

1 KATHRYN 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 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiffs,

20 v.

21 JAMES LESLIE READING, CLARE L.
22 READING, FOX GROUP TRUST,
23 MIDFIRST BANK, CHASE, FINANCIAL
24 LEGAL SERVICES, STATE OF ARIZONA

25 Defendants.

Civ. No. 11-0698-PHX-FJM

**UNITED STATES' MOTION FOR
SUMMARY JUDGMENT**

26 The United States hereby seeks summary judgment pursuant to Federal Rule of Civil
27 Procedure 56 on all claims in the complaint except for the assessments at issue in the Third Claim
28 which relates to the 2000 tax year of defendants James and Clare Reading. The United States is
conceding the Third Claim and agrees to the dismissal of that Third Claim with prejudice. Support
for this motion is set forth in the Memorandum and Statement of Material Facts in Support, the
Second Declaration of Charles Duffy, the Declaration of Debbie Vahe and the Declaration of
Elizabeth Marriaga, all of which are filed herewith.

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DATED this 11th day of May, 2012.

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

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

Of Counsel:

ANN SCHEEL
Acting United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 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

1 KATHRYN 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
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16 IN THE UNITED STATES DISTRICT COURT
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18 UNITED STATES OF AMERICA,

19 Plaintiffs,

20 v.

21 JAMES LESLIE READING, CLARE L.
22 READING, FOX GROUP TRUST,
23 MIDFIRST BANK, CHASE, FINANCIAL
24 LEGAL SERVICES, STATE OF ARIZONA

25 Defendants.

Civ. No. 11-0698-PHX-FJM

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES' MOTION FOR
SUMMARY JUDGMENT**

I.

STATEMENT

26 In its complaint, the United States seeks to reduce various federal tax and other assessments
27 to judgment and foreclose federal tax liens arising from the assessments on the residence of
28 defendants James Reading and Clare Reading (hereafter "the Readings"). The Readings' residence
("the residence") is described in the complaint, at paragraph 12.

In the motion for summary judgment filed herewith, the United States seeks summary
judgment on all claims in the complaint except for the assessments at issue in the Third Claim which

1 relates to the 2000 tax year of the Readings. The United States is conceding the Third Claim and
2 agrees to the dismissal of that Third Claim with prejudice.

3 **A. The Readings and Their Frivolous Views Concerning Federal Taxes.**

4 The Readings have previously litigated their frivolous views concerning taxes in various court
5 cases. In *U.S. v. Readings*, case number 06-1609 (D. Ariz.), the Readings alleged that the United
6 States was “at best” a “*nul tiel* corporation or legal fiction.” See United States’ Material Facts in
7 Support of Motion for Summary Judgment number 1 (“U.S. Fact”). In *Readings v. U.S.*, case number
8 06-0059 (D. Ariz.), they alleged that they did not “reside within a judicial district of an internal
9 revenue district where returns are required to be filed.” (U.S. Fact 2). In *Readings v. U.S., et al.*,
10 Case Number 06-1873 (D.D.C.), they unsuccessfully sued IRS employees simply for carrying out
11 their official duties. (U.S. Fact 3).

12 James Reading, who has earned large amounts of income in some of the years at issue herein,
13 testified at his deposition that the last time that he voluntarily paid taxes to the IRS was over 22 years
14 ago, in 1989. (U.S. Fact 4). Mr. Reading stopped voluntarily paying taxes to the IRS based on his
15 “studies” of “income tax cases [and] Supreme Court cases” relating to taxes. (U.S. Fact 5). Clare
16 Reading testified herein that the compensation earned by her husband is not subject to federal tax.
17 (U.S. Fact 6). The Readings also sent a letter to the IRS that set forth that the Internal Revenue Code
18 was never voted into “positive law” by Congress, and 26 U.S.C. that Section 6331 of the Code,
19 which allows for levies by the IRS, “has no lawful force or effect” on them. (U.S. Fact 7).

20 **B. The Assessments at Issue in the First and Second Claims of the Complaint (Regarding**
21 **Mr. Reading’s 1993-1995 and 2008 Years and Mrs. Reading’s 1994 and 1995 Years).**

22 **1. The Readings Failed to Report Income Earned in 1993, 1994, 1995 and 2008.**

23 The Readings filed their 1993 federal income tax return on or after December 24, 2008, which
24 is when they signed it. (U.S. Fact 8). The Readings did not timely file a federal income tax return
25 for 1993. (U.S. Fact 9). On their 1993 income tax return, the Readings declared under oath that they
26 had zero wages and salary and zero taxable income. (U.S. Fact 11).

27 Mr. Reading worked as an insurance adjuster for various Pilot Catastrophe Insurance-related
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1 companies during 1993. (U.S. Fact 10). Along with their 1993 return, the Readings submitted
2 “corrected” 1099-MISC forms that one or both of them prepared which set forth that James Reading
3 received zero compensation from Pilot Temporary Services, Inc., Pilot & Associates, Inc. and Pilot
4 Catastrophe Services, Inc. during 1993. (U.S. Fact 12). In 1993, James Reading actually received
5 \$14,935.24 in compensation from Pilot Catastrophe Services, \$25,628.00 in compensation from Pilot
6 and Associates and \$36,796 in compensation from Pilot Temporary Services, Inc. (U.S. Fact 13).

7 The Readings filed their 1994 federal income tax return on or after December 24, 2008, which
8 is when they signed it. (U.S. Fact 14). The Readings did not timely file a federal income tax return
9 for 1994. (U.S. Fact 15). On their 1994 income tax return, the Readings declared under oath that
10 they had zero wages and salary and zero taxable income. (U.S. Fact 17).

11 Mr. Reading also worked for various Pilot Insurance companies during 1994. (U.S. Fact 16).
12 Along with their 1994 return, the Readings submitted “corrected” 1099-MISC forms that one or both
13 of them prepared which set forth that James Reading received zero compensation from Pilot
14 Catastrophe Services and Pilot & Associates during 1994. (U.S. Fact 18). In 1994, James Reading
15 actually received over \$112,000 in compensation from Pilot Catastrophe Services, and \$44,574.00
16 in compensation from Pilot and Associates. (U.S. Fact 19).

17 The Readings filed their 1995 federal income tax return on or after December 24, 2008, which
18 is when they signed it. (U.S. Fact 20). The Readings did not timely file a federal income tax return
19 for 1995. (U.S. Fact 21). On their 1995 income tax return, the Readings declared under oath that
20 they had zero wages and salary and zero taxable income. (U.S. Fact 23).

21 Mr. Reading also worked for various Pilot companies in 1995. (U.S. Fact 22). Along with
22 their 1995 return, the Readings submitted a “corrected” 1099-MISC form which set forth that Mr.
23 Reading received zero compensation from Pilot Catastrophe Services. (U.S. Fact 24). In 1995, Mr.
24 Reading actually received over \$117,000 in compensation from that company. (U.S. Fact 25).

25 Mr. Reading worked for Colonial Claims Corporation in 2008. (U.S. Fact 26). On their 2008
26 return, the Readings declared that they had zero wages and salary and zero taxable income. (U.S.
27 Fact 27). Along with their 2008 return, the Readings submitted a “corrected” 1099-MISC form
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1 which set forth that Mr. Reading received zero compensation from Colonial Claims. (U.S. Fact 28).
2 In 2008, Mr. Reading actually received \$23,858 in compensation from that company. (U.S. Fact 29).

