The Honorable Thomas S. Zilly

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. GLEN A. STOLL; STOLL FAMILY TRUST; DIRECTOR OF THE FAMILY DEFENSE LEAGUE a.k.a. FAMILY DEFENSE LEAGUE a.k.a. FAMILY DEFENSE NETWORK a.k.a. FAMILY DEFENSE FUND; and SNOHOMISH COUNTY, Defendants.	Case No. 2:22-cv-01130-TSZ **UNITED STATES' RESPONSE TO DEFENDANT STOLL'S "NOTICE OF PREVIOUSLY FILED ANSWER TO COMPLAINT, REQUEST TO DISMISS FOR FAILURE TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED, AND NEWLY DISCOVERED EVIDENCE"** **Note on Motions Calendar: June 30, 2023**

Plaintiff the United States of America opposes Defendant Glen A. Stoll's "Notice of Previously Filed Answer to Complaint, Request to Dismiss for Failure to State a Claim for which Relief can be Granted, and Newly Discovered Evidence" and requests that it be denied. Dkt. # 38. The Court docketed the aforementioned filing as a "Motion to Dismiss for Failure to State a Claim, Notice of Answer, and Notice of Evidence" (hereinafter referred to as the "Motion")[1], and noted the Motion for June 30, 2023. *Id.* In the Motion, Stoll alleges that his previously filed motion to dismiss was based on failure to state a claim upon which relief can be granted, Dkt.

[1] The Exhibits to the Motion were filed under seal on June 2, 2023. Dkt. # 39. The United States received a copy of the Motion and Exhibits thereto via United States Postal Service Priority Mail on June 6, 2023. The United States obtained access to the filed sealed Exhibits from the Court on June 13, 2023.

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18 ("Foreign Plea in Abatement"), and *not* for lack of jurisdiction as construed by the Court, Dkt. ## 24 (Minute Order dated December 19, 2022), 28 (Minute Order dated February 16, 2023), 34 (Minute Order dated April 25, 2023). *See* Dkt. # 38 at 1.

The Court should deny the Motion. First, the Court already considered Stoll's prior motion to dismiss, correctly construed it as a motion to dismiss for lack of jurisdiction, and denied it. Dkt. # 34 at 1-2, ¶ 1. Second, to the extent that the Court considers the Motion and construes it as a motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(h)(2)(B) and 12(c), the Court should deny the Motion because Stoll has provided no basis to support his argument that this action should be dismissed for failure to state a claim. Third, to the extent the Motion is converted to a motion for summary judgment pursuant to Federal Rules of Civil Procedure 12(d) and 56, the Court should also deny the Motion because there are unresolved issues of material fact requiring discovery and at minimum a genuine dispute of material fact. In support of the Response, the United States submits the Exhibits 1-8 attached hereto, the Declaration of Yen Jeannette Tran ("Tran Decl.") concurrently filed with this response, and the following memorandum.

BACKGROUND

1. On August 12, 2022, the United States commenced this suit to: (i) reduce to judgment the outstanding federal tax assessments for income tax years 2001-2008 against Stoll; (ii) find a parcel of improved property located in Snohomish County, Washington, described more completely below and referred to as the "Subject Property", is held by a nominee and/or alter ego of Stoll; and (iii) foreclose federal tax liens on the Subject Property, selling it and distributing the proceeds of such sale in accordance with the Court's findings as to the validity and priority of the liens and claims of all the parties as to the Subject Property. *See* Dkt. # 1, ¶ 1. The Subject Property has a street address of 7311 Grove St. SE, Marysville, WA 98270, and bears Snohomish County Assessor's Parcel No. 007753-000-007-00. Dkt. # 1, ¶¶ 11-12. The Subject Property is legally described as:

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LOT(S) 7, MUNSON CREEK ESTATES DIVISION III, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 49 OF PLATS, PAGE(S) 180 AND 181, RECORDS OF SNOHOMISH COUNTY, WASHINGTON

Dkt. # 1, ¶ 13.

2. On November 25, 2022, Stoll filed a document titled "Foreign Plea in Abatement," Dkt. # 18, which the Court construed as a Motion to Dismiss for Lack of Jurisdiction ("Motion to Dismiss"), *see* Dkt. ## 24 (Minute Order dated December 19, 2022), 28 (Minute Order dated February 16, 2023), 34 (Minute Order dated April 25, 2023).

