(Rev. 10/2011)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ASH GROVE CEMENT COMPANY and its Subsidiaries as a Consolidated Group,	)	
Plaintiff,	)	
v.	)	Case No. 11-2546-CM
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

SCHEDULING ORDER

On February 8, 2012, pursuant to Fed. R. Civ. P. 16(b), the court conducted a telephone scheduling conference in this case with the parties.[1] Plaintiff appeared through counsel, W. C. Blanton and Jason A. Reschly; as discussed during the conference, Mr. Reschly shall promptly file a motion for admission pro hac vice. Defendant appeared through counsel, Brian H. Corcoran.

After consultation with the parties, the court enters this scheduling order, summarized in the table that follows:

[1]As used in this scheduling order, the term "plaintiff" includes plaintiffs as well as counterclaimants, cross-claimants, third-party plaintiffs, intervenors, and any other parties who assert affirmative claims for relief. The term "defendant" includes defendants as well as counterclaim defendants, cross-claim defendants, third-party defendants, and any other parties who are defending against affirmative claims for relief.

SUMMARY OF DEADLINES AND SETTINGS	
Event	Deadline/Setting
Plaintiff's settlement proposal	March 16, 2012
Defendant's settlement counter-proposal	March 30, 2012
Confidential settlement reports to magistrate judge	April 13, 2012
Initial disclosures exchanged	February 13, 2012
All fact discovery completed	May 31, 2012
All expert discovery completed	July 31, 2012
Experts disclosed by the parties	June 29, 2012
Rebuttal experts disclosed	July 16, 2012
Supplementation of disclosures	40 days before the deadline for completion of all discovery
Jointly proposed protective order submitted to court	February 13, 2012
Motion and brief in support of proposed protective order (only if parties disagree about need for and/or scope of order)	February 20, 2012
Motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim	February 17, 2012
Motions to join additional parties or otherwise amend the pleadings	February 29, 2012
All other potentially dispositive motions (e.g., summary judgment)	August 31, 2012
Motions challenging admissibility of expert testimony	no later than 28 days before trial
Final pretrial conference	August 8, 2012, at 9:00 a.m.
Proposed pretrial order due	July 30, 2012
Trial	March 4, 2013, at 1:30 p.m.

1. Alternative Dispute Resolution (ADR).

By **March 16, 2012**, plaintiff shall submit to defendant a good faith proposal to settle the case. By **March 30, 2012**, defendant shall make a good faith response to plaintiff's proposal, either accepting the proposal or submitting defendant's own good faith proposal to settle the case. By **April 13, 2012**, each of the parties shall submit independently, by way of e-mail or letter (preferably the former), addressed to the magistrate judge (but not the district judge), a confidential settlement report. These reports shall briefly set forth the parties' settlement efforts to date, current evaluations of the case, views concerning future settlement negotiations and the overall prospects for settlement, and a specific recommendation regarding mediation, together with an indication concerning who has been selected by the parties (preferably jointly) to serve as a mediator. These reports need not be served upon opposing parties and **shall not** be filed with the Clerk's Office. The court may thereafter order participation in an ADR process. An ADR report, on the form located on the court's Internet website, must be filed by defense counsel within 5 days of any scheduled ADR process *(http://www.ksd.uscourts.gov/adr-report/)*.

2. Discovery.

a. The parties shall exchange by **February 13, 2012** the information required by Fed. R. Civ. P. 26(a)(1). In order to facilitate settlement negotiations and to avoid unnecessary expense, the parties have agreed that, without any need for formal requests for production, copies of the various documents described in the parties' respective Rule 26(a)(1) disclosures shall be exchanged upon request by the other party within a reasonable time of

such request. The parties are reminded that, although Rule 26(a)(1) is keyed to disclosure of information that the disclosing party "may use to support its claims or defenses, unless solely for impeachment," the advisory committee notes to the 2000 amendments to that rule make it clear that this also requires a party to disclose information it may use to support its denial or rebuttal of the allegations, claim, or defense of another party. In addition to other sanctions that may be applicable, a party who without substantial justification fails to disclose information required by Fed. R. Civ. P. 26(a) or Fed. R. Civ. P. 26(e)(1) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. *See* Fed. R. Civ. P. 37(c)(1).

b. All fact discovery shall be commenced or served in time to be completed by **May 31, 2012**. All expert discovery shall be commenced or served in time to be completed by **July 31, 2012**.

c. The parties intend to serve disclosures and discovery electronically, as permitted by D. Kan. Rules 5.4.2 and 26.3.

d. At this time the parties do not anticipate any discovery issues for the court to resolve.

e. Consistent with the parties' agreements as set forth in the planning conference report submitted pursuant to Fed. R. Civ. P. 26(f), electronically stored information (ESI) in this case will be handled as follows:

> The United States anticipates seeking from plaintiffs the disclosure of some materials that may be stored by plaintiffs in electronic form, such as e-mails or some internal, nonprivileged correspondence and memoranda. The

> parties agree that metadata for electronic documents need not be produced, and agree that imaged electronic documents (and imaged paper documents) shall be produced as TIF files, accompanied by load files that will allow the images to be automatically loaded into the Concordance and Ipro software databases.

f. Consistent with the parties' agreements as set forth in their Rule 26(f) report, claims of privilege or of protection as trial-preparation material asserted after production will be handled as follows:

> The parties shall include, in the protective order specified in paragraph 2(m) below, provisions consistent with Fed. R. Civ. P. 26(b)(5)(B) that will govern cases in which materials are inadvertently produced prior to an assertion of attorney-client or attorney work product privilege. Such provisions will provide for a reasonable mechanism for resolving such claims as well as the sequestration and/or return of the relevant materials during or after the resolution of a privilege claim.

g. No party shall serve more than 25 interrogatories, including all discrete subparts, to any other party.

h. There shall be no more than 3depositions by plaintiff and 3 by defendant.

i. Each deposition shall be limited to 3 hours. All depositions shall be governed by the written guidelines that are available on the court's Internet website,

(http://www.ksd.uscourts.gov/deposition-guidelines/).

j. Disclosures required by Fed. R. Civ. P. 26(a)(2), including reports from retained experts, shall be served by the parties by **June 29, 2012**. Disclosures and reports by any rebuttal experts shall be served by **July 16, 2012**. The parties shall serve any objections to such disclosures (other than objections pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v.*

Carmichael, 526 U.S. 137 (1999), or similar case law), within 11 days after service of the disclosures upon them. These objections should be confined to technical objections related to the sufficiency of the written expert disclosures (e.g., whether all of the information required by Rule 26(a)(2)(B) has been provided, such as lists of prior testimony and publications). These objections need not extend to the admissibility of the expert's proposed testimony. If such technical objections are served, counsel shall confer or make a reasonable effort to confer consistent with requirements of D. Kan. Rule 37.2 before filing any motion based on those objections. As noted below, any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 must be filed and served within 30 days of the default or service of the response, answer, or objection which is the subject of the motion, unless the time for filing such a motion is extended for good cause shown; otherwise, the objection to the default, response, answer, or objection shall be deemed waived. *See* D. Kan. Rule 37.1(b).

k. Supplementations of disclosures under Fed. R. Civ. P. 26(e) shall be served at such times and under such circumstances as required by that rule. In addition, such supplemental disclosures shall be served in any event 40 days before the deadline for completion of all fact discovery. The supplemental disclosures served 40 days before the deadline for completion of all fact discovery must identify the universe of all witnesses and exhibits that probably or even might be used at trial. The rationale for the mandatory supplemental disclosures 40 days before the fact discovery cutoff is to put opposing counsel in a realistic position to make strategic, tactical, and economic judgments about whether to

take a particular deposition (or pursue follow-up "written" discovery) concerning a witness or exhibit disclosed by another party before the time allowed for discovery expires. Counsel should bear in mind that seldom should anything be included in the final Rule 26(a)(3) disclosures, which as explained below usually are filed 21 days before trial, that has not previously appeared in the initial Rule 26(a)(1) disclosures or a timely Rule 26(e) supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1).

l. At the final pretrial conference after the close of discovery, the court will set a deadline, usually 21 days prior to the trial date, for the parties to file their final disclosures pursuant to Fed. R. Civ. P. 26(a)(3)(A)(i), (ii) & (iii). As indicated above, if a witness or exhibit appears on a final Rule 26(a)(3) disclosure that has not previously been included in a Rule 26(a)(1) disclosure (or a timely supplement thereto), that witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1).