3 **2. The IRS's Notices of Deficiency.**

4 On November 15, 2000, the IRS mailed by certified mail a Notice of Deficiency to James
5 Reading for his 1993, 1994 and 1995 income tax years. (U.S. Fact 30). In the Notice, the IRS
6 proposed income tax and penalty deficiencies. (U.S. Fact 31). In calculating the deficiencies, the
7 IRS added-in the compensation that James Reading received from the Pilot Insurance companies in
8 those years. (U.S. Fact 32). Specifically, the IRS added in \$25,628.00, \$14,935.00 and \$36,796.00
9 for the 1993 year, \$44,574.00 and \$112,015.00 for the 1994 year and \$117,648.00 for the 1995 tax
10 year. (U.S. Fact 33). Those amounts tie to the amounts set forth on the Form 1099's that were issued
11 by the Pilot Insurance to report Mr. Reading's compensation for those years. (U.S. Fact 34).

12 On November 15, 2000, the IRS also mailed by certified mail a Notice of Deficiency to Clare
13 Reading for her 1994 and 1995 income tax years. (U.S. Fact 35). In the Notice, the IRS proposed
14 income tax and penalty deficiencies. (U.S. Fact 36). In calculating the deficiencies, the IRS added-
15 in part of the compensation that Mr. Reading received from the Pilot companies. (U.S. Fact 37).

16 On February 16, 2010, the IRS mailed by certified mail a Notice of Deficiency to James
17 Reading for his 2008 income tax year. (U.S. Fact 38). In the Notice, the IRS proposed income tax
18 and penalty deficiencies. (U.S. Fact 39). In calculating the deficiencies, the IRS added the
19 \$23,858.00 in compensation that James Reading received from Colonial Claims. (U.S. Fact 40).
20 The \$23,858.00 ties to the amount that is set forth on the Form 1099 that was issued by Colonial
21 Claims to report James Reading's compensation earned in that year. (U.S. Fact 41).

22 **3. The Assessments Against Mr. Reading for his 1993 to 1995 and 2008 Tax Years.**

23 The IRS made assessments based on the proposed deficiencies against James Reading, as
24 follows (U.S. Fact 42):
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Tax Period Ending	Tax Type	Assessment Date	Assessed Amount ¹
12/31/1993	Income	4/23/2001	\$ 2,149.74 (ETP) 11,618.00 (LFP) 54,595.00 (T) 52,245.37 (I)
		10/20/2003	1,291.00 (LFP) 20,455.15 (I)
		10/27/2003	106.97 (I) 12,909.00 (FPP)
12/31/1994	Income	4/23/2001	\$ 3,271.72 (ETP) 14,186.02 (LFP) 63,049.00 (T) 52,467.51 (I)
		10/20/2003	1,576.23 (LFP) 22,982.40 (I)
		10/27/2003	120.89 (I) 15,762.24 (FPP)
12/31/1995	Income	4/23/2001	\$ 2,274.00 (ETP) 9,436.05 (LFP) 41,938.00 (T) 27,329.46 (I)
		10/20/2003	1,048.45 (LFP) 13,900.38 (I)
		10/27/2003	73.61 (I) 10,484.50 (FPP)
12/31/2008	Income	6/28/2010	\$ 162.32 (ETP) 1,136.48 (LFP) 5,051.00 (T) 304.94 (I) 378.82 (FPP)

The current aggregate balance due for the assessments, as of May 1, 2012, is \$556,871.63. (U.S. Fact 43).

4. The Assessments Against Clare Reading for her 1994 and 1995 Tax Years.

The IRS made assessments based on the proposed deficiencies against Clare Reading, as

¹ T=Tax; LFP=Late Filing Penalty; FPP=Failure to Pay Tax Penalty; ETP=Estimated Tax Penalty; and I=Interest.

1 follows (U.S. Fact 44):

2 Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
3 12/31/1994	Income	4 4/23/2001	\$ 5,810.75 (FPP) 1,206.09 (ETP) 5,229.67 (LFP) 23,243.00 (T) 19,342.15 (I)
		6 9/5/2005	14,939.55 (I)
7 12/31/1995	Income	8 4/23/2001	\$ 3,122.25 (FPP) 677.18 (ETP) 2,810.02 (LFP) 12,489.00 (T) 8,138.62 (I)
		10 9/5/2005	7,421.07 (I)

11 The aggregate balance due for the assessments, as of May 1, 2012, is \$116,632.96
12 (U.S. Fact 45).

13 **5. The Adjustments Made by the IRS in 2011.**

14 Based on information presented by the Readings regarding certain stock transactions made
15 in 2003 and 2004, the IRS - in 2011 - decreased the amount of taxes owed for certain tax years in the
16 following amounts: James Reading's 1993 year (\$32,866.00); James Reading's 1994 year
17 (\$3,092.00); and Clare Reading's 1994 year (\$2,916.00). (U.S. Fact 46).

18 **C. The Tax and Other Assessments at Issue in the Fourth and Fifth Claims.**

19 **1. The Frivolous Return Penalty Assessments Made Against James Reading.**

20 The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James
21 Reading, as follows (U.S. Fact 47):

22 Tax Period Ending	Assessment Date	Assessed Amount
23 12/31/1997	5/21/2007	\$ 500.00
24 12/31/1998	5/21/2007	500.00
25 12/31/1999	5/21/2007	500.00
26 12/31/2000	5/14/2007	500.00
27 12/31/2002	5/14/2007	500.00

12/31/2003	5/14/2007	500.00
12/31/2004	5/14/2007	500.00
12/31/2005	5/14/2007	500.00
12/31/2006	10/22/2007	5,000.00
12/31/2008	8/17/2009	5,000.00

The basis for the assessments are the tax returns that James Reading filed for those periods, copies of which are attached to the Debbie Vahe Declaration as Exhibits D and I-1 to I-9. (U.S. Fact 48). The aggregate balance owed, as of May 1, 2012 is \$16,739.18. (U.S. Fact 50).

2. The Frivolous Return Penalty Assessments Made Against Clare Reading.

The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James Reading, as follows (U.S. Fact 51):

Tax Period Ending	Assessment Date	Assessed Amount
12/31/1997	4/9/2007	\$ 500.00
12/31/1998	4/9/2007	500.00
12/31/1999	4/9/2007	500.00
12/31/2000	4/9/2007	500.00
12/31/2001	4/9/2007	500.00
12/31/2002	4/9/2007	500.00
12/31/2003	4/30/2007	500.00
12/31/2004	4/30/2007	500.00
12/31/2005	4/9/2007	500.00
12/31/2006	10/22/2007	5,000.00
12/31/2008	8/17/2009	5,000.00

The basis for the assessments are the tax returns that Clare Reading filed for those periods, copies of which are attached to Vahe Declaration as Exhibits D and H-1 to H-10. (U.S. Fact 52). The aggregate balance owed, as of May 1, 2012, is \$16,793.78 (U.S. Fact 54).

D. Facts Relating to the Foreclosure of the IRS's Tax Liens on the Residence.

The Readings purchased the residence in 1979, as joint tenants with right of survivorship, for

1 \$68,000. (U.S. Facts 55 and 56). On June 10, 2005, the Readings allegedly transferred the residence
2 by Quit Claim Deed, to the Fox Group Trust. (U.S. Fact 57). At the time of the 2005 transfer, Clare
3 Reading knew that there were federal tax liens filed against her and or her husband. (U.S. Fact 58).

