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2425 East Fox Street
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA *Plaintiff,* v. JAMES LESLIE READING, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, CHASE, FINANCIAL LEGAL SERVICES, STATE OF ARIZONA *Defendants*	2:11-cv-00698-FJM **DEFENDANTS' RESPONSE TO OPPOSITION TO THE MOTION FOR LEAVE OF COURT TO FILE A SURREPLY BY JAMES AND CLARE READING**

DEFENDANTS' RESPONSE TO OPPOSITION TO THE MOTION FOR LEAVE OF COURT TO FILE A SURREPLY BY JAMES AND CLARE READING

The information Plaintiff's attorney believed was not "new" in Defendants' Surreply (Doc. 94) was to point out to this Honorable Court that a mere 63 days previously, U.S. supreme Court Justice John Roberts agreed with Defendants in his Opinion regarding the Affordable Care Act, even citing many of the same U.S. supreme Court decisions Defendants did in his Opinion's section on property rights.

On Page 1, lines 10 through 24 and line 1 on Page 2, of Plaintiff's OPPOSITION TO THE MOTION FOR LEAVE OF COURT TO FILE A SURREPLY BY JAMES AND CLARE READING, Plaintiff

continues to attempt to convince this Honorable Court that their "correction of errata" figures in the Declaration of Elizabeth Marriaga are valid.

For a second time, Elizabeth Marriaga computes an "audit" that arrives at positive numbers, when Defendants have sworn under penalty of perjury that their attempted investment in the stock market created a total net loss. Elizabeth Marriaga still uses numbers invented by the original IRS File Examiner, Rebecca Sexton. In her Declaration, Elizabeth Marriaga, therefore, commits perjury a second time, for her report is not based upon her own original first-hand knowledge and the numbers are still incorrect. There is serious doubt that Elizabeth Marriaga is a competent witness or had first hand knowledge of the facts in which she testified.

Plaintiff has based their harassment of Defendants and seizure of their property for two decades on incorrect calculations, sharing same with the Arizona Department of Revenue who also attached and seized property based on the erroneous calculations of the IRS. Defendants are insulted that Plaintiff would have the nerve to ask this Honorable Court to grant Summary Judgment in their favor and *then* they will try to calculate the figures correctly. This is an admission by the Plaintiff that there are genuine material facts in dispute. The fact is that the Defendants owe the amount they claimed on their tax returns. In any other court of law any claim regarding the amount owed must be true and accurate. Defendants have shown that the Plaintiff is declaring a tax deficiency on money never received, when the IRS assigned ½ of James' earnings to his wife and also added the alleged capital gains to both James' and Clare Reading's separate tax returns. Defendants expect that the jury of their peers will be able to determine whether the Plaintiff or the Defendants have the correct calculations.

On Page 2, lines 2 through 10, Plaintiff merely restates their previous erroneous position without proving it. Plaintiff presumes fact not in evidence. Plaintiff has not met its burden of proving its claims in this instant suit, as the jury of Defendants' peers will concur.

Plaintiff states at line 3 that Defendants "want to reiterate the same baseless arguments ..." yet, all the Plaintiff does is call Defendants names and otherwise attempt to discredit them without ever producing the illusive "statute of liability" upon which this entire suit is supposedly based. Defendants ask: *who* is reiterating "baseless arguments"? Defendants assert that the jury they are entitled to would readily be able to discern the truth. It is the government's burden to prove not only the facts it alleges, but the law, as well. The letter of the law does to include the law according to a letter. There must be an actual statute promulgated by Congress that everyone, including the jury, can read for themselves.

Defendants used the definition of "U.S. Person" published by the Secretary of the Treasury himself and in Title 26 of the United States Code promulgated by Congress and accepted by the Courts:

> "When the words of a statute are unambiguous, the first canon of statutory construction –that courts must presume that a legislature says in a statute what it means and mean in a statute what it says there—is also the last, and judicial inquiry is complete."
> *Connecticut National Bank v. Germain*, 503 US 249 (1992)

According to Treasury Decision (T.D.) 8734, the Secretary of the Treasury has declared that a "U.S. Person" is an American citizen or domestic entity that is part of a 'financial pipeline through which U.S. source income flows to its foreign source destination'.

At: http://constitution.org/tax/us-ic/regs/2003/2003_Regs_Vol_13.pdf can be seen the way the Secretary uses "U.S. person" in the regulations, section entitled, "Subchapter A-Income Tax (Continued) Part 1-Income Taxes Related Rules". Here, "U.S. person" is used by the Secretary on 41 pages of 622. Each and every time "U.S. person" is used, it is in conjunction with transfers of funds to a foreign person or a foreign corporation or other foreign entity. In the 622 pages the Secretary never once uses "U.S. person" to have anything at all to do with any American living and working in the Private Sector of any of the 50 republics untied. Plaintiff presumes fact not in evidence and no testimony or evidence has been presented to show that Defendant's meet the legal definition of "U.S. Persons".

If Plaintiff continues to insist on categorizing Defendants as "U.S. persons" it will have to display the evidence at trial for a jury of Defendants' peers which Defendants are entitled to as the Due Process they are guaranteed by the Constitution and let the jury decide whether or not Defendants are "U.S. persons".

On Page 2, Plaintiff has not read Defendants' Exhibit EE describing Internal Revenue Districts and tries to make fun and dismiss this serious provision of law. In this way, Plaintiff is distracting this Honorable Court from the *real* issues of the instant case. [*See*: Defendants' Exhibit I, Affidavit #1 Regarding The Real Issues in This Case – Doc. # 83]. The law clearly authorizes only certain functions such as collection and assessments, to be carried out by District Directors, who no longer exist, because of the abolishment of Internal Revenue Districts. So, how can an assessment be valid if the person who made it was not authorized to make it? Plaintiff presumes facts not in evidence and no testimony or evidence has been presented to show that notices and assessments were properly made by an authorized person, a fact which is in dispute in this case.

Surely this Honorable Court will be interested to see that Defendants do not live in an Internal Revenue District and Defendants are confidant that when the Court affords them their full measure of Constitutionally guaranteed Due Process, the jury will be glad to read the Exhibit to find out about Internal Revenue Districts, as well. Far from being "specious", as Plaintiff contends, Defendants show the statute, and regulation – which is more than the Plaintiff has been able to do in 20 years of demanding to see the "statute of liability" in which Congress requires Defendants to pay a tax on their gross labor receipts. For the Plaintiff to make light of Defendants' fundamental rights is a grave matter. Surely, this Honorable Court sees that gravity, or certainly the jury or the higher Courts will.

The Plaintiff twists Defendants' words and meaning (Plaintiff's Opposition, page 2, lines 11 through 17). It would take a Court not as sharp as this one to be fooled by the Plaintiff who attempts to show that an amount was agreed upon or even believed to be owed at all when Defendants have repeated in this instant case and for over twenty years that the Plaintiff has never been able to prove via statute promulgated by Congress that they ever received "taxable income" or that their attempted stock investment resulted in anything but a total net loss. This loss was confirmed by Debra Vahe herself, in her Integrated Collection System (ICS) History Log on Dec. 16, 2009, [*See* Exhibit JJ] when she calculated the very same loss Defendants had been telling her – and instituted this suit anyway on April 8, 2011, when the "right thing to do" would have been to cause the IRS to start correcting their errors, and share the correct Information with the Arizona Department of Revenue so that they could begin making corrections to their records and return wrongfully seized property, as well. This material fact in genuine dispute is ready for the jury of Defendants' peers to decide.

If Defendants visited their local police station and asked, "Why can't we rob a store today?" The helpful policeman would open 18 USC and find the section addressing "robbery". Then he would turn the book so Defendants could read it and say, "It's right here. And here is what would happen to you if you were caught doing it." Simple, straight forward, honest: the law.

However, Defendants *have* visited the IRS office in Phoenix to ask to see the statute in Title 26 that requires them to file and pay a tax on their gross labor receipts. The IRS employee met them in an incredibly tiny glass-walled cubicle while their supervisor stood in the darkened cubicle across the hall – watching – and they never answered Defendants' question and Defendants finally left without the copy of the statute they went in for. Mysterious, deceptive, intimidating: no law.

Defendants know that this Honorable Court sees these blatant errors and illusory actions of the Plaintiff and they believe that the jury will see them, as well.

That Plaintiff offers to "provide numerical tax and interest calculations that are based on the "concession" it erroneously dreamed Defendants agreed to once it is granted summary judgment is totally absurd. Plaintiff has for over 20 years refused to provide the statutory basis for authorizing the calculation of any amount due the federal government by Defendants. The Plaintiff's attorney is speaking out of turn and presumes facts not in evidence; whereas, Defendants have shown throughout these proceedings that the Plaintiff has committed many violations of accuracy, failure to follow its own policies and numerous procedural errors. Defendants demand that a jury of their peers evaluate the evidence at trial.

Rather than this suit being "ripe for ruling" and granting Plaintiff's Motion for Summary Judgment, a jury of the Defendants' peers must decide the many facts that are in genuine material dispute.

The government compounds its erroneous reasoning that the Code defines "income" by citing cases it contends hold that the Defendants' revenues are in the form of "compensation". What the Plaintiff intentionally omits is that the Internal Revenue Code speaks only of "compensation for services" which refers to some kind of service in conjunction with an excise-taxable activity that has a connection to the government. This is why they have a pay scale called a "Government Service Rating" or "GS Rating".

In the Private Sector, the worker is compensated for his labor. "Compensation for Labor" and "Compensation for Services" are not the same; but it would be best for the jury of Defendants' peers to decide this and the numerous other items of material fact that are in genuine material dispute.

Defendants urge this Honorable Court to notice the reasoning in this U.S. Supreme Court ruling:

> *Adickes v. SH Kress & Co.*, 398 US 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970)
>
> We think that on the basis of this record, it was error to grant summary judgment. As the moving party, respondent had the burden of showing the absence of a genuine issue as to any material fact, and for these purposes the material it lodged must be viewed in the light most favorable to the opposing party.

Defendants urge this Honorable Court to notice their right to be heard at trial as in this decision of the New York Court of Appeals:

> *Sillman v. Twentieth Century-Fox*, 3 NY 2d 395, 165 NYS 2d 498, 144 NE 2d NY (1957)
>
> To grant summary judgment it must clearly appear that no material and triable issue of fact is presented (Di Menna & Sons v. City of New York, 301 N.Y. 118). This drastic remedy should not be granted where there is any doubt as to the existence of such issues (Braun v. Carey, 280 App. Div. 1019), or where the issue is "arguable" (Barrett v. Jacobs, 255 N.Y. 520, 522); "issue-

finding, rather than issue-determination, is the key to the procedure" (Esteve v. Avad, 271 App. Div. 725, 727). In Gravenhorst v. Zimmerman (236 N.Y. 22, 38-39) Chief Judge HISCOCK, writing for this court, observed that one person may argue that as matter of law the assignor abandoned and lost the benefit of his rescission, whereas another might think that was a question of fact, and concluded: "It never could have been, or in justice ought to have been, the intention of those who framed our Practice Act and rules thereunder that the decision of such a serious question as this should be flung off on a motion for summary judgment. Whatever the final judgment may be the defendants were entitled to have the issue deliberately tried and their right to be heard in the usual manner of a trial protected."

Respectfully submitted this 17th day of September, 2012

Clare Louise Reading

Clare Louise Reading

James Leslie Reading

James Leslie Reading

Jurat

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct, 28 USC § 1746(1).

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None,

/s/ Clare Louise Reading

Clare Louise Reading

/s/ James Leslie Reading

James Leslie Reading

Arizona State)
) ss
Maricopa County)

The above named person, appeared before me, a Notary, subscribed, sworn under oath

this 17th day of September, 2012.

Notary Public

My Commission expires: 01.28.2014

seal

MARK DELCI
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
January 28, 2014

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **DEFENDANTS' RESPONSE TO OPPOSITION TO THE MOTION FOR LEAVE OF COURT TO FILE A SURREPLY BY JAMES AND CLARE READING,** with attachments, has been made this 17th day of September, 2012 by depositing a copy thereof in the United States Mail in a postage prepaid envelope addressed to:

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with one copy for Hon. F.J. Martone, Suite 526

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