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8  
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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 et al.,

15 Defendants.

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

REPLY IN SUPPORT OF UNITED STATES' MOTION TO STRIKE DEFENDANT DLP LT 13'S MOTION TO DISMISS AND ANSWER (DOC. NO. 36) AND REPLY IN SUPPORT OF UNITED STATES' MOTION TO STRIKE SECOND MOTION TO DISMISS, THIRD MOTION TO DISMISS, AND DEMAND FOR JUDGE WITHOUT CONFLICT OF INTEREST (DOC. NO. 41)

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18  
19 The United States, through undersigned counsel, hereby replies in support of its  
20 Motion to Strike Defendant DLP LT 13's Motion to Dismiss and Answer (Doc. No. 36)  
21 and Motion to Strike Defendant DLP LT 13's Second Motion to Dismiss, Third Motion  
22 to Dismiss, and Demand for Judge Without Conflict of Interest (Doc. No. 41) as follows:

1 **SUMMARY OF CASE**

2 In this case, the United States seeks to reduce to judgment certain tax liabilities  
3 assessed against Defendant Maria D. Forman, and to foreclose tax liens connected with  
4 those liabilities. Defendant DLP LT 13 was included in this case because it holds title to  
5 the property that is the subject of the United States' foreclosure claim. The United States  
6 contends that DLP LT 13 either obtained title to the Subject Property as the result of a  
7 fraudulent transfer or it is a nominee of Defendant Maria D. Forman, the true beneficial  
8 owner.

9 **THE "MOTIONS FOR DISMISSAL"**

10 **The "Motion for Dismissal" (Doc. No. 24)**

11 Defendant DLP LT 13 has since inundated the Court with various Motions styled  
12 as Motions for Dismissal. The initial "Motion for Dismissal" (Doc. No. 24) was not a  
13 proper motion to dismiss under Federal Rule of Civil Procedure 12(b). Rather than  
14 asserting any of the defenses listed in that Rule, the "Motion for Dismissal" claimed that  
15 the United States' pleadings were not properly signed.<sup>1</sup> This is not a proper basis for a  
16 motion to dismiss under Rule 12(b).

17 In that original "Motion for Dismissal", Defendant DLP LT 13 also demands that  
18 the United States "identify all live body complainants in this proceeding." While  
19 unintelligible, this is also not the proper basis for a "Motion for Dismissal."

20 **The "Second Motion for Dismissal" (Doc. No. 37)**

21 \_\_\_\_\_  
22 <sup>1</sup> As explained more fully in the United States' Response in Opposition to Defendant DLP LT 13's Motion to Strike All of Plaintiff's Pleadings, all of the United States' pleadings have been properly signed as required by Fed. R. Civ. P. 11(a) and L.R. Civ. 5.5(g).

1 The "Second Motion for Dismissal" reiterated the claim that the United States'  
2 pleadings were improperly signed and the demand that the United States "identify all  
3 live body plaintiffs." (Doc. No. 37) As such, the "Second Motion for Dismissal" is not a  
4 proper motion to dismiss under Rule 12(b).

5 This second "Motion" also argued that the United States failure to respond to the  
6 above discussed improper "Motion for Dismissal" – which the United States had  
7 previously moved to strike (Doc. No. 36) – entitled Defendant DLP LT 13 to dismissal of  
8 the action.

9 **The "Third Motion for Dismissal" (Doc. No. 38)**

10 The "Third Motion for Dismissal" deals with Defendant DLP LT 13's  
11 "Jurisdiction Challenge." (Doc. No. 25) While the issue of subject matter jurisdiction is  
12 a proper basis for a Rule 12(b) motion to dismiss, the "Jurisdictional Challenge" was not  
13 styled as a Motion to Dismiss and thus did not require any response from the United  
14 States. Even if it had been properly styled as a Rule 12(b)(1) motion to dismiss, the  
15 "Jurisdiction Challenge" would not have articulated sufficient basis for dismissal.  
16 "When reviewing a Rule 12(b)(1) motion to dismiss for lack of subject matter  
17 jurisdiction, 'we must accept all factual allegations in the complaint as true' [...and]  
18 construe the 'allegations in the complaint in the light most favorable to the plaintiff.'" *Ojo v. Farmers Group, Inc.*, 565 F.3d 1175, 1183 (9<sup>th</sup> Cir. 2009) (citing *Carson Harbor*  
19 *Village, Ltd. v. City of Carson*, 353 F.3d 824, 826 (9<sup>th</sup> Cir.2004); *Wolfe v. Strankman*, 392  
20 F.3d 358, 362 (9<sup>th</sup> Cir.2004)).  
21  
22