4 The Fox Group Trust did not pay monetary consideration in return for the alleged transfer of
5 the residence. (U.S. Fact 59). The supposed consideration given by the Trust is the Readings' right
6 to live on the property, which is a right that they already had before the alleged transfer. (U.S. Fact
7 60). At the time that the residence was allegedly transferred to the Trust, the residence was worth
8 approximately \$110,000. (U.S. Fact 61). Since the alleged transfer to the Fox Group Trust, the
9 Readings have continued to live in the residence without paying rent. (U.S. Facts 62 and 64).

10 Also, the Readings are still personally obligated on the note that is secured by a mortgage on
11 the residence. (U.S. Fact 63). The current holder of the Mortgage on the residence is defendant
12 MidFirst Bank ("MidFirst"). (U.S. Fact 65). The funds used by the Readings to personally pay the
13 mortgage payments to MidFirst are derived from compensation earned by James Reading. (U.S. Fact
14 66). The Readings also personally pay the utilities and county real estate taxes on the residence out
15 of compensation earned by Mr. Reading. (U.S. Facts 67 and 68).

16 The Readings are "Administrative Trustee[s]" of the Fox Group Trust. (U.S. Fact 69). After
17 the supposed transfer of the residence to the Trust in 2005, the one or both of the Readings acted on
18 behalf of the Fox Group Trust regarding the residence. (U.S. Fact 70). The specific action taken -
19 which was filing a document with the County Recorder (Second Duffy Dec. Ex. N) - was outside of
20 the scope of their permitted duties under the Fox Group Trust creation document and was consistent
21 with an action that could only be taken by a true owner of the residence. (U.S. Fact 71).

22 The Fox Group Trust was created by Aage Nost, who the Readings met through a friend.
23 (U.S. Fact 92). Mr. Nost, who is not an attorney, had a local health/ nutrition radio show. (U.S. Fact
24 93). David Pastorkey, who was of the original trustees, is a "dear friend" of the Readings. (U.S.
25 Facts 89 and 90). The document that created the Trust was not filed publicly. (U.S. Fact 72).

26 The current trustee of the Trust is Terry Major, who is also a friend of the Readings. (U.S.
27 Facts 73 and 91). Previously, Mr. Major filed a case in the United States Tax Court in which he
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1 argued that amounts received in exchange for his work were not “taxable income compensation” and
2 the court described those arguments as “tax protester arguments.” (U.S. Facts 74 and 75). Mr. Major
3 is also an associate of Jimmy Chisum, who was convicted of federal tax evasion and who the Tax
4 Court described as a “a known promoter of tax avoidance schemes.” (U.S. Facts 76, 77, 78 and 79).

5 **E. The Priority Interests of the Parties and the IRS’s Notices of Federal Tax Liens.**

6 Other than the Readings and the Fox Group Trust, there were four other defendants in this
7 case, MidFirst Bank, Chase, Financial Legal Services and the State of Arizona. The Court previously
8 ruled that Financial Legal Services has no interest in the residence (Docket number 26). The Court’s
9 Clerk also entered the default of Chase for failure to answer or otherwise plead. (Docket number 29).

10 The United States, the State of Arizona, the Readings and the Fox Group Trust have all
11 stipulated that MidFirst has first priority in the residence. (Docket numbers 33, 34 and 35). The
12 amount of MidFirst’s priority interest is \$13,964.12 (principal and accrued interest as of March 1,
13 2012), plus \$400 (attorney’s fees). (Docket number 35). The United States has also stipulated that
14 the State of Arizona has priority over the IRS’s federal tax liens at issue herein and that the State’s
15 interest is \$15,211.40 as of February 23, 2012, plus interest. (Docket number 36).

16 The IRS filed various Notices of Federal Tax Lien (“NFTL”) with the County recorder
17 regarding assessments made against one or both of the Readings. (U.S. Fact 85). However, on July
18 21, 2011, which is after the complaint was filed, the IRS mistakenly released NFTL’s that relate to
19 the income tax and related assessments made against James Reading for his 1993, 1994 and 1995
20 income tax years and the income tax and related assessments made against Clare Reading for her
21 1994 and 1995 tax years. (U.S. Fact 86). The IRS did not release other NFTL’s relating to the other
22 assessments at issue in this case. (U.S. Fact 87). On May 4, 2012, the IRS revoked the releases of
23 the NFTL’s that were filed on July 21, 2011. (U.S. Fact 88).

24 **II.**

25 **DISCUSSION**

26 **A. The Summary Judgment Standard.**

27 Summary judgment is appropriate when the movant demonstrates that “there is no genuine
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1 dispute as to any material fact.” FED. R. CIV. P. 56(a). The party moving for summary judgment
2 “bears the initial responsibility of informing the district court of the basis for its motion, and
3 identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions
4 on file, together with the affidavits, if any,’ which it believes demonstrate an absence of a genuine
5 issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

6 If the moving party meets its initial responsibility, then the burden shifts to the opposing party
7 to establish that a genuine issue as to any material fact actually does exist. *Matsushita Elec. Indus.*
8 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If the nonmoving party cannot produce
9 sufficient evidence to demonstrate that a triable issue of fact exists, the moving party is entitled to
10 summary judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

11 **B. The United States is Entitled to Summary Judgment on the First and Second Claims.**

12 The tax and other assessments at issue in the Government’s motion are all supported by Forms
13 4340, Certificate of Assessments, Payments that are submitted, herewith.² The Forms 4340 also set
14 forth amounts that were credited to the assessments in question. The Forms 4340 show that the
15 Readings are indebted to the United States for unpaid assessed balances of tax, penalties, and interest
16 in the amounts set forth thereon. Generated under seal and signed by an authorized delegate of the
17 Secretary of the Treasury, Forms 4340 are self-authenticating under Federal Rule of Evidence 902(1)
18 and admissible as a public record under Federal Rule of Evidence 803(8). *Hughes v. United States*,
19 953 F.2d 531, 539-540 (9th Cir. 1992); *Rossi v. United States*, 755 F. Supp. 314, 318 (D. Or. 1990).
20 These Forms 4340 carry a presumption of correctness and the “23C” entries on the Forms show that
21 the taxes, penalties and interest at issue were duly assessed and recorded. *United States v. Chila*, 871
22 F.2d 1015, 1017 (11th Cir. 1989).

23 Other supporting documents provide further evidence of the factual basis for the assessments
24 shown on the Forms 4340. For example, as explained above, regarding the deficiencies that it
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26 ² Copies of the relevant Forms 4340 are attached as Exhibits A-1 to A-4 and
27 B-1 to B-2 to the Second Declaration of Charles Duffy. The Forms do not reflect accrued
28 but unassessed statutory interest and penalties that continue to accrue on the tax liabilities.

1 calculated for James Readings' 1993, 1994, 1995 and 2008 income tax years, the IRS added-in the
2 amounts that James Reading earned during those years from the Pilot Insurance companies and
3 Colonial Claims that were reported on Form 1099's that were issued by those companies. Regarding
4 the deficiencies that it calculated for Clare Readings' 1994 and 1995 income tax years, the IRS
5 added-in part of the compensation that James Reading received from the Pilot Insurance companies
6 during those years.

7 The United States filed other IRS audit documents that also support liabilities at issue in the
8 complaint, such as the documents included in Vahe Declaration Exhibits E, F and G. Regarding the
9 frivolous return penalty assessments, the United States has filed herewith the returns that are the
10 basis for the penalties. This supporting evidence provides more than the minimal evidentiary
11 foundation required for the presumption of correctness to attach to the Forms 4340. *See e.g., Hardy*
12 *v. Commissioner*, 181 F.3d 1002, 1005 (9th Cir. 1999).

