In the United States Court of Federal Claims

No. 10-851T
(Filed: May 24, 2012)

****

CHARLES P. ADKINS and JANE E. ADKINS,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

****

ORDER

On April 24, 2012, plaintiffs in the above-captioned case filed a motion to compel discovery. Briefing concluded on May 18, 2012. The parties shall confer, and by **no later than Thursday, June 7, 2012**, contact the undersigned's judicial assistant, Ms. Beryl Sanders, at (202) 357-6644, to schedule a telephonic status conference to discuss the motion.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02278-WJM-KLM

USA,

Plaintiff,

v.

ASHCROFT HOMES CORP.,
ASHCROFT HOMES OF COLORADO, INC.,
ABSOLUTE CONSTRUCTION SERVICES, LLC,
FIRST TENNESSEE BANK NATIONAL ASSOCIATION,
ANITA L. RUSSELL,
TIMOTHY J. RUSSELL,
USAA FEDERAL SAVINGS BANK, and
TIMBER CREEK HOLDINGS, L.P.,

Defendants.

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Notice of Settlement** [Docket No. 68; Filed May 23, 2012] (the "Notice").

IT IS HEREBY **ORDERED** that the Scheduling Conference set for May 29, 2012 at 9:30 a.m. is **VACATED**.

IT IS FURTHER **ORDERED** that the parties shall file dismissal papers on or before **June 22, 2012**.

Dated: May 24, 2012

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

Case Number: 12-20038-CIV-MORENO/OTAZO-REYES

ANNE BATCHELOR-ROBJOHNS, DANIEL J. FERRARESI and FATHER PATRICK O'NEILL as Co-personal Representatives of the ESTATE OF GEORGE BATCHELOR

Petitioner,

vs.

UNITED STATES OF AMERICA,
Defendant.
_____/

ORDER RE: REFERRAL

THIS CAUSE came before the Court upon Chief Judge Federico A. Moreno's Order of Reference to Magistrate Judge for all Pretrial Proceedings (D.E. 17). Upon a review of the record, the undersigned hereby notifies the parties that she was employed as a summer associate by Plaintiffs' counsel, Kenny Nachwalter, P.A., in 1990. Accordingly, it is,

ORDERED AND ADJUDGED that should any party object to the undersigned's continuation as Magistrate Judge in this case, pursuant to Chief Judge Moreno's Order of Reference, said party shall so advise the Court within ten (10) days of the date of this Order.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of May, 2012.

ALICIA M. OTAZO-REYES
UNITED STATES MAGISTRATE JUDGE

Copies provided to:
Chief United States District Judge Federico A. Moreno
Counsel of Record

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

ROY DON BUNCH, Plaintiff,	)	
v.	)	NO. 2:10-CV-122
COMMISSIONER OF INTERNAL REVENUE SERVICE, Defendant.	)	

ORDER

Plaintiff has moved, pursuant to Federal Rule of Civil Procedure 59, to alter or amend, [Doc. 56], the judgment of the Court entered on March 8, 2012, [Doc. 55]. Rule 59(e) provides that "[a] motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Fed. R. Civ. P. 59(e). Thus, a motion to alter or amend is not timely in this case unless it was filed no later than April 5, 2012.[1] The motion was filed on April 6 and is untimely and the motion, pursuant to Rule 59, is DENIED.

In his reply, plaintiff asks that the "Judgment be set aside pursuant to Fed. R.Civ. P. 60," [Doc. 60]. *See Feathers v. Chevron U.S.A.*, 141F.3d 264, 268 (6th Cir. 1998). The Court will, therefore, treat the motion as one filed pursuant to Rule 60. It appears Bunch seeks relief under Rule 60(b). A party may obtain relief from judgment under that Rule for various reasons, including:

[1] The 28 day period is computed by counting every day, excluding the day of filing of the judgment, including the last day of the period. Fed. R. Civ. P. 6(a). Thus, beginning with March 9, 2012 and counting the 28th day, the time for filing expired on April 5, 2012, at midnight. The Court may not extend the time for filing. Fed. R.Civ. P. 6(b)(2).

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(1-6). Bunch fails to establish grounds for relief under Rule 60(b).

Presumably, Bunch makes a claim of legal error which is cognizable under Rule 60(b)(1). The Sixth Circuit has recognized a claim of legal error as subsumed in the category of mistake under Rule 60(b)(1). *See Pierce v. United Mine Workers*, 770 F.2d 449, 451 (6th Cir. 1985) (citing *Barrier v. Beaver*, 712 F.2d 231, 234 (6th Cir. 1983)). Significantly, though, a Rule 60(b) motion may not be used to relitigate the merits of a claim. *Barnes v. Clinton*, 57 Fed. App'x 240, 2003 WL 245329 (C.A. 6 (Ky.)) (citing *Mastini v. American Tel. & Tel. Co.*, 369 F.2d 378, 379 (2d Cir. 1966)). The present motion raises no arguments not previously made by the plaintiff and is an attempt by him to simply relitigate the case. Because he simply seeks to relitigate issues already decided by the Court, his motion pursuant to Rule 60(b)(1) is DENIED.

The only other arguable basis for relief under Rule 60(b) is found in Rule 60(b)(6). However, "[b]ecause of the residual nature of Rule 60(b)(6), a claim of simple legal error, unaccompanied by extraordinary or exceptional circumstances, is not cognizable under Rule 60(b)(6)." *Pierce*, 770 F.2d at 451. Plaintiff alleges no exceptional or extraordinary circumstances placing his motion within the purview of Rule 60(b)(6). To the extent, then, that Bunch proceeds

under Rule 60(b)(6), his motion is likewise DENIED.

For all the reasons set forth herein, plaintiff's motion, [Doc. 56], is DENIED.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CLASTON, LLC by and through SUNSET HOLDINGS, LLC, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CIVIL CASE NO. 08-0048 **ORDER GRANTING COUNSEL TO ATTEND MOTION FOR SUMMARY JUDGMENT AND MOTION TO EXCLUDE HENRY DUNPHY AS A FACT WITNESS VIA TELECONFERENCE** **Date: May 24, 2012** **Time: 9:00 am**

The Court, having reviewed Defendant's Notice of Counsel to Attend Status Conference via Teleconference, finds good cause and hereby GRANTS the Request.

SO ORDERED on May 23, 2012.

RAMONA V. MANGLONA, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

CLASTON, LLC by and through SUNSET HOLDINGS, LLC,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case 1:08-CV-00048

ORDER DENYING UNITED STATES' MOTION TO EXCLUDE HENRY DUNPHY AS FACT WITNESS

Claston, LLC ("Claston" or "Plaintiff") brings this action against the United States ("Defendant") challenging the partnership tax determination made by the Internal Revenue Service ("IRS") in the Final Partnership Administrative Adjustments ("FPAA") dated June 17, 2008, for Claston's taxable year ending December 31, 2002.[1]

Presently before the Court is the United States' Motion to Exclude Henry Dunphy as Fact Witness. (ECF No. 138.) After considering the relevant filings and oral arguments presented by counsel for the parties on May 24, 2012, the Court hereby DENIES the motion. Henry Dunphy shall be permitted to testify as a fact witness in this case. The Government may have the opportunity to depose Mr. Dunphy at Claston's expense. A separate decision will follow.

SO ORDERED on May 24, 2012.

RAMONA V. MANGLONA, Chief Judge

[1] Complaint for Readjustment of Partnership Items Under Internal Review Code Section 6226, ECF No. 1 ¶ 5.

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

IN RE:	
	CASE NO. 11-08637 MCF
MARCOS DEVARIE	Chapter 11
AIXA MORALES	
XXX-XX- b6	
XXX-XX- b6	
Debtor(s)	

FILED & ENTERED ON 05/24/2012

ORDER

The motion filed by Debtor requesting extension of time until June 30, 2012 to file the Disclosure Statement and Plan (docket #110) is hereby granted.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 24 day of May, 2012.

