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21 **UNITED STATES DISTRICT COURT**
22 **FOR THE DISTRICT OF NEVADA**

23 UNITED STATES OF AMERICA,)	Case No. 2:20-cv-00367-APG-EJY
)	
24 Plaintiff,)	STIPULATED DISCOVERY PLAN
v.)	AND SCHEDULING ORDER
)	
25 M. DAVID FESKO,)	SPECIAL SCHEDULING REVIEW
)	REQUESTED
26 Defendant.)	

27 Pursuant to F.R.C.P. 26(f) and L.R. 26-1, counsel for the parties held a Discovery
28 Conference on May 5, 2023. Plaintiff United States and Defendant Taylor Waite, the Special
29 Administrator of the Estate of M. David Fesko (collectively, the "Parties"), through their

1 counsel, conducted a Rule 26(f) conference on May 5, 2023, and hereby submit their Stipulated
2 Discovery Plan and Scheduling Order pursuant to F.R.C.P 16 and 26, as well as L.R 16-1 and
3 26-1.

4 **L.R. 26-1(b) Applicable Deadlines**

5 (1) Discovery Cut Off Date. The defendant filed an Answer in this matter
6 on April 7, 2023. 180 days from April 7, 2023 is October 4, 2023. Rather than a discovery
7 cut off date of October 4, 2023 as contemplated in L.R. 26-1(b)(1), the Parties request an
8 approximately 180-day extension up-to-and-including **April 1, 2024**. The Parties agree and
9 contend that such an extension is merited because of the complexity of the case and the fact
10 that the assessed accountholder, M. David Fesko, is deceased. In addition to the potential
11 challenge of locating relevant documents and witnesses without the aid of the deceased
12 accountholder, foreign discovery may be necessary since the crux of the case involves the
13 formation of foreign entities, opening of foreign financial accounts in the name of those foreign
14 entities, and use of those foreign financial accounts. Additionally, expert testimony may be
15 necessary, and the extended discovery period allows for the exchange of expert reports, as well
16 as all fact and expert discovery.

17 (2) Amending the Pleadings and Adding Parties. Motions to amend pleadings
18 and motions to add Parties shall be made 90 days before the close of discovery, i.e., **January 2**
19 **2024**.

20 (3) Expert Witness Disclosures. The disclosure of any expert witnesses shall
21 be no later than: **January 16, 2024**. The disclosures of any rebuttal experts shall be no later
22 than: **March 4, 2024**. The requirements of F.R.C.P. 26(a)(2)(B) shall apply to any such
23 disclosures. The extension of time is needed for the Parties to have sufficient time to find and
24 retain rebuttal experts, and procure the necessary rebuttal disclosures, should it become
25 necessary if they have not otherwise retained an expert witness.

1 (4) Dispositive Motions. Dispositive motions shall be filed no later than 30
2 days after the discovery cut-off date: **May 1, 2024**.

3 (5) Pretrial Order. The Joint Pretrial Order (including F.R.C.P. 26(a)(3)
4 disclosures by the Parties) shall be filed no later than 30 days after the Dispositive Motion
5 Deadline: **May 31, 2024**. However, in the event that dispositive motions are filed, the date for
6 filing the Joint Pretrial Order (including F.R.C.P. 26(a)(3) disclosures by the Parties) shall be
7 suspended until 30 days after a decision on the dispositive motions or further order of the Court.
8 Also, once the Parties' F.R.C.P. 26(a)(3) disclosures are made, the Parties' objections, if any, to
9 the disclosures shall be made no later than 14 days after the disclosures are made in conformity
10 with F.R.C.P. 26(a)(3)(B).

11 (7) Alternative Dispute Resolution. The Parties certify that prior to the May 5,
12 2023 conference, counsel had been involved in extensive global settlement discussions that
13 would have resolved not only the liabilities at issue in this case, but all IRS liabilities owed by
14 M. David Fesko. Those discussions culminated in a settlement conference, convened on two
15 different dates, in M. David Fesko's bankruptcy case in the United States Bankruptcy Court for
16 the District of Nevada. A global settlement could not be reached. As a result of those
17 discussions, the Parties agree that a decision about ADR should be deferred. The Parties will
18 continue to discuss settlement and can request a settlement conference at a later date if necessary.

19 (8) Alternative Forms of Case Disposition. The Parties certify that their
20 counsel also met and conferred regarding trial by a magistrate judge under 28 U.S.C. § 636(c)
21 and F.R.C.P. 73 and the use of the Short Trial Program (General Order 2013-01). The Parties do
22 not consent to trial by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).
23 Additionally, the Parties do not consent to using the Short Trial Program pursuant to General
24 Order 2013-01.

1 **FRCP 26(f)(3) Discovery Plan**

2 (A) The Parties shall make their initial disclosures 42 days from the date of the
3 Rule 26(f) conference - on or before **June 16, 2023**. The extension of time is necessary due to
4 the Parties' counsels' travel and work schedules.

5 (B) The Parties shall conduct discovery on all claims and affirmative defenses
6 pursuant to the Federal Rules of Civil Procedure. Discovery will include interrogatories,
7 requests for production of documents, requests for admission, depositions, and third-party
8 subpoenas. Discovery does not need to be conducted in phases or limited or focused on
9 particular issues.

10 (C) There are no anticipated issues as to disclosure, discovery, or preservation of
11 electronically stored information.

12 The Parties do not anticipate that their claims or defenses will involve extensive
13 electronically stored information ("ESI"). To the extent ESI exists, the Parties have agreed to
14 preserve their respective information, both paper and email, and have identified possible
15 custodians. The United States is preserving the IRS's file associated with its assessment of the
16 civil willful FBAR penalties at issue in this case. Defendant has requested that John Fesko
17 preserve responsive emails and documents, including but not limited to, his assistance with filing
18 amended federal income tax returns for M. David Fesko for tax years 2007 through 2010 and the
19 IRS's subsequent examination of those amended income tax returns and M. David Fesko's
20 failure to file FBARs.

21 The Parties agree that the following categories of electronically stored information need
22 not be preserved: (1) deleted, slack, fragmented, or other data only accessible by forensics; (2)
23 random access memory (RAM), temporary files, or other ephemeral data that are difficult to
24 preserve without disabling the operating system; (3) on-line access data such as temporary
25 internet files, history, cache, cookies, and the like; (4) data in metadata fields that are frequently
26 updated automatically, such as last-opened dates; (5) back-up data that are substantially
27 duplicative of data that are more accessible elsewhere; (6) server, system, or network logs; (7)

1 data remaining from systems no longer in use that is unintelligible on the systems in use; and
2 (8) electronic data (e.g. emails, calendars, contact data, and notes) sent to or from mobile devices
3 (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of all such electronic
4 data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or “cloud”
5 storage).

6 The Parties agree to produce information in PDF format, unless the need arises for an
7 alternative production format, at which point the Parties will discuss other forms of production.

8 (D) There are no known issues as to claims of privilege or protection. The Parties
9 agree that claims of privilege shall be made on privilege logs and that there is no need for a Fed.
10 R. Evid. 502(d) order.

11 (E) No changes should be made in the limitations of discovery imposed under Federal
12 Rules of Civil Procedure or local rules.

13 (F) There are no other issues that the court should consider at this time.

14 Dated: May 22, 2023.

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17 /s/ Christian Mejia
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SCHEDULING ORDER

After full consideration of the above, the Court hereby orders that the Discovery Plan and Scheduling Order shall be the Scheduling Order of this Court.

IT IS SO ORDERED.

DATED: May 22, 2023



THE HONORABLE ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE