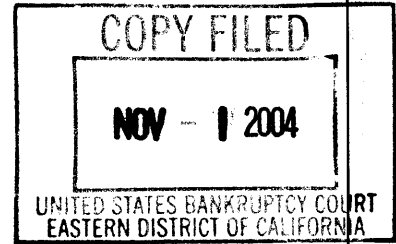


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F O R P U B L I C A T I O N



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 94-25454-A-13
JAMES ELLETT,)	
)	
)	
Debtor.)	
_____)	
JAMES ELLETT,)	Adv. No. 97-2820
)	
Plaintiff,)	
vs.)	
GERALD GOLDBERG, Executive)	
Director of the Franchise Tax)	
Board,)	
)	
Defendant.)	
_____)	

Robert N. Kolb, Antioch, California for the plaintiff.
Kristian D. Whitten, Deputy Attorney General, California Dept. of Justice, San Francisco, California, for the defendant.

AMENDED MEMORANDUM DECISION

Plaintiff James Ellett seeks prospective injunctive relief against Gerald Goldberg, the Executive Director of the Franchise

1 Tax Board, to enjoin him from causing the Franchise Tax Board to
2 collect delinquent pre-petition income taxes on the ground that
3 the plaintiff's liability for these taxes was discharged in
4 bankruptcy. This relief will be denied.

5
6 I

7 The plaintiff was indebted to the California Franchise Tax
8 Board ("FTB") for delinquent state income taxes owed for tax
9 years 1981, 1983, 1984, 1985, and 1990. To retire the taxes due
10 for 1981, 1983, and 1984, the plaintiff entered into a repayment
11 agreement with the FTB requiring him to pay \$250 a month. For
12 eight months, from November 1993 through June 1994, the plaintiff
13 abided by this repayment agreement.

14 These payments came to a halt when, on June 11, 1994, the
15 plaintiff filed a chapter 13 petition. His schedules duly listed
16 the Franchise Tax Board as a creditor. Only one other creditor
17 was listed on the schedules.

18 On his bankruptcy petition, the plaintiff gave his social
19 security number as XXX-XX-5626. His correct social security
20 number was XXX-XX-5623. There is no explanation for this error
21 other than that the social security number was mistyped on the
22 petition and the error was repeated by the court and the chapter
23 13 trustee on notices sent to the FTB. The parties agree,
24 however, that the error was inadvertent and was not motivated by
25 a desire to mislead or deceive the court or the FTB.

26 The error was repeated on the notice mailed to creditors
27 advising them of the filing of the petition, the date of the
28 first meeting of creditors convened pursuant to 11 U.S.C. §

1 341(a), and the bar date for filing proofs of claim (hereafter,
2 "bankruptcy notice"). This bankruptcy notice was dated August
3 16, 1994 and was mailed to the FTB on August 17. The FTB admits
4 that it received the bankruptcy notice.

5 The FTB did not file a proof of claim by the December 7,
6 1994 bar date for filing proofs of claim. Nor did it request an
7 extension of time to file a claim before the deadline expired.¹
8 The FTB did not otherwise appear in the plaintiff's chapter 13
9 case.

10 The plaintiff filed and confirmed on April 20, 1995 a
11 chapter 13 plan that required him to pay a 12% dividend on
12 unsecured claims.

13 While the FTB did not appear in the chapter 13 case, it did
14 take steps to collect the plaintiff's delinquent taxes outside of
15 the bankruptcy case.

16 First, on or about November 15, 1994 the FTB advised the
17 plaintiff that his pre-bankruptcy repayment agreement had been
18 terminated due to the cessation of payments directly to the FTB.
19 There is nothing in the record suggesting that the plaintiff

20
21 ¹ In 1994, Fed. R. Bankr. P. 3004(c) required all
22 creditors, whether nongovernmental or governmental, to file
23 proofs of claim within 90 days after the first date set for the
24 meeting of creditors. Provided this 90-day deadline had not
25 expired, however, Rule 3002(c)(1) permitted a governmental entity
26 to request an extension of the deadline. In 1996, Rule 3004(c)
27 was amended to track newly revised section 509(b)(9) as amended
28 on October 22, 1994. Section 502(b)(9) provides that a claim by
a governmental entity is timely if filed before 180 days after
the date of the order for relief. Amended Rule 3004(c)(1) also
permits an extension of the 180-day deadline provided the request
for an extension is made before the deadline expires. Mr.
Goldberg's trial brief erroneously states that this extended
deadline was effective in this case. See Trial Brief of
Defendant Gerald Goldberg, p. 8, n. 5.

