

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARY W. COLON, Trustee,

Plaintiff,

vs.

Case No. 4:12cv101-MCR/CAS

DARRYL STRAWBERRY, et al.,

Defendants.

ORDER

This case was referred by Chief United States District Judge Casey Rodgers for a status conference and to establish a time line for resolution of the remaining issues.¹ Doc. 56. Three issues remain outstanding: (1) the sale of Darryl Strawberry's deferred compensation, (2) distribution of the proceeds from the sale, and (3) the amount of attorney fees which should be awarded to the Mets. Doc. 55. Sterling Mets, L.P. [the "Mets"] filed a renewed motion for attorney fees and costs on April 23, 2014. Doc. 62.²

¹ Previously, the motion for partial summary judgment, doc. 33, filed by the Internal Revenue Service ("IRS"), was granted, doc. 47, and a default judgment was entered in favor of the United States of America. Docs. 53, 54.

² This Court previously ruled that the federal tax liens for Darryl Strawberry's 1989 and 1990 federal income tax liabilities have first priority, "but such priority does not extinguish the Mets' right to seek reasonable attorneys' fees and costs should any surplus funds be available after satisfaction of the IRS's tax lien." Docs. 45, 47.

The Mets seek fees of \$83,911.50 and costs of \$5,225.15. *Id.* The United States filed a response titled, "Opposition By United States to Sterling Mets, L.P.'s Motion for Attorneys' Fees and Costs," doc. 63, on May 7, 2014. Doc. 63. The response contends that Sterling Mets is not entitled to any attorney fees and costs, doc. 63 at 8, that the request includes activities unrelated to an interpleader which should not be compensable, *Id.* at 13, and the fee is excessive. *Id.* at 14. Thereafter, the Mets filed a reply which deems the opposition filed by the United States to be a "counteroffer" pursuant to the procedures of N.D. Fla. Loc. R. 54.1(E)(4) and which accepts a counteroffer in the amount of \$75,833.00 and costs of \$5,225.15. Doc. 66. In the alternative, the Mets request that its motion for attorneys' fees be considered unopposed and overrule any objections. *Id.* As noted in the prior Order, doc. 67, the issue of attorneys fees must be deferred until sale of the property and a determination that surplus funds exist after satisfaction of the tax lien.

A motion has been filed by the United States for entry of Order of Sale. Doc. 68. The motion and proposed order has been agreed upon by the Trustee, the United States, and the Mets. The Mets separately filed a notice of non-opposition to the motion. Doc. 69. The motion for entry of Order of Sale is **Granted**. The parties shall file an updated Status Report on or before **September 2, 2014**.

Accordingly, it is

ORDERED:

1. The parties shall file a Status Report by **September 2, 2014**.
2. Ruling on the request by Sterling Mets, L.P. for attorneys' fees, doc. 62, remains **DEFERRED**.

3. The motion for entry of order of sale, doc. 68, is **GRANTED**.

4. Darryl Strawberry is indebted to the United States for 1989, 1990, 2003, and 2004 federal income tax liabilities.

5. The United States has valid and subsisting federal tax liens against all property and rights to property belonging to Darryl Strawberry, including Darryl Strawberry's right to receive monthly payments under the Darryl Strawberry Deferred Compensation Agreement, Addendum III to Uniform Player's Contract Dated March 12, 1985, executed on March 12, 1985, by Darryl Strawberry and Doubleday Sports, Inc. (predecessor in interest to Sterling Mets, L.P.) (the "deferred compensation agreement"). A copy of the deferred compensation agreement is appended to this order as Appendix 1, and a copy of a schedule of the payments due under the deferred compensation agreement is appended as Appendix 2.

6. Federal tax liens encumber Darryl Strawberry's right to receive payments under the deferred compensation agreement.

7. The federal tax liens have been foreclosed against Darryl Strawberry's right to receive payments under the deferred compensation agreement and that right is ordered sold pursuant to Title 28, United States Code, § 2004.

8. The Internal Revenue Service ("IRS") Property Appraisal and Liquidation Specialists ("PALS") is authorized to offer Darryl Strawberry's right to receive payments under the deferred compensation agreement for public sale and to sell that right.

9. The terms and conditions of the sale of Darryl Strawberry's right to receive payments under the deferred compensation agreement are as follows:

a. The sale of Darryl Strawberry's right to receive payments under the deferred compensation agreement shall be free and clear of the interests of all parties to this action. Accordingly, and notwithstanding the reservation of rights referenced in paragraph 11, all liens or other claims, of any kind, against the future ongoing stream of monthly deferred compensation payments will be extinguished, with the exception of the forthcoming monthly payments to the purchaser.

b. The sale shall be held on-site at a location to be determined by PALS, and PALS shall also permit mail-in bids;

c. The PALS shall announce to the public, and the United States shall provide specific notice to Sterling Mets, L.P., Mary Colon, Trustee, through counsel, and Darryl Strawberry, of the date and time for the sale;

d. The minimum bid for the sale shall be \$550,000. If the minimum bid is not met or exceeded, the PALS may, without further permission of this Court, under the terms and conditions in this Order of Sale, hold a new public sale of Darryl Strawberry's right to receive payments under the deferred compensation agreement, and may reduce the minimum bid.

e. Notwithstanding the order of the bankruptcy court sealing the deferred compensation agreement between Darryl Strawberry and Doubleday Sports, Inc. (predecessor in interest to Sterling Mets, L.P.), PALS may disclose the contents of the deferred compensation agreement to potential bidders in whatever manner PALS deems appropriate or necessary to market the property and facilitate its sale.

f. A deposit with PALS in an amount of twenty (20) percent of the bid is required with the acceptance by PALS of the high bid.; the deposit will be in the form of

a certified or cashier's check payable to the Clerk of the United States District Court for the Northern District of Florida. PALS shall promptly deliver the deposit to the Clerk of this Court for deposit into the Court's registry.

g. The successful bidder(s) shall pay to PALS the balance of the purchase price for the right to receive payments under the deferred compensation agreement within sixty (60) days following the date of the sale, by a certified or cashier's check payable to the Clerk of the United States District Court for the Northern District of Florida, and PALS shall promptly deliver the final payment to the Clerk of this Court. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the liabilities of Darryl Strawberry at issue herein. In that event, the Clerk shall distribute the deposit as directed by the United States. Darryl Strawberry's right to receive payments under the deferred compensation agreement shall be again offered for sale under the terms and conditions of this Order of Sale or, in the alternative, sold to the second highest bidder.

h. The Clerk of the District Court is directed to accept the proceeds of the sale and deposit it into the Court's registry for distribution pursuant to further order of this Court.

i. The sale of Darryl Strawberry's right to receive payments under the deferred compensation agreement shall be subject to confirmation by this Court. On confirmation of the sale, the PALS shall execute and deliver to the purchaser its assignment conveying the right to receive the monthly payments under the deferred compensation agreement. On confirmation of the sale, all interests in, liens against, or

claims to the payments under the deferred compensation agreement are discharged and extinguished except for the Purchaser's right to on-going payments thereunder (i.e., the monthly payments reflected in Appendix 2 for the months remaining in the 360-month period that commenced January 2004). Any claims or liens by the United States, Sterling Mets, L.P., or Mary W. Colon, Trustee shall attach to the sale proceeds.

j. The sale of the Property is ordered pursuant to 28 U.S.C. § 2004, and is made without right of redemption.

10. Pending the sale of Darryl Strawberry's right to receive payments under the deferred compensation agreement, and until the assignment of that right is delivered to the successful bidder, Sterling Mets, LP, shall continue to direct the monthly payments under the deferred compensation agreement directly to the Department of Justice for application to Darryl Strawberry's 1989 and 1990 federal income tax liabilities. Within thirty days following confirmation of the sale, the successful bidder shall provide to counsel for Sterling Mets, L.P., the name of the payee and information sufficient to allow Sterling Mets, L.P., to direct payment to the payee.

11. After the Court confirms the sale of the property, the sale proceeds shall be distributed pursuant to further order of the Court. All parties to this action reserve all rights with respect to claims of priority and entitlement as to the sale proceeds from the deferred compensation agreement without prejudice to any party's legal claims or defense, all of which are expressly reserved.

12. The United States is directed to serve a copy of this order on Darryl Strawberry as well as subsequent notice of the sale. Failure of Darryl Strawberry to

object to the procedures set forth in this Order within ten days of service will constitute waiver of any such objection.

13. The Clerk of Court shall return this file upon receipt of the updated Status Report or no later than September 2, 2014.

DONE AND ORDERED on July 15, 2014.

S/ Charles A. Stampelos
CHARLES A. STAMPELOS
UNITED STATES MAGISTRATE JUDGE

DARRYL STRAWBERRY

DEFERRED COMPENSATION AGREEMENT

ADDENDUM III TO UNIFORM PLAYER'S CONTRACT

DATED MARCH 12, 1985

(1) Commencing on the first day of the January of the first calendar year immediately following the Player's retirement date, and continuing for a period of thirty (30) years, the Club shall pay the Player (as per the provision of paragraph 17 of Addendum I), as consideration for services to be performed by the Player, "Deferred Compensation" in equal monthly installments in an amount equal to the sum to which the Player would be entitled if he were to purchase a series of single premium deferred annuity contracts from Union Central Life Insurance Company of Cincinnati, Ohio, the proceeds of which shall be payable as stated above, but in no event more than 360 months, upon the following condition and subject to the special conditions set out below:

Age of Annuitant at Date of Purchase	Date of Annuity Purchased	Amount of Annuity Premium
23	July 1, 1985	\$ 100,000.00
24	July 1, 1986	300,000.00
25	July 1, 1987	400,000.00
26	July 1, 1988	500,000.00
27	July 1, 1989	600,000.00
*28	July 1, 1990	700,000.00

(* Club has an option on Player's services for 1990. See Paragraph 11 of Addendum I to the Uniform Player's Contract.)

(2) The Club shall establish on its books an intra corporate account to be known as the Strawberry Deferred Compensation Account, and on July 1st of 1985, 1986, 1987, 1988 and 1989, the Club shall credit to the Account the applicable amounts of annuity premium set out in paragraph (1) above. Amounts payable to the Player in 1985, 1986, 1987, 1988 and 1989 pursuant to Paragraph 2 of his Uniform Player's Contract shall be reduced by the amounts so transferred to the Account. (1990 will be handled similarly, if Club's option is exercised.)

Within sixty (60) days of July 1, 1985, and each year thereafter, Club will notify the Player of the annual rate of interest quoted by Union Central Life Insurance which will apply to all annuity contracts in force for the following year.

Appendix 1

Page 2 --

ADDENDUM III

(3) The Club, in its sole discretion, may elect to deposit or invest all or any portion of the amounts credited to the Account in annuity contracts or such other investments as it may select. Union Central Life Insurance Company policies are identified in this Addendum for the sole purpose of measuring the Player's benefits. Player shall have no right to question or contest the investment decisions of the Club and agrees that the Club shall not be liable to Player or his beneficiary for any decisions the Club makes with respect to the investment of amounts credited to the Account.

(4) There shall be no trust fund for the Player (or his designated beneficiary). Amounts credited to the Account shall remain the sole property of the Club and shall be an asset of the Club subject to all claims against the Club, including claims of its general creditors. Player (or his designated beneficiary) shall have no interest in the Account and no claim against the Club until such time as payments are due under paragraph (1) or (7) hereof.

(5) Player acknowledges that he has received neither advice nor recommendations from the Club concerning the tax or other consequences to Player of this special Addendum or actions taken hereunder. Therefore, Player hereby releases and holds harmless the Club, its officers, employees and agents from any liability arising out of any adverse tax or other consequences that this Special Covenant or actions taken hereunder may have upon Player.

The amounts to be credited to the Account will not constitute current compensation to the Player and no deduction will be claimed by the Club on its federal or local income tax returns with respect to the amounts transferred to the Account until the funds in the Account are paid to the Player (or his designated beneficiary). However, should, at any time in the future, federal or local income tax law change to permit deductibility of deferred compensation by the Club without any tax implications for the Player, the Club shall be able to make such deductions.

(6) In the event that Player's employment is terminated pursuant to the provisions of the Contract, Player's right to amounts transferred or to be transferred to the Account under this special Addendum shall continue with the same force and effect as if the Contract had not been terminated, except that if Player's

employment with the Club is terminated by reason of an assignment pursuant to Paragraph 6 of the Contract, the obligations of "Assignor Club" and the "Assignee Club" with respect to transfers to the Account pursuant to Paragraph (2) of this special Addendum prior or subsequent to the assignment shall be governed by Paragraph (6)(d) of the Contract. Neither termination nor assignment of the Contract shall automatically accelerate transfer of amounts to, or payments to the Player from the Account.


(7) In the event of Player's death prior to commencement of payments hereunder or prior to his having received payment in full of the amount due him, the balance of the installments due shall be paid at the same time or times as the Player would be entitled to receive them if living, to his beneficiary designated in writing to the Club, or if none has been designated, to his personal representative or if none is appointed within three months of his death, to his heirs at law determined in accordance with the laws of his domicile at the date of his death.

(8) Neither the Player nor his beneficiary or legal representative shall be entitled to assign, alienate, commute, encumber, sell, transfer or otherwise dispose of the right to receive the payments provided for herein and such right is expressly declared non-assignable and non-transferable.

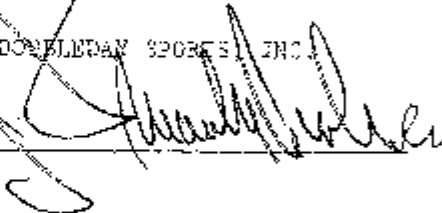
(9) Player agrees that prior to the receipt of any amounts from the Club pursuant to this Addendum, Player, his beneficiary or estate will permit the withholding of Federal, state or local income taxes, wage taxes, or similar items required to be withheld according to the legal requirements and rates of tax applicable at such time.

(10) The terms, provisions and effect of this Addendum shall be construed, enforced and administered according to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed this 12 day of March, 1985.