3. In support of his request, Stoll argued "No jurisdiction of law has been declared, and my jurisdictional challenge is hereby being made known to the judge, who along with other participants, may become personally liable for *Deprivation of Rights Under Color of Law.*" Dkt. # 18 at 2. Further, he questioned "What jurisdiction of law is being used?" *Id.* He also questioned "Exactly who is the Plaintiff/Prosecutor that is charging me with a violation?"; "What have I been accused of?"; and "Upon whose information is this action being brought?" *Id.* The motion contained no other argument supporting dismissal.

4. On April 25, 2023, the Court denied the Motion to Dismiss and also entered default against the other defendants, the Stoll Family Trust and the Director of the Family Defense League. Dkt. ## 34 at 1-2, ¶ , 35 (Order of Default).[2]

5. On May 23, 2023, counsel for the United States sent a letter to Stoll advising of the United States' intention to move for entry of default if an answer to the Complaint was not filed by June 2, 2023. Dkt. ## 37 at 1, ¶ 2, 37-1.

6. On June 2, 2023, in an apparent response to the United States' letter dated May 23, 2023, described in paragraph 5 above, Stoll filed the instant Motion claiming that his previously filed Motion to Dismiss was based on failure to state a claim, Dkt. # 18, and *not* for lack of jurisdiction as construed by the Court, Dkt. ## 24, 28, 34. *See* Dkt. # 38 at 1. Stoll also

[2] The remaining defendant, Snohomish County, entered a stipulation with the United States regarding priority of liens that the Court approved on October 18, 2022. Dkt. ## 9 , 11.

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filed (sealed)[3] newly prepared copies from April 2023 of his federal income tax returns for tax years 2002-2003 and 2005-2022 (years that are at issue in this action except for 2001 and 2004, and other years that are not at issue in this action) that allege that he effectively had zero income. Dkt. # 39. Glen Stoll asserts that he had no income for the years at issue. *See* Dkt. # 38 at 3; *see also* Dkt. # 19 at 2-3.

7. Stoll argued that "[t]he Request for Dismissal that I made was based on Plaintiff's failure to state a claim for which relief can be granted and was supported by evidence and arguments that I provided in my answer to the complaint," in other words, his prior motion to dismiss. Dkt. # 38 at 2. Stoll further stated that he never made a request to dismiss for lack of jurisdiction because "I do not even know what jurisdiction of law is being claimed by the Plaintiff, and have requested that [the Court] require the Plaintiff to notify us of such, and that you not allow this matter to continue, due to the want of jurisdiction, unless and until they provide us with this information that due process of law requires." *Id.*

8. Discovery in this case has not commenced. *See* Dkt. Entry on June 5, 2023 continuing the deadlines for a Rule 26(f) Conference to July 31, 2023 and Joint Status Report and Initial Disclosures to August 11, 2023.

ARGUMENT

I. The Court Should Deny Stoll's Motion Under the Law of the Case Doctrine, As the Court Has Already Denied Stoll's Prior Motion to Dismiss for Lack of Jurisdiction that Stoll Requests the Court to Revisit as a Motion to Dismiss for Failure to State a Claim Upon Relief Can Be Granted.

Stoll argues that his prior Motion to Dismiss was based on a failure to state claim upon relief can be granted, *not* lack of jurisdiction as the Court construed it, and asks the Court to revisit that same prior Motion to Dismiss and consider it as a motion to dismiss for failure to

[3] The documents were sealed without Glen Stoll filing a proper motion under Local Civil Rule 5(g)(3). Glen Stoll did not meet and confer with counsel for the government as required by Rule 5(g)(3)(A), provide any reasons for sealing under 5(g)(3)(B), or properly label the sealed documents under 5(g)(4) and 5(g)(2)(B). Nor did Glen Stoll comply with Rule 5(g)(2) requiring prior authorization to file sealed documents. Presumably, the documents were filed under seal because they contain unredacted social security numbers.

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state a claim. *See* Dkt. # 38 at 1. However, there is no reason for this Court to revisit its well-reasoned Minute Order dated April 25, 2023 denying Stoll's prior Motion to Dismiss. The Court considered Stoll's prior Motion to Dismiss, construed it as a motion to dismiss for lack of jurisdiction, and correctly denied it. Dkt. # 34 at 1-2, ¶ 1. The Minute Order is now law of the case.

