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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

SACV10-00479 CJC (ANX)

13 ROTHWELL, Ltd.,
14 a Cayman Islands Corporation,

15 Plaintiff,

16 v.

17 UNITED STATES OF AMERICA,

18 Defendant.

) CASE NO. _____
)
) COMPLAINT FOR WRONGFUL LEVY
) PURSUANT TO 26 U.S.C. §7426

19 Plaintiff Rothwell, Limited ("Ltd."), by and through counsel undersigned, for its Complaint
20 for Wrongful Levy against Defendant United States of America, alleges as follows:

21 **I. PARTIES.**

22 1. Plaintiff Rothwell, Ltd. (herein after "Rothwell"), is a corporation formed pursuant
23 to the Companies Law of the Cayman Islands, British West Indies. Rothwell's registered address
24 is Rothwell, Ltd., c/o FCM Ltd., Governors Square, Unit #2-105, West Bay Road, Grand Cayman,
25 Cayman Islands KY-1104.

26 2. Defendant is the United States of America.

27 **II. JURISDICTION AND VENUE.**

28 3. This action arises under 28 U.S.C. §§1331 and 1346(e) and 26 U.S.C. §7426(a)(1),

1 based on Defendant's wrongful levy on Plaintiff's property.

2 4. Venue lies in this district under 28 U.S.C. §§ 1391(b)(2) and (e)(2) and 1402(c)
3 because the subject personal property is located within the Central District of California.

4 **111. STATEMENT OF FACTS.**

5 **A. THE SUBJECT PROPERTY.**

6 5. Plaintiff is the sole legal and equitable owner of the personal property upon which
7 Defendant wrongfully levied when such property, i.e. money and securities ("the subject property"),
8 was located at Morgan Stanley's branch office at 8001 Irvine Center Drive, 8th Floor, Irvine,
9 California 92618; (948) 341-7800, which is within the above entitled judicial district.

10 6. The subject property is more particularly described as: the contents of "International
11 Active Assets Account Number xxx xxxxxx 089."

12 7. On November 6, 2009, Defendant United States wrongfully levied on the subject
13 property by serving a Notice of Levy on Morgan Stanley, for the tax liabilities allegedly owed by
14 Joseph R. Francis, asserting that Rothwell, Ltd. is a "nominee" of Joseph R. Francis. *See Exhibit*
15 *A*, attached hereto and incorporated as though set forth in full.

16 8. The value of the subject property on November 6, 2009, at the time the Jeopardy Levy
17 was served on Morgan Stanley was approximately twenty million dollars (\$20,000,000.).

18 9. In December, 2009, pursuant to the levy Morgan Stanley surrendered Nineteen
19 Million Four Hundred Twelve Thousand Six Hundred Seventy Four Dollars and Forty Three Cents
20 (\$19,412,674.43) from Rothwell's account to Defendant United States.

21 10. Colin R. Chaffe ("Chaffe"), President of Rothwell, opened the Morgan Stanley
22 account on July 2, 2001. The only "Authorized Individuals" on the account at that time were Chaffe
23 and Nicola S. Jordan ("Jordan"), Secretary/Treasurer of Rothwell. Chaffe is currently the only
24 person authorized to act for Rothwell on this account, or any other property owned by Rothwell.

25 11. Chaffe is a British citizen, resident of the Cayman Islands for many years, and
26 currently a resident of the Turks & Caicos Islands in the British West Indies ("B.W.I.").

27 12. Jordan is a British citizen, resident of the Cayman Islands for many years, and
28 currently a resident of the Turks & Caicos Islands, B.W.I.

1 13. Joseph R. Francis (“Francis”) never had any control over, nor any right to control,
2 Rothwell’s Morgan Stanley account.

3 14. Francis never had any control over, nor any right to control, Rothwell’s corporate
4 and financial activities.

5 **B. BACKGROUND.**

6 (a). Rothwell, Ltd.

7 15. On July 9, 2000, the Registrar of Companies, Cayman Islands, B.W.I., issued a
8 Certificate of Incorporation, No. CR-101238, to Rothwell Limited as “an Exempted Company
9 incorporated in the Cayman Islands, with Limited Liability with effect from the 9th Day of June Two
10 Thousand.” *See Exhibit B*, attached hereto and incorporated by this reference as though set forth in
11 full.

12 16. The total number of issued and outstanding shares of Rothwell is one hundred (100).

13 17. On June 9, 2000, Rothwell’s 100 shares were issued to Inceptre Holdings, Ltd., TCI
14 Company, Ports of Call, P.O. Box 656, Providenciales, Turks & Caicos Islands, B.W.I., which held
15 the shares in trust for the benefit of The Francis Trust.

16 18. Chaffe and Jordan were appointed the directors and officers of Rothwell on behalf
17 of Inceptre Holdings, Ltd.

18 19. Inceptre Holdings, Ltd., was incorporated in the Turks & Caicos Islands (Registered
19 No. E. 9364) on March, 5, 1992. The sole shareholders of Inceptre Holdings, Ltd., were and are
20 Colin R. Chaffe (50 shares) and Nicola S. Jordan (50 shares).