m. Discovery in this case may be governed by a protective order. If the parties agree concerning the need for and scope and form of such a protective order, their counsel shall confer and then submit a jointly proposed protective order by **February 13, 2012**. Such jointly proposed protective orders should be drafted in compliance with the written guidelines that are available on the court's Internet website:

(http://www.ksd.uscourts.gov/guidelines-for-agreed-protective-orders-district-of-kansas/)

At a minimum, such proposed orders shall include, in the first paragraph, a concise but sufficiently specific recitation of the particular facts in this case that would provide the court

with an adequate basis upon which to make the required finding of good cause pursuant to Fed. R. Civ. P. 26(c). If the parties disagree concerning the need for, and/or the scope or form of a protective order, the party or parties seeking such an order shall file an appropriate motion and supporting memorandum by **February 20, 2012**.

n. To avoid the filing of unnecessary motions, the court encourages the parties to utilize stipulations regarding discovery procedures. However, this does not apply to extensions of time that interfere with the deadlines to complete all discovery, for the briefing or hearing of a motion, or for trial. *See* Fed. R. Civ. P. 29; D. Kan. Rule 6.1(a). Nor does this apply to modifying the requirements of Fed. R. Civ. P. 26(a)(2) concerning experts' reports. *See* D. Kan. Rule 26.4(b).

3. Motions.

a. Provided that such defenses have been timely preserved, any motions to dismiss for lack of personal jurisdiction, venue, propriety of the parties, or failure to state a claim upon which relief can be granted shall be filed by **February 17, 2012**.

b. Any motion for leave to join additional parties or to otherwise amend the pleadings shall be filed by **February 29, 2012**.

c. All other potentially dispositive motions (e.g., motions for summary judgment) shall be filed by **August 31, 2012**.

d. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-705, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire*

Co. v. Carmichael, 526 U.S. 137 (1999), or similar case law, shall be filed no later than 28 days before trial.

e. Any motion to compel discovery in compliance with D. Kan. Rules 7.1 and 37.2 shall be filed and served within 30 days of the default or service of the response, answer, or objection which is the subject of the motion, unless the time for filing such a motion is extended for good cause shown. Otherwise, the objection to the default, response, answer, or objection shall be waived. *See* D. Kan. Rule 37.1(b).

4. Other Matters.

a. Pursuant to Fed. R. Civ. P. 16(e), a final pretrial conference is scheduled for **August 8, 2012, at 9:00 a.m.**, in the U.S. Courthouse, Room 236, **Kansas City**, Kansas, or by telephone if the judge determines that the proposed pretrial order is in the appropriate format and that there are no other problems requiring counsel to appear in person. Unless otherwise notified, the undersigned magistrate judge will conduct the conference. No later than **July 30, 2012**, defendant shall submit the parties' proposed pretrial order (formatted in WordPerfect 9.0, or earlier version) as an attachment to an Internet e-mail sent to *ksd_ohara_chambers@ksd.uscourts.gov*. The proposed pretrial order shall not be filed with the Clerk's Office. It shall be in the form available on the court's Internet website (*www.ksd.uscourts.gov*), and the parties shall affix their signatures according to the procedures governing multiple signatures set forth in paragraphs II(C) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases*.

b. The parties expect the trial of this case to take approximately 2-3 days. This case is set for trial on the court's docket beginning on **March 4, 2013, at 1:30 p.m.** Unless otherwise ordered, this is not a "special" or "No. 1" trial setting. Therefore, during the month preceding the trial docket setting, counsel should stay in contact with the trial judge's courtroom deputy to determine the day of the docket on which trial of the case actually will begin. The trial setting may be changed only by order of the judge presiding over the trial.

c. The parties are not prepared to consent to trial by a U.S. Magistrate Judge.

d. The arguments and authorities section of briefs or memoranda submitted shall not exceed 30 pages, absent an order of the court.

This scheduling order shall not be modified except by leave of court upon a showing of good cause.

IT IS SO ORDERED.

Dated February 8, 2012, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:	)	
	)	
Christopher E. Saunier,	)	Case No.: 07-01667-ABB-7
	)	
Debtor.	)	

Christopher E. Saunier,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	A. P. No.: 07-00073-BGC
	)	
United States of America,	)	
	)	
Defendant.	)	

ORDER

This matter came before the Court on a Joint Motion to Attend Status Conference Telephonically filed on February 7, 2012, by Kevin Gleason, the attorney for the debtor-plaintiff, and Michael May, the attorney for the defendant.

Based on the pleadings, it is **ORDERED, ADJUDGED and DECREED** that:

1. The Joint Motion to Attend Status Conference Telephonically is **GRANTED**;

2. Kevin Gleason, the attorney for the debtor-plaintiff, and Michael May, the attorney for the defendant, may appear by telephone at the February 22, 2012, status conference.

Dated: February 9, 2012

/s/Benjamin Cohen
BENJAMIN COHEN
United States Bankruptcy Judge

BC:pb

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICIA GUZIK,

Petitioner,

-vs-

UNITED STATES OF AMERICA,
DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE,

Respondent.
_____/

CASE NO. 11-51280

HON. NANCY EDMUNDS
MAG. JUDGE PAUL J. KOMIVES

STIPULATED
ORDER AND JUDGMENT

IT IS HEREBY STIPULATED AND AGREED to by the parties, United States of America, and the respondent, Patricia Guzik, by and through their undersigned attorneys as follows:

IT IS ORDERED that the Petition to Quash be DISMISSED; and it is further

ORDERED that Teresa Spence will appear before Revenue Agent C. Mei Chung or her designated representative at 9:00 a.m. on March 20, 2012, at 917 North Saginaw, Flint, Michigan, then and there to be sworn, to give testimony, and to produce for examination and copying the following:

1. Copy of any and all forms prepared and/or filed with Internal Revenue Service for calendar years 2008 and 2009 on behalf of Patricia Guzik and/or Prudential Protective Services, LLC, including but not limited to Form 2553 (Election by a Small Business Corporation). If Form 2553 was filed, provide a copy of return Proof of Form 2553 filed and accepted by Internal Revenue Service, including (a) Form 2553 with an accepted

stamp, (b) Form 2553 with a stamped IRS received date, or (c) an IRS Letter stating that Form 2553 has been accepted.

2. Copy of any and all forms prepared and/or filed with Internal Revenue Service for calendar years 2008 and 2009 on behalf of Patricia Guzik and/or Prudential Protective Services, LLC, including but not limited to Form 1120S. If any Form 1120S was filed on behalf of Patricia Guzik and/or Prudential Protective Services, LLC, provide a copy of proof of the filed Form 1120S.

3. Copy of any and all statements, invoices, logs, schedules, ledgers, journals maintained by Teresa Spence to prepare any tax returns for Patricia Guzik and/or Prudential Protective Services, LLC, for calendar years 2008 and 2009.

4. Any other books and records not mentioned herein, of any other transactions pertaining to Patricia Guzik and/or Prudential Protective Services, LLC, for calendar years 2008 and 2009, that are in Teresa Spence's custody, possession, or control.

The examination is to continue from day to day until completed.

BARBARA L. McQUADE

United States Attorney

/s/Jerry R. Abraham (with consent)
JERRY R. ABRAHAM (P45768)
Counsel for the Respondent
30500 Northwestern Hwy.
Suite 410
Farmington Hills, MI 48334
(248) 539-5040
info@abrahamandrose.com

/s/ Darlene Haas Awada
DARLENE HAAS AWADA (P61851)
Special Assistant United States Attorney
211 W. Fort Street
Suite 2001
Detroit, MI 48226
(313) 226-9641
darlene.haas.awada@usdoj.gov

Dated: February 9, 2012

IT IS SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: February 9, 2012

I hereby certify that a copy of the foregoing document was served upon counsel of record on February 9, 2012, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re	)	**JUDGE RICHARD L. SPEER**
William E. Lewinski, Jr.	)	
and	)	**Case No.** 11-33025 - Ch.13
Cheryl Lewinski	)	
Debtor(s)	)	

ORDER DISMISSING CASE

This matter comes before the Court upon Debtors' Motion to Voluntarily Dismiss their Chapter 13 Case.

For good cause shown, it is

ORDERED that the Debtors' Motion be, and is hereby, **granted** and the above captioned Chapter 13 Case is hereby, **dismissed.**

It is **FURTHER ORDERED** that the Clerk, U.S. Bankruptcy Court serve a copy of this Order of Dismissal upon the Debtors, Attorney for Debtors, all Creditors and Parties in Interest.

