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8
9 Attorneys for the United States of America

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 ALL PLEADINGS AND
DOCUMENTS FILED BY ELMER P.
VILD ON BEHALF OF DLP LT 13

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18 The United States of America, through undersigned counsel, hereby moves the
19 Court for an Order striking all pleadings and documents filed by Trustee Elmer P. Vild
20 on behalf of Defendant DLP LT 13 because they were improperly filed by a *pro se*
21 litigant. A memorandum in support is filed herewith.

22 Respectfully submitted this 14th day of October, 2010.

DENNIS K. BURKE
United States Attorney

By: /s/ Alexis V. Andrews
ALEXIS V. ANDREWS
U.S. Department of Justice
P.O. Box 683
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Attorneys for the United States

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing UNITED STATES' MOTION TO STRIKE ALL PLEADINGS AND DOCUMENTS FILED BY ELMER P. VILD ON BEHALF OF DLP LT 13; MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO STRIKE ALL PLEADINGS FILED BY ELMER P. VILD ON BEHALF OF DLP LT 13, and PROPOSED ORDER has been made this 14th day of October, 2010, by placing copies in the United States Mail addressed to the following:

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

Denise Ann Faulk
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1275 W Washington St
Phoenix, AZ 85007

Jimmy C. Chisum, 84388-008
Herlong-CA-Herlong-FCI
Federal Correction Institution
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Herlong, CA 96113

Elmer P. Vild
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/s/ Alexis V. Andrews
ALEXIS V. ANDREWS
Trial Attorney, Tax Division
United States Department of Justice

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

MEMORANDUM IN SUPPORT
UNITED STATES' MOTION TO
STRIKE ALL PLEADINGS AND
DOCUMENTS FILED BY ELMER P.
VILD ON BEHALF OF DLP LT 13

18 The United States, by and through its undersigned counsel, submits this
19 memorandum in support of its Motion to Strike All Pleadings and Documents Filed by
20 Elmer P. Vild on Behalf of DLP LT 13, because they were improperly filed on DLP LT
21 13's behalf by Elmer P. Vild, a *pro se* litigant, and states as follows in support:
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1 In this case, the United States seeks to reduce to judgment certain tax liabilities
2 assessed against Defendant Maria D. Forman, and to foreclose tax liens connected with
3 those liabilities. Defendant DLP LT 13 was included in this case because, while it may
4 claim an interest in the Subject Property, it either obtained title to the Subject Property
5 as the result of a fraudulent transfer or it is a nominee of Defendant Maria D. Forman,
6 the true beneficial owner.

7 Since the beginning of this case, Trustee Elmer P. Vild has purported to represent
8 DLP LT 13 and has filed a variety of motions to dismiss (challenging subject matter
9 jurisdiction, asserting a “lack of proof,” objecting to “failure to identify live body
10 plaintiff,” and alleging harassment) and other motions, all of which have been
11 summarily denied.

12 Also since the start of this case, the United States has opposed Mr. Vild’s
13 purported representation of DLP LT 13 on the grounds that he is a *pro se* individual
14 barred from representing anyone other than himself. (*See* Motions to Strike Pleadings at
15 Doc. No. 36, 41, 59). However, on February 5, 2010, the Court denied the Motions to
16 Strike, noting that “Defendant Vild cannot represent any party but himself” but that the
17 Court could not “yet conclude that Defendant Vild . . . does not have an interest.” (Doc.
18 No. 61).

19 As the Court stated, Mr. Vild – who is not a licensed attorney – is not authorized
20 to represent parties other than himself. *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661,
21 664-65 (9th Cir. 2008); *McShane v. U.S.*, 366 F.2d 286, 288 (9th Cir. 1966). *Russell v. U.S.*,
22 308 F.2d 78, 79 (9th Cir.1962); *see also* Local Rule 83.1. “Although a non-attorney may

1 appear *in propria persona* in his own behalf, that privilege is personal to him. He has no
 2 authority to appear as an attorney for others than himself.” *C.E. Pope Equity Trust v.*
 3 *U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (citations omitted).