Mildred Caban

Mildred Caban Flores
U.S. Bankruptcy Judge

CC: DEBTOR(S)
MAXIMILIANO TRUJILLO GONZALEZ
UST

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE:	)	
NICHOLE HOLZ,	)	
	)	
Debtor.	)	Bk. No. 6:12-bk-0914-ABB
	)	
	)	Chapter 13

ORDER GRANTING THE UNITED STATES' CONSENT MOTION TO CONTINUE EVIDENTIARY HEARING ON DEBTOR'S OBJECTION TO CLAIM NO. 3-1 FILED BY THE INTERNAL REVENUE SERVICE

This matter came before the Court on the United States' Consent Motion to Continue Evidentiary Hearing on Debtor's Objection to Claim No. 3-1 filed by the Internal Revenue Service. A hearing was not held on this matter. Having reviewed the motion, the Court finds that good cause exists to continue the evidentiary hearing scheduled for June 5, 2012, at 10:30 a.m. for 60 days. Accordingly, it is hereby

ORDERED that the United States' Consent Motion to Continue Hearing on Debtor's Objection to Claim No. 3-1 filed by the Internal Revenue Service is **GRANTED**; it is further

ORDERED the June 5, 2012, hearing in this matter shall be continued for 60 days.

SO ORDERED.

Dated this 24th day of May, 2012.

ARTHUR B. BRISKMAN
United States Bankruptcy Judge

Copies furnish to:

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Counsel for Debtor
Arvind Mahendru
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924 West Colonial Drive
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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:

MARK DOUGLAS JASPERSON,

DEBTOR,
_____/

Case No. 8:11-bk-18633-KRM
Chapter 11

MARK DOUGLAS JASPERSON,

DEBTOR,

Case No. 8:12-ap-00221-KRM
Adversary

v.

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE,

DEFENDANT.
_____/

ORDER CONTINUING PRETRIAL AND SETTING BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS

This matter came before the Court on May 14, 2012 for a pretrial hearing. Finding that the parties' request to have dispositive motions considered before proceeding with the pretrial is well taken, and the parties having agreed to a briefing schedule, it is accordingly:

ORDERED that:

1. Dispositive motions pertaining to jurisdiction shall be filed no later than June 5, 2012. Responses shall be filed no later than June 19, 2012. Replies shall be filed no later than July 3, 2012.

2. The pretrial hearing is continued to July 16, 2012 at 10:00 a.m. Any dispositive motions also will be heard at that time.

DONE AND ORDERED at Tampa, Florida on May 24, 2012.

K. RODNEY KAY
United States Bankruptcy Judge

cc: Valerie G. Preiss
William B. McCarthy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	No. 12-CR-96 RB
DOUGLAS J. KUESTER,	§	
Defendant.	§	

ORDER

THIS MATTER having come before the Court on the Defendant's Motion for Furlough filed on May 16, 2012, and the information supplied by the Probation and Pretrial Services agency, and finds that the same is not well taken.

IT IS THEREFORE ORDERED that the Defendant's Motion for Furlough be, and the same hereby is DENIED.

IT IS FURTHER ORDERED that upon reviewing recordings in question, the Defendant and his counsel can petition for reconsideration of this Order.

HON. ROBERT C. BRACK
United States District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ARNOLD A. LISS, *et al.*, Defendants.	Civil No. 12-cv-120-L(NLS) **ORDER GRANTING JOINT MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT [DOC. 20]**

Pending before the Court is the Defendants Arnold A. Liss, Arnold A. Liss as Trustee, and Silenra Visionary Family Trust, and Plaintiff United States of America's joint motion for an extension of time for these Defendants to respond to the complaint. Having read and considered the moving papers, and good cause appearing, the Court **GRANTS** the motion. (Doc. 20.) Accordingly, these Defendants have until **June 29, 2012** to respond to the complaint.

IT IS SO ORDERED.

DATED: May 24, 2012

M. James Lorenz
United States District Court Judge

12cv120

MINUTES OF THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case Name: **Ordonez v. U.S. Dept. of Treasury** Case Number: **11cv2340-CAB-NLS**

Hon. Cathy Ann Bencivengo Ct. Deputy Lori Hernandez Rptr. Tape:

Due to the extension of time granted to file an opposition to the motion to dismiss [Doc. No. 15], the hearing date for the motion to dismiss set for June 15, 2012 is **HEREBY VACATED**. After receiving all the briefing, should the Court deem oral argument to be necessary, a new hearing date will be set.

Date: May 24, 2012

Initials: AET

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MEDFORD DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUANE H. PANTER; MARCIA DOERR, Trustee of Saved by Grace, a Trust; DENNY MALLOY, Trustee of Saved by Grace, a Trust; PHYLLIS PANTER, Trustee of the Panter Family Trust; FIRST AMERICAN TITLE COMPANY; CACV of Colorado, LLC; and JACKSON COUNTY, OREGON,

Defendants.

Case No. 1:11-cv-03052-CL

REPORT & RECOMMENDATION

CLARKE, Magistrate Judge.

This matter comes before the court on plaintiff's motion (#97) for entry of default judgment against *pro se* defendant Duane H. Panter. For the reasons stated below, the motion should be granted.

BACKGROUND

A. Factual Allegations

In a Complaint (#1) filed on April 29, 2011, plaintiff, the United States of America ("United States"), alleges as follows:

Defendant Duane H. Panter ("Panter") is a resident of the state of Oregon. (Compl., ¶ 5). On or about April 12, 1990, William P. Haberlach, Douglas Cushing, and John R. Hanson conveyed to Panter by Warranty Deed a certain parcel of real property legally described as: "Beginning at a point 245 feet South of the Northwest corner of Block 6, of Galloway's Addition to the City of Medford, Jackson County, Oregon, thence South, 50 feet; thence East 125.49 feet; thence North, 50 feet; thence West, 125.49 feet to the place of beginning," and commonly known as 217 Laurel Street in Medford, Oregon ("the Property"). (Compl., ¶¶ 20-21). The Warranty Deed was recorded in the Jackson County Clerk's Office as document number 90-08705. (Id., ¶ 20). On or about April 11, 1990, Panter used the Property to secure a $41,000 loan from Phyillis Panter, evidenced by a deed of trust recorded in the Jackson County Clerk's Office on or about April 12 as document number 90-08706. (Id., ¶ 22). Crater Title Insurance Company was named as trustee of the deed of trust. (Id.). On or about July 26, 1991, Phyllis Panter recorded a document in the Jackson County Clerk's Office, document number 91-17412, in which she assigned her beneficial interest in the April 1990 deed of trust to Phyllis W. Panter, Trustee of the Panter Family Trust. (Id., ¶ 23).

Panter did not file federal income tax returns for the years 1998, 1999, or 2000. (Id., ¶ 37). On or about July 8, 1999, Panter, with the actual intent to hinder, delay, or defraud the United States in its collection of his federal income tax liabilities, executed and recorded as document number 99-36070 in the Jackson County Clerk's Office a "General Quitclaim Deed" purporting to transfer the Property to Saved by Grace, a Trust, Denny Malloy, Trustee. (Id., ¶¶ 24, 42). Thereafter, Panter did not file federal income tax returns for the years 2001, 2002, 2003, or 2004. (Id., ¶ 16). On or about January 2, 2004, Denny Malloy ("Malloy") executed and recorded as document number 2004-000498 in the Jackson County Clerk's Office a "Quit Claim

Deed" purporting to transfer the property to Marcia Doerr, Trustee, Saved by Grace, Trust. (Id., ¶ 25). Saved by Grace, a Trust, which presently holds nominal title to the Property, has no legitimate business purpose, lacks economic substance, and was formed and used by Panter to conceal his ownership interest in the Property. (Id., ¶¶ 26, 39-40). Panter has at all times remained in possession of, exercised dominion and control over, and paid property taxes on the Property. (Id., ¶¶ 43-45).

