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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA			
BY			E. DEPUTY

D L P LT13  
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 Elmer P. Vild is the Trustee for the  
 D L P LT13 contractual entity.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
 DISTRICT OF ARIZONA**

United States of America,	)	
	)	Civil No. CV 09-00444-PHX-SRB
Plaintiff,	)	
	)	MEMORANDUM IN SUPPORT
v.	)	OF MOTION FOR DISMISSAL
	)	UNDER RULE 12(b)
Maria D. Forman; Jimmy C. Chisum, and	)	
Elmer P. Vild, also known as Phillip	)	
O'Neil, as Trustees for the DLP LT 13	)	
Trust; and Arizona Department of	)	
Revenue	)	
	)	
Defendants.	)	

COMES NOW Elmer P. Vild, Trustee for the D L P LT13 contract in the form of a trust proceeding without the assistance of counsel relying on *Haines v. Kerner* and other U.S. Supreme Court decisions that hold pro se litigants cannot be held to the same standards as an attorney and the lower courts must point out any defects and allow a pro se litigant sufficient time to correct any defects. And, that the pro se litigants' pleadings are sufficient to call for an opportunity to be heard.

JUDICIAL NOTICE: All officers of this Court are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *Haines v Kerner*, 404 U.S. 519, *Platsky v. C.I.A.* 953

F.2d. 25, and *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), “*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J., concurring). *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). In re Haines: pro se litigants (Defendants are pro se litigants) are held to less stringent pleading standards than BAR registered attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In re Platsky: court errs if court dismisses the pro se litigant (Defendants are pro se litigants) without instruction of how pleadings are deficient and how to repair pleadings. In re Anastasoff: litigants’ constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000). Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. Neither are accusations by Plaintiff’s counsel of any affect without facts and/or documents on the record to back them up.

In any judicial proceeding, the moving party has the burden of proof of demonstrating that the court has subject matter and personal jurisdiction over the matters and parties before it. The Plaintiff in the instant case is the United States and is the moving party by filing suit against Maria D. Forman, D L P LT13 and others. Both subject matter and personal jurisdiction have been and is being challenged by D L P

LT13. There are many legal cases that firmly establish that the United States in the instant case must prove jurisdiction. See the following 11 cases:

*Scott v. Sandford*, 60 U.S. 393 (1856); *Security Trust Co. v. Black River National Bank*, 187 U.S. 211 (2002); *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Hague v. Committee for Industrial Organization Et. Al.*, 307 U.S. 496 (59 S.Ct. 954, 83 L.Ed. 1423 (1939)); *United States v. New York Telephone Co.*, 434 U.S. 159, 98 S.Ct. 36454 L.Ed.2d 376 (1977); *Chapman v. Houston Welfare Rights Organization Et. Al.*, 441 U.S. 600, 99 S.Ct. 1905, 60 L.Ed. 2d 508 (1979); *Cannon v. University Chicago Et. Al.*, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed. 2d 560 (1979); *Patsy v. Board Regents State Florida*, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982); *Merrill Lynch v. Curran Et. Al.*, 456 U.S. 353, 102 S.Ct. 1825, 72 L.Ed.2d 182, 50 U.S.L.W. 4457 (1982); *Insurance Corporation Ireland v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 102 S.Ct. 2099, 72 L.Ed.2d 492, 50 U.S.L.W. 4553 (1982); *Matt T. Kokkonen v. Guardian Life Insurance Company America*, 128 L.Ed.2d 391, 62U.S.L.W. 4313 (1994)

It is not mandatory or even incumbent that the Defendant prove that the Court or the Plaintiff does not have jurisdiction. That would mean that D L P LT13 would have to prove a negative.

"... as a practical matter it is never easy to prove a negative. ..." *Elkins v. United States*, 364 U. S. 206, 218 (1960) See also *Flores v. United States*, 551 F. 2d 1169, 1175 (9th Cir. 1977). *Weimerskirch v. Commissioner*

The burden of proof that D L P LT13 is the nominee or alter ego of Maria D. Forman lies upon the Plaintiff. In *Flores v. United States*, 551 F.2d 1169 (1977) at page 1174 we find:

"In most litigation, from time immemorial, the burden of proof—i.e., the burden of persuasion — is on the plaintiff." *Rockwell v. Commissioner*, 512 F.2d 882, 887 (9<sup>th</sup> Cir.), cert. denied 423 U.S. 1015, 96 S.Ct. 448, 46 L.Ed.2d 386 (1975).

It, therefore, is crystal clear that the Court does not have jurisdiction over the Defendant D L P LT13 until Plaintiff has proven, on the record, that D L P LT13 is the nominee or alter ego of Maria D. Forman.

This Court does not have the ability to determine its own jurisdiction but must rely upon **conclusive admissible evidence** that the Court has jurisdiction being entered into the record.

"A court has no jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and a court must have the authority to decide that question in the first instance." *Rescue Army v. Municipal Court of Los Angeles*, 171 P2d 8; 331 US 549, 91 L. ed. 1666, 67 S.Ct. 1409.

The fact that subject matter and personal jurisdiction can be challenged at any time and must be proven on the record is made clear in many cases that have come before the court. The following case sites are but a few:

"Jurisdiction can be challenged at any time." and "Jurisdiction, once challenged, cannot be assumed and must be decided." *Basso v. Utah Power & Light Co.*, 495 F 2d 906, 910.

"The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

"Court must prove on the record, **all jurisdiction facts** related to the jurisdiction asserted." *Latana v. Hopper*, 102 F. 2d 188; *Chicago v. New York*, 37 F Supp. 150. (emphasis added)

However, if this Court were to somehow claim it had jurisdiction, it cannot so state with the mere phrase "Defendant's Motion is plainly without merit" or some similar phrase. Any ruling by this Court regarding jurisdiction must be spelled out and explained in detail to the lay Defendants as dictated by previous case rulings some of which were quoted to this Court in the second paragraph entitled JUDICIAL NOTICE on the first page of Defendant's MOTION FOR DISMISSAL UNDER RULE 12(b) which accompanies this memorandum.

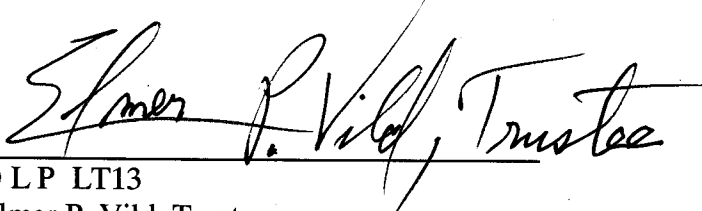
Plaintiff has alleged many things, but they are all based upon sheer speculation rather than any tangible evidence or probable cause as required by the fourth amendment to the United States Constitution.

“Thus, it appears that as a threshold matter the Fourth Amendment requires that the IRS have probable cause to believe that the property to be levied upon is actually owned by the delinquent taxpayer.” *Oxford Capital Corp. v. U.S.*, 211 F.3d 280, 286 (5<sup>th</sup> Cir. 2000).

In this instant suit, the Plaintiff must have probable cause that D L P LT13 is the nominee or alter ego of Maria D. Forman before this Court acquires jurisdiction over D L P LT13. The Plaintiff has not shown, demonstrated or proved probable cause that D L P LT13 is the nominee or alter ego of Maria D. Forman.

The Court should take note that none of the case cites state or even hint that when jurisdiction is challenged it must be stated or articulated in a certain manner. Nor does the case law state that the one challenging jurisdiction must provide facts. This Court seems to not only be holding the lay Defendant to the same standards as an attorney, but if anything, to a higher standard than attorneys. However, this Defendant has provided facts through the accompanying affidavit and, without documents to disprove the Defendant's affidavit, the Court should dismiss D L P LT13 from the instant case. Therefore, with the above premises and the Defendant's affidavit considered, Defendant prays this Court grants Defendant's MOTION FOR DISMISSAL UNDER RULE 12(b) with prejudice.

Respectfully submitted this 8<sup>th</sup> day of June, 2010.

  
D L P LT13  
Elmer P. Vild, Trustee