13 The IRS also assessed various penalties against the Readings, such as the late filing, failure
14 to pay and estimated tax penalties that are set forth on the Forms 4340. When a taxpayer fails to file
15 a federal tax return on time, the taxpayer may be assessed a penalty for failing to file or late-filing
16 the return. *See* 26 U.S.C. § 6651(a). As set forth above, the Readings signed their returns for 1993
17 through 1995 returns in 2008, which was long after they were due. Regarding the 2008 return,
18 because the return filed was frivolous in nature, it was basically considered a nullity and thereafter,
19 the IRS requested Mr. Reading to file a return. *See* Duffy Dec. Ex. Q; *see also Beard v. IRS*, 82 T.C.
20 766, 779-780 (U.S. Tax Ct. 1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986) ("In our self-reporting tax
21 system the government should not be forced to accept as a return a document which plainly is not
22 intended to give the required information.")

23 When a taxpayer fails to pay his federal tax liabilities at the time that they are due, the
24 taxpayer may be assessed a penalty for failure to timely pay the tax owed. *Id.* Based on Mr.
25 Reading's deposition testimony, he has not voluntarily paid taxes since 1989. As it appears
26 undisputed that the Readings did not timely (or otherwise) pay the amounts that they owed for the
27 referenced years the United States is entitled to judgment as a matter of law. If a taxpayer fails to
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1 make estimated income tax payments, the taxpayer is subject to a penalty under 26 U.S.C. § 6654.
2 As set forth above, the referenced notices of deficiency and Form 4340's for the periods in question
3 set forth that taxes are due but that insufficient tax payments were made.

4 As set forth in the Statement above, the amount of the judgment for the First Claim should be
5 \$556,871.63 as of May 1, 2012, plus interest accruing thereafter under law and the amount of the
6 judgment for the Second Claim should be \$116,632.96 as of May 1, 2012, plus interest.

7 **C. The United States is Entitled to Summary Judgment on the Fourth and Fifth Claims.**

8 As set forth above, the IRS assessed frivolous return penalties at issue in the Fourth and Fifth
9 Claim of the complaint under 26 U.S.C. § 6702. "When considering liability under Section 6702,
10 courts look for three elements: (i) a purported return; (ii) a failure to provide information upon which
11 the IRS can judge the return's correctness; and (iii) a frivolous position or desire to impede tax
12 administration." *Le Doux v. United States*, 375 F.Supp.2d 1242, 1244-45 (D. N.M. 2005) (citing
13 *Bradley v. United States*, 817 F.2d 1400, 1402 (9th Cir. 1987)). Section 6702 was amended in 2006
14 and now authorizes a \$5,000 penalty. *In Re Wilson*, 407 B.R. 405, 409 n. 16 (10th Cir. BAP 2009).

15 Other than the 2008 return filed by the Readings (Vahe Dec. Ex. D), all of the returns upon
16 which the Section 6702 assessments at issue are based are very similar. *See* Vahe Dec. Ex's H-1 to
17 H-10 and I-1 to I-9. Such returns are massive in size and include various attachments, including
18 lengthy "Verified Notice[s] of Completing and Filing the Attached Return at all Times Involuntarily
19 by Force Under Threat, Duress, Coercion, Intimidation and Fear of Prosecution." *Id.* In the verified
20 notices, the Readings make clear their tax defier positions, including - for example - their belief that
21 wages and compensation that they earn are not subject to federal taxes. *See* the verified notices, at
22 14 (¶ 3.1). In the notices, the Readings also refer to the United States as the "United States federal
23 corporation." *Id.*, at 11-12. The returns set forth zeros on many of the lines that were filled-in by
24 the Readings and they made various handwritten notations indicating that they were signing the
25 returns "under duress." *See* Vahe Dec. Ex's H-1 to H-10 and I-1 to I-9.

26 The 2008 return filed by the Readings sets forth "0" in wages and salary even though James
27 Reading earned \$23,858 from Colonial Claims Corporation in that year. *See* Duffy Dec. Ex. E. As
28

1 explained above, the 2008 return also included a “corrected” Form 1099-Misc prepared by the
2 Readings that falsely represented that Colonial Claims did not pay any compensation to Mr. Reading.

3 The returns filed by the Readings that are at issue in the Fourth and Fifth Claims of the
4 complaint are frivolous as a matter of law and the Court should enter judgment under Section 6702
5 based on those returns. It is also notable that the frivolous penalty assessments made under Section
6 6702 are also supported by Forms 4340 that relate to such assessments. *See* Second Duffy Dec. Ex’s
7 C-1 to C-10 and D-1 to D-11. As set forth above, the aggregate amount of the assessments at issue
8 in the Fourth Claim is \$16,739.18, as of May 1, 2012, plus accruing thereafter and the aggregate
9 amount of the assessments at issue in the Fifth Claim is \$16,793.78, as of May 1, 2012, plus interest.

10 **D. Summary Judgment Should be Entered on the Fifth, Sixth and Seventh Claims.**

11 Pursuant to 26 U.S.C. § 6321, the United States obtains a lien “upon all property and rights
12 to property, whether real or personal, belonging to” any taxpayer who neglects or refuses to pay taxes
13 after notice and demand. This lien arises as of the date of assessment and continues until the tax
14 liability is extinguished. 26 U.S.C. § 6322. It is effective as against the taxpayer without the filing
15 of a notice of lien. *See* 26 U.S.C. § 6323(a).

16 As shown by the Forms 4340 filed herewith, numerous federal tax and other assessments have
17 been made against the Readings and they have neglected to pay them after notice and demand.
18 Statutory tax liens therefore arose as of the dates of the assessments and attached to all of their
19 property and rights to property, including the residence. Those liens remain in full force and effect
20 as of the date hereof, since the Readings have outstanding tax liabilities.

21 In support of its foreclosure claim, the United States alleged in the complaint that the
22 purported transfer of the residence on June 10, 2005 from the Readings to the Fox Group Trust was
23 a fraudulent conveyance which has no effect as to the United States and should be set aside. The
24 United States alleged, in the alternative, that the Fox Group Trust is the nominee/alter ego of the
25 Readings. The Court could rely on either theory (or both) to order the residence to be sold to pay the
26 Readings’ tax liabilities under 26 U.S.C. § 7403.

1 **1. The Alleged Transfer of the Residence was a Fraudulent Conveyance.**

2 The United States is entitled to rely upon the applicable fraudulent conveyance laws of the
3 particular state in which the property is located to determine whether the conveyance should be set
4 aside. *See gen. United States v. Ranch Located in Young, Arizona*, 50 F.3d 630, 632 (9th Cir. 1995).
5 The determination of whether the residence here was fraudulently transferred is governed by the
6 Arizona Uniform Fraudulent Transfer Act (“UFTA”) Ariz. Rev. Stat. §§ 44-1001, *et. seq.* which
7 provides for claims of constructive and actual fraud.

8 The transfer of the residence involved actual as a matter of law. Regarding actual fraud, a
9 transfer involves actual fraud if the debtor made the transfer “with actual intent to hinder, delay, or
10 defraud any creditor of the debtor.” A.R.S. § 44-1004(A)(1). In determining whether there is actual
11 fraud, the Court should consider, among other things, the badges of fraud set out in A.R.S. § 44-
12 1004(B). *See Warfield v. Alaniz*, 453 F.Supp. 2d 1118, 1136 (D. Ariz. 2006). The badges include
13 factors such as whether the transfer was to an insider; whether the debtor retained possession or
14 control of the property transferred after the transfer; whether before the transfer was made, the debtor
15 had been sued or threatened with suit; and whether the value of the consideration received was
16 reasonably equivalent to the value of the asset transferred.

17 The actual intent required need not be proven by direct evidence but may be inferred from the
18 circumstances of the transaction. *In re Marriage of Benge*, 151 Ariz. 219, 223 (App. 1986). These
19 circumstances include such matters as whether the transferor and transferee have a close relationship,
20 whether there was consideration for the conveyance and whether the transferor retained possession
21 of the property. *Cashion Gin Co. v. Kulikov*, 1 Ariz. App. 90, 97 (1965). Often a single
22 circumstance or badge “may establish and stamp a transaction as fraudulent” and when “several are
23 found in the same transaction, strong, clear evidence will be required to repel the conclusion of
24 fraudulent intent.” *Torosian v. Paulos*, 82 Ariz. 304, 312 (1957).

25 In the late 1980's and early 1990's, the Readings embarked on a path to thwart the IRS and
26 avoid paying their federal taxes. For example, Mr. Reading boasted at his deposition that the last
27 time he voluntarily paid taxes was in approximately 1989. Thereafter, both of the Readings took
28

1 actions which made it clear that they believe that the compensation earned by Mr. Reading is not
2 subject to federal taxes and they have also expressed their tax defier views in their tax returns,
3 correspondence with the IRS and documents filed in their various federal court cases.

4 There is no doubt that when the Readings transferred the residence to the Trust in 2005 they
5 did so intending that the tax liens that would surely arise as a result of their non-payment of federal
6 taxes would not reach the residence. The purported transfer of the residence was surrounded with
7 badges of fraud sufficient to infer an actual intent to defraud as a matter of law. For example, little
8 or nothing of value was given to the Readings as consideration for the residence when it was
9 transferred even though it was worth approximately \$110,000. Further, the Readings retain
10 possession of the residence and continue to live there rent-free. Also, the Readings are administrative
11 trustees of the Trust and have taken actions that are consistent with ownership of the property, such
12 as filing a document with the County Recorder and paying the mortgage, utilities and real estate taxes
13 relating to the residence out of Mr. Reading's earnings. The Readings' fraudulent intent is also
14 evidenced by their tax defier views which are consistent with a willingness to improperly shield their
15 assets from their federal tax obligations.

16 **2. The Fox Group Trust is the Nominee/Alter Ego of the Readings.**

17 Consistent with the broad scope of 26 U.S.C. § 6321, the Supreme Court has held that Section
18 6321 permits the United States to impose a lien on property in the hands of a nominee. *G.M. Leasing*
19 *Corp. v. United States*, 429 U.S. 338, 350-351 (1977). As such, federal tax liens against a taxpayer
20 may be foreclosed against property, even though the taxpayer is not the nominal holder of title to the
21 property, *i.e.*, title being in a nominee, strawman, or alter ego, so long as the taxpayer is the equitable
22 owner of the property. In such instances, courts have ignored the fact that the property is in a third
23 party's name, such as a trust, and upheld the United States' right to exercise its tax lien against such
24 property. *See G.M. Leasing Corp.; Wolfe v. United States*, 798 F.2d 1241, 1245 (9th Cir. 1986);
25 *F.P.P. Enterprises v. United States*, 830 F.2d 114, 117-118 (8th Cir. 1987); and *Gastineau Equity*
26 *Trust v. United States*, 687 F. Supp. 1422, 1426-1427 (C.D. Cal. 1987).

27 Factors to consider in deciding whether a transfer of a taxpayer's residence to a trust is a sham
28

1 transaction not to be recognized for federal tax purposes include whether the taxpayers remained in
2 the residences and continued to essentially treat the residence as their own even after the purported
3 transfers. *See e.g., F.P.P. Enterprises, supra., and Gastineau Equity Trust, supra.* In the instant
4 case, the Readings have lived rent free in the residence after the “transfer” to the Fox Group Trust
5 and continued to pay the mortgage, upkeep and maintenance expenses out of the compensation
6 earned by Mr. Reading. The Readings are also administrative trustees of the Trust, they continue to
7 act as the true owners of the residence and have close relationship with the original and present
8 trustees. As a matter of law, the Fox Group Trust is a nominee or alter ego of the Readings.

9 **III.**

10 **CONCLUSION**

11 The Court should grant the motion for partial summary judgment on the assessments at issue
12 herein and also order that the United States can foreclose its tax liens and sell the residence to satisfy
13 the Readings unpaid assessments. The Court should order that the proceeds from the sale should be
14 distributed pursuant to the stipulations entered into by the other parties regarding priority.

15 DATED this 11th day of May, 2012.

16
17 KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

18
19 By: /s/ Charles M. Duffy
20 CHARLES M. DUFFY
Trial Attorney, Tax Division

21 Of Counsel:

22 ANN SCHEEL
23 Acting United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 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

1 KATHRYN 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 IN THE UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 UNITED STATES OF AMERICA,

19 Plaintiffs,

20 v.

21 JAMES LESLIE READING, CLARE L.
22 READING, FOX GROUP TRUST,
23 MIDFIRST BANK, CHASE, FINANCIAL
24 LEGAL SERVICES, STATE OF ARIZONA

25 Defendants.

Civ. No. 11-0698-PHX-FJM

**UNITED STATES' STATEMENT OF
MATERIAL FACTS IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT**

26 Pursuant to Local Rule 56.1(a), the United States hereby submits these material facts in
27 support of its motion for summary judgment, which is filed herewith.

28 1. In *United States v. Readings*, case number 06-1609 (D. Ariz.), James and Clare
Reading ("the Readings") alleged that the United States was "at best" a "*nul tiel* corporation or legal
fiction." See Exhibit A attached to the First Declaration of Charles Duffy ("First Duffy Dec.") filed

1 on April 10, 2012 (“First Duffy Dec.”), at 18:7-10.¹

2 2. In *Readings v. United States*, case number 06-0059 (D. Ariz.), the Readings alleged
3 that they did not “reside within a judicial district of an internal revenue district where returns are
4 required to be filed.” *See* First Duffy Dec. Ex. B, at 7.

5 3. In *Readings v. United States, et al.*, Case Number 06-1873 (D.D.C. 2006), the Readings
6 unsuccessfully sued various IRS employees in their individual capacities simply for carrying out their
7 official duties regarding the seizure and sale of their vehicle to satisfy a portion of their federal tax
8 obligations. *See* First Duffy Dec. Ex’s E and F.

9 4. James Reading - who has earned large amounts of income in some of the years at issue
10 herein - testified at his deposition that the last time that he voluntarily paid taxes to the IRS was in
11 1989. *See* excerpts from James Reading’s Deposition (“J. Reading Dep.) attached to the Second
12 Declaration of Charles Duffy filed herewith as Exhibit H (“Second Duffy Dec.”), at 21:13-16 and
13 33:4-6.

14 5. Mr. Reading stopped voluntarily paying taxes to the IRS based on his “studies” of
15 “income tax cases [and] Supreme Court cases” relating to taxes. *See* J. Reading dep., at 21:17-22:8.

16 6. Clare Reading stated under oath that the compensation earned by her husband is not
17 subject to federal tax. *See* excerpts from Clare Reading’s Deposition (“C. Reading Dep.”) attached
18 as Second Duffy Dec. Ex. I, at 29:20-30:10.

19 7. The Readings sent a letter to the IRS that set forth that the Internal Revenue Code
20 (Title 26, U.S.C.) was never voted into “positive law” by Congress, and 26 U.S.C. § 6331 (the levy
21 provision in the Internal Revenue Code) “has no lawful force or effect” on them. *See* Second Duffy
22 Dec. Ex. G, at 8 (partial copy of the letter).