Pursuant to 26 U.S.C. § 6020(b)(1), a duly authorized delegate of the Secretary of the Treasury ("the Secretary") prepared and filed federal income tax returns for Panter for the years 2001, 2002, 2003, and 2004, and made timely assessments against him for the unpaid individual federal income taxes, penalties, and interest for the years. (Id., ¶¶ 17-18). Despite proper notice and demand for payment, Panter neglected, failed or refused to pay to the United States the assessed amounts and the interest and penalties accrued thereon. (Id., ¶ 31). Therefore, pursuant to 26 U.S.C. §§ 6321 and 6322, tax liens arose in favor of the United States upon all property and rights to property belonging to Panter as of the dates of each assessment. (Id., ¶ 19).

On or about February 3, 2010, a duly authorized delegate of the Secretary recorded a Notice of Federal Tax Lien concerning certain unpaid assessments in the Jackson County Clerk's Office; that notice was assigned the document number 2010-004002. (Id., ¶ 28). On or about March 25, 2010, a duly authorized delegate of the Secretary of the Treasury again recorded a Notice of Federal Tax Lien concerning certain unpaid assessments and stating that the Saved by Grace Trust, Marcia Doerr trustee, was the nominee or alter ego of Panter with respect to the property in the Jackson County Clerk's Office; that document was also assigned the document number 2010-004002. (Id., ¶ 29). As of April 29, 2011, these assessments remained due and

owing with an unpaid balance of $76,207.21 including statutory interest and other additions allowed by law. (Id., ¶ 34).

On the basis of the allegations outlined above, the United States brought this action to: (1) reduce the federal income tax assessments against Panter to judgment; (2) set aside as fraudulent the transfer of the Property to the Saved by Grace Trust; (3) for a determination that the Saved by Grace Trust is Panter's nominee or alter ego; and (4) foreclose the federal tax liens through a decree for the sale of the Property pursuant to 26 U.S.C. § 7403(c).

B. Procedural History

Defendants Jackson County, Oregon ("Jackson County"); First American Title Company ("First American"); CACV of Colorado, LLC ("CACV"); and Phyllis Panter as trustee and sole beneficiary of the Panter Family Trust ("Phyllis Panter"), have separately filed stipulations entered into jointly with the United States (#16, 17, 26, 36) and approved by order of the court (#20, 21, 27, 41). Pursuant to these stipulations, First American, CACV, and Phyllis Panter disclaim any interest they may have in the Property (#17, 26, 36), while Jackson County and the United States stipulate and agree that Jackson County's interest in the Property, consisting of unpaid ad valorem tax, should be satisfied before the Unites States' interest in the property is satisfied (#16). On September 13, 2011, defendant Denny Malloy as Trustee of Saved by Grace, a Trust, was dismissed (#53) without prejudice pursuant to the stipulation (#48) she entered into jointly with the United States. On September 6, 2011, default was entered against defendant Marcia Doerr, Trustee of Saved by Grace, a Trust. (#46). On September 13, 2011, the court granted (#55) the United States' motion (#49) for default judgment against Marcia Doerr, Trustee of Saved by Grace, a Trust, and further determined and adjudged that, with respect to the Property, Saved by Grace, a Trust, is Panter's nominee.

On September 20, 2011, the court granted (#59) the United States' motion (#34) to strike the document docketed as Panter's Answer (#22) after Panter failed to either file a response in opposition to the motion or respond to the court's order (#42) to show cause why the motion should not be granted. On September 22, the court denied (#61) Panter's motion to dismiss. On October 17, 2011, Panter mailed a letter (#67) to the Clerk of the Court purporting to appoint counsel for the United States as his trustee. Thereafter, correspondence sent to Panter by the Clerk of the Court has consistently been returned, unopened, to the court. (#79, 84, 88, 89, 90, 94, 104).

On December 15, 2011, the court granted (#73) the United States' motion to compel (#62) Panter to respond to its discovery requests after Panter again failed to either file a response in opposition or respond to the court's order (#65) to show cause why the motion should not be granted. The court's order (#73) cautioned Panter that failure to comply with the court's order could result in further sanctions, including entry of default. On January 24, 2012, Panter returned the court's order (#73), unopened. (#84).

On November 23, 2011, the United States moved for entry of default against Panter. (#69). Yet again, Panter failed to either file a response in opposition or respond to the court's order (#72) to show cause why the motion should not be granted.[1] On January 3, 2012, the court ordered (#75) the United States to file a supplemental affidavit and any relevant exhibits to establish that Panter was properly served under Oregon Rule of Civil Procedure ("ORCP") 7D. In its January 3, 2012, Supplemental Memorandum (#77), the United States conceded that its service of process on Panter was insufficient under Oregon law, but argued the court should find that Panter had waived any challenge to the sufficiency of process or personal jurisdiction and further stated its intent to move to reopen the window for service should the court deny the

[1] Indeed, Panter returned the court's order to show cause (#72) to the court, unopened. (#84).

motion for entry of default. On January 11, 2012, the court ordered (#80) the motion for entry of default held in abeyance and, finding good cause pursuant to Rule 4(m), granted the United States an additional 60 in which to serve its Complaint on Panter. On February 23, 2012, the United States filed its Second Supplemental Memorandum (#86) and supplemental service of process materials. On April 12, 2012, Judge Panner adopted (#95) this court's recommendation (#91) that default be entered against Panter. Presently before the court is the United States' motion for entry of default judgment (#97).

STANDARD

Pursuant to Federal Rule of Civil Procedure ("Rule") 55, a party who has obtained entry of default against a defendant may move the court for an order of judgment by default. FED. R. CIV. P. 55(b)(2); Symantec Corp. v. Global Impact, Inc., 559 F.3d 922, 923 (9th Cir. 2009) (noting that Rules 55(a) and (b) provide a two-step process for obtaining a default judgment). Once the Clerk of Court enters default, all well-pleaded allegations regarding liability are deemed admitted and are taken as true, however, allegations regarding the amount of damages must be proven. Fair Hous. of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002); Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977). The decision whether to grant default judgment is within the discretion of the court. Draper v. Coombs, 792 F.2d 915, 924 (9th Cir. 1986). In exercising its discretion, the court must consider seven factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

//

DISCUSSION

In the instant motion, the United States asks that the court enter a money judgment against Panter in favor of the United States for unpaid federal individual income taxes; determine that the United States has a valid lien against all of Panter's property and rights to property; and order the Property be foreclosed upon and sold to satisfy the liens and taxes owed according to the priority of legitimate liens established by the various stipulations (#16, 17, 26, 36, 48) approved by order of the court (#20, 21, 27, 41, 49).

I. Recovery of Unpaid Taxes

On review of the United States' motion and supporting memorandum, declarations and exhibits, the court finds that the entry of default judgment is proper.

Under the first and sixth Eitel factors, the Court weighs the possibility of prejudice to a plaintiff if default judgment is not entered against the showing, if any, that the defendant's failure to participate in the litigation is the result of excusable neglect. In this case, although Panter has been served, knows of the lawsuit, and initially participated in it,[2] he now refuses respond to the Court's orders or otherwise communicate with either the Court or the United States, and returns unopened all correspondence sent to him by the Clerk of the Court. Thus, not only has Panter failed to make a showing of excusable neglect, the court has explicitly cautioned (#73) him that his conduct could result in the imposition of sanctions including entry of default. If the United States is not granted default judgment, it will be without recourse to collect the

[2] Panter did initially defend this action, filing his motion to dismiss (#11) on June 23, 2011. However, that motion was denied (#61). If the court denies a motion made pursuant to Rule 12, the defendant must serve an answer "within 14 days after notice of the court's action. FED. R. CIV. P. 12(a)(4)(A). While Panter did file an Answer (#22) on July 18, 2011, the Answer was stricken (#59) by order of the court, and Panter did not thereafter file an Amended Answer. The failure to file an answer—in spite of an earlier defense—is an adequate basis for a Rule 55 default judgment. *See* SEC v. Small Cap Research Group, Inc., 226 Fed. App'x. 656, 658 (9th Cir. 2007).

federal income taxes Panter owes until such time as he chooses to participate in these proceedings. *See, e.g.*, Craigslist, Inc. v. Naturemarket, Inc., 694 F.Supp.2d 1039, 1061 (N.D.Cal. 2010) ("[W]here a defendant's failure to appear makes a decision on the merits impracticable, if not impossible, entry of default judgment is warranted.") (internal quotations omitted). Therefore, the first and sixth Eitel factors weigh in favor of granting of default judgment.