21 20. Joseph Francis has never owned or controlled – directly or indirectly – any interest
22 in Inceptre Holdings, Ltd.

23 21. On November 29, 2005, Inceptre Holdings, Ltd.’s 100 Rothwell shares were
24 transferred to Hallmark Trust Limited, which held the 100 shares in trust for the benefit of The
25 Francis Trust. However, Hallmark Trust Ltd. inadvertently failed to record the transfer of the 100
26 Rothwell shares from Inceptre to Hallmark with the Registrar of Companies for the Cayman Islands.

27 22. On November 29, 2005, Hallmark Bank and Trust, Ltd., fka Hallmark Trust, Ltd.,
28 (collectively “Hallmark”) assumed management of Rothwell’s corporate and financial affairs and

1 continued to do so until January 29, 2010.

2 23. The following were appointed officers of Rothwell: Brian Trowbridge, President;
3 Gregory S. Hurd, Secretary; and Colin Whittingham, Treasurer.

4 24. Brian Trowbridge, a Canadian citizen and resident of the Turks & Caicos Islands,
5 B.W.I., is the Chairman and Chief Executive Officer of Hallmark Bank & Trust Ltd. ("Hallmark").

6 25. Gregory S. Hurd is a Canadian citizen, former resident of the Turks & Caicos Islands,
7 B.W.I., and is now retired and a resident of Costa Rica.

8 26. Colin Whittingham is a British citizen and resident of the Turks & Caicos Islands,
9 B.W.I.

10 27. Hallmark Bank and Trust, Ltd.'s address is P.O. Box 656, Tropicana Plaza,
11 Providenciales, Turks & Caicos Islands, B.W.I.

12 28. Joseph Francis has never owned or controlled – directly or indirectly – any interest
13 in Hallmark Trust, Ltd.

14 29. On January 29, 2010, Rothwell's 100 shares were transferred to The Francis Trust
15 and the transfer was duly recorded with the Registrar of Companies for the Cayman Islands.

16 30. At all relevant times, as directors and officers, either Chaffe, Jordan, Trowbridge,
17 Hurd and/or Whittingham directed and controlled all of Rothwell's operations, finances and
18 investment decisions.

19 31. Francis had no authority to control or direct Rothwell's operations, finances, assets
20 and investment decisions.

21 32. Francis never directed nor controlled the operations, finances, assets, or investment
22 decisions of Rothwell, Ltd.

23 **(b). The Francis Trust.**

24 33. The Francis Trust was created on May 24, 1999, pursuant to the laws of the Turks &
25 Caicos Islands, B.W.I.

26 34. The Francis Trust indenture was drafted and created by Owen Foley, Attorney at Law,
27 of the law firm of Misick & Stanbrook, Richmond House, P.O. Box 127, Providenciales, Turks &
28 Caicos Islands, B.W.I.; <http://w.w.w.misickstanbrook.tc>.

1 35. The Francis Trust was drafted to create and did create an irrevocable discretionary
2 trust, whereby all power and discretion, including *inter alia* decisions concerning investments and/or
3 disbursements, is vested in the Trustee(s), viz. any and all disbursement(s) to any beneficiary are
4 determined at the sole discretion of the Trustee(s) so that no beneficiary has any right to any
5 property of The Francis Trust until delivery of such property to them is completed by the Trustee(s),
6 who has/have no duty to make any such distribution until twenty-one (21) years after the death of
7 the last living person identified as a potential beneficiary.

8 36. Since the creation of the Francis Trust to the date of filing the instant Complaint, no
9 distribution has been made to any beneficiary or any other person or entity.

10 37. Settlement of the trust was completed on May 24, 1999, by and between Joseph
11 Raymond Francis, Settlor, and Hallmark Trust Ltd., Trustee.

12 38. The first Protector of The Francis Trust was Pittsford Ltd. of Craigmuir Chambers,
13 P.O. Box 71, Road Town, British Virgin Islands, B.W.I. ("First Protector").

14 39. On or about January 28, 2005, pursuant to provision (iii) of the Fifth Schedule (the
15 Protector provision) of the trust indenture, the Trustee, Hallmark Bank and Trust, Ltd., appointed
16 Brian J. Rayment of the Oklahoma law firm of Kivell, Rayment, Francis, Coulson and Heath, P.C.,
17 as Protector of The Francis Trust. Mr. Rayment's law partner Joe B. Francis is not related in any
18 way to Joseph R. Francis, whose allegedly unpaid taxes are claimed by defendant to support its
19 wrongful levy. The law firm's address is: Triad Center, Suite 240, 7666 East 61st Street, Tulsa,
20 Oklahoma 74133; telephone: (918) 254-0626.

21 40. The Francis Trust beneficiaries are Joseph Francis, his parents and children and
22 Oklahoma Film Holding Corporation.

23 41. Although Francis is one of the beneficiaries, as a matter of Turks & Caicos law
24 Francis is not a "beneficial owner," of The Francis Trust.

