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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 et al.,

15 Defendants.

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

PROPOSED CASE MANAGEMENT
PLAN

16
17 The United States, by and through undersigned counsel, hereby submits the
18 following joint¹ Proposed Case Management Plan, pursuant to the Court's Order
19 Setting Rule 16 Scheduling Conference:
20

21 ¹ The United States contacted all parties to discuss the matters set forth in the Court's Order Setting Rule 16
Scheduling Conference, and suggesting the deadlines listed herein. Counsel for the State of Arizona has agreed to
22 the deadlines. Mr. Vild has voiced no objection to the deadlines, but neither has he specifically consented. Neither
Mr. Chisum nor Ms. Forman have responded to government counsel's correspondence regarding the Case
Management Plan.

1 **1. The Nature of the Case.** This is a civil action by the United States to (1)
2 reduce to judgment outstanding federal tax assessments against Maria D. Forman and
3 her now-deceased husband Howard E. Forman based on returns they filed, (2) set aside
4 the purported conveyance to Defendant DLP LT 13 of the Subject Property as either
5 fraudulent, or in the alternative, on the grounds that Defendant DLP LT 13 Trust holds
6 title to the Subject Property as the nominee of Defendant Maria D. Forman, such that
7 the United States' tax liens attach to the Subject Property; and (3) foreclose federal tax
8 liens against the Subject Property owned by Defendant Maria D. Forman, with regard to
9 which the United States has filed Notices of Federal Tax Lien.

10 **2. Elements of Proof.**

11 **a. Reducing Assessment to Judgment.** The government must first prove
12 that the assessments were properly made. *Palmer v. U.S.*, 116 F.3d
13 1309, 1312 (9th Cir. 1997). The submission of a Form 4340 Certificate of
14 Assessment may establish a presumption that the assessment was
15 properly made. *Hughes v. Comm'r*, 953 F.2d 531, 535 (9th Cir. 1992);
16 *Huff v. U.S.*, 10 F.3d 1440, 1445-46 (9th Cir. 1993). Once the form is
17 provided, the taxpayer must prove the assessment is erroneous in
18 order to prevail. The government must also prove that the balance
19 remains due and owing. If it does so, it is entitled to judgment in its
20 favor under 26 U.S.C. § 7402(a).

21 **b. Fraudulent Conveyance.** Under the Arizona Uniform Fraudulent
22 Transfer Act, present creditors – that is, creditors whose claims arose

1 prior to the transfer – can establish a fraudulent transfer by showing
2 actual intent to hinder, delay, or defraud, A.R.S. § 44-1004; or by
3 showing that the debtor failed to receive reasonably equivalent value
4 in exchange and the transaction rendered him insolvent, A.R.S § 44-
5 1005. A future creditor – a creditor whose claims arose after the
6 transfer must show actual intent under A.R.S § 44-1004. Actual intent
7 may be established either by direct or circumstantial evidence –
8 traditionally by proving the existence of “badges of fraud,” such as 1)
9 The transfer was to an insider; 2) The debtor retained possession or
10 control of the property after the transfer; 3) The transfer was concealed;
11 4) Prior to the transfer, the debtor was threatened with suit; 5) The
12 transfer was of substantially all of the debtor's assets; 6) The debtor
13 absconded; 7) The debtor concealed assets; 8) The value of the
14 consideration was not reasonably equivalent to the value of assets
15 transferred; 9) The debtor became insolvent; 10) The transfer occurred
16 shortly before or after a substantial debt was incurred and the debtor
17 transferred the essential assets of the business to a lienholder who
18 transferred the assets to an insider of the debtor. A.R.S. § 44-1004.

19 c. **Nominee.** The government must present evidence to prove that the
20 ostensible titleholder is merely the nominee of the taxpayer. *United*
21 *States v. Webb*, 595 F.2d 203 (4th Cir. 1979). Relevant factors include the
22 following: (a) No consideration or inadequate consideration paid by

1 the nominee; (b) Property placed in the name of a nominee in
2 anticipation of a suit or occurrence of liabilities while the transferor
3 continues to exercise control over the property; (c) Close relationship
4 between the transferor and the nominee; (d) Failure to record
5 conveyance; (e) Retention of possession by the transferor; and (f)
6 Continued enjoyment by the transferor of benefits of the transferred
7 property. *Towe Antique Ford Foundation v. I.R.S.*, 791 F. Supp. 1450,
8 1454, *aff d*, 999 F.2d 1387 (9th Cir. 1993).

9 d. **Foreclosure.** Under 28 U.S.C. § 7403(c), the United States is entitled to
10 foreclose its liens arising under 26 U.S.C. §§ 6321 and 6322, as limited
11 by 26 U.S.C. § 6323. These liens attach at the time of assessment and
12 are perfected by the filing of a Notice of Federal Tax Lien.

13 2. **Factual and Legal Issues.** Whether the taxes were properly assessed as to
14 Defendant Forman, whether Defendant Forman has an interest in the Subject Property
15 such that the United States' liens attach thereto, and the priority of the liens against the
16 subject property.

