSS KENDIG
Debtor.	**ORDER RE: ORDER GRANTING MOTION FOR ORDER COMPELLING CITY OF BARBERTON TO PRODUCE DOCUMENTS FOR IN CAMERA INSPECTION**

On May 17, 2012, the court entered an order granting the United States' motion for order compelling the City of Barberton to produce documents and ordered that the City of Barberton produce all documents claimed as privileged within thirty (30) days from the date of the order for an in camera inspection. The May 17, 2012 order provided that the City of Barberton produce all documents in paper form. Due to the volume of documents claimed as privileged, the City of Barberton requests to submit the documents in electronic form. Parties shall have seven (7) days from the date of this order to file an objection, if any, to the court's in camera review electronically.

It is so ordered.

# # #

Service List:

Alan Shapiro
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Washington, D.C. 20044

John N. Childs
Justin M. Alaburda
Brennan, Manna & and Diamond
75 East Market Street
Akron, OH 44308

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAMILY TRUST OF MASSACHUSETTS, INC.,	)	
Plaintiff,	)	
v.	)	Civil Action No. 11-680 (RBW)
UNITED STATES	)	
Defendant.	)	

ORDER

This case arises from a claim brought under the Internal Revenue Code, 28 U.S.C. § 7428(a)(2) (2006), which allows a party to request declaratory relief from a United States District Court if the Internal Revenue Service ("IRS") fails to make a determination on its request for tax-exempt status within 270 days, Complaint ("Compl.") at 1, and is currently before the Court on the defendant's Motion to Supplement Agreed Administrative Record ("Def.'s Mot."). The plaintiff, Family Trust of Massachusetts, Inc. ("FTM"), filed an application with the IRS for tax-exempt status on November 17, 2005. Administrative Record ("A. R.") at 1. The IRS had not made a determination on the plaintiff's tax-exempt status when the plaintiff initiated this action on April 6, 2011, more than five years (and thus more than 270 days) after its application for exemption. Compl. at 1. For the reasons explained below, the Court will grant the defendant's motion. [1]

[1] In addition to the previously cited materials, in rendering its decision, the Court considered the plaintiff's Memorandum in Opposition of the defendant's Motion to Supplement Agreed Administrative Record ("Pl.'s Opp'n"), the parties' stipulation, and the parties' Notice of Filing of Agreed Administrative Record, along with their supporting exhibits.

I. BACKGROUND

A. The Parties' Stipulation

The parties have agreed that certain documents comprise the administrative record and they have filed a joint stipulation to that effect. See Stipulation Regarding Administrative Record ("Stipulation"). They also agree that Tax Court Rule 210(b)(12) provides the applicable definition of what must be included in the administrative record, see Def.'s Mot. ¶ 3; Pl.'s Opp'n ¶ 2, a conclusion that is supported by this Court's precedent, see Airlie Foundation v. United States, 826 F. Supp. 537, 547 (D.D.C. 1993) (noting that in cases brought pursuant to § 7428, this Court reviews the administrative record as it is defined in the tax court rules). Rule 210(b)(12) states that the administrative record

> includes, where applicable, the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service and the applicant in respect of the request for determination of such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner.

B. The Parties' Disagreements and Arguments

The parties disagree about whether the FTM's 2003 and 2009 tax returns comprise part of the administrative record under Rule 210(b)(12). Def.'s Mot. ¶¶ 4-8; Pl.'s Opp'n ¶¶ 4-9. The government argues that Rule 210(b)(12)'s definition of what constitutes the administrative record includes all of the FTM's filed tax returns, which are "'pertinent' simply as a matter of completeness." Def.'s Mot. ¶ 4.

> Because Tax Court Rule 210 references both "all documents submitted to the Internal Revenue Service by the applicant" and "all pertinent returns filed with the Internal Revenue Service" in the disjunctive, a tax return filed by the taxpayer is part of the Administrative Record even if not submitted as part of the administrative process.

Def.'s Mot. ¶ 3 n.1 (emphasis in original). Moreover, the defendant states that it explicitly requested the 2009 tax return from the plaintiff when it asked the plaintiff to submit "copies of returns 'filed' for 2007 'to the present'" for inclusion in the administrative record on August 18, 2010. Id. ¶ 5; id., Exhibit ("Ex.") C. The defendant states that the plaintiff never specifically objected to providing the 2009 return once it was filed, see id., Ex. D, and classifies the plaintiff's failure to provide the return as an attempt to "circumscribe the [a]dministrative [r]ecord," id. ¶ 6.

The plaintiff contends that Rule 210(b)(12) does not make all tax returns filed with the IRS part of the administrative record, arguing that

> [Rule 210] is descriptive and limiting, stating that the administrative record 'includes, where applicable' the items listed. . . . [B]y using the qualifying phrase "where applicable," the definition recognizes that the contents of the record are established at the administrative level. Consequently, if a tax return filed with the IRS . . . is actually considered during the administrative process, whether at the insistence of the taxpayer or the IRS, it will be a part of the administrative record. Otherwise, it will not.

Pl.'s Opp'n ¶ 4. The plaintiff further argues that the defendant never explicitly requested the 2009 tax return on August 18, 2010. Id. ¶ 8. Because it had not yet filed the 2009 tax return by that date, the plaintiff contends that the defendant's request for "filed" returns did not encompass that return. Id. Although the due date for filing the 2009 return was May 15, 2010, the plaintiff properly filed for an extension, which extended the due date to November 15, 2010. Id. ¶ 8 n.4. Furthermore, the plaintiff argues that it never promised to provide a copy of the 2009 return after that return had been filed and that it was not otherwise obligated to do so. Id. The government did not issue a new request for the 2009 tax return after receiving the plaintiff's response to the August 18 request, which explained that the return was not being provided because it had not yet been filed. Id. Thus, the plaintiff argues that the defendant "never actually requested" the 2009

return, and the defendant's suggestion that not providing it was an attempt to "'circumscribe' the record . . . is . . . entirely unwarranted." Id.

These disagreements resulted in the defendant filing its motion to supplement the administrative record because, as filed on September 21, 2011, and in accordance with the parties' stipulation, the administrative record is currently composed of only the documents which both parties agree constitute the record under Rule 210(b)(12). See Notice of Filing of Agreed Administrative Record at 1 (noting that the parties diverged on whether the plaintiff's 2003 and 2009 tax returns were part of the administrative record and that the defendant would be filing the motion now before the Court in order to add those documents to the administrative record).

II. STANDARD OF REVIEW

Tax Court Rule 217(a) provides:

> Disposition of an action for declaratory judgment which involves the initial qualification of a retirement plan or the initial qualification or classification of an exempt organization, a private foundation, or a private operating foundation will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(12). Only with the permission of the Court, upon good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined.

Tax Ct. R. 217(a) (emphasis added). Because the administrative record is comprised of "only those documents that were before the administrative decisionmaker[,]. . . [a] court should consider neither more nor less than what was before the agency at the time it made its decision." Marcum v. Salazar, 751 F. Supp. 2d 74, 78 (D.D.C. 2010) (citing Citizens to Preserve Overton Park, 401 U.S. 402 (1971) and IMS, P.C. v. Alvarez, 129 F.3d 618, 623 (D.C. Cir. 1997)). When a party seeks to supplement the record, it is usually seeking to add documents to the administrative record that actually were before the agency because those documents are not included in the record that has been filed with the court. See, e.g., Natural Res. Def. Council v.

Train, 519 F.2d 287, 291 (D.C. Cir. 1975). In such cases, documents may be added to the administrative record if the party seeking to add them can show "reasonable, non-speculative grounds for its belief that the documents were considered by the agency and not included in the record." Pac. Shores Subdivision Cal. Water Dist. v. U.S. Army Corps of Eng'rs, 448 F. Supp. 2d 1, 6 (D.D.C. 2006). Sometimes, however, a party may seek to add documents that the agency did not necessarily rely upon. See, e.g., Calloway v. Harvey, 590 F. Supp. 2d 29, 38 (D.D.C. 2008). Courts may consider such extra-record documents only when such evidence is necessary for effective judicial review. See Esch v. Yeutter, 876 F.2d 976, 991 (D.C. Cir. 1989). In Esch, the District of Columbia Circuit stated that extra-record evidence was reviewable if it fell within one of eight exceptions.[2] Since then, the Circuit appears to have narrowed these exceptions to four: (1) when the agency failed to examine all relevant factors; (2) when the agency failed to explain adequately its grounds for decision; (3) when the agency acted in bad faith; or (4) when the agency engaged in improper behavior. See IMS, P.C., 129 F.3d at 624; see also Cape Hatteras Access Pres. Alliance v. U.S. Dep't. of Interior, 667 F. Supp. 2d 111, 116 (D.D.C. 2009) (noting the Circuit's narrowing of the Esch exceptions in its IMS decision). Because there is a "strong presumption of regularity" that the agency correctly determined which records it

[2] Specifically, the Circuit stated that consideration of extra-record evidence may be warranted in the following circumstances:

> (1) when agency action is not adequately explained in the record before the court; (2) when the agency failed to consider factors which are relevant to its final decision; (3) when an agency considered evidence which it failed to include in the record; (4) when a case is so complex that a court needs more evidence to enable it to understand the issues clearly; (5) in cases where evidence arising after the agency action shows whether the decision was correct or not; (6) in cases where agencies are sued for a failure to take action; (7) in cases arising under the National Environmental Policy Act; and (8) in cases where relief is at issue, especially at the preliminary injunction stage.