The second, third and fifth Eitel factors address the merits and sufficiency of the United States' claims pled in the Complaint and the possibility of dispute regarding the material facts. In this case, default was entered against Panter on April 12, 2012, therefore the court will accept as true all well-pleaded allegations regarding liability. Fair Housing of Marin, 285 F.3d at 906. The Complaint alleges Panter failed to file federal income tax returns for the years 1998 through 2004. (Compl. ¶¶ 16, 37). The Complaint further alleges that despite receiving notice and demand for payment of assessments made by a delegate of the Secretary of the Treasury for unpaid federal income tax for tax years 2001 through 2004, Panter has neglected, failed or refused to pay the assessments which therefore remain due and owing, plus interest, penalties, and fees and costs. (Id. ¶¶ 31). The assessments made against Panter are reflected on the Certificates of Assessments and Payments (Form 4340) for the tax years 2001 through 2004 submitted by the United States in support of its motion, each of which is accompanied by a Certificate of Official Record (Form 2866). (Decl. Adam D. Strait Supp. U.S. Mot. Default J. ("Strait Decl."), Dckt. # 103, ¶¶ 2-5 & Exs. A-D).[3] A Certificate of Assessments and Payments is a proper means of establishing that assessments were properly made and that notices and demand for payment were sent. Koff v. U.S., 3 F.3d 1297, 1298 (9th Cir. 1993); Hughes v. U.S.,

[3] Exhibit D is incorrectly identified in paragraph 5 of the Strait Declaration as being a true and complete copy of Forms 2866 and 4340 for Panter's individual federal income taxes for 2001; the correct year of these documents is 2004.

953 F.2d 531, 535 (9th Cir. 1992). An assessment for unpaid federal taxes, when properly certified, is presumptively correct evidence of a taxpayer's liability, and the taxpayer has the burden to overcome this presumption by countervailing proof. U.S. v. Janis, 428 U.S. 433, 440–41, 96 S.Ct. 3021 (1976); Koff, 3 F.3d at 1298; Hughes, 953 F.2d at 540; U.S. v. Voorhies, 658 F.2d 710, 715 (9th Cir. 1981). Here, Panter has made no attempt to rebut the tax assessments against him. Therefore, the Certificates of Assessments and Payments submitted by the United States establish that assessments were properly made, notice and demand for payment were sent, and that Panter is presumptively liable for the unpaid taxes, penalties, and interest reflected on the Certificates. Thus, the merits of the United States' claims are deemed valid. Since the allegations are taken as true, there is no possibility of a dispute concerning material facts. Therefore, the second, third and fifth Eitel factors weigh in favor of granting default judgment.

With respect to the sum of money at stake, a large amount of money in dispute generally weighs against granting default judgment. *See* Eitel, 782 F.2d at 1472. Here, the United States seeks entry of judgment against Panter for unpaid federal income tax liabilities for the years 2001, 2002, 2003, and 2004 in the amount of $78,092.45 as of December 31, 2011,[4] with interest continuing to accrue on that amount. While this amount is significant, it is not excessive given the allegations and is supported by the evidence submitted. Thus, the Court finds that this factor is neutral with respect to whether entry of default judgment is appropriate.

[4] The tax assessments and calculations of penalties and interest are detailed in the Certificates of Assessment and Payment (*see* Strait Decl., Dckt. # 103, ¶¶ 2-5 & Exs. A-D) and further explained in the declarations and exhibits of an Internal Revenue Service Revenue Agent and Revenue Officer (*see* Decl. of Paula Bennett, Dckt. # 99; Decl. Ron W. Robinson, Dckt. # 100) submitted in support of the instant motion. As of December 31, 2011, Duane H. Panter owed the following amounts, which represent the total individual income tax, interest and penalties unpaid to that date:

For the tax period ending December 31, 2001:	$19,902.75
For the tax period ending December 31, 2002:	$19,369.11
For the tax period ending December 31, 2003:	$19,298.01
For the tax period ending December 31, 2004:	$19,522.58

The seventh Eitel factor addresses the strong public policy favoring decisions on the merits. While this factor weighs against awarding default judgment, it is only one factor among seven and, standing alone, is generally not dispositive particularly where a defendant fails to appear or defend itself in an action. *See, e.g.*, Craigslist, Inc., 694 F.Supp.2d at 1061; PepsiCo, Inc. v. Cal. Sec. Cans, 238 F.Supp2d 1172, 1177 (C.D.Cal. 2002). In the aggregate, this factor is outweighed by the five factors that weigh in favor of default judgment.

In sum, the Court finds that the Eitel factors weigh in favor of granting default judgment. Accordingly, the United States' Motion for Default Judgment (#97) should be GRANTED, and default judgment should be entered in favor of the United States and against Duane H. Panter for unpaid income tax assessments, plus penalties and interest, for the years 2001 through 2004 in the sum of $78,092.45 as of December 31, 2011, plus penalties and interest continuing to accrue thereafter until paid pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c).

II. The United States' Valid Liens

The Complaint also alleges that the United States has valid tax liens against all property belonging to Panter and that Panter has notice of those liens. (Compl. ¶¶ 16-19, 28-29, 30-34). 26 U.S.C. § 6321 provides that the amount of a delinquent taxpayer's liability shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to the taxpayer. Under 26 U.S.C. § 6322, a lien imposed under § 6321 arises at the time the assessment is made and continues until the liability is satisfied, or the lien is removed in accordance with federal law. A federal tax lien is perfected upon assessment and no further action need be taken. U.S. v. McDermott, 507 U.S. 447, 452–55, 113 S.Ct. 1526 (1993); U.S. v. Vermont, 377 U.S. 351, 355, 84 S.Ct. 1267 (1964); Glass City Bank of Jeanette, Pa. v. U.S., 326 U.S. 265, 267, 66 S.Ct. 108 (1945).

The Court has already adjudged (#55) that Saved by Grace, a Trust, is Panter's nominee with respect to the real property described in paragraph 20 of the United States' Complaint ("the Property"). Accordingly, it should be ordered that the United States has valid federal tax liens in the amount of $78,092.45 as of December 31, 2011, plus penalties and interest thereafter, against all property and rights to property held by Duane H. Panter, including but not limited to the interest in the Property.

III. Foreclosure and Sale of the Property and the Priority of Legitimate Liens

When "there has been a refusal or neglect to pay any tax, or to discharge any liability in respect thereof," the United States may bring an action in federal district court to enforce the lien created by 26 U.S.C. § 6321 or to subject any property held by the taxpayer to the payment of the tax. 26 U.S.C. § 7403(a). After adjudicating the merits of the United States' claim to the subject property, the district court may decree a sale of the property and order distribution of the proceeds from that sale. 26 U.S.C. § 7403(c); *see also* U.S. v. Nat'l Bank of Commerce, 472 U.S. 713, 719–720, 105 S.Ct. 2919 (1985); U.S. v. Rodgers, 461 U.S. 677, 693–94, 103 S.Ct. 2132 (1983).

Here, Panter has refused to pay the tax deficiencies, interest and penalties assessed against him. He has failed to appear to contest the validity of those assessments, and default has been entered against him. As described above, the Court has already adjudged (#55) that Saved by Grace, a Trust, is Panter's nominee with respect to the Property. Accordingly, judgment should be entered in favor of the United States and against Panter and an order of sale should be entered foreclosing on the United States' tax liens upon the Property in order to satisfy the unpaid tax assessments made against him pursuant to 26 U.S.C. §§ 6321 and 7403 and 28 U.S.C. §§ 2001 and 2002.

