SO ORDERED.

SIGNED this 26th day of September, 2014.

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	)	
	)	
Phillip Brent Dean and	)	Case No. 13-11577C-13G
Alaine Ceder Dean,	)	
	)	

ORDER DENYING MOTION TO VACATE ORDER DISALLOWING CLAIMS

This case came before the Court for hearing on August 19, 2014, (the "Hearing") with respect to the Motion to Vacate Order Disallowing Claims [Doc. # 46] (the "Motion to Vacate") filed on July 31, 2014, by the United States of America (the "United States"). In its Motion to Vacate, the United States requests that the Court vacate its June 6, 2014 Order Disallowing Claims [Doc. # 39] (the "Claim Order") pursuant to Bankruptcy Rule 9024 and Rule 60(b) of the Federal Rules of Civil Procedure, arguing that the Debtor failed to properly serve the underlying objection to the Internal Revenue Service's ("IRS") claim upon the United States as required by Bankruptcy Rule 7004(b)(4) and (b)(5). At the Hearing, J. Marshall Shelton appeared on behalf of the Debtor and Cheryl T. Sloan appeared on behalf of the United States. Having considered the arguments of counsel, the docket, and the record before the Court, including the Objection to Claim [Doc. # 33] (the "Claim Objection"), the Certificate of Service thereto, the Proof of Claim filed by the IRS in this case [Claim # 10] (the "IRS Claim"), and the Certificate of Notice [Doc.

36] (the "BNC Certificate") filed by the Bankruptcy Noticing Center ("BNC"), the Court determines that the Motion to Vacate should be DENIED for the reasons set forth herein.

BACKGROUND

On March 27, 2000, the IRS entered into a Trading Partner Agreement (for use in electronic bankruptcy noticing) with this Court (the "MDNC Trading Partner Agreement"). Pursuant to the MDNC Trading Partner Agreement, the IRS agreed to receive limited types of bankruptcy notices electronically in raw data form through the electronic data interchange ("EDI"). On January 6, 2011, the IRS provided the BNC a Supplemental Email Notification Form For Existing Electronic Data Interchange (EDI) Trading Partners (the "IRS Supplemental Notice Agreement"), pursuant to which the IRS expanded the types of notices for which it consented to electronic service beyond those types previously listed in the MDNC Trading Partner Agreement. Pursuant to the IRS Supplemental Notice Agreement, the IRS agreed to receive electronic notice of all bankruptcy notices, and eliminated "altogether" paper notification of the IRS in favor of receiving all notices via electronic mail addressed to cio.bncmail@irs.gov. The IRS Supplemental Notice Agreement initially was limited to notices from the New Mexico Court. However, on May 31, 2012, the IRS requested in writing that its authorization to receive all bankruptcy notices via electronic mail be extended to bankruptcy courts in other states, including North Carolina. A copy of the MDNC Trading Partner Agreement, Supplemental Notice Agreement, and the May 31, 2012 IRS written request to extend the Supplemental Notice Agreement to North Carolina are attached hereto as Exhibit A.

The Debtors Phillip Brent Dean and Alaine Ceder Dean (the "Debtors") commenced this case by filing a voluntary petition under Chapter 13 of the United States Bankruptcy Code (the "Code") on December 5, 2013 (the "Petition Date"). On January 24, 2014, the IRS timely filed

the IRS Claim, asserting an unsecured claim in the total amount of $51,235.40, with $30,126.33 of that amount asserted as a priority tax claim pursuant to 11 U.S.C. § 507(a)(8). The IRS Claim was submitted on Official Form 10 (4/13) (the "Claim Form"). On the Claim form, the IRS listed the "Name of Creditor" as "Department of the Treasury – Internal Revenue Service." On the Claim, the IRS further listed in the box for "Name and address where notices should be sent" the following: "Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346." The Claim Form was signed by Loretta Callahan, Bankruptcy Specialist, Internal Revenue Service. Official Form 10 further provides spaces for the address of the person executing and filing a proof of claim "if different from the notice address above." In this space, Ms. Callahan provided, "Internal Revenue Service, 400 North 8th Street, Box 76, M/S Room 898, Richmond, VA 23219."

On April 21, 2014, the Debtors filed their Claim Objection, objecting to the IRS Proof of Claim. In the Claim Objection, the Debtors argued that the IRS Claim erroneously asserted duplicate assessments for the same tax year, and that the appropriate amount of the priority tax claim should be $15,991.00. The Debtors attached to the Claim Objection a Certificate of Service, certifying that "a copy of the Objection to Prof [sic] of claim was Mailed [sic] or delivered by electronic means and/or first class mail, postage prepaid, to the parties indicated below pursuant to Rule 3007 (a) of the Federal Rules of Bankruptcy Procedure: . . . Internal Revenue Service, P.O. Box 7346, Philadelphia PA 19101-7346 [and upon] . . . Loretta Callahan, Internal Revenue Service, 400 North 8th Street, Box 76, M/S Room 898, Richmond VA 23219 . . . ." On April 22, 2014, the Office of the Clerk for this Court issued a notice of the Claim Objection [Doc. # 34] (the "Notice of Hearing"), which gave notice of the objection, provided that objecting parties were required to file a written objection on or before May 24, 2014, and

further provided that, in the event of an objection, the Court would conduct a hearing on the Claim Objection on June 10, 2014. The Notice of Hearing stated that, if no objection were filed, the Court would consider the Claim Objection without a hearing.

The BNC Certificate provides that a copy of the Notice of Hearing was sent via first class mail to: "Loretta Callahan, Internal Revenue Service, 400 North 8th Street, Box 76, M/S Room 898, Richmond VA 23219-5805," and that "[n]otice by electronic transmission was sent to . . . cio.bncmail@irs.gov Apr 22, 2014 18:14:17 Internal Revenue Service, P.O. Box 7346, Philadelphia PA 19101-7346."

No response or objection to the Claim Objection was filed, and, on June 6, 2014, the Court entered the Claim Order, sustaining the Claim Objection, allowing the IRS Claim as an unsecured priority claim in the amount of $15,991, and allowing the IRS a general unsecured claim in the amount of $21,109.07.

On July 31, 2014, the United States filed the Motion to Vacate the Claim Order. The United States argues that the Claim Order should be set aside pursuant to Bankruptcy Rule 9024 and Rule 60(b) of the Federal Rules of Civil Procedure because the Claim Objection was not properly served upon the United States pursuant to Bankruptcy Rule 7004(b)(4) and (b)(5). The United States argues that, without proper service, the Order is void, and should be set aside under Rule 60(b).

DISCUSSION

The United States seeks relief from the Claim Order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, made applicable in this case by Bankruptcy Rule 9024. Rule 60(b) allows the Court to set aside an order or judgment where any of the following is shown: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud;

(4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b).

