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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 and
Elmer P. Vild, also known as Phillip
15 O'Neil, as Trustees for the DLP LT 13
Trust; and Arizona Department of
16 Revenue,

17 Defendants.

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

[PROPOSED] SECOND AMENDED
COMPLAINT

18
19 The United States of America states the following claims against the defendants:

20 CAUSE OF ACTION

21 1. This is a civil action by the United States to (1) reduce to judgment
22 outstanding federal tax assessments against Maria D. Forman, and (2) foreclose federal

1 tax liens against certain real property in Maricopa County beneficially owned by
2 Defendant Maria D. Forman but titled in the name of DLP LT 13 Trust, as her nominee
3 or fraudulent transferee.

4 **JURISDICTION AND VENUE**

5 2. This action is commenced under sections 7401 and 7403 of the Internal
6 Revenue Code, at the direction of the Attorney General of the United States and with
7 the authorization of the Associate Area Counsel of the Internal Revenue Service, a
8 delegate of the Secretary of the Treasury.

9 3. The Court has jurisdiction over the subject matter of this action pursuant
10 to 26 U.S.C. § 7402 and 28 U.S.C. §§ 1340 and 1345.

11 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and
12 1396 because it is the judicial district in which Defendant resides and the District in
13 which the subject property is located.

14 **DEFENDANTS**

15 5. Defendant Maria D. Forman resides in the United States in Cave Creek,
16 Arizona, which is within the jurisdiction of this Court. She is made a party to this suit
17 because she has unpaid federal tax assessments and has an ownership interest in the
18 parcel of property sought to be foreclosed in this action.

19 6. Defendant Maria D. Forman's husband, Howard E. Forman, held an
20 ownership interest in the parcel of property sought to be foreclosed in this action.
21 Howard E. Forman passed away on or about April 16, 2008.

1 7. Elmer P. Vild and Jimmy C. Chisum as Trustees for the DLP LT 13 Trust,
2 are made a party to this suit pursuant to 26 U.S.C. § 7403(b), because it may claim an
3 interest in the parcel of property sought to be foreclosed in this action.

4 8. Arizona Department of Revenue is made a party to this suit because it
5 may claim an interest in the parcel of property sought to be foreclosed in this action.

6 **DESCRIPTION OF REAL PROPERTY SOUGHT TO BE FORECLOSED**

7 9. The United States seeks foreclosure of federal tax liens against the parcel
8 of real property located at 5640 E. Duane Lane, Cave Creek, Arizona (address used by
9 the Post Office), sometimes listed as 29614 N. 57th St., Cave Creek, Arizona. Defendant
10 Maria D. Forman's current residence is located on this property. A legal description of
11 the land is as follows:

12 The Southeast quarter of the Northwest quarter of the Northwest quarter
13 of the Northwest quarter of Section 28, Township 5 North, Range 4 East of
14 the Gila and Salt River Base and Meridian, Maricopa County, Arizona, EX
P/F 98-904961. Excepting all oil, gas and other mineral deposits as
reserved to the United States in the Patent of said land.

15 The exception listed is for the North 145 feet of the property, which was sold in 1998.

16 **TAX LIABILITIES AND LIENS**

17 10. The United States reasserts the allegations made in paragraph one (1)
18 through nine (9) above, as fully set forth herein.

19 11. Defendant Maria D. Forman and Howard E. Forman filed frivolous Form
20 1040 income tax returns for the 1986, 1987, 1988, and 1989 tax years.

1 12. Defendant Maria D. Forman and Howard E. Forman failed to file timely
2 returns for the 1995, 1997, 1998, 1999, and 2001 tax years. The IRS determined the tax
3 liability for these years and made the appropriate assessments.

4 13. On January 20, 2004, Defendant Maria D. Forman submitted returns for
5 the 1995, 1997, 1998, 1999, and 2001 tax years, reflecting the same tax liability as
6 determined by the IRS.

7 14. On January 20, 2004, Defendant Maria D. Forman submitted a return for
8 the 2002 tax year, and assessments were made based on this return.

9 15. On May 18, 2007, Defendant Maria D. Forman submitted returns for the
10 2003 and 2004 tax years, and assessments were made based on these returns.

