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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; 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
ADDITIONAL MOTIONS TO
DISMISS (DOC. NO. 50, 51, & 53) AND
MOTION/DEMAND FOR
SIGNATURES (DOC. NO. 52)

18 The United States of America, through undersigned counsel, hereby moves the
19 Court for an Order striking Defendant DLP LT 13's Notice to the Court and Motion to
20 Dismiss (Doc. No. 50), Motion to Dismiss for Harassment (Doc No. 51),
21 Motion/Demand for Signatures (Doc. No. 52), and Motion to Dismiss (Doc. No. 53)
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1 because they were improperly filed on DLP LT 13's behalf by Trustee Elmer P. Vild, a
2 *pro se* litigant. A memorandum in support is filed herewith.

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

4 DENNIS K. BURKE
United States Attorney

5
6 By: /s/ Alexis V. Andrews
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7 U.S. Department of Justice
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8 Ben Franklin Station
Washington, D.C. 20044

9 Attorneys for the United States
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CERTIFICATE OF SERVICE

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2 It is hereby certified that service of the foregoing UNITED STATES' MOTION
3 TO STRIKE DEFENDANT DLP LT 13'S ADDITIONAL MOTIONS TO DISMISS AND
4 MOTION/DEMAND FOR SIGNATURES; MEMORANDUM IN SUPPORT OF
5 UNITED STATES' MOTION TO STRIKE DEFENDANT DLP LT 13'S ADDITIONAL
6 MOTIONS TO DISMISS AND MOTION/DEMAND FOR SIGNATURES, and
7 PROPOSED ORDER has been made this 27th day of January, 2010, by placing copies in
8 the United States Mail addressed to the following:

9 Maria D. Forman
10 c/o 5640 E. Duane Lane
11 Cave Creek, AZ 85331

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

11 Jimmy C. Chisum, 84388-008
12 Herlong-CA-Herlong-FCI
13 Federal Correction Institution
P.O. Box 800
Herlong, CA 96113

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

14 /s/ Alexis V. Andrews
15 ALEXIS V. ANDREWS
16 Trial Attorney, Tax Division
17 United States Department of Justice
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10 IN THE UNITED STATES DISTRICT COURT FOR THE
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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.

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

MEMORANDUM IN SUPPORT
UNITED STATES' MOTION TO
STRIKE DEFENDANT DLP LT 13'S
ADDITIONAL MOTIONS TO
DISMISS (DOC. NO. 50, 51, & 53) AND
MOTION/DEMAND FOR
SIGNATURES (DOC. NO. 52)

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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's Notice to the
20 Court and Motion to Dismiss (Doc. No. 50), Motion to Dismiss for Harassment (Doc No.
21 51), Motion/Demand for Signatures (Doc. No. 52), and Motion to Dismiss (Doc. No. 53)
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1 filed in this action, because they were improperly filed on DLP LT 13's behalf by Elmer
2 P. Vild, a *pro se* litigant, and states as follows in support:

3 **SUMMARY OF CASE**

4 In this case, the United States seeks to reduce to judgment certain tax liabilities
5 assessed against Defendant Maria D. Forman, and to foreclose tax liens connected with
6 those liabilities. Defendant DLP LT 13 was included in this case because, while it may
7 claim an interest in the Subject Property, it either obtained title to the Subject Property
8 as the result of a fraudulent transfer or it is a nominee of Defendant Maria D. Forman,
9 the true beneficial owner.

10 **THE "MOTIONS FOR DISMISSAL"**

11 The various pleadings entitled "Motions for Dismissal" proffer a variety of
12 arguments. Each of the proffered arguments is either frivolous or fails to articulate a
13 proper basis for a motion to dismiss.

14 **Subject Matter Jurisdiction**

15 Defendant DLP LT 13 continues to raise the issue of subject matter jurisdiction.
16 (Doc. No. 53). While the issue of subject matter jurisdiction is a proper basis for a Rule
17 12(b) motion to dismiss, the repeated challenge to this Court's jurisdiction do not
18 articulate sufficient basis for dismissal. "When reviewing a Rule 12(b)(1) motion to
19 dismiss for lack of subject matter jurisdiction, 'we must accept all factual allegations in
20 the complaint as true' [...and] construe the 'allegations in the complaint in the light
21 most favorable to the plaintiff.'" *Ojo v. Farmers Group, Inc.*, 565 F.3d 1175, 1183 (9th Cir.

1 2009) (citing *Carson Harbor Village, Ltd. v. City of Carson*, 353 F.3d 824, 826 (9th Cir.2004);
2 *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir.2004)).