Under the law of the case doctrine, "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *Thomas v. Bible*, 98 F.2d 152, 154 (9th Cir. 1993). Courts have limited discretion to not apply this doctrine where "(1) the first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3) the evidence on remand is substantially different; (4) other changed circumstances exist; [or] (5) a manifest injustice would otherwise result." *Id.* at 155. Here, Stoll has not presented any legal authority to support his assertion that the prior Motion to Dismiss should be considered as a motion to dismiss for failure to state a claim, let alone address the law of the case doctrine. Nor could Stoll as his prior Motion to Dismiss (and instant Motion) does not contain a claim to dismiss based on failure to state a claim. There is no mention of such a claim in the prior Motion to Dismiss and the instant Motion simply references the prior Motion to Dismiss as containing a "[r]equest for [d]ismissal that [Stoll] made was based on the Plaintiff's failure to state a claim for which relief can be granted and was supported by the evidence and arguments that I provided in my answer to the complaint . . . ." Dkt. # 38 at 1.

To the contrary, the prior Motion to Dismiss only contained a claim to dismiss the case for lack of jurisdiction as the Court correctly construed. *See* Dkt. ## 18 at 2, 24, 28 34 (Minute Order dated April 25, 2023). Further, Stoll again challenges jurisdiction in the Motion: "I do not even know what jurisdiction of law is being claimed by the Plaintiff, and have requested that [the Court] require the Plaintiff to notify us of such, and that [the Court] not allow this matter to continue, due to [the United States'] want of jurisdiction." Dkt # 38 at 1. Therefore, under the law of the case doctrine, this Court should deny Stoll's Motion.

Moreover, neither of Stoll's motions provide any argument that the Complaint fails to

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state a claim upon which relief can be granted. At best, the initial motion questioned "Exactly who is the Plaintiff/Prosecutor that is charging me with a violation?"; "What have I been accused of?"; and "Upon whose information is this action being brought?" Dkt # 18 at 2. None of these questions constitute a valid claim for dismissal and each is answered on the face of the Complaint. *See* Dkt. # 1, ¶¶ 1-3. There is no reason to revisit the prior motion to resolve these trivial issues.

II. To the Extent the Court Considers Stoll's Motion as a Motion for Judgment on the Pleadings, the Court Should Deny the Motion Because the Complaint Has Stated a Claim Upon Which Relief Can Be Granted.

To the extent that the Court considers the Motion and construes it as a motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(h)(2)(B) and 12(c), the Court should also deny the Motion because Stoll has provided no basis to support his argument that this action should be dismissed for failure to state a claim.

This motion constitutes a second motion to dismiss, which implicates Federal Rules of Civil Procedure 12(g)(2), 12(h)(2)(B), and 12(c). Rule 12(g)(2) limits a party from making another motion raising a defense or objection that was available to the party but omitted from its earlier motion with certain exceptions. One such exception is for the defense of failure to state a claim, which may be raised again: "(A) in any pleading allowed or ordered under Rule 7(a); (B) by motion under Rule 12(c); (C) or at trial." Fed. R. Civ. P. 12(h)(2)(B). Relevant here is the exception to raise the defense again in a Rule 12(c) motion. Rule 12(c) provides that "[a]fter the pleadings are closed-but early enough not to delay trial-a party may move for judgment on the pleadings.

Consideration of a Rule 12(c) motion is "functionally identical" to that of a Rule 12(b)(6) motion, and the standard of review is the same. *Gregg v. Hawaii, Dep't of Safety*, 870 F.3d 883, 886-87 (9th Cir. 2017) (citing *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054 n.4 (9th Cir. 2011)). In deciding a Rule 12(c) motion, the Court "may consider any of the pleadings, including the complaint, the answer, and any written instruments attached to them." 2 Moore's Federal Practice - Civil § 12.38 (2022). Dismissal is only appropriate if the

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moving party has "clearly establishe[d] on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co.*, 132 F.3d 526, 529 (9th Cir. 1997). As with a Rule 12(b)(6) motion, the Court must view the facts in the light most favorable to the nonmoving party and must accept that party's allegations as true. *See Cafasso*, 637 F.3d at 1053.

As an initial matter and as argued above, the Court previously considered Stoll's prior Motion to Dismiss and did not construe it as including a claim to dismiss the case for failure to state a claim because it did not contain such a claim and Stoll has also not provided any basis in the instant Motion to dismiss the case for failure to state a claim. In the Complaint, the United States alleges that on specific dates, a duly authorized delegate of the Secretary of the Treasury made timely assessments against Stoll for unpaid federal income taxes, penalties, and interest for tax years 2001-2008. Dkt. # 1, ¶ 32. The Complaint also alleges that Stoll is the true owner of the Subject Property on which the United States wants to foreclose and that the Subject Property is held by Defendants the Stoll Family Trust and/or Director of the Family Defense League as the nominee and/or alter ego of Stoll. *Id.* at ¶¶ 40-54. The United States alleges specific facts regarding Stoll's control of the Subject Property and Defendants the Stoll Family Trust and the Director of the Family Defense League and their relationship to Stoll and the Subject Property. *Id.* The United States also alleges specific facts on the title history of the Subject Property and the dates on which Notices of Federal Tax Lien were recorded by the Internal Revenue Service ("IRS") against all property or rights to property, whether real or personal, belonging to Stoll. *Id.* at ¶¶ 11-27, 37.