Dated: FEB - 9 2012

/S/ RICHARD L. SPEER
RICHARD L. SPEER
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re	)	**JUDGE RICHARD L. SPEER**
William E. Lewinski, Jr.	)	
and	)	**Case No.** 11-33025 - Ch.13
Cheryl Lewinski	)	
Debtor(s)	)	

ORDER DISMISSING CASE

This matter comes before the Court upon Debtors' Motion to Voluntarily Dismiss their Chapter 13 Case.

For good cause shown, it is

ORDERED that the Debtors' Motion be, and is hereby, **granted** and the above captioned Chapter 13 Case is hereby, **dismissed.**

It is **FURTHER ORDERED** that the Clerk, U.S. Bankruptcy Court serve a copy of this Order of Dismissal upon the Debtors, Attorney for Debtors, all Creditors and Parties in Interest.

Dated: FEB - 9 2012

/S/ RICHARD L. SPEER
RICHARD L. SPEER
United States Bankruptcy Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

STEVE L. CHAMBERLAIN,

Plaintiff,

-vs- **Case No. 6:11-cv-1702-Orl-31DAB**

INTERNAL REVENUE SERVICE; RICHARD D. EULISS; and BRUCE T RUSSELL,

Defendants.

ORDER

This matter is before the Court on the Motion to Dismiss filed by Defendants (Doc. 9). The Court construes Doc. 15 as Plaintiff's response to the Motion.

Plaintiff's Complaint (Doc. 1) and "take judicial notice petition . . ." (Doc. 15) can best be described as non-sensical legal gibberish and are patently without merit. It is, therefore

ORDERED that Defendants' Motion is GRANTED. Plaintiff's Complaint is DISMISSED. The Clerk is directed to close the case.

DONE and **ORDERED** in Chambers, Orlando, Florida on February 9, 2012.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 4.2
Eastern Division

United States of America

Plaintiff,

v.

Case No.: 1:11−cv−03196
Honorable Sharon Johnson Coleman

Horst Meniw, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, February 9, 2012:

MINUTE entry before Honorable Sharon Johnson Coleman:Motion hearing held on 2/9/2012. Plaintiff's motion for default judgment [10] is granted. Mailed notice(keg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SPIRITBANK, an Oklahoma banking corporation,	)	
Plaintiff,	)	
v.	)	
	)	Case No. 11-CV-240-GKF-TLW
UNITED STATES OF AMERICA and MICHAEL SHEPARD,	)	
Defendants.	)	

ORDER

Before the court is defendant United States of America's ("United States") Motion for Judgment on the Pleadings or, in the Alternative for Summary Judgment [Dkt. ##18, 20]. The court, having reviewed the pleadings, hereby grants the Motion for Judgment on the Pleadings [Dkt. #18]. The United States is therefore entitled to receive funds interplead by plaintiff SpiritBank at the commencement of this action and now held in the court's treasury registry account 604700, in the amount of $45,142.00. The alternative Motion for Summary Judgment [Dkt. #20] is moot.

The court hereby directs the Clerk of the United States District Court for the Northern District of Oklahoma to issue a check in the amount of $45,142.00, less any fees, if applicable, payable to the United States Treasury and deliver the check to counsel for the United States:

Martin M. Shoemaker
U.S. Dept. of Justice, Tax Division
Post Office Box 7238
Washington, D.C. 20044

ENTERED this 9th day of February, 2012.

Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SPIRITBANK, an Oklahoma banking corporation ,	)	
Plaintiff,	)	
v.	)	
	)	Case No. 11-CV-240-GKF-TLW
UNITED STATES OF AMERICA and MICHAEL SHEPARD,	)	
Defendants.	)	

JUDGMENT

Pursuant to the court's order of February 9, 2012 granting the Motion for Judgment on the Pleadings filed by defendant the United States of America, judgment is hereby entered in favor of the United States of America.

ENTERED this 9th day of February, 2012.

Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENN BUSINESS CREDIT, LLC.	:	CIVIL ACTION
	:	
v.	:	
	:	
ALL STAFF INC., et. al.	:	NO. 2:11-cv-5366

O R D E R

AND NOW, this 9th day of February 2012, upon consideration of the United States' Motion for Leave to File Reply (Doc. No. 23), it is hereby ORDERED that the motion is GRANTED. The Clerk of Court is directed to file Document 23-1 as a reply to Alfonso Sebia and Pamela Sebia's Response in Opposition to the Motion to Dismiss (Doc. No. 21).

BY THE COURT:

/s/ Legrome D. Davis

Legrome D. Davis, J.

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE TRUSTEE'S SALE OF PROPERTY OF JOHN AND GAIL BIANCO THE UNITED STATES OF AMERICA, Cross-Plaintiff, v. JOHN BIANCO, et al., Cross-Defendants.	CASE NO. C12-11RAJ ORDER

The court has received the January 30, 2012 order of the King County Superior Court transferring the deposit previously in the King County Superior Court registry to the registry of this court. That order is appended as an attachment to this one.

Accompanying the order is a check for $108,087.22 payable to the Clerk of this court. The court directs the clerk to deposit that check into the registry of this court. The funds will remain in the registry, accruing interest (less costs), until further order of the court.

DATED this 9th day of February, 2012.

Richard A. Jones

The Honorable Richard A. Jones
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE United States District Court for the Western District of Washington

Parkview Townhouses Homeowners Association

Plaintiff,

v.

Case No.: 2:12−cv−00141−JLR
Judge James L. Robart

Mary A Jackson, et al.

Defendant.

ORDER REGARDING INITIAL DISCLOSURES, JOINT STATUS REPORT, AND EARLY SETTLEMENT

I. INITIAL SCHEDULING DATES

Pursuant to the December 1, 2000 revisions to the Federal Rules of Civil Procedure, the Court sets the following dates for initial disclosure and submission of the Joint Status Report and Discovery Plan:

Deadline for FRCP 26(f) Conference:	**03/26/2012**
Initial Disclosures Pursuant to FRCP 26(a)(1):	**04/09/2012**
Combined Joint Status Report and Discovery Plan as Required by FRCP 26(f) and Local Rule CR 16:	**04/09/2012**

If this case involves claims which are exempt from the requirements of FRCP 26(a) and (f), please notify the court in writing within 7 days of the date of this order.

II. JOINT STATUS REPORT & DISCOVERY PLAN

All counsel and any pro se parties are directed to confer and provide the Court with a combined Joint Status Report and Discovery Plan (the "Report") by **04/09/2012**. This conference shall be by direct and personal communication, whether that be a face−to−face meeting or a telephonic conference. The Report will be used in setting a schedule for the prompt completion of the case. It must contain the following information by corresponding paragraph numbers:

1. A statement of the nature and complexity of the case.

2. A statement of which ADR method (mediation, arbitration, or other) should be used. The alternatives are described in Local Rule CR 39.1 and in the ADR Reference Guide which is available from the clerk’s office. If the parties believe there should be no ADR, the reasons for that belief should be stated.

3. Unless all parties agree that there should be no ADR, a statement of when mediation or another ADR proceeding under Local Rule CR 39.1 should take place. In most cases, the ADR proceeding should be held within four months after the Report is filed. It may be resumed, if necessary, after the first session.

4. A proposed deadline for joining additional parties.

5. A proposed discovery plan that indicates:

A. The date on which the FRCP 26(f) conference and FRCP 26(a) initial disclosures took place;

B. The subjects on which discovery may be needed and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

C. What changes should be made in the limitations on discovery imposed under the Federal and Local Civil Rules, and what other limitations should be imposed;

D. A statement of how discovery will be managed so as to minimize expense (e.g., by foregoing or limiting depositions, exchanging documents informally, etc.); and

E. Any other orders that should be entered by the Court under FRCP 26(c) or under Local Rule CR 16(b) and (c).

6. The date by which the remainder of discovery can be completed.

7. Whether the parties agree that a full−time Magistrate Judge may conduct all proceedings, including trial and the entry of judgment, under 28 U.S.C. § 636(c) and Local Rule MJR 13. The Magistrate Judge who will be assigned the case is James P. Donohue. Agreement in the Report will constitute the parties' consent to referral of the case to the assigned Magistrate Judge.

8. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way.