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

12 However, despite this clear statement of jurisdictional basis, Defendant DLP LT
13 13 asserts that jurisdiction must be proved by the Plaintiff¹ (Doc. No. 53) and dismisses
14 the jurisdictional basis alleged in the Complaint as "a section or two of a mere 'code'" to
15 which Defendant DLP LT 13 is not subject. This argument is baseless.

16 **Lack of "Proof"; Truth of Claims**

17 Defendant DLP LT 13 also repeatedly claims that the case should be dismissed
18 for "lack of proof." (Doc. No. 50, 51, & 53) However, lack of proof is not a defense that
19 may be asserted in a motion to dismiss. Fed. R. Civ. P. 12(b). Indeed, when considering
20 a motion to dismiss, all allegations in the complaint are to be viewed in the light most

21 ¹ Counsel for the United States was unable to locate *Latana v. Hopper* and *Chicago v. New York*, which Defendant
22 DLP LT 13 purports to quote, at the citations provided, and was further unable to locate the quoted phrases in *Maine*
v. Thiboutot, 100 S. Ct. 2502 (1980), *Stuck v. Bd. Of State Medical Examiners*, 211 P.2d 389 (a state case dealing
with the jurisdiction of the state medical board), or *Rescue Army v. Municipal Court of Los Angeles*, 331 U.S. 549.

1 favorable to the non-moving party and all material allegations must be accepted as true.
2 *Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096, 1101 (9th Cir. 1999).

3 Defendant DLP LT 13 also challenges the truth of the allegations in the
4 Complaint. (Doc. No. 50 & 51). However, the truth or falsity of the allegations in the
5 Complaint may not be considered for purposes of a motion to dismiss. The allegations
6 are accepted as true.

7 Defendant DLP LT 13 is outraged that the United States has, thus far, offered
8 “only allegations” and “no facts or hard evidence.” (Doc. No. 51) This is entirely
9 appropriate at this nascent stage of the case. The United States has not yet had the
10 opportunity to obtain, through discovery, proof to support its allegations. Proof is not
11 required at this stage of the case. The United States has stated a claim which, if true,
12 would result in the relief sought. The “lack of proof” claim is premature and not a valid
13 basis for a motion to dismiss.

14 **Other Claims**

15 The various “Motions for Dismissal” assert a number of other claims, including;
16 (1) failure to identify live body plaintiff (Doc. No. 53), and (2) harassment (Doc. No. 51).
17 These are not proper grounds for a motion to dismiss. Fed. R. Civ. P. 12(b).

18 **PLEADINGS FILED BY A NON-ATTORNEY**

19 All of these “Motions for Dismissal” – along with Demand for Signatures (Doc.
20 No. 52)² – have been filed by Trustee Elmer P. Vild on behalf of DLP LT 13. Mr Vild is

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22 ² As explained in the United States’ Response in Opposition to Defendant DLP LT 13’s Motion to Strike All of Plaintiff’s Pleadings (Doc. No. 47), all of the United States’ pleadings have been properly signed.

1 not an attorney.

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

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

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

20 Accordingly, Defendant DLP LT 13’s Notice to Court and Motion for Dismissal
21 (Doc. No. 50), Motion to Dismiss for Harassment (Doc. No. 51), Motion/Demand for
22

1 Signatures (Doc. No. 52), and Motion to Dismiss, Jurisdiction Not Proven (Doc. No. 53)
2 are improper pleadings and should be stricken from the docket.
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5 WHEREFORE, the United States prays for an Order striking Defendant
6 DLP LT 13's Notice to the Court and Motion to Dismiss (Doc. No. 50), Motion to
7 Dismiss for Harassment (Doc No. 51), Motion/Demand for Signatures (Doc. No. 52),
8 and Motion to Dismiss (Doc. No. 53). A proposed order is attached.

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

10 DENNIS K. BURKE
11 United States Attorney

12 By: /s/ Alexis V. Andrews
13 ALEXIS V. ANDREWS
14 U.S. Department of Justice
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18 Attorneys for the United States
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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Maria D. Forman, et al.,

Defendants.

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

[PROPOSED] ORDER GRANTING
UNITED STATES' MOTION TO
STRIKE DEFENDANT DLP LT 13'S
ADDITIONAL MOTIONS TO
DISMISS (DOC. NO. 50, 51, & 53) AND
MOTION/DEMAND FOR
SIGNATURES (DOC. NO. 52)

IT IS HEREBY ORDERED THAT the United States' Motion to Strike Defendant
DLP LT 13's Additional Motions to Dismiss and Motion/Demand for Signatures is
GRANTED. Defendant DLP LT 13's Notice to the Court and Motion to Dismiss (Doc.
No. 50), Motion to Dismiss for Harassment (Doc No. 51), Motion/Demand for
Signatures (Doc. No. 52), and Motion to Dismiss (Doc. No. 53) are stricken from the
record.