17 3. **Jurisdictional basis.** This action is commenced under sections 7401 and
18 7403 of the Internal Revenue Code, at the direction of the Attorney General of the
19 United States and with the authorization of the Associate Area Counsel of the Internal
20 Revenue Service, a delegate of the Secretary of the Treasury. The Court has jurisdiction
21 over the subject matter of this action pursuant to 26 U.S.C. § 7402 and 28 U.S.C. §§ 1340
22 and 1345. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and

1 1396 because it is the judicial district in which Defendant resides and the District in
2 which the subject property is located.

3 5. **Parties.** The United States is not aware of any parties which have not been
4 served, and all served parties have appeared.

5 6. **Jurisdiction Over Parties.** All parties are subject to the Court's
6 jurisdiction.

7 7. **Dispositive Motions.** The United States anticipates filing a Motion for
8 Summary Judgment at the close of discovery.

9 8. **Referral to a Magistrate.** The United States will not consent to a
10 Magistrate Judge.

11 9. **Related Cases.** The United States is not aware of any pending related
12 cases.

13 10. **Initial Disclosures.** The United States recommends that the parties make
14 initial disclosures within thirty (30) days of the Rule 16 Scheduling Conference, or by
15 October 27, 2010.

16 11. **Proposed Deadlines.**

17 A. **Discovery.** The United States also proposes an initial ninety (90)
18 day period—or until December 27, 2010—for discovery as to the issue of Mr. Vild's
19 representation of DLP LT 13, at which time the parties could brief the Court on the issue
20 or participate in an evidentiary hearing. Once the issue of Mr. Vild's representation of
21 the DLP LT 13 is resolved, the United States proposes a discovery period lasting two-
22 hundred-seventy (270) days, or until September 23, 2011.

1 B. **Dispositive motions.** The United States proposes that dispositive
2 motions be due forty-five (45) days after the close of discovery, or November 7, 2011,
3 that responses be due thirty (30) days after the filing of dispositive motions, or
4 December 7, 2011, and that replies be due fifteen (15) days after the filing of responses,
5 or December 22, 2011.

6 C. **Experts.** The United States proposes that the parties disclose any
7 expert witnesses within sixty (60) days prior to the close of discovery, or July 25, 2011,
8 and any rebuttal witnesses within forty-five (45) days prior to the close of discovery, or
9 August 9, 2011.

10 D. **Pretrial Disclosures.** The United States requests that the Court
11 postpone setting the deadline for pretrial disclosures – and the deadlines for other
12 pretrial materials, such as the pretrial order, exhibit lists, witness lists, and motions in
13 limine–until the resolution of the dispositive motions.

14 E. **Pretrial Conference.** The United States requests that the Court
15 postpone scheduling the Final Pretrial Conference until after any dispositive motions
16 have been resolved.

17 12. **Scope and Phases of Discovery.** As mentioned above, the United States
18 requests that the Court resolve the issue of Mr. Vild’s representation of DLP LT 13 prior
19 to the start of discovery regarding the merits of the case.

20 13. **Suggested Limits on Discovery.** The United States has no suggested
21 changes.
22

1 14. **Time and Length of Trial.** The United States anticipates that this case will
2 be ready for trial by approximately January 9, 2012—allowing 90 days for initial
3 discovery regarding Mr. Vild’s representation of DLP LT 13 and the resolution of that
4 issue, 270 days for discovery as to the merits, 45 days for the preparation and filing of
5 dispositive motions, 30 days for responses to dispositive motions, and 15 days for
6 replies — and that trial will last 3 days. Furthermore, the pendency of any dispositive
7 motions before the Court could also delay the date of trial. For these reasons, the
8 United States does not advocate the setting of a trial date at this time, but requests that
9 the Court set the trial date in a separate order to be issued after the close of discovery
10 and the resolution of any dispositive motions.

11 15. **Jury Trial.** Ms. Forman and Mr. Chisum have requested a jury trial. The
12 United States contests this request, as Defendants are not entitled to a jury trial on the
13 issue of nominee liens and foreclosure. Those issues triable by jury may be resolved by
14 stipulation or dispositive motions.

15 16. **Settlement.** The United States believes settlement may be possible, but
16 does not request a settlement conference or other formal settlement assistance from the
17 Court.

18 17. **Class Action.** This section is not applicable.

19 18. **Complex Problems.** The United States does not believe that this case
20 should be categorized as complex.

21 19. **Other matters.** As discussed above, the United States is not aware of any
22 such other matters.

1 Respectfully submitted this 20th day of September, 2010.

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3 United States Attorney

4 By: /s/ Alexis V. Andrews
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11 **CERTIFICATE OF SERVICE**

12 It is hereby certified that service of the foregoing PROPOSED CASE
13 MANAGEMENT PLAN has been made this 20th day of September, 2010, by placing
14 copies in the U. S. Mail addressed to the following:

15 Maria D. Forman
16 c/o 5640 E. Duane Lane
17 Cave Creek, AZ 85331

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18 Jimmy C. Chisum, 84388-008
19 Herlong-CA-Herlong-FCI
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