In this case, the United States has not specified under which subparagraph of Rule 60(b) it seeks relief, but it asserts that it is entitled to relief based upon improper service of the Claim Objection on the United States. If a court lacks jurisdiction to enter an order due to defective notice, the judgment is void because the deficient notice has deprived the party of its due process rights.[1] See, e.g., In re Ryse Constr., Inc., No. 11-26778-SSC, 2013 WL 1335777, at *2 (Bankr. D. Ariz. Mar. 29 2013) (and cases cited therein); see also United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 271 (2010) (noting that a judgment is void for purposes of Rule 60(b)(4) "where [it] is premised either on a certain type of jurisdictional error or on a violation of due process that deprives the party of notice or the opportunity to be heard").[2] In such cases, Rule 60(b)(4) provides that a party may obtain relief from a judgment where it is void due to defective notice. Therefore, the proper basis for relief under Rule 60(b) for failure of service of process is

[1] While the United States and the IRS do not have constitutional due process rights, basic principles of justice require "that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights[.]" In re Moore, No. 08-40118-JTL, 2013 WL 4017936, at *11 (Bankr. M.D.Ga. Aug. 6, 2013) (internal citation omitted). Therefore, courts have vested the government with a right "'akin to due process.'" Id. (quoting United States v. Hairopoulos (In re Hairopoulos), 118 F.3d 1240, 1244 n. 3 (8th Cir. 1997) (internal citation omitted)).

[2] A judgment also will be void where the court lacked subject matter jurisdiction. Nevertheless, "[f]ederal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved such relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." Espinosa, 559 U.S. at 271. The United States does not contend that this Court lacked subject matter jurisdiction to enter the Claim Order, and the Claim Objection, as a core matter under 28 U.S.C. § 157(b)(2)(B), clearly is within the Court's subject matter jurisdiction in any event. Moreover, the allowance and disallowance of claims asserted against the estate is "at the core of the federal bankruptcy power," and unquestionably within this Court's constitutional authority. See N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 71 (1982) ("[T]he restructuring of debtor-creditor relations . . . is at the core of the federal bankruptcy power . . . ."). The IRS also did not argue any basis for relief under Rule 60(b) other than improper service of process. Therefore, the Court has not considered any other unarticulated bases for potential relief from the Claim Order.

Rule 60(b)(4).[3] Nevertheless, as explained by Judge Leonard in the United States Bankruptcy Court for the Eastern District of North Carolina:

> The concept of a void order under Rule 60(b)(4) is construed narrowly by courts in the Fourth Circuit. Wendt v. Leonard, 431 F.3d 410, 412 (4th Cir. 2005). "An order is 'void' for purposes of Rule 60(b)(4) only if the court rendering the decision lacks personal or subject matter jurisdiction or acted in a manner inconsistent with due process." *Id.*

In re Zapolski, No. 08-05552-8-JRL, 2013 WL 1856256, at *2 (Bankr. E.D.N.C. May 2, 2013).

Courts in the Fourth Circuit (and other circuits) previously held that service of process that in any way fell short of the form and manner of service required by the Bankruptcy Code and Bankruptcy Rules rendered a judgment void for failure of due process and constituted an appropriate basis for relief under Rule 60(b)(4). See, e.g., Banks v. Sallie Mae Servicing Corp. (In re Banks), 299 F.3d 296, 303 n.4 (4th Cir. 2002) (holding that, "where the Bankruptcy Code and Rules require a heightened degree of notice, due process entitles a party to receive such notice before an order binding the party will be afforded preclusive effect"); CIT v. Official Committee of Unsecured Creditors of E-Z Serve Convenience Stores, Inc. (In re E-Z Serve Convenience Stores, Inc.), 318 B.R. 631, 635-36 (Bankr. M.D.N.C. 2004) (following Banks, and granting relief from prior order where the relief was granted by a motion, rather than by the

[3] At least one court has opined that improper service also might entitle a movant to relief under the "catchall" provision of Rule 60(b)(6), which provides for relief from a judgment for any other reason justifying relief. See In re Balzano, 399 B.R. 428, 431 (Bankr. D. Md. 2008) ("The improper service of the motion in this case rendered the order void and justifies relief under Rule 60(b)(6)."). Rule 60(b)(6) cannot, however, be relied upon to expand the bases for relief due to a judgment being "void" beyond those bases for construing a judgment "void" for purposes of Rule 60(b)(4). Rule 60(b)(4) specifically provides for relief in instances where the order is "void," and the provisions of Rules 60(b)(4) and 60(b)(6) are mutually exclusive. See Valero Terrestrial Corp. v. Paige, 211 F.3d 112, 118 n.2 (4th Cir. 2000) (citing Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 863 n.11 (1988), for the proposition that "clause (6) [of Rule 60(b)] and clauses (1) through (5) are mutually exclusive"). As further observed by the Fourth Circuit, "[w]hile this catchall reason [provided in Rule 60(b)(6)] includes few textual limitations, its context requires that it may be invoked in only 'extraordinary circumstances' when the reason for relief from judgment does not fall within the list of enumerated reasons given in Rule 60(b)(1)-(5)." Aikens v. Ingram, 652 F.3d 496, 500 (4th Cir. 2011). Since Rule 60(b)(4) specifically provides for relief where the judgment is void, and, as set forth herein, the courts have developed the rules around which improper service will render a judgment void for purposes of Rule 60(b)(4), these courts (and others) make clear that Rule 60(b)(6) cannot expand the bases upon which a party might assert that a judgment is void for improper service beyond those justifying relief under Rule 60(b)(4).

required adversary proceeding accompanied by service of a summons and a complaint). Nevertheless, in Espinosa, the United States Supreme Court abrogated the Fourth Circuit's prior holding in Banks, see Espinosa, 559 U.S. at 268 n.6, and made clear that the violation of a procedural service rule will not render a judgment void for purposes of relief under Rule 60(b)(4) where the party against whom relief was granted received constitutionally sufficient notice. Id. at 272 (finding that the failure to commence an adversary proceeding and serve a summons and complaint equated to denial of a "right granted by a procedural rule," and did not limit the jurisdiction of the lower court over the party or the subject matter of the case where the complaining party received constitutionally sufficient notice). Instead, the Court held that, in order to be entitled to relief under Rule 60(b)(4), the failure of service must be so fundamental that the movant was deprived of its due process rights. Id. Due process merely "requires notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections[.]'" Id. (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)). See also Ryse Constr., 2013 WL 1335777, at *2 ("A violation of statutory notice requirements is not necessarily a violation of due process.").

Therefore, in this case, the Court first must consider whether the United States was properly served with the Claim Objection pursuant to the Bankruptcy Code and Bankruptcy Rules, and then the Court must determine whether the circumstances of this case entitle the United States to relief from the Claim Order pursuant to Bankruptcy Rule 9024 and Rule 60(b)

of the Federal Rules of Civil Procedure due to insufficient service of process that rose to the level of a violation of the IRS's[4] right to receive proper notice and an opportunity to be heard.

Service of Objections to Claim Under the Bankruptcy Code and Bankruptcy Rules

Bankruptcy Rule 3007 governs the procedures for objections to claims. Rule 3007(a) provides that: "An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . at least 30 days prior to the hearing." Fed. R. Bankr. P. 3007(a). In this case, the tentative hearing was set on the Claim Objection for June 10, 2014, and the BNC notice was provided to the IRS at the address provided by the IRS to receive such notices on April 24, 2014. The Debtor served a copy of the Claim Objection upon the IRS on April 21, 2014. Each of these dates occurred more than 30 days prior to the scheduled tentative hearing. Therefore, to the extent that notice and service was proper, such notice and service was timely under Rule 3007(a).

The United States contends that service was improper in this case because an objection to claim is a contested matter, and the Debtor therefore was required under Rule 9014(b) to serve the United States pursuant to Rule 7004(b)(4) and (b)(5).[5] The United States is correct in its

[4] As set forth below, by filing the IRS Claim, the IRS submitted to the personal jurisdiction of this Court as the real party in interest with respect to the allowance or disallowance of the claim. See e.g., Scott v. United States (In re Scott), 437 B.R. 376, 380 n.8 (9th Cir. BAP 2010).

[5] Appropriate service under Rule 9014(b), 7004(b)(4) and (5) require the Debtor to serve the United States in the following manner: 9014(b) requires the motion to be served in the manner provided for service of a summons and complaint by Rule 7004; Rule 7004(b)(4), in turn, requires service on the United States by mailing a copy of the summons and complaint by first class mail to "the civil process clerk at the office of the United States attorney for the district in which the action is brought and . . . to the Attorney General of the United States at Washington, District of Columbia . . . ." Rule 7004(b)(5) applies to service on any officer or agency of the United States and requires mailing a copy of the summons and complaint by first class mail to in the same manner stated in 7004(b)(4).

contention that an objection to claim is a contested matter, and that, as a contested matter, certain portions of Rule 9014 apply with respect to the procedures to be followed in litigating such a contested matter. In fact, to the extent that there is any question whether an objection to claim is a contested matter, the Advisory Committee's Notes on both Rules 3007 and 9014 make the conclusion clear. See Advisory Committee's Notes on Fed. R. Bank. P. 3007 ("The contested matter initiated by an objection to a claim is governed by Rule 9014."); Advisory Committee's Notes on Fed. R. Bank. P. 9014 ("Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter. For example, the filing of an objection to claim . . . creates a dispute which is a contested matter."). However, the United States is incorrect in its contention that all contested matters must be served in the manner of service for the types of motions contemplated by Rule 9014(b).[6]

Bankruptcy Rule 9014 is entitled "Contested Matters," and contains five subparagraphs. Subparagraph (a) sets forth the procedure for commencement of a contested matter when the Bankruptcy Rules do not otherwise govern the method for commencing a contested matter with respect to the type of relief sought. Fed. R. Bankr. P. Rule 9014. In these circumstances, Rule 9014(a) requires that the relief be requested by a motion. Id. Subparagraph (b) provides the manner of service for "the motion" referred to in subparagraph (a). Id. Subparagraphs (c), (d), and (e) of Rule 9014, respectively, provide for certain procedural rules applicable to all contested matters, including certain rules under Part 7 of the Bankruptcy Rules, the procedures for the taking of testimony, and certain procedures for the attendance of witnesses. Id.

The language of Rule 9014(a) makes clear that this subparagraph does not apply to all contested matters. Rule 9014(a) provides that, "[i]n a contested matter in a case under the Code

[6] At the hearing on this matter, the Court indicated its initial belief that service of the Claim Objection was governed by Rules 9014(b) and 7004(b). For the reasons set forth herein, the Court has determined that Rule 9014(b) does not govern service of objections to claims.

not otherwise governed by these rules, relief shall be requested by motion . . . ." Id. (emphasis added). The rule therefore clearly contemplates that there are some types of contested matters which are otherwise governed by the Bankruptcy Rules. If it applied to all contested matters, there would be no purpose for the phrase "not otherwise governed by these rules," rendering this language superfluous. Cf. Hibbs v. Winn, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .") (internal citation omitted). The other types of contested matters to which the rule refers, therefore, may or may not be required to be commenced by a motion and may or may not be required to be served as provided pursuant to Rule 9014(b), depending upon the provisions of the applicable rule or rules that "otherwise govern" a request for such relief. See In re Hawthorne, 326 B.R. 1, 3 (Bankr. D.C. 2005) (observing that various contested matters are not commenced by the type of motion contemplated under Rule 9014(a), including objections to claim (Rule 3007), confirmation of a Chapter 13 plan (Rule 3015(f)), approval of a disclosure statement (Rule 3017(a)), confirmation of a Chapter 11 plan (Rule 3020(b)), objections to exemptions (Rule 4003(b)), notice of a proposed use, sale, or lease of property (Rule 6004(b)), and notice of a proposed abandonment of property (Rule 6007(a))).

Bankruptcy Rule 3007(a) is a rule otherwise governing the method for requesting relief with respect to a claim asserted against the estate. Rule 3007(a) provides that an objection to claim is not commenced by a motion, but instead is commenced by an objection, which must be in writing and filed. Fed. R. Bankr. P. 3007(a). Importantly, Rule 3007(a) also provides for the proper manner of service of an objection to claim. The rule states that, "[a] copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant . . . ." Id. As observed by the court in Hawthorne:

> Although Rule 3007 does not use the term "serve," plainly the mailing it requires is a form of service . . . .
>
> Rule 3007, as the specific rule dealing with objections to claims, controls service of such an objection, not Rule 9014(b). Jorgenson v. State Line Hotel, Inc. (In te [sic] State Line Hotel, Inc.), 323 B.R. 703, 2005 WL 857471 (9th Cir. BAP Mar. 29, 2005); In re Hejl, 85 B.R. 399 (Bkrtcy. W.D.Tex. 1988). . . . If Rule 9014(b) controlled service of an objection, there would be no need to require mailing of an objection to claim under Rule 3007 . . . . If the first sentence of Rule 9014(b) were intended to apply to objections to claims . . . , the sentence could have readily referred to "the paper commencing a contested matter" instead of to "the motion."

Hawthorne, 326 B.R. at 4 (footnote omitted).[7]

The court in Hawthorne notes several courts which disagree with this interpretation of Rules 3007(a) and 9014(b), and further notes a distinction in that "most" of those cases "involve service on the United States or an agency thereof, a creditor who traditionally enjoys the benefit of special service requirements." Id. at 4 n.3.[8] However, this distinction does not alter the rationale for the application of Rule 3007 in lieu of Rule 9014(b) with respect to service of an objection to claim. Just because service under Rule 3007 will not always require service in the same manner, method, or even upon the same recipient as does Rule 9014(b), for purposes of an objection to the claim, the address listed by the claimant "ought to control as it implicitly gives notice of the address to be used for any service of papers relating to the claim, and consents to use of that address." Id. at 4 n.4. It is the claimant in all instances that is in control of where and upon whom any objections to the claim are sent. A claimant may amend a claim to change the

[7] Not only does Rule 9014(b) refer to a motion commencing a contested matter, but it specifically refers to the motion identified in 9014(a), which is "the" motion "not otherwise governed by these rules" identified in Rule 9014(a). Similar to the observation in Hawthorne that the rule could have referred to the "paper" commencing a contested matter, Rule 9014(b) also could have said, "A motion shall be served in the manner provided for service of a summons and complaint by Rule 7004." Therefore, Rule 9014(b) only is referring to "the" motion contemplated in Rule 9014(a), unless the service requirements of Rule 9014 are made applicable by other rules or by due process when other specific rules do not govern service.

[8] The Court in Hawthorne also noted that its district has a local rule requiring additional service on the United States through Rule 7004(b) with respect to proofs of claim. Id.at 5. This Court has no similar local rule.

name and address provided. In fact, a claimant is free to list more than one entity and address in the notice portion of the Proof of Claim form, and claimants often do just that.

The United States argues that service upon the IRS was insufficient in that the United States is the real party in interest and must have been served with the Claim Objection. It is true that courts have generally recognized that the United States, and not the IRS, is the real party in interest with respect to matters affecting the United States and its agencies (including the IRS), and that the IRS cannot sue or be sued. See, e.g., United Sates v. Laughlin (In re Laughlin), 210 B.R. 659, 660 (1st Cir. BAP 1997) (finding that, where a motion to abate taxes initiated a contested matter, United States, rather than the IRS was the real party in interest, and, where the motion to abate was served only on the IRS, the failure to serve the United States rendered the resulting order void for lack of personal jurisdiction over the United States).[9] Nevertheless, any claimant, including the United States, is free to identify any entity upon whom any objections to

[9] The decision in Laughlin is distinguishable. The underlying motion to abate taxes in Laughlin was not an objection to claim, and, therefore, service of the motion was not governed by Rule 3007, but was governed by the more general rule for motions "not otherwise governed" by the Bankruptcy Rules. Therefore, the court in Laughlin correctly determined that the United States, rather than the IRS, must be served under Rules 9014(b) and 7004. Moreover, to the extent that the court in Laughlin more generally held that the failure to follow a procedural rule regarding service of process is a jurisdictional defect, it has been overruled by Espinosa for the reasons set forth herein. See Espinosa, 559 U.S. at 268 n.6, 271-272.

Also prior to Espinosa, but after Laughlin, the First Circuit Bankruptcy Appellate Panel issued its opinion in United States of America v. Sousa (In re Sousa), No. MB 00-095, 2001 WL 933595 (1st Cir. BAP 2001), in which it extended the holding in Laughlin, and reversed the bankruptcy court's refusal to vacate an order disallowing a claim filed by the IRS where only the IRS and not the United States was served with the objection to claim. Importantly, in Sousa, the debtor conceded that the objection was improperly served. Id. at *1. The proper manner for service of an objection to a proof of claim was not even considered by the court, and the court clearly assumed without discussion that an objection to claim must be served under Rules 9014(b) and 7004. Id. at *2. Moreover, as in Laughlin, the court in Sousa held that, "[i]f proper service is not effectuated, personal jurisdiction over the United States is lacking, and any judgment entered prior to proper service is void." Id. While Sousa itself is distinguishable from Espinosa in that there was no evidence in Sousa that the United States, as the real party in interest, even had actual notice of the underlying objection, there similarly was no discussion Sousa regarding whether the United States or the IRS was listed on the underlying proof of claim in the area for notices. Therefore, there was no discussion or consideration of whether service upon the entity provided for notices on the proof of claim form provides either proper procedural service or proper notice to the claimant for an objection to that very claim. For the reasons set forth herein, this Court finds that it provides both, even where the claimant is the United States or the IRS.

the filed claim should (and must) be served for purposes of Rule 3007 and is bound by that choice.

The holding in Hawthorne further buttresses this conclusion. In Hawthorne, despite determining that Rule 3007 generally provides for the method and manner of service with respect to an objection to claim, Judge Teel granted the claimant relief from the order disallowing the claim because objection to the claim had been served in the name of the actual claimant, rather than upon the entity identified for service on the proof of claim. Hawthorne, 326 B.R. at 2-6. In that case, the underlying creditor was "Sherman Acquisition LP dba Resurgent Acquisition." Id. at 2. The proof of claim requested notices to be mailed to "Resurgent Capital Services," and provided an address. Id. The debtor, however, while using the correct address, mailed notice to "Sherman Acquisition LP dba Resurgent Acquisition." Id. Judge Teel found that this service was insufficient to provide the requisite procedural notice.[10] Id. at 5-6 ("To obtain the benefits of service by mail under Rule 3007, the party filing the objection ought to scrupulously comply with the creditor's specific instructions regarding how notice is to be sent."). Therefore, an objecting party not only may rely upon serving the claimant through the entity listed on the claim form, but, at least according to Hawthorne, it would be inappropriate to serve the claimant in a manner other than upon the party whom the claimant has identified as being the proper party to respond to matters affecting the filed claim.

[10] The opinion in Hawthorne was issued prior to the Supreme Court's holding in Espinosa, and there was no discussion in Hawthorne as to whether the claimant received actual notice that would have satisfied due process, despite the failure by the debtor to "scrupulously" abide by the service requirements of Rule 3007. Nothing herein shall be construed as a finding that, where an objection to claim is served upon the actual claimant, and the claimant receives actual notice, failure to serve the entity listed on the proof of claim will cause a due process violation that would entitle the claimant to relief from an order disallowing the claim pursuant to Rule 60(b)(4).

As argued by the Debtor at the hearing in this case, this Court's Local Rule 3007-1 further puts claimants on notice that they may be served with an objection to claim at the name and address they provide on the proof of claim form. Local Rule 3007-1 provides:

> Any claimant filing a proof of claim shall be deemed to authorize service of any objection to claim by the mailing of a copy of the objection to claim to the claimant at the address set forth in the "Name and address where notices should be sent:" section of the proof of claim.

Citing this rule, the Debtor argued that, by filing the claim through the IRS and providing that the IRS is to receive notices with respect to the claim, the United States in effect appointed the IRS as its agent to receive service of process with respect to objections to the claim. The argument of the United States at the Hearing on this matter demonstrates why the party identified on the claim, the IRS, is in fact the party more likely to get the notice where it needs to be for the formulation of any proper response. The United States argued that, unless the IRS sends a referral in a matter to the United States attorney, or to Tax Division, the United States Attorney has no authority to represent the IRS in the matter. Moreover, the United States argued that the United States Attorney is not authorized even to seek information regarding a matter unless there has been an official referral to the United States Attorney's office by the IRS. Finally, the United States argued that it does not authorize the IRS to do anything, including filing a proof of claim. These arguments make clear that the IRS is the entity asserting the claim and the one more likely to put in motion a proper response to the objection. It certainly would be anomalous to hold that the IRS may file a claim, see Hawthorne, 326 B.R. at 4-5 (noting that when a creditor files a claim, it is analogous to the filing of a complaint (citing Kline v. Zueblin, AG (In re American Export Group Int'l Servs., Inc.), 167 B.R. 311, 313-15 (Bankr. D.D.C. 1994)), but that the IRS is not the proper party to assert that claim because the IRS may not sue or be sued.

Regardless, the IRS is the real and proper party in interest with respect to the IRS Claim. Where the IRS files a proof of claim, the IRS submits to the personal jurisdiction of this Court for the allowance and disallowance of its claim. In such a case, the IRS is the real and proper party in interest with respect to any proof of claim that it files. See Scott, 437 B.R. at 379-80. In Scott, the debtors filed a motion to abate taxes, and served only the IRS. In vacating the order allowing the motion to abate to which the IRS had not responded, the BAP found that the United States, and not the IRS, was the real party in interest, observing that the IRS cannot sue or be sued. Id. at 379. Nevertheless, the BAP specifically noted as follows:

> The IRS did not file a proof of claim in the debtors' case. Had it done so, the bankruptcy court would have had jurisdiction over the IRS. "A creditor who offers proof of its claim, and demands its allowance, subjects himself to the dominion of the court, and must abide by the consequences."

Id. at 380 n.8 (citing United States v. Levoy (In re Levoy), 182 B.R. 827, 832 (9th Cir. BAP 1995)).[11] Cf. IRS v. Brickell Investment Corp. (In re Brickell Investment Corp.), 171 B.R. 149 (S.D. Fla. 1994) (permitting a case to proceed against both the IRS and the United States, and refusing "to elevate form over substance" where the United States and the IRS appeared in the bankruptcy case interchangeably, including through the filings of proofs of claim and litigating the claims).

As observed by the Court in Hawthorne and as discussed in part above, a number of courts disagree with this interpretation of Rules 3007(a) and 9014(a) and (b). Hawthorne, 326 B.R. at 4, n.3 (and cases cited therein). This Court finds that the rationale by Judge Teel in Hawthorne represents the more persuasive view. See also Summit Limits, LLC v. AMF

[11] In Levoy, the Ninth Circuit BAP held that an objection to claim must be served pursuant to Bankruptcy Rules 9014(b) and 7004. However, the BAP rested its conclusion on the finding that an objection to claim is a contested matter, and jumped from this finding without discussion to the conclusion that any paper commencing any contested matter must be served under Rule 9014. For the reasons set forth herein, this Court disagrees and finds the Ninth Circuit BAP's later opinion in State Line Hotel as the better reasoned interpretation of the rules, despite that later opinion being vacated as moot.

Bowling Worldwide, Inc. (In re AMF Bowling Worldwide, Inc.), No. 12-36495-KRH, 2013 WL 5575470, at *4 (Bankr. E.D. Va. Oct. 9, 2013) (finding that Rule 9014(b) is "simply inapplicable" to an objection to claim because it is a contested matter otherwise governed by Rule 3007(a)); In re Wilkinson, 457 B.R. 530, 546 (Bankr. W.D. Tex. 2011) (same); In re Cagle, No. 07-11689-WHD, 2008 WL 7874772, at *4 (Bankr. N.D. Ga. June 2, 2008) (same); Arnott v. Internal Revenue Serv. (In re Arnott), 388 B.R. 656, 659-60 (Bankr. W.D. Pa. 2008) (same), vacated as moot by happenstance, 395 B.R. 343, 345 (Bankr. W.D. Pa. 2008) ("[T]he Court candidly advised counsel at the argument on the Motion to Vacate that the same result would be reached if the same issues were to come before the Court again in the future (barring some intervening change in applicable law) and suggested that the IRS take more care when filing proofs of claim in the future."); In re Parker, 392 B.R. 490, 495-96 (Bankr. D. Utah 2008) (same); In re Hensley, 356 B.R. 68 (Bankr. D. Kan. 2006) (finding that service at the notice address on the proof of claim was sufficient under Rule 3007 and for due process purposes, and later clarified in Swanson v. Internal Revenue Serv. (In re Swanson), 343 B.R. 678, 684 (Bankr. D. Kan. 2006) (stating that, where an objection to claim is joined with an affirmative demand for relief, such service must be accomplished pursuant to Rule 7004 in connection with an adversary proceeding)); In re Anderson, 330 B.R. 180, 186 (Bankr. S.D. Tex 2005) (holding that an objection to claim should be served under Rule 3007); 9 Collier on Bankruptcy ¶ 3007.01[4] (Alan N. Resnick & Henry J Sommer eds., 16th ed.) ("Since Rule 3007 is the specific rule concerning objections to claims, it controls service of such an objection rather than the more general Rule 9014(b)." (citing Anderson)).

Some consideration and discussion of the varying opinions in the Ninth Circuit further demonstrates why this Court concludes that the opinion in Hawthorne is the better reasoned

interpretation. The decision in State Line Hotel, cited by the court in Hawthorne, was later vacated after the appeal became moot. In vacating the BAP's decision as moot, the Ninth Circuit followed its general practice "to vacate the judgment of the BAP and the bankruptcy court." Jorgenson v. State Line Hotel, Inc. (In re State Line Hotel, Inc.), 242 Fed.Appx. 460, 462 (9th Cir. 2007). The Ninth Circuit BAP recently recognized its conflicting opinions on this issue, but declined to indicate which of the two interpretations that it believes is correct. See Keys v. 701 Mariposa Project, LLC (In re 701 Mariposa Project, LLC), 514 B.R. 10, 16 (9th Cir. BAP 2014) ("In the past, the Panel has offered conflicting views regarding whether Rule 3007(a)'s mailing/delivery requirements are in addition to or in lieu of Rule 7004's service requirements" (referencing Levoy and State Line Hotel)).[12]

Prior to the opinion in Mariposa, but after the Ninth Circuit vacated the opinion of the BAP, at least two bankruptcy courts within the Ninth Circuit ruled that the contested matter commenced by an objection to claim must be served as provided in Rule 9014, finding that the opinion in Levoy is controlling in light of the fact that State Line Hotels was vacated, and, in any event, determining that the rationale in Levoy is more persuasive. In Monk v. LSI Title Company of Oregon, LLC (In re Monk), Ch. 13 Case No. 04-60712-fra 13, Adv. No. 10-6067-fra, 2013 WL 4051864, at *3 (Bankr. D. Or. Aug. 9, 2013), the court agreed with the holding in Levoy that Rule 3007 does not provide for the manner of service of an objection to a proof of claim, and concluded that Rule 3007 supplements Rule 9014 only with respect to notice, rather than service. Similarly, the court in In re Gordon, No. BK-S-11-22221-LBR, 2013 WL 1163773 (Bankr. D. Nev. Mar. 20, 2013), appropriately drew a distinction between service and notice. As stated by the court in Gordon:

[12] For the reasons set forth in Mariposa, this Court limits its holding to those cases in which the creditor actually has filed a proof of claim. See Mariposa, 514 B.R. at 16-17.

> Bankruptcy Rules 3007, 9014, and 7004 set forth the procedures which must be complied with when objecting to a proof of claim. Rules 3007 and 9014(a) concern ***notice,*** while the other rules – Rules 9014(b) and 7004 – are about ***service.*** These rules act in tandem to govern ***service*** of the claim objection and ***notice*** of the hearing about it.

Id. at * 2. This Court agrees with the court in Gordon that there is a difference between receiving notice of a hearing to be held on a contested matter and receiving service of the paper seeking relief that commences the underlying contested matter. However, the Court disagrees that Rule 3007(a) only contemplates or governs the former.

Rule 3007(a) provides that "[a] copy of the objection to claim with a notice of the hearing thereon shall be mailed or delivered to the claimant." Fed. R. Bankr. P. 3007(a) (emphasis added). Clearly, the rule contemplates more than simply providing notice of the hearing on the objection. It requires mailing (or otherwise delivering) a copy of the underlying objection as well. As observed by the court in Hawthorne, this is a form of service, rather than merely notice of a hearing as posited by the court in Gordon, and, if the objection must be served upon the claimant under Rule 7004, there would be no purpose in requiring that it also be delivered to the claimant under Rule 3007(a). Hawthorne, 326 B.R. at 4.

In this case, the IRS received a copy of the notice of the hearing pursuant to the method and manner that it requested to receive notices pursuant to the MDNC Trading Partner Agreement and the IRS Supplemental Notice Agreement, and the Debtor served a copy of the Claim Objection on the IRS in the name and at the address as provided on the IRS Claim. For the reasons stated herein, the Court finds that the Claim Objection and the notice of hearing were "mailed or otherwise delivered" to the IRS as required by Rule 3007(a), and the IRS therefore

was properly served with the Claim Objection in this case as required by the Bankruptcy Code and Bankruptcy Rules.[13]

Due Process

Having determined that the IRS properly was served under the Bankruptcy Code and Bankruptcy Rules, the Court must consider whether this service provided the IRS with sufficient notice to satisfy due process. As set forth above, due process merely "requires notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Espinosa, 559 U.S. at 272 (citing Mullane,339 U.S. at 314). Even if service of an objection to claim must be accomplished under Rule 7004,

> service under Rule 7004 of the Federal Rules of Bankruptcy Procedure is not constitutionally mandated. If "a party was afforded actual notice consistent with constitutional standards, then that party cannot claim a violation of its constitutional rights to due process of law simply because the technical requirements for service of process might not have been met."

AMF Bowling, 2013 WL 5575470, at *5 (quoting Wilkinson, 457 B.R. at 544).

In this case, the Claim Objection set forth sufficient substantive bases upon which the Debtor sought relief. The Claim Objection asserted that the taxes were erroneously double assessed, and the relief granted in the Claim Order was limited to the grounds and in the amounts set forth in the Claim Objection. Moreover, the United States has not argued that the content of either the notice or the Claim Objection was sufficiently defective that it failed to meet the requirements of due process. Instead, the United States seeks relief solely for what it contends is

[13] The Court notes that notice of the hearing was not required to be delivered to the United States or to the United States Attorney pursuant to Bankruptcy Rule 2002(j). This rule does not apply to notices with respect to objections to tax claims. Subsection (j)(4) of Rule 2002 applies only to notices required to be given to all creditors under Rule 2002. A notice of an objection to claim is not required to be served on all creditors under any provision of Rule 2002. Moreover, subsection (j)(4) only applies to notices for debts owed to the "United States other than for taxes…." Fed. R. Bankr. P. 2002(j)(4) (emphasis added). See Henlsey, 356 B.R. at 78-79.

a defect in the manner of service of the objection. Therefore, to the extent that the notice provided to the IRS was served in a manner consistent with due process, the substance of the Claim Objection was sufficient to put the IRS on notice of the pendency of the action and an opportunity to respond.

The Claim Objection and the notice of the hearing were sent to the IRS via United States Mail, and via the electronic service requested by the IRS, respectively. According to the Certificate of Service, the Claim Objection was mailed to the IRS at the address provided by the IRS on the IRS Claim. While the United States argues that it did not receive the Claim Objection (an argument that is undisputed), the United States does not argue that the IRS did not receive the Claim Objection, nor did it present any evidence at the hearing that the Claim Objection was not received by the IRS. "'The rule is well settled that proof that a letter properly was directed was placed in a post office, creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed.'" Bosiger v. U.S. Airways, 510 F.3d 442, 452 (4th Cir. 2007) (quoting Hagner v. United States, 285 U.S. 427, 430(1932)). See also In re Ware, No. 02-12262C-11G, 2003 WL 1960454, at *5 (Bankr. M.D.N.C. Apr. 24, 2003) (same).

Since the content of the Claim Objection and notice were satisfactory, and it is presumed the IRS received each of these documents, the Court must determine whether mailing a copy of an objection to claim and the notice to the claimant at the address for notices provided by the claimant on the claim form satisfies due process. The Court finds that it does.

Not only is the claimant (including the IRS) always in full control of the name and address that it provides on a claim form for notices, but presumably the individual submitting the claim and signing it under penalty of perjury on behalf of the claimant also is the person most

likely aware of the underlying merits of the claim and the proper person to whom notices should be sent in the event of a dispute. In fact, in light of the arguments of the United States in this case, it is difficult to imagine how mailing the notice and objection to the United States Attorney could have provided a better opportunity for the IRS (or the United States) to respond in this case. The United States argues that it does not take any action in a case unless it is requested to do so by the IRS. How then could the IRS make such a request to the United States unless the IRS receives notice of the matter?