25 42. At all relevant times, the Trustee, Hallmark Bank & Trust Ltd. (fka Hallmark Trust,
26 Ltd.), through its directors and officers directed and controlled the operations, finances, assets and
27 investment decisions of The Francis Trust.

28 43. On March 2, 2010, Hallmark Bank & Trust Ltd., retired as the Trustee of The Francis

1 Trust and Colin Chaffe was appointed the Trustee of The Francis Trust.

2 44. As a matter of fact and law Francis had no authority to direct or control The Francis
3 Trust's operations, assets, finances or investment decisions.

4 45. Francis did not direct or control the operations, finances, assets or investment
5 decisions of The Francis Trust.

6 (c). **Joseph R. Francis.**

7 46. The statements of facts asserted in the following paragraphs are matters of public
8 record set forth in pleadings filed in this Court as explained *infra*.

9 47. On September 23, 2009, Mr. Francis agreed to plead guilty to two misdemeanor
10 counts of filing a false tax return. Mr. Francis agreed that he should have reported and paid the tax
11 on the interest income earned on the Rothwell Morgan Stanley account.

12 48. On November 6, 2009, Judge Otero of this Court accepted Mr. Francis' plea to two
13 misdemeanor counts of filing a false tax return and sentenced him according to a binding Plea
14 Agreement with the government. *See U.S. v. Francis*, Case No. 2:08-cr-00494-SJO.

15 49. On or before that same date, Francis paid in full all restitution, fines and assessments
16 required by the plea agreement. *U.S. v. Francis, supra*.

17 50. A few hours later, officers of the Internal Revenue Service, United States Department
18 of the Treasury, served Mr. Francis with Notices of Jeopardy Assessments and Taxes Due totaling
19 over \$33 million dollars. *Francis v. U.S.*, Case No. 2:09-cv-09449-RGK-FFM (CR #1) (hereinafter
20 the "Jeopardy Assessment action").

21 51. On January 25, 2010, in support of his motion for reconsideration in his Jeopardy
22 Assessment action, Mr. Francis filed the Declaration of expert witness Michael C. Durney, Esq., of
23 the Law Offices of Michael C. Durney, 1072 Thomas Jefferson Street N.W., Washington, D.C.
24 20007; (202) 965-7744; Email: med@mdurney.com. Attorney Durney is a former Principal Deputy
25 Assistant Attorney General and Acting Assistant Attorney General for the Tax Division of the
26 Department of Justice, who opined that as a matter of law that: "the fact that Mr. Francis was
27 required to include Rothwell income on his personal income tax returns does not mean that Mr.
28 Francis is the actual 'owner' of Rothwell's assets and income." (CR #46-5, pp. 23-28 at ¶8). *See*

1 *Exhibit C*, attached hereto and incorporated herein as though set forth in full.

2 (d). **Matters Of Foreign And United States Law.**

3 52. The Cayman Islands are a British Overseas Territory; the Governor is appointed by
4 the Queen of England, who is bound to confer with the Executive Council in the exercise of his
5 powers. The every-day administration of government is vested in the Executive Council made up
6 of the three official members and four elected members (selected from the twelve elected members
7 of the House) and presided over by the Governor.

8 53. The Courts having jurisdiction in the Cayman Islands are: the Summary Court; the
9 Grand Court; the Court of Appeal; and the Judicial Committee of the Privy Council. The Grand
10 Court is a court having unlimited civil and criminal jurisdiction subject to appeal and corresponds
11 to the High Court in England.

12 54. English Common Law, as modified by local ordinances, is the law of the Cayman
13 Islands.

14 55. Rothwell is a Cayman Islands corporation wholly owned by The Francis Trust, not
15 by Mr. Francis.

16 56. Mr. Francis is one of the beneficiaries of The Francis Trust, created under Turks &
17 Caicos Islands laws.

18 57. The Turks & Caicos Islands are a British Overseas Territory; a governor is appointed
19 by the Queen of England.

20 58. Like the Cayman Islands, the Judicial Committee of the Privy Council is the court
21 of final appeal for the Turks and Caicos Islands, B.W.I.

22 59. English Common Law, as modified by local ordinances, is the law of the Turks &
23 Caicos Islands.

24 60. As a matter of Turks & Caicos law and the trust indenture Mr. Francis does not own
25 nor control The Francis Trust. Instead, all control, discretion and power is vested in the Trustee.

26 61. A Cayman Islands corporation cannot carry on business until the Registrar of
27 Companies signs the Certificate of Incorporation.

28 62. Before the Registrar of Companies can issue the Certificate of Incorporation a

1 Memorandum of Association and the Articles of Association must be lodged with the Registrar of
2 Companies.

3 63. The Memorandum of Association states the location of the registered office of the
4 company and sets forth the object(s) for which the company is being formed (aka “the objects
5 clause”).

6 64. The objects clause not only describes the kind of business(es) the company is
7 intending to carry on but also the things it has the power to do.

8 65. The Memorandum of Association states how much capital the company is to have
9 and into how many shares that capital is to be divided.