1 The United States clearly set forth the jurisdictional basis for its claims in  
2 Complaint, the Amended Complaint, and the Second Amended Complaint. *See* Compl.  
3 ¶¶2-3; Am. Compl. ¶¶2-3, Sec. Am. Compl. ¶¶2-3. *See U.S. v. Scherping*, 187 F.3d 796,  
4 798 (8<sup>th</sup> Cir. 1999) (district court has subject matter jurisdiction over action to reduce to  
5 judgment tax assessments and foreclose tax liens against property under 26 U.S.C. §  
6 7402); *U.S. v. Dawes*, 161 Fed.Appx. 742, 745, 2005 WL 3278027, \*1 (10<sup>th</sup> Cir. 2005)  
7 (unpublished) (United States properly asserted jurisdiction under 26 U.S.C. §§ 7402 &  
8 7403 and 28 U.S.C. §§ 1340 & 1345, and defendants' assertions to the contrary were  
9 frivolous).

10 However, despite this clear statement of jurisdictional basis, the "Jurisdiction  
11 Challenge" asserts that "jurisdiction must be proved by the Plaintiff" (Doc. No. 25 at 1)  
12 and dismisses the jurisdictional basis alleged in the Complaint as "a section or two of a  
13 mere 'code'" to which Defendant DLP LT 13 is not subject. This argument is baseless.  
14 The United States properly alleged jurisdiction, and thus a Rule 12(b)(1) motion would  
15 have been unsuccessful. The "Third Motion for Dismissal" thus fails to state a proper  
16 basis for dismissal.

#### 17 **PLEADINGS FILED BY A NON-ATTORNEY**

18 All of these "Motions for Dismissal" – along with the Answer to Amended  
19 Complaint (Doc. No. 28) and Demand for Judge Without Conflict of Interest (Doc. No.  
20 39) – have been filed by Trustee Elmer P. Vild on behalf of DLP LT 13. Mr. Vild is not  
21 an attorney. He has purported to file these pleadings on behalf of Defendant DLP LT 13.  
22

1 The prohibition against allowing non-attorneys to represent entities is well established,  
2 and has been clearly set forth in the United States' Motions to Strike (Doc. No. 36 & 41).  
3 *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664-65 (9th Cir. 2008); *C.E. Pope Equity*  
4 *Trust v. U.S.*, 818 F.2d 696, 697 (9th Cir. 1987) (citations omitted); *U.S. v. Stepard*, 876  
5 F.Supp. 214, 215 (D.Ariz. 1994) (relying in part on Ariz. Supreme Court Rule 31(a)(3)--  
6 now 31(b) – for the prohibition on non-attorney representation). *See also* Local Rule 83.1.

7 Defendant DLP LT 13 claims that Trustee Vild is permitted to represent  
8 Defendant DLP LT 13 because it is not a trust, but rather a “contract.” According to  
9 Black’s Law Dictionary, a contract is “an agreement between two or more parties . . .”  
10 *Black’s Law Dictionary* 321 (8th ed. 2004). A contract is not a party. Defendant DLP LT 13  
11 has pointed to no legal basis for this assertion that a contract can be a party to a lawsuit,  
12 or that a contract can hold an interest in property.

13 Defendant DLP LT 13 also refers to itself nonsensically as a “contractual entity.”  
14 However, the form of DLP LT 13 does not affect the outcome of the Motions to Strike.  
15 Regardless of the form of DLP LT 13, Mr. Vild – who is not an attorney – is not  
16 authorized to represent it.

17 Accordingly, the United States' Motions to Strike (Doc. No. 36 & 41) should be  
18 granted, and Defendant DLP LT 13's Answer to Amended Complaint (Doc. No. 28),  
19 Motion for Dismissal (Doc. No. 24), Second Motion for Dismissal (Doc. No. 37), Third  
20 Motion for Dismissal (Doc. No. 38), and Demand for Judge Without Conflict of Interest  
21 (Doc. No. 39) are improper pleadings and should be stricken from the docket.

22 Respectfully submitted this 27th day of January, 2010.

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By: /s/ Alexis V. Andrews  
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**CERTIFICATE OF SERVICE**

It is hereby certified that service of the foregoing REPLY IN SUPPORT OF UNITED STATES' MOTION TO STRIKE DEFENDANT DLP LT 13'S MOTION TO DISMISS AND ANSWER AND UNITED STATES' MOTION TO STRIKE SECOND MOTION TO DISMISS, THIRD MOTION TO DISMISS, AND DEMAND FOR JUDGE WITHOUT CONFLICT OF INTEREST has been made this 27th day of January, 2010, by placing copies in the United States Mail addressed to the following:

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