11 16. On the dates and in the amounts set forth below, a duly authorized
12 delegate of the Secretary of Treasury made timely assessments for unpaid federal taxes
13 (IRS Form 1040) against Defendant Maria D. Forman, as follows:

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	<u>Type of Tax</u>	<u>Tax Period</u>	<u>Assessment Date</u>	<u>Assessment Amount</u> ¹	<u>Unpaid Balance as of December 29, 2008</u> ²	
2	IRC 6702	12/31/86	03/22/99	P3	\$500.00	\$1,015.78
3			03/29/04	F	\$16.00	
4			11/17/08	F	\$32.00	
4	IRC 6702	12/31/87	03/22/99	P3	\$500.00	\$982.04
5			08/22/05	F	\$16.00	
5	IRC 6702	12/31/88	03/22/99	P3	\$500.00	\$961.74
6	IRC 6702	12/31/89	03/22/99	P3	\$500.00	\$961.74
6	Form 1040	12/31/95	07/14/03	P1	\$273.25	\$3,693.11
7			07/14/03	T	\$1,459.00	
8			07/14/03	I	\$1,033.87	
9			10/16/06	P2	\$273.25	
8	Form 1040	12/31/97	07/14/03	P1	\$252.45	\$3,236.66
9			07/14/03	T	\$1,684.00	
10			07/14/03	I	\$647.72	
11			07/14/03	P2	\$280.50	
10	Form 1040	12/31/98	07/28/03	P1	\$270.90	\$3,244.93
11			07/28/03	T	\$2,021.00	
12			07/28/03	I	\$537.07	
13			07/28/03	P2	\$301.00	
12	Form 1040	12/31/99	07/28/03	P1	\$225.45	\$2,506.96
13			07/28/03	T	\$1,744.00	
14			07/28/03	I	\$317.36	
15			07/28/03	P2	\$200.40	
16			10/16/2006	P2	\$50.10	
14	Form 1040	12/31/01	04/05/04	T	\$1,481.00	\$2,128.32
15			04/05/04	P1	\$238.00	
16			04/05/04	I	\$126.27	
17			07/11/05	F	\$16.00	
18			07/18/05	F	\$16.00	
19			10/16/06	P2	\$238.00	
20			10/13/08	F	\$16.00	
18	Form 1040	12/31/02	02/23/04	T	\$1,564.00	\$1,909.15
19			02/23/04	P1	\$209.02	
20			02/23/04	P2	\$51.09	
21			02/23/04	I	\$41.64	
22			04/12/04	F	\$16.00	
			04/19/04	F	\$16.00	

¹ **F**—fees and collection costs; **P1**—late filing penalty, 26 U.S.C. § 6651(a)(1); **P2**—failure to pay tax penalty; 26 U.S.C. § 6651(a)(2); **P3**—frivolous filing penalty, 26 U.S.C. § 6702; **I**—interest assessed; **T**—tax assessed.

² Includes accrued but unassessed interest and applied credits as of this date.

<u>Type of Tax</u>	<u>Tax Period</u>	<u>Assessment Date</u>	<u>Assessment Amount</u> ³	<u>Unpaid Balance as of January 5, 2009</u> ⁴
Form 1040	12/31/03	07/16/07	T \$2,898.00	\$4,493.70
		07/16/07	P1 \$517.72	
		07/16/07	P2 \$460.20	
		07/16/07	RI \$663.06	
		02/11/08	F \$16.00	
		10/13/08	F \$16.00	
Form 1040	12/31/04	09/17/07	T \$1,268.00	\$2,293.74
		09/17/07	P1 \$280.35	
		09/17/07	P2 \$166.35	
		09/17/07	RI \$296.05	

17. Defendant Maria D. Forman failed to pay the subject tax liabilities despite timely notice and demand for payment. Pursuant to 26 U.S.C. § 6321, statutory liens arose against all property and rights to property owned by Defendant Maria D. Forman, including the Subject Property.

18. On April 5, 2004, to provide notice to third parties entitled to notice of the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of Maricopa County, Arizona, a Notice of Federal Tax Lien with respect to the assessment against Defendant Maria D. Forman for the 2002 tax year.

19. On July 29, 2005, to provide notice to third parties entitled to notice of the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of Maricopa County, Arizona, a Notice of Federal Tax Lien with respect to the assessment against Defendant Maria D. Forman for the 2001 tax year.

20. On August 25, 2005, to provide notice to third parties entitled to notice of

³ **F**—fees and collection costs; **P1**—late filing penalty, 26 U.S.C. § 6651(a)(1); **P2**—failure to pay tax penalty; 26 U.S.C. § 6651(a)(2); **RI**—restricted interest; **T**—tax assessed.

⁴ Includes accrued but unassessed interest and applied credits as of this date.

1 the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of
2 Maricopa County, Arizona, a Notice of Federal Tax Lien with respect to the assessments
3 against Defendant Maria D. Forman for the 1986, 1987, 1988, 1989, 1995, 1997, 1998, and
4 1999 tax years.

5 21. On January 23, 2008, to provide notice to third parties entitled to notice of
6 the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of
7 Maricopa County, Arizona, a Notice of Federal Tax Lien with respect to the assessment
8 against Defendant Maria D. Forman for the 2003 and 2004 tax years.

9 22. On March 8, 2004, to provide notice to third parties entitled to notice of
10 the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of
11 Maricopa County, Arizona, a Notice of Federal Tax Lien against DLP LT 13 Trust as the
12 nominee of Defendant Maria D. Forman, with respect to the assessments against
13 Defendant Maria D. Forman for the 1986, 1987, 1988, 1989, 1995, 1997, 1998, and 1999 tax
14 years and describing the Subject Property.

15 23. On March 25, 2004, to provide notice to third parties entitled to notice of
16 the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder of
17 Maricopa County, Arizona, a Notice of Federal Tax Lien against DLP LT 13 Trust as the
18 nominee of Defendant Maria D. Forman, with respect to the assessment against
19 Defendant Maria D. Forman for the 2002 tax year and describing the Subject Property.

20 24. On September 22, 2008, to provide notice to third parties entitled to notice
21 of the statutory liens under 26 U.S.C. § 6323, the IRS recorded with the County Recorder
22 of Maricopa County, Arizona, a Notice of Federal Tax Lien against DLP LT 13 Trust as

1 the nominee of Defendant Maria D. Forman, with respect to the assessments against
2 Defendant Maria D. Forman for the 2001, 2003, and 2004 tax years.

3 **TRANSFERS OF THE SUBJECT PROPERTY**

4 25. On August 29, 1983, Defendant Maria D. Forman and Howard E. Forman
5 acquired title to the Subject Property as joint tenants with right of survivorship.

6 26. On May 15, 1990, Defendant Maria D. Forman and Howard E. Forman
7 signed a warranty deed purporting to convey the Subject Property to "DLP LT 13 with
8 Jimmy Chisum as Trustee" for little or no consideration and without receipt of
9 reasonably equivalent value in exchange for the transfer. The deed was recorded on
10 May 30, 1990, at recording number 90-239325.

11 27. Upon the death of Howard E. Forman, on or about April 16, 2008, his
12 interest in the Subject Property passed to Defendant Maria D. Forman.

13 28. Despite the purported transfer of the Subject Property, Defendant Maria
14 D. Forman continues to occupy, possess, exercise dominion and control over, and have
15 use and enjoyment of the property such that, to the extent that DLP LT 13 Trust
16 purports to hold title to the Subject Property, it does so as a nominee of Defendant
17 Maria D. Forman.

18 **COUNT I**

19 **REDUCE TO JUDGMENT FEDERAL INCOME TAX ASSESSMENTS**

20 29. The United States reasserts the allegations made in paragraphs one (1)
21 through twenty-eight (28) above, as fully set forth herein.

22 30. On the dates, in the amounts, and for the tax periods set forth in

1 paragraph sixteen (16) above, a duly authorized delegate of the Secretary of the
2 Treasury made assessments against Defendant Maria D. Forman for unpaid federal
3 income taxes, penalties, and interest.

4 31. Despite timely notice and demand for payment of assessments described
5 above, Defendant Maria D. Forman has neglected, refused, or failed to pay the
6 assessments and there remains due and owing to the United States on those
7 assessments the total of \$27,427.87, together with accrued but unassessed statutory
8 interest and any other additions as of the dates listed in paragraph sixteen (16) above.

9 32. Under 28 U.S.C. § 7402(a), the United States is entitled to a judgment
10 against Defendant Maria D. Forman for the unpaid balance of the assessed amounts
11 described above, plus statutory interest and any other additions accruing to the date of
12 payment.

13 **COUNT II**

14 **SET ASIDE FRAUDULENT CONVEYANCES OF THE SUBJECT PROPERTY OR**
15 **ESTABLISH DLP LT 13 TRUST AS NOMINEE**

16 33. The United States reasserts the allegations made in paragraph one (1)
17 through thirty-two (32) above, as fully set forth herein.

