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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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L. DELYNN HANSEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Case No. 2:15-CV-223-DN-BCW

District Judge David Nuffer

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The Report and Recommendation<sup>1</sup> issued by United States Magistrate Judge Brooke C. Wells on March 11, 2016 recommends that Defendant's Motion to Dismiss<sup>2</sup> be GRANTED and Plaintiff's Complaint<sup>3</sup> be DISMISSED.

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of service pursuant to 28 U.S.C. § 636 and Fed. R. Civ. P. 72.<sup>4</sup> Plaintiff filed an Objection to the Report and Recommendation on March 25, 2016.<sup>5</sup> Plaintiff's Objection urges a more thorough written analysis of the arguments raised in his opposition to Defendant's Motion to Dismiss.<sup>6</sup> Plaintiff argues that the Magistrate Judge incorrectly framed the issues presented as turning on whether Plaintiff had a valid offer in compromise pending with the IRS at the time of the seizure of his property.<sup>7</sup> Plaintiff maintains that the Magistrate Judge

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<sup>1</sup> [Docket no. 28](#), filed Mar. 11, 2016.

<sup>2</sup> [Docket no. 4](#), filed June 5, 2015.

<sup>3</sup> [Docket no. 2](#), filed Apr. 2, 2015.

<sup>4</sup> Report and Recommendation at 9, [docket no. 28](#), filed Mar. 11, 2016.

<sup>5</sup> Objection to Report and Recommendation on United States' Motion to Dismiss, [docket no. 29](#), filed Mar. 25, 2016.

<sup>6</sup> *See id.* at 1-2.

<sup>7</sup> *See id.* at 2-3.

erred in rejecting his argument that “even when the IRS deems an offer solely to delay collection, it may levy only after it returns the offer to the taxpayer.”<sup>8</sup>

De novo review has been completed of those portions of the report, proposed findings and recommendations to which objection is made, including the record that was before the Magistrate Judge, and the reasoning set forth in the Report and Recommendation.<sup>9</sup> The analysis and conclusion of the magistrate judge are correct. A more thorough written analysis of the arguments Plaintiff raised in opposition to Defendant’s Motion to Dismiss is unnecessary. Plaintiff’s arguments ignore the plain language of 26 U.S.C. § 7122(g) and 26 C.F.R. § 301.7122(g)(4), and instead, rely on internal policies within the Internal Revenue Manual that are neither statute nor regulation and which have no legal force.<sup>10</sup> The Magistrate Judge’s framing of the issues relating to Plaintiff’s attempted offer in compromise is inconsequential to the analysis and ultimate determination on Defendant’s Motion to Dismiss. The Magistrate Judge properly rejected Plaintiff’s argument that the IRS had not returned his attempted offer in compromise before levying his property based on the facts presented. Plaintiff’s argument regarding the return relied on internal policies within the Internal Revenue Manual that have no force in law.<sup>11</sup> Moreover, Plaintiff did not object to the Magistrate Judge’s alternate basis for granting Defendant’s Motion to Dismiss, *i.e.*, Plaintiff’s “failure to exhaust administrative remedies and ... failure to show that the United States has waived its sovereign immunity.”<sup>12</sup>

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<sup>8</sup> *Id.* at 3 (internal quotations omitted).

<sup>9</sup> *See* 28 U.S.C. § 636(b).

<sup>10</sup> *See Shwarz v. United States*, 234 F.3d 428, 433-34 (9th Cir. 2000); *Ludtke v. United States*, 84 F.Supp.2d 294, 302 n.3 (D.Conn. 1999) (citing *Gonsalves v. IRS*, 975 F.2d 13, 16 (1st Cir. 1992)).

<sup>11</sup> *See Shwarz*, 234 F.3d at 433-34; *Ludtke*, 84 F.Supp.2d at 302 n.3 (citing *Gonsalves*, 975 F.2d at 16).

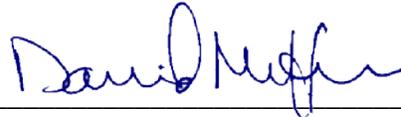
<sup>12</sup> Report and Recommendation at 8, [docket no. 28](#), filed Mar. 11, 2016.

Therefore, the analysis and conclusion of the Magistrate Judge are accepted and the Report and Recommendation is adopted.

IT IS HEREBY ORDERED that the Report and Recommendation<sup>13</sup> is ADOPTED and the above-captioned matter is DISMISSED with prejudice. The Clerk shall close the case.

Signed April 22, 2016.

BY THE COURT

A handwritten signature in blue ink, appearing to read "David Nuffer", written over a horizontal line.

District Judge David Nuffer

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<sup>13</sup> [Docket no. 28](#), filed Mar. 11, 2016.