The United States may sue to obtain a judgment for unpaid taxes, and, on getting judgment, exercise the usual rights of a judgment creditor including foreclosure of tax liens on the taxpayer's property. 26 U.S.C. § 7403; *United States v. Rodgers*, 461 U.S. 677, 682 (1983). Additionally, the Court may find under Washington law that the Subject Property is held by a nominee or alter ego of the taxpayer under the nominee or alter-ego doctrine. *See United States v. Black*, 482 Fed. Appx. 241, 244 (9th Cir. 2012); *United States v. Smith*, Case No. C11-5101-

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RJB, 2012 WL 1977964, at *5 (W.D. Wash. June 1, 2012); *Sharp Management, LLC v. United States*, No. C07-402JLR, 2007 WL 1367698, at *3 (W.D. Wash. May 8, 2007) (indicating that no Washington state court has addressed nominee liability, but nonetheless finding that the doctrine applied, using factors set forth in *Towe Antique Ford Found. v. IRS*, 999 F.2d 1387 (9th Cir. 1993)) (same).

The facts as alleged in the Complaint, which the Court must accept as true for purposes of Stoll's Motion, establish a claim upon which relief can be granted and demonstrate that the United States is entitled to the relief it seeks – an order reducing to judgment the tax assessments against Stoll, finding that the Subject Property is held by a nominee and/or alter ego of Stoll and that Stoll is the true owner of the Subject Property, and foreclosing the liens on the Subject Property. The United States' Complaint thus meets the relevant pleading requirements and states specific claims upon which relief can be granted. Therefore, the Court should deny Stoll's Motion even if construed as a motion for judgment on the pleadings.

III. To the Extent the Court Considers Stoll's Motion as a Motion for Summary Judgment, the Court Should Deny the Motion Because There Are Unresolved Issues of Material Fact Requiring Discovery

To the extent that the Court considers the Motion and converts it to a motion for summary judgment pursuant to Federal Rules of Civil Procedure 12(d) and 56, the Court should deny the motion as premature pursuant to Rule 56(d). Under Rule 56(d), the United States requests that it be granted until the close of the to-be-scheduled discovery period to submit a substantive factual response to the Motion. The United States is entitled to take discovery, at a minimum, to ascertain the specific basis for Stoll's challenge on the merits and to obtain evidence from him and others regarding such challenge. To the extent the Court does not grant the United States additional time to respond under Rule 56(d), the Court should also deny the Motion because Stoll has failed to show that there is no genuine dispute to any material fact.

Stoll has implicated Federal Rules of Civil Procedure 12(d) and 56 by submitting evidence outside the pleadings in support of his Motion. Rule 12(d) converts a motion for judgment on the pleadings under Rule 12(c) to a motion for summary judgment under Rule 56

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when "matters outside the pleadings are presented to and not excluded by the court." When this occurs, "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* Under Rule 56(d), if the party opposing a motion for summary judgment shows that "it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery; or (3) issue any other appropriate order." Summary judgment must "be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 n.5 (1986). As a result, Rule 56(d) requests "'are generally favored and are liberally granted.'" *Clear Creek Cmty. Servs. Dist. v. United States*, 100 Fed. Cl. 78, 83 (Fed. Cl. 2011), *citing Chevron U.S.A. Inc. v. United States,* 72 Fed. Cl. 817, 819 (2006). A district court should continue a summary judgment motion where the opposing party shows "(1) that they have set forth in affidavit form the specific facts that they hope to elicit from further discovery, (2) that the facts sought exist, and (3) that these sought- after facts are "essential" to resist the summary judgment motion." *State of Cal., on Behalf of California Dep't of Toxic Substances Control v. Campbell*, 138 F.3d 772, 779 (9th Cir. 1998).

