No. 16-1204

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JEFFREY T. MAEHR,

Plaintiff–Appellant

v.

JOHN KOSKINEN, Commissioner of Internal Revenue, JOHN VENCATO, Revenue Agent, GINGER WRAY, Revenue Agent, JEREMY WOODS, Disclosure Specialist, WILLIAM SOTHEN, Revenue Agent, GARY MURPHY, Revenue Agent, THERESA GATES, Program Manager, SHARISSE TOMPKINS, Disclosure Manager, CAROLYN COLVIN, SSA Acting Administrator, WELLS FARGO BANK, N.A.; JOHN AND JANE DOES 1-100,

Defendants-Appellees

ORAL ARGUMENT NOT REQUESTED

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
No. 1:15-cv-00512-LTB
SENIOR JUDGE LEWIS T. BABCOCK

BRIEF FOR THE FEDERAL APPELLEES

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STATEMENT OF RELATED CASES

Pursuant to Tenth Circuit Rule 28.2(C)(1), counsel for the Commissioner state that they are aware of two related cases previously before this Court.

In Case No. 11-9019, Jeffrey T. Maehr appealed from an order of the United States Tax Court determining his federal income tax liabilities for the tax years 2003-2006. This Court affirmed the decision of the Tax Court. *Maehr v. Commissioner*, 480 F. App'x 921 (10th Cir. 2012), *cert. denied*, 133 S. Ct. 1579 (2013), *rehearing denied*, 133 S. Ct. 2384 (2013).

In Case No. 15-1342, Jeffrey T. Maehr appealed from an order of the United States District Court dismissing his petition to quash an IRS summons, issued to aid in the collection of his 2003-2006 federal income tax liabilities. This Court affirmed the order of the district court. *Maehr v. Commissioner*, 2016 WL 475402 (10th Cir. Feb. 8, 2016).

For further discussion of other related actions brought by Jeffrey T. Maehr in the United States District Courts and the United States Tax Court, *see infra* at pp. 3-4.

GLOSSARY

Acronym	Definition
Br.	Appellant's brief
Doc.	District Court docket entry
Fed. R. App. P.	Federal Rule of Appellate Procedure
Fed. R. Civ. P.	Federal Rule of Civil Procedure
I.R.C.	Internal Revenue Code (26 U.S.C.) of 1986
IRS	Internal Revenue Service
Treas. Reg.	Treasury Regulation (26 C.F.R.)
U.S.C.	United States Code

IN THE UNITED STATES COURT OF APPEALS
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No. 16-1204

JEFFREY T. MAEHR,

Plaintiff–Appellant

v.

JOHN KOSKINEN, Commissioner of Internal Revenue, JOHN VENCATO, Revenue Agent, GINGER WRAY, Revenue Agent, JEREMY WOODS, Disclosure Specialist, WILLIAM SOTHEN, Revenue Agent, GARY MURPHY, Revenue Agent, THERESA GATES, Program Manager, SHARISSE TOMPKINS, Disclosure Manager, CAROLYN COLVIN, SSA Acting Administrator, WELLS FARGO BANK, N.A.; JOHN AND JANE DOES 1-100,

Defendants-Appellees

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

BRIEF FOR THE FEDERAL APPELLEES

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

On March 1, 2016, Jeffrey T. Maehr (taxpayer) initiated a civil action in the United States District Court for the District of Colorado. (Doc. 1, D. Colo. Case No. 1:16-cv-00512-LTB.) Taxpayer failed to comply with multiple court orders to file a complaint that complied with the pleading requirements of the Federal Rules of Civil Procedure and

clarified the claims he sought to assert. Consequently, the district court dismissed his case *sua sponte* on May 5, 2016. (Doc. 11.) Taxpayer moved for reconsideration of the order of dismissal on May 10, 2016 (Doc. 14), but his motion was promptly denied. (Doc. 15.)