Furthermore, defendants First American, CACV, and Phyllis Panter as trustee and sole beneficiary of the Panter Family Trust have each disclaimed any interest they may have in the Property through stipulations (#17, 26, 36) jointly entered into with the United States and approved by order of the court (#21, 27, 41). Defendant Denny Malloy as Trustee of Saved by Grace, a Trust, has been dismissed (#53) as a defendant, while default (#46) and default judgment (#55) have been entered against defendant Marcia Doerr, Trustee of Saved by Grace, a Trust. By stipulation (#16) and order (#20), the United States and Jackson County, the sole remaining defendant, have resolved the competing priority of their respective liens. The Proposed Order of Sale (#97-3) submitted by the United States complies with these stipulations and orders. Therefore, the court's judgment and order of sale should provide that the proceeds from the sale of the Property be distributed according to the terms of the Proposed Order of Sale after costs of sale have been paid.

RECOMMENDATION

For the reasons stated above, the United States' motion (#97) should be GRANTED and default judgment should be entered against Panter for unpaid federal individual income tax liabilities in the amount of $78,092.45 plus penalties and interest continuing to accrue thereafter until paid pursuant to 26 U.S.C. §§ 6601, 6621, and 6622, and 28 U.S.C. § 1961(c), and an order of sale should be entered for the Property pursuant to 26 U.S.C. §§ 6321 and 7403 and 28 U.S.C. §§ 2001 and 2002. Because this determination resolves all of the remaining issues in the case, a separate and final judgment should be entered as to all defendants.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Federal Rule of Appellate Procedure 4(a)(1) should not be filed until entry of the district court's judgment or appealable order.

The Report and Recommendation will be referred to a district judge. ***Objections to this Report and Recommendation, if any, are due by June 11, 2012. If objections are filed, any response to the objections is due by June 28, 2012.*** *See* FED. R. CIV. P. 72, 6.

DATED this 24 day of May, 2012.

MARK D. CLARKE
United States Magistrate Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re PARKHURST, DAVID AND CORNELIA Debtor.	No. 11-41635 ORDER FIXING VALUE OF REAL ESTATE AND APPROVING COMPROMISE AND SETTLEMENT WITH ACQUIRED CAPITAL I, LP

THIS MATTER came before the Court upon the motion ("Motion") of David and Cornelia Parkhurst, debtors in possession, for entry of an Order fixing value of real estate and approving Amendment of Term Loan Agreement with Acquired Capital I, LP ("Agreement") of all claims held by Acquired Capital I, LP. The Court, having reviewed the files and records herein, and having considered the presentations of counsel at a hearing held on June 14, 2012, and deeming itself fully advised, and for the reasons stated on the record, which are incorporated herein pursuant to Bankruptcy Rule 7052, the Court finds and concludes that the proposed Agreement should be approved in all respects, but that all issues related to plan confirmation should be reserved for further proceedings, now, therefore, it is hereby

ORDERED as follows:

1. The Motion is hereby granted.

2. The Agreement with Acquired Capital I, LP, as set forth in the Amendment of Term Loan Agreement attached as Exhibit A to the Motion, is hereby approved, and the Debtors and Acquired Capital I, LP are hereby authorized and/or directed to perform under and comply with each of the obligations and covenants thereunder without further notice or order of the Court.

3. Parties agree and stipulate and the Court hereby finds that the property subject to ACI's security interest and the basis for this settlement agreement has a fair market value of $350,000.00.

4. Nothing in this order shall prejudice or otherwise affect the rights of any creditor to object on any basis to any plan of reorganization filed herein. Notwithstanding the foregoing, no confirmation objection shall be based upon the terms to be offered Acquired Capital I, LP under such plan so long as such terms are consistent with the Agreement.

Presented by:

By */s/ Brian L. Budsberg*
Brian L. Budsberg, WSBA #11225
Attorneys for Debtors

Approved as to form:

_____
Robert Rowley, WSBA #
Attorneys for Acquired Capital I, LP

END OF ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-2(c)
THE PANZER LAW FIRM, LLC
Charles N. Panzer, Esq.
225 Millburn Avenue, Suite 207
Millburn, New Jersey 07041
(973) 454-1585
Counsel for First American Title Insurance Company

In re:	Chapter 7
SKENDER U. PEROLLI,	Case No: 11-44043(MS)
Debtor.	

STIPULATION AND AGREED ORDER RESOLVING MOTION OF FIRST AMERICAN TITLE INSURANCE COMPANY FOR ORDER, PURSUANT TO 11 U.S.C. § 362(d): (I) GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT RELEASE OF ESCROW FUNDS TO PAY OFF FEDERAL TAX LIEN AND TO PAY LEGAL FEES AND COSTS INCURRED IN CONNECTION WITH MOTION, AND (II) DEEMING FEDERAL TAX LIEN RELEASED

The Stipulation and Agreed Order (the "Stipulation") set forth on the following pages two (2) through seven (7), is hereby SO ORDERED.

DATED: 05/24/2012

Honorable Morris Stern
United States Bankruptcy Judge

Debtor: SKENDER U. PEROLLI
Case No.: 11-44043(MS)
Caption of Order: STIPULATION AND AGREED ORDER RESOLVING MOTION OF FIRST AMERICAN TITLE INSURANCE COMPANY FOR ORDER, PURSUANT TO 11 U.S.C. § 362(d): (I) GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT RELEASE OF ESCROW FUNDS TO PAY OFF FEDERAL TAX LIEN AND TO PAY LEGAL FEES AND COSTS INCURRED IN CONNECTION WITH MOTION, AND (II) DEEMING FEDERAL TAX LIEN RELEASED

First American Title Insurance Company ("First American") and The United States of America, on behalf of the Internal Revenue Service (the "United States", and together with First American, the "Parties" and each a "Party"), submit this Stipulation, and consent, agree and state as follows:

WHEREAS, on November 29, 2011 (the "Petition Date"), Skender U. Perolli (the "Debtor") filed in the United States Bankruptcy Court for the District of New Jersey (the "Court") a voluntary petition for relief under chapter 7 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "Bankruptcy Code"), and thereby commenced the captioned Chapter 7 bankruptcy case, captioned *In re Skender U. Perolli*, Case No. 11-44043 (the "Case"); and

WHEREAS, on January 30, 2012, First American filed a motion (the "Motion") seeking the entry of an order, pursuant to pursuant to 11 U.S.C. § 362(d): (i) granting First American relief from the automatic stay to permit First American to release and pay certain funds being held in escrow pursuant to an Escrow Agreement with the Debtor and his wife, Concetta Perolli (together, the "Perollis"), to satisfy a federal tax lien on the Perollis' residence located at 497 Franklin Avenue, Wyckoff, New Jersey (the "Property") and to pay First American's legal fees and costs, pursuant to the terms of the Escrow Agreement; (ii) deeming federal tax lien released; and (iii) granting such other and further relief as the Court deems just and proper; and

Approved by Judge Morris Stern May 24, 2012

Debtor: SKENDER U. PEROLLI
Case No.: 11-44043(MS)
Caption of Order: STIPULATION AND AGREED ORDER RESOLVING MOTION OF FIRST AMERICAN TITLE INSURANCE COMPANY FOR ORDER, PURSUANT TO 11 U.S.C. § 362(d): (I) GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT RELEASE OF ESCROW FUNDS TO PAY OFF FEDERAL TAX LIEN AND TO PAY LEGAL FEES AND COSTS INCURRED IN CONNECTION WITH MOTION, AND (II) DEEMING FEDERAL TAX LIEN RELEASED

WHEREAS, on March 2, 2012, the United States filed a Proof of Claim in the Case, reflecting not one federal tax lien on the Property as was disclosed by the Perollis when First American issued a title insurance policy with respect to the Property, but two federal tax liens on the Property, respectively identified by IRS Serial Numbers 268354106 and 419425408 (together, the "Tax Liens");[1] and

WHEREAS, by Order dated March 9, 2012, the Debtor received his bankruptcy discharge in connection with the Case, thus mooting the stay relief request aspect of the Motion; and

WHEREAS, on April 2, 2012 the United States filed a response (the "Response") to the Motion, setting forth a limited objection to certain aspects of the Motion; and

WHEREAS, no other responses or objections to the Motion were filed; and

WHEREAS, the Parties have agreed to terms and conditions upon which any and all objections of the United States to the Motion, and the satisfaction, discharge and release of the Tax Liens, shall be settled and resolved as set forth below.