Other courts considering this issue similarly have found that providing service upon a party at the name and address provided by the claimant on the claim form constitutes sufficient notice for purposes of due process. See AMF Bowling, 2013 WL 5575470, at *4-5 (notice provided at the address on the claim form satisfies the due process requirements in Mullane); Hawthorne, 326 B.R. at 5 ("When the court has already acquired jurisdiction over the creditor's person by way of its filing a proof of claim, due process is satisfied by mailing the objection and notice to the name and address specified on the proof of claim for the receipt of notices . . . . "); Hensley, 356 B.R. at 79-80 (finding that service on a department of the United States at the address provided on the proof of claim satisfied due process with respect to an objection to the claim). Therefore, the Court finds that delivering a copy of the notice of the hearing to the IRS at the email address which the IRS has designated to receive notices, and mailing a copy of the Claim Objection to the IRS at the address provided by the IRS on the claim form filed by the IRS satisfied due process.[14]

[14] Rule 3007(a) provides that "[a] copy of the objection with notice of the hearing" shall be mailed or otherwise delivered to the claimant. To the extent that the terms of this rule require that the objection and notice of hearing be simultaneously served together, the IRS still would not be entitled to the relief that it requests under Rule 60(b) in this case. First, the United States did not contend that service was defective due to the notice and objection being served separately. An argument not raised at the trial level is generally waived. U.S. ex rel. Bunk v. Gosselin World Wide Moving, N.V., 741 F.3d 390, 395 (4th Cir. 2013). Second, by agreeing to have all notices served upon it via electronic service, the IRS arguably further waived any right provided by rule to receive the underlying

For the foregoing reasons, the Court finds that the Claim Order is not void as contemplated under Rule 60(b)(4), and the Motion to Vacate is DENIED.

[END OF DOCUMENT]

objection served in tandem with the notice. Finally, and most importantly, even if the rule requires that both the objection and the notice be served together, a failure to do so is merely a procedural violation, which does not rise to the level of a violation of due process under the facts of this case for the reasons set forth herein.

Trading Partner Agreement
(for use in electronic bankruptcy noticing)

This Agreement, by and between The United States Bankruptcy Court for the Middle District of North Carolina ("Sender") and The Internal Revenue Service ("Receiver"), for the purpose of providing general procedures and policies to be followed by the Sender and Receiver ("Parties") when using electronic data interchange ("EDI") for transmitting and receiving documents, is the written request referred to in Rule 9036, Federal Rules of Bankruptcy Procedure (Fed. R. Bank. P.).

WHEREAS, Rule 9036, Fed. R. Bank. P., authorizes the clerk or other party as directed by the court, to send notices to creditors and interested parties, previously transmitted by mail, by electronic transmission, including all or part of the information required to be contained in such notices; and

WHEREAS, the Parties desire to facilitate noticing and Receiver's data entry in all bankruptcy cases in this District by electronically transmitting and receiving data in agreed formats instead of conventional paper notice by mail and to assure that the notice requirements of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure are met through the use of available electronic technologies for the mutual benefit of the parties;

THEREFORE, the Parties agree as follows:

SCOPE This Agreement provides for the electronic transmission in accordance with the provisions of this Agreement, including the two Exhibits attached hereto and

incorporated by reference, of the information required to be contained in specific bankruptcy notices, and the electronic confirmation that the transmission has been received by the Receiver.

AUTHORIZATIONS For those bankruptcy notices listed in Exhibit 1 (Bankruptcy Notices), Receiver authorizes Sender to satisfy its noticing obligations to Receiver, in accordance with Rule 9036, Fed. R. Bank. P., by making data files electronically available to Receiver in accordance with this Agreement. For those data files made available electronically, Receiver waives all rights to receive the standard "boiler-plate" text of notices attached to and listed in the current Exhibit 1 and to receive written notice by mail.

The Receiver will submit a list with this Agreement, as Exhibit 2 (Standard Name and Postal Service Address, Standard Electronic Address, Synonyms for Name and Postal Service Addresses), of the common synonyms for Receiver's name and the specific electronic and postal service addresses in accordance with Rule 2002(g), Fed. R. Bank. P. to which notices are to be directed in accordance with this Agreement.

Receiver acknowledges and agrees to the Technical Specifications set forth in the Implementation Convention for the Accredited Standards Committee X12 electronic data interchange version 3060 transaction set 175 Bankruptcy Court Notice.

Sender will make all reasonable efforts to transmit notices intended for Receiver electronically, however, Sender does not warrant that all notices it is required to send to Receiver will be transmitted electronically. All notices Sender does not transmit electronically will be sent to Receiver by standard First Class mail service.

THIRD-PARTY SERVICES Data files will be transmitted electronically to the Receiver by transmission to the Collection Point (CP) maintained by the Defense Logistics Agency (DLA) Defense Automatic Addressing System Center (DAASC) for transmission to Receiver as a value added network (VAN) or for pick up by another VAN service provider of the Receiver's choice. If not using DAASC for VAN services, the Receiver will contract for VAN service which is compatible with the DAASC CP service used by the Sender and will pay the costs for the VAN service.

CONFIRMATIONS AND ACKNOWLEDGMENTS The Receiver agrees its VAN service provider will be its agent for confirmation and that the confirmation described in the following paragraph will satisfy the requirements of Rule 9036, Fed. R. Bank. P.

The VAN will confirm that it has received and delivered transmission into Receiver's mailbox by returning a confirmation to the CP, either in proprietary format or using the ASC X12 242 Data Status Tracking transaction. Sender's non-receipt of confirmation within two (2) hours of transmission to the CP will be considered to be System Failure (see below).

SYSTEM FAILURE In case of failure of the electronic noticing system for any reason, the Sender will provide paper notice to the Receiver.

TRANSACTION SECURITY Each party shall use due care and diligence to capture, transmit and maintain all electronic data with the same level of security used for conventional paper notices.

REDUNDANT OPERATION For a limited initial period, the Receiver will receive redundant paper notices as well as the electronic notices provided for in this Agreement. At such

time as the Sender determines that a sufficient period of electronic transmission has been provided to permit effective capture of data, paper noticing for the Receiver will cease. The Receiver may terminate this Agreement at that time without allowing 30 days for the notice and not receive notices electronically.

TERMINATION Either Party may terminate this Agreement on thirty (30) days notice to the other Party.

MISCELLANEOUS

1. SEVERABILITY: Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the limited extent of such determination, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions, unless their invalidity or enforceability are so critical to this Agreement as to make it unreasonable to proceed in their absence.

2. ENTIRE AGREEMENT: This Agreement constitutes the full and complete agreement between the Parties relating to the matters specified in this Agreement and supersedes all prior representations and agreements, whether oral or written, with respect to such matters. This does not include the agreement(s) either party may have with service providers referred to in this Agreement. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party.