23 8. The Readings filed their 1993 federal income tax return on or after December 24, 2008,
24 which is when they signed it. *See* Exhibit A attached to the Declaration of Debbie Vahe (“the Vahe
25 Dec.”) filed herewith, at 2.

26
27 ¹ This document and other documents referenced herein that were filed
28 previously in this case are incorporated herein pursuant to Local Rule 7.1(d)(2).

1 9. The Readings did not timely file a federal income tax return for 1993. *Id.*; *see also* C.
2 Reading Dep., at 41:6-12.

3 10. Mr. Reading worked as an insurance adjuster for various Pilot Catastrophe Insurance-
4 related companies during 1993. *See* J. Reading dep., at 22:14-23:4.

5 11. On their 1993 income tax return, the Readings declared under oath that they had zero
6 wages and salary and zero taxable income. *See* Vahe Dec. Ex. A, at 1(line 7) and 2 (line 37).

7 12. Along with their 1993 return, the Readings submitted “corrected” 1099-MISC forms
8 that one or both of them prepared which set forth that James Reading received zero compensation
9 from Pilot Temporary Services, Inc., Pilot & Associates, Inc. and Pilot Catastrophe Services, Inc.
10 during 1993. *See* Vahe Dec. Ex. A; C. Reading dep., at 36:19-38:4.

11 13. In 1993, James Reading actually received \$14,935.24 in compensation from Pilot
12 Catastrophe Services, \$25,628.00 in compensation from Pilot and Associates and \$36,796 in
13 compensation from Pilot Temporary Services, Inc. *See* Second Duffy Dec. Ex. F (three Form 1099's
14 produced by Pilot Companies for 1993) and J. Reading Dep., at 22:25-23:16 (Second Duffy Dec. Ex.
15 H).

16 14. The Readings filed their 1994 federal income tax return on or after December 24, 2008,
17 which is when they signed it. *See* Exhibit B attached to the Vahe Dec.

18 15. The Readings did not timely file a federal income tax return for 1994. *Id.*; C. Reading
19 Dep., at 41:6-12 (Second Duffy Dec. Ex. I).

20 16. Mr. Reading also worked for various Pilot Insurance companies during 1994. *See* J.
21 Reading dep., at 23:17-23 (Second Duffy Dec. Ex. H).

22 17. On their 1994 income tax return, the Readings declared under oath that they had zero
23 wages and salary and zero taxable income. *See* Vahe Dec. Ex. B, at 1(line 7) and 2 (line 37).

24 18. Along with their 1994 return, the Readings submitted “corrected” 1099-MISC forms
25 that one or both of them prepared which set forth that James Reading received zero compensation
26 from Pilot Catastrophe Services, Inc. and Pilot & Associates, Inc. during 1994. *See* Vahe Dec. Ex.
27 B; C. Reading dep., at 39:21-25.

1 19. In 1994, James Reading actually received over \$112,000 in compensation from Pilot
2 Catastrophe Services, and \$44,574.00 in compensation from Pilot and Associates. *See* Second Duffy
3 Dec. Ex. F (two Form 1099's produced by Pilot Companies for 1994) and J. Reading Dep., at 23:17-
4 23.

5 20. The Readings filed their 1995 federal income tax return on or after December 24, 2008,
6 which is when they signed it. *See* Exhibit C attached to the Vahe Dec, at 2.

7 21. The Readings did not timely file a federal income tax return for 1995. *Id.*; *see also* C.
8 Reading dep., at 41:6-12.

9 22. Mr. Reading also worked for various Pilot companies during 1995. *See* J. Reading
10 dep., at 23:24-25.

11 23. On their 1995 income tax return, the Readings declared under oath that they had zero
12 wages and salary and zero taxable income. *See* Vahe Dec. Ex. C, at 1(line 7) and 2 (line 37).

13 24. Along with their 1995 return, the Readings submitted a “corrected” 1099-MISC form
14 which set forth that James Reading received zero compensation from Pilot Catastrophe Services, Inc.
15 *See* Vahe Dec. Ex. B.

16 25. In 1995, James Reading actually received over \$117,000 in compensation from Pilot
17 Catastrophe Services. *See* Second Duffy Dec. Ex. F (Form 1099 produced by Pilot Companies for
18 1995) and J. Reading Dep., at 23:24-24:12.

19 26. Mr. Reading worked for Colonial Claims Corporation in 2008. *See* C. Reading dep.,
20 at 77:18-78:14; J. Reading dep., at 20:2-8.

21 27. On the 2008 income tax return, the Readings declared under oath that they had zero
22 wages and salary and zero taxable income. *See* Vahe Dec. Ex. D, at 1(lines 1 and 6).

23 28. Along with their 2008 return, the Readings submitted a “corrected” 1099-MISC form
24 which set forth that James Reading received zero compensation from Colonial Claims. *See* Vahe
25 Dec. Ex. D.

26 29. In 2008, James Reading actually received \$23,858 in compensation from Colonial
27 Claims. *See* Second Duffy Dec. Ex E; J. Reading dep., at 20:9-11.

28

1 30. On November 15, 2000, the IRS mailed by certified mail a Notice of Deficiency to
2 James Reading for his 1993, 1994 and 1995 income tax years. *See* Vahe Dec. Ex. E and Vahe Dec.,
3 at ¶ 7.

4 31. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec.
5 Ex. E, at 1.

6 32. In calculating the deficiencies referenced in the Notice, the IRS added-in the
7 compensation that James Reading received from the Pilot Insurance companies in those years. *See*
8 the Form 4549) (Bates Prod0003) in Vahe Ex. E that relates to the Notice.

9 33. Specifically, the IRS added in \$25,628.00, \$14,935.00 and \$36,796.00 for the 1993
10 year, \$44,574.00 and \$112,015.00 for the 1994 year and \$117,648.00 for the 1995 tax year. *Id.*, at
11 1 (lines 1A, 1B and 1I).

12 34. Those amounts tie to the amounts that are set forth on the Form 1099's that were issued
13 by the Pilot Insurance to report James Reading's compensation earned in those years. *See* Second
14 Duffy Dec. Ex. F.

15 35. On November 15, 2000, the IRS also mailed by certified mail a Notice of Deficiency
16 to Clare Reading for her 1994 and 1995 income tax years. *See* Vahe Dec. Ex. F and Vahe Dec., at
17 ¶ 8.

18 36. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec.
19 Ex. F, at 1.

20 37. In calculating the deficiencies referenced in the Notice, the IRS added-in part of the
21 compensation that James Reading received from the Pilot related companies. *See* the Form 4549 in
22 Vahe Ex. E (Bates Prod0039).

23 38. On February 16, 2010, the IRS mailed by certified mail a Notice of Deficiency to
24 James Reading for his 2008 income tax year. *See* Vahe Dec. Ex. G and Vahe Dec., at ¶ 9.

25 39. In the Notice, the IRS proposed income tax and penalty deficiencies. *See* Vahe Dec.
26 Ex. G, at 1.

27 40. In calculating the deficiencies referenced in the Notice, the IRS added the \$23,858.00
28

1 in compensation that James Reading received from Colonial Claims. *See* the Form 4549 in Vahe Ex.
2 G (Bates Prod00097) that relates to the Notice (at line 1b).

