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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

MEMORANDUM IN SUPPORT OF  
SECOND MOTION FOR LEAVE TO  
FILE AMENDED COMPLAINT

16  
17 The United States, by and through its undersigned counsel, submits this  
18 memorandum in support of its Second Motion for Leave to File Amended Complaint  
19 filed in this action. This is the United States' second request to file an amended  
20 complaint. The United States seeks to file a complaint correcting the legal description of  
21 the subject property at issue in this case.  
22

1 FACTS

2 In its Amended Complaint filed July 7, 2009, the United States sought to reduce  
3 to judgment federal tax assessments against Defendant Maria D. Forman and to  
4 foreclose federal tax liens upon property beneficially owned by Defendant Maria D.  
5 Forman but titled in the name of DLP LT 13 Trust, as her nominee or fraudulent  
6 transferee. The United States subsequently filed a Notice of Lis Pendens with the  
7 Maricopa County Recorder, which included a legal description of the subject property.  
8 Counsel for the United States has since been informed that the legal description in the  
9 Notice of Lis Pendens – and thus the legal description in the Amended Complaint – is  
10 incomplete. Thus, the United States requests leave to correct the legal description of the  
11 subject property at issue in this case.

12 LEGAL STANDARD

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

17 [i]n the absence of any apparent and declared reason – such  
18 as delay, bad faith or dilatory motive on the part of the  
19 movant, repeated failure to cure deficiencies by amendments  
20 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.’

21 Foman v. Davis, 371 U.S. 178, 182 (1962). Rule 15 has a “policy of favoring  
22

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

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

#### 14 ARGUMENT

15 The United States requests leave to file an amended complaint to correct the legal  
16 description of the subject property. None of the parties have raised the issue of the  
17 legal description of the subject property, and there has been no indication that the  
18 correction of the legal description would in any way burden the other parties. As  
19 discovery has not yet commenced and no scheduling order has issued, no party will be  
20 prejudiced by the amendment.

1           Accordingly, the United States respectfully requests that the proposed order be  
2 entered, and that the United States be granted leave to file an amended complaint. A  
3 proposed order and a proposed amended complaint, are attached.

4           Respectfully submitted this 11th day of January, 2010.

5   DENNIS K. BURKE  
6   United States Attorney

7   By: /s/ Alexis V. Andrews  
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