On May 19, 2016, taxpayer filed a timely notice of appeal from this "final denial of motion." (Doc. 16.) *See* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the district court abused its discretion under 28 U.S.C. § 1915 when it dismissed this action as legally frivolous.

STATEMENT OF THE CASE

Taxpayer "Jeffrey Thomas Maehr did not pay his federal income taxes from 2003 to 2006 and still owes the IRS the amount of his unpaid liabilities for these years." *Maehr v. Commissioner*, No. 15-1342, 2016 WL 475402, at *1 (10th Cir. Feb. 8, 2016). This action represents taxpayer's latest endeavor to frustrate collection of those taxes. Taxpayer, proceeding *in forma pauperis*, sought to enjoin an IRS levy on his personal property. After taxpayer twice failed to comply with court orders requiring him to conform his pleadings to the requirements of

the Federal Rules of Civil Procedure, the district court dismissed this case pursuant to 28 U.S.C. § 1915 as frivolous. Taxpayer now appeals that dismissal.

A. Background: taxpayer's history of filing frivolous suits to avoid paying taxes he owes

This is the latest case to arise out of taxpayer's failure to file income tax returns or pay taxes he owes for the years 2003-2006. *Maehr v. Commissioner*, 2016 WL 475402 at *1. Taxpayer has repeatedly resorted to the federal courts to reiterate his frivolous arguments about the internal revenue laws. For example, he has filed no fewer than eight petitions to quash IRS summonses issued to third parties, all of which were dismissed. *Maehr v. United States*, No. CIV.A. 3:08MC3-HEH, 2008 WL 4491596, at *1 (E.D. Va. July 10, 2008); *Maehr v. United States*, No. 3:08-MC-00067-W, 2008 WL 2705605, at *2 (W.D.N.C. July 10, 2008) (taxpayer's challenge to the IRS's authority to summons information from Lending Tree, LLC, was "wholly without merit"); *Maehr v. United States*, No. MC 08-00018-BB, 2008 WL 4617375, at *1 (D.N.M. Sept. 10, 2008); *Maehr v. United States*, No. C 08-80218 (N.D. Cal. April 2, 2009); *Maehr v. United States*, No A-09-CA-097 (W.D. Tex. April 10, 2009); *Maehr v. United*

States, No. 8:08CV190, 2009 WL 2507457, at *3 (D. Neb. Aug. 13, 2009 (taxpayer's challenge to validity of Federal income taxes was "without merit and the court will not waste time addressing these frivolous claims"); *Maehr v. United States*, No. CIV. 08-cv-02274-LTB-KLM, 2009 WL 1324239, at *3 (D. Colo. May 1, 2009) (denying petition to quash summons and noting that taxpayer had raised the same argument that had been rejected as without merit in the Western District of North Carolina); *Maehr v. Commissioner*, No. CV 15-mc- 00127-JLK-MEH, 2015 WL 5025363, at *3 (D. Colo. July 24, 2015), *aff'd*, 2016 WL 475402 (10th Cir. Feb. 8, 2016).

After receiving a statutory notice of deficiency for the tax years 2003-2006, taxpayer attempted to challenge this deficiency in the Tax Court. His petition was dismissed for failure to comply with Tax Court rules, and this Court affirmed the dismissal. *Maehr v. Commissioner*, Tax Court No. 10758-11 (Aug. 19, 2011) (unpublished), *aff'd, Maehr v. Commissioner*, 480 F. App'x 921, 922 (10th Cir. 2012), *cert. denied*, 133 S. Ct. 1579 (2013), *rehearing denied*, 133 S. Ct. 2384 (2013).

In January 2016, a notice of levy with respect to taxpayer's unpaid 2003-2006 federal income tax liabilities was served on Wells Fargo Bank, N.A. (Doc. 1, Ex. B-2.) Wells Fargo Bank made no payment

pursuant to the levy, due to insufficient funds in taxpayer's account. (Doc. 1, Exs. B-1, B-3.) The Social Security Administration also received a notice of levy, which it honored in February 2016. (Doc. 1, Exs. A-1, A-2.) These levies apparently prompted the instant action.

B. Proceedings below: the district court dismisses the instant case *sua sponte*

Taxpayer initiated this case in the United States District Court for the District of Colorado with a filing styled "Motion for Emergency Injunction, Notice of Criminal Actions under 18 & 42 U.S.C." (Doc. 1, D. Colo. Case No. 1:16-cv-00512-LTB.) He named as defendants the Commissioner of Internal Revenue; the acting Administrator of the Social Security Administration; multiple employees of the Internal Revenue Service; Wells Fargo Bank, N.A.; and "John and Jane Does 1-100."[1] (Docs. 1, 6, 10.) Taxpayer's pleading asserted that the Government had effected an "unlawful taking of his entire living" by

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[1] Where (as here) a complaint pleads no cognizable cause of action against any individual, and seeks no relief against any individuals other than the injunction against the collection of taxes, "[s]uch claims against individuals in their official capacities are claims against the United States." *Lonsdale v. United States*, 919 F.2d 1440, 1442 n.1 (10th Cir. 1990). This Court treats such actions as actions solely against the United States. *Id.*; *see also Atkinson v. O'Neill*, 867 F.2d 589, 590 (10th Cir. 1989).

virtue of its levies on his bank account and Social Security payments.[2] (*Id.*) He also sought leave to proceed *in forma pauperis* (Doc. 2), which the court granted. (Doc. 7.)

On March 1, 2016, the same day the suit was brought, the district court issued an order noting that taxpayer's initial filing was deficient, and directing taxpayer to file a complaint, petition, or application within 30 days or face dismissal of the action. (Doc. 5.) Taxpayer filed an amended pleading on March 25, 2016, which he styled as "Complaint; Amended Motion for Emergency Injunction Due to Violation of Plaintiff's Constitutional 5th Amendment Right to Due Process, Fraud, and Unlawful Taking of All Finances in Disregard to Original Intent and Standing Laws." (Doc. 6.)

The district court again entered an order, directing taxpayer to file an amended complaint that complied with the pleading requirements of Fed. R. Civ. P. 8. (Doc. 8.) When taxpayer's next filing (Doc. 10) failed

[2] While taxpayer asserts that he is suing the federal defendants in their individual capacities, it is clear that all action complained of relates to official collection action against taxpayer. Therefore, the United States is the sole proper defendant, in addition to Wells Fargo Bank.

to comply with this order, the district court dismissed the case *sua sponte* on May 5, 2016.[3] (Doc. 12.)

The order of dismissal explained: "[Taxpayer] has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Therefore, the Court must dismiss the action if the claims in the amended complaint are frivolous." (Doc. 12 at 2.) *See* 28 U.S.C. § 1915(e)(2)(B)(i). The district court found that taxpayer's pleadings had "fail[ed] to allege specific facts that support an arguable claim for relief challenging the manner in which his unpaid taxes are being collected and, to the extent he is challenging the validity of his tax liability, his tax protester arguments repeatedly have been rejected by the United States Court of Appeals for the Tenth Circuit." (Doc. 12 at 3.) The district court added that this Court had "advised [taxpayer] on multiple occasions that his tax protester arguments are frivolous." (Doc. 12 at 3-4.) The district court concluded, "[Taxpayer's] claims in the amended complaint are legally frivolous and must be dismissed." (Doc. 12 at 4.) The court further certified, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from its order would not be taken in good

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[3] No summonses were ever issued to the named defendants.

faith. *Id.* Final judgment in the action entered on May 5, 2016. (Doc. 13.)

Taxpayer moved for reconsideration of the order of dismissal on May 10, 2016 (Doc. 14), but his motion was promptly denied. (Doc. 15.)

Taxpayer now appeals. (Doc. 16.)