(Player) Harry Strawberry

DOMESTIC SPORTS, INC.
By 

DARRYL STRAWBRN
PAYOFF
DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.1032%
Months 12
Monthly Interest Rate 0.42527%
Monthly Payment \$ 8,891.82
Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
1	1/1/2004 \$ 1,644,367.39	\$ (8,891.82)	\$ 1,635,465.51	\$ 6,953.51	1,642,419.02
2	1,642,419.02	(8,891.82)	\$ 1,626,563.69	\$ 6,945.57	1,640,173.08
3	1,640,173.08	(8,891.82)	\$ 1,617,661.86	\$ 6,937.30	1,637,216.95
4	1,637,216.95	(8,891.82)	\$ 1,608,759.73	\$ 6,928.96	1,634,255.71
5	1,634,255.71	(8,891.82)	\$ 1,600,063.89	\$ 6,920.64	1,631,284.53
6	1,631,284.53	(8,891.82)	\$ 1,591,362.71	\$ 6,912.25	1,628,304.80
7	1,628,304.80	(8,891.82)	\$ 1,582,461.14	\$ 6,903.83	1,625,316.00
8	1,625,316.00	(8,891.82)	\$ 1,573,358.32	\$ 6,895.38	1,622,320.34
9	1,622,320.34	(8,891.82)	\$ 1,564,054.72	\$ 6,886.89	1,619,315.61
10	1,619,315.61	(8,891.82)	\$ 1,554,549.79	\$ 6,878.36	1,616,302.16
11	1,616,302.16	(8,891.82)	\$ 1,545,043.33	\$ 6,869.80	1,612,280.14
12	1,612,280.14	(8,891.82)	\$ 1,535,335.32	\$ 6,861.20	1,608,249.32
13	1,608,249.32	(8,891.82)	\$ 1,525,425.70	\$ 6,852.57	1,604,210.27
14	1,604,210.27	(8,891.82)	\$ 1,515,314.45	\$ 6,843.89	1,600,162.34
15	1,600,162.34	(8,891.82)	\$ 1,505,001.52	\$ 6,835.15	1,596,105.71
16	1,596,105.71	(8,891.82)	\$ 1,494,487.69	\$ 6,826.44	1,592,040.33
17	1,592,040.33	(8,891.82)	\$ 1,483,772.81	\$ 6,817.66	1,587,966.16
18	1,587,966.16	(8,891.82)	\$ 1,472,856.94	\$ 6,808.84	1,583,883.18
19	1,583,883.18	(8,891.82)	\$ 1,461,739.06	\$ 6,799.96	1,579,791.34
20	1,579,791.34	(8,891.82)	\$ 1,450,419.15	\$ 6,791.03	1,575,690.60
21	1,575,690.60	(8,891.82)	\$ 1,438,897.28	\$ 6,782.15	1,571,580.02
22	1,571,580.02	(8,891.82)	\$ 1,427,173.40	\$ 6,773.18	1,567,460.26
23	1,567,460.26	(8,891.82)	\$ 1,415,247.45	\$ 6,764.17	1,563,331.61
24	1,563,331.61	(8,891.82)	\$ 1,403,119.28	\$ 6,755.12	1,559,197.92
25	1,559,197.92	(8,891.82)	\$ 1,390,788.40	\$ 6,746.03	1,554,052.14
26	1,554,052.14	(8,891.82)	\$ 1,378,254.52	\$ 6,736.91	1,549,897.22
27	1,549,897.22	(8,891.82)	\$ 1,365,517.40	\$ 6,727.74	1,545,733.14
28	1,545,733.14	(8,891.82)	\$ 1,352,576.52	\$ 6,718.54	1,541,559.08
29	1,541,559.08	(8,891.82)	\$ 1,339,431.64	\$ 6,709.30	1,537,377.34
30	1,537,377.34	(8,891.82)	\$ 1,326,082.52	\$ 6,700.01	1,533,188.33
31	1,533,188.33	(8,891.82)	\$ 1,312,529.71	\$ 6,690.68	1,528,994.41
32	1,528,994.41	(8,891.82)	\$ 1,300,072.59	\$ 6,681.33	1,524,797.02
33	1,524,797.02	(8,891.82)	\$ 1,287,510.70	\$ 6,671.93	1,520,594.03
34	1,520,594.03	(8,891.82)	\$ 1,274,843.21	\$ 6,662.45	1,516,384.70
35	1,516,384.70	(8,891.82)	\$ 1,262,070.39	\$ 6,653.01	1,512,169.50
36	1,512,169.50	(8,891.82)	\$ 1,249,192.08	\$ 6,643.49	1,507,947.67
37	1,507,947.67	(8,891.82)	\$ 1,236,109.45	\$ 6,633.93	1,503,719.08
38	1,503,719.08	(8,891.82)	\$ 1,222,921.66	\$ 6,624.33	1,500,084.13
39	1,500,084.13	(8,891.82)	\$ 1,209,628.80	\$ 6,614.68	1,496,035.05
40	1,496,035.05	(8,891.82)	\$ 1,196,230.92	\$ 6,605.00	1,491,976.25
41	1,491,976.25	(8,891.82)	\$ 1,182,728.04	\$ 6,595.28	1,487,907.68
42	1,487,907.68	(8,891.82)	\$ 1,169,120.26	\$ 6,585.51	1,483,829.37
43	1,483,829.37	(8,891.82)	\$ 1,155,407.53	\$ 6,575.70	1,479,741.29
44	1,479,741.29	(8,891.82)	\$ 1,141,589.75	\$ 6,565.85	1,475,643.76
45	1,475,643.76	(8,891.82)	\$ 1,127,666.93	\$ 6,555.96	1,471,536.42
46	1,471,536.42	(8,891.82)	\$ 1,113,639.06	\$ 6,546.03	1,467,419.83
47	1,467,419.83	(8,891.82)	\$ 1,099,506.21	\$ 6,536.05	1,463,293.96
48	1,463,293.96	(8,891.82)	\$ 1,085,268.34	\$ 6,526.03	1,459,159.27

Mets D00004

Appendix 2

DARYL STRAWBERRY
PAYOUT
DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 6.1032%
Months 12
Monthly Interest Rate 0.42527%
Monthly Payment \$ 8,891.62
Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
49	1,541,100.07	(8,891.62)	\$ 1,532,208.25	6,615.07	1,538,724.22
50	1,538,724.22	(8,891.62)	\$ 1,529,832.40	6,596.87	1,536,338.27
51	1,536,338.27	(8,891.62)	\$ 1,527,446.45	6,496.72	1,533,942.17
52	1,533,942.17	(8,891.62)	\$ 1,525,059.35	6,486.53	1,531,535.86
53	1,531,535.86	(8,891.62)	\$ 1,522,644.36	6,475.30	1,529,119.36
54	1,529,119.36	(8,891.62)	\$ 1,520,227.54	6,466.02	1,526,692.56
55	1,526,692.56	(8,891.62)	\$ 1,517,809.74	6,454.70	1,524,265.44
56	1,524,265.44	(8,891.62)	\$ 1,515,389.82	6,444.34	1,521,837.38
57	1,521,837.38	(8,891.62)	\$ 1,512,918.14	6,433.93	1,519,399.00
58	1,519,399.00	(8,891.62)	\$ 1,510,458.24	6,423.48	1,516,967.72
59	1,516,967.72	(8,891.62)	\$ 1,507,999.90	6,412.90	1,514,492.88
60	1,514,492.88	(8,891.62)	\$ 1,505,511.03	6,402.43	1,511,913.50
61	1,511,913.50	(8,891.62)	\$ 1,503,021.68	6,391.85	1,509,413.53
62	1,509,413.53	(8,891.62)	\$ 1,500,621.71	6,381.22	1,506,902.92
63	1,506,902.92	(8,891.62)	\$ 1,498,211.10	6,370.54	1,504,381.65
64	1,504,381.65	(8,891.62)	\$ 1,495,799.83	6,358.82	1,501,849.53
65	1,501,849.53	(8,891.62)	\$ 1,493,387.83	6,348.05	1,499,306.55
66	1,499,306.55	(8,891.62)	\$ 1,490,915.06	6,333.24	1,496,763.36
67	1,496,763.36	(8,891.62)	\$ 1,488,481.48	6,327.33	1,494,188.86
68	1,494,188.86	(8,891.62)	\$ 1,485,997.04	6,319.47	1,491,613.51
69	1,491,613.51	(8,891.62)	\$ 1,483,721.63	6,308.02	1,489,027.21
70	1,489,027.21	(8,891.62)	\$ 1,481,385.59	6,294.52	1,486,423.91
71	1,486,423.91	(8,891.62)	\$ 1,478,998.09	6,283.48	1,483,821.57
72	1,483,821.57	(8,891.62)	\$ 1,476,929.75	6,272.35	1,481,292.13
73	1,481,292.13	(8,891.62)	\$ 1,474,810.31	6,261.24	1,478,571.56
74	1,478,571.56	(8,891.62)	\$ 1,472,679.74	6,250.05	1,475,929.59
75	1,475,929.59	(8,891.62)	\$ 1,470,537.58	6,238.62	1,473,276.80
76	1,473,276.80	(8,891.62)	\$ 1,468,384.96	6,227.54	1,470,612.32
77	1,470,612.32	(8,891.62)	\$ 1,466,170.70	6,216.21	1,467,936.31
78	1,467,936.31	(8,891.62)	\$ 1,463,945.09	6,204.83	1,465,249.92
79	1,465,249.92	(8,891.62)	\$ 1,461,699.10	6,193.41	1,462,551.51
80	1,462,551.51	(8,891.62)	\$ 1,459,455.60	6,181.53	1,459,841.62
81	1,459,841.62	(8,891.62)	\$ 1,457,249.80	6,170.44	1,457,120.21
82	1,457,120.21	(8,891.62)	\$ 1,454,979.39	6,158.93	1,454,387.22
83	1,454,387.22	(8,891.62)	\$ 1,452,485.40	6,147.21	1,451,642.51
84	1,451,642.51	(8,891.62)	\$ 1,449,790.79	6,135.54	1,448,886.33
85	1,448,886.33	(8,891.62)	\$ 1,446,994.51	6,123.82	1,446,116.32
86	1,446,116.32	(8,891.62)	\$ 1,443,726.50	6,112.05	1,443,332.65
87	1,443,332.65	(8,891.62)	\$ 1,440,446.73	6,100.22	1,440,546.55
88	1,440,546.55	(8,891.62)	\$ 1,437,155.13	6,088.35	1,437,743.42
89	1,437,743.42	(8,891.62)	\$ 1,433,855.06	6,076.43	1,434,928.09
90	1,434,928.09	(8,891.62)	\$ 1,430,536.27	6,064.45	1,432,100.73
91	1,432,100.73	(8,891.62)	\$ 1,427,238.51	6,052.43	1,429,261.34
92	1,429,261.34	(8,891.62)	\$ 1,423,950.52	6,040.35	1,426,409.58
93	1,426,409.58	(8,891.62)	\$ 1,421,175.16	6,028.23	1,423,546.35
94	1,423,546.35	(8,891.62)	\$ 1,417,894.47	6,016.06	1,420,570.63
95	1,420,570.63	(8,891.62)	\$ 1,414,177.81	6,003.82	1,417,762.23
96	1,417,762.23	(8,891.62)	\$ 1,410,590.71	5,991.54	1,414,882.95

Mets 000005

DARRY L. STRAWBERRY
 PAYOUT
 DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.1537%
 Months 12
 Monthly Interest Rate 0.42925%
 Monthly Payment \$ 6,291.62
 Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
97	1,414,882.26	(6,691.62)	\$ 1,408,190.64	5,979.21	1,414,169.84
98	1,411,950.64	(6,691.62)	\$ 1,405,259.02	5,966.82	1,409,244.85
99	1,409,044.68	(6,691.62)	\$ 1,402,353.06	5,954.38	1,406,307.21
100	1,406,167.21	(6,691.62)	\$ 1,399,465.59	5,941.69	1,403,357.28
101	1,403,315.26	(6,691.62)	\$ 1,396,623.64	5,928.35	1,400,394.81
102	1,400,494.81	(6,691.62)	\$ 1,393,802.99	5,916.75	1,397,419.75
103	1,397,715.73	(6,691.62)	\$ 1,391,024.11	5,904.10	1,394,432.01
104	1,394,972.04	(6,691.62)	\$ 1,388,280.42	5,891.39	1,391,431.58
105	1,392,261.58	(6,691.62)	\$ 1,385,569.96	5,878.63	1,388,418.38
106	1,389,582.39	(6,691.62)	\$ 1,382,890.77	5,865.82	1,385,382.39
107	1,386,932.38	(6,691.62)	\$ 1,380,240.76	5,852.35	1,382,315.51
108	1,384,311.51	(6,691.62)	\$ 1,377,619.89	5,838.82	1,379,217.72
109	1,381,719.72	(6,691.62)	\$ 1,375,028.10	5,825.06	1,376,089.84
110	1,379,156.94	(6,691.62)	\$ 1,372,466.32	5,811.01	1,372,929.14
111	1,376,623.14	(6,691.62)	\$ 1,369,932.52	5,796.92	1,369,736.24
112	1,374,118.24	(6,691.62)	\$ 1,367,427.62	5,782.76	1,366,764.29
113	1,371,641.20	(6,691.62)	\$ 1,364,950.58	5,768.38	1,363,846.96
114	1,369,191.86	(6,691.62)	\$ 1,362,500.24	5,753.76	1,360,916.48
115	1,366,769.46	(6,691.62)	\$ 1,360,077.84	5,738.91	1,357,916.65
116	1,364,372.65	(6,691.62)	\$ 1,357,686.03	5,723.84	1,354,915.47
117	1,361,999.47	(6,691.62)	\$ 1,355,312.85	5,708.51	1,351,944.86
118	1,359,649.86	(6,691.62)	\$ 1,352,958.24	5,692.93	1,348,930.77
119	1,357,322.77	(6,691.62)	\$ 1,350,631.15	5,677.16	1,345,883.14
120	1,354,998.14	(6,691.62)	\$ 1,348,331.52	5,661.29	1,342,851.91
121	1,352,695.91	(6,691.62)	\$ 1,346,059.29	5,645.23	1,339,827.02
122	1,350,416.02	(6,691.62)	\$ 1,343,814.40	5,628.97	1,336,808.42
123	1,348,158.38	(6,691.62)	\$ 1,341,592.76	5,612.51	1,333,796.65
124	1,345,922.05	(6,691.62)	\$ 1,339,393.13	5,595.85	1,330,791.50
125	1,343,706.85	(6,691.62)	\$ 1,337,215.51	5,578.99	1,327,792.96
126	1,341,511.71	(6,691.62)	\$ 1,335,059.89	5,561.93	1,324,800.71
127	1,339,336.54	(6,691.62)	\$ 1,332,925.27	5,544.67	1,321,815.36
128	1,337,181.25	(6,691.62)	\$ 1,330,811.65	5,527.14	1,318,836.44
129	1,335,045.84	(6,691.62)	\$ 1,328,718.02	5,509.35	1,315,863.81
130	1,332,929.29	(6,691.62)	\$ 1,326,644.23	5,491.30	1,312,897.32
131	1,330,831.61	(6,691.62)	\$ 1,324,590.99	5,473.00	1,309,936.91
132	1,328,752.81	(6,691.62)	\$ 1,322,558.19	5,454.46	1,306,982.58
133	1,326,692.91	(6,691.62)	\$ 1,320,545.57	5,435.69	1,304,034.32
134	1,324,651.81	(6,691.62)	\$ 1,318,553.02	5,416.69	1,301,092.11
135	1,322,629.43	(6,691.62)	\$ 1,316,580.40	5,397.46	1,298,165.94
136	1,320,626.78	(6,691.62)	\$ 1,314,627.71	5,377.99	1,295,255.79
137	1,318,642.87	(6,691.62)	\$ 1,312,695.04	5,358.29	1,292,361.54
138	1,316,677.61	(6,691.62)	\$ 1,310,782.37	5,338.36	1,289,483.17
139	1,314,730.99	(6,691.62)	\$ 1,308,889.60	5,318.20	1,286,620.76
140	1,312,802.01	(6,691.62)	\$ 1,307,016.71	5,297.81	1,283,773.29
141	1,310,890.57	(6,691.62)	\$ 1,305,164.15	5,277.19	1,280,940.74
142	1,308,996.67	(6,691.62)	\$ 1,303,331.78	5,256.35	1,278,123.11
143	1,307,119.30	(6,691.62)	\$ 1,301,519.47	5,235.28	1,275,320.42
144	1,305,258.54	(6,691.62)	\$ 1,299,727.09	5,213.98	1,272,532.67

7/15/14

Meta 000006

DARAYL STRAWBERRY
PAYOUT
DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.1032%
Months 12
Monthly Interest Rate 0.42527%
Monthly Payment \$ 6,891.82
Payments made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
146	1,260,144.73	(6,891.82)	\$ 1,253,252.90	5,321.18	1,258,573.11
147	1,258,573.11	(6,891.82)	\$ 1,246,361.29	5,305.92	1,232,367.29
148	1,232,367.29	(6,891.82)	\$ 1,235,469.47	5,290.74	1,249,359.21
149	1,249,359.21	(6,891.82)	\$ 1,240,467.39	5,275.42	1,245,774.82
150	1,245,774.82	(6,891.82)	\$ 1,238,883.00	5,260.05	1,242,143.05
151	1,242,143.05	(6,891.82)	\$ 1,233,251.23	5,244.61	1,238,495.84
152	1,238,495.84	(6,891.82)	\$ 1,228,604.02	5,229.10	1,234,833.11
153	1,234,833.11	(6,891.82)	\$ 1,225,941.29	5,213.52	1,231,154.61
154	1,231,154.61	(6,891.82)	\$ 1,222,262.09	5,197.89	1,227,463.87
155	1,227,463.87	(6,891.82)	\$ 1,218,568.05	5,182.17	1,223,754.22
156	1,223,754.22	(6,891.82)	\$ 1,214,855.40	5,166.38	1,220,032.79
157	1,220,032.79	(6,891.82)	\$ 1,211,123.97	5,150.55	1,216,294.32
158	1,216,294.32	(6,891.82)	\$ 1,207,382.70	5,134.64	1,212,527.34
159	1,212,527.34	(6,891.82)	\$ 1,203,635.52	5,118.53	1,208,754.18
160	1,208,754.18	(6,891.82)	\$ 1,199,882.38	5,102.61	1,204,964.37
161	1,204,964.37	(6,891.82)	\$ 1,196,123.15	5,086.50	1,201,158.65
162	1,201,158.65	(6,891.82)	\$ 1,192,357.53	5,070.32	1,197,335.15
163	1,197,335.15	(6,891.82)	\$ 1,188,585.33	5,054.07	1,193,509.43
164	1,193,509.43	(6,891.82)	\$ 1,184,806.58	5,037.75	1,189,648.32
165	1,189,648.32	(6,891.82)	\$ 1,180,764.50	5,021.24	1,185,773.06
166	1,185,773.06	(6,891.82)	\$ 1,176,584.34	5,004.90	1,181,888.93
167	1,181,888.93	(6,891.82)	\$ 1,172,287.51	4,988.37	1,177,966.48
168	1,177,966.48	(6,891.82)	\$ 1,167,948.63	4,971.77	1,174,065.43
169	1,174,065.43	(6,891.82)	\$ 1,163,565.73	4,955.09	1,170,128.70
170	1,170,128.70	(6,891.82)	\$ 1,159,125.00	4,938.35	1,166,175.23
171	1,166,175.23	(6,891.82)	\$ 1,154,523.45	4,921.54	1,162,204.96
172	1,162,204.96	(6,891.82)	\$ 1,150,313.15	4,904.66	1,158,217.79
173	1,158,217.79	(6,891.82)	\$ 1,146,325.87	4,887.70	1,154,213.57
174	1,154,213.57	(6,891.82)	\$ 1,142,321.85	4,870.57	1,150,192.52
175	1,150,192.52	(6,891.82)	\$ 1,138,309.70	4,853.37	1,146,154.27
176	1,146,154.27	(6,891.82)	\$ 1,134,289.45	4,836.40	1,142,098.05
177	1,142,098.05	(6,891.82)	\$ 1,130,207.03	4,819.15	1,138,033.18
178	1,138,033.18	(6,891.82)	\$ 1,126,124.36	4,801.83	1,133,938.20
179	1,133,938.20	(6,891.82)	\$ 1,122,044.30	4,784.44	1,129,870.82
180	1,129,870.82	(6,891.82)	\$ 1,117,957.90	4,766.97	1,125,762.57
181	1,125,762.57	(6,891.82)	\$ 1,113,859.15	4,749.43	1,121,561.58
182	1,121,561.58	(6,891.82)	\$ 1,109,759.16	4,731.81	1,117,401.57
183	1,117,401.57	(6,891.82)	\$ 1,105,659.73	4,714.12	1,113,233.87
184	1,113,233.87	(6,891.82)	\$ 1,101,552.05	4,696.36	1,109,028.41
185	1,109,028.41	(6,891.82)	\$ 1,097,435.59	4,678.51	1,104,815.10
186	1,104,815.10	(6,891.82)	\$ 1,093,309.22	4,660.50	1,100,593.88
187	1,100,593.88	(6,891.82)	\$ 1,089,182.06	4,642.50	1,096,334.85
188	1,096,334.85	(6,891.82)	\$ 1,085,042.84	4,624.53	1,092,067.37
189	1,092,067.37	(6,891.82)	\$ 1,080,897.56	4,606.38	1,087,781.54
190	1,087,781.54	(6,891.82)	\$ 1,076,739.12	4,588.16	1,083,478.28
191	1,083,478.28	(6,891.82)	\$ 1,072,568.48	4,569.85	1,079,155.37
192	1,079,155.37	(6,891.82)	\$ 1,068,384.50	4,551.45	1,074,815.97
193	1,074,815.97	(6,891.82)	\$ 1,064,187.15	4,532.92	1,070,457.17

14/12/14

Mets 000007

DARRYL STRAWBERRY
PAYOUT
DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.7032%
Months 12
Monthly Interest Rate 0.47527%
Monthly Payment \$ 8,891.82
Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
193	1,070,457.17	(8,891.82)	\$ 1,061,565.35	4,614.40	1,066,179.14
194	1,066,179.14	(8,891.82)	\$ 1,057,187.02	4,605.87	1,052,883.39
195	1,052,883.39	(8,891.82)	\$ 1,052,791.07	4,477.11	1,048,288.24
196	1,048,288.24	(8,891.82)	\$ 1,043,377.42	4,458.40	1,043,835.62
197	1,043,835.62	(8,891.82)	\$ 1,043,944.00	4,439.55	1,046,393.55
198	1,046,393.55	(8,891.82)	\$ 1,039,491.73	4,420.61	1,043,912.34
199	1,043,912.34	(8,891.82)	\$ 1,039,020.52	4,401.36	1,039,422.11
200	1,039,422.11	(8,891.82)	\$ 1,030,530.29	4,382.50	1,034,912.60
201	1,034,912.60	(8,891.82)	\$ 1,029,020.98	4,363.33	1,030,384.30
202	1,030,384.30	(8,891.82)	\$ 1,021,452.46	4,344.07	1,025,836.55
203	1,025,836.55	(8,891.82)	\$ 1,016,944.73	4,324.73	1,021,289.46
204	1,021,289.46	(8,891.82)	\$ 1,012,377.64	4,305.30	1,016,832.94
205	1,016,832.94	(8,891.82)	\$ 1,007,791.12	4,285.80	1,012,376.32
206	1,012,376.32	(8,891.82)	\$ 1,003,185.10	4,266.21	1,007,919.31
207	1,007,919.31	(8,891.82)	\$ 998,559.49	4,246.54	1,002,806.03
208	1,002,806.03	(8,891.82)	\$ 993,914.21	4,226.75	998,141.05
209	998,141.05	(8,891.82)	\$ 989,249.18	4,206.95	993,456.13
210	993,456.13	(8,891.82)	\$ 984,564.31	4,187.02	988,751.23
211	988,751.23	(8,891.82)	\$ 979,856.51	4,167.02	984,026.52
212	984,026.52	(8,891.82)	\$ 975,134.70	4,145.82	979,281.63
213	979,281.63	(8,891.82)	\$ 970,399.51	4,123.74	974,510.55
214	974,510.55	(8,891.82)	\$ 965,654.73	4,101.48	969,731.21
215	969,731.21	(8,891.82)	\$ 960,895.39	4,085.13	964,923.52
216	964,923.52	(8,891.82)	\$ 956,123.70	4,068.59	960,099.39
217	960,099.39	(8,891.82)	\$ 951,337.57	4,045.17	955,252.74
218	955,252.74	(8,891.82)	\$ 946,538.92	4,024.56	950,385.46
219	950,385.46	(8,891.82)	\$ 941,723.86	4,003.86	945,497.32
220	945,497.32	(8,891.82)	\$ 936,896.70	3,983.07	940,586.77
221	940,586.77	(8,891.82)	\$ 931,956.95	3,962.21	935,650.45
222	935,650.45	(8,891.82)	\$ 926,767.33	3,941.23	930,709.55
223	930,709.55	(8,891.82)	\$ 921,515.74	3,920.18	925,736.92
224	925,736.92	(8,891.82)	\$ 916,246.10	3,899.04	920,744.14
225	920,744.14	(8,891.82)	\$ 911,052.22	3,877.50	915,720.12
226	915,720.12	(8,891.82)	\$ 905,838.30	3,855.48	910,684.78
227	910,684.78	(8,891.82)	\$ 901,602.56	3,833.07	905,638.03
228	905,638.03	(8,891.82)	\$ 896,745.21	3,811.35	900,539.77
229	900,539.77	(8,891.82)	\$ 891,667.95	3,791.37	895,459.92
230	895,459.92	(8,891.82)	\$ 886,568.18	3,770.28	890,322.33
231	890,322.33	(8,891.82)	\$ 881,446.56	3,748.90	885,195.36
232	885,195.36	(8,891.82)	\$ 876,303.21	3,726.63	880,029.08
233	880,029.08	(8,891.82)	\$ 871,138.04	3,704.65	874,842.70
234	874,842.70	(8,891.82)	\$ 865,962.58	3,682.50	869,633.42
235	869,633.42	(8,891.82)	\$ 860,774.55	3,660.45	864,402.11
236	864,402.11	(8,891.82)	\$ 855,574.29	3,638.20	859,149.49
237	859,149.49	(8,891.82)	\$ 850,250.57	3,615.85	853,872.53
238	853,872.53	(8,891.82)	\$ 844,909.71	3,593.42	848,574.13
239	848,574.13	(8,891.82)	\$ 839,552.31	3,570.89	843,258.20
240	843,258.20	(8,891.82)	\$ 834,179.33	3,548.36	837,939.64

GARRY L. STRAWBERY
 PAYOUT
 DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2002

Annual Interest Rate 5.1332%
 Months 12
 Monthly Interest Rate 0.4277%
 Monthly Payment \$ 8,891.82
 Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
241	837,805.64	(8,891.82)	\$ 828,913.82	3,525.54	832,443.35
242	832,443.35	(8,891.82)	\$ 823,551.53	3,502.72	827,154.25
243	827,154.25	(8,891.82)	\$ 818,259.43	3,479.89	821,742.23
244	821,742.23	(8,891.82)	\$ 812,850.41	3,456.72	816,307.19
245	816,307.19	(8,891.82)	\$ 807,415.37	3,433.67	810,849.64
246	810,849.64	(8,891.82)	\$ 801,957.22	3,410.46	805,357.57
247	805,357.57	(8,891.82)	\$ 796,470.65	3,387.15	799,853.06
248	799,853.06	(8,891.82)	\$ 790,971.13	3,363.74	794,334.82
249	794,334.82	(8,891.82)	\$ 785,443.10	3,340.23	788,793.32
250	788,793.32	(8,891.82)	\$ 779,891.60	3,316.82	783,230.12
251	783,230.12	(8,891.82)	\$ 774,318.50	3,292.91	777,598.21
252	777,598.21	(8,891.82)	\$ 768,717.39	3,268.50	771,886.49
253	771,886.49	(8,891.82)	\$ 763,084.67	3,243.19	766,239.86
254	766,239.86	(8,891.82)	\$ 757,448.04	3,221.17	760,558.27
255	760,558.27	(8,891.82)	\$ 751,777.39	3,197.08	754,874.45
256	754,874.45	(8,891.82)	\$ 746,082.83	3,172.84	749,155.47
257	749,155.47	(8,891.82)	\$ 740,333.65	3,148.62	743,512.17
258	743,512.17	(8,891.82)	\$ 734,520.36	3,124.10	737,744.45
259	737,744.45	(8,891.82)	\$ 728,632.83	3,099.57	731,852.19
260	731,852.19	(8,891.82)	\$ 722,660.37	3,074.93	725,935.11
261	725,935.11	(8,891.82)	\$ 716,642.48	3,050.29	720,003.60
262	720,003.60	(8,891.82)	\$ 710,591.67	3,025.36	714,027.22
263	714,027.22	(8,891.82)	\$ 704,533.40	3,000.41	708,035.81
264	708,035.81	(8,891.82)	\$ 698,462.99	2,975.25	702,019.34
265	702,019.34	(8,891.82)	\$ 692,377.32	2,950.18	695,977.71
266	695,977.71	(8,891.82)	\$ 686,273.89	2,924.82	689,910.82
267	689,910.82	(8,891.82)	\$ 680,159.00	2,899.35	683,718.55
268	683,718.55	(8,891.82)	\$ 674,029.73	2,874.07	677,463.78
269	677,463.78	(8,891.82)	\$ 667,888.07	2,848.47	671,235.45
270	671,235.45	(8,891.82)	\$ 661,725.83	2,822.77	665,033.40
271	665,033.40	(8,891.82)	\$ 655,545.58	2,796.95	658,793.14
272	658,793.14	(8,891.82)	\$ 649,341.72	2,771.04	652,514.77
273	652,514.77	(8,891.82)	\$ 643,119.58	2,745.07	646,225.59
274	646,225.59	(8,891.82)	\$ 636,873.14	2,718.92	640,000.82
275	640,000.82	(8,891.82)	\$ 630,607.20	2,692.52	633,753.82
276	633,753.82	(8,891.82)	\$ 624,325.60	2,665.20	627,528.25
277	627,528.25	(8,891.82)	\$ 618,023.44	2,637.79	621,276.23
278	621,276.23	(8,891.82)	\$ 611,705.41	2,610.20	615,000.51
279	615,000.51	(8,891.82)	\$ 605,367.73	2,582.59	608,732.23
280	608,732.23	(8,891.82)	\$ 599,000.48	2,553.65	602,443.14
281	602,443.14	(8,891.82)	\$ 592,608.22	2,523.73	596,110.09
282	596,110.09	(8,891.82)	\$ 586,195.20	2,500.71	589,714.97
283	589,714.97	(8,891.82)	\$ 579,756.15	2,476.55	583,301.79
284	583,301.79	(8,891.82)	\$ 573,294.86	2,451.29	576,861.15
285	576,861.15	(8,891.82)	\$ 566,814.34	2,425.88	570,399.23
286	570,399.23	(8,891.82)	\$ 560,311.44	2,399.36	563,897.79
287	563,897.79	(8,891.82)	\$ 553,784.07	2,371.76	557,374.71
288	557,374.71	(8,891.82)	\$ 547,234.91	2,344.12	550,822.51

DARRYL STRAWBERRY
PAYOUT
DEFERRED COMP, BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.1032%
Months 12
Monthly Interest Rate 0.42527%
Monthly Payment \$ 8,891.82
Payment made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
288	552,623.68	(8,891.82)	\$ 543,731.86	2,891.15	546,623.01
289	546,623.01	(8,891.82)	\$ 537,731.19	2,885.19	539,626.34
290	539,626.34	(8,891.82)	\$ 530,739.52	2,877.00	532,636.54
291	532,636.54	(8,891.82)	\$ 524,112.05	2,866.87	525,648.97
292	525,648.97	(8,891.82)	\$ 517,449.15	2,250.54	518,649.69
293	518,649.69	(8,891.82)	\$ 510,757.83	2,172.58	512,029.65
294	512,029.65	(8,891.82)	\$ 504,038.10	2,143.51	505,181.63
295	505,181.63	(8,891.82)	\$ 497,289.81	2,114.51	498,404.62
296	498,404.62	(8,891.82)	\$ 490,512.80	2,085.89	492,598.70
297	492,598.70	(8,891.82)	\$ 483,708.87	2,057.04	486,764.81
298	486,764.81	(8,891.82)	\$ 476,877.19	2,027.98	480,900.17
299	480,900.17	(8,891.82)	\$ 470,008.35	1,998.79	475,087.14
300	475,087.14	(8,891.82)	\$ 463,115.32	1,969.48	469,304.80
301	469,304.80	(8,891.82)	\$ 456,192.98	1,940.04	463,133.01
302	463,133.01	(8,891.82)	\$ 449,241.19	1,910.47	457,151.66
303	457,151.66	(8,891.82)	\$ 442,259.84	1,880.78	451,140.63
304	451,140.63	(8,891.82)	\$ 435,248.81	1,850.87	445,089.70
305	445,089.70	(8,891.82)	\$ 428,207.85	1,821.03	439,028.98
306	439,028.98	(8,891.82)	\$ 421,137.16	1,790.90	432,926.12
307	432,926.12	(8,891.82)	\$ 414,036.30	1,759.78	426,797.58
308	426,797.58	(8,891.82)	\$ 406,905.24	1,728.43	420,635.67
309	420,635.67	(8,891.82)	\$ 399,743.85	1,696.98	414,443.63
310	414,443.63	(8,891.82)	\$ 392,552.01	1,665.39	408,221.40
311	408,221.40	(8,891.82)	\$ 385,329.58	1,633.68	401,980.26
312	401,980.26	(8,891.82)	\$ 378,076.44	1,601.83	395,684.27
313	395,684.27	(8,891.82)	\$ 370,792.45	1,570.86	389,369.31
314	389,369.31	(8,891.82)	\$ 363,477.49	1,540.75	383,023.24
315	383,023.24	(8,891.82)	\$ 355,131.42	1,511.51	376,646.02
316	376,646.02	(8,891.82)	\$ 346,754.10	1,483.13	370,237.24
317	370,237.24	(8,891.82)	\$ 338,345.42	1,454.61	363,797.05
318	363,797.05	(8,891.82)	\$ 330,905.23	1,418.29	357,325.22
319	357,325.22	(8,891.82)	\$ 323,433.40	1,383.21	350,821.61
320	350,821.61	(8,891.82)	\$ 315,929.79	1,350.30	344,286.09
321	344,286.09	(8,891.82)	\$ 308,394.27	1,320.25	337,718.53
322	337,718.53	(8,891.82)	\$ 300,826.71	1,292.07	331,113.70
323	331,113.70	(8,891.82)	\$ 293,226.86	1,258.75	324,483.71
324	324,483.71	(8,891.82)	\$ 285,594.89	1,227.20	317,822.19
325	317,822.19	(8,891.82)	\$ 278,000.57	1,184.70	311,125.67
326	311,125.67	(8,891.82)	\$ 270,333.25	1,161.07	304,385.22
327	304,385.22	(8,891.82)	\$ 262,593.40	1,128.10	297,602.60
328	297,602.60	(8,891.82)	\$ 254,740.00	1,096.09	290,636.77
329	290,636.77	(8,891.82)	\$ 246,944.55	1,062.83	283,597.88
330	283,597.88	(8,891.82)	\$ 239,115.35	1,029.54	276,143.59
331	276,143.59	(8,891.82)	\$ 231,253.38	996.20	268,250.00
332	268,250.00	(8,891.82)	\$ 223,358.26	962.63	260,320.66
333	260,320.66	(8,891.82)	\$ 215,425.07	928.91	252,357.97
334	252,357.97	(8,891.82)	\$ 207,456.15	895.04	244,351.20
335	244,351.20	(8,891.82)	\$ 200,456.35	861.03	236,290.41

GARRY L. STRAWBERRY
PAYOUT
DEFERRED COMP. BALANCE AS OF DECEMBER 31, 2003

Annual Interest Rate 5.1032%
Months 12
Monthly Interest Rate 0.42527%
Monthly Payment 5 8,891.82
Payments made at the beginning of the month

Period	Opening Monthly Balance	Monthly Payment	Subtotal	Monthly Interest	Closing Monthly Balance
337	203,339.41	(8,891.82)	\$ 194,438.59	826.80	195,265.47
338	195,265.47	(8,891.82)	\$ 186,373.65	792.59	187,166.24
339	187,166.24	(8,891.82)	\$ 178,274.42	758.14	179,032.56
340	179,032.56	(8,891.82)	\$ 170,140.74	723.56	170,864.29
341	170,864.29	(8,891.82)	\$ 161,972.47	688.81	162,661.28
342	162,661.29	(8,891.82)	\$ 153,769.47	653.83	154,422.40
343	154,422.40	(8,891.82)	\$ 145,531.58	618.53	146,150.48
344	146,150.48	(8,891.82)	\$ 137,258.66	583.72	137,842.37
345	137,842.37	(8,891.82)	\$ 128,950.55	548.36	129,498.83
346	129,498.83	(8,891.82)	\$ 120,607.11	512.90	121,120.82
347	121,120.82	(8,891.82)	\$ 112,238.20	477.21	112,705.47
348	112,705.47	(8,891.82)	\$ 103,813.35	441.48	104,255.13
349	104,255.13	(8,891.82)	\$ 95,363.31	405.56	95,768.85
350	95,768.85	(8,891.82)	\$ 86,877.04	369.48	87,246.50
351	87,246.50	(8,891.82)	\$ 78,364.68	333.22	78,697.89
352	78,697.89	(8,891.82)	\$ 69,795.97	296.82	70,092.79
353	70,092.79	(8,891.82)	\$ 61,251.97	260.27	61,461.34
354	61,461.34	(8,891.82)	\$ 52,559.62	223.56	52,793.08
355	52,793.08	(8,891.82)	\$ 43,901.26	186.79	44,067.96
356	44,067.96	(8,891.82)	\$ 35,199.14	149.89	35,348.82
357	35,348.82	(8,891.82)	\$ 26,454.00	112.89	26,566.89
358	26,566.89	(8,891.82)	\$ 17,574.05	75.16	17,749.36
359	17,749.36	(8,891.82)	\$ 8,658.02	37.67	8,795.89
360	8,795.89	(8,891.82)	\$ -	0.02	0.00

Function Check (8,891.82)

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARY W. COLON, TRUSTEE,

Plaintiff,

v.

DARRYL STRAWBERRY, et al.,

Defendants.

Case No. 4:12cv101-MCR/CAS

**OPPOSITION BY UNITED STATES
TO MOTION FOR TEMPORARY RESTRAINING ORDER**

The United States of America opposes the Emergency Motion for Temporary Restraining Order [doc. 84] filed this morning at 9:00 am by Lisa Strawberry seeking to delay the sale of Darryl Strawberry's deferred compensation. The sale is scheduled for today at Noon Eastern time.

The motion is without merit for a number of reasons.

First, there exists a statutory bar to the relief Lisa Strawberry seeks. The Anti-Injunction Act, 26 U.S.C. § 7421(a), states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . ." There are statutory and court-created exceptions to this statutory bar, but none of them applies here. *See Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962) (injunction will issue only if there are "no circumstances" under which the United States would prevail, and equity jurisdiction otherwise exists).

Second, there is no likelihood that Lisa Strawberry will prevail on her claim to a portion of the deferred compensation because her interest in the deferred compensation was extinguished pursuant to a bankruptcy settlement between the trustee of her Chapter 7 bankruptcy case and Sterlings Mets, L.P., as shown by Exhibit 1.

Third, even if Lisa Strawberry had an *in rem* claim against the deferred compensation, there is no irreparable harm in allowing the asset to be sold and the proceeds of the sale distributed according to a further order of this Court, as contemplated in the Order of Sale.

Fourth, staying the sale will cause great harm to the United States. The IRS specialist has advised counsel that at least 15 bidders have flown in to Chicago to bid on the asset. It is unlikely that interest in the sale will continue after a last-minute cancellation.

WHEREFORE, the Court should grant the motion for temporary restraining order.

CAROLYN CIRAULO
Principal Deputy Assistant Attorney General

s/ Philip Doyle
PHILIP DOYLE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14189
Washington, D.C. 20044
202-514-9673 (v)
202-514-4963 (f)
Philip.A.Doyle@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 20th of January, 2015, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

David K. Minacci
Smith, Thompson, Shaw & Manausa, P.A.
3520 Thomasville Road
4th Floor
Tallahassee, Florida 32309

Nathan A. Adams, IV
Holland & Knight, LLP
P.O. Drawer 810
Tallahassee, Florida 32302

And by first-class mail to:

Christopher Darden
11500 Olympic Blvd.
Ste. 400
Los Angeles, CA 90065

/s/ Philip Doyle
PHILIP DOYLE
Trial Attorney
United States Department of Justice, Tax Division

1 DAVID R. WEINSTEIN (State Bar No. 082881)
 2 LEONARD PEÑA (State Bar No. 192898)
 WEINSTEIN, EISEN, WEISS & ROTHSCCHILD LLP
 1925 Century Park East, Suite 1150
 3 Los Angeles, California 90067-2712
 Telephone (310) 203-9393
 4 Facsimile (310) 203-8110

5 Attorneys for Carolyn A. Dye,
 Chapter 7 Trustee.

6
 7
 8 UNITED STATES BANKRUPTCY COURT
 9 CENTRAL DISTRICT OF CALIFORNIA
 10 LOS ANGELES DIVISION

11
 12 In re
 13 LISA M. STRAWBERRY,
 14 Debtor.

Bk. No. LA 99-50067-EC
 [Chapter 7]

[Related to Adv. No. LA 01-02538-EC]

15 ORDER GRANTING TRUSTEE'S
 16 MOTION FOR ORDER: (1) APPROVING
 17 COMPROMISE OF CONTROVERSIES
 WITH SABOT CAPITAL
 18 CORPORATION; NADINE HOLDINGS,
 INC.; CITY NATIONAL BANK AS
 19 CUSTODIAN FOR ROBERT MURPHY
 ROLLOVER IRA; GARGOYLE
 20 PRODUCTIONS LIMITED
 RETIREMENT TRUST; HARRY AND
 21 EVA POLL GRANDCHILDREN'S
 TRUST No. 1; SALTZBURG FAMILY
 22 INVESTMENT PARTNERSHIP; TRUST
 COMPANY OF AMERICA; NORMA
 23 MEADE; KOCH FAMILY TRUST AND
 24 STERLING METS, L.P.; AND (2)
 25 APPROVING FORM OF SETTLEMENT
 AGREEMENTS AND MUTUAL
 GENERAL RELEASES

26 [NO HEARING REQUIRED]

27 ///

28 ///

cc
 1 AT LOS ANGELES, IN THIS DISTRICT ON

2003.

2 On May 27, 2003, Carolyn A. Dye, Chapter 7 Trustee ("Trustee") through her
 3 counsel of record served a *Notice of Trustee's Motion for Order (1) Approving*
 4 *Compromise of Controversies with Cabot Capital Corporation; Nadine Holdings, Inc.;*
 5 *City National Bank as Custodian for Robert Murphy Rollover IRA; Gargolye*
 6 *Productions Limited Retirement Trust; Harry and Eva Poll Grandchildren's Trust*
 7 *No. 1; Salzburg Family Investment Partnership; Trust Company of America; Norma*
 8 *Meade; Koch Family Trust and Sterling Mets, L.P.; and (2) Approving Form of*
 9 *Settlement Agreements and Mutual General Releases ("Notice")* on all interested parties
 10 pursuant to Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule
 11 9013-1(g)(1)(M).

12 Said Notice was filed with the Court on July 1, 2003. The Trustee's *Motion for*
 13 *Order (1) Approving Compromise of Controversies with Cabot Capital Corporation;*
 14 *Nadine Holdings, Inc.; City National Bank as Custodian for Robert Murphy Rollover*
 15 *IRA; Gargolye Productions Limited Retirement Trust; Harry and Eva Poll*
 16 *Grandchildren's Trust No. 1; Salzburg Family Investment Partnership; Trust*
 17 *Company of America; Norma Meade; Koch Family Trust and Sterling Mets, L.P.; and*
 18 *(2) Approving Form of Settlement Agreements and Mutual General Releases ("Motion")*
 19 was filed with the Court on July 1, 2003.

20 The Notice stated that any party with an objection and/or requesting a
 21 hearing must serve and file with the Court a written response within 15 days of the
 22 date of service the Notice was served on all parties. As evidenced by the *Declaration of*
 23 *Leonard Peña Re Non-Opposition To Trustee's Motion For Order: (1) Approving*
 24 *Compromise Of Controversies with Cabot Capital Corporation; Nadine Holdings, Inc.;*
 25 *City National Bank as Custodian for Robert Murphy Rollover IRA; Gargolye*
 26 *Productions Limited Retirement Trust; Harry and Eva Poll Grandchildren's Trust No.*
 27 *1; Salzburg Family Investment Partnership; Trust Company of America; Norma*
 28 *Meade; Koch Family Trust and Sterling Mets, L.P.; and (2) Approving Form of*

1 *Settlement Agreements and Mutual General Releases* ("Declaration") filed with the
 2 Court, there is no outstanding objection to the Motion and neither the Trustee nor her
 3 counsel received a request for hearing on the Motion.

4 Based upon the Notice, Motion and the Declaration and there being no
 5 unresolved objections to the Motion nor any request for hearing thereon, and due and
 6 adequate notice having been given to all interested parties and the Court having
 7 considered all papers filed and proceedings had herein and otherwise being fully
 8 informed and good cause appearing therefor,

9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

10 1. The Trustee's Motion for Order (1) Approving Compromise of
 11 Controversies with Cabot Capital Corporation; Nadine Holdings, Inc.; City
 12 National Bank as Custodian for Robert Murphy Rollover IRA; Gargoyle
 13 Productions Limited Retirement Trust; Harry and Eva Poll Grandchildren's
 14 Trust No. 1; Saltzburg Family Investment Partnership; Trust Company of
 15 America; Norma Meade; Koch Family Trust and Sterling Mets, L.P.; and (2)
 16 Approving Form of Settlement Agreements and Mutual General Releases is
 17 granted;

18 2. The Trustee's Settlement Agreement and Mutual General
 19 Release with (Cabot Capital Corporation, a California corporation, for itself
 20 and as loan servicing agent for Nadine Holdings, Inc., a Liberian corporation,
 21 City National Bank, as custodian for Robert Murphy Rollover IRA, Gargoyle
 22 Productions Limited Retirement Trust, Harry and Eva Poll Grandchildren's
 23 Trust No. 1, Saltzburg Investment Partnership, a general partnership, Trust
 24 Company of America (successor custodian for Transcorp) as custodian for
 25 James A. Brinton No. 87657, Nancy J. Palm and Norma Meade and the Koch
 26 Family Trust, which is attached hereto as Exhibit "1" is approved;

27 3. The Trustee's Settlement Agreement and Mutual General
 28 Release with Sterling Mets, L.P., Ek/a Sterling Doubleday Enterprises, L.P.,

owner and operator of the New York Mets National League baseball franchise, Nadine Holdings, Inc., a Liberian corporation, City National Bank, as custodian for Robert Murphy Rollover IRA, Gargoyle Productions Limited Retirement Trust, Harry and Eva Poll Grandchildren's Trust No. 1, Sautzburg Investment Partnership, a General Partnership, Trust Company of America (successor custodian for Transcorp) as custodian for James A Briton No. 87657, Nancy J. Palm and Norma Meade and the Koch Family Trust and Cabot Capital Corporation, a California corporation for itself and as loan servicing agent for the Lenders, which is attached hereto as Exhibit "2" is approved; and

4. The Trustee is authorized to execute any and all documents necessary to effectuate the Settlement Agreements, including dismissing the adversary proceeding titled *Dye v. Cabot Capital, et al.*, case no. LA 01-02538-EC.

JUL 29 2003

ELLEN CARROLL
HONORABLE ELLEN CARROLL
UNITED STATES BANKRUPTCY JUDGE

1. Lisa M. Strawberry (the "Debtor") filed a petition for relief under Chapter 7 of Title 11 of the United States Code on November 2, 1999 (the "Petition Date"), bankruptcy case No. LA 99-50067-EC.

2. Carolyn A. Dye is the duly appointed and acting Chapter 7 Trustee of the Debtor's bankruptcy estate (the "Estate").

3. The only asset in the Debtor's Estate is a fifty (50%) percent interest in the Debtor's former husband's deferred compensation plan ("Plan") valued, with payments over time, at approximately One Million Six Hundred Thousand Dollars (\$1,600,000) (the "Estate Asset").

4. Pursuant to the order of the Bankruptcy Court entered October 17, 2000, the Plan is not exempt but is an asset of the bankruptcy estate that the Trustee may administer.

5. The Defendants assert that they have a lien and/or an assignment of the Debtor's interest in the Plan to secure a Five Hundred Twenty Five Thousand Dollar (\$525,000.00) loan to the Debtor. The Defendants assert that pursuant to various promissory notes, the Defendants are now owed approximately One Million Dollars (\$1,000,000.00), including unpaid principal, default interest, interest and attorneys' fees, all of which they assert is secured by the Plan.

6. The Trustee asserts that the Defendants' loans to the Debtor are not secured by the Plan and that their purported liens and/or assignments of an interest in the Plan are subject to avoidance under the applicable federal and state avoiding powers. The Defendants deny these allegations.

7. On November 2, 2001, the Trustee commenced an Adversary Proceeding against the Defendants, adversary case number AD 01-02538-MC (the "Adversary Proceeding"), by filing a Complaint that sought to avoid the Defendants' alleged liens and/or assignments of the Estate's interest in the Plan. On March 12, 2002, the Trustee amended the original complaint to add a new defendant (the "First Amended Complaint").

8. This Agreement is made with reference to any and all claims of the Trustee against the Defendants alleged in the First Amended Complaint. It is the intention of the Parties to compromise and settle any and all claims that may exist among and between them arising out of the First Amended Complaint and to release any and all claims between the Defendants and the Trustee.

9. The Parties desire to resolve the Adversary Proceeding in its entirety and agree that litigation of the Adversary Proceeding would be costly and have an uncertain outcome.

10. Under a separate agreement with Sterling Mets, L.P., d/k/a Sterling Doubleday Enterprises, L.P. ("Mets") (the "Mets Agreement"), which the Trustee is submitting concurrently with this Agreement for approval by the Bankruptcy Court, the Trustee expects to receive the sum of \$814,014.50, less any applicable federal taxes which will be withheld and paid by the Mets, from the Mets payable one-half in 2003 and the remaining one-half payable in 2004.

11. In particular, this Agreement pertains to the division of the monies actually received by the Trustee received from the Mets between the Defendants and the Trustee.

- 7 -

- 19 -

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

II.

TERMS OF AGREEMENT AND RELEASE

1. Incorporation of Recitals.

The recitals set forth above are not only recitals but form an integral part of this Agreement, and are true and correct statements of fact and are incorporated herein by this reference.

2. Bankruptcy Court Approval.

Promptly upon the execution of this Agreement and the Mets Agreement, the Trustee will file a motion and/or commence another appropriate proceeding with the Bankruptcy Court, whereby the Trustee shall request the Bankruptcy Court to approve and authorize the terms and conditions of this Agreement. Except as otherwise set forth below, the Parties agree that the rights, obligations and release of the Parties arising under this Agreement are specifically conditioned upon (a) entry of a final nonappealable order by the bankruptcy court approving and authorizing the terms and conditions of this Agreement (the "Settlement Order") and (b) entry of a final nonappealable order approving and authorizing the terms and conditions of the Mets Agreement.

3. Payments to Cabot.

(a) The Trustee shall pay to Cabot, as servicing agent (1) 66% of the amount actually received by the Trustee from the Mets (the "Plan Funds"); and (2)

66% of any tax refund the Trustee receives from the Internal Revenue Service relating to the estate's federal income tax obligation (the "Refund Funds"). All amounts to be paid by the Trustee to Cabot from the Plan Funds and the Refund Funds are referred to as (the "Cabot Funds"), except for any deductions permitted under paragraph 3(b). The Trustee shall make payments to Cabot as provided for above within ten business days from the receipt of the Plan Funds or the Refund Funds from the Mets. Cabot shall be responsible for distributing the Cabot Funds it receives from the Trustee to the Investors. The Trustee shall have no responsibility for distributing the Cabot Funds to any of the Investors and will have no liability in connection therewith. The Trustee's sole obligation will be to deliver the Cabot Funds to Cabot.

(h) If the Mets breach the Mets Agreement and the Trustee incurs attorneys' fees and costs not reimbursed by the Mets as a result of such a breach, regardless of whether an action against the Mets is actually filed, then the Trustee will be entitled to deduct 66% of the estate's unreimbursed reasonable attorneys' fees and costs from Cabot's share of the Plan Funds or the Refund Funds. If there is any dispute as to the reasonableness of the Trustee's attorneys' fees and costs, such dispute will be decided by the Bankruptcy Court. The Trustee will inform Cabot of any dispute that arises with the Mets relating to the Mets Agreement. However, the Trustee will retain the authority to resolve any dispute with the Mets subject to bankruptcy court approval.

4. Avoidance and Preservation of Lien for Benefit of Estate

The parties further agree that the Defendants' lien is avoided to the extent of the Trustee's 34% share of the Plan Funds resulting from the Mets Agreement and that such avoided lien is preserved for the benefit of the estate under 11 U.S.C. § 551 and the order approving this Agreement shall so provide. The parties further agree that Defendants' lien is not avoided to the extent of the Defendants' 66% share of the Plan Funds and the order approving this Agreement shall so provide.

5. Consideration from the Trustee

Within fifteen court days after an order approving this Agreement as described in paragraph 2 above, is entered on the Court's docket, the Trustee will cause the Adversary Proceeding number AD 01-02438-EC to be dismissed with prejudice as to any and all remaining Defendants. However, the Bankruptcy Court will retain jurisdiction over this matter as described in paragraph 11 below.

6. Release by Trustee

Excepting the obligations under this Agreement, the Trustee hereby irrevocably and unconditionally releases, acquits and forever discharges the Defendants from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, which are based on, relate to, refer to, or arise out of any of the matters or facts set forth in the Recitals to this Agreement and Release and the

Complaint's claims arising therefrom that were or could have been asserted in the Adversary Proceeding against the Defendants.

7. Release by Defendants

Excepting the obligations under this Agreement, the Defendants hereby irrevocably and unconditionally release, acquit and forever discharges the Trustee and each and all of her present and former respective past and present representatives, agents, servants, employees, attorneys, successors and assigns, and each of them, and all persons acting by, through, under or in concert with any of them from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, which are based on, relate to, refer to, or arise out of any of the matters or facts set forth in the Recitals to this Agreement and the First Amended Complaint and claims arising therefrom that were or could have been asserted in the Adversary Proceeding against the Trustee. This release includes any claims filed by any of the Defendants in this bankruptcy estate.

8. Release Includes Unknown Claims.

The Parties agree, warrant and represent that it is within their contemplation that they may have claims, causes of action, proceedings, covenants, sums of money, accounts, controversies, debts, demands, and differences of any type whatsoever, known or unknown, which may at any time heretofore have existed in

11. Jurisdiction.

The United States Bankruptcy Court overseeing the Debtor's Bankruptcy Case retains exclusive jurisdiction to resolve any and all disputes pertaining to this Agreement, including the enforcement of any of its terms.

12. Representations and Warranties.

Each party hereto represents and warrants that:

- a. It, he or she has had the benefit and advice of independent counsel in connection with this Agreement;
- b. This Agreement is executed without reliance on any statement, representation, promise, inducement, understanding, or agreement by or on behalf of any other party hereto or by or on behalf of any representative or agent employed by any of them, other than the matters expressly set forth herein;
- c. No promise, inducement, understanding or agreement not expressed herein has been made to or with any party, and this Agreement contains the entire written agreement between the Parties;
- d. This Agreement is the product of the efforts of the Parties and, as a result, it will not be construed, and no presumption will arise, based upon who drafted this Agreement;
- e. No claim or obligation referred to or released in this Agreement has been assigned, transferred, hypothecated, pledged, mortgaged, or set over in any manner whatsoever, in whole or in part, to any third person, each party to this Agreement has the sole and exclusive right to release all of the claims and obligations described and released in this Agreement and the Defendants assert

that there are no other parties that have an interest in the Plan and they have the sole right to compromise all the claims described in this Agreement;

f. To the extent applicable, each of the Parties has all corporate power and authority to perform its obligations hereunder and to consummate the terms of the Agreement;

g. The terms of this Agreement are contractual and not mere recitals; and

h. The various headings in this Agreement are inserted for convenience only and shall not affect this Agreement or any provisions hereof.

13. Entirety and Amendments.

This Agreement constitutes the full and final agreement among the Parties with respect to the subject matter hereof and shall not be modified or amended in any respect except by a written instrument expressing such amendment or modification signed by each of the Parties.

14. Final Accord and Satisfaction.

This Agreement and any releases that may be contained herein are intended to be final and binding between the Parties hereto and are further to be effective as a full and final accord and satisfaction between the Parties to this Agreement and each party expressly relies on the finality of this Agreement as a substantial, material factor inducing that party's execution of this Agreement.

15. Governing Law.

Each party agrees that this Agreement shall be governed by and interpreted under the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and, where appropriate, the laws of the State of California.

16. Attorneys' Fees.

Each party shall bear its own costs and expenses arising out of the negotiation, execution, delivery, and performance of this Agreement, all proceedings leading up to this Agreement and the consummation of all transactions contemplated hereby. Should any party hereto institute any action or proceeding to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive such amount as the Court may judge to be reasonable attorneys' fees and costs for the services rendered to the prevailing party in such action or proceeding.

17. No Admission of Liability.

This Agreement effects the settlement of claims which are contested, and nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party or to any other person or entity.

18. Execution in Counterparts.

This Agreement may be signed in counterparts by the Parties hereto and shall be valid and binding on each party as if fully executed in a single document.

19. Execution by Fax Signatures.

This Agreement may be signed by fax transmission by the Parties hereto and shall be valid and binding on each party as if executed in person.

20. Successors and Assigns.

The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the hereto.

21. No Personal Liability to Trustee.

Carolyn A. Dye undertakes no obligation or responsibility for this Agreement other than in her capacity as Chapter 7 Trustee of the Lisa M. Strawberry bankruptcy Estate. No personal liability of any kind may attach to Carolyn A. Dye individually or to any professional employed by the Trustee on account of this Agreement or the actions and non-actions which led to or were otherwise related to this Agreement.

22. Time of the Essence.

Time is of the essence. The Parties agree that any party's failure to perform any term, condition or covenant of this Agreement within the time provided for herein shall constitute a default of this Agreement.

DATED: June 19, 2003

CAROLYN A. DYE

By 

CAROLYN A. DYE

Solely in her capacity as Chapter 7
Trustee of the Lisa M. Strawberry
Bankruptcy Estate

DATED: June 12, 2003

CABOT CAPITAL CORPORATION, a
California Corporation, for itself and
as loan servicing agent, for Nadine
Holdings, Inc., a Liberian corporation,
City National Bank, as custodian for
Robert Murphy Rollover IRA,
Gargoyle Productions Limited
Retirement Trust, Harry and Eva Poll
Grandchildren's Trust No. 1,
Saltzburg Investment Partnership, a
general partnership, Trust Company
of America (successor custodian for
Transcorp) as custodian for James A.
Brinton No. 87657, Nancy J. Palm and
Norma Meade and the Koch Family
Trust

By Donald Bergman
As President

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

MARY W. COLON, Trustee,

Plaintiff,

and

LISA STRAWBERRY

Plaintiff Intervenor

v.

Case No. 4:12cv101-SPM/CAS

DARRYL STRAWBERRY,
STERLING METS, L.P., a/k/a
THE NEW YORK METS BASEBALL
CLUB, INTERNAL REVENUE
SERVICE and MARY W. COLON,
Trustee;

Defendants,

**LISA STRAWBERRY'S EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND SUPPORTING MEMORANDUM OF LAW**

I. INTRODUCTION

Plaintiff Intervenor Lisa Strawberry, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Local Rule 7.1(e), respectfully requests that this Court enter a temporary restraining order to prevent the sale of Defendant Darryl Strawberry's Deferred Compensation Agreement, Addendum III to Uniform Player's Contract Dated

March 12, 1985, executed on March 12, 1985, by Darryl Strawberry and Doubleday Sports, Inc. (Predecessor in interest to Sterling Mets, L.P.) (the “deferred compensation agreement”), [Docket 78] presently scheduled for January 20, 2015.

Plaintiff Intervenor is the first ex-wife of Defendant Darryl Strawberry and as the result of a final judgment of the dissolution of marriage, dated October 15, 1993, is half owner of the Deferred Compensation agreement asset foreclosed upon and presently scheduled for sale on January 20, 2015. Defendant IRS is well aware of Plaintiff Intervenor’s spousal ownership interest in the Deferred Compensation because Defendant IRS: 1) issued a Notice of Levy on September 28, 2000 [Docket 201-6 of the Bankruptcy action, Case #11-04003-KKS], which states “This levy only attaches the property and rights to property of Darryl Strawberry. It does not attach the property and rights to property arising from the spousal interest of Lisa Strawberry...,” and 2) stated in Defendant IRS’s Amended Answer to the Crossclaim of Defendant Sterling Mets LP [Docket 12, p 12] stating, “On October 2, 2000, the IRS served a notice of levy on Sterling Mets, L.P. to seize all present and future payments due to Darryl Strawberry under his deferred compensation agreement. The notice of levy is for the tax years 1987, 1988, 1989, and 1990, and recites on its face that it attaches solely to amounts owed to Darryl Strawberry and not to any spousal interest belonging to Lisa Strawberry (his first ex-wife).”

In addition to the Plaintiff Intervenor’s Spousal ownership interest in the Deferred Compensation, Plaintiff Intervenor has unsatisfied Judgments for both Child Support and Spousal Support, both which predate the IRS liens and judgments. Notwithstanding the

fact that Defendant IRS is aware of Plaintiff Intervenor's Spousal ownership interest of the deferred compensation and aware of the unsatisfied judgments for Child Support and Spousal support, the minimum opening bid on the sale of the asset is \$550,000 which represents the approximate amount due for the unpaid taxes of Defendant Darryl Strawberry. If the sale goes forward, Plaintiff Intervenor will have lost all ownership interest to her spousal interest to the Deferred Compensation and any opportunity to recover the unsatisfied judgments of Child Support and Spousal Support and will place Plaintiff Intervenor in an extreme financial crisis, as the IRS will take through liens and seizures, all of the available property from which Plaintiff Intervenor may exert her Child Support judgment based upon the priority of her claim and upon the exemption provided by § 6334 of the Internal Revenue Code.

II. FACTUAL AND LEGAL BACKGROUND

Plaintiff Intervenor Lisa Strawberry filed a divorce action against Defendant Darryl Strawberry July 31, 1989, Los Angeles Superior Court Case # D 242 112. On October 15, 1993, a Judgment of Dissolution was entered where in addition to Plaintiff Intervenor acquiring half interest in the Deferred Compensation of Defendant Darryl Strawberry that is the subject of the underlying action, Defendant Darryl Strawberry was also ordered to pay child support of \$15,000.00 per child for a total of \$30,000.00 per month and \$50,000.00 per month of spousal support commencing May 1, 1993,

On September 11, 1995, a Findings and Order After Hearing was filed, which adjusted the child and spousal support. On November 21, 1996, a Findings and Order

After Hearing was Filed, which again adjusted the Child and Spousal Support. On April 18, 1997, an Order on Arrearage was filed showing combined Child and Spousal Support of approximately \$150,000.00. On September 25, 2007, a hearing was held regarding the Child Support Services Department's Motion to enter QDRO. As of January 16, 2015, the total outstanding balance owing on the Child and Spousal support is over \$300,000.00.

In December 3, 1993, Defendant Darryl Strawberry married Charisse Ann Strawberry. Unbeknownst to Plaintiff Intervenor, Defendant Darryl Strawberry illegally entered into a marital property settlement that purported to transfer to Charisse Ann Strawberry \$800,000 or approximately half the Darryl Strawberry's interest in his deferred compensation agreement, which is the same asset foreclosed and scheduled for sale. That transfer is also purported to be incorporated into Defendant Darryl Strawberry's divorce decree [Doc 201, Ex. A] to his second ex-wife. However, Defendant Darryl Strawberry did not have legal authority to transfer any portion of the Deferred compensation as half of it belonged to Plaintiff Intervenor. As a result of a subsequent Chapter 7 Bankruptcy filing by Charisse Ann Strawberry, Defendant Mary Colon, Trustee for Charisse Ann Strawberry's Chapter 7 bankruptcy filed the instant action to pursue an asset that the debtor had no ownership interest to, because of the improper transfer by Defendant Darryl Strawberry.

Because of the publicity associated with the sale of the Deferred Compensation, Plaintiff Intervenor, who lives in Los Angeles, became aware of the sale on Monday January 12, 2015 by reading a news article on the internet. She immediately contacted

counsel. On the same day, January 12, 2015, the office of counsel for Plaintiff Intervenor's attempted to communicate with all of the parties in the instant action and successfully made contact with Mr. Philip Doyle, counsel for Defendant IRS, wherein counsel for Plaintiff Intervenor requested that the sale scheduled for January 20, 2015 be stayed. Mr. Doyle rejected any request to stay the sale but invited counsel to file a claim in the instant action.

LEGAL STANDARDS

I. RULE 65(a)

A district court has the authority, pursuant to Federal Rule of Civil Procedure 65(a), to issue a preliminary injunction. Fed. R. Civ. P. 65(a) (2010). "The grant or denial of a preliminary injunction rests in the discretion of the district court." *Long v. Benson*, No. -8- 16261, 2010 WL 2500349, at *1 (11th Cir. June 22, 2010). The Eleventh Circuit generally weighs four traditional equitable considerations in determining whether preliminary relief is appropriate. These factors are (1) likelihood of success on the merits, (2) the irreparable injury to the movant, (3) "the threatened injury to the movant outweighs whatever damage the proposed injunction may cause to the moving party," and (4) "if issued, the injunction would not be adverse to the public interest." *Charles H Wesley Educ. Found Inc., v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005) (quoting *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000)(en banc)); see also *Order League of Women Voters of Florida v. Browning*, No. 4:11-CV-628, slip op. at p. 3 (N.D. Fla. May 31, 2012) (2012 WL 1957793 at *1). *Mesa Air Group, Inc. v. Delta Air Lines, Inc.*, 573 F.3d 1124, 1128 (11th Cir. 2009); see also *Cardile Brothers Mushroom Packaging, Inc.*

v. First Choice Produce, Inc., No. 07-61870-CIV, 2007 WL 4592251, at *1 (S.D. Fla. Dec. 28, 2007) (same). The evidence which may be used to make out this showing need not be admissible at trial, and may consist of affidavits, declarations and hearsay. See *Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (“[A] district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceedings.”).

II. EMERGENCY RELIEF

Northern District of Florida Local Rule 7.1(e) provides for emergency relief. The Rule provides:

(e) Emergency Motions. The Court may, upon written motion and good cause shown, waive the time requirements of this local Rule and grant an immediate hearing on any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.

Id.

ARGUMENT

I. THIS COURT SHOULD ISSUE A RESTRAINING ORDER PURSUANT

TO RULE 65(a)

A. Plaintiff Intervenor Lisa Strawberry is Likely to Succeed on the

Merits

It is axiomatic that a court has the “authority to enforce its orders and provide for the efficient disposition of litigation.” *Zocaras v. Castro*, 465 F.3d 479, 483 (11th Cir. 2006); see also *Miccosukee Tribe of Indians of Florida v. United States*, No. 04-21448,

2010 WL 1506267, at *18 (S.D. Fla. April 14, 2010) (“Gold case”) (“A court has the power to enforce its orders.”); *Bettis v. Toys “R” Us*, No. 06-80334, 2009 WL 5206192, at *7 (S.D. Fla. Dec. 31, 2009) (“Inherent powers are vested in the very nature and essence of the Court; without such power the Court would be unable to manage the expeditious disposition of its docket, enforce its orders, and guard the integrity of its proceedings.”). Moreover, federal courts have the authority to enjoin a government agency from spending and/or dissipating funds which are needed to ensure compliance with existing law. See *Silva v. East Providence Housing Authority*, 390 F. Supp. 691 (D. R.I. 1975); *Dowdell v. City of Apopka, Florida*, 511 F. Supp. 1375 (M.D. Fla. 1981); *City of South Pasadena v. Slater*, 56 F. Supp. 2d 1106, 1145 (C.D. Cal. 1999) (“Therefore, the Court finds that it is appropriate to enjoin the defendants from spending either federal or state funds to construct any portion of the [challenged] project without leave of Court.”).

In this case, Plaintiff Intervenor is likely to succeed on the merits of her request to stay and enjoin the sale of the Deferred Compensation of Defendant Darryl Strawberry until such time as her ownership interest can be established and the Child and Spousal Support judgments can be enforced and take priority over Defendant IRS’s claims.

Plaintiff Intervenor Lisa Strawberry seeks to safeguard her spousal ownership interest in the Deferred Compensation Agreement as she is half owner of said agreement. Additionally, Lisa Strawberry seeks funds which she claims are the property of her ex-husband, Defendant Darryl Strawberry, of which were security for same and which, but for the liens of the IRS, Plaintiff Intervenor Lisa Strawberry would be available to her

based upon the priority of her claim and upon the exemption provided by the §6334 of the Internal Revenue Code, which states:

Judgment for support of minor children.--If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

The applicable regulation under this statute is §301.6334-1(a), 26 C. F. R., Treasury Regulations on Procedure and Administration (1954 Code), which provides:

Judgments for support of minor children.--If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children so much of his salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The district director is not required to release a levy until such time as he is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The district director may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Special Procedures Staff, for the internal revenue district in which the taxpayer resides. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the district director be allocated to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income. This subparagraph applies with respect to levies made on or after January 30, 1970 .

In addition to a judgment for Child Support issued in October 15, 1993, Plaintiff Intervenor obtained a Judgment for Spousal Support dated the same date. As of the date

of the IRS levy, Defendant Darryl Strawberry was delinquent in his obligations to pay both judgments. As of the today's date, January 16, 2015, Defendant Darryl Strawberry is still delinquent in his obligations to pay either judgments.

A federal tax lien, described as a "secret lien," see *United States v. Security Trust & Savings Bank* [50-2 USTC ¶9492], 340 U.S. 47, 53 (1950) (Jackson, J., concurring) (citation omitted), is effective upon assessment against all persons, even in the absence of recordation of the lien. See *Rice Investment Co. v. United States* [80-2 USTC ¶9654], 625 F.2d 565, 568 (5th Cir. 1980). However, under 26 U.S.C. §6323(a) , certain persons are protected against unrecorded federal tax liens. Section 6323(a) provides:

The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirement of subsection (f) has been filed by the Secretary.

Only those persons specifically listed in the statute are entitled to priority over unrecorded federal tax liens. See 14 *Mertens, Law of Federal Income Taxation* §15A.03, at 15-16 (1991).

In addition to the Judgment for Child Support, Plaintiff Intervenor is a "judgment lien creditor" by virtue of the Judgment for Spousal Support dated October 15, 1993, which predates the IRS lien and levy of October 2000. If Lisa Strawberry were a "judgment lien creditor," and her status as such was acquired prior to October 2000 (which is established), when the government recorded its federal tax liens, Lisa Strawberry would be entitled to priority over the government.

A "judgment lien creditor," undefined by statute, is described in treasury regulations as a person who has obtained a valid judgment . . . for the recovery of . . . a certain sum of money. . . . [and as] a person who has perfected a lien under the judgment on the property involved.

26 C.F.R. §301.6323(h)-1(g) . "In determining . . . whether a judgment creditor's lien is perfected . . . , we look first to the local law setting forth the lien procedure and its legal consequences." *Hartford Provision Co. v. United States* [78-1 USTC ¶9392], 579 F.2d 7, 9 (2d Cir. 1978).

For all persons who are not specifically listed in section 6323 , priority as a lienor is determined by the common law rule of "first in time is the first in right." *United States v. City of New Britain* [54-1 USTC ¶9191], 347 U.S. 81, 87-88 (1954). Under that rule, a federal tax lien takes priority over competing liens unless the competing lien was choate, or fully established, prior to the attachment of the federal lien. See *id.* at 86. Not only does a lienor's interest have to be first chronologically, but the interest must be choate to defeat the federal tax lien. A choate lien is one in which the identity of the lienor, the property subject to the lien and the amount of the lien are established. *Id.* at 84. A lien that is "choate" has been described as a lien that is "specific and perfected" and for which "nothing more [need] be done." *United States v. Equitable Life Assurance Society* [66-1 USTC ¶9444], 384 U.S. 323, 327-28 (1966) (citation omitted).

Under the federal revenue statute, federal law determines the rights of priority among competing lienors; however, state law controls in determining the nature of a taxpayer's interest in property. *SEC v. Levine*, 881 F.2d 1165, 1175 (2d Cir. 1989); see

also *National Bank of Commerce* [85-2 USTC ¶9482], 472 U.S. at 722; *Aquilino v. United States* [60-2 USTC ¶9538], 363 U.S. 509, 513 (1960). "[W]hether the [federal] tax lien has attached depends on the state law question of ownership, since the lien can only attach to property that the taxpayer owns." *United States v. Fontana* [82-1 USTC ¶9237], 528 F.Supp. 137, 143 (S.D.N.Y. 1981). "This follows from the fact that the federal statute 'creates no property rights but merely attaches consequences, federally defined, to rights created under state law.' " *National Bank of Commerce* [85-2 USTC ¶9482], 472 U.S. at 722 (quoting *United States v. Bess* [58-2 USTC ¶9595], 357 U.S. 51, 55 (1958)). Thus, Plaintiff Intervenor Lisa Strawberry has priority because: 1) she is half owner of the Darryl Strawberry Deferred Compensation Agreement, 2) Spousal Support judgment entered on October 15, 1993 predates the competing claims by Defendants including IRS; and 3) the Child Support Judgment of October 15, 1993 has priority because this judgment is exempt from the lien and levy and it also predates all other claims.

B. The Temporary Restraining Order is Necessary to Prevent Irreparable Harm

Plaintiff Intervenor Lisa Strawberry will suffer irreparable harm if a Temporary Restraining Order is not issued. A showing of irreparable injury is "the sine qua non of injunctive relief." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (citing *Northeastern Fla. Chapter of the Ass 'n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)). A temporary restraining order or a preliminary injunction is "an extraordinary and drastic remedy not to be granted unless

the movant clearly carries the burden of persuasion.” *Zardui– Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (internal quotation marks omitted). In particular, the party seeking a TRO must make a clear showing both (a) that it will suffer irreparable injury absent the injunction and (b) that it is likely to prevail on the merits. See *Winter v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 375 (2008). Although the foregoing standard is sometimes described as an equitable balancing, e.g., *U.S. Mem.* 12, the Supreme Court has stressed that these are absolute requirements, both of which must be clearly established in order to obtain an injunction. See *Winter*, 129 S.Ct. at 375 (rejecting cases holding that a party demonstrating a likelihood of success on the merits need only make a lesser showing of irreparable injury and holding that, at a minimum, “plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is likely in the absence of an injunction”). A court may not issue a general injunction directing a party to “obey the law” or avoid some general course of conduct not tethered to a specific violation. *Burton v. City of Belle Glade*, 178 F.3d 1173, 1200- 01 (11th Cir. 1999). Rather, if warranted, any injunction “must be tailored to fit the nature and extent of [an] established violation.” *Gibson v. Firestone*, 741 F.2d 1268, 1273 (11th Cir. 1984)

C. The Balance of Equities Favors Issuing a Temporary Restraining Order

The balance of the equities favors granting a temporary restraining order because if the Deferred Compensation asset is sold at the minimum bid, Plaintiff Intervenor will have lost all ownership interest to her half interest of the asset and furthermore, Plaintiff Intervenor will have lost an opportunity to enforce the unsatisfied judgments for Child

and Spousal Support which has priority over all other claims including the IRS claim. Moreover, it would hardly be equitable to permit the IRS to violate existing court judgments that predate its lien and order.

D. The Public Interest Will Not Be Harmed as a Result of the Temporary Restraining Order

The public interest will be promoted rather than harmed by the restraining order. The rights of divorce judgment creditors and child support judgments will remain as having priority over IRS liens and levies.

II. THERE IS GOOD CAUSE FOR EMERGENCY RELIEF

In just four days, on January 20, 2015, the Defendant IRS will auction off the Deferred Compensation of Defendant Darryl Strawberry with a minimum bid that barely covers the outstanding tax liability of Darryl Strawberry. If the asset sells near the minimum bid, Plaintiff Intervenor's ownership interest in the asset will be lost and the IRS lien does not even apply to her spousal ownership interest. A tragedy of justice will have occurred and the funds will be dissipated without taking into consideration of Plaintiff Intervenor's ownership of the asset as well as the unsatisfied judgments for Child and Spousal Support. Because this proposed course of action is contrary to the preexisting judgments of the Los Angeles superior Court, this Court should grant emergency relief pursuant to Local Rule 7.1(e).

III. CONCLUSION

For the reasons set forth above, Plaintiff Intervenor Lisa Strawberry respectfully requests that the Court enter her proposed temporary restraining order that stays the sale of the Darryl Strawberry Deferred Compensation.

/s/ Christopher A. Darden, Esq
Christopher A. Darden, Esq.
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90065
Telephone: 310-444-3099
Telefax: 310-444-3098
Email: dardenatty@aol.com

*Attorney for Plaintiff Intervenor
Lisa Strawberry*

Declaration of Christopher A. Darden

I, Christopher A. Darden, declare:

1. I am an attorney duly licensed to practice law in California and before this and other federal courts. The facts set forth in this declaration are based on my personal knowledge, and if called and sworn as a witness I could and would testify to the following.

2. This motion is made following a conference of counsel pursuant to 7.1(b) which took place on January 12, 2015, and pursuant to Federal Rule of Civil Procedure 24(a) on Defendants.

3. I call this Court's attention to the Final Judgment of Dissolution dated October 15, 1993 between Lisa Strawberry and Darryl Strawberry, specifically page 15, ¶ h, which refers to Lisa Strawberry's spousal ownership interest of the Deferred Compensation Agreement. Attached as Exhibit "A" is a true and correct copy of this document.

4. Attached hereto as Exhibit "B" is a Responsive Declaration to Order to Show Cause which includes an Order of Arrearage.

I declare under penalty of perjury under the laws of the state of California and the United States of America that the foregoing is true and correct. Executed on January 16, 2015 at Los Angeles, California.

/s/ Christopher A. Darden

Christopher A. Darden, Esq.

Declaration of Lisa Strawberry

I, Lisa Strawberry, declare:

1. I am the Plaintiff Intervenor in this motion. The facts set forth in this declaration are based on my personal knowledge, and if called and sworn as a witness, I could and would testify to the following.

2. I initiated a divorce proceeding against my ex husband Darryl Strawberry on July 31, 1989. The dissolution was finalized by a final Judgment being issued on October 15, 1993.

3. As of result of the final Judgment dated October 15, 1993, I was awarded half ownership of the Deferred Compensation Agreement, Addendum III to Uniform Player's Contract Dated March 12, 1985, executed on March 12, 1985, by Darryl Strawberry and Doubleday Sports, Inc. At the time of this judgment, the approximate value of half the Deferred Compensation was \$800,000.00.

4. In addition, Defendant Darryl Strawberry was to pay both Child Support and separate Spousal Support which was adjusted from time to time. As of March 4, 2008, Defendant Darryl Strawberry was delinquent in paying both the Child Support and spousal Support. As of today's date, January 16, 2015, the combined outstanding total child support and spousal support arrears is over \$300,000.00.

lose any ability to enforce the Child Support and Spousal Support judgments that are very long overdue and delinquent.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on January 16, 2015, at Los Angeles, California.



Lisa Strawberry

Certificate of Conferral

Pursuant to Local Rule 7.1(b) for the Northern District of Florida, counsel for the Plaintiff Intervenor certifies that he conferred with counsel for Defendant IRS and the Defendant IRS did not agree to the relief sought in this Motion.

/s/ Christopher A. Darden, Esq
Christopher A. Darden, Esq.
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90065

*Attorney for Plaintiff Intervenor
Lisa Strawberry*

Certificate of Service

I certify that a true and correct copy of the foregoing will be sent electronically to the registered participants (filed through EM/ECF system) and an email copy of the same will be transmitted to the non-registered participants, on this 16th day of January 2015.

/s/ Christopher A. Darden, Esq
Christopher A. Darden, Esq.
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90065

*Attorney for Plaintiff Intervenor
Lisa Strawberry*

theJasmineBRAND.com

theJasmineBRAND.com

theJasmineBRAND.com

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MARY W. COLON, Trustee,

Plaintiff,

and

LISA STRAWBERRY

Plaintiff Intervenor

v.

Case No. 4:12cv101-SPM/CAS

**DARRYL STRAWBERRY,
STERLING METS, L.P., a/k/a
THE NEW YORK METS BASEBALL
CLUB, INTERNAL REVENUE
SERVICE, and MARY W. COLON,
Trustee;**

Defendants,

**LISA STRAWBERRY'S MOTION TO INTERVENE
AS PLAINTIFF INTERVENOR**

Lisa Strawberry hereby moves this Court, by and through its undersigned attorneys, for leave to intervene in this action as of right, pursuant to Federal Rule of Civil Procedure 24(a) or, alternatively, in permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). The complaint in Intervention is attached as Exhibit "A". Plaintiff Intervenor further requests that her Complaint in Intervention be deemed filed upon granting this motion and that Defendants be required to respond to the Complaint in

Intervention within twenty-one (21) days. Plaintiff Intervenor is concurrently filing an *Emergency Motion* to request a stay of the sale presently scheduled for January 20, 2015 of the asset in question. As grounds therefore, Plaintiff Intervenor Lisa Strawberry states as follows:

1. The Plaintiff Intervenor Lisa Strawberry's Motion to Intervene is timely because the scheduled foreclosure sale of the asset in question has not taken place yet. Lisa Strawberry's intervention will not create any delay. Thus, intervention by Plaintiff Intervenor Lisa Strawberry at this juncture will not prejudice the existing parties.
2. The Plaintiff Intervenor Lisa Strawberry has a substantial legal interest in the subject matter of the action because it involves an asset that is community property and subject of a dissolution of marriage judgment, dated October 15, 1993 between Plaintiff Intervenor and Defendant Darryl Strawberry.
3. The Plaintiff Intervenor's interests are not adequately protected by the existing parties to the litigation. Because the Intervenor's interests are contradictory to the other Defendants in this action, its interests do not necessarily align with the interests represented by private plaintiffs.
4. The Plaintiff Intervenor also satisfies the requirements for permissive intervention because its claims against the defendant have questions of law and fact in common with the claims and facts at issue in the main action.
5. Pursuant to Local Rule 7.1(b) counsel for the Intervenor conferred with counsel for the defendant IRS by telephone on January 12, 2015 concerning the Intervenor's motion to intervene.

6. As further support for this Motion, the intervenor respectfully directs the Court to the following Memorandum of Law, which is attached hereto and incorporated herein by reference.

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF INTERVENOR LISA STRAWBERRY'S MOTION TO INTERVENE**

I. INTRODUCTION

Although Intervenor Lisa Strawberry is not a party to this action, the underlying action involves community property of which Intervenor Lisa Strawberry owns half. In fact the notice of IRS lien and levy states that the lien and levy shall not effect the portion of which belongs to Intervenor Lisa Strawberry (See Docket No.), however the scheduled foreclosure sale takes no consideration of intervenor's ownership interest in her half of Deferred Compensation Agreement.

No party has made any attempt to serve or notify Intervenor Plaintiff of the underlying proceedings. It was only through the publicity of the scheduled sale that Intervenor Plaintiff only became aware of the scheduled sale of her ex-husband Defendant Darryl Strawberry January 12, 2015 and immediately hired counsel to assert her ownership interest in the asset scheduled for sale.

Intervenor Plaintiff seeks to bring the attached complaint in intervention because Defendant New York Mets holds the Deferred Retirement Annuity that Intervenor is one half owner of and Intervenor has a unsatisfied judgment for Child Support and Spousal Support that predates all the claims that have been made in this action including that of the Defendant IRS.

Defendant New York Mets is aware of the fact that Intervenor is not a party. It is also aware of the facts that Intervenor is the rightful owner of one half share of the Retirement Deferred annuity and furthermore is aware that Intervenor has unsatisfied judgments for Child Support and Spousal Support that

II. ARGUMENT

A. The Intervenor Satisfies the Requirements for Intervention of Right

Federal Rule of Civil Procedure Rule 24(a) provides that upon timely application, anyone shall be permitted to intervene in an action:

When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302-03 (11th Cir. 2008) (quoting *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)); *see also* *Stone v. First Union Corp.*, 371 F. 3d 1305, 1308-09 (11th Cir. 2004).

Here, the Plaintiff Intervenor's request for intervention satisfies the requirements of Rule 24(a)(2) for intervention as of right. The Intervenor has a substantial legal interest in the subject matter of the action because this case directly deals with property that Intervenor is the rightful and legal owner, specifically half of the Deferred Compensation of Darryl Strawberry belongs to Intervenor.

1. The Intervenor's Motion to Intervene is Timely

The Eleventh Circuit has identified several factors relevant to determining whether a request for intervention is timely:

(1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Engineers, 302 F.3d 1242, 1259 (11th Cir. 2002) (quoting *Chiles*, 865 F.2d at 1213).

The Supreme Court has emphasized that “[t]imeliness is to be determined from all the circumstances.” *NAACP v. New York*, 413 U.S. 345, 366 (1973). This Circuit has also recognized that the requirement of timeliness “must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *U.S. Army Corps of Engineers*, 302 F.3d at 1259 (citing *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970)).

In *Chiles v. Thornburgh*, a motion to intervene was held to be timely where the motion “was filed only seven months after [the plaintiff] filed his original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun.” *Chiles*, 865 F.2d at 1213; *see also Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1125-26 (5th Cir. 1970) (motion to intervene more than a year after the action was commenced was timely when there had been no legally significant proceedings other than

the completion of discovery and intervention would not cause any delay in the process of the overall litigation).

Applying these factors to the instant case, the Intervenor's application for intervention is timely. Thus, this litigation remains at an early stage and the Plaintiff Intervenor's decision to intervene at this point will not prejudice either party. *Davis v. Southern Bell Tel. & Tel. Co.*, 149 F.R.D. 666, 670 (S.D. Fla. 1993) (allowing intervention "[a]lthough the case has been pending for more than two years, discovery on the merits has not been completed and dispositive motions have not been filed. As a consequence, there is no indication that this litigation is close to conclusion.").

While the existing parties to the litigation will not be prejudiced by the Intervenor's intervention, the Plaintiff Intervenor will be prejudiced if its request for intervention is denied. By avoiding multiple lawsuits and coordinating discovery, intervention will lend efficiency to the proceedings.

2. The Plaintiff Intervenor has a Substantial Legal Interest in this Litigation

For an applicant's interest in the subject matter of the litigation to be cognizable under Rule 24(a)(2), it must be "direct, substantial and legally protectable." *U.S. Army Corps of Engineers*, 302 F.3d at 1249. *See also Chiles*, 865 F.2d at 1212-13 (noting that the focus of a Rule 24 inquiry is "whether the intervenor has a legally protectable interest in the litigation.") The inquiry on this issue "is 'a flexible one, which focuses on the particular facts and circumstances surrounding each [motion for intervention].'" *Chiles*,

865 F.2d at 1214 (quoting *United States v. Perry County Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978)).

The Plaintiff Intervenor has a legally protectable interest in this litigation.

Plaintiff Intervenor Lisa Strawberry seeks to safeguard her spousal ownership interest in the Deferred Compensation Agreement as she is half owner of said agreement. Additionally, Lisa Strawberry seeks funds which she claims are the property of her ex-husband, Defendant Darryl Strawberry, of which were security for same and which, but for the liens of the IRS, Plaintiff Intervenor Lisa Strawberry would be available to her based upon the priority of her claim and upon the exemption provided by the §6334 of the Internal Revenue Code, which states:

Judgment for support of minor children.--If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

The applicable regulation under this statute is §301.6334-1(a), 26 C. F. R., Treasury Regulations on Procedure and Administration (1954 Code), which provides:

Judgments for support of minor children.--If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children so much of his salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The district director is not required to release a levy until such time as he is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The district director may make arrangements with a delinquent taxpayer to establish a

specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Special Procedures Staff, for the internal revenue district in which the taxpayer resides. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the district director be allocated to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income. This subparagraph applies with respect to levies made on or after January 30, 1970 .

In addition to a judgment for Child Support issued in October 15, 1993, Plaintiff Intervenor obtained a Judgment for Spousal Support dated the same date. As of the date of the IRS levy, Defendant Darryl Strawberry was delinquent in his obligations to pay both judgments. As of the today's date, January 16, 2015, Defendant Darryl Strawberry is still delinquent in his obligations to pay either judgments.

For all persons who are not specifically listed in section 6323 , priority as a lienor is determined by the common law rule of "first in time is the first in right." *United States v. City of New Britain* [54-1 USTC ¶9191], 347 U.S. 81, 87-88 (1954). Under that rule, a federal tax lien takes priority over competing liens unless the competing lien was choate, or fully established, prior to the attachment of the federal lien. See *id.* at 86. Not only does a lienor's interest have to be first chronologically, but the interest must be choate to defeat the federal tax lien. A choate lien is one in which the identity of the lienor, the property subject to the lien and the amount of the lien are established. *Id.* at 84. A lien that is "choate" has been described as a lien that is "specific and perfected" and for which "nothing more [need] be done." *United States v. Equitable Life Assurance Society* [66-1 USTC ¶9444], 384 U.S. 323, 327-28 (1966) (citation omitted).

Under the federal revenue statute, federal law determines the rights of priority among competing lienors; however, state law controls in determining the nature of a taxpayer's interest in property. *SEC v. Levine*, 881 F.2d 1165, 1175 (2d Cir. 1989); see also *National Bank of Commerce* [85-2 USTC ¶9482], 472 U.S. at 722; *Aquilino v. United States* [60-2 USTC ¶9538], 363 U.S. 509, 513 (1960). "[W]hether the [federal] tax lien has attached depends on the state law question of ownership, since the lien can only attach to property that the taxpayer owns." *United States v. Fontana* [82-1 USTC ¶9237], 528 F.Supp. 137, 143 (S.D.N.Y. 1981). "This follows from the fact that the federal statute 'creates no property rights but merely attaches consequences, federally defined, to rights created under state law.'" *National Bank of Commerce* [85-2 USTC ¶9482], 472 U.S. at 722 (quoting *United States v. Bess* [58-2 USTC ¶9595], 357 U.S. 51, 55 (1958)). Thus, Plaintiff Intervenor Lisa Strawberry has priority because: 1) she is half owner of the Darryl Strawberry Deferred Compensation Agreement, 2) Spousal Support judgment entered on October 15, 1993 predates the competing claims by Defendants including IRS; and 3) the Child Support Judgment of October 15, 1993 has priority because this judgment is exempt from the lien and levy and it also predates all other claims.

3. The Disposition of the Instant Litigation May Impair the Intervenor's Ability to Protect Her Interest

The Intervenor's ability to protect its substantial legal interest would be impaired absent intervention. In just four days, on January 20, 2015, the Defendant IRS will

auction off the Deferred Compensation of Defendant Darryl Strawberry with a minimum bid that barely covers the outstanding tax liability of Darryl Strawberry. If the asset sells near the minimum bid, Plaintiff Intervenor's ownership interest in the asset will be lost and the IRS lien does not even apply to her spousal ownership interest. A tragedy of justice will have occurred and the funds will be dissipated without taking into consideration of Plaintiff Intervenor's ownership of the asset as well as the unsatisfied judgments for Child and Spousal Support. The Existing Parties Do Not Adequately Represent the Intervenor's Interests

The fourth and final element to justify intervention of right is inadequate representation of the proposed intervenor's interest by existing parties to the litigation. This element is satisfied if the proposed intervenor "shows that representation of his interest 'may be' inadequate." *Chiles*, 865 F.2d at 1214 (citing *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n. 10 (1972)). The burden on the proposed intervenor to show that existing parties cannot adequately represent its interest is "minimal." *Stone*, 371 F.3d 1311; *U.S. Army Corps of Engineers*, 302 F.3d at 1259 (citing *Trbovich*, 404 U.S. at 538 n. 10). Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action. *Lloyd v. Alabama Dep't of Corrections*, 176 F.3d 1336, 1341 (11th Cir. 1999); *Federal Sav. and Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993).

In the instant case, the current IRS and METS Defendants cannot adequately represent Intervenor because they are parties to the instant action and directly affected by

the rights of Plaintiff Intervenor. As parties, the other Defendants cannot successfully advance Intervenor's essential argument that its spousal interest in the Deferred Compensation and judgment for Child Support and Spousal Support.

B. The Plaintiff Intervenor Meets the Requirements for Permissive Intervention

Rule 24(b) of the Federal Rules of Civil Procedure provides an alternative basis for the Intervenor's intervention in this action. Rule 24(b) states, in relevant part:

Upon timely application anyone may be permitted to intervene in an action ...when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b). The Eleventh Circuit has established a two-part test to guide the Court's discretion as to whether a party may intervene pursuant to Rule 24(b)(2): the applicant must show that "(1) his application to intervene is timely, and (2) his claim or defense and the main action have a question of law or fact in common." *Chiles*, 865 F.2d at 1213 (citing *Sellers v. United States*, 709 F.2d 1469, 1471 (11th Cir. 1983)).

III. CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiff Intervenor's motion to intervene (i) as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil

Procedure or, in the alternative, (ii) permissively pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

Dated: January 16, 2015

Respectfully Submitted,

/s/ Christopher A. Darden, Esq

Christopher A. Darden, Esq.
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90065
Los Angeles, CA 90065
Telephone: 310-444-3099
Telefax: 310-444-3098
Email: dardenatty@aol.com

*Attorney for Plaintiff Intervenor
Lisa Strawberry*

Certificate of Service

I certify that a true and correct copy of the foregoing will be sent electronically to the registered participants (filed through EM/ECF system) and an email copy of the same will be transmitted to the non-registered participants, on this 16th day of January 2015.

/s/ Christopher A. Darden, Esq
Christopher A. Darden, Esq.
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90065

Attorney for Plaintiff Intervenor
Lisa Strawberry

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MARY W. COLON, Trustee,

Plaintiff,

v.

Case No. 4:12cv101-MCR/CAS

DARRYL STRAWBERRY, et al.

Defendants.

ORDER

Pending before the Court is Lisa Strawberry's Emergency Motion for a Temporary Restraining Order (doc. 84), seeking to enjoin the sale of the Darryl Strawberry Deferred Compensation Agreement, Addendum III to Uniform Player's Contract Dated March 12, 1985, executed on March 12, 1985, by Darryl Strawberry and Doubleday Sports, Inc. (predecessor in interest to Sterling Mets, L.P.), scheduled for today, January 20, 2015. The document purports to have been filed on January 16, 2015, but was not filed in this Court until this morning (the morning of the sale) with over 70 pages of supporting materials and little time to review the matter. On initial review, the Court was inclined to grant the motion based on Lisa Strawberry's statement that a delay would cause no prejudice to the IRS but would prejudice her rights. On further review and receipt of the IRS's Response in Opposition (doc. 85), however, the Court finds that the motion is due to be denied. The IRS has a valid tax lien and only Darryl Strawberry's interest in the Deferred Compensation Agreement is to be sold. Additionally, the Court was apprised that the sale was scheduled to take place in a matter of minutes, that 15 bidders had flown to Chicago to bid on the asset, and that potential bidders would likely lose interest in the sale if a last-minute cancellation occurred, subjecting the IRS to irreparable harm. Pursuant to

the Order of Sale (doc. 78), the proceeds of the sale will be deposited into the Registry of this Court, and objections to the sale will be considered prior to confirmation of the sale or any distribution of proceeds. Lisa Strawberry's pending Motion to Intervene (doc. 83) remains pending, and will be considered prior to confirmation of the sale as well.

Accordingly:

1. Lisa Strawberry's Emergency Motion for a Temporary Restraining Order (doc. 84), seeking to enjoin the sale of the Darryl Strawberry Deferred Compensation Agreement, Addendum III to Uniform Player's Contract Dated March 12, 1985, executed on March 12, 1985, by Darryl Strawberry and Doubleday Sports, Inc. (predecessor in interest to Sterling Mets, L.P.) is **DENIED**.

2. Responses to Lisa Strawberry's Motion to Intervene as Plaintiff Intervenor (doc. 83) are due within fourteen (14) days of this Order.

DONE AND ORDERED this 20th day of January, 2015.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE