UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor, v. WALKER RIVER IRRIGATION DISTRICT, a corporation, et al., Defendants.	)	IN EQUITY NO. C-125-RCJ SUBPROCEEDING NO. C-125-B 3:73-CV-00127-RCJ-WGC **SUPERSEDING ORDER REGARDING SERVICE AND FILING IN SUBPROCEEDING C-125-B ON AND BY ALL PARTIES**

On June 3, 2013, the Court entered the Order Regarding Service and Filing in Subproceeding C-125-B On and By Unrepresented Parties (the "Unrepresented Party Order") (Doc. 1874). Because of the unique circumstances of this case and for the reasons expressed at the Status Conferences in this matter on July 25, 2013 and November 4, 2013, the Court has determined that the Unrepresented Party Order should be modified. In order to have all of the provisions regarding service on all parties, including, but not limited to, Unrepresented Parties in one Order, rather than two, the Court is entering this Order (hereafter, "Superseding Order") to completely supersede the Unrepresented Party Order.

ATTENTION – ACTION BY YOU MAY BE NECESSARY

In this Superseding Order, the Court is ordering every unrepresented party who wishes to appear and participate in this case to complete and return the attached form titled: **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE.** Through this form, each unrepresented party who wishes to appear and participate in this case must elect whether to receive notice of filings electronically (by e-mail) or in writing (by postcard).

Unless you have previously taken action in response to the Unrepresented Party Order of June 3, 2013, within sixty (60) days from being served this Superseding Order, you **may** need to take action described on pages 8 through 10, paragraphs 6 through 12, below.

INTRODUCTION

This case or Subproceeding, referred to interchangeably by the designation "3:73-CV-00127-RCJ-WGC" and "C-125-B," concerns claims to water rights asserted by the United States in the Walker River Basin. Through this Superseding Order, the Court is only addressing case management issues related to this case - Subproceeding C-125-B. You are receiving this Superseding Order because you are a defendant in Subproceeding C-125-B.

The purpose of this Superseding Order is to identify and implement the alternative methods of service for all parties to receive or to be served papers.

BACKGROUND

Previously, this Court required the United States of America ("United States") and the Walker River Paiute Tribe ("Tribe") to serve persons and entities holding certain categories of water rights pursuant to the provisions of Rule 4 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") with a Notice in Lieu of Summons that required them to file a Notice of Appearance and Intent to Participate. Thus far, the United States and Walker River Paiute Tribe have served approximately 3,280 parties who remain defendants in this case. Of those served, approximately 180 have entered their appearance and are represented by an attorney. In addition, approximately 1,000 parties have filed a Notice of Appearance and Intent to Participate but are not represented by an attorney. Finally, of the remaining approximately 2,100 of those served, a response has not been filed and they are deemed not to have appeared at all.

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Throughout the remainder of this Superseding Order, the following definitions shall apply:

"**Represented Party**" means a party who has been served, who has filed a Notice of Appearance and Intent to Participate, and who is represented by an attorney.

"**Unrepresented Party**" means a party who has been served and who previously filed a Notice of Appearance and Intent to Participate, but who is not represented by an attorney.

"**Non-Appearing Party**" means a party who has been served, but who has not filed a Notice of Appearance and Intent to Participate, thus making no appearance in this case.

Under Fed. R. Civ. P. 4, parties, such as the United States and the Tribe, who assert claims must initially serve affected persons/entities by personal service (or secure waiver of such service). Once a person/entity has been initially served, Fed. R. Civ. P. 5 describes that all subsequent filings (motions, papers, documents, etc.) may be served on that person/entity by mail or electronic means.

In this case, now that the initial service under Fed. R. Civ. P. 4 is complete, the provisions of Fed. R. Civ. P. 5 control the service of papers filed. Because of the large number of **Non-Appearing Parties** and **Unrepresented Parties**, the Court is entering this Superseding Order to clarify which papers filed in this matter must be served, on whom they must be served, and how they must be served under Fed. R. Civ. P. 5 as this matter moves forward.