SUMMARY OF ARGUMENT

Where a plaintiff in a civil action has been granted leave to proceed *in forma pauperis*, 28 U.S.C. § 1915 authorizes the district court to "issue and serve all process, and perform all duties in such cases." 28 U.S.C. § 1915(d). That same statute also requires the court to "dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious." 28 U.S.C. § 1915(e)(2)(B)(i).

Here, the district court appropriately dismissed taxpayer's complaint as frivolous under section 1915. Taxpayer's pleadings alleged no facts and stated no claims that could have entitled taxpayer to relief from the collection of his unpaid federal income taxes. None of taxpayer's pleadings raised any legitimate defenses to the IRS levies he desired to challenge. Instead, those pleadings merely restated multiple tax-protester theories discredited by this and other courts. Because taxpayer's pleadings were legally frivolous within the meaning of

Section 1915, the district court did not abuse its discretion in dismissing the action.

The decision of the district court is correct and should be affirmed.

ARGUMENT

Where taxpayer, proceeding *in forma pauperis*, failed to state colorable claims for relief from the collection of taxes he owes, the district court appropriately dismissed his complaint as legally frivolous.

Standard of review

This Court reviews the dismissal of an action as legally frivolous under 28 U.S.C. § 1915 for an abuse of discretion. *Denton v. Hernandez*, 504 U.S. 25, 33–35 (1992); *Fratus v. DeLand*, 49 F.3d 673, 674 (10th Cir. 1995).

A. The district court correctly determined that taxpayer's action was legally frivolous

Where a plaintiff has been granted leave to proceed *in forma pauperis*, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases." 28 U.S.C. § 1915(d). The court, however, "shall dismiss the case at any time if the court determines that the action or appeal is frivolous or malicious [or] fails to state a claim on which relief may be granted[.]" 28 U.S.C. § 1915(e)(2)(B)(i), (ii). Section 1915(d) "accords judges not only the authority to dismiss a

claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

"An IFP lawsuit also may be dismissed under § 1915(d) as legally frivolous if the claims are 'based on an indisputably meritless legal theory.'" *Abbott v. McCotter*, 13 F.3d 1439, 1441 (10th Cir. 1994), quoting *Neitzke*, 490 U.S. at 327. "Examples of claims based on inarguable legal theories include those against which the defendants are undeniably immune from suit and those alleging an infringement of a legal interest that clearly does not exist." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991). "To the extent that a complaint filed *in forma pauperis* which fails to state a claim lacks even an arguable basis in law, [Fed. R. Civ. P.] 12(b)(6) and § 1915(d) both counsel dismissal." *Neitzke*, 490 U.S. at 328.

Here, there was no abuse of discretion in the district court's dismissal of the instant action as prescribed by section 1915(e)(2)(B)(i). Twice the court invited taxpayer to cure his deficient pleadings, to no avail. At no point did taxpayer allege any operative facts other than the existence of an IRS levy on his personal property. Nor did he attempt to

assert a claim or cause of action pursuant to any statute, allege that his suit was permitted by any waiver of sovereign immunity, or demonstrate that any of the named defendants were amenable to suit.[4]

Instead, taxpayer's pleadings – and, now, his brief on appeal – simply reiterated many of the common pseudo-constitutional, anti-taxation theories repeatedly discredited by this Court. The district court noted that, while taxpayer attempted to frame his claims as "challenging the manner in which [his] unpaid taxes are being collected, it is apparent that his due process claims challenge the validity of the determination that he is liable for the unpaid income taxes." (Doc. 12 at 2.) To the extent that taxpayer sought to challenge the validity of his tax liability, "his tax protester arguments repeatedly have been rejected by the United States Court of Appeals for the Tenth Circuit," which had "advised [him] on multiple occasions that his tax protester arguments are frivolous." (Doc. 12 at 3.) As we demonstrate below, the character of these arguments has not changed since taxpayer last attempted to raise them in this Court. The district court did not abuse its discretion in declining to entertain them any further.