1 responded to the November 15 notice from the FTB.

2 Second, on February 6, 1995 the FTB levied the plaintiff's
3 wages. The levy provoked a response from the plaintiff. Through
4 counsel, the FTB was advised, apparently by telephone, of the
5 pending bankruptcy. As a result, the FTB "withdrew" its levy.
6 However, by this time it was too late to file a proof of claim.

7 The plaintiff then consummated his plan. Of course, because
8 the FTB did not file a proof of claim, it received nothing on
9 account of its claim. All plan dividends were paid to
10 administrative claimants and to the one other creditor filing a
11 proof of claim. The plaintiff received his discharge on April
12 19, 1997.

13 It appears from the stipulated exhibits introduced by the
14 parties that the correct social security number never appeared on
15 any of the documents filed or served on the FTB. For instance,
16 the discharge order dated April 19, 1997 bears the incorrect
17 number.

18 Once the plan was completed, the FTB swung back into action.
19 In a written demand dated October 8, 1997, the FTB staked out the
20 position that because the plaintiff had "NOT discharged" his pre-
21 petition income taxes, and because the bankruptcy case had been
22 concluded, it was able to collect those taxes.

23 Through counsel, the plaintiff responded on October 13.
24 Counsel's letter to the FTB demanded that all collection activity
25 cease because it violated the plaintiff's chapter 13 discharge.
26 While counsel recognized that the FTB had not filed a proof of
27 claim, he pointed out that the plaintiff had duly scheduled the
28 FTB and its claim, the FTB received the bankruptcy notice (which

1 included the deadline for filing a proof of claim), the plan
2 provided for the taxes, the plan had been completed, and the
3 plaintiff had received a discharge.

4 The next day, a copy of the petition, Schedule F, the
5 bankruptcy notice, the plan, a modification of the plan, the
6 order confirming the plan, and the discharge order were sent by
7 facsimile transmission to the FTB.

8 In response, the plaintiff's attorney was advised by
9 telephone that the FTB did not believe the tax liability had been
10 discharged because the bankruptcy notice had included a social
11 security number that did not belong to the plaintiff. That is,
12 while the FTB received notice that a bankruptcy petition had been
13 filed by James Ellett, the social security number on that notice
14 belonged to someone other than James Ellett.

15 This was a problem for the Franchise Tax Board. Its
16 database identifies taxpayers by social security number. This is
17 easy to believe and understand. Names change but social security
18 numbers rarely change. Also, there could be more than one James
19 Ellett but only one James Ellett with a particular social
20 security number.

21 As a matter of routine, whenever the FTB receives a
22 bankruptcy notice, it checks its records to verify that the
23 social security number on that notice belongs to the person
24 identified as the plaintiff. If this is verified, and after
25 determining that the debtor owes delinquent taxes, the FTB files
26 a proof of claim.

27 If the FTB discovers that the debtor's name and the social
28 security number do not match, it checks its records to determine

1 whether the record holder of that social security number owes
2 taxes. If so, the case is referred to the FTB's Bankruptcy Unit
3 for further investigation. The Bankruptcy Unit might determine,
4 for instance, that the debtor and the record holder of the social
5 security number are the same person. Perhaps a marriage, a name
6 change, or an alias explains the name discrepancy. In such
7 cases, a proof of claim may be filed.

8 In this case, however, the record holder of social security
9 number XXX-XX-5626 owed no taxes. That person and James Ellett
10 were obviously different people because James Ellett said he owed
11 taxes while the record holder of the social security number owed
12 none.

13 In those instances where the name of the debtor does not
14 match the social security number on the bankruptcy notice, and
15 the taxpayer with that social security number owes no taxes, the
16 debtor's name and the erroneous social security number are placed
17 by the FTB on a "fallout list." This list is a cumulative
18 listing of all mismatched social security numbers and names
19 contained on bankruptcy notices. Each entry is given a locator
20 number and that locator number is also placed on the bankruptcy
21 notice.