10 66. The Memorandum of Association regulates the corporation’s powers, objects, capital
11 and how the liability of members and directors is limited.

12 67. The Articles of Association contain the company’s internal regulation and how its
13 affairs are to be conducted. The Articles set out the internal regulations for the management of the
14 company and the rights and duties of the members and directors among themselves.

15 68. The Articles of Association are the internal regulations of the corporation over which
16 the members have full discretion and control, which they may alter at their discretion.

17 69. As a matter of Cayman Islands law and Rothwell, Ltd.’s Memorandum of Association
18 and Articles of Association, Mr. Francis does not own nor control any aspect of Rothwell. Instead,
19 all discretion, power and control is vested in the members and directors of the corporation.

20 70. Pursuant to the “Controlled Foreign Corporations” rules set out at (Title 26, United
21 States Code) Sections 951 *et seq.* of the Internal Revenue Code (also referred to as “Subpart F”), for
22 United States tax purposes only, Mr. Francis, by reason of his being a beneficiary of the Francis
23 Trust, is treated as the “owner” of Rothwell’s stock and is taxed on the income of Rothwell.

24 71. The fact that Mr. Francis as a U.S. taxpayer is required by certain technical provisions
25 of the Internal Revenue Code to include the Rothwell income on his personal income tax returns
26 does not render Mr. Francis the actual “owner” of Rothwell’s assets and income.

27 72. The fact that Mr. Francis as a U.S. taxpayer is required by certain technical provisions
28 of the Internal Revenue Code to include the Rothwell income on his personal income tax returns

1 does not provide, constructively or otherwise, control of Rothwell's assets, income, corporate
2 activities, financial activities or investments to Mr. Francis.

3 73. The Internal Revenue Code cannot and does not change the legal ownership of
4 Rothwell from The Francis Trust to Mr. Francis.

5 74. The Internal Revenue Code cannot nor does it purport to change the legal nor factual
6 control of Rothwell from Inceptre Holdings Ltd. and Hallmark Trust Ltd. to Mr. Francis.

7 75. In the Plea Agreement, Mr. Francis agreed that the interest income earned on the
8 Rothwell Morgan Stanley account should have been reported on his personal income tax return. *U.S.*
9 *v. Francis, supra.*

10 76. The Francis Plea Agreement is consistent with the Subpart F inclusion required under
11 the Controlled Foreign Corporation rules applicable to the facts and circumstances instanter.

12 77. The technical provisions of Subpart F work as follows:

- 13 a. To be a Controlled Foreign Corporation, at least 50% of the ownership of the
14 corporation must be owned by "United States shareholders." 26 U.S.C.
15 §957(a). For these purposes, a "United States shareholder" is a person
16 owning at least 10% of the voting stock in the foreign corporation. 26 U.S.C.
17 §951(b).
- 18 b. Even if the foreign corporation is a Controlled Foreign Corporation, only
19 certain types of income are subject to inclusion on the United States
20 shareholder's tax returns. 26 U.S.C. §951(a)(1) and (2); 26 U.S.C. §952(a).
21 Thus, although most business income is not subject to inclusion, the interest
22 and dividends earned by a Controlled Foreign Corporations are subject to
23 inclusion. 26 U.S.C. §§952(a)(2), 954(a)(1) and (c)(1)(A).
- 24 c. The amount of any Subpart F inclusion required to be reported on the tax
25 returns of United States shareholders is determined under rules (26 U.S.C.
26 §§951(a)(2)(A) and 958), which incorporate (with some minor adjustments)
27 the complex constructive corporate tax ownership rules of 26 U.S.C. §318.
- 28 d. The rules discussed in subpart "c." *supra*, attribute ownership among certain

1 family members and between entities and their owners/beneficiaries.

2 78. These Subpart F provisions apply to Mr. Francis as follows:

- 3 a. The Francis Trust, a foreign trust, is the sole shareholder of Rothwell.
- 4 b. The Third Schedule to the Francis Trust states that the permissible
- 5 beneficiaries of the Francis Trust are Mr. Francis, the mother and father of
- 6 Mr. Francis, any children of Mr. Francis, and Oklahoma Film Holding
- 7 Corporation, which on information and belief, is solely owned by Mr.
- 8 Francis. Distributions by the Trustee are entirely discretionary and the
- 9 interests of eligible beneficiaries are not quantified.
- 10 c. Pursuant to 26 U.S.C. §958(a)(2), stock owned by a foreign trust is treated as
- 11 if it were owned by the foreign trust's beneficiaries. Thus, Mr. Francis, his
- 12 parents, his children and Oklahoma Film Holding Corporation are all treated
- 13 for income tax reporting purposes as if owning interests in Rothwell in
- 14 proportion to their beneficial interest in the Francis Trust.
- 15 d. For purposes of the Subpart F inclusion, Mr. Francis is treated as owning any
- 16 interests owned by his parents or children pursuant to 26 U.S.C. §958(b) and
- 17 318 (a)(1)(ii).
- 18 e. For purposes of the Subpart F inclusion, Mr. Francis is also treated as owning
- 19 the full amount of any interest owned by Oklahoma Film Holding
- 20 Corporation. 26 U.S.C. §§958(b) and 318 (a)(1)(ii).

