**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

UNITED STATES OF AMERICA **CASE NO. 0:18-cv-60704**

vs.

MICHAEL L. MEYER,

Defendant.
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**MOTION TO RECONSIDER OR VACATE ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ENTERED APRIL 22, 2019 [DE 93]**

Defendant Michael Meyer moves this Court to withdraw, vacate, or otherwise set aside its Order Adopting Magistrate Judge's Report and Recommendation [DE 93], entered April 22, 2019. Defendant moves for this relief pursuant to Federal Rule of Civil Procedure 54(b) and the Court's inherent authority to reconsider its own orders.

Specifically, the Parties settled this matter before the Court entered the subject order. Accordingly, the Motion to which the Report and Recommendation pertained was non-judiciable as moot. Further, Defendant lacked an incentive to object to the Report and Recommendation because his case had settled, and thus the Court lacked complete briefing on the issue. Although Defendant lacks a personal stake in continuing to brief these issues (as his case has settled), undersigned counsel believes that they are of extreme importance to the fair administration of the tax laws and should not be decided without complete briefing before the district court.[1]

[1] Notably, the Government is already using the Court's decision as supplemental authority in another civil tax injunction case pending in the Northern District of Georgia, *United States v. Zak*, 1:18-cv-05774-AT, DE 58 (N.D. Ga. Apr. 23, 2019).

## BACKGROUND

In this case, the Government sued Defendant Michael Meyer, alleging that he ran an unlawful and abusive tax shelter. Meyer has denied these allegations. Following a mediation before David H. Lichter and subsequent negotiations between the parties, Defendant Meyer submitted the Government a settlement offer on April 12, 2019, that resolved the entirety of this case, including both the Government's claim for permanent injunction and the Government's claim for disgorgement.[2] Meyer offered to sign a stipulated injunction with specific, previously negotiated terms on or before April 19, 2019, and offered to settle the Government's disgorgement claim by making a payment on or before April 23, 2019. If Meyer did not make this payment on or before April 23, 2019, Meyer's offer provided that the parties would still file the stipulated injunction, but that entering the injunction would not resolve the Government's disgorgement claim.[3] On April 16, 2019, the Government accepted Meyer's offer. On April 19, 2019, Meyer provided a copy of the signed Stipulation to the United States. Around 10:00 a.m. the morning of April 22, 2019, Meyer visited his bank and made the payment to the government by wire transfer. On April 23, 2019, the Payment cleared the Treasury.

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[2] The language of this offer had previously been negotiated with the Government for submission to supervisory authorities within the Tax Division for evaluation.

[3] The disgorgement claim was, however, settled. The Government's remedy if Meyer failed to make this payment would be to move to enforce the settlement agreement with respect to the contemplated payment. *See, e.g.*, *Manriquez v. Manuel Diaz Farms, Inc.*, Case No. 00-1511-CIV, 2002 WL 1050331, at *2 (S.D. Fla. May 23, 2002) (observing that when a settlement agreement is breeched, a party has two remedies—"to file a motion to enforce the agreement" or "file a state-court action to enforce the agreement"). This contingency was never seriously contemplated however, because Meyer had the funds available when the agreement was signed, and promptly payed.

The case thus settled on April 16, 2019. Moreover, Meyer had taken all the steps required under the settlement agreement to resolve the disgorgement claim by the morning of April 22, 2019.

While these settlement negotiations were ongoing, the Court continued to work through pending motions filed in this case. On March 21, 2019, United States Magistrate Judge Valle entered a report and recommendation on the Government's motion to strike Defendant's jury trial demand and affirmative defenses, including his statute of limitations defense. These motions concerned matters of first impression in the Eleventh Circuit and beyond, on whether 28 U.S.C. § 2462 applies a five-year statute of limitations period to disgorgement actions under 26 U.S.C. § 7402, and whether Defendants had the right to a jury trial in such actions. Judge Valle recommended that the Government's Motions be granted. On April 3, 2019, Defendant filed an unopposed motion to extend his time to object to the Report and Recommendation until April 18, 2019, which the Court granted.

Because the parties settled this case on April 16, 2019, mooting the pending issues before the Court, Defendant did not object to the Report and Recommendation, and did not move for a further extension of his deadline to do so. The Court entered an Order adopting the Report and Recommendation on April 22, 2019. For the following reasons, Defendant requests that the Court reconsider, vacate, or otherwise set aside this order.

## ANALYSIS

The Court should set aside its April 22, 2019 Order [DE 93] because the parties' April 16 settlement mooted this case and the Court accordingly lacked jurisdiction to enter the April 22, 2019 Order.

It is well established that settlement moots any motions pending in an action. *See, e.g., Amer. Patriot Ins. Agy., Inc. v. Mut. Risk Magmt., Ltd.*, 364 F.3d 884, 888 (7th Cir. 2004) ("[C]onsiderations of economy argue against the filing of *any* motions while parties are trying to reach a settlement, **since if they do settle the case any motions filed in it will be moot**.") (emphasis added); *see also Williams v. Moody Manor, Inc.*, Case No. 16-cv-60857, 2016 WL 11214667, at *2 (S.D. Fla. Nov. 3, 2016) (Bloom, J.) (approving FLSA settlement agreement and denying all pending motions as moot). And this is no mere rule of convenience. "Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.'" *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982). This precludes decision upon moot matters. Indeed, the Supreme Court has held that "[n]o principle is more fundamental to the judiciary's proper role in our system of government' than this constitutional limitation." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013).

Accordingly, the Court lacked jurisdiction to decide Plaintiff's motion when it entered its April 22, 2019 Order. It must therefore be vacated.

This case is not the first time that a court has ruled on a pending motion between the time that a case has settled and when the parties have filed a Notice of Settlement with the Court. In such circumstances, the Courts have recognized that they lacked authority to resolve the motion, and vacated their ruling upon it.

For example, in *Russell v. CSX Transportation, Inc.*, Case No. 12-cv-316-DRH-PMF, 2014 WL 1716596, at *1 (S.D. Ill. May 1, 2014), a district court vacated an order that had been entered between the settlement of a case and when the parties had notified the Court. The Court concluded that, in that case, "the settlement became final as of August 19, 2013, and as of that

date, this Court lost jurisdiction over this dispute." *Id.* Accordingly, the Court vacated its order even though it found that "the parties inexcusably ignored their mutual duty to inform this Court of their finalized settlement agreement." *Id.*

Additionally, in *Inteliclear, LLC v. Victor*, Case No. 3:16-cv-1403, 2017 WL 4847615, at *1 (D. Conn. Oct. 24, 2017), and *Budget Rent A Car Corp. v. G & M Truck Rental*, Case No. 03 C 2434, 2003 WL 23109766, at *1 (N.D. Ill. Dec. 22, 2003), the courts addressed motions for reconsideration pending at the time of a settlement. Both courts concluded that due to the settlement, they lacked jurisdiction to decide the motions for reconsideration. **And,** they accordingly vacated the underlying orders to which those motions for reconsideration pertained. *See Inteliclear, LLC,* 2017 WL 4847615, at *1 ("Because the Motion for Reconsideration was denied as moot in light of the settlement, there was no opportunity for ruling on that Motion. Thus, in the interest of justice, the Court VACATES its Ruling on Counterclaim Defendant's Motion to Dismiss."); *Budget*, 2003 WL 23109766, at *1 ("The court's memorandum opinion dated June 25, 2003 (the subject of the motion to reconsider) is hereby withdrawn and the order is vacated as moot.").

Rule 54(b) provides the mechanism through which the Court may vacate its April 22, 2019 Order [DE 93]. According to Rule 54(b) "any order or decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . ***may be revised*** at any time before the entry of a judgment adjudicating all the claims and all parties' rights and liabilities." "While Rule 54(b) does not specify a standard for reconsideration, 'the Advisory Committee Notice make clear that interlocutory judgments . . . are left to the complete power of the court rendering them to afford such relief as justice requires." *Inetianbor*

*v. CashCall, Inc.*, 962 F. Supp. 3d 1303, 1307 (S.D. Fla. 2013) (quoting *Grupo Televisa v. Telemundo Communs. Group, Inc.*, 2007 WL 4699017, at *1 (S.D. Fla. 2007)).

As discussed above, the Court lacked jurisdiction to enter its April 22, Order [DE 93] and accordingly the Court should exercise its power under Rule 54(b) and vacate it. Alternatively, the Court should exercise its discretion and vacate the Order because such an issue of first impression should not be decided without full briefing.

**CERTIFICATE OF CONFERRAL**

The undersigned certifies that he has conferred with opposing counsel and parties and they oppose the relief sought herein.

Dated: April 25, 2019

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on April 25, 2019, the foregoing was served on all counsel of record through this Court's CM/ECF system.

*/s/ Jeffrey A. Neiman*