NOW, **THEREFORE**, in consideration of the foregoing recitals, the mutual promises, conditions and covenants set forth herein, and for other good and valuable consideration, the

[1] The "Tax Liens" referenced in this Stipulation and Agreed Order only include the tax assessments made against Skender U. and Concetta Perolli on October 4, 2004 for tax year 2001 and on May 21, 2007 for tax year 2005, and do not include the additional tax assessment made on April 3, 2006 for tax year 2001, which is listed in the IRS's proof of claim as an unsecured general claim.

receipt and sufficiency of which are hereby acknowledged, the Parties, subject to approval of the Court, intending to be legally bound, stipulate and agree as follows:

1. Recitals. The above recitals form an integral part of this Stipulation and are incorporated fully herein.

2. Agreement as to Satisfaction, Discharge and Release of Tax Liens. First American shall pay the Internal Revenue Service the total sum of $21,095.96 (the "Payoff Amount") by forwarding a check in the Payoff Amount, on or before May 25, 2012, to the Internal Revenue Service as follows:

Patricia A. Davis
Bankruptcy Specialist
955 S. Springfield Avenue
Springfield, NJ 07081

Upon such receipt by the Internal Revenue Service of the Payoff Amount, the Tax Liens shall be deemed satisfied in full, discharged and released, and the United States and/or the Internal Revenue Service shall promptly provide the undersigned counsel for First American with official documentation of satisfaction, discharge and release of each of the Tax Liens.

3. Integration. This Stipulation constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof. Each of the Parties acknowledges that none of the Parties, their attorneys or attorneys for any other parties has made any promise, representation, or warranty whatsoever, express or implied, not contained in this Stipulation concerning the subject matter hereof to induce such Party to execute this Stipulation.

Debtor: SKENDER U. PEROLLI
Case No.: 11-44043(MS)
Caption of Order: STIPULATION AND AGREED ORDER RESOLVING MOTION OF FIRST AMERICAN TITLE INSURANCE COMPANY FOR ORDER, PURSUANT TO 11 U.S.C. § 362(d): (I) GRANTING RELIEF FROM AUTOMATIC STAY TO PERMIT RELEASE OF ESCROW FUNDS TO PAY OFF FEDERAL TAX LIEN AND TO PAY LEGAL FEES AND COSTS INCURRED IN CONNECTION WITH MOTION, AND (II) DEEMING FEDERAL TAX LIEN RELEASED

4. Amendments and Waivers. No amendment of this Stipulation or any provision of this Stipulation shall be valid unless the same is in writing and signed by each of the Parties. No waiver by either of the Parties will be effective unless it is in writing and then only to the extent specifically stated.

5. No Admission of Liability. It is agreed and understood that the negotiation, execution and performance of this Stipulation shall not be deemed to be, or used as, an admission of liability or responsibility on the part of any Party hereto.

6. Construction of Stipulation. Each Party executes this Stipulation as its own free and voluntary act. Each Party has voluntarily entered into this Stipulation without any duress or coercion from anyone. Each Party has been represented by counsel of its choice in the negotiation of this Stipulation, and the language of this Stipulation shall not be construed for or against either Party. The headings used herein are for reference only and shall not affect the construction of this Stipulation.

7. Severability. If any provision of this Stipulation is held to be invalid or unenforceable on any occasion or in any circumstance, such holding shall not be deemed to render this Stipulation invalid or unenforceable, and to that extent the provisions of this Stipulation are severable; provided, however, that this provision shall not preclude a court of competent jurisdiction from refusing so to sever any provision if severance would be inequitable to either Party.

8. Binding Effect. This Stipulation shall be binding upon, and shall inure to the benefit of, the Parties hereto and each of their respective predecessors, successors and assigns. There shall be no third party beneficiaries of this Stipulation.

9. Governing Law and Disputes. This Stipulation is made according to, and shall be governed by, the laws of the State of New Jersey and, where applicable, the Bankruptcy Code. Any claim or cause of action, whether legal or equitable, based upon a breach of this Stipulation shall be commenced in this Court.

10. Authority to Execute. By execution of this Stipulation, each Party represents and warrants that it has the full power and authority to enter into and perform this Stipulation in accordance with its terms, and each representative or attorney executing this Stipulation represents and warrants that he has the authority to bind the client on whose behalf he has executed this Stipulation.

11. Bankruptcy Court Approval. This Stipulation is conditioned upon and subject to approval by the Court by the "so ordering" of same. The failure of the Court to approve this Stipulation, or the reversal on appeal of this Stipulation, shall render this Stipulation, and all of its provisions, except for this one, null and void and the Parties shall be restored to their original factual and legal positions.

12. Costs and Attorneys' Fees. Each Party agrees that, with respect to each other (but not with respect to non-Parties), it shall bear its own costs, attorneys' fees, consultants' fees and

experts' fees, if any, incurred in connection with the Case, the negotiation of this Stipulation, and all claims addressed in this Stipulation.

13. Counterparts and Originals. This Stipulation may be executed in any number of facsimile or electronic mail counterparts and by each Party hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same document. Delivery by a Party of an executed counterpart of a signature page to this Stipulation by facsimile or electronic mail shall be effective as delivery of an original executed counterpart.

14. Recording of this Stipulation: First American may file and record one or more copies of this Stipulation as notice of the satisfaction, discharge release of the Tax Liens.

CONSENTED AND AGREED TO BY:

THE PANZER LAW FIRM, LLC
225 Millburn Avenue, Suite 207
Millburn, NJ 07041
Tel: (973) 454-1585

By: /s/ Charles N. Panzer
Charles N. Panzer, Esq.
Attorneys for First American Title Insurance Company

KATHRYN KENEALLY
Assistant Attorney General

By: */s/ Allie C. Yang-Green*
Allie C. Yang-Green, Esq.
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 227
Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 514-9641

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDRE PAUL PROVOST, JR.,

Defendant.

_____/

CASE NO. CV F 11-2080 LJO DLB

ORDER TO RETURN DOCUMENTS

Defendant Andre Paul Provost, Jr. ("Mr. Provost") continues to attempt to file frivolous matters despite this Court's orders striking prior frivolous matters and warnings to cease such attempts. On May 23, 2012, Mr. Provost attempted to file a document entitled "Objection and Lawful Show Cause for Noncompliance." This document contains frivolous matters which "should be summarily dismissed." *See Crain v. Commissioner*, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.")

This Court will not indulge Mr. Provost by addressing the document's frivolous matters. This Court again surmises that Mr. Provost attempted to file the document to vex and harass the United States and its counsel. In the interests of justice and to preserve the record, this Court DIRECTS the clerk to attach a copy of the document to this order and to return the document to Mr. Provost. If Mr. Provost attempts to refile the document, the clerk is directed to return the document to Mr. Provost.

This Court again ADMONISHES Mr. Provost to discontinue to file frivolous papers, such as the document returned with this order. This Court FURTHER ADMONISHES Mr. Provost that he must obey the Federal Rules of Civil Procedure and this Court's Local Rules and orders and is subject to sanctions as this Court deems appropriate and to include entry of default against him.

DATED: May 24, 2012

LAWRENCE J. O'NEILL
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANDRE PAUL PROVOST, JR.,

Defendant.

_____/

CASE NO. CV F 11-2080 LJO DLB

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DATED: May 24, 2012

LAWRENCE J. O'NEILL
U.S. District Judge

UNITED STATES BANKRUPTCY COURT

Northern District of Georgia

In Re: Debtor(s)
Leon Pye
2158 Troutdale Dr
Decatur, GA 30032

xxx−xx b6
b6

Case No.: **12−57207−mhm**
Chapter: **7**

ORDER

Because no party in interest has filed a request for an order of dismissal pursuant to 11 U.S.C. § 521(i)(2) and because the parties in interest should not be subjected to any uncertainty as to whether this case is subject to automatic dismissal under §521(i)(1), Debtor is not required to file any further document pursuant to §521(a)(1)(B) to avoid an automatic dismissal and this case is not and was not subject to automatic dismissal under §521(i)(1). This does not prevent any party in interest from requesting by motion that Debtor supply further information described in § 521(a)(1)(B), and this does not prevent the United States Trustee or Chapter 7 Trustee from requesting by any authorized means, including but not limited to motion, that the Debtor supply further information.

