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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Alan H. MacDonald, et al.,
13 Defendants.

No. CV-13-00178-PHX-JAT

ORDER

14 Pending before the Court is the parties' Joint Motion to Dismiss (Doc. 23).

15 **I. Background**

16 The United States filed this action against Defendants as a result of unpaid federal
17 income taxes. The United States alleged four counts against Defendants. Count 1 asked
18 the Court to reduce federal income tax assessments to judgment against Defendant Alan
19 H. MacDonald. (Doc. 1 at 3). Count 2 asked for certain real property purchased by
20 MacDonald through his trust to be deemed to be in the name of MacDonald. (*Id.* at 4).
21 Count 3 alleged the transfer of real property to MacDonald's trust was a fraudulent
22 transfer and of no effect against the United States. (*Id.* at 4-5). Count 4 asked for
23 foreclosure of tax liens against MacDonald's real property. (*Id.* at 5).

24 In October 2013, the parties stipulated and jointly moved for entry of judgment
25 against Defendant Alan H. MacDonald. (Doc. 21 at 1-2). The parties' motion agreed as to
26 only the amount of MacDonald's indebtedness for unpaid taxes, the amount of the
27 judgment to be entered, and that the parties would each bear their respective costs. (*Id.* at
28 2-3). The motion was silent as to the remaining counts in the complaint.

1 On November 12, 2013, the Court entered judgment in favor of the United States
2 and against MacDonald for the balances MacDonald owed for tax years 2000 and 2001.
3 (Doc. 22)

4 The parties have now filed a joint motion asking the Court to dismiss counts 2, 3,
5 and 4 of the United States' complaint as well as to dismiss Defendant MRC Receivables
6 as a party to this action. (Doc. 23).

7 **II. Discussion**

8 The parties' previous joint motion for entry of judgment (Doc. 21) requested the
9 impossible: entry of a final judgment on less than all counts but without language
10 required by Federal Rule of Civil Procedure ("Rule") 54(b). Rule 54(b) requires any
11 judgment adjudicating "fewer than all" claims or parties to contain an express
12 determination that there is no just reason for delay. Fed. R. Civ. P. 54(b). Otherwise, "any
13 order or other decision, however designated, that adjudicates fewer than all the claims or
14 the rights and liabilities of fewer than all the parties does not end the action as to any of
15 the claims or parties and may be revised at any time before the entry of a judgment
16 adjudicating all the claims and all the parties' rights and liabilities." *Id.*

17 Although the United States' complaint contained four counts against Defendants,
18 the previous judgment entered in this case adjudicates only the claim in the first count of
19 the United States' complaint. The Court improvidently entered this judgment, which is
20 invalid and not effective to adjudicate any claims in this case. Accordingly, the Court will
21 not rule on the pending motion until the parties submit a new proposed form of judgment.

22 **III. Conclusion**

23 For the foregoing reasons,

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IT IS ORDERED vacating the Court's November 12, 2013 judgment filed at Doc. 22.

IT IS FURTHER ORDERED that the parties shall within ten days from the date of this Order file a proposed form of final judgment that adjudicates all of the claims and all of the rights and liabilities of all of the parties in this case.

Dated this 2nd day of July, 2014.



James A. Teilborg
Senior United States District Judge