Esch, 876 F.2d at 991.

relied upon in making its decision, courts rarely grant plaintiffs' requests to supplement the record or to have the court consider extra-record evidence. Marcum, 751 F.2d at 78-79.

III. ANALYSIS

The defendant's motion is unusual because motions to supplement the record are typically made by plaintiffs who are suing a government agency, not by an agency itself. As previously noted, when a government agency compiles the administrative record, it is presumed to have included within it only the documents it relied upon during its decision-making process. According to Tax Court Rule 217(b), which applies to dispositions of actions for declaratory judgment, the parties are to "file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness." Tax Ct. R. 217(b). The rule further provides that "[i]f . . . the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner [of the IRS] shall file with the Court the entire administrative record, as defined in Rule 210(b)(12), appropriately certified as to its genuineness." Id.

It appears that the parties, in an effort to comply with Rule 217(b), stipulated to the administrative record that is currently before the Court. See Stipulation at 1; Notice of Filing of Agreed Administrative Record at 1. However, it also appears that, under Rule 217(b), the defendant could have filed its own version of the administrative record if the parties had not been able to reach such an agreement after 30 days. Had the defendant done so, there would have been no need to file the motion to supplement the record now before the Court and the administrative record would presumably have been designated to include the 2003 and 2009 tax returns. In that circumstance, the plaintiff would then have to argue that the agency did not, in

fact, rely on the tax returns and in so doing, it would have "[t]o overcome the strong presumption of regularity to which the agency is entitled" when it compiles the administrative record. See Marcum, 751 F. Supp. 2d at 78. The defendant's decision to proceed the way it did is thus puzzling.

Nevertheless, the Court will begin its analysis by examining whether the government has met the good cause requirement of Rule 217(a) and whether it is appropriate to grant the motion under the respective standards for supplemental or extra-record evidence and Rule 210(b)(12). The Court will proceed with its analysis mindful of the due deference necessarily afforded to the agency.

In determining whether the 2003 and 2009 tax returns should be included in the record, the Court must first resolve the parties' dispute over whether Rule 210(b)(12) encompasses tax returns which were not filed with the IRS at the time the plaintiff submitted its request for determination (i.e., that were not filed by the taxpayer as part of the administrative process). With what seems to be the absence of any case law interpreting Rule 210(b)(12),[3] the Court is guided solely by the text of the rule itself.[4] Under the plaintiff's interpretation, filed tax returns would only seem to be "pertinent" if they were submitted in connection with the request for determination. Pl.'s Mem. ¶ 2. This would, however, essentially render the phrase "all pertinent returns filed with the Internal Revenue Service" meaningless. Under the defendant's

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[3] Airlie Foundation, Inc. v. United States, 826 F. Supp. 537 (D.D.C. 1993), which both sides cite, provides no assistance. Airlie involved a motion for summary judgment, not a motion to supplement the record. Id. at 553. Furthermore, it involved the revocation of tax-exempt status, not the failure to make a determination on tax-exempt status. Id. at 539. Finally, the Airlie court only mentioned Rule 210(b)(12) when concluding that it must rely on the administrative record in reviewing the agency's action. Id. at 547.

[4] As noted previously, Tax Court Rule 210(b)(12) reads: "'Administrative record' includes, where applicable, the request for determination, all documents submitted to the [IRS] by the applicant in respect of the request for determination, all protests and related papers submitted to the [IRS], all written correspondence between the [IRS] and the applicant in respect of the request for determination of such protests, all pertinent returns filed with the [IRS], and the notice of determination by the Commissioner."

interpretation of Rule 210(b)(12), because the rule "references both 'all documents submitted to the [IRS] by the applicant' and 'all pertinent returns filed with the [IRS] in the disjunctive, a tax return filed by the taxpayer is part of the Administrative Record even if not submitted as part of the administrative process." Def.'s Mot. ¶ 3 n.1. The defendant's interpretation of Rule 210(b)(12) affords meaning to all of its clauses, while the plaintiff's interpretation does not. In light of the well-established canon of statutory construction that "every clause and word of a statute should, if possible, be given effect," see Chickasaw Nation v. United States, 534 U.S. 84 (2001) (internal quotations and citations omitted), the defendant's interpretation of the rule is compelling. The 2003 and 2009 tax returns are thus part of the administrative record under Rule 210(b)(12) if they are pertinent, regardless of whether the plaintiff submitted them as part of the administrative process (and regardless of whether the defendant asked for them during the administrative process).

Having decided that that Rule 210(b)(12) encompasses all pertinent tax returns, even those not submitted as part of the administrative process, the Court must now determine whether the 2003 and 2009 tax returns were pertinent under Rule 210(b)(12). The defendant contends that the returns were pertinent to its determination—or lack thereof—of the plaintiff's tax-exempt status. Def.'s Mot. ¶¶ 4-7.

The Court finds this claim convincing as it pertains to the 2003 tax return. FTM's application for tax-exempt status, filed in 2005, includes a section asking for any past and estimated future financial data. A.R. at 9. FTM included data from tax year 2003 on this form, although this data is limited and essentially shows no financial activity. Id. Therefore, it would be reasonable to conclude that FTM's 2003 tax return—on which FTM must have presumably

relied, at least in part, for this data—was pertinent to the IRS' consideration of FTM's tax-exempt status.

The Court also finds that the 2009 return was pertinent to the agency's decision not to act on the plaintiff's request for tax-exempt status. Although the 270-day period set forth in § 7428(b)(2) of the Internal Revenue Code has elapsed, an agency is not precluded from acting simply because it has failed to act within a statutory deadline. Accordingly, because the IRS could still take action on the plaintiff's request for determination, the possibility of pertinent returns arising before the resolution of this litigation (i.e., from the passing of the statutory 270-day deadline, to the filing of the Complaint in this case, to the Court's ultimate resolution of the issues presented in the parties' pending cross-motions for summary judgment) is not foreclosed. Because FTM's 2009 tax return was filed in November 11, 2010, nearly four months before the Complaint was filed, it is pertinent under Rule 210(b)(12), and thus, should be part of the administrative record.

Because the Court has determined that the records the defendant seeks to add to the administrative record were pertinent, it is not necessary to analyze the parties' arguments in regard to extra-record evidence, which apply only to records that the agency did not rely upon and that were not pertinent to its decision.

In light of the deference that the Court must show to agencies regarding the designation of the administrative record and the Court's determination that the 2003 and 2009 tax returns were pertinent under Rule 210(b)(12), the defendant's motion to supplement the record will be granted.

Accordingly, the defendant's motion is **GRANTED** and the plaintiff's 2003 and 2009 tax returns will be added to the administrative record.

SO ORDERED this 7th day of June, 2012.

REGGIE B. WALTON
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES,

Plaintiff,

v. **No. 12-cv-0113 SMV/LAM**

SAMUEL E. FIELDS, JOHNETTE FIELDS, and N.M. DEP'T OF TAXATION & REVENUE,

Defendants.

ORDER QUASHING ORDER TO SHOW CAUSE

THIS MATTER is before the Court on its Order to Show Cause [Doc. 6], issued on May 23, 2012. The order required United States to show cause by June 6, 2012, why its case should not be dismissed. In its response, the government explained that it had not moved forward because Defendant Samuel E. Fields expressed his intention to hire counsel on behalf of himself and Defendant Johnette Fields. United States' Response to Order to Show Cause [Doc. 10] at 1–2. The government also reiterated the steps that it has taken since the issuance of the order to prosecute its claim, to wit, attempting to perfect service on Defendant Johnette Fields and moving for default against Defendant Samuel E. Fields. *Id.* The Court is satisfied that the United States is prosecuting its claim. Accordingly, the Order to Show Cause will be QUASHED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Order to Show Cause [Doc. 6] is **QUASHED**.

IT IS SO ORDERED.

STEPHAN M. VIDMAR
United States Magistrate Judge

In the United States Court of Federal Claims

No. 10-381T
(Filed June 6, 2012)
NOT FOR PUBLICATION

* *

LUCY HAMRICK POWELL and JAMES CLEMENT POWELL,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

* *

ORDER

Pending before the Court is defendant's motion to dismiss the complaint in part. The government contends that only a portion of the plaintiffs' claim for an income tax refund for 2004 is within our jurisdiction, based on the "look-back" period of 26 U.S.C. § 6511(b)(2)(B) and the Internal Revenue Service's Certificate of Assessments, Payments and Other Specified Matters (Form 4340) for that tax year. *See* Mot. to Dismiss at 2-3, 5-7 & Ex. 2. The government argues that the Form 4340 shows that only $356.28 was credited toward the satisfaction of the plaintiffs' 2004 taxes within two years of the filing of their refund claim. *Id.* at 7 & Ex. 2 at 3.