Margaret Murphy
United States Bankruptcy Judge

Form 420

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

IN RE:

JAMES WILLIAM RITTER	**}** Debtor(s)	Chapter: **7**
JAMES WILLIAM RITTER	**}** Plaintiff(s)	Case Number: **5-11-bk-07056 RNO**
	vs.	Adversary No: **5-12-ap-00102 RNO**
UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, BUREAU OF INTERNAL REVENUE SERVICE	**}** Defendant(s)	Nature of Proceeding: **Complaint to Determine Dischargeability**

SCHEDULING ORDER

The Plaintiff(s) having filed an adversary proceeding and the Defendant(s) having filed a responsive pleading,

IT IS HEREBY ORDERED THAT:

1. Subject to any stipulation between parties, each party shall make the initial discovery disclosures required by F.R.B.P. 7026(a) within thirty (30) days of the date of this Order.

2. Any other discovery disclosures shall be made pursuant to any filed stipulation between the parties or when required by the provisions of F.R.B.P. 7026.

3. Any objections to the making of initial disclosures under F.R.B.P. 7026(a)(1)(C) shall be made within fourteen (14) days of the date of this Order, unless a different time is set in a stipulation between the parties.

4. All discovery shall be completed on or before ninety (90) days from the date of this Order.

5. Any request for a pretrial conference shall be filed on or before fourteen (14) days after the close of discovery.

6. Any request for a settlement conference, to be conducted by a bankruptcy judge not assigned to this matter, shall be filed on or before twenty-one (21) days before trial.

7. Dispositive motions shall be filed on or before one hundred twenty (120) days from the date of this Order.

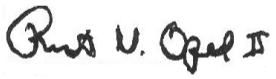
8. On or before seventy (70) days from the date of this Order, the parties shall submit a joint statement whether they consent to participation in the court-annexed mediation program.

9. Trial is scheduled for **Thursday, December 13, 2012**, at **9:30** A.M., in the United States Bankruptcy Court for the Middle District of Pennsylvania, Courtroom No. 2, Max Rosenn United States Courthouse, 197 South Main Street, Wilkes-Barre, Pennsylvania.

10. Any trial briefs must be filed and served at least seven (7) days before the originally scheduled trial date.

11. Any requests for continuance shall be filed at least fourteen (14) days before trial, shall state good cause for the continuance request and shall certify the concurrence or non-concurrence of all parties to this action.

By the Court,



Robert N. Opel, II, Bankruptcy Judge

Date: May 24, 2012

(BI)

(Official Form dsm13priorplan)(10/09)

UNITED STATES BANKRUPTCY COURT
District of Colorado

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address:

Jason Todd Schobinger Sr.
Rebecca Ellen Schobinger

aka(s), if any will be listed on the following page.
Debtor(s)

Case No.: 10−41825−MER
Chapter: 13

SSN/TID Nos. xxx−xx− b6
xxx−xx− b6

ORDER DISMISSING CHAPTER 13 CASE PRIOR TO CONFIRMATION OF PLAN

THIS MATTER comes before the Court on the Motion to Dismiss , filed by the Chapter 13 Trustee . Notice has been given to the Debtor(s) and Debtor(s') counsel, and the Chapter 13 Trustee as applicable. No timely objection has been filed. The court

FINDS that:

1. Cause exists for dismissal of this case pursuant to 11 U.S.C. section 1307.
2. No Plan has been confirmed.
3. No request for delayed revestment of property of the estate has been made.

IT IS THEREFORE ORDERED that:

1. THIS CASE IS DISMISSED. The Clerk of the court shall serve this Order on all creditors and parties in interest within fourteen (14) days of the order.

2. In accordance with 11 U.S.C. sections 349(b)(1) and (2), any transfer avoided under sections 522, 544, 545, 547, 548, 549 or 724(a) of Title 11, or preserved under section 510(c)(2),522(i)(2) or 551 of Title 11 is reinstated; any lien voided under section 506(d) of Title 11 is reinstated; and any order, judgment or transfer ordered under sections 522(i)(1), 542, 550 or 553 of Title 11 is vacated.

3. All property of the estate, except payments made by the Debtor(s) to the Trustee, willl revest in the Debtor(s) as of the date of this Order pursuant to 11 U.S.C. section 349.

4. Payments made by the debtor(s) shall be retained by the Trustee pending payment of claims allowed under sec. 503(b) pursuant to 11 U.S.C. sec 1326(a) (2).

a. Any request for allowance of a sec. 503(b) claim shall conform with 11 U.S.C. sec. 503 and Fed. R. Bankr. P. 9013, 9014, and 2002, and be filed no sooner than 10 days but within 15 days of the date of this Order.

b. Within 30 days after determination of the last request, if any, for allowance of sec. 503(b) claims, the Trustee shall pay all fees imposed by the statute and all allowed claims under sec 503(b) from the Debtor(s') payments and return any surplus to the Debtor(s).

Dated: 5/24/12

FOR THE COURT:
s/ Michael E. Romero
United States Bankruptcy Judge

Aliases Page

Debtor aka(s):
dba Custom Quality, fods Custom Quality Painting, Inc., ods CQP Inc.,

Joint Debtor aka(s):
aka Rebecca Ellen Bowman

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

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	CIVIL ACTION NO. 12-0364
v.	)	
	)	JUDGE NORA BARRY FISCHER
JOHN SEMANCHIK,	)	
	)	***Electronic Filing***
Respondent.	)	

ORDER

AND NOW, this 24th day of May, 2012, upon consideration of the United States' Unopposed Motion for Leave to Exceed Page Restriction,

IT IS HEREBY ORDERED that the United States' Motion is GRANTED and that the United States may file a Reply Brief of up to twenty (20) pages, plus the signature page.

Nora Barry Fischer, J.

cc: All counsel of record

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

LARRY L. STULER,

Plaintiff,

12cv0391
ELECTRONICALLY FILED

v.

INTERNAL REVENUE SERVICE,

Defendant.

MEMORANDUM ORDER RE: DEFENDANT'S MOTION TO DISMISS (DOC. NO. 4)

I. Introduction and Factual Background

Currently before the Court is Defendant Internal Revenue Service's Motion to Dismiss. Doc. No. 4. The parties' dispute centers on Defendant's handling of a Freedom of Information Act (FOIA) request filed by *pro se* Plaintiff. After careful consideration of the Motion to Dismiss[1] (Doc. No. 4), Brief in Support (Doc. No. 5), and Plaintiff's Response in Opposition (Doc. No. 7), and for the reasons that follow, Defendant's Motion to Dismiss (Doc. No. 4) will be **GRANTED**.

On August 14, 2010, Plaintiff filed a FOIA request with the Internal Revenue Service. Doc. No. 2-5. Plaintiff commenced an action in this Court on October 13, 2010. *Stuler v. Internal Revenue Service*, 2:10-cv-1342, Doc. No. 1. Judge Ambrose dismissed the case on June 23, 2011, for failure to exhaust administrative remedies. 10-1342, Doc. No. 23.

[1] Defendant's Motion was timely filed. Fed.R.Civ.P. 12(a)(2).

II. Standard of Review

A Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) challenges this Court's "very power to hear the case." *See Judkins v. HT Window Fashions Corp.*, 514 F. Supp. 2d 753, 759 (W.D. Pa. 2007) (quoting *Mortenson v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). As the party asserting jurisdiction, Plaintiff "bears the burden of showing that its claims are properly before the district court." *Dev. Fin. Corp. v. Alpha Housing & Health Care*, 54 F.3d 156, 158 (3d Cir. 1995). In reviewing a Motion to Dismiss pursuant to Rule 12(b)(1), this Court must distinguish between facial attacks and factual attacks. *See Petruska v. Gannon Univ.*, 462 F.3d 294, 302 (3d Cir. 2006).

