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VS.

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA UNITED STATES OF AMERICA, Plaintiff, No. 2:11-cv-1187 JAM JFM KENNETH J. MALINOWSKI, et al., Defendants. ORDER This matter is before the court on defendants' motion to compel. The court has

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

determined that the matter shall be submitted upon the record and briefs on file and accordingly,

the date for hearing of this matter shall be vacated. Local Rule 230.

On November 10, 2010, the United States filed this action seeking to reduce to judgment certain federal tax assessments made against Kenneth and Patricia Malinowski ("defendants"), as well as to foreclose federal tax liens on the property of defendants, including real property located in Citrus Heights, CA ("the subject property").

On August 10, 2011, the Honorable John A. Mendez issued a scheduling order, in which he set June 29, 2012 as the discovery completion date.

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On May 29, 2012, defendants served on the United States a document entitled "Request for Disclosure," to which the United States served timely responses. The defendants did not dispute these responses and further did not serve any other discovery before the June 29, 2012 discovery deadline.

On July 21, 2012, after the discovery deadline had passed and without asking for relief from the scheduling order, defendants served on the United States a document entitled "Request for Admission–IRS."

On August 8, 2012, the United States moved for summary judgment in this case. Defendants did not file an opposition. On September 20, 2012, Judge Mendez issued an order granting the government's motion for summary judgment. Judgment was entered on that date.

On September 24, 2012, defendants filed a motion for reconsideration of Judge Mendez's order, which was ultimately denied. They also filed the instant motion to compel.

On October 19, 2012, Judge Mendez signed an order of sale, authoring the United States to proceed with the sale the subject property.

## **DISCUSSION**

Defendants' motion makes a number of assertions directed at plaintiff's counsel and at individuals over which this court has no authority. They assert, for example, that individuals identified as Douglas Schulman and Ed Sabrack failed to respond to defendants' "Request for Proof of Claim" and "Notice of Demand for a Verified Assessment." Not only did some of these failures to respond occur before this litigation was initiated, but a number of defendants' grievances are directed at individuals not a party to this litigation. Insofar as the motion is directed at plaintiff's counsel, defendants claims that they did not receive responses to their May 29, 2012 and July 21, 2012 discovery requests.

The United States argues that defendants' motion should be denied for the following reasons: (1) it is untimely, having been brought after the discovery deadline set forth in Judge Mendez's scheduling order; (2) it is untimely, having been brought after judgment was

entered in this case; (3) defendants failed to comply with Local Rule 251 and FRCP 37(a)(1) regarding the requirement to meet and confer prior to court intervention; (4) the majority of the discovery requests were sent to individuals and entities not involved in this litigation and over which this court has no authority; (5) even if the court considers the merits of defendants' motion, the United States properly responded to the request; and (6) defendants do not identify any particular response that is insufficient. The government's points are well-taken. It is without question that the instant motion is untimely and procedurally improper. Moreover, the defendants' only assertion as to the government is that it failed to respond at all to defendants' discovery requests. The record, however, proves otherwise.

Accordingly, IT IS HEREBY ORDERED that:

- 1. The October 25, 2012 hearing on this matter is vacated; and
- 2. Defendants' motion to compel is denied.

DATED: October 24, 2012.

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