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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER M. HANSEN,

Defendant.

Civil No. 05cv0921-L(NLS)

**ORDER GRANTING PLAINTIFF'S
MOTION TO STRIKE JURY
DEMAND**

[Docket No. 22]

This matter comes before the Court on Plaintiff United States' Motion to Strike Jury Demand. The Court finds the motion suitable for disposition on the papers and without oral argument in accordance with Civil Local Rule 7.1(d)(1).¹

¹ Hansen's opposition brief argues his due process rights have been violated by the Court taking motions under submission because it has prevented Hansen from identifying the United States' evidence. As an initial matter, the Court is not persuaded by Hansen's challenge to the Court's authority to take motions under submission. Federal Rule of Civil Procedure 78 and Civil Local Rule 7.1(d)(1), grant courts the discretion to determine whether to hold oral argument. Fed. R. Civ. P. 38; Civ. L. R. 7.1(d)(1). Further, courts have rejected the argument that adjudication of a motion without oral argument violates due process. *See, e.g., Dredge Corp. v. Penny*, 338 F.2d 456, 462 n.14 (9th Cir. 1964); *Greene v. WCI Holdings Corp.*, 136 F.3d 313, 316 (2d Cir. 1998); *United States v. One 1974 Porsche 911-S*, 682 F.2d 283, 286 (1st Cir. 1982).

Second, hearings on a motion to dismiss or a motion to strike jury demand are not the appropriate fora to obtain evidence from the opposing party. Rather, Hansen must obtain evidence through discovery in the manner provided by the Federal Rules of Civil Procedure and according to the time schedule set forth in Judge Stormes' September 20, 2005 scheduling order.

BACKGROUND

Defendant Christopher M. Hansen sells how-to guides filed with forms, instructions, and tactics to help customers evade paying federal taxes. (Compl. ¶ 7.) Hansen also sells sample form response letters for customers to use when they receive specific correspondence from the Internal Revenue Service (“IRS”). *Id.* ¶ 8. These letters are designed to disrupt or hinder the enforcement of the internal revenue laws. *Id.* ¶¶ 8, 9. Hansen also advises his customers to assert frivolous positions and engage in disruptive and abusive tactics to obstruct an audit by the IRS. *Id.* ¶ 10.

If his customers file income tax returns, Hansen advises and assists them to file returns showing only one cent of income and requesting a refund for payments made or taxes previously withheld. *Id.* ¶ 14. Hansen promotes the view that federal tax withholding applies only to elected or appointed officers of the United States government, and incites and assists his customers to file false IRS W-4 Forms (Employee’s Withholding Allowance Certificate) and W-8 Forms (Certificate of Foreign Status) so employers will stop withholding taxes from the customers’ paychecks. *Id.* ¶¶ 16, 17.

In addition to his other programs, Hansen markets a program to assist customers to give up their “U.S. citizenship” but retain or claim “American National citizenship.” *Id.* ¶ 18. Hansen informs customers this results in their not being liable for federal income taxes and puts them outside the scope of federal jurisdiction. *Id.*

For a fee, Hansen meets with customers for administrative or consulting services and prepares their documents for them. *Id.* ¶ 19. He also provides his customers with opinion letters to support their belief they do not have to pay income taxes. *Id.* ¶ 20.

Hansen markets his programs through word of mouth, at seminars, and on the Internet, including on his websites www.famguardian.org and www.sedm.org. *Id.* ¶ 21.

On May 2, 2005, the United States filed this action seeking to enjoin Hansen from: promoting programs that advise or encourage customers to violate the tax laws and evade assessment or collection of their federal tax liabilities; making false or fraudulent statements about the securing of any tax benefit by reason of participating in any plan or arrangement;

1 engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701; engaging in conduct
2 that interferes with the administration and enforcement of the internal revenue laws; and
3 engaging in any activity subject to penalty under the Internal Revenue Code ("IRC").

4 On June 9, 2005, Hansen filed an Answer containing a demand for a jury trial. Hansen
5 also filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted
6 and Other Matters. By order dated July 26, 2005, the Court denied Hansen's motion to dismiss.

7 DISCUSSION

8 The United States moves to strike Hansen's jury demand on the ground the only relief the
9 United States seeks is equitable. Hansen opposes this motion, arguing Federal Rule of Civil
10 Procedure 38 does not allow withdrawal of a demand for jury trial without the parties' consent.
11 Because he does not consent, Hansen maintains a jury trial is mandated. Hansen further argues
12 a jury trial is provided for in the Copyright/Software License Agreement attached as exhibit 3 to
13 his Answer.

14 Contrary to Hansen's suggestion, Rule 38(a) "contains no affirmative grant, and neither
15 enlarges nor restricts the right to jury trial that existed before the Federal Rules were adopted." 8
16 James Wm. Moore, *Moore's Federal Practice* § 38.03[1][a] at 38-29 (Matthew Bender 3d ed.
17 2005). Rather, Rule 38 preserves the right to a jury trial in those actions in which the right is
18 protected by the Seventh Amendment or is provided by federal statute. Fed. R. Civ. P. 38(a).²
19 Courts first analyze whether a statute compels a jury trial. *City of Monterrey v. Del Monte*
20 *Dunes at Monterey, Ltd.*, 526 U.S. 687, 707 (1999). If that right is not conferred by statute, the
21 Court must analyze the Seventh Amendment to determine whether it provides the right to a jury
22 trial. *Id.*

23 In this case, the United States seeks relief under 26 U.S.C. §§ 7402 and 7408 for
24 violations of 26 U.S.C. §§ 6700 and 6701. These statutes do not provide for a jury trial when the
25

26
27 ² The text of Rule 38(a) reads: "[t]he right of trial by jury as declared by the Seventh
28 Amendment to the United States Constitution or as given by a statute of the United States shall
be preserved to the parties inviolate." Fed. R. Civ. P. 38(a).