9. Whether the pretrial statements and pretrial order called for by Local Rules CR 16(e), (h), (i), and (l), and 16.1 should be dispensed with in whole or in part for the sake of economy.

10. Any other suggestions for shortening or simplifying the case.

11. The date the case will be ready for trial.

12. Whether the trial will be jury or non−jury.

13. The number of trial days required.

14. The names, addresses, and telephone numbers of all trial counsel.

15. If, on the due date of the Report, all defendant(s) or respondent(s) have not been served, counsel for the plaintiff shall advise the Court when service will be effected, why it was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f) conference and FRCP 26(a) initial disclosures.

16. Whether any party wishes a scheduling conference prior to a scheduling order being entered in the case.

If the parties are unable to agree on any part of the Report, they may answer in separate paragraphs. No separate reports are to be filed.

The time for filing the Report may be extended only by court order. Any request for extension should be made by telephone to Casey Condon, by telephone at 206−370−8520.

If the parties wish to have a status conference with the Court at any time during the pendency of this action, they should notify the deputy clerk, Casey Condon, by telephone at 206−370−8520.

III. PLAINTIFF'S RESPONSIBILITY

This Order is issued at the outset of the case, and a copy is delivered by the clerk to counsel for plaintiff (or plaintiff, if pro se) and any defendants who have appeared. Plaintiff's counsel (or plaintiff, if pro se) is directed to serve copies of this Order on all parties who appear after this Order is filed within ten (10) days of receipt of service of each appearance. Plaintiff's counsel (or plaintiff, if pro se) will be responsible for starting the communications needed to comply with this Order.

IV. ALTERATION OF ELECTRONIC FILING PROCEDURES

The following alterations to the Electronic Filing Procedures apply in all cases pending before Judge Robart: When the aggregate submittal to the court (i.e., the motion, any declarations and exhibits, the proposed order, and the certificate of service) exceeds 50 pages in length, a paper copy of the documents (with tabs or other organizing aids as necessary) shall be delivered to the Clerk's Office for chambers, in addition to electronically filing the document. The paper copy must be clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers."

In addition, the parties need not email a copy of their proposed order to the Judge's email address unless it is stipulated, agreed, or otherwise uncontested.

V. EARLY SETTLEMENT CONSIDERATION

When civil cases are settled early −− before they become costly and time−consuming −− all parties and the court benefit. The Federal Bar Association Alternative Dispute Resolution Task Force Report for this district stated:

> [T]he major ADR related problem is not the percentage of civil cases that ultimately settle, since statistics demonstrate that approximately 95% of all cases are resolved without trial. However, the timing of settlement is a major concern. Frequently, under our existing ADR system, case resolution occurs far too late, after the parties have completed discovery and incurred substantial expenditure of fees and costs.

The judges of this district have adopted a resolution “approving the Task Force’s recommendation that court−connected ADR services be provided as early, effectively, and economically as possible in every suitable case.”

The steps required by this Order are meant to help achieve that goal while preserving the rights of all parties.

If settlement is achieved, counsel shall notify Casey Condon, deputy clerk, at 206−370−8520.

VI. SANCTIONS

A failure by any party to comply fully with this Order may result in the imposition of sanctions.

DATED: February 9, 2012

s/ James L. Robart
United States District Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:11-bk-21104-MGW
Chapter 11

AURORA OF TAMPA, INC,
D/B/A REMINGTON'S STEAKHOUSE,

Debtor.
_____/

ORDER GRANTING UNITED STATES' MOTION FOR RELIEF FROM STAY [DOC. NO. 38]

This matter came before the Court at a hearing on February 1, 2012 to consider the United States' Motion for Relief from Stay in the above-referenced Chapter 11 case of Aurora of Tampa, Inc. ("Debtor"). The Debtor, having agreed to the relief sought by the United States with the terms as provided below, and the Court finding that the motion is well taken, the Court grants the motion. Accordingly, it is

ORDERED that:

1. The United States' Motion for Relief from Stay is hereby granted;

2. The United States and the Debtor agree that the United States will not seek relief in the district court before February 15, 2012 regarding the Debtor's alleged violations of the permanent injunction entered on November 9, 2011 in *United States v. Abraham Srour and Aurora of Tampa, Inc. D/B/A Remington's Steakhouse*, Case No. 8:11-cv-02419-RAL-TGW (M.D. Fla., Tampa Div.) ("Permanent Injunction"), which alleged violations occurred up to the date of this Order, if the Debtor (a) fully complies with all the terms of the Permanent Injunction on or before February 15, 2012, and (b) provides verification to the United States of such compliance by February 15. The

Debtor understands that the obligations imposed under the Permanent Injunction are continuing in nature, and thus, the United States may pursue relief in the district court for past violations not cured by February 15, and/or for future violations.

3. The United States and the Debtor further agree that any fine imposed by the district court for any violation of the Permanent Injunction is deemed administrative expenses pursuant to 11 U.S.C. § 503.

DONE AND ORDERED at Tampa, Florida on _____.

MICHAEL G. WILLIAMSON
United States Bankruptcy Judge

cc: Valerie G. Preiss
David W. Steen
United States Trustee

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

ABE JOHN SROUR,

Case No. 8:11-bk-21105-MGW
Chapter 11

Debtor.
_____/

ORDER GRANTING UNITED STATES' MOTION FOR RELIEF FROM STAY [DOC. NO. 29]

This matter came before the Court at a hearing on February 1, 2012 to consider the United States' Motion for Relief from Stay in the above-referenced Chapter 11 case of Abe John Srour ("Debtor"). The Debtor, having agreed to the relief sought by the United States with the terms as provided below, and the Court finding that the motion is well taken, the Court grants the motion. Accordingly, it is

ORDERED that:

1. The United States' Motion for Relief from Stay is hereby granted;

2. The United States and the Debtor agree that the United States will not seek relief in the district court before February 15, 2012 regarding the Debtor's alleged violations of the permanent injunction entered on November 9, 2011 in *United States v. Abraham Srour and Aurora of Tampa, Inc. D/B/A Remington's Steakhouse*, Case No. 8:11-cv-02419-RAL-TGW (M.D. Fla., Tampa Div.) ("Permanent Injunction"), which alleged violations occurred up to the date of this Order, if the Debtor (a) fully complies with all the terms of the Permanent Injunction on or before February 15, 2012, and (b) provides verification to the United States of such compliance by February 15. The Debtor understands that the obligations imposed under the Permanent Injunction are

continuing in nature, and thus, the United States may pursue relief in the district court for past violations not cured by February 15, and/or for future violations.

3. The United States and the Debtor further agree that any fine imposed by the district court for any violation of the Permanent Injunction is deemed administrative expenses pursuant to 11 U.S.C. § 503.

DONE AND ORDERED at Tampa, Florida on February 09, 2012.

MICHAEL G. WILLIAMSON
United States Bankruptcy Judge

cc: Valerie G. Preiss
David W. Steen
United States Trustee

B18JO (Form 18JO) (08/07)

United States Bankruptcy Court

Western District of Washington
700 Stewart St, Room 6301
Seattle, WA 98101

Case No. 11−13498−MLB

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Kenneth J Durkee
PO Box 75
Issaquah, WA 98027

Kathleen A Durkee
14810 SE Jones Pl
Renton, WA 98058

Social Secur payer ID No.:
xxx−xx−

xxx−xx−

Employer Tax ID/Other nos.:

DISCHARGE OF ONE JOINT DEBTOR

The Debtor(s) filed a Chapter 7 case on **March 28, 2011.** It appearing that Kathleen A Durkee** is entitled to a discharge,

IT IS ORDERED:

Kathleen A Durkee** is granted a discharge under 11 U.S.C. § 727.

BY THE COURT

Dated: February 9, 2012

Marc Barreca
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

***When only one of the debtors in a joint case is discharged, state here the name of the individual debtor being discharged.*

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named in the order. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the named debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the named debtor. A creditor who violates this order can be required to pay damages and attorney's fees to the discharged debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

a. Debts for most taxes;

b. Debts incurred to pay nondischargeable taxes (in a case filed on or after October 17, 2005);

c. Debts that are domestic support obligations;

d. Debts for most student loans;

e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;

f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;

g. Some debts which were not properly listed by the debtor;

h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;

i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and

j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans (in a case filed on or after October 17, 2005).