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[4] *See* note 1, *supra*.

B. Taxpayer's objections to the levy are meritless

Taxpayer is evidently troubled by the effectuation of an IRS levy on his personal property – a Government action to collect taxes that taxpayer does not believe he should owe. *See Kane v. Capital Guardian Trust Co.,* 145 F.3d 1218, 1221 (10th Cir. 1998). However, none of taxpayer's objections to the levy, even if well-pleaded, would relieve him from collection of his taxes.

First, taxpayer lacks standing to sue for wrongful levy. I.R.C. § 7426 permits a wrongful levy suit against the United States only if the suit is brought by a person "other than the person against whom is assessed the tax out of which the levy arose." I.R.C. 7426(a)(1). *See Dieckmann v. United States*, 550 F.2d 622, 624 (10th Cir. 1977) (recognizing limited waiver of sovereign immunity for wrongful levy action under § 7426(a)(1)); *United States v. Mann*, 365 F. App'x 121, 123 (10th Cir. 2010) (same). And I.R.C. § 6331 expressly authorizes the IRS to collect unpaid taxes "by levy upon all property and rights to property . . . belonging to . . . [the taxpayer] or on which there is a lien provided in this chapter for the payment of such tax." I.R.C. § 6331(a).

Second, taxpayer's Social Security payments are not exempt from levy, as he suggests. (Br. 18-19.) Section 6334(a) of the Internal

Revenue Code sets forth an exclusive list of property and property rights which are exempt from levy. *See* I.R.C. §§ 6334(a), (c); *Drye v. United States*, 528 U.S. 49, 56 (1999). Social Security retirement benefits are not included within § 6334(a)'s exclusive list. *See Overton v. United States*, 74 F. Supp. 2d 1034, 1045 (D.N.M. 1999), *aff'd*, 202 F.3d 282 (10th Cir. 2000). There is thus no legal basis for taxpayer's claim that his Social Security payments are insulated from the IRS levy he contests.

The record does not indicate that the IRS has sought to levy directly on taxpayer's service-connected disability payments, nor on any income stream insulated from levy under I.R.C. § 6334. Even had the IRS done so, "the only remedy available to the taxpayer would be full payment of the assessment [of his tax liability] followed by a suit for refund in district court." *Marvel v. United States*, 548 F.2d 295, 297 (10th Cir. 1977). Injunctive relief is not available to a taxpayer aggrieved by a levy. *Id.*; *see also* I.R.C. § 7421(a); 28 U.S.C. § 2201; *Fostvedt v. United States*, 978 F.2d 1201, 1203 (10th Cir. 1992) (actions like this suit "are prohibited by the Anti–Injunction Act, [I.R.C.] § 7421(a), and the tax exception provision of the Declaratory Judgment Act, 28 U.S.C. § 2201. Section 7421(a) provides that no suit to restrain

the assessment or collection of any tax shall be maintained. In addition, the Declaratory Judgment Act specifically prohibits declaratory judgments in matters relating to federal taxes."). Accordingly, there was no error in the district court's refusal to entertain taxpayer's pleas for injunctive relief.

C. Taxpayer's other arguments are frivolous

There is no merit to taxpayer's contentions that his income is not subject to taxation or collection by levy. Section 1 of the Internal Revenue Code imposes a tax on the taxable income of all individuals who, like taxpayer here, are citizens or residents of the United States. *See* Treas. Reg. § 1.1-1(a)(1); *Wheeler v. Commissioner*, 528 F.3d 773, 776-77 (10th Cir. 2008) ("The very first section of the Internal Revenue Code, 26 U.S.C. § 1, imposes an income tax on the taxable income of every citizen or resident of the United States."). Section 63 of the Code defines "taxable income" as gross income less allowable deductions. Section 61(a) of the Code, in turn, defines "gross income" as "all income from whatever source derived," and specifically includes compensation for services, I.R.C. § 61(a)(1), and business income, I.R.C. § 61(a)(2).

