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15 District of Nevada

16 Attorneys for the United States

17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF NEVADA**

19 UNITED STATES OF AMERICA,)

20 Plaintiff,)

21 v)

22 ADAM SACHS,)

23 PROCLOAK SERIES II, LLC.,)

24 WELLS FARGO BANK, NA.,)

25 PHH MORTGAGE CORPORATION,)

26 THE BANK OF NEW YORK, as)

27 successor Trustee of)

28 CSFB HOME EQUITY MORTGAGE)

29 TRUST SERIES 2004-1, and)

30 REPUBLIC SILVER STATE DISPOSAL, INC.,)

31 Defendants.)

_____)

Case No. 2:23-cv-1966

MOTION TO EXTEND THE
DEADLINE FOR FILING MOTIONS
TO AMEND PLEADINGS OR ADD
PARTIES

32 **MOTION TO EXTEND THE DEADLINE FOR FILING MOTIONS TO AMEND**
33 **PLEADINGS OR ADD PARTIES**

This is the United States' first time to request an extension of the deadline for filing

1 motions to amend pleadings and add parties. This is the United States’ second request of an
2 extension of time in this case.

3 The scheduling order set a deadline to file motions to amend pleadings and add parties
4 of March 18, 2024. The United States files its first motion to extend the deadline for filing
5 motions to amend or add parties for thirty days, until April 17, 2024, as the United States will
6 seek to file a motion to amend its complaint. In support the United States states as follows:

7 1. On November 28, 2023, the United States brought this suit to enforce the federal tax
8 liens upon certain real property under 26 U.S.C. §§ 7401, 7402 and 7403. One of the
9 properties the United States sought to enforce its liens against was 3090 Cooper Creek Dr.,
10 Henderson, Nevada 89074 (“Cooper Creek Property”). 26 U.S.C. § 7403(b) requires all
11 persons having liens upon the property be named as party to the suit. The United States filed
12 this suit upon information and belief that Defendant The Bank of New York as successor trustee
13 to JP Morgan Chase Bank N.A., as trustee for the holders of CSFB Home Equity Mortgage
14 Trust Series 2004-1, Home Equity Mortgage Pass-Through Certificates, Series 2004-1 (Bank of
15 New York Mellon) had an interest in the Cooper Creek Property. *See DKT # 34-2.*

16 2. After the deadline, on March 19, 2024, the United States filed an extension of time to
17 serve Bank of New York Mellon. *See Dkt. #34.* The Court granted the United States’ Motion.
18 *See Text Order Dkt. # 37.* After filing a motion to extend time to serve Bank of New York
19 Mellon and preparing to serve Bank of New York Mellon, the United States determined that its
20 original complaint named Defendant Bank of New York Mellon only as follows:

21 “The Bank of New York as successor trustee to JP Morgan Chase Bank N.A., as
22 trustee for the holders of CSFB Home Equity Mortgage Trust Series 2004-1, Home
23 Equity Mortgage Pass-Through Certificates, Series 2004-1.”

1 However, it appears that the complete, full, and accurate name of the proper defendant in
2 regard to Gov. Ex. 2 is as follows:

3 The Bank of New York Mellon Corporation FKA The Bank of New York, as successor
4 trustee to JP Morgan Chase Bank N.A., as trustee for the holders of CSFB Home Equity
5 Mortgage Trust Series 2004-1, Home Equity Mortgage Pass-Through Certificates, Series
6 2004-1.

7 Out of the abundance of caution, to ensure the proper party is accurately named, to
8 perfect service and to provide clear title for the Cooper Creek Property, the United States
9 believes it needs to amend its complaint to correct the named defendant and/or add the proper
10 party. Thus, under Federal Civil Procedures Rules 21 and 15(c), the United States will seek
11 leave to add the proper party and amend its complaint to reflect the complete, current and
12 accurate name of the defendant “The Bank of New York Mellon Corporation FKA The Bank of
13 New York, as successor trustee to JP Morgan Chase Bank N.A., as trustee for the holders of
14 CSFB Home Equity Mortgage Trust Series 2004-1, Home Equity Mortgage Pass-Through
15 Certificates, Series 2004-1”, as the party that may have an interest in the Cooper Creek Property.
16 *See Dkt. #34-2 at 13 of 14.* However, the deadline of March 18, 2024, for filing amendments to
17 pleadings has passed and the United States seeks an extension of this deadline.