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CARDINAL MANAO SENDATSU, also known as CMS, INC.; RONALD S. CARLSON, Petitioners, vs. UNITED STATES; UNITED STATES INTERNAL REVENUE SERVICE; COLIN KELLY; AMERICAN SAVINGS BANK, Respondents.	CIVIL NO. 11-00610 LEK-KSC FINDINGS AND RECOMMENDATION TO DISMISS PETITION TO QUASH SUMMONS

FINDINGS AND RECOMMENDATION TO DISMISS PETITION TO QUASH SUMMONS

Before the Court is Petitioners Cardinal Manoa[1] Sendatsu ("CMS") and Ronald Carlson's ("Dr. Carlson") (collectively "Petitioners") Petition to Quash Summons ("Petition"), filed October 12, 2011. The United States filed a Response on January 19, 2012. On February 3, 2012, Petitioners filed their Reply. The United States filed a Supplement to Declaration of

[1] Cardinal Manoa Sendatsu is incorrectly identified as Cardinal Manao Sendatsu in the Petition and Reply. However, documents attached to the parties' submissions indicate that the correct name is Cardinal Manoa Sendatsu. Pet., Exs. 1 & 2.

Revenue Officer Colin Kelly and a Second Declaration of Revenue Officer Colin Kelly on February 3, 2012, and February 7, 2012, respectively.

This matter came on for hearing on February 9, 2012. Myles Breiner, Esq., appeared on behalf of Petitioners and Trial Attorney Jeremy Hendon appeared on behalf of the United States. After careful consideration of the parties' submissions, the arguments presented at the hearing, and the applicable law, the Court HEREBY FINDS AND RECOMMENDS that the Petition be DISMISSED for the reasons set forth below.

BACKGROUND

The Internal Revenue Service ("IRS"), through Revenue Officer Colin Kelly, is conducting an investigation to aid in the collection of Dr. Carlson's outstanding federal income tax liabilities for the tax years ending December 31, 1984, December 31, 1985, December 31, 1986, December 31, 1987, and December 31, 1988. United States' Response to Pet., Decl. of Revenue Officer Colin Kelly ("Kelly Decl.") at ¶ 3. Dr. Carlson was previously convicted of federal tax

crimes in 1999. Id. at ¶ 6. He was required to file past-due tax returns (including the 1984-88 tax years) and make payments of all delinquent tax liabilities as part of his release and probation. Id. On June 23, 2003, the IRS made assessments for the foregoing liabilities and the unpaid balance of the assessments is $622,040.70. Id. at ¶¶ 3, 6. The sole purpose of Revenue Officer Kelly's investigation is to locate assets to satisfy Dr. Carlson's outstanding federal tax liabilities. Id. at ¶ 3. Revenue Officer Kelly is not seeking to determine the federal tax liabilities of either Dr. Carlson or CMS. Id.

On September 14, 2011, Revenue Officer Kelly issued a summons to American Savings Bank ("ASB") pursuant to 26 U.S.C. § 7602, directing that ASB produce all records relating to Petitioners for the period January 1, 2010 through September 30, 2011. Id. at ¶ 4. Revenue Officer Kelly served the summons by certified mail on September 15, 2011. Id. at ¶ 5.

On October 12, 2011, Petitioners filed the instant Petition pursuant to 26 U.S.C. § 7609.

DISCUSSION

Petitioners seek to quash the summons on the following grounds: 1) the IRS failed to serve them; 2) the summons is inconsistent, vague, and ambiguous; 3) the summons is criminal in nature;[2] 4) the summons is untruthful and misleading and denies ASB and Petitioners' due process rights; 5) the summons is not attested and/or not properly attested; 6) the summons violates Petitioners' privacy and constitutional rights; and 7) the summons was not issued in good faith. The United States asks the Court to dismiss the Petition for lack of subject matter jurisdiction or alternatively, to enforce the summons.

A. The IRS and Revenue Officer Kelly are not Proper Parties

The United States first argues that Petitioners

[2] Petitioners speculate that the IRS is attempting to use the civil process in the aid of a criminal investigation, but they have not submitted any evidence to substantiate their conjecture. Revenue Officer Kelly represents that there is no Justice Department referral for the periods covered by the summons. Kelly Decl. at ¶ 10. If a Justice Department referral was in effect, the IRS would lack the authority to issue a summons. 26 U.S.C. § 7602(d).

have improperly named the IRS and Revenue Officer Kelly as Respondents. The Court agrees. A suit against a federal officer in his official capacity is barred by the doctrine of sovereign immunity. Oliva v. United States, 221 F.R.D. 540, 543 (D. Haw. 2003) (citing Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985)). Thus, Revenue Officer Kelly is not a proper party. Neither is the IRS because Congress has not authorized suit against it. Id. at 543-44 (citing Castleberry v. Alcohol, Tobacco and Firearms Div., 530 F.2d 672, 673 n.3 (5th Cir. 1976)). For these reasons, the Court recommends that the IRS and Revenue Officer Kelly be dismissed.

B. The Court Lacks Jurisdiction Over the Petition

The United States next argues that the Petition should be dismissed for lack of subject matter jurisdiction. The doctrine of sovereign immunity bars suits against the United States unless the United States has consented to suit. United States v. Sherwood, 312 U.S. 584, 586 (1941). It is well settled

that the United States, as a sovereign, is immune from suit unless it has expressly waived such immunity and consented to being sued. Gilbert, 756 F.2d at 1458; Valdez v. United States, 56 F.3d 1177, 1179 (9th Cir. 1995). "Jurisdiction over any suit against the Government requires a clear statement from the United States waiving sovereign immunity, together with a claim falling within the terms of the waiver." Mollison v. United States, 568 F.3d 1073, 1075 (9th Cir. 2009) (quoting United States v. White Mountain Apache Tribe, 537 U.S. 465, 472 (2003)) (quotations omitted). The petitioner bears the burden of demonstrating that the United States has waived its sovereign immunity. Baker v. United States, 817 F.2d 560, 562 (9th Cir. 1987); Holloman v. Watt, 708 F.2d 1399, 1401 (9th Cir. 1983). When the United States has not consented to suit, dismissal is required. Gilbert, 756 F.2d at 1458 (citing Hutchison v. United States, 677 F.2d 1322, 1327 (9th Cir. 1982)).

The exclusive statute providing courts with jurisdiction to quash an IRS summons is 26 U.S.C. § 7609(b). "Section 7609(b)(2) constitutes the government's consent to waive sovereign immunity and subject itself to a legal challenge in court." Mollison, 568 F.3d at 1075. Section 7609(b)(2)(A) confers standing only upon those persons entitled to notice of the summons pursuant to § 7609. 26 U.S.C. §7609 ("Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons. . . ."); Viewtech, Inc. v. United States, 653 F.3d 1102, 1104 (9th Cir. 2011) (only persons entitled to notice under § 7609 may bring a proceeding to quash a summons). The IRS is not required to give notice when a summons is "issued in aid of the collection of . . . an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." 26 U.S.C. § 7609(c)(2)(D)(i).

1. Dr. Carlson

The United States has demonstrated that the summons was issued to ASB, a third party, in aid of collection of an assessment made against Dr. Carlson. As the assessed taxpayer, Dr. Carlson is disqualified from notice under § 7609(c)(2)(D)(i). Viewtech, 653 F.3d at 1106; Oliva, 221 F.R.D. at 544 (quoting Barmes v. United States, 199 F.3d 386, 390 (7th Cir. 1999)) (per curiam) (quotations omitted) ("[A]s long as the third-party summons is issued to aid in the collection of any assessed tax liability the notice exception applies."). Dr. Carlson consequently lacks standing to quash the summons.

2. CMS

The United States submits that due to CMS's relationship with Dr. Carlson, it too is excepted from receiving notice. To support its position, the United States asserts that 1) CMS has a significant relationship with Dr. Carlson; 2) Dr. Carlson has an interest in CMS's bank account; 3) CMS is the nominee,

alter ego, or transferee of Dr. Carlson; and 4) the summons was issued to gather information and documents regarding Dr. Carlson's possible use of bank accounts held in other individuals' or companies' names to shield those assets from the reach of the IRS and that said information and documents may assist the IRS in locating assets or funds held by CMS or others as the nominee/alter ego and/or transferee of Dr. Carlson. In determining whether CMS was entitled to notice, the Court must consider whether CMS could be deemed a fiduciary or transferee of Dr. Carlson or whether Dr. Carlson had/has a sufficient legal interest in CMS's bank account, which is the object of the summons.

