

1 DENNIS K. BURKE
United States Attorney
2 District of Arizona
Evo A. DeConcini Courthouse
3 405 West Congress St., Suite 4800
Tuscon, Arizona 85801-5040
4 Telephone: (520) 620-7300

5 ALEXIS V. ANDREWS
Trial Attorney, Tax Division
6 U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
7 Washington, D.C. 20044-0683
Telephone: (202) 307-6432

8 Attorneys for the United States of America
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

UNITED STATES' RESPONSE IN
OPPOSITION TO MOTION TO
STRIKE ALL OF PLAINTIFF'S
PLEADINGS

16
17 The United States of America, through undersigned counsel, hereby responds to
18 Trustee Elmer P. Vild's Motion to Strike All of Plaintiff's Pleadings (Doc. No. 43) as
19 follows:

20 As stated in the United States' previous Motions to Strike¹, Trustee Elmer P.

21 _____
22 ¹ United States' Motion to Strike Defendant DLP LT 13 Trust's Answer and Motion to Dismiss (Doc. No. 36) and 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 (Doc. No. 41).

1 Vild's Motion to Strike All of Plaintiff's Pleadings was improperly filed on DLP LT 13
2 Trust's behalf by Trustee Elmer P. Vild, who is not an attorney. Trustee Elmer P. Vild is
3 not authorized to represent parties other than himself, and the Motion to Strike All of
4 Plaintiff's Pleadings should itself be stricken from the record. *See, e.g., Simon v. Hartford*
5 *Life, Inc.*, 546 F.3d 661, 664-65 (9th Cir. 2008).

6 Furthermore, none of the arguments proffered in the Motion to Strike have any
7 basis in law. Despite Trustee Elmer P. Vild's claim that none of the United States'
8 pleadings in this case were signed (Mot. to Strike 2), each pleading filed with this Court
9 in this case on behalf of the United States clearly bears the required signature. Fed. R.
10 Civ. P. 11(a) and L.R. Civ. 5.5(g).

11 It is true that Federal Rule of Civil Procedure 11 requires that all pleadings be
12 signed.² Fed. R. Civ. P. 11(a). However, according to the Local Rules:

13 The log-in and password required to submit documents to
14 the ECF System constitute the Registered User's signature on
15 all electronic documents filed with the Court for purposes of
16 Rule 11 of the Federal Rules of Civil Procedure. Documents
17 signed by an attorney shall be filed using that attorney's ECF
18 log-in and password . . .

19 L.R. Civ. 5.5(g). Each pleading filed by the United States in this case was filed using the
20 ECF System, using undersigned counsel's log-in and password. Thus all the United
21 States' pleadings were properly signed under both Rule 11 and Local Rule 5.5(g).

22 ² This same rule supports the United States' assertion that pleadings filed by Trustee Elmer P. Vild on behalf of DLP LT 13 Trust be stricken, as Trustee Elmer P. Vild is not an attorney of record for DLP LT 13 Trust, nor is he himself the party in interest. "Where a trustee is not the real party in interest, the trustee is not allowed to represent the trust *pro se*." *C.E. Pope Equity Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (citations omitted); *see also In re Ball*, 2009 WL 1457025, *1 (D.Ariz. 2009) (unreported) (plaintiff could not represent trust because he was not an attorney admitted to practice within the District of Arizona).

1 For the foregoing reasons, the United States opposed the Motion to Strike All of
2 Plaintiff's Pleadings, and requests that it be stricken from the record.

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

4 DENNIS K. BURKE
United States Attorney

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

9 Attorneys for the United States

10 **CERTIFICATE OF SERVICE**

11 It is hereby certified that service of the foregoing UNITED STATES' RESPONSE
12 IN OPPOSITION TO MOTION TO STRIKE ALL OF PLAINTIFF'S PLEADINGS has
13 been made this 11th day of January, 2010, by placing copies in the United States Mail
14 addressed to the following:

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

Denise Ann Faulk
Office of the Attorney General
1275 W Washington St
Phoenix, AZ 85007

17 Jimmy C. Chisum, 84388-008
18 Herlong-CA-Herlong-FCI
Federal Correction Institution
19 P.O. Box 800
Herlong, CA 96113

Elmer P. Vild
989 S. Main St.
#A-269
Cottonwood, AZ 86326

20 /s/ Alexis V. Andrews
21 ALEXIS V. ANDREWS
Trial Attorney, Tax Division
22 United States Department of Justice