4 Trustees can appear on behalf of a trust only where the trustee is a real party in
 5 interest; if the Trustee is not a real party in interest, he is not allowed to represent the
 6 trust. *Id.*¹ See also *In re Ball*, 2009 WL 1457025, *1 (D.Ariz. 2009) (unreported) (plaintiff
 7 could not represent trust because he was not an attorney admitted to practice within the
 8 District of Arizona). “A trustee may bring an action regarding a trust only if he or she is
 9 an *actual beneficiary* of the trust because only then is the trustee, as beneficiary,
 10 representing his or her own interests.”² *Willoughby v. Rubin*, 1999 WL 221862 (D. Ariz.
 11 1999) (citing *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987)(where record
 12 did not indicate that Trustee was “the actual beneficial owner of the claims being
 13 asserted by the Trusts,” Trustee was not a party asserting his “own case personally”
 14 and thus his Trustee status did not include the right to appear *pro se*)); *U.S. v. Stepard*,
 15 876 F.Supp. 214, 215 (D.Ariz. 1994) (disallowing Trustee’s *pro se* representation of trust,

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 18 ¹ This prohibition on non-attorney representation is not unique to trusts. *In re America West Airlines*, 40 F.3d 1058,
 1059 (9th Cir. 1994) (per curiam) (non-attorney may not appear on behalf of a partnership); *U.S. v. High Country*
 19 *Broadcasting Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam) (non-attorney shareholder may not represent the
 20 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).

21 ² Mr. Vild has argued in the past that DLP LT 13 is not a trust, but rather a “contract,” but has pointed to no legal
 22 basis for this assertion that a contract can be a party to a lawsuit, or that a contract can hold an interest in property.
 However, the form of DLP LT 13 the entity does not affect the outcome of the Motion to Strike. Regardless of the
 form of DLP LT 13, Mr. Vild—who is not an attorney—is not authorized to represent it.

1 relying in part on Arizona Supreme Court Rule 31(a)(3)--now 31(b) – for the prohibition
2 on non-attorney representation).

3 Mr. Vild has now stated on the record that he is *not* the beneficiary of DLP LT
4 13 – the beneficiary of DLP LT 13 is “another trust.” (Notice re: Indispensable Parties
5 (Doc. No. 106) at 2). He has further stated that he is not a beneficiary of *that* trust.³ *Id.*
6 Because Mr. Vild is not a beneficiary of DLP LT 13 or its beneficiary, he is not permitted
7 to appear *pro se* on behalf of DLP LT 13, and all pleadings and documents filed by Mr.
8 Vild should be stricken from the record.

9 Accordingly, Defendant DLP LT 13’s pleadings and documents are improper
10 and should be stricken from the docket.

11 WHEREFORE, the United States prays for an Order striking Defendant
12 DLP LT 13’s pleadings and documents. A proposed order is attached.

13 Respectfully submitted this 15th day of October, 2010.

14 DENNIS K. BURKE
15 United States Attorney

16 By: /s/ Alexis V. Andrews
17 ALEXIS V. ANDREWS
18 U.S. Department of Justice
19 P.O. Box 683
20 Ben Franklin Station
21 Washington, D.C. 20044

22 Attorneys for the United States

³ Mr. Vild claims that the “ultimate beneficiaries” of the other trust have not been officially notified of this suit; Mr. Vild has received official notification of the suit and has been properly served and has appeared in the case several times.

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[PROPOSED] ORDER GRANTING
MOTION TO STRIKE ALL
PLEADINGS AND DOCUMENTS
FILED BY ELMER P. VILD ON
BEHALF OF DLP LT 13

IT IS HEREBY ORDERED THAT the United States' Motion to Strike All
Pleadings and Documents Filed by Elmer P. Vild on Behalf of DLP LT 13 is GRANTED.
Defendant DLP LT 13's pleadings and documents filed by Elmer P. Vild are stricken
from the record.