Third parties, i.e. individuals or businesses other than the assessed taxpayer, are often summoned by the IRS in its effort to collect on a tax assessment based on a suspicion that the taxpayer may be attempting to conceal assets in the accounts, holdings, or property of the third party. Viewtech, 653 F.3d at 1104 (citing IP v. United States, 205 F.3d 1168, 1170-

71 (9th Cir. 2000)). Generally, § 7609 provides "that if the IRS asked the person summoned (here, the third party's bank) for specified information relating to a person identified in the summons (in this example, the third party account owner), the IRS must give that third person notice of the summons." Id. However, the Ninth Circuit has held that a third party need not receive notice that the IRS has summoned the third party's records if the third party is the assessed taxpayer, or a fiduciary or transferee of the taxpayer, or the assessed taxpayer has "some legal interest or title in the object of the summons." Id. at 1105 (citation and quotations omitted).

The foregoing test is applied non-technically. Id. To determine whether a third party could be deemed a fiduciary or transferee of the taxpayer, the Court may consider "whether a taxpayer had transferred funds into the third party's account." Id. at 1105-06. In assessing whether a taxpayer has a sufficient legal interest in the object of the summons, the Court may

consider whether the taxpayer and third party have an employment, agency, or ownership relationship. Id. at 1106.

Here, Revenue Officer Kelly offers the following in support of the United States' contention that CMS has a significant relationship with Dr. Carlson; Dr. Carlson has an interest in CMS's bank account; and CMS is the nominee, alter ego, or transferee of Dr. Carlson:

> 1) While Dr. Carlson claims that he performed his dental services as an employee of CMS, his patients made check or money order payments payable to him. Patients were sometimes instructed to make checks payable to CMS or leave the checks blank. Blank checks were rubber stamped with CMS.
>
> 2) Virtually all of Dr. Carlson's income from his dental practice was deposited into the CMS bank account.
>
> 3) Checks issued from the CMS bank account were made by Dr. Carlson or his staff using a stamp in the name of Paul Kenyon.
>
> 4) Payments for the dental practice space lease were paid from the CMS bank account. Prior to 2005, the aforesaid lease was in Dr. Carlson's father's name. Following Dr. Carlson's father's passing in 2005,

> Syntro, a Nevada corporation, was substituted on the lease. Syntro is purportedly owned by Ron Kirzinger, but Mr. Kirzinger is in the business of incorporating businesses in Nevada and assisting taxpayers in the use of nominees to protect their assets.
>
> 5) Dr. Carlson deposited remaining funds from the CMS bank account into a Syntro bank account in Nevada.
>
> 6) Dr. Carlson's rent on his personal residence (made to his landlord Y.P. Kang) is paid from the Syntro bank account. Personal expenditures such as electric bill, grocery, restaurant and dry cleaning are also paid from the Syntro bank account.
>
> 7) Syntro's checks were signed by Dr. Carlson and/or his staff in the name of Ron Kirzinger.

Kelly Decl. at ¶ 6; Second Decl. of Revenue Officer Colin Kelly ("Second Kelly Decl."). The United States has submitted bank statements, deposit tickets, and checks to demonstrate the linkage and relationship between Dr. Carlson, CMS and Syntro. Kelly Decl. at ¶ 7, Exs. C-F; Second Kelly Decl. at ¶¶ 5-9, Exs. 1-4.

Petitioners assert that the United States has failed to demonstrate that Dr. Carlson had a legal

interest in the object of the summons or that CMS is a fiduciary or transferee of Dr. Carlson. In addition to raising evidentiary objections to Revenue Officer Kelly's Declaration, Petitioners contend that Revenue Officer Kelly has failed to provide evidence to support the statements contained in paragraph 6 of his Declaration.

Based on the evidence presented, the Court is persuaded that Dr. Carlson has a sufficient legal interest in the CMS bank account and/or that CMS was or is a fiduciary or transferee of Dr. Carlson. Significantly, although Petitioners bear the burden of establishing standing, Cranford v. United States, 359 F. Supp. 2d 981, 988 (E.D. Cal. 2005) (citing Northwest Envtl. Defense Ctr. v. Bonneville Power Admin., 117 F.3d 1520, 1528 (9th Cir. 1997); Snake River Farmers' Ass'n, Inc. v. Dep't of Labor, 9 F.3d 792, 795 (9th Cir. 1993)), they have not proffered evidence to refute the United States' arguments. They simply contend that the United States has not provided evidence to support

the allegations in Revenue Officer Kelly's Declaration.

Dr. Carlson, who claims to merely be an employee of CMS, is the only dentist practicing at his Honolulu office location. The existence of an employment relationship is among the factors the Court may consider in determining whether Dr. Carlson has a sufficient legal interest in the CMS bank account. Viewtech, 653 F.3d at 1106. Petitioners erroneously argue that the Ninth Circuit more or less ignores employment status and requires the United States to prove that Dr. Carlson is an officer and shareholder of CMS. The Ninth Circuit created no such requirement in Viewtech v. United States. The Viewtech court plainly held that the close legal relationship created by the taxpayer's ownership interest in Viewtech, coupled with his status as an employee and officer of Viewtech was sufficient to give the taxpayer the requisite interest in the Viewtech bank account, thereby disqualifying Viewtech from receiving notice of the summons. Id. Although the record does not indicate that Dr. Carlson

is an owner, officer, or director of CMS, the United States has provided the Court with ample evidence, as explained in further detail below, of Dr. Carlson's legal interest in the CMS bank account. In any event, even if Dr. Carlson lacks any legal interest in the CMS bank account, the record before the Court indicates that CMS is a fiduciary or transferee of Dr. Carlson.

Payments from dental patients and income from the dental practice and other sources, whether directed to Dr. Carlson or CMS, were and/or are deposited into the CMS bank account. Second Kelly Decl. at ¶ 6, Ex. 2. Funds from the CMS bank account are used to pay for the dental practice space lease, and remaining funds are transferred to the Syntro bank account. Dr. Carlson's personal expenses are then paid from the Syntro bank account. These facts demonstrate that CMS is Dr. Carlson's fiduciary or transferee and that Dr. Carlson has the requisite interest in the CMS bank account to disqualify CMS from receiving notice under § 7609(c)(2)(D)(i)-(ii). Viewtech, 653 F.3d at 1106.

Given the relationship between Petitioners, providing them with notification could "impede the IRS's ability to collect taxes." Id. at 1105. For these reasons, the Court finds that CMS was not entitled to notice of the summons and it, like Dr. Carlson, lacks standing to petition the Court to quash the summons. Insofar as the Court lacks subject matter jurisdiction, the Petition should be dismissed.

Petitioners request that if the Court does not quash the summons, that Petitioners be allowed to conduct discovery. Petitioners additionally request that if the Court finds that they have no remedy under sections 7602 through 7609, that they be granted leave to amend the Petition to ask for an injunction to restrain the IRS from proceeding to enforce the summons. Finally, Plaintiffs ask that the Court hold an evidentiary hearing to establish that the issuance of the summons was improper. The Court recommends that these requests be denied. Because Petitioners lack standing with respect to the summons, thereby requiring

dismissal of the Petition, discovery and an evidentiary hearing are unnecessary and inappropriate. Moreover, where, as here, the Court lacks subject matter jurisdiction, the proposed amendment would be futile.

CONCLUSION

In accordance with the foregoing, the Court HEREBY FINDS AND RECOMMENDS that the Petition to Quash Summons, filed October 12, 2011, be DISMISSED.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, February 9, 2012.

Kevin S.C. Chang
United States Magistrate Judge

CV 11-00610 LEK-KSC; Cardinal Manao Sendatsu, et al. v. United States, et al.; FINDINGS AND RECOMMENDATION TO DISMISS PETITION TO QUASH SUMMONS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON

CIVIL ACTION NO. 11-371-JBC

WALTER WAYNE BROWN, JR., ET AL. **PLAINTIFFS,**

V. **ORDER**

JAN ESTEP, ET AL., **DEFENDANTS.**

* * * * * * * * * * *

Pending before the court are motions to dismiss by the United States of America (R. 7), the U.S. Office of Comptroller of the Currency (R.8), Topako Love and James C. Morris (R.10), and David M. Applegate (R.11). The plaintiffs having failed to respond, and for the reasons explained below, the motions will be granted.