3 41. The \$23,858.00 ties to the amount that is set forth on the Form 1099 that was issued
4 by Colonial Claims to report James Reading's compensation earned in that year. *See* Second Duffy
5 Dec. Ex. E.

6 42. The IRS made assessments based on the proposed deficiencies against James Reading,
7 as follows (*See* the certified Certificates of Assessments, Payments and Other Specified Matters,
8 copies of which are attached to Second Duffy Declaration as Exhibits A-1 through A-4):
9

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1993	Income	4/23/2001	\$ 2,149.74 (ETP) 11,618.00 (LFP) 54,595.00 (T) 52,245.37 (I)
		10/20/2003	1,291.00 (LFP) 20,455.15 (I)
		10/27/2003	106.97 (I) 12,909.00 (FPP)
12/31/1994	Income	4/23/2001	\$ 3,271.72 (ETP) 14,186.02 (LFP) 63,049.00 (T) 52,467.51 (I)
		10/20/2003	1,576.23 (LFP) 22,982.40 (I)
		10/27/2003	120.89 (I) 15,762.24 (FPP)
12/31/1995	Income	4/23/2001	\$ 2,274.00 (ETP) 9,436.05 (LFP) 41,938.00 (T) 27,329.46 (I)
		10/20/2003	1,048.45 (LFP) 13,900.38 (I)
		10/27/2003	73.61 (I) 10,484.50 (FPP)

12/31/2008	Income	6/28/2010	\$ 162.32 (ETP) 1,136.48 (LFP) 5,051.00 (T) 304.94 (I) 378.82 (FPP)
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T=Tax
LFP=Late Filing Penalty
FPP=Failure to Pay Tax Penalty
ETP=Estimated Tax Penalty
I=Interest

43. The current aggregate balances due for each year, as of May 1, 2012, are as follows:

1993	\$118,162.63
1994	262,505.58
1995	167,776.69
2008	<u>8,426.73</u>
Total	\$556,871.63

See Vahe Dec., at ¶ 15 and Vahe Dec. Ex's J-1 to J-4.

44. The IRS made assessments based on the proposed deficiencies against Clare Reading, as follows (See the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits B-1 and B-2):

Tax Period Ending	Tax Type	Assessment Date	Assessed Amount
12/31/1994	Income	4/23/2001	\$ 5,810.75 (FPP) 1,206.09 (ETP) 5,229.67 (LFP) 23,243.00 (T) 19,342.15 (I)
		9/5/2005	14,939.55 (I)
12/31/1995	Income	4/23/2001	\$ 3,122.25 (FPP) 677.18 (ETP) 2,810.02 (LFP) 12,489.00 (T) 8,138.62 (I)
		9/5/2005	7,421.07 (I)

1 T=Tax
 2 LFP=Late Filing Penalty
 3 FPP=Failure to Pay Tax Penalty
 4 ETP=Estimated Tax Penalty
 5 I=Interest

45. The current aggregate balances due for each year, as of May 1, 2012, are as follows:

1994	\$ 66,746.54
1995	<u>49,886.42</u>
Total	\$116,632.96

See Vahe Dec., at ¶ 16 and Vahe Dec. Ex's K-1 to K-2.

46. Based on information presented by the Readings regarding certain stock transactions in 2003 and 2004, the IRS - in 2011 - decreased the amount of tax owed for certain tax years as follows:

Decrease to taxes owed by James Reading for 1993:	\$32,866.00
Decrease to taxes owed by James Reading for 1994:	3,092.00
Decrease to taxes owed by Clare Reading for 1994:	2,916.00

See the Declaration of IRS Revenue Agent Elizabeth Marriaga filed herewith, at ¶¶3-6; see also the Form 4340's attached to the Second Duffy Dec., as A-1 (at 6), A-2 (at 6) and B-1 (at 5).

47. The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James L. Reading, as follows (see the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits C-1 to C-10):

Tax Period Ending	Assessment Date	Assessed Amount
12/31/1997	5/21/2007	\$ 500.00
12/31/1998	5/21/2007	500.00
12/31/1999	5/21/2007	500.00
12/31/2000	5/14/2007	500.00
12/31/2002	5/14/2007	500.00
12/31/2003	5/14/2007	500.00
12/31/2004	5/14/2007	500.00

12/31/2005	5/14/2007	500.00
12/31/2006	10/22/2007	5,000.00
12/31/2008	8/17/2009	5,000.00

48. The basis for the frivolous return penalty assessments are the tax returns that James Reading filed for those periods, copies of which are attached to Vahe Declaration as Exhibits D and I-1 to I-9. *See* the Vahe Dec., at ¶¶ 6, 12 and 13.

49. The returns, copies of which are attached to the Vahe Declaration as Exhibits D and I-1 to I-9 are true and correct copies of tax returns that James Reading filed for his 1997-2000, 2002-2006 and 2008 Income Tax Years. *See* the Vahe Dec., at ¶¶ 6, 12 and 14; J. Reading dep., at 16:7-16 and 35:25-39:13.

50. The aggregate amounts of the balances due for each period, as of May 1, 2012, are as follows:

1997	\$	633.42
1998		633.42
1999		633.42
2000		634.40
2002		634.40
2003		634.40
2004		634.40
2005		634.40
2006		6,124.02
2008		<u>5,542.90</u>
Total	\$	16,739.18

See Vahe Dec., at ¶¶ 19 and 20 and Vahe Dec. Ex's M-1 to M-7.

51. The IRS made frivolous return penalty assessments under 26 U.S.C. § 6702 against James L. Reading, as follows (*see* the certified Certificates of Assessments, Payments and Other Specified Matters, copies of which are attached to the Second Duffy Declaration as Exhibits D-1

1 to D-11):

2 Tax Period Ending	Assessment Date	Assessed Amount
3 12/31/1997	4/9/2007	\$ 500.00
4 12/31/1998	4/9/2007	500.00
5 12/31/1999	4/9/2007	500.00
6 12/31/2000	4/9/2007	500.00
7 12/31/2001	4/9/2007	500.00
8 12/31/2002	4/9/2007	500.00
9 12/31/2003	4/30/2007	500.00
10 12/31/2004	4/30/2007	500.00
11 12/31/2005	4/9/2007	500.00
12 12/31/2006	10/22/2007	5,000.00
12 12/31/2008	8/17/2009	5,000.00

13 52. The basis for the frivolous return penalty assessments are the tax returns that Clare
14 Reading filed for those periods, copies of which are attached to Vahe Declaration as Exhibits D and
15 H-1 to H-10. *See* the Vahe Dec., at ¶¶ 6, 10 and 11.

16 53. The returns, copies of which are attached to the Vahe Declaration as Exhibits D and
17 H-1 to H-10 are true and correct copies of tax returns that Clare Reading filed for her 1997-2006 and
18 2008 Income Tax Years. *See* the Vahe Dec., at ¶¶ 6, 10 and 14; C. Reading dep., at 13:6-14:6 and
19 73:19-77:21.

20 54. The aggregate amounts of the balances due for each period, as of May 1, 2012, are as
21 follows:

22	1997	\$	677.28
23	1998		639.28
24	1999		633.42
25	2000		634.40
26	2002		634.40
27	2003		634.40

1	2004	634.40
2	2005	639.28
3	2006	6,124.02
4	2008	<u>5,542.90</u>
5	Total	\$ 16,793.78

6 *See* Vahe Dec., at ¶¶ 21 and 22 and Vahe Dec. Ex's N-1 to N-7.

7 55. The Readings purchased the residence in 1979 as joint tenants with right of
8 survivorship. *See* Second Duffy Dec. Ex. J (copy of the Joint Tenancy Deed signed by the
9 Readings); C. Reading dep., at 41:25-42:6.

