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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 Hilda A. Hernandez and Elvia Callahan,

13 Defendants.

No. CV-11-00250-TUC-DCB

ORDER

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15 On April 25, 2011, the United States filed an action against the Defendants, Hilda
16 Hernandez and Elvia Callahan, under the Arizona Fraudulent Transfer Act (AFTA),
17 A.R.S. § 44-1001-1010. The Government sued Defendants for the value they received as
18 a result of an alleged fraudulent transfer of real property at the location where Alfonso's
19 Carnitas, Inc. operated Alfonso's Carnitas restaurant. The judgment amount represents
20 \$47,059 for unpaid employment taxes, interest, late fees, and penalties that Alfonso's
21 Carnitas, Inc. owes the IRS from 2003 through 2007.

22 To succeed on its claim, the Government must establish its creditor status, a
23 property transfer, and actual or constructive fraud on the part of the transferor. In a prior
24 Report and Recommendation, the Magistrate Judge found the Government prevailed as to
25 Defendant Hernandez and recommended the Court grant summary judgment for the
26 Government as to her. However, the Magistrate Judge found material questions of fact
27 remained in dispute as to Defendant Callahan, which would prevent summary judgment
28 being entered against her.

1 On February 20, 2013, the Court accepted and adopted the Magistrate Judge’s
2 R&R as its findings of fact and conclusions of law. The Court granted Judgment for the
3 Government against Defendant Hernandez. The Court did not grant summary judgment
4 against Defendant Callahan because it appeared she may be a good-faith transferee. The
5 Court ordered the Plaintiff and Defendant Callahan to file a Joint Pretrial Order and
6 subsequently appointed counsel to serve *pro bono* on behalf of Defendant Callahan.

7 On April 9, 2013, the Joint Proposed Pretrial Order was filed. It identified two
8 remaining factual issues to be tried and decided: (1) Ms. Callahan’s subjective
9 unawareness of the government’s tax lien against the property, and (2) the amount of Ms.
10 Callahan’s payments on the loan. According to the Defendant, neither of these issues
11 were raised in the original Answer.

12 On April 1, 2013, the Defendant filed a Motion for Leave to File an Amended
13 Answer. The proposed Amended Answer includes a demand for trial by jury on all the
14 factual issues not previously raised in the original Answer. The Government does not
15 object to the Defendant’s Amended Answer, but objects to the Defendant’s request for a
16 jury trial. The Court allows Defendant Callahan to amend her Answer, which is her first
17 pleading to be properly filed with the Court. Defendant Hernandez filed the first
18 Answer, *pro se*. It was not signed by Defendant Callahan. While a non-attorney may
19 appear *pro se* on his own behalf, “[sh]e has no authority to appear as an attorney for
20 others than [herself].” *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997)
21 (citing *C.E. Pope Equity Trust v. Unites States*, 818 F.2d 696, 697 (9th Cir. 1987)).
22 Defendant Hernandez could not answer for Defendant Callahan.

23 The Court allows the Amended Answer including Defendant’s timely jury demand
24 as to new matters. Fed. R. Civ. P. 38(b)(1). The Government claims the Defendant’s
25 Amended Answer does not raise any new issues for trial that were not already stated in
26 the initial Answer filed by Defendant Hernandez. The Court finds the initial Answer filed
27 by Defendant Hernandez and the proposed Amended Answer filed by Defendant
28 Callahan to be quite different. The first did not touch on Defendant Callahan’s subjective

1 good faith. Nor did it state the amount of the Defendant's payments on the loan or her
2 entitlement to an offset. The proposed Amended Answer directly raises these two issues
3 left to be tried – raising them for the first time in a pleading properly filed by Defendant
4 Callahan.

5 Conclusion

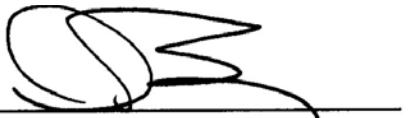
6 Since the Court is granting Defendant Callahan's request for leave to file an
7 Amended Answer, her jury demand is timely as to all new issues raised by the Amended
8 Answer, which are the issues remaining for trial.

9 Accordingly,

10 IT IS ORDERED that the Motion for Leave to File Amended Answer and Motion
11 for Jury Trial (Doc. 54) are GRANTED.

12 Dated this 6th day of August, 2013.

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David C. Bury
United States District Judge