The plaintiffs filed a difficult-to-decipher complaint against at least fifteen defendants in state court, bringing varied claims that include violation of the 1864 Currency Act, failure to give deposit receipts, conversion, unjust enrichment, violation of the 1939 Repealed Internal Revenue Code Act, and "a act of sedition against the United States [sic]." The claims all stem from a loan obtained by Winona J. Cox that was originally serviced by Option One Mortgage Corporation, which later assigned the mortgage to U.S. Bank and transferred the servicing of the mortgage to American Home Mortgage Servicing, Inc.[1] The plaintiffs appear to allege that the mortgage was fraudulently assigned and that foreclosure

[1] The court will presume that Winona J. Cox is the same person the plaintiffs refer to as "Winona Jean (Enarson Brown); a living physical woman" and "winona jean (enarson brown); a living Immortal Spiritual Being."

proceedings on the mortgaged property were wrongful, but the complaint is also littered with allusions to entities such as the "Roman Pontiff," the "Arch Treasurer of the Vatican", the "Queen of England", and the "Chief of the commonwealth of Kentucky Militia."

The United States asserts that the plaintiffs' case against it must be dismissed because the court lacks personal jurisdiction over the United States. The court lacks personal jurisdiction over the United States because the plaintiffs failed to properly serve the summons and complaint on the U.S. Attorney for the Eastern District of Kentucky. The United States also asserts that the plaintiffs' complaint against it should be dismissed under Fed. R. Civ. P. 12(b)(6). Because the plaintiffs have failed to state a claim upon which relief can be granted, their complaint against the United States will be dismissed.

The United States further requests that the IRS defendants Douglas Shulman, Michael W. Cox, Yolanda K. Churchwell, Gregory N. Yurick, Wesley K. Jones, and Vivian Harris ("IRS defendants") be dismissed under Fed. R. Civ. P. 12(b)(6) and because the United States is the proper defendant in suits where an official of an agency of the United States is sued for official acts.

John Walsh, Acting Comptroller of the Currency, argues that claims against him should be dismissed because under the doctrine of sovereign immunity the United States may not be sued without its consent. The plaintiffs name Walsh in his official capacity as Comptroller and, as this case does not fall into any category

that triggers a waiver of sovereign immunity, Walsh is entitled to immunity and a dismissal of the plaintiffs' claims against him.

As to James C. Morris and Topako Love, the plaintiffs have failed to establish grounds for relief regarding either Morris's acknowledging the signature of Love in his capacity as a notary public, or Love's unexplained "conflict of interest" as Officer for Option One Mortgage Corp. Similarly, the claims against David M. Applegate, President and CEO of American Home Mortgage Servicing, Inc., fail to "raise a reasonable expectation that discovery will reveal evidence" of an actionable claim. *See Bell Atlantic v. Twombly*, 550 U.S. 544, 555-56 (2007). Viewing the plaintiffs' averments and statements of fact in a light most favorable to them, the plaintiffs fail to support an action against Applegate, Morris, Love, or the IRS defendants. **ACCORDINGLY,**

IT IS ORDERED that the motions to dismiss (R.7, 8, 10, and 11) are **GRANTED**.

IT IS FURTHER ORDERED that the claims against Douglas Schulman, Michael W. Cox, Yolanda K. Churchwell, Gregory N. Yurick, Wesley K. Jones, and Vivian Harris are **DISMISSED**.

Signed on February 9, 2012

Jennifer B. Coffman

JENNIFER B. COFFMAN, JUDGE
U.S. DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Clemente Ranch Homeowners Association, Plaintiff, vs. Ernesto Bello, et al, Defendants.	No. CV 11-2496 PHX-ROS **ORDER SETTING** **SCHEDULING CONFERENCE**

Pursuant to the Rules of Practice of the District of Arizona governing differentiated case management, this action is designated a **standard track** case. Accordingly,

IT IS HEREBY ORDERED that pursuant to Fed.R.Civ.P. (FRCP) 16 a Scheduling Conference is set for **Friday, March 16, 2012 at 3:30 p.m.** in Courtroom 604 at the Sandra Day O'Connor U.S. Courthouse, 401 West Washington, Phoenix, Arizona. This Court views the Scheduling Conference as critical to its case management responsibilities and the responsibilities of counsel/ parties pursuant to FRCP 1. **All counsel to this action shall request of the Court three days prior to this Conference if they plan to participate by telephone. Appearing telephonically is granted for good cause ONLY.**

IT IS FURTHER ORDERED that: (1) The counsel/parties are directed to Rule 16 of the FRCP for the guidelines to be followed at this Conference. (2) Counsel who will serve as principal trial counsel, or who have the authority to make stipulations at the Conference and have knowledge of all facets of this action must appear at the Conference. (3) Counsel/Parties who fail to appear or who are late, or counsel/parties who send insufficiently authorized and

knowledgeable substitutes to the Conference **shall** be ordered to pay the attorneys fees and expenses of the counsel/parties who attend the Conference.

IT IS FURTHER ORDERED that all counsel/parties **shall** conduct an initial **Case Management Meeting** at least twenty-one days before the Scheduling Conference in accordance with Rule 26(f) of the FRCP and **shall** discuss the matters set forth in the Court's **Agenda for Case Management Meeting**.

IT IS FURTHER ORDERED that it **shall** be the responsibility of the Plaintiff or Plaintiff's counsel to initiate the communication necessary with opposing counsel/parties to schedule the **Case Management Meeting**, and to prepare both the **Proposed Case Management Plan** and **Proposed Scheduling Order**.

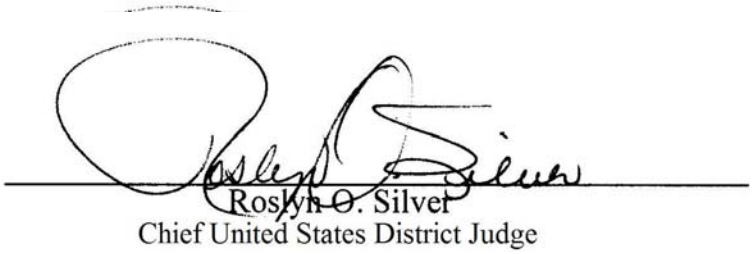
IT IS FURTHER ORDERED that at the Case Management Meeting the counsel/parties **shall** prepare a **Proposed Case Management Plan** and a **Proposed Scheduling Order** and **shall** file them with the Court, not less than ten days before the Scheduling Conference. Counsel shall submit the Proposed Scheduling Order in Word or WordPerfect format to the Court's mailbox at silver_chambers@azd.uscourts.gov.

IT IS FURTHER ORDERED that after the Scheduling Conference the Court will enter a **Scheduling Order** that **shall** control the course of this action. To the extent that the Court's **Scheduling Order** differs from the parties'/counsel's **Proposed Case Management Plan** and/or **Proposed Scheduling Order**, the Court's Order **shall** control the course of this action unless modified by Court order, pursuant to FRCP 16(b) and (c).

IT IS FURTHER ORDERED that counsel/parties **shall** obtain and use from this Court's website at www.azd.uscourts.gov, (refer to Judges & Courtrooms; Orders, Forms & Procedures), only the Court's forms for the **Agenda for the Case Management Meeting**, the **Proposed Case Management Plan**, the **Proposed Scheduling Order**, the **Joint Proposed Pretrial Order** and other documents and orders that are adopted and/or issued by this Court throughout the course of this action.

IT IS FURTHER ORDERED Counsel shall be prepared to discuss the facts of the case and the law in connection with the lawsuit and initial disclosures must have been made under Rule 26(a) prior to the conference, unless the Court has made an exception.

DATED this 9th day of February, 2012.



Roslyn O. Silver
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 1:10-cv-237-SJM
v.	)	
	)	
EBERT G. BEEMAN,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Presently pending before this Court is a renewed motion by the Defendant Ebert G. Beeman pursuant to Fed. R. Civ. P. 60(b) to obtain relief from the Orders of Judgment entered by the Court on June 30 and July 22, 2011. At the motion hearing held on January 31, 2012, I denied Mr. Beeman's original Rule 60(b) motion, noting certain deficiencies in the evidence which he had presented to the Court in support of his motion. I nevertheless permitted Mr. Beeman seven days within which to reassert his motion to the extent he could correct the deficiencies in the supporting evidence. More specifically, I directed that Mr. Beeman should supply the Court with a copy of any returns or documents that he has submitted, or which he intends to submit, to the IRS for any of the tax years at issue, and I specifically admonished that the documents should bear Mr. Beeman's signature under penalty of perjury or otherwise show that he has attested by sworn affidavit to the accuracy of the information contained in the tax returns. I further directed that Mr. Beeman should submit an affidavit from the tax

preparer attesting to the method of calculation, the records relied upon, and the accuracy of the return.