10 56. The purchase price was approximately \$68,000. *See* the C. Reading dep., at 42:23-13.

11 57. On June 10, 2005, the Readings allegedly transferred the residence by Quit Claim
12 Deed, to the Fox Group Trust. *See* Second Duffy Dec. Ex. K (copy of the Quit Claim Deed signed
13 by the Readings).

14 58. At the time of the June, 2005 transfer, Clare Reading knew that there were federal tax
15 liens filed against her and or her husband. *See* C. Reading dep., at 46:15-18.

16 59. The Fox Group Trust did not pay monetary consideration in return for the alleged
17 transfer of the residence. *See* Clare Reading dep., at 52:13-25.

18 60. The supposed consideration given by the Fox Group Trust is the Readings' right to live
19 on the property, which is a right that they already had before the alleged transfer. *See* the deposition
20 of Terry Major ("Major dep."), the current trustee of the Fox Group Trust, at 78:3-79:4 (excerpts
21 attached as Second Duffy Dec. Ex. P).

22 61. At the time that the residence was allegedly transferred to the Fox Group Trust, the
23 residence was worth approximately \$110,000. *See* J. Reading dep., at 30:21-31:5.

24 62. Since the alleged transfer to the Fox Group Trust, the Readings have continued to live
25 in the residence. *See* J. Reading dep., at 6:9-10 and 32:10-13 and C. Reading dep., at 12:17-20.

26 63. Also, the Readings are still personally obligated on the note that is secured by a
27 mortgage on the residence. *See* Second Duffy Dec. Ex L (copy of the Note); C. Reading dep., at
28

1 43:19-44:9.

2 64. The Readings have not paid rent to live in the residence since the alleged transfer to
3 the Fox Group Trust. *See* J. Reading dep., at 32:10-16 and C. Reading dep., at 102:21:25.

4 65. The current holder of the Mortgage on the residence is MidFirst Bank (“MidFirst”).
5 *See* Court Docket numbers 33, 34 and 35.

6 66. The funds used by the Readings to personally pay the mortgage payments to MidFirst
7 also are derived from compensation earned by James Reading. *See* C. Reading dep., at 66:1-67:8;
8 J. Reading dep., at 8:17-20.

9 67. The Readings also personally pay the utilities on the residence out of compensation
10 earned by Mr. Reading. *See* C. Reading dep., at 67:12-16.

11 68. The Readings also personally pay the County real estate taxes owed on the residence.
12 *See* C. Reading dep., at 42:16-18.

13 69. The Readings are “Administrative Trustee[s]” of the Fox Group Trust. *See* Second
14 Duffy Dec. Ex. M, at 8; C. Reading dep., at 56:11-21, 61:19-20 and 72:20-73:3.

15 70. After the supposed transfer of the residence to the Fox Group Trust in 2005, the
16 Readings acted on behalf of the Fox Group Trust regarding the residence. *See* Second Duffy Dec.
17 Ex. N; Major dep., at 80:1-9.

18 71. The specific action taken by the Readings was outside of the scope of their permitted
19 duties under the Fox Group Trust creation document and was consistent with an action that could
20 only be taken by a true owner of the residence. *See* Major dep., at 82:7-83:7.

21 72. The document that created the Fox Group Trust was not filed publicly. *See* Second
22 Duffy Dec. Ex M, at 1 and Major dep. (Second Duffy Dec. Ex. P), at 80:10-19.

23 73. The current trustee of the Fox Group Trust is Terry Major. *See* Major dep., at 6:14-17.

24 74. Previously, Mr. Major filed a petition with the United States Tax Court in which he
25 argued that amounts received in exchange for computer work that he performed was not “taxable
26 income compensation.” *See Major v. Commissioner*, 2005 WL 1405978 *2 (U.S. Tax Court 2005).

27 75. The Tax Court described arguments raised by Mr. Major as “tax protester arguments.”
28

1 *Id.*, at *3.

2 76. Mr. Major followed the teachings of Jimmy Chisum and videotaped Mr. Chisum's
3 seminars. *See* Terry Major dep., at 7:6-8:7 and 20:2-8.

4 77. The Tax Court described Mr. Chisum as a "a known promoter of tax avoidance
5 schemes." *Lundgren v. Commissioner*, 2006 WL 2436894, n.3 (Tax Ct. 2006).

6 78. Mr. Chisum was also convicted of federal tax evasion. *United States v. Chisum*, 502
7 F.3d 1237 (10th Cir. 2007).

8 79. Mr. Major is still in touch with Mr. Chisum. *See* Major Dep., at 7:22-24.

9 80. Based on a Stipulation between the United States and Financial Legal Services (Docket
10 number 25), the Court ruled that Financial Legal Services has no interest in the residence (Docket
11 number 26).

12 81. The Court Clerk previously entered the default of Chase for failure to answer or
13 otherwise plead. (Docket number 29).

14 82. The United States, the State of Arizona, the Readings and the Fox Group Trust have
15 all stipulated that MidFirst has first priority in the residence. (Docket numbers 33, 34 and 35).

16 83. The amount of MidFirst's priority interest is \$13,964.12 (principal and accrued interest
17 as of March 1, 2012), plus \$400 (attorney's fees). (Docket number 35).

18 84. The United States has also stipulated that the State of Arizona has priority over the
19 IRS's federal tax liens at issue herein and that the State's interest is \$15,211.40 as of February 23,
20 2012, plus interest accruing thereafter under law. (Docket number 36).

21 85. the IRS filed various Notices of Federal Tax Lien ("NFTL") with the County recorder
22 regarding assessments made against one or both of the Readings. *See* the complaint, at ¶¶ 56-66.

23 86. However, on July 21, 2011, which is after the complaint was filed, the IRS mistakenly
24 released NFTL's that relate to the income tax and related assessments made against James Reading
25 for his 1993, 1994 and 1995 income tax years and the income tax and related assessments made
26 against Clare Reading for her 1994 and 1995 tax years. *See* the Vahe Dec., at ¶ 23.

27 87. The IRS did not release other NFTL's relating to the other assessments at issue in this
28

1 case. *Id.*, at ¶¶ 24-25 and Vahe Dec. Ex's O-1, O-2, O-3, O-5, O-7, O-8 and O-9 (copies of the
2 NFTL's that were not released).

3 88. On May 4, 2012, the IRS revoked the releases of the NFTL's that were filed on July
4 21, 2011. *See* the Vahe dec., at ¶ 26.

5 89. David Pastorkey was one of the original trustees for the Fox Group Trust. *See* Duffy
6 Dec. Ex. M, at 8 and 9.

7 90. Mr. Pastorkey is a "dear friend" of one or both of the Readings. C. Reading dep., at
8 57:8-12.

9 91. Terry Major is also a friend of the Readings. Major dep., at 12:5-7.

10 92. The Fox Group Trust was created by Aage Nost, who the Readings met through a
11 friend. C. Reading dep., at 47:14-49:5.

12 93. Mr. Nost, who is not an attorney, had a radio show in Tucson on which he talked about
13 health and nutrition. C. Reading dep., at 47:19-48:4.

14 DATED this 11th day of May, 2012.

15
16 KATHRYN KENEALLY
Assistant Attorney General, Tax Division
U.S. Department of Justice

17
18
19 By: /s/ Charles M. Duffy
CHARLES M. DUFFY
Trial Attorney, Tax Division

20
21 Of Counsel:

22 ANN SCHEEL
Acting United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 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