3. LIMITATION OF DAMAGES: Neither Party shall be liable to the other for any actual, special, incidental, exemplary or consequential damages arising from or as a result of any delay, omission or error in the electronic transmission or receipt of any data pursuant to this

Agreement, even if either party has been advised of the possibility of such damages.

4. MODIFICATION: This Agreement, including all Exhibits, may be modified from time to time as agreed to by the Parties, in writing.

5. NOTIFICATION: Unless otherwise specified herein, any notification between Sender and Receiver required under this Agreement shall be in conventional paper form, sent first class by United States mail, or by a recognized courier service, postage prepaid, and addressed to the intended recipient as follows:

Internal Revenue Service
320 Federal Place
Greensboro, NC 27401

Either Party may from time to time designate a different notice address by giving the other Party thirty days notice of the change in writing .

EFFECTIVE DATE This Agreement shall take effect on March 15, 2000.

For the Court: Linda M. Ball **Date:** 3/2/2000
Linda M. Ball, Chief Deputy

Subscriber: Tom Julian **Date:** 3/27/00
FOR District Director

UTP 2

SUPPLEMENTAL EMAIL NOTIFICATION FORM
for Existing Electronic Data Interchange (EDI) Trading Partners

Certain bankruptcy court notices are transmitted to your organization as EDI transactions, including notices of meeting of creditors, dismissals, discharges, and notices of assets. Court notices that cannot be sent by EDI are sent through the U.S. Mail, unless you elect to receive supplemental email notification.

If you would like to eliminate paper notification altogether, please sign up for email notification below. To learn more about email notification, go to ebn.uscourts.gov.

I. Email

Recipients are able to retrieve their notices through a hyperlink by email. Receiving the notices by Email Link ensures that the sizes of emails are small and will not clutter in-boxes.
This agreement is initially limited to notices from the New Mexico Court.
Specify Email Address for Notice Delivery: cio.bncmail@irs.gov

Please select a delivery option:

~~1. Email Link Option 1~~
~~One email contains a link to a single PDF file. The PDF file contains multiple notices (e.g., 20 notices in one PDF file). This option is the default if no option is selected.~~

2. Email Link Option 2
An email for each notice contains with one link to a PDF file (e.g., 20 notices are sent as 20 emails, each email with one link).

~~3. Email Link Option 3~~
~~An email contains multiple links to PDF files. Each link contains one notice (e.g., 20 notices have 20 individual links).~~

II. Contact Information

EDI Trading Partner: Internal Revenue Service

Specify the person to be contacted regarding supplemental electronic notification:

Contact Name: Denise M Valdez

Contact Phone Number: 202 283-2292

Contact Email: Denise.M.Valdez@irs.gov

IV. How Email Works

A. Redundant Mode for 30 Days Only

Email service will begin approximately two weeks after you complete and return this form to the Bankruptcy Noticing Center (BNC). During the first 30 days of email service, the BNC also will mail paper copies of notices so that you can confirm the process is working properly. This process is called redundant mode, and it begins from the date the BNC sets up your email service, not the date of your first emailed notice. Upon termination of the 30-day redundant mode period, all notices will be sent electronically only.

B. Name and Address Matching

When you completed the EDI Trading Partner Agreement, or any update thereto, you supplied the BNC with all names and addresses for which you wanted court notices to be sent electronically. This list of names and addresses also will apply to your email service. The BNC sends a notice electronically when the names and addresses that you provided per your Agreement match a name and address on the bankruptcy court mailing matrix. If the recipient name and address on the court's mailing matrix does not match any names or addresses that you provided pursuant to your Agreement, the BNC will mail the notice through the U.S. Postal Service. The U.S. Courts and BNC do not warrant that all court notices will be sent electronically, and court notices that are not transmitted electronically, will be sent via U.S. Mail. You must notify the BNC if your email or names and addresses used for electronic notice change. You can make updates by completing a Change of Account Information Form available at ebn.uscourts.gov.

C. Termination

Either the U.S. Courts or EDI Trading Partner may terminate supplemental email notification without cause by giving the other party written notice.

Note: The BNC does not process all notices you may receive in a case. Notices generated by trustees, debtors, and some court-generated notices are not processed by the BNC.

V. Sign and Return

This constitutes an addendum to your EDI Trading Partner Agreement. Neither the BNC nor the courts bear any liability for errors resulting from information submitted herein.

I, the undersigned, affirm under penalty of perjury that I am duly authorized to make the modifications specified on this form or attached hereto on behalf of the EDI Trading Partner.

Name: JNBBB Digitally signed by JNBBB DN: cn=JNBBB, email=Denise.M.Valdez@irs.gov Date: 2011.01.06 17:10:25 -05'00' Date: 1/6/2011

Corporate Title or Agent (if applicable):

_____

Signature: _____

Please email, mail, or fax the signed form to the Bankruptcy Noticing Center at:

BAE SYSTEMS - Attention BNC Dept.
2525 Network Place
Herndon, VA 20171-3514
Email: ebn@baesystems.com
Fax: (703) 563-7508

For additional information, you may call the toll free help line at 1-877-837-3424.

TP 2

Winters, Gigi G (US SSA)

From: Vick Judy G [Judy.Vick@irs.gov]
Sent: Thursday, May 31, 2012 11:38 AM
To: Winters, Gigi G (US SSA)
Subject: Email Noticing

Hi Gigi,

I usually send requests to add new states to the electronic noticing through Denise Valdez. However, Denise is off on a wonderful vacation right now - good for her! I would like to add the following states to electronic distribution effective Monday, June 4th, if possible:

New Hampshire
New Jersey
New York
North Carolina
North Dakota

If this is too short of notice to implement, please let me know what date is acceptable. Thanks in advance for your assistance.

Judy Vick
Senior Tax Analyst
Campus Filing and Payment Compliance
Centralized Operations - Insolvency
801 Broadway, MDP #45
Nashville, TN 37203
Phone - (615) 250-5995
FAX - (615) 250-5699

SERVICE LIST

Internal Revenue Service
Centralized Insolvency
PO Box 7346
Philadelphia, PA 19101-7346

Cheryl T. Sloan
Assistant U. S. Attorney
101 S. Edgeworth St., 4th Floor
Greensboro, NC 27401

J. Marshall Shelton
Law Office of J. Marshall Shelton
P.O. Box 1470
Graham, NC 27253

Anita Jo Kinlaw Troxler
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Phillip Brent Dean
Alaine Ceder Dean
7149 Virginia Lamm Dr.
Graham, NC 27253

William Miller
US Bankruptcy Administrator

Office of United States Attorney, MDNC
Attn: Civil Process Clerk
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Greensboro, NC 27401