21 79. Thus, for purposes of 26 U.S.C. §§958(a)(1) and 951(a)(2), which requires the

22 inclusion of the undistributed Subpart F income, Mr. Francis is treated for income tax reporting

23 purposes as owning all of Rothwell's stock.

24 80. Consequently, Mr. Francis was required to include the entire amount of the interest

25 income of Rothwell on his personal return, notwithstanding the fact that Francis was not the actual

26 owner of Rothwell, nor an officer, director or shareholder of Rothwell.

27 81. The fact that Mr. Francis was taxed under Subpart F on the interest of the Rothwell

28 Morgan Stanley account does not render Rothwell a nominee for Mr. Francis, as asserted in the

1 Notice of Levy served on the Rothwell Morgan Stanley account.

2 **IV. PLAINTIFF'S CAUSE OF ACTION - WRONGFUL LEVY.**

3 82. Plaintiff hereby incorporates paragraphs 1 through 77 herein above.

4 83. Pursuant to 26 U.S.C. § 7426 (a)(1), if a levy has been made on property, any person
5 (other than the person against whom is assessed the tax out of which such levy arose) who claims
6 an interest in such property and that such property was wrongfully levied upon may bring a civil
7 action against the United States in a district court of the United States without regard to whether such
8 property has been surrendered to the Secretary of the Treasury.

9 84. Pursuant to 26 U.S.C. §§6532(c) and 7426(I) a suit for return of property wrongfully
10 levied upon shall be begun within nine (9) months from the date of the levy.

11 85. Less than 9 months have lapsed since the levy was issued on November 6, 2009.

12 86. The property wrongfully levied on and seized by the United States was owned by the
13 Plaintiff at the time of the seizure.

14 87. The property wrongfully levied on and seized by the United States was not held by
15 Plaintiff as a nominee for Mr. Francis.

16 88. At no time has Plaintiff been a nominee of Mr. Francis.

17 WHEREFORE, Plaintiff Rothwell, Ltd., prays:

- 18 1. That this Court declare that the claims of the United States to the subject property
19 described herein above are of no validity whatsoever.
- 20 2. That this Court declare that the seizure of Rothwell Ltd.'s property by the Defendant
21 United States was wrongful, and therefore null and void.
- 22 3. That the Defendant be forever enjoined and barred from asserting any claim
23 whatsoever adverse to the Plaintiff arising out of liabilities owed by or actions taken
24 by Joseph R. Francis; and
- 25 4. That this Court order return of Plaintiff's wrongfully levied upon and seized
26 property.
- 27 5. That, pursuant to 26 U.S.C. §7426(g)(1), this Court further award interest from the
28 date the Secretary received Plaintiff's property to the day of payment of judgment


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sought hereby.

6. That this Court further award attorneys fees and costs and such other and further relief as this Court deems appropriate in the interests of justice.

RESPECTFULLY SUBMITTED this 15th day of April, 2010.

WILLIAM A. COHAN, P.C.

By: 

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ROTHWELL, LTD.

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MORGANSTANLEYSMITHBARNEY

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949 640 8713 P.06

| | |
|---|--|
| Form 688-A (IGS) (Rev. July 2002) | Department of the Treasury - Internal Revenue Service Notice of Levy |
| DATE: 11/08/2009 | TELEPHONE NUMBER OF IRS OFFICE: (813)286-2320 x4004 |
| REPLY TO: Internal Revenue Service F. STEVENS, GROUP 3600 225 W BROADWAY 3RD FLOOR GLENDALE, CA 91204 | NAME AND ADDRESS OF TAXPAYER: ROTHWELL LIMITED- as nominee for, JOSEPH R. FRANCIS 1601 S. Cloverfield 420, Santa Monica, CA 90404 IDENTIFYING NUMBER(S) 4432 NOT LIMITED TO ACCOUNTS: |
| TO: Morgan Stanley Smith Barney, LLC (aka) Morgan Stanley, (aka) Morgan Stanley (NY) (aka) Morgan Stanley & Co., Incorporated Attention: Garnishment Unit, Fax (914)225-8164 200 Westchester Ave., Building LD- Purchase, NY 10577-2520002 | |

| Kind of Tax | Tax Period Ended | Unpaid Balance of Assessment | Statutory Additions | Total |
|--|------------------|------------------------------|---------------------|-----------------|
| 1040 | 12/31/2001 | \$17,658,050.00 | \$132,075.32 | \$17,790,125.32 |
| 1040 | 12/31/2002 | \$11,288,502.14 | \$84,060.74 | \$11,372,562.88 |
| 1040 | 12/31/2003 | \$4,822,147.00 | \$11,201.63 | \$4,833,348.63 |
| THIS LEVY WON'T AFFECT FUNDS IN IRAs, SELF-EMPLOYED INDIVIDUALS' RETIREMENT PLANS, OR ANY OTHER RETIREMENT PLANS IN YOUR POSSESSION OR CONTROL, UNLESS IT IS SIGNED IN THE BLOCK TO THE RIGHT. | | | Total Amount Due | \$34,036,424.03 |

We figured the interest and late payment penalty to 12/25/2009

Although we have told you to pay the amount you owe, it is still not paid. This is your copy of a notice of levy we have sent to collect this unpaid amount. We will send other levies if we don't get enough with this one.