The Supreme Court has recognized that "Congress intended through § 61(a) . . . to exert 'the full measure of its taxing power,' and to bring within the definition of income any 'accessio[n] to wealth.'" *United States v. Burke*, 504 U.S. 229, 233 (1992) (quoting *Helvering v. Clifford*, 309 U.S. 331, 334 (1940), and *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955)). Further, I.R.C. § 6012(a)(1)(A) generally provides that every individual with income "which equals or exceeds the exemption amount" is required to file an individual income tax return. Because taxpayer apparently concedes (Br. 11) that he received "wages" and has never alleged that the amounts he received fell below the exemption amount, it follows that he was subject to tax under § 1 and was required by § 6012(a) to file a return.

Taxpayer restates several of the well-worn tax-defier arguments that this Court has previously rejected, in an attempt to reinvigorate his contention that he is not subject to the Internal Revenue Code. Included among his frivolous arguments are assertions that that the Sixteenth Amendment does not authorize a tax on income (Br. 6-8), that wages are not income (Br. 8-13), that he is a nonresident alien exempt from taxation (Br. 13-14), that the Government may levy only on the

wages of Government officials (Br. 15-16), and that the Internal Revenue Service is either not an agency of the United States Government, or perhaps was disbanded in 2005 (Br. 21-22). This Court described these arguments as "completely lacking in legal merit and patently frivolous" more than 25 years ago, in *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990). *Accord Maehr v. Commissioner*, 480 F. App'x at 923; *Ford v. Pryor*, 552 F.3d 1174, 1177 n.2 (10th Cir. 2008) (listing arguments that "have long been held to be lacking in legal merit and frivolous"); *Wheeler v. Commissioner*, 528 F.3d 773, 776-77 (10th Cir. 2008) (rejecting, as frivolous, taxpayer's claims that there is no statutory authority for the income tax, that the filing requirement violates his Fifth Amendment right against self-incrimination, and that he was not liable for penalties because the Forms 1040 did not contain a valid OMB number); *Lewis v. Commissioner*, 523 F.3d 1272, 1277 (10th Cir. 2008) (rejecting argument that IRS Form 1040 does not comply with the Paperwork Reduction Act of 1995); *Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004) (describing as "long rejected" by the courts defendant's argument that he was not subject to the Code because he was not a "'fourteenth amendment citizen'"); *Fox v. Commissioner*, 969 F.2d 951,

952 (10th Cir.1992) (describing petitions that argued that the petitioner was not a "'taxpayer'" as "blatantly frivolous and groundless").

Other courts have also rejected such frivolous arguments. *See, e.g., United States v. Cooper*, 170 F.3d 691, 691 (7th Cir. 1999); *Cook v. Spillman*, 806 F.2d 948, 949 (9th Cir. 1986); *Ryan v. Bilby*, 764 F.2d 1325, 1328 (9th Cir. 1985); *Crain v. Commissioner*, 737 F.2d 1417, 1417-18 (5th Cir. 1984); *Ginter v. Southern*, 611 F.2d 1226, 1229 n.2 (8th Cir. 1979). As the Fifth Circuit has stated, "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain*, 737 F.2d at 1417.

CONCLUSION

The judgment of the district court should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT

Counsel for the Government respectfully submit that oral argument is not necessary for the Court's consideration of this case, because taxpayer's arguments are frivolous.

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/s/ Julie Ciamporcero Avetta
JULIE CIAMPORCERO AVETTA
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Dated: July 21, 2016

CERTIFICATE OF SERVICE AND DIGITAL SUBMISSION

I hereby certify that on July 21, 2016: (i) I filed this brief by using the CM/ECF system and by sending 7 paper copies to the Court via FedEx for next business day delivery; (ii) service was made on the CM/ECF participant via that system; (iii) service was made on the non-CM/ECF participant by sending 2 paper copies to the address below.

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/s/ Julie Ciamporcero Avetta
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