22 Ideally, someone at the FTB then investigates further and
23 attempts to match the name of the debtor to a correct social
24 security number. This might be done by manually retrieving tax
25 returns² or using the cross reference procedures laid out in

26
27 ² As noted in the Trial Brief of Mr. Goldberg, matching
28 Mr. Ellett to his tax returns would not have been a simple task
given the incorrect social security number, his several address
changes, and his name variations (James Ellett, Jim Ellett, James

1 Stipulated Exhibit 16.

2 However, "[d]ue to resource limitations, and the lengthy
3 fallout list, these further investigations occurred infrequently,
4 if at all." See Declaration of Alda Jeanne Leahy, filed May 21,
5 2004, at p. 2, ¶ 7. There is no evidence that the FTB did
6 anything to determine the plaintiff's correct social security
7 number.

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II

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A chapter 13 discharge is limited to debts "provided for by the plan." 11 U.S.C. § 1328(a).³ In order to provide for a debt, the chapter 13 plan must make provision for the claim and the holder of the claim must be given notice of the filing of the bankruptcy petition in time to participate by filing a timely proof of claim. See Fed. R. Bankr. P. 3002.

Did the plaintiff's chapter 13 plan provide for the taxes in question and did the FTB have the opportunity to participate in the chapter 13 case and collect its share of the plan distributions?

A

The plaintiff scheduled the taxes owed to the FTB on

E. Ellett, Jim E. Ellett). See Trial Brief of Defendant Gerald Goldberg, p. 5, n. 3.

³ Section 1328(a) provides: "As soon as practicable after completion by the debtor of all payments under the plan, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title. . . ."

1 Schedule F signifying that he believed that the taxes were
2 unsecured claims not entitled to priority status. See 11 U.S.C.
3 § 507(a)(8). There is nothing before the court, either in the
4 evidentiary record or the argument of the parties, suggesting
5 that the taxes were secured by any property owed by the plaintiff
6 or were entitled to priority status. Indeed, given the tax years
7 in question, it seems likely that these taxes were not entitled
8 to priority status. See id.; 11 U.S.C. § 523(a)(1).

9 The chapter 13 plan confirmed by the court required the
10 plaintiff to pay a 12% dividend to holders of unsecured claims
11 over 37 months. Consequently, the court concludes that the
12 plaintiff's chapter 13 plan provided for the taxes owed to the
13 FTB. See Lawrence Tractor Co. v. Gregory (In re Gregory), 705
14 F.2d 1118 (9th Cir. 1983).

15
16 B

17 Providing for a claim in a chapter 13 plan, however, does no
18 good if the debtor fails to tell the claim holder about the
19 bankruptcy case in time to file a proof of claim. In this
20 circumstance, the debtor will not discharge that claim even if
21 the plan makes provision for its payment. See, e.g., Crites v.
22 Oregon (In re Crites), 201 B.R. 277 (Bankr. D. Ore. 1996);
23 Southtrust Bank of Ala. v. Gamble (In re Gamble), 85 B.R. 150,
24 152 (Bankr. N.D. Ala. 1988); In re Cash, 51 B.R. 927, 929 (Bankr.
25 N.D. Ala. 1985); Leber v. Illinois Dep't of Revenue (In re
26 Leber), 134 B.R. 911 (Bankr. N.D. Ill. 1991).

27 This result is dictated by the requirements of due process.
28 See U.S. Const., amend. V ("[n]o person . . . shall . . . be

1 deprived of . . . property, without due process of law. . . .").
2 "An elementary and fundamental requirement of due process in any
3 proceeding which is to be accorded finality is notice reasonably
4 calculated, under all the circumstances, to apprise interested
5 parties of the pendency of the action and afford them an
6 opportunity to present their objections." Mullane v. Central
7 Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

8 Governmental entities with regulatory jurisdiction over a
9 debtor as well as those responsible for collecting taxes are also
10 entitled to notice of the commencement of a bankruptcy case as a
11 condition to the discharge of their claims. "Fundamental
12 fairness" rather than due process requires such notice. See,
13 e.g., City of New York v. New York, N.H. & H.R., Co., 344 U.S.
14 293 (1953); In re Hairopoulos, 118 F.3d 1240, 1244, n. 3 (6th
15 Cir. 1997); IRS v. Hildebrand, 245 B.R. 287, 290 (M.D. Tenn.
16 2000).

17 Unquestionably, the FTB received notice that a chapter 13
18 petition had been filed by the plaintiff well before the December
19 7, 1994 bar date for filing proofs of claim. It maintains
20 through Mr. Goldberg, however, that the erroneous social security
21 number on the bankruptcy notice vitiated the effectiveness of the
22 notice.

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25 When this case was filed, 11 U.S.C. § 342(a) required that
26 appropriate notice of an order for relief entered in a case under
27 title 11 be given to creditors. Section 342(a) did not (and does
28 not) prescribe the form of such notice. The Federal Rules of

1 Bankruptcy Procedure address the form of the notice.

2 Fed. R. Bankr. P. 2002 implements section 342(a).

3 Subdivision (a) of Rule 2002 requires "the clerk, or some
4 other person as the court may direct, shall give the debtor, the
5 trustee, all creditors and indenture trustees not less than 20
6 days notice by mail of . . . the meeting of creditors pursuant to
7 § 341 of the Code. . . ."

8 In this case, like all other chapter 13 cases filed in this
9 court, the chapter 13 trustee mailed the notice of the first
10 meeting of creditors to all creditors,⁴ namely, the FTB and the
11 other scheduled creditor, and to the plaintiff and his attorney.
12 The notice was mailed on August 17, 1994, thereby giving 22 days'
13 notice of the first meeting.

14 Subdivision (f)(1) provides that "the clerk, or some other
15 person as the court may direct, shall give the debtor, all
16 creditors, and indenture trustees notice by mail of . . . the
17 order for relief . . . [and] the time allowed for filing claims
18 pursuant to Rule 3002. . . ."

19 In this case, these notices were combined⁵ with the notice
20

21 ⁴ It is not uncommon for a bankruptcy court to require
22 that the chapter 13 trustee mail the notice to creditors. See
23 Lawrence P. King, et al., eds., 3 Collier on Bankruptcy, ¶
342.02[1] (15th ed. rev.).

24 ⁵ The 1983 Advisory Committee Note to Rule 2002(f)
25 provides that these notices, and others, may be combined to avoid
26 the necessity of more than one mailing. The Note also refers to
27 Official Form 16 with approval. Official Form 16 was titled,
28 "Notice of Commencement of Case Under Bankruptcy Code, Meeting of
Creditors, and Fixing of Dates." By 1994 this form had been
amended into several alternative versions known as Official Forms
9A through 9I. Official Form 9I was for use in chapter 13 cases.
Comparison of Official Form 9I to Stipulated Exhibit No. 6
reveals that the bankruptcy notice mailed to the FTB in this

1 of the first meeting of creditors. This combined notice,
2 referred to throughout this Memorandum Decision as the
3 "bankruptcy notice," was mailed on August 17, 1994 to the
4 plaintiff, the plaintiff's attorney, the FTB, and the other
5 scheduled creditor. See Stipulated Exhibit 6.

6 Interestingly, nothing in Rule 2002, as effective in 1994,⁶
7 required that an individual debtor's social security number be
8 included on the bankruptcy notice. However, Rule 2002(n)
9 required that every notice given under Rule 2002 have a caption
10 compliant with Fed. R. Bankr. P. 1005. In 1994, Rule 1005
11 provided that the "caption of a petition commencing a case under
12 the Code shall contain the . . . title of the case . . . The
13 title of the case shall include the name, social security number
14 and employer's tax identification number of the debtor. . . ."

15 In this case, the social security number given for the
16 plaintiff on the bankruptcy notice was the wrong social security
17 number. Did this error vitiate the effectiveness of the notice
18 given to the FTB?

19

20 2

21 This is a close question.

22

23 case, substantially conformed with the requirements of the
24 official form. See Fed. R. Bankr. P. 9009.

25 ⁶ In 2003, Rule 2002(a) was amended to require that the
26 notice of the meeting of creditors include the debtor's social
27 security number "unless the court orders otherwise." Rule 1005
28 was also amended in 2003 to require only that the last four
digits of an individual debtor's social security number be
included in the title of the case. Consequently, beginning in
2003, the only notice containing the entire social security
number is the first meeting notice.

1 On the one hand, even a creditor receiving no formal notice
2 that its debtor has filed a bankruptcy case may have its claim
3 discharged if the creditor nonetheless learns of the petition.
4 Such knowledge imposes an obligation to inquire further. If the
5 creditor fails to inquire further, it is nonetheless on notice of
6 everything to which such inquiry would have led.