Banks, credit unions, savings and loans, and similar institutions described in section 408(n) of the Internal Revenue Code must hold your money for 21 calendar days before sending it to us. They must include the interest you earn during that time. Anyone else we send a levy to must turn over your money, property, credits, etc. that they have (or are legally obligated to) when they would have paid you.

If you decide to pay the amount you owe now, please bring a guaranteed payment (cash, cashier's check, certified check, or money order) to the nearest IRS office with this form, so we can tell the person who received this levy how to send us your money. Make checks and money orders payable to United States Treasury. If you mail your payment instead of bringing it to us, we may not have time to stop the person who received this levy from sending us your money.

If we have already levied your bank account, we may reimburse you for the fees your bank charged you for handling the levy. You must file a claim with the IRS on Form 6546 within one year after the fees are charged.

If you have any questions, or want to arrange payment before other levies are issued, please call or write us. If you write to us, please include your telephone number and the best time to call.

| | |
|--|----------------------------|
| Signature of Service Representative /S/ A. ALLEVATO | Title TERRITORY MANAGER |
|--|----------------------------|

Part 2 - For Taxpayer

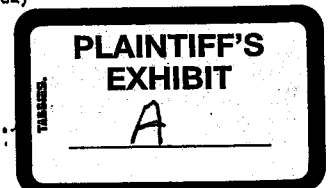
Form 688-A (IGS) (7-2002)

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CVT

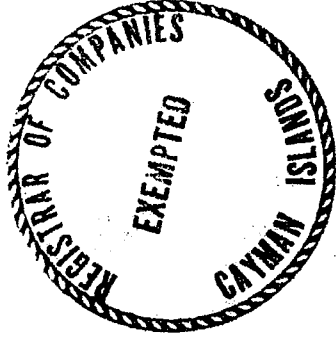
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CR-101238

Certificate of Incorporation



I, **DONNELL HARLEE DIXON**

*Assistant Registrar of Companies of the Cayman Islands
DO HEREBY CERTIFY, pursuant to the Companies Law CAP. 22, that all the requirements of the said
Law in respect of registration were complied with by*

ROTHWELL LIMITED

*an Exempted Company incorporated in the Cayman Islands with Limited Liability with effect from
the 9th Day of June Two Thousand*

*Given under my hand and Seal at George Town in the
Island of Grand Cayman this Ninth day of June
Two Thousand*

CERTIFIED TO BE A TRUE AND CORRECT COPY

(SGD. D.H. DIXON)

SIG.

[Signature]
DONNEL H. DIXON
Asst. Registrar of Companies

**Assistant Registrar
of Companies, Cayman Islands, B.W.I.**

Date. JUNE 9th. 2000

**PLAINTIFF'S
EXHIBIT**

DH

DECLARATION OF MICHAEL C. DURNEY

I, Michael C. Durney declare as follows:

1. I am over 18 years of age and otherwise competent to testify to the facts set forth herein. I would testify to them if called and sworn to testify as a witness before this Court.

2. I am an attorney licensed to practice law in the District of Columbia and the State of California. I received my JD Degree from the University of California Hastings College of Law in 1968. From 1968 to 1972, I served as a Trial Attorney with the Tax Division of the Department of Justice and from 1986 to 1988 I served as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General for the Tax Division of the Department of Justice. Apart from those six years, I have been continuously engaged in the private practice of law, specializing in Federal tax practice, with particular emphasis on the representation of taxpayers before the Internal Revenue Service and the Department of Justice in civil and criminal tax matters. I have been the author and co-author of articles for national and international tax and financial publications, principally on tax compliance matters, and co-author of *Criminal Tax Procedure*, Tax Management Portfolio No. 162-2nd. I have testified as an expert witness in numerous matters before federal and state courts and administrative agencies, involving issues concerning compliance with and violations of U.S. tax laws.

3. I was retained by Plaintiff's counsel as an expert witness in this matter, regarding the application of the foreign corporation rules and Rothwell account earnings. My retention was conditioned on the understanding that I would, at all times, exercise my independent professional judgment based on my learning and experience in the profession, and not serve as an advocate for the Plaintiff.

4. In connection with this engagement, I have reviewed the Plea Agreement

DECLARATION OF MICHAEL DURNEY - 1



1 in the Francis criminal case, the Francis Trust dated May 24, 1999, the Government's
2 Proposed Jury Instructions in the Francis criminal case, the Plaintiff's Reply Brief in
3 the Section 7429 Action, the Notice of Levy dated November 6, 2009, served on
4 Morgan Stanley with respect to Rothwell Limited, the Government's Response to
5 Plaintiff's Brief in the 7429 Action, the Declarations of Brian Rayment and George
6 Beas submitted in the Section 7429 Action, and the Order re Complaint entered by this
7 Court on January 31, 2010..

