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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.
17

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

UNITED STATES' MOTION TO
STRIKE DEFENDANT DLP LT 13'S
SECOND MOTION TO DISMISS,
THIRD MOTION TO DISMISS, AND
DEMAND FOR JUDGE WITHOUT
CONFLICT OF INTEREST

18 The United States of America, through undersigned counsel, hereby moves the
19 Court for an Order striking Defendant DLP LT 13's Second Motion to Dismiss (Doc. No.
20 37) Third Motion to Dismiss (Doc. No. 38), and Demand for Judge Without Conflict of
21 Interest because they were improperly filed on DLP LT 13's behalf by Trustee Elmer P.
22 Vild, a *pro se* litigant. A memorandum in support is filed herewith.

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Respectfully submitted this 28th day of December, 2009.

DENNIS K. BURKE
United States Attorney

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

Attorneys for the United States

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing UNITED STATES' MOTION TO STRIKE DEFENDANT DLP LT 13 TRUST'S SECOND MOTION TO DISMISS, THIRD MOTION TO DISMISS, AND DEMAND FOR JUDGE WITHOUT CONFLICT OF INTEREST; MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION TO STRIKE DEFENDANT DLP LT 13 TRUST'S SECOND MOTION TO DISMISS, THIRD MOTION TO DISMISS, AND DEMAND FOR JUDGE WITHOUT CONFLICT OF INTEREST, and PROPOSED ORDER has been made this 28th day of December, 2009, by placing copies in the United States Mail addressed to the following:

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

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/s/ Alexis V. Andrews
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10 IN THE UNITED STATES DISTRICT COURT FOR THE
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14 Maria D. Forman; Jimmy C. Chisum, as
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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
SECOND MOTION TO DISMISS,
THIRD MOTION TO DISMISS, AND
DEMAND FOR JUDGE WITHOUT
CONFLICT OF INTEREST

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 Second
20 Motion to Dismiss (Doc. No. 37), Third Motion to Dismiss (Doc No. 38), and Demand
21 for Judge Without Conflict of Interest (Doc. No. 39) filed in this action, because they
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1 were improperly filed on DLP LT 13's behalf by Trustee Elmer P. Vild, a *pro se* litigant,
2 and states as follows in support:

3 Trustee Elmer P. Vild purported to file the Second Motion to Dismiss, Third
4 Motion to Dismiss, and Demand for Judge Without Conflict of Interest on behalf of DLP
5 LT 13 Trust, "without the assistance of counsel." (See Sec. Mot. to Dismiss at 1; Third
6 Mot. to Dismiss at 1; Demand for Judge at 1). However, as stated in the United States'
7 earlier Motion to Strike Defendant DLP LT 13 Trust's Answer and Motion to Dismiss
8 (Doc. No. 36), Trustee Elmer P. Vild, as a *pro se* litigant, is not authorized to represent
9 parties other than himself. *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664-65 (9th
10 Cir. 2008); *McShane v. U.S.*, 366 F.2d 286, 288 (9th Cir. 1966). *Russell v. U.S.*, 308 F.2d 78,
11 79 (9th Cir.1962); *see also* Local Rule 83.1. "Although a non-attorney may appear *in*
12 *propria persona* in his own behalf, that privilege is personal to him. He has no authority
13 to appear as an attorney for others than himself." *C.E. Pope Equity Trust v. U.S.*, 818 F.2d
14 696, 697 (9th Cir. 1987) (citations omitted). "Where a trustee is not the real party in
15 interest, the trustee is not allowed to represent the trust *pro se*. *Id.*¹ *See also In re Ball*, 2009
16 WL 1457025, *1 (D.Ariz. 2009) (unreported) (plaintiff could not represent trust because
17 he was not an attorney admitted to practice within the District of Arizona); *Willoughby*
18 *v. Rubin*, 1999 WL 221862 (D. Ariz. 1999) (only trust beneficiary may bring suit *pro se* on

19 _____
20 ¹ 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 behalf of trust); *U.S. v. Stepard*, 876 F.Supp. 214, 215 (D.Ariz. 1994) (relying in part on
2 Arizona Supreme Court Rule 31(a)(3)--now 31(b) – for the prohibition on non-attorney
3 representation);

4 Accordingly, the Second Motion to Dismiss, Third Motion to Dismiss, and
5 Demand for Judge Without Conflict of Interest are improper pleadings and should be
6 stricken from the docket.

7 WHEREFORE, the United States prays for an Order striking Defendant
8 DLP LT 13 Trust’s Second Motion to Dismiss (Doc. No. 37), Third Motion to Dismiss
9 (Doc. No. 28), and Demand for Judge Without Conflict of Interest. A proposed order is
10 attached.

11 Respectfully submitted this 28th day of December, 2009.

12 DENNIS K. BURKE
13 United States Attorney

14 By: /s/ Alexis V. Andrews
15 ALEXIS V. ANDREWS
16 U.S. Department of Justice
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IN THE UNITED STATES DISTRICT COURT FOR THE
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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

[PROPOSED] ORDER GRANTING
MOTION TO STRIKE DEFENDANT
DLP LT 13 TRUST'S SECOND
MOTION TO DISMISS, THIRD
MOTION TO DISMISS, AND
DEMAND FOR JUDGE WITHOUT
CONFLICT OF INTEREST

IT IS HEREBY ORDERED THAT the United States' Motion to Strike Defendant
DLP LT 13 Trust's Second Motion to Dismiss, Third Motion to Dismiss, and Demand for
Judge Without Conflict of Interest is GRANTED. Defendant DLP LT 13 Trust's Second
Motion to Dismiss (Doc. No. 37), Third Motion to Dismiss (Doc. No. 38), and Demand
for Judge Without Conflict of Interest (Doc. No. 39) are stricken from the record.