The plaintiffs, Lucy H. and James C. Powell, appearing *pro se*, have submitted a document from the Internal Revenue Service ("IRS") dated July 5, 2006 --- less than two years and two months prior to the filing of their refund --- which indicated that they owed $22,223.71 in taxes, penalty and interest for tax year 2004 as of that date (including $17,303.47 in taxes). *See* Sched. 8 to Pls.' Opp'n. The Powells have also submitted a copy of a letter they sent to the IRS, dated September 17, 2006 --- less than two years prior to the filing of the 2004 refund claim --- in which they requested that $10,071.68 in overpayments for tax year 2003 be applied to their 2004 taxes, Sched. 9 to *id.*; and they rely on a copy of their cancelled check for $12,567.00, dated October 28, 2006, sent to the IRS purportedly to pay the balance of their 2004 taxes. *See* Attach. 3 to Compl.; Sched. 10 to Pls.' Opp'n.

According to the Form 4340, other than the two items totaling $356.28, there was only one payment or credit toward the Powells' 2004 taxes entered after the July 5, 2006 date of the

notice from the IRS (which indicated a balance of $22,223.71, *see* Sched. 8 to Pls.' Opp'n); this was a $10,000 entry for an "overpaid credit applied" on July 6, 2006, and attributable to the 2003 tax year. Def.'s Mot., Ex. 2 at 3. If, as the government argues, only $356.28 of the check for $12,567 was needed to pay off the balance of 2004 taxes, penalties, and interest, then nearly $12,000 of the balance disappeared between July 5 and November 6, 2006. According to defendant, this is the result of overpayment credits for the 2003 tax year, "significantly greater than $10,071," Def.'s Reply at 8 n.4, that were used to satisfy the 2004 taxes and were essentially backdated in the 2004 Form 4340 to the dates the payments were originally made. *See* Tr. (Mar. 24, 2011) at 42-46.

Although there are precedents from our court treating the section 6511(b)(2) "look-back" periods as jurisdictional, *see Musangayi v. United States*, 86 Fed. Cl. 121, 124-25 (2009); *Thomas v. United States*, 56 Fed. Cl. 112, 118-19 (2003), those cases, like this one, were litigated *pro se* and the jurisdictional nature of the provision may not have been questioned.[1] Since the provision of the tax code which makes section 6511 relevant to our court's jurisdiction requires only "a claim for refund or credit [that] has been duly filed with the Secretary," 26 U.S.C. § 7422(a), this seems to implicate only the limitation periods for filing a claim, and not the "look-back" periods. *See* 26 U.S.C. §§ 6511(a), (b)(1).[2] But in any event, in consulting section 7422 the Court's attention was drawn to a provision which was not mentioned by the government, but which, on its face, appears to bear on the question at hand. Section 7422(d) reads:

> **Credit treated as payment.** —The credit of an overpayment of any tax in satisfaction of any tax liability shall, for purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability *at the time such credit is allowed.*

26 U.S.C. § 7422(d) (emphasis added).

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[1] The tax code provision which limits refunds determined by the United States Tax Court to those that would be allowable under the section 6511 "look-back" periods has, however, been found to be jurisdictional by the Supreme Court. *See Comm'r of Internal Revenue v. Lundy*, 516 U.S. 235, 237 (1996) (concerning 26 U.S.C. § 6512(b)(3)(B)).

[2] The "look-back" periods are not limitations concerning the *filing* of refund claims, but rather limit the amount of allowed refunds. *See* 26 U.S.C. § 6511(b)(2). Thus, the Supreme Court has characterized them as "impos[ing] a ceiling on the amount of credit or refund to which a taxpayer is entitled as compensation for an overpayment of tax," *Baral v. United States*, 528 U.S. 431, 432 (2000), and called them "substantive limitations" as opposed to "procedural" ones. *United States v. Brockamp*, 519 U.S. 347, 351-52 (1997). A failure to conform a claim to these limitations would seem to more naturally be considered a failure to state a claim upon which relief can be granted rather than a want of jurisdiction. *See Fisher v. Unitd States*, 402 F.3d 1167, 1175-76 (Fed. Cir. 2005).

This provision seems to indicate that the important dates, for purposes of applying the section 6511(b)(2)(B) "look-back" period, are not when the 2003 tax payments were received, but rather when the overpayment credits were transferred to cover 2004 taxes. These dates are not indicated on the Form 4340. *See* Def.'s Mot., Ex. 2. Thus, the document relied upon by the government does not seem to support a challenge to the jurisdictional facts (if, indeed, they are of that nature) regarding plaintiffs' payment of 2004 taxes. But since section 7422(d) was not addressed by the parties, the Court will allow defendant the opportunity to address its applicability. Defendant may file a supplemental brief addressing the relevance of 26 U.S.C. § 7422(d) to its pending motion, on or by **June 20, 2012**. Plaintiffs may file a supplemental brief responding to the government's paper, on or by **July 3, 2012**.

IT IS SO ORDERED.

VICTOR J. WOLSKI
Judge

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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **MARY CAROL S. JOHNSON; JAMES W. SMITH; MARIAN S. BARNWELL; BILLIE ANN S. DEVINE; and EVE H. SMITH,** **Defendants.**	**ORDER EXTENDING DEADLINE FOR DEFENDANTS TO ANSWER PLAINTIFF'S COMPLAINT** **Case No. 2:11-CV-00087 CW**

Pursuant to Rule 6(b)(1)(A) of the Federal Rules of Civil Procedure, the Stipulated Motion for Extension of Time For Defendants to Answer Plaintiff's Complaint and good cause appearing therefore,

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\\

IT IS HEREBY ORDERED that Defendants' deadline to answer to Plaintiff's complaint is extended to June 13, 2012.

DATED this 7th day of June, 2012.

BY THE COURT

CLARK WADDOUPS
United States District Court Judge

4811-3116-2633, v. 1

ORDERED in the Southern District of Florida on JUN -6 2012

Erik P. Kimball, Judge
United States Bankruptcy Court

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

IN RE: KANE & KANE, A PARTNERSHIP, Debtor.	)	Bk. No. 09-15556-EPK Chapter 7
MICHAEL R. BAKST, Plaintiff, v. UNITED STATES OF AMERICA, CHARLES J. KANE, and HARLEY N. KANE Defendants.	)	Adversary No. 10-01022-EPK

ORDER GRANTING AGREED MOTION TO CONTINUE PRETRIAL CONFERENCE

THIS MATTER came before the Court in West Palm Beach, Florida, pursuant to the

Agreed Motion to Continue Pretrial Conference (DE # 289), the Court having considered the motion, and being otherwise fully advised in the premises, it is

ORDERED as follows:

1. The motion is **GRANTED.**

2. The pretrial conference scheduled for June 14, 2012 at 1:30 p.m is hereby CONTINUED to August 9th at 9:30am at the United States Bankruptcy Court, The Flagler Waterview Building, 1515 North Flagler Drive, 8th Floor, Courtroom B, West Palm Beach, Florida 33401. This Court's Order Setting Filing and Disclosure Requirements for Pretrial and Trial shall remain in full force and effect, and all deadlines set in such order shall be calculated based on the continued pretrial conference, except that no deadline to file a motion to dismiss or motion for summary judgment shall be extended by this order.

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Submitted by:

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Movant/Attorney for the Movant is directed to mail an conformed copy of this order to all interested parties and to file a certificate of service with the clerk of the Bankruptcy Court:

Via Electronic Mail to:

- Michael R. Bakst efileu1094@gmlaw.com, efileu1092@gmlaw.com; FL65@ecfcbis.com; efileu1093@gmalw.com
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	CIVIL ACTION H-10-2812
ROBERT S. MACINTYRE, Individually, and as Temporary Administrator of the Estate of James Howard Marshall II, *et al*.,	§	
	§	
	§	
	§	
Defendants.	§	

ORDER

Pending before the court is the United States' motion for partial summary judgment against Elaine T. Marshall for donee liability (Dkt. 61); Elaine T. Marshall's cross-motion for partial summary judgment and to seal (Dkt. 71); and Elaine T. Marshall's motion for partial summary judgment as to count XIII and motion to seal (Dkt. 92). Upon consideration of the motions, responses, replies, sur-replies, and the applicable law, the United States' motion for summary judgment against Elaine T. Marshall (Dkt. 61) is GRANTED IN PART and DENIED IN PART AS MOOT[1] and Elaine T. Marshall's cross-motion for summary judgment and to seal (Dkt. 71) is DENIED. Elaine T. Marshall's motion for partial summary judgment on count XIII (Dkt. 92) is DENIED AS MOOT (*See* Dkt. 100) and motion to seal (Dkt. 92) is DENIED.

BACKGROUND

In 1995, J. Howard Marshall II ("JHM") made indirect gifts to E. Pierce Marshall, Elaine T. Marshall, the E. Pierce Marshall Jr. Trust, and the Preston Marshall Trust (collectively the "EPM

[1] Some issues in the motion for summary judgment were eliminated as part of a stipulation filed by the parties. Dkt. 78. With regard to those issues, the United States' motion is DENIED AS MOOT. As to all other issues, the motion is GRANTED.

DOnees") when JHM sold his stock in Marshall Petroleum, Inc. back to the company below market value, thereby increasing the value of the stock of the remaining stockholders, among whom were the EPM Donees. The IRS assessed gift tax against JHM's Estate, which JHM's Estate challenged in United States Tax Court. The parties reached an agreement, resolving the dispute over the gift tax liability of the JHM Estate for the 1995 gift to the EPM Donees. The JHM Estate did not pay its gift tax liability on these gifts.

In 2008, the IRS assessed the gift tax liability against the EPM Donees. At this time, the EPM Donees have made payments to the IRS—assuming the court's math is correct—equaling the amount of the value of the gift received by each donee. However, they have paid none of the interest assessed on the personal liability for late payment. The government now moves the court for summary judgment on the scope of the donee liability of the EPM Donees. The EPM Donees have cross-moved on the same issue.

SUMMARY JUDGMENT STANDARD

Summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(a); *see also Carrizales v. State Farm Lloyds*, 518 F.3d 343, 345 (5th Cir. 2008). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; there must be an absence of any genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S. Ct. 2505 (1986). An issue is "material" if its resolution could affect the outcome of the action. *Burrell v. Dr. Pepper/Seven Up Bottling Grp., Inc.*, 482 F.3d 408, 411 (5th Cir. 2007). "[A]nd a fact is genuinely in dispute only if a reasonable jury could return a verdict for the non-moving party." *Fordoche, Inc. v. Texaco, Inc.*, 463 F.3d 388, 392 (5th Cir. 2006).

The moving party bears the initial burden of informing the court of all evidence demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986). Only when the moving party has discharged this initial burden does the burden shift to the non-moving party to demonstrate that there is a genuine issue of material fact. *Id.* at 322. If the moving party fails to meet this burden, then it is not entitled to a summary judgment, and no defense to the motion is required. *Id* . "For any matter on which the non-movant would bear the burden of proof at trial . . . , the movant may merely point to the absence of evidence and thereby shift to the non-movant the burden of demonstrating by competent summary judgment proof that there is an issue of material fact warranting trial." *Transamerica Ins. Co. v. Avenell* , 66 F.3d 715, 718–19 (5th Cir. 1995); *see also Celotex*, 477 U.S. at 323–25. To prevent summary judgment, "the non-moving party must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348 (1986) (quoting former FED. R. CIV. P. 56(e)).

When considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-movant and draw all justifiable inferences in favor of the non-movant. *Envl. Conservation Org. v. City of Dallas, Tex.*, 529 F.3d 519, 524 (5th Cir. 2008). The court must review all of the evidence in the record, but make no credibility determinations or weigh any evidence; disregard all evidence favorable to the moving party that the jury is not required to believe; and give credence to the evidence favoring the non-moving party as well as to the evidence supporting the moving party that is uncontradicted and unimpeached. *Moore v. Willis Ind. Sch. Dist.*, 233 F.3d 871, 874 (5th Cir. 2000). However, the non-movant cannot avoid summary judgment simply by presenting "conclusory allegations and denials, speculation, improbable inferences, unsubstantiated assertions, and legalistic argumentation." *TIG Ins. Co. v. Sedgwick James of Wash.*,

276 F.3d 754, 759 (5th Cir. 2002); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). By the same token, the moving party will not meet its burden of proof based on conclusory "bald assertions of ultimate facts." *Gossett v. Du-Ra-Kel Corp.*, 569 F.2d 869, 872 (5th Cir. 1978); *see also Galindo v. Precision Am. Corp.*, 754 F.2d 1212, 1221 (5th Cir. 1985).

ANALYSIS

A. United States and Elaine T. Marshall's Cross-Motions for Summary Judgement

1. Interest on Donee Liability

Section 6324(b) governs liens for gift taxes. It reads in relevant part

> [U]nless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift.

26 U.S.C. § 6324(b). In this case, JHM's estate failed to pay the gift taxes assessed on the 1995 gifts to the EPM Donees.

The parties do not dispute that § 6324(b) operates to impose liability on the donee for the unpaid gift taxes and resulting interest attributable to the donor—at least up to the amount of each individual gift. Nor do they argue the fact of the gifts, the amounts of the gifts, or the amount of the interest accrued by JHM on the gifts.[2] Where the parties part ways is on the issue of the government's ability to charge interest pursuant to §§ 6601 and 6621[3] on the unpaid donee liability created by § 6324(b). The government perceives the obligations of the donor and donee as two

[2] The parties do not dispute, that pursuant to 26 U.S.C. § 6601(e) the "tax" transferred by § 6324 includes interest. § 6601(e)(1) ("Any reference in this title . . . to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.").

[3] These section together operate to impose and set the rates for interest on underpayments.

distinct liabilities and argues that only the obligation of the donor is capped. The EPM Donees argue that the plain language of § 6324(b) caps *all* donee liability and that the government's second obligation—the separate donee liability—is not supported by a plain language reading of the Tax Code. The Fifth Circuit has not spoken to this issue. And, the few circuits that have addressed it have taken opposing positions.

The government contends that it may charge interest on the amounts owed by the EPM Donees in excess of the amount of the gifts received and urges the court to follow the reasoning of the Eleventh Circuit in *Baptiste v. Commissioner* 29 F.3d 1533 (11th Cir. 1994). In *Baptiste*, the Eleventh Circuit held that § 6324(a)(2)[4] imposes an independent liability on the donee separate from the tax liability of the donor and not subject to limitations imposed on the donor's transferred liability. Thus, the court determined that § 6601 applied to impose interest on the donee's independent obligation.

In *Baptiste*, the transferee inherited one third of a $150,000 life insurance policy. *Id* at 1535. The estate challenged in tax court the amount of the tax deficiency assessed by the IRS on the transfer. *Id.* Later, the estate entered into a stipulation with the government that the deficiency was $62,378.48 and the tax court entered judgment for that amount. *Id.* at 1536. When the estate failed to pay the estate taxes, the IRS assessed the deficiency against Baptiste as transferee. *Id.* The IRS

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[4]The Eleventh Circuit examined § 6324(a), which addresses estate tax, not gift tax. However, gift tax and estate tax provisions are *in pari materia* and must be construed together. *United States v. Davenport*, 484 F.3d 321, 328 n.11 (5th Cir. 2007). Section 6324(a)(2) reads in relevant part

> Liability of transferees and others.--If the estate tax imposed by chapter 11 is not paid when due, then the . . . transferee. . . who receives, or has on the date of the decedent's death, property included in the gross estate . . . to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

26 U.S.C. § 6324(a)(2).

assessed the transferee liability at $50,000—the amount of Baptiste's inheritance. *Id.* Additionally, the IRS charged interest on the unpaid transferee liability. *Id.*

In holding that the government could charge interest on the personal liability created by § 6324(a), the Eleventh Circuit examined the nature of the obligation at issue. *Id.* at 1541. It found that transferee liability essentially involved two separate obligations. The first obligation was the obligation of the transferor—the estate. That obligation was a tax obligation imposed on the estate by chapter 11 of the tax code, collected as a tax by the government, and subject to interest like any other tax. The amount of that obligation when it shifted to the transferee was governed by § 6324(a) and, thus, limited to the amount of the transferred property. Therefore, under the facts of *Baptiste*, at the moment the obligation shifted to the transferee, the deficiency, including any interest assessed on that deficiency, could not exceed $50,000—the value of the property Baptiste received.

The second obligation was the obligation of the transferee. The Eleventh Circuit held that this second obligation was a personal liability of the general sort imposed by federal law. *Id.* The court arrived at this conclusion for two main reasons. First, the language of § 6324 does not create a tax on the transferee but instead requires the transferee to satisfy the tax liability of the transferor. *Id.* And second, the court pointed to the fact that unlike collecting a tax liability, to collect these personal liabilities the government must use the separate mechanism provided by§ 6901(a). The court reasoned that if the transferee liability was a tax liability, § 6901(a) would be rendered superfluous—"a statutory construction that is both disfavored and unlikely." *Id.*

Next the court examined whether the Code imposed any interest on the liability and whether the limitation outlined in § 6324 applied to the interest—if any—on the liability. Looking again to the language of § 6901(a), the court stated that the section specified the liability would be "subject to the same provisions and limitations" as the underlying tax from which the liability arose. *Id.* at

1542. (quoting 26 U.S.C. § 6901(a)). And, the court noted that charging interest on the personal liability would comport with "the traditional rule that one who possesses funds of the government must pay interest for the period that person enjoys the benefit of same." *Id.* Having determined that the transferee's personal liability was subject to interest pursuant to § 6901, the court then moved to the question of whether the limitation in § 6324(a) applied to cap the amount of interest on the personal liability to the value of the property transferred and concluded that it did not. *Id.* Although the court did not directly, separately analyze the question of the cap, it concluded that since § 6601 was applied to the personal liability through § 6901, and § 6901 imposed no limit on the amount of interest, Congress did not intend to limit the interest on the transferee's personal liability. *Id.* The court noted that limiting the interest to the value received would "create a system which encourages transferees to retain assets of the estate, at the expense of the government, for as long as possible with no adverse consequences." *Id.* at 1542 n. 9. Last, the court held that Baptiste was liable to the government beginning the day the estate tax was due and not paid by the estate, and Baptiste was in possession of the transferred assets.[5] Therefore, the court affirmed the district court's grant of summary judgment for the government, which imposed interest on Baptiste's personal liability from the date the estate tax was due and unpaid.