A facial attack challenges the sufficiency of the pleadings, and the Court must accept the Plaintiff's allegations as true. *Id.* A Defendant who attacks a complaint on its face "[asserts] that considering the allegations of the complaint as true, and drawing all reasonable inferences in favor of [plaintiff], the allegations of the complaint are insufficient to establish a federal cause of action." *Mullen v. Thompson*, 155 F. Supp. 2d 448, 451 (W.D. Pa. 2001). Dismissal is proper under Rule 12(b)(1) only when "the claim clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or. . . is wholly insubstantial and frivolous." *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991) (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)).

When, as in this case, a Defendant launches a factual attack on subject matter jurisdiction, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Petruska*, 462 F.3d at 302 (quoting *Mortenson*, 549 F.2d at 891). In a factual attack, this Court must weigh the evidence relating to jurisdiction, with discretion to

allow affidavits, documents, and even limited evidentiary hearings. *See United States ex rel. Atkinson v. Pa. Shipbuilding Co.*, 473 F.3d 506, 514 (3d Cir. 2007).

III. Discussion

The Internal Revenue Service has sent Plaintiff all documents covered by his request. Doc. Nos. 2-19; 4-4. That is all that is required by the FOIA. Once Defendant sent Plaintiff all responsive documents, this Court no longer had its subject matter jurisdiction. *Kissinger v. Reporters Comm.*, 445 U.S. 136, 150 (1980); *Voinche v. FBI*, 999 F.2d 962, 963 (5th Cir. 1993); *Tijerina v. Walters*, 821 F.2d 789, 799 (D.C. Cir. 1987) (quoting *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982)); *Carter v. Veterans Admin*., 780 F.2d 1479, 1480-81 (9th Cir. 1986). Thus, this Court does not have subject matter jurisdiction to order Defendant to comply with Plaintiff's FOIA request.

The Government must waive sovereign immunity for a Complaint against the government to proceed. *Dep't of the Army v. Blue Fox, Inc*., 525 U.S. 255, 260 (1999) (citing *FDIC v. Meyer*, 510 U.S. 471, 475 (1994)). 5 U.S.C. § 552(a)(4)(B) provides a limited waiver of the government's sovereign immunity with respect to FOIA claims. The government has not waived its immunity. The remainder of the relief that Plaintiff seeks is thus barred by sovereign immunity.

IV. Conclusion

In sum, Plaintiff's Complaint is frivolous because Defendant has already provided all the documents that Plaintiff requested. Accordingly, Defendant's Motion to Dismiss (Doc. No. 4) will be **GRANTED**.

ORDER

AND NOW, this 24th day of May, 2012**, IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (Doc. No. 4) is **GRANTED**. Plaintiff's Complaint (Doc. No. 2) is **DISMISSED WITH PREJUDICE**.[2]

The Clerk of Court shall mark this **CASE CLOSED**.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF counsel/parties

Larry L. Stuler
565 Addison Street
Washington, PA 15301
PRO SE PLAINTIFF

[2] The Court finds that any amendment of the Complaint would be futile because this Court does not have subject matter jurisdiction. *See In re Burlington Coat Factory Sec. Litig.,* 114 F.3d 1410, 1434 (3d Cir.1997) (" . . . a district court may exercise its discretion and deny leave to amend on the basis of . . . futility.").

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

UNITED STATED OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 11-01181-CV-W-DGK
	)	
RICHARD C. WALDEN,	)	
	)	
Defendant.	)	

JUDGMENT

THIS MATTER comes before the Court upon Plaintiff United States' Complaint to recover an erroneous refund that was issued to Defendant Richard C. Walden.

WHEREFORE it appears to the Court that the parties are in agreement as to the disposition of this action pursuant to the Stipulation for Entry of Judgment (Doc. 13) filed herein.

IT IS HEREBY ORDERED AND ADJUDGED that the stipulation between the United States and Walden is APPROVED and ADOPTED by the Court, and it is

FURTHER ORDERED as follows:

1. Judgment under 26 U.S.C § 7405 is entered against Walden and in favor of the United States in the amount of $96,669.66, plus interest accruing from December 7, 2009, pursuant to 26 U.S.C. §§ 6602 and 6621.

2. This Order constitutes the final judgment in this matter, and Walden agrees to waive all rights of appeal.

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

Dated: May 24, 2012

/s/ Greg Kays
HONORABLE GREG KAYS
UNITED STATES DISTRICT JUDGE

Approved by:

DAVID M. KETCHMARK
United States Attorney

/s/:
JOSE A. OLIVERA
California Bar #: 279741
Trial Attorney, Tax Division
P.O. Box 7238, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 353-0703
E-mail: jose.a.olivera@usdoj.gov

Dated: 5/23/2012

Attorney for the United States

/s/:
RICHARD C. WALDEN
1709 S. Ash Avenue
Independence, MO 64052

Dated: 5/4/2012

Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:12CR11-WKW
	)	
NATACIA WEBSTER	)	

SECOND PRETRIAL CONFERENCE ORDER

A pretrial conference was held on 5/23/2012 before the undersigned Magistrate Judge. Present at this conference were James Cooper, counsel for the defendant, and Assistant United States Attorney Jared Morris, counsel for the government. As a result of the conference, it is hereby

ORDERED as follows:

1. Jury selection is set for **10/1/2012**. The trial of this case has been continued to the trial term commencing on **10/1/2012** before Chief United States District Judge W. Keith Watkins and is expected to last 4 days for trial.

2. All applicable deadlines contained in the prior arraignment order and pretrial order are adjusted accordingly, provided, however, that the deadline for the filing of pretrial, dispositive motions is not extended.

3. The court will not consider a plea pursuant to Rule 11(c)(1)(A) or (C) unless notice is filed on or before noon on 9/19/2012. The government and defendant are informed that if a defendant waits until the last minute to enter a plea, and if that plea, for whatever reason is not accepted by the court, the defendant and

the government will be expected to be prepared to go to trial on 10/1/2012. The court will not continue the trial of this case as to any defendant because a defendant's plea was not accepted. In other words, the defendant and the government should not wait until the last minute for a defendant to enter a guilty plea, and both the defendant and the government should all be ready to go to trial on 10/1/2012, as to all defendants, even though a particular guilty plea was not accepted by the court.

Done this 24th day of May, 2012.

/s/ Wallace Capel, Jr.
WALLACE CAPEL, JR.
UNITED STATES MAGISTRATE JUDGE

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

WINFIELD PRAIRIE LLC, an Oklahoma Limited Liability Company,	)	
Plaintiff,	)	
vs.	)	Case No. CIV-12-216-M
UNITED STATES OF AMERICA, ex rel., Internal Revenue Service,	)	
Defendant.	)	

ORDER

Before the Court is defendant's Rule 56(d) Motion, filed April 20, 2012. Plaintiff has filed no response. Pursuant to Federal Rule of Civil Procedure 56(d), defendant now moves this Court to allow it to conduct discovery prior to being required to file its opposition brief to plaintiff's motion for summary judgment.

Rule 56(d) provides:

> **(d) When Facts Are Unavailable to the Nonmovant.** If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
>
> **(1)** defer considering the motion or deny it;
>
> **(2)** allow time to obtain affidavits or declarations or to take discovery; or
>
> **(3)** issue any other appropriate order.

Fed. R. Civ. P. 56(d).

The Court has carefully reviewed defendant's motion and memorandum in support and finds defendant has established the need for a Rule 56(d) continuance. Accordingly, the Court GRANTS defendant's Rule 56(d) Motion [docket no. 9]. In order to allow defendant to conduct discovery

prior to filing its response, the Court EXTENDS the deadline for defendant to file its response to plaintiff's motion for summary judgment until September 15, 2012.

IT IS SO ORDERED this 24th day of May, 2012.

VICKI MILES-LaGRANGE
CHIEF UNITED STATES DISTRICT JUDGE