7 This is the premise of 11 U.S.C. § 523(a)(3). Section
8 523(a)(3) bars the chapter 7 discharge of a claim omitted from
9 the schedules unless the claim holder "had notice or actual
10 knowledge of the case in time" to file a timely proof of claim or
11 a complaint to except the debt from discharge under 11 U.S.C. §
12 523(a)(2), (a)(4), or (a)(6). See, e.g., In re Price, 871 F.2d
13 97 (9th Cir. 1989) (claim discharged when a creditor who learned
14 of debtor's petition 58 days prior to bar date but failed to make
15 inquiry of the deadline and failed to file timely
16 dischargeability complaint); Manufacturers Hanover v. Dewalt (In
17 re Dewalt), 961 F.2d 848 (9th Cir. 1992) (unscheduled creditor's
18 discovery of a bankruptcy petition seven days prior to the bar
19 date for dischargeability complaints is not sufficient notice
20 even though "acting under ideal circumstances and with the utmost
21 of diligence" the creditor might have requested an extension of
22 the bar date).

23 In other words, "[w]here formal notice from the Bankruptcy
24 Court is omitted, informal notice which provides creditor with an
25 opportunity for a fair hearing will satisfy the requirements of
26 notice." Ascencio v. Ramirez, 36 B.R. 943, 945-46 (D.V.I. 1984).

27 On the other hand, when a bankruptcy notice does not include
28 basic information necessary for a creditor to identify the debtor

1 as its debtor, courts have concluded that the notice is not
2 effective.

3 For example, in Pecovsky v. IRS (In re Pecovksy), 241 B.R.
4 530 (Bankr. M.D. Pa. 1999), the debtor operated a restaurant.
5 After failing to pay federal employment taxes for several years,
6 the debtor filed a chapter 7 petition that was later converted to
7 chapter 13. When the petition was filed, the debtor owed no
8 personal income taxes. However, the petition and all subsequent
9 notices included the debtor's social security number but not his
10 employer's tax identification number. As a result, when the IRS
11 received notice of the petition it searched its computerized
12 records against the listed social security number but not the
13 undisclosed employer's tax identification number. It discovered
14 no unpaid taxes and so did not file a proof of claim. The
15 bankruptcy court held that notice was defective without the
16 employer's tax identification number:

17 Debtor was responsible to ensure that the IRS had
18 adequate notice of his Petition. I would find
19 "adequacy" to be lacking where the source of the tax
20 liabilities is omitted even if the amount of them is
21 listed. "Due process requires notice that . . .
22 reasonably conveys all of the required information, and
23 permits a reasonable amount of time for response."
24 Oppenheim, Appel, Dixon & Co. v. Bullock (In re
25 Robintech, Inc.), 863 F.2d 393, 396 (5th Cir. 1989),
26 *cert. denied*, 493 U.S. 811, 110 S.Ct. 55, 107 L.Ed.2d
27 24 (1989) (citing Mullane v. Central Hanover Bank &
28 Trust Co., 339 U.S. 306, 314, 318, 70 S.Ct. 652, 94
L.Ed. 865 (1950)) (emphasis added). Put another way,
in a case where a person does not know or have
reasonable cause to believe that it has rights which
could be affected by bankruptcy, mere knowledge of the
bankruptcy is not the kind of actual and timely notice
necessary to expect such person to exercise due
diligence to preserve that unknown right; such person
would not have been afforded fundamental due process.

1 In re Pecovksy, 241 B.R. at 533-34.⁷

2 The same result was reached in In re Anderson, 159 B.R. 830
3 (Bankr. N.D. Ill. 1993), when the debtor failed to include his
4 employer's tax identification number and fictitious business name
5 in the caption. As a result, the court concluded that the notice
6 of the commencement of the bankruptcy served on the state taxing
7 authority was defective.

8 Fed.R.Bankr.P. 1005 requires that a bankruptcy
9 proceeding title contain the tax identification number
10 of the Debtor, and all names the Debtor has used in the
11 past six years. [Footnote omitted.] In re Sleepy
12 Giant, 120 B.R. 6, 7 (Bankr. D. Conn. 1990). Accuracy
13 in the caption of the bankruptcy petition is of
14 substantive importance - not a mere matter of form. In
15 re Austin, 46 B.R. 358, 360 (Bankr. E.D. Wis. 1985).
16 The caption of the case informs a creditor of exactly
17 who filed the bankruptcy, so that a creditor has
18 opportunity to determine whether it has a claim against
19 that Debtor's estate. In re AM Intern. Inc., 142 B.R.
20 252, 256 (Bankr. N.D. Ill. 1992).