The government argues that the Eleventh Circuit's construction of the Code regarding a transferee's interest on his personal obligation under § 6324 comports best with the Code taken as a whole. Additionally, the government points to the language of § 6901 which states that the government may collect the personal liability *in the same manner* as a tax, rather than merely stating that the transferor's tax liability becomes the transferee's tax liability. Therefore, the government

[5] *See* 26 U.S.C. §§ 6601(a); 6601(b)(5) (combining to make the date on which the interest begins to run, the date the tax is due and unpaid); § 6324(a)(2) (specifying that a transferee who *receives* property is liable).

urges this court to adopt the Eleventh Circuit's approach and allow interest to be applied to the EPM Donees' personal liabilities.

The EPM Donees disagree with the Eleventh Circuit's decision in *Baptiste.* First, they argue that the court ran afoul of a basic principle of construction for tax statutes when it improperly construed the tax statute to create liability by implication. Second, they contend that the court should not have looked to the legislative history to construe the tax statute without first finding that the statute was ambiguous. Third, the EPM Donees argue that the statute is plain on its face and the court's holding that donee liability is a nontax personal liability runs counter to the clear language in the statute. Moreover, they urge that even if the statute was ambiguous, all ambiguity should be resolved against the taxing entity.

Fourth, they argue that the Eleventh Circuit's reliance on § 6901(a) is misplaced, because they argue that the government can collect donee liability under § 6324 without using § 6901(a)—as they have done in this case. Additionally, § 6901 may not be used to increase the donee's liability because it does not create substantive liability, but rather provides an alternate procedure for collection. Last, the EPM Donees argue that the government's use of the word taxpayer at various junctions illustrates the fact that "no one really thinks donee liability is 'nontax' in any meaningful way." Dkt. 71 at 17.

Instead, the EPM Donees urge the court to adopt the Third Circuit's reasoning in *Poinier v. Commissioner*, 858 F.2d 917 (3rd Cir. 1988).[6] In *Poinier*, the transferees challenged the tax court's decision that the government could charge interest on the donees' liability created by § 6324(b). The Third Circuit agreed and reversed the tax court's decision. The main reason for the reversal was that

[6] The court notes that the Eighth Circuit in *Baptiste v. Commissioner*, 29 F.3d 433 (8th Cir. 1994) has adopted the Third Circuit's reasoning in *Poinier*. However, since it did so without expanding on *Poinier*, the court does not discuss it here.

the court could "point to no specific code provision imposing such an independent liability on a transferee." *Id.* at 920. The court explained that § 6901 could not be an independent basis for the liability because it "'neither creates nor defines a substantive liability but provides merely a new procedure by which the Government may collect taxes.'" *Id.* (quoting *Comm'r v. Stern*, 357 U.S. 39, 42, 78 S. Ct. 1047 (1958)). Also, the court pointed out that § 6601(f)(2) of the 1970 version of the Tax Code specifically prohibited imposing interest on interest. *Id.* at 922 (quoting 26 U.S.C. § 6601(f)(2) (1970)). Last, the court argued that Congress could easily have intended to limit the total liability of donees to the value of the gift received because the instances in which the amount of the gift was smaller than the deficiency were relatively rare, alleviating the necessity of deterring donees from delaying paying their personal liabilities as long as possible.

Although both the Third and Eleventh Circuits' reasoning is persuasive, the court agrees with and adopts the holding of the Eleventh Circuit for the following reasons. As a threshold matter, the court disagrees with the EPM Donees' argument that § 6324(b) unambiguously limits *all* donee liability. Both the Third and the Eleventh Circuit examined the legislative history and went to great pains to construe the statute. They both found it to be less than clear on its face. In fact, it could be argued that because after careful examination of the statute, the courts construed it in opposite ways, the statute must be ambiguous. Regardless, the court finds that although the statute is clear about the cap on the amount of the donor's liability transferred to the donee, it does not clearly address—if at all—the donee's responsibilities after that point.

Just as there are two parties to a gift—the donor and the donee, there are two different possible deficiencies—that of the donor and that of the donee. One is the donor's chapter 12 liability for the gift itself, including interest and penalties. The other is the donee's liability under § 6601 for interest on using the government's money. Section 6324(b) imposes the chapter 12 liability on the

donee, but limits that liability to the amount of the gift received. This makes perfect sense because otherwise a donee who received only 5% of an enormous gift could be responsible for the entirety of the gift tax in an amount far exceeding the gift he received based solely on the donor's actions—or, more accurately, inaction. So, the amount for which the donee may be held responsible as a result of another's failure to pay gift tax is capped.

That liability triggers an obligation in the donee. Donee liability is not a tax. It may not be collected as a tax. Instead the government must use one of two separate mechanisms. The first is to file suit against the donee and obtain a personal judgment against him. The government has chosen that option here. The second is to make an assessment through § 6901. Either of these methods may be subject to interest on the donee's separate obligation to pay. First, § 6901 expressly states that the liability is "subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred." § 6901(a). Since the gift tax of the donor is subject to interest under §§ 6601 and 6621, the donee liability is also. And that makes sense. The interest is charged based on the failure of the *donee* to pay, not the donor. It was equitable to cap the donee's responsibility for the actions of another, but if he chooses not to pay his own liability that is a different matter.

Additionally, the court agrees with the Eleventh Circuit that the Tax Code treats the donee liability as a different obligation. The Tax Code does not state that the obligation is a tax assessed on the donee, instead it calls the obligation a liability. And, although the government need not use § 6901 to collect the liability, it may not simply assess and collect the liability as a tax without either bringing suit or using § 6901. If the donee liability were a tax, neither of these mechanisms would be necessary. In § 6324(b) the statute reads that "[i]f the tax is not paid when due, the donee of any gift shall be personally liable for such *tax* to the extent of the gift." §6324(b) (emphasis added). The

phrase "to the extent of the gift" is modifying the word "tax" in this sentence. Therefore, the cap is on the tax. And the tax is the donor's obligation. Also, the court notes that the Third Circuit's strongest argument—that § 6601(f) expressly forbids paying interest on interest—is no longer valid. Congress amended § 6601 and removed that provision. Last, although it dealt with a prior version of the Tax Code, the Fifth Circuit has held that old § 311—the predecessor to § 6901—allowed the assessment of interest on a transferee's liability. *Patterson v. Sims*, 281 F.2d 577, 580–81 (5th Cir. 1960). For all of these reasons, the court adopts the Eleventh Circuit's rule in *Baptiste.* Section 6324(b) imposes an independent liability on the donee that is not capped by the liability limitation language in § 6324(b). The donee's independent liability is subject to § 6601, including the interest, beginning on the date on which the EPM Donees had the gift in their possession, and the gift tax was due and unpaid by JHM's estate.

2 Motion to Seal

The EPM Donees also move the court to seal the motions and exhibits. For the same reasons articulated by the court in response to Defendant Eleanor Pierce Stevens (Dkt. 100), the motion is DENIED.

B. Elaine T. Marshall's Motion for Partial Summary Judgment as to Count XIII

Defendant Elaine T. Marshall has also moved for summary judgment on Count XIII, the government's alternative claim for additional donee liability. Since, the court's order on Eleanor Pierce Stevens's motion for summary judgment (Dkt. 100) moots that claim, the motion is DENIED AS MOOT.

CONCLUSION

Pending before the court is the United States' motion for partial summary judgment against Elaine T. Marshall for donee liability (Dkt. 61); Elaine T. Marshall's cross-motion for partial

summary judgment and to seal (Dkt. 71); and Elaine T. Marshall's motion for partial summary judgment as to count XIII and motion to seal (Dkt. 92).

For the reasons articulated above, the United States motion (Dkt. 61) is GRANTED IN PART and DENIED IN PART AS MOOT. The court holds that the EPM Donees are liable to the United States for the interest assessed pursuant to §§6601 and 6621 on their separate personal liabilities created by §6324(b) as a result of the failure of JHM's Estate to pay the gift taxes assessed against it for the 1995 gift. As explained in this court's order of March 28, 2012 (Dkt. 100), the amount of the gifts has been previously determined by the tax court as reflected in the 2002 Stipulation of Settled Issues between the government and JHM's Estate. The United States is hereby ORDERED to submit to the court a proposed judgment against the EPM Donees calculating the statutory interest on the EPM Donees' gift, plus statutory prejudgment—if any, and post judgment interest beginning on the date that the Donor's obligation was due and unpaid, and the EPM Donees were in possession of the gift.

Additionally, Elaine T. Marshall's cross motion for summary judgment and to seal (Dkt. 71) is DENIED.

And, Elaine T. Marshall's motion for partial summary judgment on count XIII (Dkt. 92) is DENIED AS MOOT.

It is so ORDERED.

Signed at Houston, Texas on June 7, 2012.

Gray H. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

GREGORY G. MOORE,

Plaintiff,

Civil Action No: 2:11cv548

v.

UNITED STATES OF AMERICA,

Defendant,

v.

IRVIN C. JONES, JR.

Third-Party Defendant.

RULE 16(b) SCHEDULING ORDER

Subject to any motions now pending, the parties having reported to the Court in accordance with Federal Rule of Civil Procedure (hereinafter "Rule") 26(f), the Court **ORDERS** as follows **(only the court, by order, may approve extensions of time)**:

1. **Trial** shall commence on **February 20, 2013, at 10.00 a.m.,** at Norfolk. Unless otherwise ordered by the court, the party intending to offer exhibits at trial shall place them in a binder, properly tabbed, numbered, and indexed, and the original and two (2) copies shall be delivered to the Clerk, with copies in the same form to the opposing party, one (1) business day before the trial. The submitting party may substitute photographs for demonstrative or sensitive exhibits.

2. The party having the burden of proof upon the primary issue to which potential Rule 702, 703 or 705 evidence is directed shall **identify expert witnesses** to be proffered upon such an issue by name, residence and business address, occupation and field of expertise on **October 22, 2012**. The disclosure outlined in Rule 26(a)(2)(B) shall be made on **November 22, 2012**. In addition to the disclosures required by Rule 26(a)(2)(B), the same disclosures shall be made on the same dates regarding all witnesses proffered by a party for the purpose of presenting evidence under Rules 702, 703 or 705 of the Federal Rules of Evidence,

whose first direct contact with the case or the parties occurred subsequent to the filing of this action. Rule 702, 703 or 705 disclosures intended solely to respond to, contradict or rebut evidence on the same subject matter disclosed by another party pursuant to paragraph (a)(2)(B) of Rule 26, or pursuant to this order, shall be made on **December 24, 2012**. Any rebuttal disclosure by the party bearing the initial burden of proof shall be made on **January 8, 2013**, and shall be limited as to source to expert witnesses previously identified. Further rebuttal to Rule 702, 703 or 705 evidence shall be permitted only by leave of court.

3. **Discovery** shall be commenced timely and, except as to expert witnesses, shall be completed by **plaintiff(s)** on or before **December 12, 2012**; by **defendant(s) and the third-party defendant** on or before **January 9, 2013**. "**Completed**" means that interrogatories, requests for production, and requests for admission must be served at least thirty (30) days prior to the established completion date so that responses thereto will be due on or before the completion date. All subpoenas issued for discovery shall be returnable on or before the completion date. Unrepresented parties may request subpoenas of witnesses for depositions or trial, but such requests must be accompanied by a memorandum containing the name, address and purpose of the testimony of each witness and be approved in advance of issuance by a judge or magistrate judge of this court. Such approval shall not preclude any witness from contesting a summons. In accordance with Rule 5(d), depositions upon oral examination and upon written questions, interrogatories, requests for production, requests for admission, notices for depositions and production, requests for disclosure of expert information, expert information, disclosures, and answers and responses or objections to such discovery requests **shall not be filed** with the court until they are used in the proceeding, or ordered filed by the court. Discovery improperly submitted will be discarded by the clerk without notice to counsel. The party taking a deposition or obtaining material through discovery is responsible for its preservation and delivery to the court if sought to be used by any party or ordered filed.

4. All **discovery** of experts, and all **depositions** taken by the proponent of a witness for presentation in evidence in lieu of the appearance of the witness at trial, shall be concluded on or before **January 16, 2013**.

5. The **pretrial disclosures** required by Rule 26(a)(3) shall be **delivered** to all counsel and unrepresented parties on or before **January 16, 2013**, and filed with the Court at the final pretrial conference as part of the final pretrial order. Any objections to this disclosure

shall be **delivered** to all counsel and unrepresented parties on or before **January 23, 2013**, and, if unresolved, will be heard at the final pretrial conference. The failure to **deliver** timely objections to Rule 26(a)(3) disclosures shall constitute a waiver of the right to object. Wherever **delivery** to counsel or unrepresented parties, as opposed to the Clerk, is required by this order, facsimile transmission or equivalent electronic transmission during normal business hours on the due date, accompanied by simultaneous service by mail, shall be considered timely.

6. An **attorneys' conference** is scheduled in the office of counsel for plaintiff or, if the plaintiff is unrepresented, at the office of counsel for the defendant whose office is located closest to the courthouse at Norfolk on **January 25, 2013 at 2:00 p.m.** Counsel and unrepresented parties shall meet in person and confer for the purpose of reviewing the **pretrial disclosure** required by Rule 26(a)(3), preparing stipulations, and marking the exhibits to be included in the final pretrial order outlined in paragraph 7. With the exception of rebuttal or impeachment, any information required by Rule 26(a)(3) not timely disclosed, **delivered**, and incorporated in the proposed final pretrial order shall result in the exclusion of the witnesses, depositions, and exhibits which are the subject of such default.

7. A **final pretrial conference** shall be conducted on **February 1, 2013 at 12:00 p.m.**, at the courthouse in Norfolk, at which time trial counsel and unrepresented parties shall appear and be prepared to present for entry the proposed final pretrial order setting forth: (1) a stipulation of undisputed facts; (2) identification of documents, summaries of other evidence, and other exhibits in accordance with Rule 26 (a)(3)(A)(iii) to which the parties agree; (3) identification of Rule 26(a)(3)(A)(iii) materials sought to be introduced by each party to which there are unresolved objections, stating the particular grounds for each objection, and arranging for the presence of any such materials at this conference; (4) identification of witnesses in accordance with Rule 26(a)(3)(A)(i) indicating any unresolved objections to the use of a particular witness and the grounds therefor, and designating those witnesses expected to testify by deposition in accordance with Rule 26(a)(3)(A)(ii); (5) the factual contentions of each party; and (6) the triable issues as contended by each party. While preparation of the final pretrial order shall be the responsibility of all counsel and unrepresented parties, counsel for the plaintiff, or if the plaintiff is unrepresented, counsel for the first-named defendant, shall distribute a **proposed final draft** to all other counsel and unrepresented parties on or before **January 30, 2013**. Unresolved objections shall be noted in the proposed final pretrial order, but disagreements

concerning the content of the final draft shall be resolved before the final pretrial conference, at which time the parties shall present a complete and endorsed proposed draft of the final pretrial order. Failure to comply with the requirements of this paragraph may result in the imposition of sanctions pursuant to Rule 16(f).

8. **Trial by jury** has been demanded. Proposed *voir dire* and two typewritten sets of jury instructions, one set with authorities in support thereof, and one set without authorities, along with a CD-ROM diskette, shall be delivered to the Clerk on or before **February 12, 2013**.

9. Motions

a. Disposition of **motions for summary judgment** is left to the discretion of the court, and such motions may or may not be addressed prior to trial.

b. Counsel must file a brief in support of their motion or response to a motion as required by Local Civil Rule 7(F).

c. Briefs may not exceed the page limits set by Local Civil Rule 7(F)(3) without an order of the court.

d. Counsel filing a dispositive or partially dispositive motion against a pro se party must comply with the notice requirements of Local Civil Rule 7(K).

e. The original signature of counsel of record must be on all pleadings and motions filed with the court. Local counsel are required to sign the pleading. See Local Civil Rule 83.1(F) for counsel's responsibilities.

10. **ADR** has neither been requested nor ordered in this case. If the parties agree upon a settlement, counsel for one of the parties shall immediately notify the court by facsimile mail directed to the clerk's office with copies to all other counsel of record. If an endorsed dismissal order is not received within eleven (11) days of receipt of the facsimile notice by the clerk, the court may enter an order dismissing the case with prejudice and retaining jurisdiction to enforce the settlement.

UNITED STATES DISTRICT JUDGE

Date: June 1, 2012

Below is an Order of the Court.

TRISH M. BROWN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

In re Stephen Miles Munson, as consolidated with *In re Stephen Miles Munson (11-30188)* Debtor.	Case No. 10-39795-tmb11 **STIPULATED ORDER GRANTING DEBTOR'S NOTICE OF INTENT TO SEEK ORDER OF SETTLEMENT**

THIS MATTER came before the Court on Debtor's Notice of Intent to Seek Order of Settlement (Docket #526), in which the Debtor and the Unsecured Creditors Committee agreed, as one part of a settlement agreement, that the Debtor would not object to certain creditors' claims on the grounds that those claimants were creditors of an entity or person other than the Debtor ("Settlement Notice"). The deadline to object to the Settlement Notice was April 3, 2012. On April 3, 2012, the United States of America, for the Internal Revenue Service ("United States"), filed an objection to the Settlement Notice (Docket #537). A hearing on the Settlement Notice was set for June 7, 2012. No other objections to the Settlement Notice were filed. On May 25, 2012, the United States filed a withdrawal of its objection to the Settlement Notice (Docket #604).

The Court having reviewed the Settlement Notice, being advised that there are no pending objections to the Settlement Notice, and the Court being otherwise fully advised in the premises;

Tonkon Torp LLP
888 SW Fifth Avenue, Suite 1600
Portland, Oregon 97204
503-221-1440

IT IS HEREBY ORDERED that Debtor will not contest the proofs of claim set forth on the attached **Exhibit 1** (the "Claims") on the grounds that an entity or person other than the Debtor is liable on any of the given Claims. Debtor retains the right to object to the Claims on any other grounds, including but not limited to the amount or priority of the given Claim. All other parties may object to the Claims on any grounds, including that an entity or person other than the Debtor is liable for any of the Claims.

IT IS HEREBY FURTHER ORDERED that the hearing on Debtor's Notice of Intent to Seek Order of Settlement set for June 7, 2012, shall be taken off the Court's calendar.

# # #

IT IS SO STIPULATED AND AGREED:

FARLEIGH WADA WITT

By */s/ Tara Schleicher*
Tara Schleicher, OSB No. 954021
Attorneys for Debtor Stephen Miles Munson

TONKON TORP LLP

By */s/ Leon Simson*
Leon Simson, OSB No. 753429
Jeanne M. Chamberlain, OSB No. 851698
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cc: List of Interested Parties

In re: Stephen Miles Munson -USBC OR Lead Case No. 10-39795-tmb11

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Creditor Name	Proof of Claim Total Amount	Proof of Claim No.
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Rodney Rasmussen	$10,531.50	10
Terry Johnson	$24,173.47	6
TOTAL:	**$287,665.14**	

LIST OF INTERESTED PARTIES

In re Stephen Miles Munson, as Consolidated With
In re Stephen Miles Munson (11-30188-tmb11)
U.S. Bankruptcy Court Case No. 10-39795-tmb11

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NON-ECF PARTICIPANTS

EXAMINER:

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Jesse B. Schneider
1740 Broadway
New York, NY 10019

Vulcan Shareholder Rights Protection Committee, LLC
c/o Joe B. Richards
777 High Street #300
Eugene, OR 97401

Below is an Order of the Court.

TRISH M. BROWN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF OREGON

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs- **Case No. 6:11-cv-689-Orl-28GJK**

MICHAEL E. MURRAY and LINDA S. MURRAY,

Defendants.

ORDER

The United States filed this action for the collection of unpaid federal income tax, penalties, and interest assessed against Defendants. Defendants (pro se) assert that this case is time-barred by the applicable statutes of limitations set forth in 26 U.S.C. §§ 6501(a) & 6502(a)(1). This case is now before the Court on the United States's Motion for Summary Judgment (Doc. 20), Defendants' Response (Doc. 23), Defendants' Cross-Motion for Summary Judgment (Doc. 24), and the United States's Reply to Defendants' Response and Response to Defendants' Cross-Motion for Summary Judgment (Doc. 25). As discussed below, the United States's motion shall be granted and the Defendants' motion shall be denied.

I. Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In ruling on a motion for summary judgment, the Court construes the

facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). However, when faced with a "properly supported motion for summary judgment, [the nonmoving party] must come forward with specific factual evidence, presenting more than mere allegations." Gargiulo v. G.M. Sales, Inc., 131 F.3d 995, 999 (11th Cir. 1997).

Summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "Summary judgment may be granted if the non-moving party's evidence is merely colorable or is not significantly probative." Sawyer v. Southwest Airlines Co., 243 F. Supp. 2d 1257, 1262 (D. Kan. 2003) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-51 (1986)).

"[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249. "Essentially, the inquiry is 'whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so onesided that one party must prevail as a matter of law.'" Sawyer, 243 F. Supp. 2d at 1263 (quoting Anderson, 477 U.S. at 251-52).

I. Background

On September 26, 1995, Defendants filed a joint federal income tax return for the 1993 tax year, reporting that they owed no taxes. (Lawson Decl., Doc. 20-1, ¶ 2; I.R.S.

Certificate of Assessments & Payments, Doc. 20-2, at 2).[1] The IRS then examined Defendants' tax return, determined that there was a deficiency, and sent notice to Defendants regarding this deficiency. (Lawson Decl. ¶ 3). Thereafter, on January 26, 1998, Defendants filed a Petition with the U.S. Tax Court, challenging the deficiency determination and arguing, inter alia, that Defendants were entitled to a deduction for a loss purportedly attributable to worthless stock. (U.S. Tax Ct. Pet., Doc. 25-1, at 1, 2; see also Tax Ct. Mem. Op., Doc. 26-2, at 2). The Tax Court determined that Defendants were not entitled to such deductions, (Tax Ct. Mem. Op. at 4), and issued its final Decision on September 28, 2000, holding that Defendants owed $889,520 in income tax; $222,380 for failing to timely file the 1993 tax return pursuant to 26 U.S.C. § 6651(a)(1); and $177,904 as a penalty for Defendants' underpayment of taxes for the 1993 tax year pursuant to 26 U.S.C. § 6662. (Tax Ct. Decision, Doc. 20-4). In accordance with the Tax Court's decision, on April 27, 2001, a delegate of the Secretary of the Treasury assessed income tax, penalties, and interest against Defendants. (Lawson Decl. ¶ 4). The United States filed this suit on April 26, 2011. (Compl., Doc. 1).

III. Analysis

Defendants do not challenge the amount of the assessment or the Tax Court's Decision. Rather, Defendants assert that both the assessment and the filing of this suit are barred by the applicable statutes of limitations. Defendants' argument, however, is based

[1] Citations to page numbers of the Certificate of Assessments & Payments are to the electronic filing page numbers.

on a flawed interpretation of those statutes; neither the relevant assessment nor the filing of this action is time-barred.

A. Timeliness of the Assessment

The Internal Revenue Code ("I.R.C.") provides that "the amount of any tax imposed by [the I.R.C.] shall be assessed within 3 years after the return was filed" and defines "return" as "the return required to be filed by the taxpayer." 26 U.S.C. § 6501(a). It is undisputed that Defendants filed their return on September 26, 1995; thus, the United States had until September 26, 1998 to complete its assessment. When a taxpayer challenges a deficiency determination in the Tax Court, however, the limitations period is "suspended" from the time that the case "is placed on the docket of the Tax Court[] until the decision of the Tax Court becomes final[] and for 60 days thereafter." 26 U.S.C. § 6503(a)(1). Therefore, when Defendants filed their petition challenging the deficiency determination on January 26, 1998, the limitations period was suspended. At that time, there were eight months remaining in the three-year limitations period.

The Tax Court decision became final on September 28, 2000. As required by § 6503(a)(1), the limitations period did not begin to run again until November 27, 2000–sixty days after the Tax Court decision became final. Thus, the eight months remaining in the limitations period began to run again on that date and would have expired on July 27, 2001. The assessment that the United States is seeking to collect in this action was issued on April 27, 2001–three months prior to the expiration of the limitations period. Accordingly, the April 27 assessment was timely.

B. Timeliness of This Suit

Once an assessment has been timely made, "such tax may be collected . . . by a proceeding in court, but only if . . . the proceeding [is] begun . . . within 10 years after the assessment of the tax." 26 U.S.C. § 6502(a)(1). Accordingly, the United States had until April 27, 2011 to bring an action to collect the April 27, 2001 assessment. This case was filed on April 26, 2011–one day before the ten-year limitations period expired. Although the United States waited until the eleventh hour to file this suit, this case was, nevertheless, timely-filed.

Defendants' arguments to the contrary are misplaced. Defendants first argue that the assessment that the United States is seeking to collect in this case was made on March 2, 1998, and that therefore the filing of this case was well beyond the ten-year limitations period. In support, Defendants cite Certificate of Assessments & Payments, which has an entry for "additional tax assessed by examination" on March 2, 1998. (Doc. 20-2 at 2). Defendants also assert that an assessment must have been made prior to the Tax Court proceeding because otherwise the Tax Court would have had nothing to review.

Even reading this evidence in the light most favorable to the Defendants, this action is not time-barred. Under the "payment [or] credit" column next to the March 2, 1998 entry, the amount is listed as "0.00," (id.), while later entries–dated April 27, 2001–reflect assessments made for the amounts that the United States is seeking to collect in this case, (id. at 1-2). The United States may have made some sort of initial assessment on March 2, 1998, but the record evidence reflects that the assessment that it is seeking to collect in this case was made on April 27, 2001, (id.; Lawson Decl. ¶ 4), and Defendants have not presented any contradictory evidence. Furthermore, the Tax Court record reflects that it was

reviewing the deficiency determination–not an assessment. (See U.S. Tax Ct. Pet.; Tax Ct. Mem. Op.).