18 34. At the time Defendant Maria D. Forman and Howard E. Forman
19 purported to transfer the Subject Property to DLP LT 13 Trust in 1990, without
20 consideration as described above, they knew or had reason to know that they had
21 incurred and would continue to incur income tax liabilities despite and as a result of
22 their failure to file timely Form 1040 returns.

1 35. The purported transfer of the Subject Property as described above was
2 made with the actual intent to hinder, delay, or defraud the United States as a creditor
3 of Defendant Maria D. Forman and Howard E. Forman. The transfer is therefore of no
4 effect as to the United States and the United States may cause said transfer to be set
5 aside pursuant to the Arizona Uniform Fraudulent Transfer Act, A.R.S. §§ 44-1004, 44-
6 1005, and 44-1007.

7 36. After the transfer is set aside as described above, legal and equitable title
8 to the Subject Property should rest with the true owner, Defendant Maria D. Forman.

9 37. After the purported transfer of the Subject Property, Defendant Maria D.
10 Forman has continued to enjoy full beneficial ownership of, and to exercise dominion
11 and control over, the Subject Property.

12 38. Defendant Maria D. Forman is using DLP LT 13 Trust in an improper
13 attempt to shield the Subject Property from the federal tax liens.

14 39. DLP LT 13 Trust is the nominee of Defendant Maria D. Forman, the true
15 beneficial owner of the Subject Property.

16 **COUNT III**

17 **FORECLOSE THE FEDERAL TAX LIENS AGAINST THE SUBJECT PROPERTY**

18 40. The United States reasserts the allegations made in paragraphs one (1)
19 through thirty-nine (39) above, as fully set forth herein.

20 41. Pursuant to 26 U.S.C. §§ 6321 and 6322, statutory liens for unpaid federal
21 taxes arose in favor of the United States against all property and rights to property,
22 whether real or personal, belonging to Defendant Maria D. Forman—including the

1 Subject Property – as of the dates of the assessments described in paragraph sixteen (16)
2 above.

3 42. The federal tax liens described in paragraphs seventeen (17) through
4 twenty-four (24) above, attached to Defendant Maria D. Forman’s interest in the subject
5 property sought to be foreclosed in this action, and remain on the Subject Property,
6 despite and subsequent transfers.

7 43. The federal tax liens have priority over all interests in the Subject Property
8 acquired after the attachment of the tax liens, subject to 26 U.S.C. § 6323.

9 44. Under 28 U.S.C. § 7403(c), the United States is entitled to a decree of sale
10 of the Subject Property to enforce its tax liens thereon.

11 **PRAYER FOR JUDGMENT**

12 WHEREFORE, the plaintiff, the United States of America, prays as follows:

13 A. That judgment be entered in favour of the United States and against
14 Defendant Maria D. Forman, in the amount of \$27,427.87, which represents the unpaid
15 balance of the federal income tax liabilities assessed against Defendant Maria D.
16 Forman as described above, together with accrued but unassessed interest and other
17 statutory additions, together with statutory interest and other additions, less any
18 applicable credits and payments;

19 B. That the Court determine that the United States has valid and subsisting
20 federal tax liens, by virtue of the assessments set forth above, on all property and rights
21 to property of Defendant Maria D. Forman, both real and personal, tangible and
22 intangible, including the Subject Property described above;

1 C. That the Court determine that the purported transfer of the Subject
2 Property from Defendant Maria D. Forman and Howard E. Forman was fraudulent and
3 of no effect to the lien claims of the United States and that it be set aside; or in the
4 alternative, that the Court determine that DLP LT 13 Trust holds title to the Subject
5 Property as the nominee of Defendant Maria D. Forman, and that the United States' tax
6 liens attach to the Subject Property;

7 D. That the Court order that the United States' tax liens encumbering the
8 Subject Property be foreclosed, that the Subject Property be sold pursuant to 28 U.S.C. §
9 7403 and 28 U.S.C. § 2001, and that the net proceeds be applied towards the satisfaction
10 of the federal tax liens; and

11 E. That the United States be awarded its costs and such other relief as is just
12 and proper.

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

14 DENNIS K. BURKE
15 United States Attorney

16 By: /s/ Alexis V. Andrews
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