8 5. Under the Internal Revenue Code, a person is usually taxed only on the
9 income from property he actually owns; that is, property as to which the owner has
10 legally enforceable rights to receive the income from the property and to dispose of the
11 property by sale or otherwise.

12 6. In this case, Rothwell, Ltd ("Rothwell") is a foreign corporation wholly
13 owned by the Francis Trust, not by Mr. Francis. Mr. Francis is one of the beneficiaries
14 of the Francis Trust. Legally, Mr. Francis does not own any part of Rothwell.

15 7. However, pursuant to the "Controlled Foreign Corporations" rules set out
16 at Sections 951 *et seq.* of the Internal Revenue Code (also referred to as "Subpart F"),
17 for United States tax purposes only, Mr. Francis, by reason of his being a beneficiary of
18 the Francis Trust, is treated as the "owner" of Rothwell's stock and is taxed on the
19 income of Rothwell.

20 8. The fact that Mr. Francis as a U.S. taxpayer is required to include the
21 Rothwell income on his personal income tax returns does not mean that Mr. Francis is
22 the actual "owner" of the Rothwell's assets and income. The Internal Revenue Code
23 cannot change the legal ownership of Rothwell from the Francis Trust to Mr. Francis.
24 Instead, all it means is that certain technical provisions of the Internal Revenue Code
25 require inclusion of Rothwell's income in the personal return of Mr. Francis.
26

1 9. In Proposed Jury Instruction 58 in the Francis criminal case, the
2 government correctly described the general operation of the Controlled Foreign
3 Corporation rules. I understand that this instruction was offered in connection with the
4 Government's position at trial that the interest income earned by Rothwell with respect
5 to accounts held at Morgan Stanley should have been reported on Mr. Francis' personal
6 income tax return.

7 10. In the Plea Agreement, Mr. Francis agreed that the interest income earned
8 on the Morgan Stanley accounts should have been reported on his personal income tax
9 returns. (Plea Agreement, Exhibit A).

10 11. The Plea Agreement is consistent with the Subpart F inclusion required
11 under the Controlled Foreign Corporation rules in this case.

12 12. The technical provisions of Subpart F work as follows:

- 13 a. To be a Controlled Foreign Corporation, at least 50% of the
14 ownership of the corporation must be owned by "United States
15 shareholders." 26 U.S.C. § 957(a). For these purposes, a "United
16 States shareholder" is a person owning at least 10% of the voting
17 stock in the foreign corporation. 26 U.S.C. § 951(b).
- 18 b. Even if the foreign corporation is a Controlled Foreign Corporation,
19 only certain types of income are subject to inclusion on the United
20 States shareholder's tax returns. 26 U.S.C. § 951(a)(1) and (2); 26
21 U.S.C. § 952(a). For example, most business income is not subject
22 to inclusion. However, the interest and dividends earned by a
23 Controlled Foreign Corporation are subject to inclusion. 26 U.S.C.
24 §§ 952(a)(2), 954(a)(1) and (c)(1)(A).
- 25 c. The amount of any Subpart F inclusion required to be reported on
26

1 the tax returns of United States shareholders is determined under
2 rules (26 U.S.C. §§ 951(a)(2)(A) and 958)), which incorporate (with
3 some minor adjustments) the complex constructive corporate tax
4 ownership rules of 26 U.S.C. § 318. These rules attribute ownership
5 among certain family members and between entities and their
6 owners/beneficiaries. For example, even if a taxpayer does not own
7 any interest in a Controlled Foreign Corporation in his own right,
8 but he owns a 25% interest in a partnership and his grandson owns a
9 5% interest in that partnership, and that foreign partnership in turn
10 owns 100% of the Controlled Foreign Corporation's stock, the
11 taxpayer is treated as owning 30% of the Controlled Foreign
12 Corporation's stock, and must report 30% of that income. See 26
13 U.S.C. §§ 951(a)(2)(A), 958, and 318(a)(1)(A)(ii) and (2)(A).

- 14 13. These Subpart F provisions apply to Mr. Francis as follows:
- 15 a. The Francis Trust, a foreign trust, is the sole shareholder of
16 Rothwell.
 - 17 b. The Third Schedule to the Francis Trust states that the permissible
18 beneficiaries of the Francis Trust are Mr. Francis, the mother and
19 father of Mr. Francis, any children of Mr. Francis, and Oklahoma
20 Film Holding Corporation, a company that I understand is owned
21 100 percent by Mr. Francis.
 - 22 c. Under 26 U.S.C. §§ 958(a)(2), stock owned by a foreign trust is
23 treated as if it were owned by the foreign trust's beneficiaries.
24 Thus, Mr. Francis, his parents, his children (if any) and Oklahoma
25 Film Holding Corporation are all treated for income tax reporting
26

1 purposes as if owning interests in Rothwell in proportion to their
2 beneficial interest in the Francis Trust.