21 In re Anderson, 159 B.R. at 838.⁸ But see In re Bringe, 1992
22 W.L. 12003983 (Bankr. W.D. Wis. 1992).

23 Other courts have concluded that a debtor's failure to list
24 aliases and former names in the caption prevented the discharge
25

26 _____
27 ⁷ In Pecovsky, rather than bar the discharge of the IRS's
28 claim because of the defective notice, the bankruptcy court
permitted the IRS to file a late claim pursuant to the court's
equitable authority under 11 U.S.C. § 105(a). In the Ninth
Circuit, at least in chapter 13 cases, it is doubtful that
permitting a late claim is an alternative. See In re Osborne, 76
F.3d 306, 311 (9th Cir. 1996); Zidell, Inc. v. Forsch (In re
Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990); In re
Tomlan, 102 B.R. 790, 793 (E.D. Wash. 1989), *affirmed*, Ledlin v.
United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); In re
Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999). Whether or
not an available option, in the case at bar it is too late to
allow a late claim. The case has long since been concluded.

29 ⁸ Once again, rather than prevent the discharge of the
30 claims, the bankruptcy court permitted the creditor to file a
late claim. See footnote 7.

1 of claims held by creditors who knew the debtor only by the
2 unlisted name. See, e.g., Southtrust Bank of Ala. v. Gamble (In
3 re Gamble), 85 B.R. 150 (Bankr. N.D. Ala. 1988); In re AM
4 International, Inc., 142 B.R. 252 (Bankr. N.D. Ill. 1992).

5 This court concludes that the burden falls on the debtor to
6 give accurate information in the case caption, statements, and
7 schedules, at least when that information is necessary for a
8 creditor to identify the debtor. This is a burden allocated to
9 the debtor by 11 U.S.C. § 521(1) and Rule 1005. If a business
10 name, former name, alias, social security number, or employer's
11 tax identification number is omitted or is not listed accurately
12 and as a result the creditor cannot identify the debtor as its
13 debtor, the claim held by that creditor will not be discharged
14 unless it can be demonstrated that the creditor managed to
15 identify the debtor despite the incomplete or inaccurate caption.

16 This is consistent with Lawrence Tractor Co. v. Gregory (In
17 re Gregory), 705 F.2d 1118, 1123 (1983), in which the Ninth
18 Circuit concluded that if an unsecured creditor received notice
19 that "its debtor" had filed a bankruptcy petition it was "under
20 constructive or inquiry notice that its claim may be affected,
21 and it ignores the proceedings . . . at its peril." Here, the
22 incorrect social security number prevented the FTB from
23 identifying the plaintiff as its debtor.

24 It is also consistent with section 523(a)(3) and the cases
25 discussed above. If a creditor knows that its debtor has filed a
26 bankruptcy petition, there is a duty to make further inquiry
27 regarding impact of the case on the creditor's claim. In this
28 instance, however, the FTB could not identify the plaintiff as

1 someone who owed it delinquent taxes, and researching the
2 bankruptcy court's docket would not have shed any additional
3 light on the identify the debtor.

4 Due process and fundamental fairness require that the debtor
5 accurately reveal the debtor's own identity to his or her
6 creditors. This proposition seems self-evident. This
7 information is surely at the fingertips of the debtor. On the
8 other hand, requiring the creditor to ferret out the identity of
9 the debtor imposes a significant administrative burden on it.
10 This is particularly so for creditors like the FTB which
11 undoubtedly must deal with thousands of bankruptcy notices. Cf.
12 In re Dewalt, 961 F.2d at 851 (declining to require a creditor
13 with just seven days of notice of the deadline for
14 dischargeability complaint to seek an extension of that deadline,
15 holding "we see no reason, however, to interpret the statute as
16 placing even the most conscientious of creditors in a position in
17 which, because of the negligence of the debtor, a motion for an
18 extension of time is their only option.")

19 Of course, self-interest will usually prompt most creditors
20 to conduct some level of inquiry so that they can file a claim or
21 otherwise contest the bankruptcy petition. If they do not do so
22 successfully, however, the debtor will not discharge the claim.

23 It deserves mention that the plaintiff was in a position to
24 protect himself from this result.

25 Fed. R. Bankr. P. 3004 permits a debtor to file a proof of
26 claim on behalf of a creditor. The deadline for doing so in this
27 case expired 30 days after the December 7, 1994 deadline for the
28 FTB to file its own proof of claim. A review of the court file

1 on December 8 would have revealed no proof of claim by the FTB.

2 On its face, this should have seemed odd. After all, the
3 FTB had been attempting to collect the taxes immediately before
4 the petition was filed. Why did it fail to file a proof of
5 claim? The plaintiff could have contacted the FTB after December
6 7 to ask this question without running any risk. Assuming proper
7 notice to the FTB, it was too late for the FTB to file its own
8 claim. But, if there was a notice issue that could prevent the
9 discharge of the FTB's claim, the plaintiff had a 30-day window
10 to file a proof of claim on behalf of the FTB.

11
12 3

13 The court does not believe its conclusion that the noticing
14 error results in the plaintiff's inability to discharge the FTB's
15 claim is inconsistent with 11 U.S.C. § 342(c). Section 342(c)
16 provides:

17 If notice is required to be given by the debtor to a
18 creditor under this title, any rule, any applicable
19 law, or any order of the court, such notice shall
20 contain the name, address, and taxpayer identification
number of the debtor, but the failure of such notice to
contain such information shall not invalidate the legal
effect of such notice.

21 The argument might be made that if section 342(c) provides
22 that the absence of a social security number from a notice does
23 not vitiate its effectiveness, then the court's conclusion that
24 due process and fundamental fairness required its inclusion in
25 the bankruptcy notice given in this case might be wrong. This
26 argument lacks merit.

27 First, but least, section 342(c) was added to the Bankruptcy
28 Code on October 22, 1994. It has no application to this case

1 because it was filed before October 22, 1994.

2 Second, section 342(c) makes no reference to a debtor's
3 social security number. It requires only that the debtor's
4 taxpayer identification number be included in notices given by
5 the debtor.

6 "Most individual debtors do not have taxpayer
7 identification numbers. The legislative history
8 suggests that for a debtor without a taxpayer
9 identification number the notice can include a Social
Security number, but the statute itself does not
contain that alternative."

10 Lawrence P. King, et al., eds., 3 Collier on Bankruptcy, ¶
11 342.02[1] (15th ed. rev.).

12 Third, section 342(c) applies only to notices given by the
13 debtor. The clerk of the court or some other person designated
14 by the court (in this case, the chapter 13 trustee) was charged
15 with giving the bankruptcy notice at issue. Section 342(c) would
16 not have been applicable even assuming it had been enacted before
17 the plaintiff's petition had been filed. Id.

18 Finally, as noted in Collier on Bankruptcy, the information
19 required by section 342(c) can be obtained by reviewing the court
20 docket. For that reason, "Congress wished to make clear that the
21 omission of the additional identifying information was not so
22 serious a defect that it would in any way invalidate the notice."
23 See Lawrence P. King, et al., eds., 3 Collier on Bankruptcy, ¶
24 342.02 (15th ed. rev.).

25 In this case, a review of the court docket or file would not
26 have turned up the plaintiff's correct social security number.
27 To this day, the same incorrect social security number appears on
28 the docket and, as noted above, the error has been repeated on

1 all notices given by the court and the trustee.

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III

4 For these reasons, the court concludes that the pre-petition
5 taxes owed to the FTB were not discharged in the plaintiff's
6 chapter 13 case. Therefore, no injunctive relief will be issued
7 enjoining Mr. Goldberg from collecting these taxes.

8 Because the plaintiff has not prevailed, no fees and costs
9 will be awarded to him. Even if the court had found for the
10 plaintiff, it is doubtful the plaintiff would have been eligible
11 for an award of attorney's fees for the reasons argued by Mr.
12 Goldberg. However, given the result, the court need not reach
13 the issue.

14 A separate judgment will be entered. Counsel for Mr.
15 Goldberg shall prepare a proposed form of judgment, serve it on
16 counsel for the plaintiff, then lodge it with the court ten
17 calendar days after its service. Counsel for the plaintiff shall
18 have seven calendar days from its service to object in writing to
19 the form of the judgment.

20 Dated: November 1, 2004

21

By the Court

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23

/s/
Michael S. McManus, Chief Judge
United States Bankruptcy Court

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