

1 KATHRYN M. KENEALLY
Assistant Attorney General

2 CHARLES M. DUFFY
3 Trial Attorney, Tax Division
4 U.S. Department of Justice
5 P.O. Box 683
6 Ben Franklin Station
7 Washington, D.C. 20044-0683
8 Telephone: (202) 307-6406
9 Email: charles.m.duffy@usdoj.gov
10 Western.taxcivil@usdoj.gov
11 *Attorneys for the United States of America*

12 ANN SCHEEL
13 Acting United States Attorney
14 District of Arizona
15 *Of Counsel*
16 *Attorneys for the United States of America*

17 IN THE UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA

19 UNITED STATES OF AMERICA,
20
21 Plaintiffs,

22 v.

23 JAMES LESLIE READING, CLARE L.
24 READING, FOX GROUP TRUST,
25 MIDFIRST BANK, CHASE, FINANCIAL
26 LEGAL SERVICES, STATE OF ARIZONA
27
28 Defendants.

Civ. No. 11-0698-PHX-FJM

**UNITED STATES' OPPOSITION TO THE
MOTION TO COMPEL FILED BY
JAMES AND CLARE READING AND
THE FOX GROUP TRUST**

29 The United States hereby responds to the motion to compel recently filed by defendants Clare
30 and James Reading and the Fox Group Trust. As set forth below, the motion is without merit and
31 should be denied.

I.**STATEMENT****A. Defendants Clare and James Readings (“the Readings”).**

To provide context for the motion to compel, it is necessary to explain that the Readings have previously filed documents in other federal tax cases in this District in which they have made clear their tax defier views regarding the United States and the Internal Revenue Service (“IRS”). In *United States v. James and Clare Reading*, case number 06-1609 (D. Ariz.), the Readings alleged that the United States was “at best” a “*nul tiel* corporation or legal fiction.” See Exhibit (“Duffy Ex.”) A attached to the Declaration of Charles Duffy filed herewith (“Duffy Dec.”), at 18:7-10 (a partial copy of a response filed by the Readings). In *James and Clare Reading v. United States*, case number 06-0059 (D. Ariz.), the Readings alleged that they did not “reside within a judicial district of an internal revenue district where returns are required to be filed.” See Duffy Ex. B, at 7 (partial copy of a motion filed by Readings).

For their 1995 income tax year, which is one of the tax years at issue herein, the Readings submitted a return on which they declared that they had zero taxable income. See Duffy Ex. C, at 2. Along with the return, the Readings submitted a “corrected” 1099-MISC form which set forth that James Reading received zero compensation from Pilot Catastrophe Services, Inc. during 1995. *Id.*, at 3. However, based on the Form 1099-MISC that was recently produced by Pilot Catastrophe Services, James Reading *actually* received \$117,698.59 in compensation from that entity in 1995. See Duffy Ex. D (a copy of the Form 1099-MISC produced by Pilot Catastrophe).

B. The Discovery at Issue, the Government’s Responses Thereto and the Subsequent Correspondence Between the Readings/Trust Parties.

In the two sets of interrogatories that the Readings and the Fox Group Trust (hereafter “the Readings/Trust”) propounded, they continue to espouse their tax defier views. For example, in interrogatory 6 in the first set of interrogatories, they asked “what basis was assigned to the labor personally performed by [Mr. Reading] in order to determine what, if any, profit (income) could be derived from the gross proceeds received by [him] in exchange for such labor, and if no basis of zero

1 under the IRS's 'zero basis' rule was applied to that labor, please state the statutory basis for failing
2 to assign a basis pursuant to [citation omitted]." See the first set of interrogatories, at number 6
3 (copies in docket number 42-1 filed on March 29, 2012). This Court previously ruled that the
4 statement by the Readings/Trust is another way of asserting that wages are not income, which is a
5 common tax defier argument. *In Re Matter of Blankstyn*, 1994 WL 713730 **4-5 (D. Ariz. 1994),
6 citing, *Beard v. United States*, 580 F.Supp. 881, 882 (E.D.Mich. 1984); see also *Lonsdale v. United*
7 *States*, 919 F.2d 1440, 1448 (10th Cir. 1990) (a list of common tax defier arguments). In their brief
8 in support of their motion to compel, the Readings/Trust continue to pursue that frivolous tax defier
9 argument. See the brief, at 7 (reference to "Mr. Readings sale of his labor").

10 In response to the interrogatories and document requests propounded by the
11 Readings/Trust, the United States - on March 2, 2012 - raised various objections *but* it also
12 produced many documents. See docket number 42-1 (copies of the Government's responses).
13 Regarding the interrogatories, the United States responded pursuant to Federal Rule of Civil
14 Procedure 33(d) by specifically citing to documents that it produced. See *e.g.*, the Government's
15 response to interrogatory 2 of the first set of interrogatories.

16 In an e-mail dated March 8, 2012, the Readings/Trust raised objections to the
17 Government's responses to the discovery. See Exhibit 2 filed in docket number 40-1 on March
18 15, 2012 (a copy of the e-mail). In that e-mail, the Readings/Trust asked the Government to
19 "reconsider" its objections but they did not address the specific documents that were produced in
20 response to the subject discovery requests. *Id.* In the March 8, 2012 e-mail, counsel for the
21 Readings/Trust also suggested narrowing the discovery disputes to interrogatories 2, 3 and 4 in
22 the first set of interrogatories and interrogatory 2 in the second set. *Id.*

23 On March 9, 2012, the United States sent a letter to counsel for the Readings/Trust in
24 response to his March 8, 2012 e-mail. See Exhibit 3 filed in docket number 40-1 on March 15,
25 2012 (a copy of the letter). In the letter, the United States urged counsel for the Readings/Trust
26 to review the documents that were produced before reaching a conclusion about whether to file a
27 motion to compel. *Id.*, at 2. The United States also gave three specific examples of how the
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1 produced documents were responsive to the interrogatories to which the Readings/Trust had
2 narrowed the discovery disputes.

3 One of the referenced examples related to interrogatory 2 (first set of interrogatories),
4 which requested information about notices of deficiency issued by the IRS that are relevant to the
5 case. In its March 9, 2012 letter, the Government explained that in its response to that
6 interrogatory it directed the Readings/Trust to copies of the notices of deficiency in the IRS's
7 administrative files that were produced on March 2, 2012. *Id.* The Government also explained
8 that the notice procedures do not apply to the twenty-one frivolous return penalty assessments
9 that are at issue in the fourth and fifth claims in the complaint. *Id; see also Brown v. United*
10 *States*, 35 Fed.Cl. 258, 269 (Ct.Cl. 1996).

11 In its March 9, 2012 letter, the United States also addressed the Readings/Trust's request
12 in the interrogatories for personal and identifying information of IRS employees (*see*
13 interrogatories 2 and 4 of the first set of interrogatories), explaining that such information is
14 irrelevant herein given that the Court's proceeding on the issues presented in the complaint is *de*
15 *novo* in nature. *Id; see also e.g., Desert Valley Painting & Drywall v. United States*, __ F.Supp.
16 2d. __ 2011 WL 5325432 **4-5 (D. Nev. 2011) (discussing the general *de novo* nature of the
17 court proceeding in a tax case).

18 The insistence by the Readings/Trust to try to obtain the names, addresses, phone
19 numbers, employee identification numbers, grades and job titles of IRS employees is of
20 substantial concern given that, in *Clare and James Reading v. United States, et al.*, Case Number
21 06-1873 (D.D.C. 2006), they previously sued various IRS employees in their individual
22 capacities simply for carrying out their official duties. *See Duffy Ex's E and F* (partial copies of
23 the complaint and brief support of the motion to dismiss filed in that case). It is notable that in
24 that case, the Readings also raised the same or similar notice of demand and notice of deficiency
25 allegations in that case that they are raising herein (and that are discussed below). *See e.g., Duffy*
26 *Ex. E*, at 35-36, ¶¶ b and h.

27 The parties also exchanged other correspondence regarding their discovery disputes which
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1 are repetitive to issues that the Readings/Trust have raised in their motion to compel. *See*
2 Exhibits 4, 5 and 6 filed in docket number 40-1 on March 15, 2012.

3 II.

4 THE MOTION TO COMPEL SHOULD BE DENIED

5 A. Introduction.

6 In their corrected motion to compel filed on April 4, 2012 (at ¶ 3), the Readings/Trust
7 contend that the United States “has failed and refused to answer *any* of the interrogatories and
8 has failed and refused to produce *any* of the requested documents, numerous and extensive
9 efforts by Readings' counsel to persuade plaintiff otherwise.” (Emphasis added). That statement
10 could not be further from what has occurred. The Government has been more than responsive to
11 the subject discovery but the Readings/Trust, among other things, basically refuse to analyze the
12 documents that were produced to them.

13 It also appears that the Readings/Trust’s real “bone of contention” is that they disagree
14 with various holdings of the United States Court of Appeals for the Ninth Circuit, such as *Hughes*
15 *v. United States*, 953 F.2d 531 (9th Cir. 1992), and they want to use this case as a vehicle to
16 challenge such holdings. *See* Readings/Trust’s brief in support, at 3-5 (“...until *Hughes* and *Farr*
17 are corrected”). In their brief, the Readings/Trust rail against the acceptance by courts of the
18 IRS’s Certificates of Assessments and Payments (IRS Forms 4340) - which were produced in this
19 case. *Id.*

20 Before discussing the specific discovery requests, it should also be noted that it does not
21 appear that the Readings/Trust submitted a certification under Rule 37(a)(1) of good faith
22 conferral. The Government submits that the Readings/Trust have not conferred in good faith
23 because of their general refusal to consider the documents that were produced to them. For that
24 reason alone, the motion to compel should be denied.

25 B. The Specific Discovery Requests.

26 In their brief, the Readings/Trust first focus on interrogatories 2, 3 and 4 and requests for
27 production 1 and 2. *See* the brief, at 5-6. Interrogatories 1 and 2 and document requests 1 and 2

1 relate to notices of deficiencies issued by the IRS. As stated previously, the notice of deficiency
2 procedures do not apply to the 21 frivolous return penalty assessments at issue in the fourth and
3 fifth claims in the complaint. Thus, the notice of deficiencies at issue in the subject discovery
4 relate to the assessments referenced in the first, second and third claims.

5 In their brief (at 6), the Readings/Trust assert that they want the Government to “[s]how
6 me your [notices of deficiency]” without explaining that the Government produced copies of the
7 notices of deficiency and related underlying documents that are in the IRS’s administrative files.
8 *See e.g.*, Duffy Ex’s G, H and I.

9 The Readings/Trust also assert in the brief (at 6) that the notices of deficiency “**must be**
10 **sent by registered or certified mail**” (emphasis in original) but they do not explain that the
11 United States produced documents that evidence that the notices of deficiency were sent by
12 certified mail. *See e.g.*, Duffy Ex’s J and K. It is notable that, for example, the certified mail
13 number set forth on the copy of the notice of deficiency (Duffy Ex H) issued to Clare Reading on
14 November 15, 2000 (*i.e.*, Z096928396) ties to the certified mail numbers on the copy of the
15 certified mail listing that the Government produced (Duffy Ex J).

16 The Readings/Trust also assert that they want the tax returns that relate to the assessments
17 at issue in the complaint. *See e.g.*, Readings/Trust brief, at 5. But the United States produced
18 copies of the returns that the Readings filed that relate to the frivolous return penalties at issue in
19 claims 4 and 5 of the complaint. *See* the Government’s response to interrogatory 2 (first set)
20 (such returns were produced as exhibits H through AA).¹ Regarding the other claims, the United
21 States produced the 1993, 1994 and 1995 returns submitted by the Readings that are in the IRS’s
22 administrative files and also produced other documents that underlie the assessments at issue in
23 claims 1, 2 and 3 of the complaint. *See e.g.*, Duffy Ex’s C, G, H, I and M. Instead of addressing
24 what was produced to them, the Readings/Trust make numerous accusatory statements in their
25 brief, mostly without citing to legal authority. *See* the brief, at 5-8.

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28 ¹ Duffy Ex. L filed herewith is a partial copy of one of the subject returns.

1 In their brief in support, the Readings/Trust have also broadened the scope of the
2 discovery disputes at issue here. Whereas they indicated earlier that they were interested in
3 narrowing the discovery dispute to the interrogatories, 2, 3 and 4 (first set) and interrogatory 2
4 (second set) (*see* the exhibit 2 filed in docket number 40-1 on March 15, 2012), they are now
5 complaining about other discovery requests as well. *See* the Readings/Trust brief, at 7.
6 Regarding interrogatory 6, the Readings/Trust want to know “[h]ow did [the Government] obey
7 §§ 64, 1001 and 1011 relative to Mr. Reading’s sale of his labor” (emphasis in original),
8 which - as discussed above - is basically another way of arguing that the income received by Mr.
9 Reading in return for his labor is not taxable. *Id.* The United States submits that it properly
10 objected to that interrogatory, citing *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir.
11 1990) and stating *inter alia* that it “mistate[s] applicable law in that, to the extent that the
12 Readings are asserting that their wages or other income are not subject to the federal income tax,
13 that assertion is without merit.” *See* docket number 42-1 filed on March 29, 2012.

14 In their brief, (at page 7), the Readings/Trust also demand to know which of their
15 submissions triggered the Section 6702 penalty assessments. But they fail to explain that in
16 response to their interrogatory 7 (first set) - which requested the identification of such
17 submissions - the United States produced and directed them to the tax returns in question that
18 they filed and also IRS documents that relate to the assessments. *See* docket number 42-1 filed
19 on March 29, 2012; *see also* Duffy Ex. L (a partial copy of one of the referenced returns). Again,
20 the Readings/Trust basically refuse to analyze the documents that were produced.

21 At page 8 of the Readings/Trust brief, they refer to interrogatory 2 (second set) and a
22 related document request and argue about whether the United States produced notices of demand
23 under 26 U.S.C. § 6303. Their assertions in this regard are without merit. As a preliminary
24 matter, and as the United States explained to the Readings/Trust (*see* exhibit 2 in docket number
25 40-1 filed on March 15, 2012, at 2), whether the IRS issued the notices and demand is irrelevant
26 in this case because this is a judicial collection action. *See United States v. Chila*, 871 F.2d 1015,
27 1018 (11th Cir. 1989) and *Purcell v. United States*, 1 F.3d 932, 941 (9th Cir. 1993). In *Chila*, the
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1 Eleventh Circuit pointed out that the Section 6303 notice “is not required as a prerequisite to
2 filing a civil action, because the filing of the action allows sufficient time for the taxpayer to
3 consider and pay any tax that is due before any judgment or lien can be made against his
4 property.” *Chila, supra*, at 1018. Further, and in any event, the United States produced and
5 directed the Readings/Trust to copies of the IRS’s Certificates of Assessments and Payments
6 (IRS Form 4340's) which indicate - through the “statutory notice of balance due” entries set forth
7 thereon that the referenced notices were issued to the Readings regarding the taxes in question.
8 *See* the Government’s March 9, 2012 letter, at 2 (exhibit 3 in docket number 40-1 filed on March
9 15, 2012); *see also e.g., United States v. Scott*, 290 F.Supp.2d 1201, 1206-07 (S.D.Cal. 2003).²

10 The Readings/Trust attack the United States for relying on the Form 4340's to evidence
11 that the notices and demand were sent instead of producing copies of the actual notices.
12 However, the Government has produced what it has in the IRS files to show that the subject
13 notices were sent. It should be noted in this regard that the Readings basically refuse to account
14 for whether documents such as tax returns that *they* filed or notices that were sent to *them* by the
15 IRS are already in their possession, which is one of the objections that the Government made in
16 response to the subject discovery requests.

17 Regarding the Form 4340's, such documents are generated under seal and signed by an
18 authorized delegate of the Secretary of the Treasury, Forms 4340 are self-authenticating under
19 Federal Rule of Evidence 902(1) and admissible as a public record under Federal Rule of
20 Evidence 803(8). *Hughes v. United States*, 953 F.2d 531, 539-540 (9th Cir. 1992); *Rossi v.*
21 *United States*, 755 F. Supp. 314, 318 (D. Or. 1990). The “23C” entries on the Forms 4340 show
22 that the taxes at issue were duly assessed and recorded. *United States v. Chila*, 871 F.2d 1015,
23 1017 (11th Cir. 1989); *Rossi*, 755 F. Supp. at 318. The “Notice” entries on the Forms 4340
24 constitute proof that adequate notice and demand was made. *Hansen v. United States*, 7 F.3d
25 137, 138 (9th Cir. 1993)(quoting *Hughes*, 953 F.2d at 541); *Huff v. United States*, 10 F.3d 1440,

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27 ² An example of a copy of a Form 4340 that was produced to the
28 Readings/Trust is submitted herewith as Duffy Exhibit O.

1 1446 (9th Cir. 1993); *Chila*, 871 F.2d at 1019; *United States v. Lorson Electric Co.*, 480 F.2d 554,
2 555-56 (2d Cir. 1973).

3 Finally, without citing to anything, the Readings/Trust asserted in their original motion to
4 compel filed on March 29, 2012 (at 2, ¶ 3) that their counsel only agreed to a one week extension
5 rather than 30 days. That is not consistent with the recollection of the undersigned who kept
6 counsel for the Readings/Trust abreast of when the Government was going to respond to the
7 discovery and there appears to be nothing in the record that reflects that counsel had only agreed
8 to a one week extension of time. *See* copies of the February 9, 2012 and February 21, 2012 e-
9 mails sent to counsel for Readings/Trust (Duffy Ex. N).³ In the February 21st e-mail to counsel
10 for the Readings/Trust, the undersigned explained that he “should be able to send responses to
11 [the] discovery by March 2nd”- which is when the Government’s responses were served. *Id.*

12 III.

13 CONCLUSION

14 The Court should deny the motion to compel.

15 DATED this 10th day of April, 2012.

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17 KATHRYN M. KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

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20 By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

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22 Of Counsel:

23 ANN SCHEEL
Acting United States Attorney

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26 ³ In the February 9, 2012 e-mail there is a reference to returning from a trip to
27 Hong Kong. The undersigned traveled to Hong Kong in early February for depositions in
28 *Runvee, Inc. v. United States*, case no. 10-2260 (D. Nev.).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2012, I served the foregoing through the Court’s electronic filing system:

ROBERT P. VENTRELLA
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926

PAUL M. LEVINE, ESQUIRE
LAKSHMI JAGANNATH, ESQUIRE
McCarthy, Holthus, Levine Law Firm
8502 E. Via de Ventura, Suite 200
Scottsdale, Arizona 85258

TOMMY K. CRYER
Attorney at Law
7330 Fern Avenue
Shreveport, Louisiana 71105

/s/ Charles M. Duffy
Charles M. Duffy
Trial Attorney, Tax Division
U.S. Department of Justice