Mr. Beeman has since submitted materials within the designated time frame which essentially comply in all material respects with my order. Nevertheless, due to Mr. Beeman's appeal, which is still currently pending before the Third Circuit, I remain circumscribed in terms of my discretion to act on Mr. Beeman's renewed Rule 60(b) motion. Pursuant to Rule 62.1 of the Federal Rules of Civil Procedure, my options are limited to the following: (1) defer consideration of Mr. Beeman's Rule 60(b) motion; (2) deny the motion outright; or (3) state either that I would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

It bears repeating that the relevant motion before me is a motion pursuant to Rule 60(b) for Relief from Judgment – namely the Orders of Judgment entered on June 30 and July 22, 2011 [Doc. # 40 and 48]. Rule 60(b) provides, in relevant part, that, "on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" based on various enumerated reasons, including "any other reason that justifies relief." See Fed. R. Civ. P. 60(b)(6). This catch-all provision requires the movant to demonstrate "extraordinary circumstances" to justify relief from the judgment. *See United States v. Minor*, No. 11-1500, 2012 WL 29062 at *2 (3d Cir. Jan. 6, 2012) (*quoting Gonzales v. Crosby*, 545 U.S. 524, 535 (2005)). To meet this burden, there must be "a showing that without relief from the judgment, an extreme and unexpected hardship will result." *Id.* (*quoting Budget Blinds, Inc. v. White,* 536 F.3d 244, 255 (3d Cir. 2008)).

The Government points out that, for purposes of Rule 60(b)(6), courts are typically disinclined to afford relief from a judgment where the alleged hardship is the result of the movant's own litigation tactics. In a fairly recent unreported decision, the Third Circuit Court of Appeals reaffirmed this principle when it refused to set aside a default judgment that had previously been entered against a taxpayer in a separate federal tax collection action. In *Johnson v. United States,* 375 Fed. Appx. 273 (3d Cir. April 14, 2010), the Court of Appeals reiterated the requirement that a litigant seeking relief under Rule 60(b)(6) must show the presence of "extraordinary circumstances" which, in turn, requires a showing of "an extreme and unexpected hardship." 375 Fed. Appx. at 275. The *Johnson* Court found that the mere existence of an IRS lien failed to satisfy this standard, notwithstanding the taxpayer's claim that the lien "impair[ed] [his] ability ... to qualify as credit-worthy for most, if not all, major purchase necessities." *Id.* Noting that "extraordinary circumstances rarely exist when a party seeks relief from a judgment that resulted from the party's deliberate choices," *id.* at 276 (*quoting Budget Blinds*, 536 F.3d at 255), the court ruled that the taxpayer did not demonstrate any basis for relief under Rule 60(b)(6).

In this case, it is undeniable that the hardships which Beeman now faces as a result of the pending Judgment Orders are borne of his own poor choices. Notwithstanding this fact, however, there are a number of considerations present here which distinguish this case from *Johnson* and which arguably present the type of extraordinary circumstances that might make relief under Rule 60(b)(6) appropriate.

For one, unlike the taxpayer in the *Johnson* case, Beeman is not seeking to set aside the judgment of a different court. This is potentially significant because, "when a

court is deciding whether or not to vacate another court's judgment," as was the case in *Johnson,* the "circumstances must be even more 'extraordinary' because of the additional interest in comity among the federal district courts.'" *Johnson*, 375 Fed. Appx. at 275 (*quoting Budget Blinds*, 536 F.3d at 252). No such concerns are present here, since we are faced only with a challenge to this Court's own judgment orders.

Second, unlike the taxpayer in *Johnson,* Beeman is contesting the amount of the Government's tax assessments, particularly as it pertains to tax years 1997 and 2003, as well as the interest and penalties calculated on the basis of those assessments. This in and of itself would not likely amount to extraordinary circumstances in the ordinary case, but it is potentially significant that, here, Beeman (or more accurately, his accountant) is claiming that the Government over-assessed his tax liability by $877,520 for the year 2003 and by $26,552 for the year 1997. (In all other tax years, Beeman apparently concedes that the Government correctly assessed the amount of taxes owed, or it under-assessed him.) Regarding tax year 2003, if the calculations of Beeman's accountant are ultimately shown to be accurate, they would suggest that Beeman's tax liability for that year was overestimated by a factor of approximately 28 times what he actually owed; it would necessarily follow that the penalties and interest calculated upon that assessment were also, by extension, grossly over-inflated.

Third, although the Government does not, and cannot be expected to, accept Beeman's figures at face value (particularly where Beeman himself supplied some of the information relied upon by his accountant and the Government has not yet had an opportunity to depose Beeman or examine the records upon which he relies), the Government does not appear to take issue with the basic premise that consideration of

proper cost-basis figures might dramatically reduce Beeman's true tax liability for the year 2003. Since 2003 resulted in the largest tax assessment by far (i.e., $909,428.00), a significant reduction in this figure could conceivably reveal that the Government obtained an extraordinarily high windfall in its money judgment.

This brings us to the fourth consideration: namely, the possibility that the Government may have obtained a grossly overly inflated judgment from a taxpayer – albeit one who has utterly disregarded the tax laws -- does nothing to advance the interests of justice and instead merely threatens to undermine faith in our public institutions. Counsel for the Government contends that, even if Beeman's figures are ultimately shown to be accurate, he would still owe in excess of $100,000 in interest and penalties for tax years 1997 and 2003, as well as approximately $13,000 in interest and penalties for tax years 2007-2010. The Government also protests that Beeman has yet to file returns for tax years 1998 through 2001.

The short answer to this is that, insofar as tax years 1998 to 2001 and 2007 to 2010 are concerned, those years do not form the basis of this litigation, nor are the Court's orders of judgment in this case intended to address any grievances the Government may have with respect to those years. With respect to tax years 1998-2001 and 2007-2010, we assume the Government has the right and the power to pursue the same remedies against Beeman as it has sought relative to the tax years actually at issue in this case. Moreover, accepting the Government's point that Beeman's ultimate tax liability for the years in question may well exceed $120,000, we simply note that there is a big difference between $120,000 and the $2.1 million judgment which has been entered against Beeman in this case. As counsel for the

United States has previously acknowledged, the I.R.S. has no interest in collecting more from a taxpayer than is legitimately owed under the federal tax laws. When the possibility exists that the Government may have obtained a windfall judgment from an individual in the order of hundreds of thousands – and perhaps millions -- of dollars, the interests of justice counsel against an overly rigid and formalistic application of the court's procedural rules.

In sum, at this juncture the Court cannot definitively say that it would grant the Defendant's Rule 60(b) motion if the matter were remanded from the appellate court. Among other things, as I have noted, the Government has had no opportunity as yet to subject the Defendant or his accountant to cross-examination concerning the materials recently submitted, so it remains unclear at this point whether Beeman's current arguments in favor of Rule 60(b) relief will prove to be well-founded. Nevertheless, Beeman's most recent submissions do raise at least a substantial issue as to whether the judgment orders entered in this case accurately reflect his overall liabilities for the tax years in question. Of particular relevance, as we have noted, is tax year 2003 and, to a much lesser extent, tax year 1997. If Beeman's calculations are ultimately shown to be accurate, they would arguably support a finding that "extraordinary circumstances" are present within the meaning of Rule 60(b)(6). Accordingly, based upon the foregoing reasons, I find pursuant to Rule 62.1 of the Federal Rules of Civil Procedure that Defendant Beeman's renewed motion under Rule 60(b) raises a substantial issue as to his entitlement to relief.[1]

[1] This Court fully recognizes that, even if a significant miscalculation occurred respecting tax year 2003, it would be as a result of Beeman's own actions in failing to file timely returns and in further failing to supply

Entered this 9th Day of February, 2012.

s/ Sean J. McLaughlin

Sean J. McLaughlin
United States District Judge

cc: All parties of record.

any information to the IRS which would have permitted the agency to properly calculate his cost-basis for tax purposes. In view of this fact, I leave open the question whether, at some future point, sanctions might be appropriate to account for the needless time, energy, and financial resources which the Government has had to expend by virtue of Beeman's vexatious litigation tactics. For present purposes, that question is premature, and it need not be addressed now.