Defendants also argue that the United States could indefinitely expand the ten-year limitations period by delaying the making of an assessment. This argument is refuted by the statute of limitations discussed in the previous section, which requires that assessments be made within three years of the filing of a return.

Next, Defendants argue that the United States only had ten years and sixty days from the final decision of the Tax Court to bring this case. Again, Defendants' argument is premised on a misinterpretation of the applicable statute of limitations. As explained above, the ten-year limitations period begins to run from the date of the assessment–not the date of the Tax Court decision. The date of the Tax Court decision and the sixty-day grace period are relevant only to the tolling of the three-year statute of limitations for making an assessment and have nothing to do with the limitations period for bringing an action to collect a timely-made assessment.

Finally, Defendants claim that they have requested additional documents from the United States that they believe will support their position. The discovery deadline has passed, however, and Defendants have provided no additional evidence to support their arguments.

IV. Conclusion

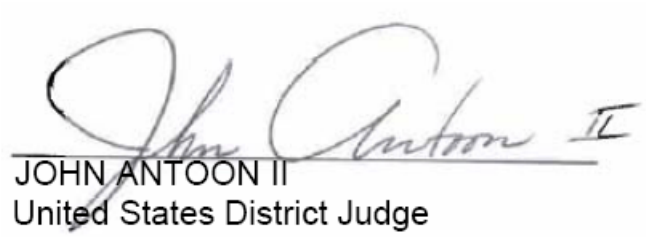
In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. The Motion for Summary Judgment (Doc. 20) filed by the United States is **GRANTED**;

2. The Cross-Motion for Summary Judgment (Doc. 24) filed by Defendants is **DENIED**; and

3. The United States shall submit an updated calculation of the interest due on the amount owed by Defendants, accurate as of the date of submission, **at or before noon on Thursday, June 14, 2012.**

DONE and **ORDERED** in Chambers, Orlando, Florida this 7th day of June, 2012.



JOHN ANTOON II
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

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

JAMES D. SAUNDERS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL CASE NO. 3:12-CV-1370-D
	)	
JENNIFER HEATHER NUNEZ	)	
	)	
Defendant.	)	
	)	
vs.	)	
	)	
UNITED STATES OF AMERICA	)	

ORDER OF DISMISSAL

The parties have filed with this court their stipulation of dismissal with prejudice. All matters between these parties having been resolved, this action can be dismissed with prejudice. It is therefore,

ORDERED that the above-entitled case is dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of this litigation.

SIGNED June 7, 2012.

SIDNEY A. FITZWATER
CHIEF JUDGE

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA Plaintiff, 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 COUNTY Defendants.	Civil No. 11-05101-RJB STIPULATION AND REQUEST FOR ORDER REGARDING LIEN PRIORITY BETWEEN THE UNITED STATES AND JEFFERSON COUNTY AND ORDER NOTE ON MOTION CALENDAR: June 7, 2012

The United States of America and Jefferson County, through their respective attorneys, hereby stipulate and agree as follows:

1. The parties make the following agreement concerning their respective interests in the property at issue in this suit. The real property at issue in this suit, hereinafter referred to Parcel A and Parcel B, is described more fully in the United States' Amended Complaint and below.

2. Parcel A, tax parcel 999 600 901, is located in Jefferson County, Washington. Parcel A is legally described as "Lots 1 and 2, Block 9, Woodman's addition as per plat recorded in volume 2 of plats, Page 114, records of Jefferson County, Washington."

3. Parcel B, tax parcel 901 084 005, is adjacent to Parcel A. Parcel B is located in Jefferson County, Washington, and is "portions of Section 8, Township 29 North, Range 1 West,

United States Department of Justice
Tax Division
P.O. Box 683
Washington, D.C. 20044
(202) 514-6507

W.M., lying westerly of Highway State Route 20 as conveyed by deeds recorded in Volume 1 of Right of Way. Pages 339 and 341 and in Volume 91 of Deeds, page 524, records of Jefferson County Washington" and is more particularly described as follows:

> (a) Beginning at a point on the East boundary line of said Section 8, 2042.2 Feet South of the Northeast corner of said Section 8; thence West , 2269.3 feet to meander line; thence along meander line South 11[degrees] West, 609.2 feet to the Southwest corner of Government Lot 2, in said Section 8; thence East, 2387.2 feet to the Section line; thence North along the Section line 598 feet to the place of beginning; (b) Beginning at the Northwest corner of Government Lot 3, in said Section 8; thence East, 1320 feet; thence South 330 feet; thence West, 1384.2 feet tot eh meander line; thence along said meander line North 11[degrees] East 336.8 feet to the Place of beginning; Excepting therefrom that portion lying Southerly of a line drawn parallel with and 95 feet Northerly from the North line of Lot 1, Block 9, Woodman's Addition, and its Easterly Extension, as per plat recorded in Volume 2 of Plats, page 114, records of Jefferson County, Washington. (c) Together with former Railroad right-of-way as conveyed by deed dated February 20, 1990 and recorded March 9, 1990 under Auditor's file No. 328952.

4. The Court has ruled that federal tax liens encumber the above described property in its order entering summary judgment in favor of the United States and that the property will be sold pursuant to an order of sale to be submitted to the Court. Dkt. # 79.

5. Pursuant to Washington law, Jefferson County will have a lien upon the above described property for any unpaid property taxes assessed against the property at the time of the sale of the property.

6. The United States and Jefferson County agree that, pursuant to 26 U.S.C. § 6323(b)(6), any Jefferson County property tax lien upon the above described property that is entitled to priority over prior security interests under Washington state law has priority over the federal tax liens at issue in the above-captioned action.

7. The Order of Judicial Sale will provide that the property will be sold free and clear of all liens of record. The Order of Judicial Sale shall also provide that the sale proceeds be distributed first to the United States to the extent of its costs and expenses of the sale, second to Jefferson County to satisfy any existing Jefferson County secured property tax liens, and third to the United States to satisfy the United States' federal tax liens. If the affected parties cannot stipulate to the amounts of their liens, the Court may hold an evidentiary hearing to determine the amounts.

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8. Jefferson county claims no interest in the Sailboat Mystera, described more fully in ¶¶ 1 & 18-20 in the United States' Amended Complaint. Dkt. # 46.

9. The United States and Jefferson County agree to bear their own respective costs related to this litigation, including any possible attorney's fees.

10. Jefferson County has been named as a defendant under 26 U.S.C. § 7403(b). The United States claims no monetary relief against Jefferson County in this action.

WHEREFORE the parties so agree and request an order confirming the foregoing.

Dated: June 6, 2012

By: S /_____
MICHAEL P. HATZIMICHALIS
QUINN P. HARRINGTON
Trial Attorney, Tax Division
U.S. Department of Justice
Attorney for the United States

Dated: June 5, 2012

By: S /_____
DAVID ALVAREZ
Prosecuting Attorney
Jefferson County
Attorney for Jefferson County

IT IS SO ORDERED.

DATED this 7TH day of June, 2012.

Robert J Bryan
United States District Judge

United States Department of Justice
Tax Division
P.O. Box 683
Washington, D.C. 20044
(202) 514-6507

SO ORDERED.

SIGNED this 7 day of June, 2012.

James D. Walker, Jr.
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

In re:	]	BANKRUPTCY CASE
	]	
JOHNNY W. AND TAMMY L. JAMES	]	NO. 04-12331
	]	
Debtor.	]	Chapter 13 Proceeding

ORDER TO REOPEN BANKRUPTCY CASE

The debtors having filed a Motion To Reopen their Bankruptcy Case after the bankruptcy case was discharged and closed, and having provided Notice of said motion to all interested parties, and the Internal Revenue Service having responded and a hearing having come before this Court on June 5, 2012 and the motion appearing appropriate to the Court; it is hereby

ORDERED, ADJUDGED and DECREED that the Motion To Reopen bankruptcy case is hereby granted, and the bankruptcy case shall be reopened. The reappointment of the previous Chapter 13 Trustee being unwarranted at this time, such reappointment shall be stayed subject to further Order of the Court.

End of Document

Prepared by:
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

EDITH SCHLAIN WINDSOR,

Plaintiff,

-against-

THE UNITED STATES OF AMERICA,

Defendant.

----------X

10 **CIVIL** 8435 (BSJ)

JUDGMENT

#12, 0973

Plaintiff having moved for summary judgment; Defendant-Intervenor having moved to dismiss, and the matter having come before the Honorable Barbara S. Jones, United States District Judge, and the Court, on June 6, 2012, having rendered its Order granting Plaintiff's motion for summary judgment, denying Defendant-Intervenor's motion to dismiss, declaring that section 3 of the Defense of Marriage Act, 1 U.S.C. § 7, is unconstitutional as applied to Plaintiff, awarding Plaintiff judgment in the amount of $363,053.00, plus interest and costs allowed by law with each party to bear their own costs and fees, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Order dated June 6, 2012, 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 $363,053.00, plus interest and costs allowed by law; each party shall bear their own costs and fees; accordingly, the case is closed.

Dated: New York, New York
June 7, 2012

RUBY J. KRAJICK

Clerk of Court

BY:

Deputy Clerk