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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

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

MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

The United States, by and through its undersigned counsel, submits this memorandum in support of its Motion for Leave to File Amended Complaint filed in this action. This is the United States' first request to file an amended complaint. The United States seeks to file a complaint adding the current Trustee for the DLP LT 13 Trust, which may claim an interest in two of the parcels of real property at issue.

FACTS

In its Complaint filed March 5, 2008, the United States sought to reduce to judgment federal tax assessments against Defendant Maria D. Forman and to foreclose federal tax liens upon property beneficially owned by Defendant Maria D. Forman but titled in the name of DLP LT 13 Trust, as her nominee or fraudulent transferee. On May 19, 2009, Elmer P. Vild filed with the Court a document titled "Notice of Change of Trustee; Request Caption Change." (Doc. No. 8) This document indicates that Jimmy C. Chisum, the Trustee of DLP LT 13 Trust at the time of the 1990 transfer of the subject property, subsequently appointed Elmer P. Vild – also known as Phil O’Neil – as his successor trustee. Mr. Vild claims to be the current trustee of DLP LT 13 Trust, and requests that he be added as a party to this action. Thus, the United States requests leave to add Mr. Vild as a Defendant as Trustee of DLP LT 13 Trust in this action.

LEGAL STANDARD

Rule 15(a) of the Federal Rules of Civil Procedure provides that a complaint may be amended by leave of Court after an initial responsive pleading has been filed. The Supreme Court has interpreted the requirement of Rule 15 that leave be ‘freely given’ to mean that:

[i]n the absence of any apparent and declared reason – such as delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc. – the leave sought should, as the rules require be ‘freely given.’

Foman v. Davis, 371 U.S. 178, 182 (1962). Rule 15 has a “policy of favoring

amendments” and this policy should be applied liberally. Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

Courts have frequently exercised their discretion to permit the addition of new parties. See e.g., Spurgeon v. Olympic Panel Prods., LLC, No. C07-5436BHS, 2008 WL 687446 (W.D. Wash. 2008); Sorensen v. Black & Decker Corp., No. 6-CV-1572, 2007 WL 951839 (S.D. Cal. 2007); Towhawl Corp. v. Birana Eng’g Pty. Ltd., No. CV-0635, 2007 WL 1051689 (D. Mont. 2007) (adopting 2007 WL 837235 (Magistrate’s report and recommendation permitting addition of new parties)).

Additionally, in Yellow Bus Lines, Inc. v. Local Union 639, the District of Columbia Circuit held that the district court abused its discretion in refusing to grant leave to amend a complaint where the amendment would have imposed no additional burden on the defendant. 883 F.2d 132, 145 (D.C. Cir. 1989); cf. Wilderness Soc’y v. Griles, 824 F.2d 4, 19 (D.C. Cir. 1987)(no abuse of discretion to deny leave to amend where amended complaint would add new cause of action, and where leave sought after dispositive motions filed and opposed); Williamsburg Wax Museum v. Historic Figures, Inc., 810 F.2d 243 (D.C. 1987)(no abuse of discretion to refuse leave to amend where leave sought six years after complaint filed, after entry of summary judgment, and amended complaint would have added a new cause of action requiring additional discovery).

ARGUMENT

The United States requests leave to file an amended complaint to add the self-proclaimed current trustee of DLP LT 13 Trust, which may claim an interest in the

1 subject properties.

2 In order to determine the rights of all parties to the subject properties, any person
3 or entity that may claim an interest in the subject properties must be named as a party
4 to the action. 26 U.S.C. § 7403(b). So that all parties' interests are properly determined,
5 justice requires leave to amend the complaint to add Elmer P. Vild, also known as
6 Phillip O'Neil, as Trustee of DLP LT 13 Trust as a defendant. As discovery has not yet
7 commenced and no scheduling order has issued, no party will be prejudiced by the
8 amendment.

9 Accordingly, the United States respectfully requests that the proposed order be
10 entered, that the United States be granted leave to file an amended complaint and that
11 the United States be granted time to serve the additional party named in the amended
12 complaint. A proposed order and a proposed amended complaint, are attached.

13 Respectfully submitted this 2nd day of July, 2009.

14 DIANE J. HUMETEWA
United States Attorney

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16 By: /s/ Alexis V. Andrews
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