18 3. As required by Local Rule 1A 6-1.(a), the United States asserts that missing the filing
19 deadline was due to excusable neglect.

20 The Court in *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507
21 U.S. 380, 395 (1993) set forth four equitable factors that are weighed as to the discretion of the
22 district court. See *Pincay v. Andrews*, 389 F.3d 853, 860 (9th Cir.,2004). The four factors are
23 (1) the danger of prejudice to the party; (2) length of the delay and its potential impact on
judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable
control of the movant; (4) and whether the movant acted in good faith. *Pioneer Inv. Services*

1 *Co.*, 507 U.S. at 395.

2 One (1); there is no prejudice to Bank of New York Mellon or the other parties.
3 Defendants Adam Sachs, Procloak, and the United States have entered into a stipulation that
4 resolves most if not all the contested issues in this case. *See* ECF #24. Wells Fargo and PHH
5 Mortgage have appeared and entered into stipulations with the United States resolving their
6 respective lien priorities at to the properties at issue in this case. *See* ECF ##30 and 31. The
7 Clerk of Court has entered a default against Defendant Republic Silver State Disposal, Inc. *See*
8 ECF #20. Defendant Bank of New York Mellon is not prejudiced because if it has a lien
9 interest in the Cooper Creek Property it should be represented in regard to its respective lien
10 priority. The properties as issue have not been sold and no sales proceeds have been
11 distributed. The United States is not adding any new factual allegations to its Amended
12 Complaint but merely correcting one defendant's name. Thus, no parties that are in the case
13 will be prejudiced by correcting the proper party name of Defendant New York Mellon. Thus,
14 no parties that are in the case will be prejudiced by an extension. Factor one weighs in favor of
15 the United States.

16 Two (2); the length of the delay in filing this motion is 10 days and it will not impact or
17 delay the case. Defendants Adam Sachs, Procloak, Wells Fargo and PHH Mortgage and the
18 United States have entered into stipulations resolving most of the contested issues between the
19 parties including respective lien priorities. *See* ECF ##24, 30 and 31. A receiver has been
20 appointed to sell the Cooper Creek Property and the property located at 309 Rosegate,
21 Henderson, NV. *See* DKT. #36. The delay in filing the motion is slight, not holding up the
22 case. Factor two weighs in favor of the United States. Three (3); the reason for the delay is that
23 counsel for the United States simply failed to provide the complete full name of the defendant.

1 Counsel for the United States was actively trying to make Bank of New York Mellon aware of
2 the case and determine if its lien had been paid. However, the filing of the motion was within
3 control of Counsel for the United States. The United States believes Factor 3 would be neutral
4 or weigh against the United States.

5 Fourth, counsel for the United States has not acted in bad faith or gamesmanship for
6 the delay in filing this motion. The lien interest or deed of trust at issue is the same. *See Dkt.*
7 *34-2.* The actual defendant is the same as The Bank of New York Mellon is formally known
8 as, FKA, The Bank of New York. The United States' Complaint did not provide the complete
9 and current name of the defendant Bank of New York Mellon. Plaintiff's failure to provide the
10 complete and current name is a simple misnomer.

11 Taken as a whole, the United States believes the factors weigh in favor of establishing
12 excusable neglect on behalf of the United States.

13 4. The United States has conferred with counsel for defendants Adam Sachs, Procloak
14 Series II., LLC, Wells Fargo Bank, N.A., and PHH Mortgage Corporation, and they are not
15 opposed to the relief sought by this motion.

CERTIFICATE OF SERVICE

I certify that on March 27, 2024, I electronically filed the foregoing Motion using the CM/ECF system, which will send notification of such filing to the following registered users currently in this case:

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Case No. 2:23-cv-1966

ORDER EXTENDING THE
DEADLINE TO FILE MOTIONS TO
AMEND PLEADINGS OR ADD
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**ORDER GRANTING UNITED STATES' MOTION TO EXTEND THE DEADLINE TO
FILE MOTIONS TO AMEND PLEADINGS OR ADD PARTIES**

1 Pending before the Court is the United States’ Motion to Extend the Deadline to File
2 Motions to Amend Pleading or add Parties. Good cause having been shown, the Motion is
3 GRANTED.
4

5 Accordingly, the deadline for filing motions to amend pleadings or add parties is
6 extended for 30 days until April 17, 2024.
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9

10 “IT IS SO ORDERED:

11 _____
12 UNITED STATES DISTRICT JUDGE

13 DATED: _____”
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