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9

10 IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA

11 United States of America,

12 Plaintiff,

13 v.

14 Maria D. Forman; Jimmy C. Chisum, as  
Trustee for the DLP LT 13 Trust; and  
15 Arizona Department of Revenue,

16 Defendants.

Civil No. 09-CV-444-PHX-SRB

UNITED STATES' MOTION TO  
STRIKE DEFENDANT DLP LT 13'S  
ANSWER AND MOTION TO DISMISS

17  
18 The United States of America, through undersigned counsel, hereby moves the  
19 Court for an Order striking Defendant DLP LT 13's Answer (Doc. No. 28) and Motion to  
20 Dismiss (Doc. No. 24) because the Answer and Motion were improperly filed on DLP  
21 LT 13's behalf by Trustee Elmer P. Vild, a *pro se* litigant. A memorandum in support is  
22 filed herewith.

1 Respectfully submitted this 22nd day of December, 2009.

2 DENNIS K. BURKE  
3 United States Attorney

4 By: /s/ Alexis V. Andrews  
5 ALEXIS V. ANDREWS  
6 U.S. Department of Justice  
7 P.O. Box 683  
8 Ben Franklin Station  
9 Washington, D.C. 20044

10 Attorneys for the United States

11 **CERTIFICATE OF SERVICE**

12 It is hereby certified that service of the foregoing UNITED STATES' MOTION  
13 TO STRIKE DEFENDANT DLP LT 13 TRUST'S ANSWER AND MOTION TO DISMISS,  
14 MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO STRIKE  
15 DEFENDANT DLP LT 13 TRUST'S ANSWER AND MOTION TO DISMISS, and  
16 PROPOSED ORDER has been made this 22nd day of December, 2009, by placing copies  
17 in the United States Mail addressed to the following:

18 Maria D. Forman  
19 c/o 5640 E. Duane Lane  
20 Cave Creek, AZ 85331

Denise Ann Faulk  
Office of the Attorney General  
1275 W Washington St  
Phoenix, AZ 85007

21 Jimmy C. Chisum, 84388-008  
22 Herlong-CA-Herlong-FCI  
Federal Correction Institution  
P.O. Box 800  
Herlong, CA 96113

Elmer P. Vild  
989 S. Main St.  
#A-269  
Cottonwood, AZ 86326

/s/ Alexis V. Andrews  
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13 v.

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15 Arizona Department of Revenue,

16 Defendants.  
17

Civil No. 09-CV-444-PHX-SRB

MEMORANDUM IN SUPPORT  
UNITED STATES' MOTION TO  
STRIKE DEFENDANT DLP LT 13'S  
MOTION TO DISMISS AND ANSWER

18 The United States, by and through its undersigned counsel, submits this  
19 memorandum in support of its Motion to Strike Defendant DLP LT 13 Trust's Answer  
20 (Doc. No. 28) and Motion to Dismiss (Doc No. 24) filed in this action, because the  
21 Answer and Motion were improperly filed on DLP LT 13's behalf by Trustee Elmer P.  
22 Vild, a *pro se* litigant, and states as follows in support:

1 Trustee Elmer P. Vild purported to file the Answer and Motion to Dismiss on  
2 behalf of DLP LT 13 Trust, “without the assistance of counsel.” (See Mot. to Dismiss at  
3 1; Mot. for Appointment of Counsel (Doc. No. 23)). However, as a *pro se* litigant, Trustee  
4 Elmer P. Vild is not authorized to represent parties other than himself. *See, e.g., Simon v.*  
5 *Hartford Life, Inc.*, 546 F.3d 661, 664-65 (9th Cir. 2008); *McShane v. U.S.*, 366 F.2d 286, 288  
6 (9th Cir. 1966). *Russell v. U.S.*, 308 F.2d 78, 79 (9th Cir.1962); *see also* Local Rule 83.1.  
7 “Although a non-attorney may appear *in propria persona* in his own behalf, that privilege  
8 is personal to him. He has no authority to appear as an attorney for others than  
9 himself.” *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (citations  
10 omitted). “Where a trustee is not the real party in interest, the trustee is not allowed to  
11 represent the trust *pro se*. *Id.*<sup>1</sup> *See also In re Ball*, 2009 WL 1457025, \*1 (D.Ariz. 2009)  
12 (unreported) (plaintiff could not represent trust because he was not an attorney  
13 admitted to practice within the District of Arizona); *Willoughby v. Rubin*, 1999 WL  
14 221862 (D. Ariz. 1999) (only trust beneficiary may bring suit *pro se* on behalf of trust);  
15 *U.S. v. Shepard*, 876 F.Supp. 214, 215 (D.Ariz. 1994) (relying in part on Arizona Supreme  
16 Court Rule 31(a)(3)--now 31(b) – for the prohibition on non-attorney representation);

17 Accordingly, both the Answer and the Motion to Dismiss are improper pleadings  
18 and should be stricken from the docket.

19 \_\_\_\_\_  
20 <sup>1</sup> This prohibition on non-attorney representation is not unique to trusts. *In re America West Airlines*, 40 F.3d 1058,  
21 1059 (9th Cir. 1994) (per curiam) (non-attorney may not appear on behalf of a partnership); *U.S. v. High Country*  
22 *Broadcasting Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (non-attorney shareholder may not represent the  
corporation and was properly precluded from intervening and representing himself where his “interests [were]  
identical to the corporation’s”); *Iannaccone v. Law*, 142 F.3d 553, 559 (2nd Cir. 1998) (administrator of estate may  
not appear *pro se* on behalf of estate); *Pridgen v. Andresen*, 113 F.3d 391, 393 (2nd Cir. 1997) (executrix may not  
appear *pro se* on behalf of estate).

1           WHEREFORE, the United States prays for an Order striking Defendant  
2 DLP LT 13 Trust's Answer (Doc. No. 28) and Motion to Dismiss (Doc. No. 24). A  
3 proposed order is attached.

4           Respectfully submitted this 22nd day of December, 2009.

5                                   DENNIS K. BURKE  
6                                   United States Attorney

7                                   By: /s/ Alexis V. Andrews  
8                                   ALEXIS V. ANDREWS  
9                                   U.S. Department of Justice  
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10                                  Attorneys for the United States

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IN THE UNITED STATES DISTRICT COURT FOR THE  
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United States of America,

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Maria D. Forman; Jimmy C. Chisum, as  
Trustee for the DLP LT 13 Trust; and  
Arizona Department of Revenue,

Defendants.

Civil No. 09-CV-444-PHX-SRB

[PROPOSED] ORDER GRANTING  
MOTION TO STRIKE DEFENDANT  
DLP LT 13 TRUST'S ANSWER AND  
MOTION TO DISMISS

IT IS HEREBY ORDERED THAT the United States' Motion to Strike Defendant  
DLP LT 13 Trust's Answer and Motion to Dismiss is GRANTED. Defendant DLP LT 13  
Trust's Answer (Doc. No. 28) and Motion to Dismiss (Doc. No. 24) are stricken from the  
record.