3 d. For purposes of the Subpart F inclusion, Mr. Francis is treated as
4 owning any interests owned by his parents or children pursuant to
5 26 U.S.C. §§ 958(b) and 318(a)(1)(ii).

6 e. For purposes of the Subpart F inclusion, Mr. Francis is also treated
7 as owning the full amount of any interest owned by his corporation.
8 26 U.S.C. §§ 958(b) and 318(a)(1)(ii).

9 14. Thus, for purposes of 26 U.S.C. §§ 958(a)(1) and 951(a)(2), which
10 requires the inclusion of the undistributed Subpart F income, Mr. Francis is treated for
11 income tax reporting purposes as owning all of Rothwell's stock. Accordingly, he was
12 required to include the entire amount of the interest income of Rothwell on his personal
13 return, irrespective of the fact that he was not the actual owner of Rothwell.

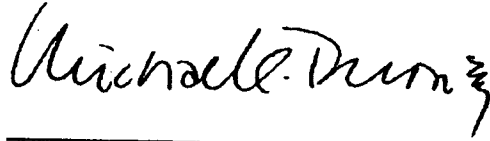
14 15. The fact that Mr. Francis agreed in his criminal plea that he was required
15 to report the interest income from Morgan Stanley does not mean that he was, or that he
16 agreed that he was, the actual "owner" of the Rothwell Morgan Stanley account, only
17 that he was required to include the full amount of Rothwell's interest income on his
18 personal tax returns pursuant to the requirements of Subpart F of the Internal Revenue
19 Code.

20 16. The fact that Mr. Francis was taxed under Subpart F on the interest of the
21 Rothwell Morgan Stanley account does not make Rothwell a nominee for Mr. Francis
22 as stated in the Notice of Levy dated November 6, 2009, served on the Rothwell
23 Morgan Stanley account. Accordingly, the taking of the Rothwell Morgan Stanley
24 account pursuant to this Levy in order to satisfy the asserted tax liabilities of Mr.
25 Francis had no legal basis.
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 25th day of January, 2010, in Alameda County, State of California.



Michael C. Durney

| | |
|--|---|
| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ROTHWELL, Ltd., a Cayman Islands Corporation | DEFENDANTS UNITED STATES OF AMERICA |
|--|---|

| | |
|---|----------------------|
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) William A. Cohan, P.C. P.O. Box 3448 Rancho Santa Fe, CA 92067; Tel: 858-832-1632; Fax: 858-832-1845 | Attorneys (If Known) |
|---|----------------------|

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|--|--------------------------|---|--------------------------|---|-----|-----|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|---|--------------------------|--------------------------|----------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%; border: none;">Citizen of This State</td> <td style="width:10%; border: none;">PTF</td> <td style="width:10%; border: none;">DEF</td> <td style="width:30%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none;">PTF</td> <td style="width:10%; border: none;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;">Foreign Nation</td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> </tr> <tr> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> <td style="border: none;"><input type="checkbox"/></td> </tr> </table> | Citizen of This State | PTF | DEF | Incorporated or Principal Place of Business in this State | PTF | DEF | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of This State | PTF | DEF | Incorporated or Principal Place of Business in this State | PTF | DEF | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation | <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No
 MONEY DEMANDED IN COMPLAINT: \$ 20,000,000. plus

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

26 USC Section 7426, Wrongful Levy by Internal Revenue Service

VII. NATURE OF SUIT (Place an X in one box only.)

| | | | | | |
|--|--|--|---|---|---|
| OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
|--|--|--|---|---|---|

SACV10-00479

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): 2:08-cr-00494-SJO and 2:09-cv-09449-RGK-FFM

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

| | |
|--------------------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Cayman Islands, B.W.I. (Corporation) | |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| | |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Orange County | |

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): William A. Cohen Date April 15, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g)) |

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Arthur Nakazato.

The case number on all documents filed with the Court should read as follows:

SACV10- 479 CJC (ANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
WILLIAM A. COHAN, P.C.
Calif. Bar #141804; Colo. Bar #7426
P.O. Box 3448
Rancho Santa Fe, CA 92069
Tel: 858-832-1632; Fax: 858-832-1845

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FOR OFFICE USE ONLY

ROTHWELL, Ltd., a Cayman Islands Corporation

PLAINTIFF(S)

v.

UNITED STATES OF AMERICA,

DEFENDANT(S).

CASE NUMBER

SACV10-00479

CJC (ANX)

SUMMONS

TO: DEFENDANT(S): UNITED STATES OF AMERICA

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, William A. Cohan, whose address is P.O. Box 3448, Rancho Santa Fe, CA 92067. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

FOR OFFICE USE ONLY

Clerk, U.S. District Court

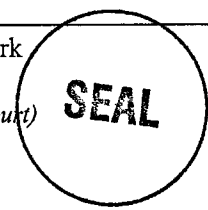
Dated: APR 19 2010

By: _____

CHRISTOPHER POWERS

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].