1 United States seeks injunctive relief.³ The Court must therefore turn to the Seventh Amendment.
2 That amendment provides: “[i]n suits at common law, where the value in controversy shall
3 exceed twenty dollars, the right of trial by jury shall be preserved.” U.S. Const. amend. VII.
4 Like Rule 38, the Seventh Amendment itself does not create a right to a jury trial, but instead
5 preserves that right in the federal courts as it existed in 1791, the date of the Amendment’s
6 ratification by the original states. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 41-42 (1989).
7 Thus, when determining whether a claim is jury triable, a court must consider whether the claim
8 was historically tried to juries, and whether the relief sought is legal or equitable in nature. *Id.* at
9 42; *Tull v. United States*, 481 U.S. 412, 417-18 (1987); see *United States v. McHan*, 345 F.3d
10 262, 273 (4th Cir. 2003) (“The phrase ‘Suits at common law’ has ‘been construed to refer to
11 cases tried prior to the adoption of the Seventh Amendment in courts of law in which jury trial
12 was customary as distinguished from courts of equity or admiralty in which jury trial was not.’”)
13 (quoting *Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm’n*, 430 U.S. 442, 449
14 (1977)). The second part of this test — the character of the relief sought — is the more
15 important factor. *Wooddell v. Int’l Bhd. of Elec. Workers*, 502 U.S. 93, 97 (1991);
16 *Granfinanciera*, 492 U.S. at 42; *Tull*, 481 U.S. at 421.

17 The two causes of action asserted by the United States in this action are for injunctive
18 relief. (See Compl.) A suit for injunctive relief sounds in equity, and therefore neither a party
19 seeking an injunction nor the party opposing the injunction is entitled to a jury trial. *Marseilles*
20 *Hydro Power, LLC v. Marseilles Land & Water Co.*, 299 F.3d 643, 648 (7th Cir. 2002);
21 *Rodriguez v. Munoz*, 808 F.2d 138, 142-43 (1st Cir. 1986). Accordingly, insofar as Hansen’s
22 jury demand rests on the causes of action asserted in the Complaint, the demand must be
23 stricken.

24 Hansen also contends a jury trial is mandated because there is a dispute regarding the
25 Copyright/Software License Agreement. The Court is not persuaded by that argument. First, a
26 party cannot seek affirmative relief through an answer. 2 William W. Schwartz *et al.*, *California*

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28 ³ To the contrary, 26 U.S.C. § 7408 expressly states the court is to issue an injunction
should the evidence show the defendant engaged in certain specified conduct. 26 U.S.C. § 7408.

1 *Practice Guide: Federal Civil Procedure Before Trial* § 8:197 at 8-73 (The Rutter Group 2005).
2 Thus, Hansen cannot seek to enforce the agreement by raising it in his Answer. Second, Hansen
3 is not entitled to a jury trial even if he has a viable claim against the United States under the
4 agreement. "It has long been settled that the Seventh Amendment right to trial by jury does not
5 apply in actions against the Federal Government." *Lehman v. Nakshian*, 453 U.S. 156, 160
6 (1981). "The reason that the Seventh Amendment presumption in favor of jury trials does not
7 apply in actions at law against the United States is that the United States is immune from suit,
8 and the Seventh Amendment right to a jury trial, therefore, never existed with respect to a suit
9 against the United States." *Id.* at 162 n.9. Accordingly, Hansen's reliance on the
10 Copyright/Software License Agreement attached to his Answer does not grant him a right to a
11 jury trial.

12 For the foregoing reasons, the United States' Motion to Strike Jury Demand is
13 **GRANTED**.

14 Hansen's opposition brief and supporting documents raise additional arguments,
15 including that there is no evidence he has a contractual relationship with the United States, as
16 shown by his *Resignation of Compelled Social Security Trustee*. He also demands proof of this
17 Court's jurisdiction over him because he is not a taxpayer. Hansen requests the Court to respond
18 to certain questions to determine whether the undersigned is biased against Hansen and therefore
19 must recuse from this action, and also maintains the Court's order denying his motion to dismiss
20 is void because it was not rendered by an impartial decision-maker. Hansen further requests the
21 Court revisit the issue of Hansen's domicile that was at issue in Hansen's motion to dismiss.

22 Insofar as Hansen is challenging the rulings made in the order denying his motion to
23 dismiss, those arguments must be raised in an appropriate motion for reconsideration under the
24 Federal Rules of Civil Procedure. Furthermore, the Court finds no basis for recusal from this
25 action and any request by Hansen for this Court to do so must be raised by way of motion under
26 the applicable statutes. Accordingly, to the extent Hansen seeks affirmative relief through his
27 opposition papers, such requests are **DENIED WITHOUT PREJUDICE**.

28 ///

CONCLUSION

Having reviewed the record and applicable law, **IT IS HEREBY ORDERED** Plaintiff United States' Motion to Strike Jury Demand is **GRANTED**. Hansen's requests for affirmative relief are **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated: 9/30/05


M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

COPY TO:

HON. NITA L. STORMES
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL