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10
11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 UNITED STATES OF AMERICA,

14 Plaintiffs,

15 v.

16 JAMES LESLIE READING, CLARE L.
READING, FOX GROUP TRUST,
17 MIDFIRST BANK, CHASE, FINANCIAL
LEGAL SERVICES, STATE OF ARIZONA

18 Defendants.
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Civ. No. 11-698-PHX-FJM

**PROPOSED CASE MANAGEMENT
PLAN**

21 The United States, James Leslie Reading, Clare L. Reading, Fox Group Trust, MidFirst Bank
22 and the State of Arizona hereby file this Proposed Case Management Plan.

23 **1. The Nature of the Case.** Through the complaint, the United States seeks to reduce
24 various tax, interest and penalty assessments made by the Internal Revenue Service (“IRS”) against
25 James L. Reading and/or Clare Reading (hereafter “the Readings”) to judgment and foreclose federal
26 tax liens arising from the assessments against the real property described in the complaint (“the real
27 property”). The United States also asserted in the complaint that the alleged owner of the real
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1 property, *i.e.*, Fox Group Trust, is a nominee or alter ego of the Readings and that the transfer of the
2 real property from the Readings to Fox Group Trust was a fraudulent conveyance *vis a vis* the United
3 States. Defendants MidFirst Bank, Chase Bank, Financial Legal Services and the State of Arizona
4 may claim an interest in the real property.

5 **2. Elements of Proof and Affirmative Defenses.** The United States will likely have the
6 initial burden regarding the claims that it asserted in the complaint. If the Readings are going to
7 challenge the assessments that the United States seeks to reduce to judgment, then discovery and
8 other litigation will focus on the amount owed by the Readings for each of the subject liabilities.

9 Regarding the Government's nominee/alter ego claim, if the real property was held in the
10 name of the Fox Group Trust as a nominee or alter ego of the Readings, then it can be levied to
11 satisfy their tax liabilities. Factors that could evidence that an entity is a nominee or alter ego
12 include, for example:

- 13 - whether the taxpayer in question treats the property as if it belongs to him;
- 14 - whether minimal or no consideration was paid by the alleged nominee in consideration
15 for the property; and
- 16 - whether a close relationship exists between the taxpayer and the alleged nominee that
17 holds the property.

18 Regarding the fraudulent conveyance claim, a fraudulent transfer of property is evidenced
19 where the taxpayer in question engaged in actual or constructive fraud when he transferred the
20 property. In determining whether there was an actual fraud, the Court could consider the eleven
21 badges of fraud set forth in Arizona Revised Statute § 44-1004(B). Constructive fraud is evidenced
22 where, for example, a taxpayer did not receive reasonably equivalent value and also reasonably
23 believed that he would incur debts beyond his ability to pay them.

24 Defendants Reading and Fox Group Trust dispute both validity and accuracy of the
25 assessments sued upon based upon an alleged failure of due process, lack of authority, impropriety
26 of process and methodology and any other vices revealed through discovery. Defendants Reading
27 and Fox Group Trust further dispute the claim that Fox Group Trust is an alter ego of defendants
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1 Reading based upon an alleged absence of the factors described above. Defendants Reading and
2 Fox Group Trust also dispute the applicability of Arizona Revised Statutes 44-1004(b) by virtue of
3 both an alleged absence of fraud and the action's being time barred by Arizona Revised Statutes 44-
4 1009.

5 **3. Factual and Legal Issues in Dispute.** It appears likely that most or all of the factual
6 and legal issues regarding the tax and foreclosure claims will be contested between the United States,
7 the Readings and Fox Group Trust. There also might be questions of fact and law regarding the
8 priority of interests between the parties regarding the real property.

9 **4. Jurisdictional Basis of the Case.** Jurisdiction is conferred on this Court under 28
10 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402. At this point, there do not appear to be issues in
11 dispute concerning jurisdiction. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1396 because
12 the liabilities that are the subject of this action accrued in this district and because the real property
13 is located in the district.

14 **5. Parties that Have Not Been Served or Who Have Not Answered.** The only named
15 defendants that have not filed a response are the Chase Bank and Financial Legal Services, each of
16 which may claim an interest in the real property. Chase Bank was served with a summons and copy
17 of the complaint on May 5, 2011 but has not yet filed a response. The undersigned Government
18 counsel recently discussed Chase's failure to respond with a representative of Chase's registered
19 agent in Arizona. If Chase does not file an answer in the near future, the United States will request
20 the Clerk of the Court to enter its default.

21 There appears to be a question whether United States served the current representative of
22 Financial Legal Services. The undersigned Government attorney is currently trying to resolve the
23 issue.

24 **6. The Names of parties not subject to the Court's Jurisdiction.** At this point, none
25 of the parties are contesting the Court's jurisdiction.

26 **7. Contemplated Dispositive Pre-Trial Motions.** The United States anticipates that,
27 at some point prior to trial, it will file a dispositive motion regarding some or all of the claims in the
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1 complaint.

2 Defendants Reading and Fox Group Trust anticipate filing some form of dispositive motion(s)
3 dependent upon accrual of evidence through discovery.

4 **8. Whether the Case is Suitable for Reference to a United States Magistrate for**
5 **Settlement Conference.** The United States does not believe that this case is suitable for reference
6 to a Magistrate.

7 Defendants Reading and Fox Group Trust have no position relative to the assignment of the
8 case to a Magistrate, so defer to the government's objection thereto.

9 **9. Status of Related Cases.** At this point, it is unknown whether there are related cases.

10 **10. Date that Initial Disclosures are Due.** The Court's July 7, 2011 order requires that
11 initial disclosures be made on or before August 26, 2011.

12 **11. Proposed Dates for:**

- 13 (a) Last day to file motions to amend the complaint and to join additional parties.
14 December 1, 2011;
- 15 (b) Disclosure of expert testimony by plaintiff under Rule 26(a)(2), Fed. R. Civ. P.
16 January 3, 2012;
- 17 (c) Disclosure of expert testimony by defendant under Rule 26(a)(2), Fed. R. Civ.
18 P. February 3, 2012;
- 19 (d) Disclosure of rebuttal expert testimony. March 2, 2012;
- 20 (e) Disclosure of all witnesses, exhibits and other matters under Rule 26(a)(3), Fed.
21 R. Civ. P. On the date that the joint proposed pretrial order is lodged;
- 22 (f) Closure of all discovery. June 15, 2012;
- 23 (g) Last day to file dispositive motions. August 10, 2012;
- 24 (h) The lodging of a joint proposed pretrial order. January 11, 2013;
- 25 (i) The final pretrial conference. January 25, 2013;
- 26 (j) Firm trial date. Commencing on February 21, 2013.
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1 **12. The estimated length of trial, and any suggestions for shortening the trial.** Three
2 (3) days; however, the length of trial may be shortened based on the Court's rulings on dispositive
3 motions that are hereafter filed.

4 **13. Whether a jury trial has been requested and whether the request for a jury trial**
5 **is contested.** Fox Group Trust requested a jury trial in its answer filed on June 28, 2011. The United
6 States asserts that the request is not proper since a jury trial is not permitted on the foreclosure claims
7 in the complaint. *See e.g., United States v. McMahan*, 569 F.2d 889 (5th Cir. 1978).

8 Defendants Reading and Fox Group Trust assert that they have both made timely demand for
9 jury trial as to all issues proper to be so tried. Defendants Reading and Fox Group Trust allege that
10 the Government is seeking three remedies, 1) money judgment on the basis of assessments; 2)
11 declaratory relief recognizing the existence of a lien against the property belonging to defendant Fox
12 Group Trust; and, 3) judicial enforcement of the lien if recognized. Defendants Reading and Fox
13 Group Trust contend that although suit for declaratory relief is a suit in equity, both the suit for
14 money judgment and the suit for enforcement of the purported lien are common law actions, thus
15 Defendants Reading and Fox Group Trust believe that they are entitled to trial by jury as to those
16 causes of action, necessitating a bifurcated trial. Defendants Reading and Fox Group Trust assert
17 that, at this time, no formal objections to the jury trial sought by them has been propounded, but
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1 defendants Reading and Fox Group Trust are ready and willing to brief and argue the issue at the
2 appropriate time should that become necessary.

3 Dated this 19th day of August, 2011.

4 DENNIS K. BURKE
5 United States Attorney

6 /s/ Charles M. Duffy
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13 Approved August 19, 2011
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and certify that I have mailed by U.S. Postal Service to the foregoing:

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