First, as demonstrated in the Tran Declaration, the United States needs to conduct discovery into Stoll's merits claims. In the Motion, Stoll appears to challenge the assessment of income tax and submitted newly prepared tax returns that allege he effectively had zero income. The United States contests the accuracy of Stoll's newly prepared tax returns and his assertions of a lack of income, but it has had no chance to conduct discovery related to his newly prepared tax returns asserting lack of income and challenge of income tax. Tran Decl. at 2, ¶ 6. The United States has not been able to issue document discovery to Stoll regarding his control over bank accounts, credit accounts, and other money; has not been able to issue third party discovery to entities that might have paid Stoll money or received money from him; and has not been able to conduct depositions. *Id.*

Additionally, Stoll, in his various other filings, asserts that he is not the true owner of the

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Subject Property on which the United States wants to foreclose. *See, e.g.*, Dkt. # 19 at 4-6. He also argues that the Stoll Family Trust, Dkt. # 19 at 4, and the Director of the Family Defense League, Dkt. # 19 at 5, are not his nominees or alter egos. The United States has not been able to conduct discovery on those assertions. Tran Decl. at 3, ¶ 7. There has been no chance for written discovery, third party discovery, or depositions of Glen Stoll and the alleged nominees/alter egos or third parties. *Id.* Further, the United States has been unable to issue subpoenas to entities with relationships with the alleged nominees/alter egos and Glen Stoll. Nor has the United States had a chance to depose Glen Stoll and others with information regarding his relationship to the Subject Property. *Id*.

All these issues require factual development before they are ripe for a summary judgment decision, and the United States has not yet had that opportunity. Because discovery has not yet commenced, the United States requests that the Court defer consideration of it until after discovery. *See*, *e.g., Hood v. King Cty*., 2016 WL 792698, at *1 (W.D. Wash. Feb. 29, 2016) (denying defendants' motion for summary judgment pursuant to Rule 56(d)).

Alternatively, to the extent the Court does not grant the United States additional time to respond under Rule 56(d), the Court should also deny the Motion because Stoll has failed to show that there is no genuine dispute to any material fact. Here, the United States has submitted Forms 4340[4] attached hereto as Exhibits 1-8, which are presumptive proof of a valid assessment and are routinely used to prove that tax assessments have been made. *Huff v. United States*, 10 F.3d 1440, 1445 (9th Cir. 1993), *cert. denied*, 512 U.S. 1219 (1994); *Hughes v. United States*, 953 F.2d 531, 535 (9th Cir. 1992). Moreover, it is well established in the Ninth Circuit that Forms 4340 are "probative evidence in and of themselves and, in the absence of contrary evidence, are sufficient to establish that notices and assessments were properly made." *Hughes*, 953 F.2d at 540; *see Koff v. United States*, 3 F.3d 1297, 1298 (9th Cir. 1993). Furthermore, the

[4]A Form 4340 is self-authenticating under Fed. R. Evid. 902(1), and is admissible into evidence under Fed. R. Evid. 803(8). Forms 4340 are presumptive proof of a valid assessment and are routinely used to prove that tax assessments have been properly made. *E.g., Huff,* 10 F.3d at 1445; *Hughes*, 953 F.2d at 535.

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Forms 4340 also establish (1) that the income and Section 6702 penalty tax liabilities and associated penalties were properly assessed against Stoll for the tax periods at issue pursuant to 26 U.S.C. §§ 6201-6203; (2) that notice and demand for payment of those liabilities was properly sent to Stoll in accordance with 26 U.S.C. §§ 6303(a) and 6321; and (3) that Stoll is presumptively liable for the unpaid taxes, penalties, and interest shown on those Certificates, plus accruing interest under 26 U.S.C. §§ 6601, 6621, 6622. *See Huff*, 10 F.3d at 1445-47; *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). The Court should deny the Motion because at a minimum, the Forms 4340 establish a genuine dispute of material fact precluding summary judgment.

CONCLUSION

For the foregoing reasons, the Court should deny Stoll's "Notice of Previously Filed Answer to Complaint, Request to Dismiss for Failure to State a Claim for which Relief can be Granted, and Newly Discovered Evidence."

Respectfully submitted this 26th day of June 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Rebecca J. Guadamud (Rebecca.Guadamud@snoco.org)
Attorneys for Snohomish County

I further certify that on the same date, I caused a true and complete copy of the foregoing document to be served by first-class mail, postage prepaid, to the following at the following addresses:

Glen A Stoll
c/o Director of the Family Defense League
16910 – 59th Avenue NE, Ste. 210
Arlington, WA 98223

/s/ Yen Jeannette Tran
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