Fed. R. Civ. P. 5(a)(2) provides that no service is required on a party who has failed to appear (*i.e.* in this case, a **Non-Appearing Party**). For purposes of that Rule and as applied to this case, except as provided in pages 7 through 8, paragraphs 3 through 5, below, a **Non-Appearing Party** here who has been properly served and has not filed a Notice of Appearance and Intent to Participate **need not be served further by the Court or other parties unless and until that party does so appear (except for pleadings asserting a new claim for relief against that party, which must be served on that party under Rule 4)**.

With respect to parties who have appeared, Fed. R. Civ. P. 5 controls service of papers on them. Under that rule, most papers filed in this matter are required to be served on every other party. Fed. R. Civ. P. 5 specifies several methods for this service. Two of the most frequently used methods are service by mail and service by electronic means.

Under the Local Rules for the U.S. District Court for the District of Nevada ("Local Rules"), parties who are represented by attorneys serve other parties represented by attorneys using the Court's Case Management/Electronic Case Filing system ("CM/ECF System").

However, use of the CM/ECF System is generally limited to attorneys representing a party, who are required to file and receive all papers using this electronic system. Authorized users do not receive paper copies of filings by mail because the CM/ECF System sends them e-mail notice of all filings with a link to an electronic copy of the document in the CM/ECF System. Use of the CM/ECF System is easy, efficient and economical. This Superseding Order does not change the requirement for attorneys for **Represented Parties** to use the CM/ECF System.

Because of the large number of **Unrepresented Parties** who have appeared, the Court has identified a need for an effective, efficient, and inexpensive method for the Court, as well as all parties, to serve papers on **Unrepresented Parties**, and conversely, to allow **Unrepresented Parties** to serve papers that they might file. Because the CM/ECF System is generally not available for service on **Unrepresented Parties**, service of documents upon **Unrepresented Parties** must be accomplished by another means. Typically, parties without an attorney are served paper copies of filings by mail and must serve paper copies of their own filings by mail on every other party who has appeared. The cost of copying and mailing a paper may not be significant when a case includes only a few unrepresented parties. Here, however, there are approximately 1,000 **Unrepresented Parties** and the cost of postage alone for every paper served on the Court by an **Unrepresented Party** could be, at a minimum, approximately $490.00.

Although the Court is concerned with, among other things, the cost to the judiciary of mailing paper copies, of greatest concern to the Court is that the cost of requiring every party to serve every filing by mail on every other party will unfairly impede the participation of all parties to this matter whether represented or unrepresented.

Fundamentally, the Federal Rules of Civil Procedure are designed so that the Court can ensure "the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Further, the Local Rules allow papers to be filed or served by electronic means. Local Rules 5-3 and 5-4 allow electronic filing and service pursuant to Special Order No. 109. Further, the Court may amend the electronic filing procedures in Special Order No. 109 "in keeping with the needs of the Court." Therefore, application of Fed. R. Civ. P. 1, the

circumstances of this complex subproceeding, the needs of the Court, and the interests of fairness require this Court to develop unique service procedures for the remainder of this subproceeding.

FINDINGS AND CONCLUSIONS

Accordingly, and based upon the foregoing, the Court finds:

THAT the alternative methods addressed in this Superseding Order for service on all Parties and filing by such parties through the Clerk's Office are fair, are in keeping with the needs of the Court and all parties, and are consistent with the Federal Rules of Civil Procedure, the Local Rules of this Court, and Special Order No. 109;

THAT the procedure set forth herein for **Unrepresented Parties** to request to be on the Court's "postcard notice" list, including the conditions for them to remain on the "postcard service" list, is a reasonable exception to electronic service; and

THAT the additional, limited use of the CM/ECF System and the establishment and maintenance of the public website described below will not overburden the Court staff.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

Establishment of a Public Website:

1. The Clerk of the Court has established and will maintain a website that is separate from the Court's official docket and available to the public, on which the Clerk has and will post Orders and other filings of Subproceeding C-125-B.
2. This separate public website may be accessed directly at: https://ecf.nvd.uscourts.gov/casedisplay or by selecting "Walker River" on the District of Nevada's official website (www.nvd.uscourts.gov).

Service of this Superseding Order:

3. The Court shall serve this Superseding Order through the CM/ECF System on all **Represented Parties**. In addition, the Court shall send e-mail notice of this Superseding Order electronically to all unrepresented persons who have previously

consented to such service and provided the Court with an e-mail address for such service.

4. Within thirty (30) days from entry of this Superseding Order, the United States shall serve this Superseding Order by first-class mail on **Unrepresented Parties** who have not consented to service by email. The United States shall serve **Unrepresented Parties** at their last known address as reflected by the most recent correspondence with **Unrepresented Parties**, including as reflected on the Walker River Irrigation District's most recent assessment list, at the address shown thereon. Such service by the United States shall also include the Notice of Appearance and Intent to Participate and/or Notice of Selecting Method of Service Form in form and substance as attached hereto as Exhibit A (the "Notice of Appearance and Election Form").

5. Within thirty (30) days from entry of this Superseding Order, the United States shall also serve this Superseding Order by first-class mail on all **Non-Appearing Parties.** The United States shall serve such persons at their last known address as reflected by records maintained by the United States and/or the Clerk of the Court, including as reflected on the Walker River Irrigation District's most recent assessment list, at the address shown thereon. Such service by the United States shall also include the Notice of Appearance and Election Form.

Action By Non-Appearing Parties:

6. To give **Non-Appearing Parties** another opportunity to appear, to continue to receive notice as provided in this Superseding Order, and to be heard, within sixty (60) days from such service of the Superseding Order on them by the United States, **Non-Appearing Parties** may mail the attached **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE** to the Clerk of the Court.

7. A **Non-Appearing Party** who appears through an attorney will, as a result thereof, become a **Represented Party** and will thereafter file and serve and be served with papers through the CM/ECF system.

8. A **Non-Appearing** Party who files a **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE**, but who is not represented by an attorney, will, as a result, become an **Unrepresented Party**, and must either consent to receive service by e-mail notification or request to receive service by postcard (hereafter referred to as "postcard notice") as outlined in paragraphs 11 through 12, below. Any such party with access to a computer and the Internet, is **strongly** encouraged by the Court to consent to electronic service in order to reduce the costs associated with service not only for all other parties, but also for that party because any paper filed by that party in this matter will otherwise have to be served by U.S. mail on other parties as provided in this Superseding Order by that party at considerable expense. However, by consenting to electronic service, such party will be sent an e-mail each time a document is filed with the Court and will be directed to a specific location on the Court's website where the document can be examined easily and at no additional cost to that party.

9. A **Non-Appearing Party** who does not file a **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE** will, as a result, remain a Non-Appearing Party. Parties who have been properly served under Fed. R. Civ. P. 4 and who have not filed a Notice of Appearance and Intent to Participate are in "default" for purposes of Fed. R. Civ. P. 5(a)(2). No further service will be required under Fed. R. Civ. P. 5 on those **Non-Appearing Parties**, unless and until they so appear.

10. Paragraph 9 immediately above is not intended to change and does not change the provisions of the April 18, 2000 Case Management Order (Doc. 108) at page 12, paragraph 13, that no default shall be taken under Fed. R. Civ. P. 55 and the Court will take no action to enter a default or a default judgment under that Rule against any **Non-Appearing Party.**

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Action By Unrepresented Parties:

11. If an **Unrepresented Party** previously responded to the Court's June 3, 2013 Unrepresented Party Order, and informed the Court of an election of a method of service (i.e. by e-mail or by mail only), such party need not complete and return the attached Notice. However, because parties serving documents are required to only mail a postcard notice to those who have elected postal mail service, the Court requests that unrepresented parties who have previously opted for service by mail reconsider and re-elect to get service by e-mail.

12. An **Unrepresented Party** who did not respond to the June 3, 2013 Order, must either consent to receive service by e-mail notification or request to receive service by postcard. Within sixty (60) days of service of this Superseding Order on such an **Unrepresented Party** by the United States, every such **Unrepresented Party** must complete and return to the Court the attached Notice of Appearance and Election Form concerning an election of service. The notice must be mailed to:

U.S. District Court Clerk, Attn. C-125-B Notice Clerk
Bruce R. Thompson Courthouse
400 S. Virginia Street, Room 301
Reno, Nevada 89501

If an **Unrepresented Party** has access to a computer and the Internet, the Court strongly encourages that they consent to electronic service in order to reduce the costs associated with service not only for all other parties, but also for themselves because any paper they file in this matter will have to be served by them on other parties as provided in this Superseding Order. An **Unrepresented Party** consenting to electronic service may wish to create a new e-mail address to receive notice from the Court that is separate from that party's personal or other e-mail addresses.

Consequences of Election or Failure to Elect:

13. If an **Unrepresented Party** consents to electronic service, that party will receive an e-mail from the Court each time a document is filed in this case and in that e-mail will be

directed to a specific location on the Internet where the document can be easily accessed and examined.

14. If an **Unrepresented Party** elects to receive postcard notice for substantive documents filed in this matter, that party will be mailed a postcard each time any other party files a paper required to be served by Fed. R. Civ. P.5(a) and by paragraphs 17 and 18, below.

15. **If an Unrepresented Party fails either to consent to electronic service or service by postcard, or if a Non-Appearing Party takes no action and remains a Non-Appearing Party, that party shall be deemed to have consented and agreed to receive service and subsequent notice of all filings in this matter by taking the responsibility to check the public website by selecting "Walker River" on the Court's website (www.nvd.uscourts.gov) or by accessing the public website directly (https://ecf.nvd.uscourts.gov/casedisplay). All such parties shall be deemed to have received notice of all subsequent Orders and other filings in Subproceeding C-125-B.**

16. At any time, a party who fails to make a service election may elect to start receiving electronic or postcard notice by filing with the court a request for such service through the Notice of Appearance and Election Form attached to this Superseding Order. The process to file a document with the Court is described in paragraph 23, below.

Service of Motions, Papers and Documents Filed with the Court

17. Except as provided in paragraph 20, below, after this Superseding Order has been issued and served as described in paragraphs 3 through 5, above, for any paper filed with the Court in this Subproceeding every party shall serve every other party with the item filed as follows:

    a. that paper will be automatically served on all **Represented Parties** through the CM/ECF System;

    b. notice that a paper has been filed will be automatically served by the Court on all **Unrepresented Parties** who elected to get service by e-mail and such notice will direct the recipient to view papers through the Court's website; and

c. written notice, at least in the form of a postcard, of that paper will be mailed to every **Unrepresented Party** who has elected to receive notice of filings by mail only and such notice will direct the recipient to view papers through the Court's website.

18. Such postcard notice described in paragraph 17.c, above, must contain the following information: language specifically informing the recipient that the recipient is receiving a NOTICE that a paper has been filed in this litigation; language informing the recipient that they are receiving the Notice as ordered by the Court; the date the paper was filed; the name of the party or parties who filed the paper; the Court's docket number for the filed paper; the name of the paper that was filed; and the address of the public website established by the Court where the party may view, print and/or save the paper. A single postcard notice may provide notice of the filing of multiple papers, and may provide notice on behalf of more than one party.

19. The Court shall maintain the list of those **Unrepresented Parties** who have elected to receive postcard notice.

Filings For Which Postcard Service Not Required:

20. Consistent with Fed. R. Civ. P. 5(a)(1)(D) and Local Rule 7-5, the postcard notice provided for in paragraph 17.c, above, will not be required for a motion that may be heard *ex parte*.[1] As well, the postcard notice provided for in paragraph 17.c, above, will not be required for any other filing (notice, pleading, motion, etc.) that does not affect the rights of others and does not raise a significant issue of law or fact. **At the conclusion of every filing, the filing party shall state whether the materials filed are subject to the postcard notice provided for in paragraph 17.c, above, and, as a result, whether they have served Unrepresented Parties who have opted for postcard notice.** In the event that the Court, for whatever reason, disagrees with a

[1] "*Ex parte*" refers to a motion or application that is filed with the Court but is not served on other parties or to a communication made with the Court outside the presence of the other parties. *See* Local Rules 7-5(a), 7-6(a). Generally, a party may not appear before the Court or file documents *ex parte*; however, under specific circumstances and as permitted by the Federal Rules of Civil Procedure and the Local Rule, occasion may exist in these proceedings to appear or file documents *ex parte*. *See* Local Rules 7-5 and 7-6.

filing party's determination that a filing is not subject to postcard service, the Court will instruct the filing party to serve **Unrepresented Parties** by postcard.

Motions Requiring a Response:

21. The Court, at a later date, will adopt special procedures regarding the timing of and requirement for responses to motions.

Availability to Public:

22. All documents filed with this Court concerning this case will be available to the public for free viewing at the Clerk's Office in Reno, Nevada, and through the website described in paragraph 2, above. Free, public access to the Internet and the Court's website may be made at the following locations near the Walker River Basin:

Nevada libraries near Walker River Basin with public use computers

Carson City Library, 900 North Roop Street, Carson City 89701 (775-887-2244)

Churchill County Library, 553 S Maine Street, Fallon 89406 (775-423-7581)

Fernley Branch - Lyon County, 575 Silver Lace Blvd, Fernley 89408 (775-575-3366)

Mineral County Library, 110 1st Street, Hawthorne 89415 (775-945-2778)

Douglas County Library, 1625 Library Lane, Minden 89423 (775-782-9841)

Lyon County Central Library, 20 Nevin Way, Yerington 89447 (775-463-6645)

California libraries near Walker River Basin with public use computers

Mono County Public Libraries

94 N School Street, Bridgeport 93517 (760-932-7482)

111569 HWY 395, Coleville 96107 (530-495-2788)

400 Sierra Park Rd., Mammoth Lakes 93546 (760-934-4777)

Filings by Unrepresented Parties:

23. **Unrepresented Parties** may *file* documents in Subproceeding C-125-B by mail or in person with the Clerk of the Court at:

Clerk of the Court, Bruce R. Thompson Courthouse
400 S. Virginia Street, Room 301
Reno, Nevada 89501

24. In connection with all such filings, **Unrepresented Parties** must follow the requirements set forth in paragraph 17 above and the Local Rules for the Federal District Court of Nevada, which are available through the Court's official website (www.nvd.uscourts.gov) and at the Clerk's Office.

Changes of Address and/or E-mail:

25. Whether an **Unrepresented Party** has elected to receive electronic notice of filings as described herein, elected to receive service by postcard, or made no service election, every **Unrepresented Party** must notify the Court if their mailing and/or e-mail addresses change. In the event that the Court receives notification from the U.S. Postal Service that the address associated with an **Unrepresented Party** is no longer valid, the Court shall no longer rely upon that address, shall remove that address from the list maintained and described in paragraph 19, above, and no other party shall be required to send any mailing to the invalid address. Any **Unrepresented Party** whose address is determined to be invalid may resume receiving correspondence by providing the Court with his/her valid address.

26. Notice of all e-mail and/or mailing address changes must be filed with the Court at:

U.S. District Court Clerk, Attn. C-125-B
Bruce R. Thompson Courthouse
400 S. Virginia Street, Room 301
Reno, Nevada 89501

27. **Unrepresented Parties** who fail to notify the Court of mailing or e-mail address changes and who, as a result of such failure, do not receive notice of a filed document will nevertheless be deemed to have notice of that document and all subsequent orders and other filings in this matter.

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Required Form to Complete and Return to the Court:

28. The **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE** shall be completed and shall be returned to:

U.S. District Court Clerk, Attn. C-125-B
Bruce R. Thompson Courthouse
400 S. Virginia Street, Room 301
Reno, Nevada 89501

29. As described in the paragraphs above, any **Unrepresented Party** who elects not to register for electronic notice of filings of documents must request to be on the Court's postcard notice list.

30. **Unrepresented Parties** needing assistance with the electronic notice and/or filing procedures provided for herein are encouraged to contact the Clerk of Court at 775-686-5800, 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

Miscellaneous:

31. All parties are encouraged to keep a copy of this Superseding Order and a copy of their completed **NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE AND/OR NOTICE OF SELECTING METHOD OF SERVICE** for future reference.

32. **The cost associated with postcard service is potentially extremely high not only to Represented and Unrepresented Parties but to the Court as well. Therefore, the Court strongly encourages all Unrepresented Parties to consent to electronic service because e-mail notice in conjunction with the use of the Court's website is prompt, helps keep parties apprised of the proceeding's status, and avoids significant mailing expenses. The Court appreciates your careful attention to this Superseding Order.**

33. **As described in the paragraphs above, even if an Unrepresented Party had previously requested to be mailed a copy of documents, parties serving documents are required to only mail a postcard notice to those who have elected mail service.**

The Court requests that Unrepresented Parties who have initially opted for service by mail reconsider and re-elect to get service by e-mail.

34. This Order supersedes in its entirety the Unrepresented Party Order of June 3, 2013 (Doc. 1874).

Dated this ____ day of _____, 2014.

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UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff WALKER RIVER PAIUTE TRIBE, Plaintiff-Intervenor vs. WALKER RIVER IRRIGATION DISTRICT, a corporation, *et al.*, Defendant	IN EQUITY NO. C-125-RCJ SUBPROCEEDING NO. C-125-B 3:73-CV-00127-RCJ-WGC

NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE
AND/OR
NOTICE OF SELECTING METHOD OF SERVICE

1. I hereby enter my appearance in this case **OR** I have already entered my appearance in this case and am providing the Court with my service election choice as outline in paragraph 4, below.

2. I am filing this document with the District Court by mailing it or delivering it to the following address:

   U.S. District Court Clerk, Attn. C-125-B
   Bruce R. Thompson Courthouse
   400 S. Virginia Street, Room 301
   Reno, Nevada 89501

3. If I (or the entity on whose behalf I am acting) have retained an attorney for representation in these proceedings, I identify that attorney below, along with his or her mailing address, telephone number, facsimile number, and e-mail address:

   Attorney: _____
   Address: _____
   Phone Number: _____
   E-mail Address: _____

PLEASE NOTE: Attorneys are reminded that they are required to comply with the electronic filing procedures of the U.S. District Court for District of Nevada.

"Attorneys who are admitted to the bar of this court, admitted to participate in a case *pro hac vice*, or who are authorized to represent the United States and its agencies, shall register as Filing Users of the

System. Registration shall be in the form prescribed by the Clerk of the Court and by these Electronic Filing Procedures." U.S. Dist. Ct., D. Nev., Electronic Filing Procedures (rev. Aug. 24, 2006) at I.C.

4. If I am not represented by an attorney, I elect to receive service of documents by one of the two court approved methods (**select only one method of service**):

a. **Electronic Service**_____(your initials) to the following e-mail address of notice that a motion, pleading, or document has been filed in this case and that it may be viewed at the Court's website (**www.nvd.uscourts.gov**):

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(please provide a current e-mail address).

b. **Postcard Service** _____(your initials) to the following physical mailing address of notice that a motion, pleading, or document has been filed in this case and that it may be viewed at the Court's website (**www.nvd.uscourts.gov**):

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(please provide a current mailing address).

PLEASE NOTE: To keep costs down for all parties to this case, the District Court **strongly** encourages unrepresented parties to accept Electronic Service.

(Signature)

_____

(Printed or typed Name)

_____

(Entity, if any, on whose behalf you are appearing)

_____

_____

(Address)

_____

(Telephone number)