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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' OPPOSITION TO
TERRY MAJOR'S EMERGENCY
MOTION TO STAY PROCEEDINGS
PENDING INTERLOCUTORY APPEAL**

26 **STATEMENT**

27 On August 9, 2012, Terry Major, who is the Trustee of the Fox Group Trust ("the trust"), filed
28 a Notice of Appeal and an "Emergency Motion to Stay Proceedings Pending Interlocutory Appeal."

Mr. Major's appeal relates to the District Court's July 3, 2012 order that struck his notice of
appearance on behalf of the trust. Mr. Major's motion to reconsider the July 3, 2012 order was also
denied by the District Court on July 26, 2012. Mr. Major is not an attorney and the District Court's
order striking his notice of appearance is based on *C.E. Pope Equity Trust v. United States*, 818 F.2d
696, 697 (9th Cir. 1987), which provides that trusts must be represented in federal court by duly-

1 qualified counsel.

2 **THE COURT SHOULD DENY THE MOTION FOR STAY**

3 Mr. Major's motion for a stay should be denied for various reasons. As a preliminary matter,
4 his notice of appeal does not appear to be proper since the July 3rd and July 26th orders are not final
5 orders under 28 U.S.C. § 1291 in that the parties are still in the midst of litigating this case in the
6 District Court. Also, the Court has not certified the orders for interlocutory appeal under Federal
7 Rule of Civil Procedure 54(b) and 28 U.S.C. § 1292(b). Where there is no certification under Rule
8 54(b), there is no jurisdiction with the Court of Appeals. *See Hoonah Indian Ass'n v. Morrison*, 170
9 F.3d 1223, 1225 (9th Cir. 1999); *In re Brown*, 248 F.3d 484, 485-88 (6th Cir. 2001).

10 It should be noted also that there are no proper grounds upon which the District Court should
11 certify the referenced orders under Rule 54(b) and 28 U.S.C. § 1292(b) since the orders do not
12 involve controlling questions of law "as to which there is substantial ground for difference of
13 opinion" and an immediate appeal from such orders would not "materially advance the ultimate
14 termination of the litigation." *See* 28 U.S.C. § 1292(b) and *Couch v. Telescope Inc. et al.*, 611 F.3d
15 629, 633 (9th Cir. 2010). In this regard, it is well established that a non-lawyer cannot represent a
16 trust in federal court (*see e.g., C. E. Pope, supra.*). Further, an appeal of the subject orders will not
17 advance the ultimate termination of the litigation since there are various other issues that need to be
18 resolved (and that are being addressed) before the litigation in the District Court can be concluded.

19 There are also no grounds to stay this matter pending the resolution of Mr. Major's appeal
20 since he has not shown (1) a probability of success on the merits concerning his argument that he
21 should be allowed to represent the trust; (2) the possibility of irreparable injury; (3) that serious legal
22 questions are raised; and (4) that the balance of hardships tips sharply in his favor. *See e.g., Andreiu*
23 *v. Ashcroft*, 253 F.3d 477, 483 (9th Cir. 2001).

24 **CONCLUSION**

25 The Court should deny the motion to stay and decline to certify the July 3, 2012 and July 26,
26
27
28

1 2012 orders for interlocutory appeal.

2 DATED this 14th day of August, 2012.

3
4 KATHRYN KENEALLY
5 Assistant Attorney General, Tax Division
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7 By: /s/ Charles M. Duffy
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2012, I served the foregoing through the Court’s electronic filing system:

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I also certify that on this 14th day of August, 2012, I served the foregoing on the undersigned by first class mail:

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