

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW MEXICO

WILLIAM H. PAYNE and
ARTHUR R. MORALES,

Plaintiffs,

v.

CIVIL NO. 97-266 MCA/LFG

NATIONAL SECURITY AGENCY,

Defendant,

UNITED STATES OF AMERICA,

Garnishor,

and,

SANDIA LABORATORY FEDERAL CREDIT UNION
AND ITS SUCCESSORS OR ASSIGNS
ATTENTION: LOSS PREVENTION,

Garnishee.

UNITED STATES' RESPONSE TO DEBTOR'S
MANDATORY JUDICIAL NOTICE NO. 2 (Doc. 146)

The Debtors' Mandatory Judicial Notice No. 2 that was filed by the Debtors as Docket No. 146 is not a document for which there is any provision under the Federal Rules of Civil Procedure (like their Mandatory Judicial Notice No. 1). However, to the extent that it may be deemed an objection to the garnishment proceedings under 28 U.S.C. § 3205(c)(5), the United States provides this response to the Debtors' assertions in Docket No. 146.

The Debtors appear to assert on the first five pages of Docket No. 146 that Mr. Payne's copies of the original garnishment papers for Sandia Laboratories Federal Credit Union (the "Credit Union") were included in the envelope mailed to Mr. Morales on January 28, 2008 (USPS Certified Mail Receipt No. 005-1820-0006-5937-6621). Even if this is true, he has not disputed that he was re-served by certified mail on February 13, 2008. See Docket No. 143, Exhibit A, Attachment 2. Further, he has not disputed that he posted the garnishment papers relating to him on his web site. See Docket No. 143, Exhibit B. Thus, he has received adequate notice of the writ of garnishment and has the further opportunity to make his claim of exemption at the hearing set in this matter. .

The Debtors on pages five through seven of Docket No. 146 complain about the filing date shown on the Court's docket for their Mandatory Judicial Notice No. 1. Whether the Court received it on March 6 or March 7, 2008, is irrelevant. It was filed in time for the Court's consideration prior to the hearing set in this matter. Thus, the Debtors are not prejudiced by any possible typographical error by the Court on the docket sheet.

Similarly, the Debtors complain on pages seven through ten of Docket No. 146 that a typographical error in Mr. Morales social security number invalidated the writ of garnishment. The Debtors cite no relevant authority for this assertion. Adequate information was provided to the Credit Union to identify Mr. Morales by name and address as the debtor under the writ of garnishment. The statute does not even require

that the social security number of the debtor be included in the writ. 28 U.S.C, § 3205(c)(2). The United States acknowledges that one digit was incorrect but any error in the exact number is irrelevant.

Finally, the Debtors at pages ten through twelve of Docket No. 146 object to the hearing set in this matter and make allegations of improper conduct by the Court and counsel for the United States and the Credit Union which are frivolous as previously argued in the United States' Response to Mandatory Judicial Notice No. 1. (Docket No. 145).

WHEREFORE, the United States requests that all relief in the Debtors' Mandatory Judicial Notice No. 2 be denied.

Respectfully submitted,

GREGORY J. FOURATT
United States Attorney

/s/ Electronically filed March 24, 2008

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I HEREBY CERTIFY that a true copy of the foregoing pleading was mailed, postage prepaid, on March 24, 2008, to the following non-participants in the CM/ECF electronic filing system:

William H. Payne at 13015 Calle De Sandias NE, Albuquerque, New Mexico 87111-2924;

Arthur Morales at 1400 Camino Amparo NW, Albuquerque, New Mexico 87107-2608;
and
Sandia Laboratory Federal Credit Union, c/o Kevin D. Hammar, Attorney for Garnishee,
1212 Pennsylvania NE, Albuquerque, New Mexico 87110.

/s/ JOHN ZAVITZ
JOHN ZAVITZ
Assistant United States Attorney

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