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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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| UNITED STATES OF AMERICA,<br><br>Plaintiffs,<br><br>v.<br><br>JAMES LESLIE READING, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, STATE OF ARIZONA<br><br>Defendants. | Civ. No. 11-0698-PHX-FJM<br><br><br><br>**UNITED STATES' REPLY BRIEF** |

In its complaint, the United States seeks to reduce various tax and other assessments made against James and Clare Reading ("the Readings") to judgment and foreclose its federal tax liens on their residence ("the residence"). On May 11, 2012, the United States moved for summary judgment on all claims. On August 9, 2012, the Readings filed an amended response to the motion. Most of the arguments in the amended response are frivolous and similar to the arguments that the Readings made previously to the Court in cases numbered 06-1609 and 06-0059.

The Fox Group Trust did not file a response to the United States' summary judgment motion and, thus, judgment should be entered against it on the Sixth, Seventh and Eighth Claims in the complaint, wherein the United States seeks to foreclose its tax liens on the residence.

## I.

## THE UNITED STATES IS ENTITLED TO SUMMARY JUDGMENT ON THE ASSESSMENTS IN THE FIRST AND SECOND CLAIMS OF THE COMPLAINT

In the First Claim of the complaint, the United States seeks to reduce income tax and related assessments to judgment regarding James Reading's 1993, 1994, 1995 and 2008 tax years. In the Second Claim, the United States seeks to reduce income tax and related assessments to judgment regarding Clare Reading's 1994 and 1995 tax years. The Readings' arguments are addressed below.

### A. The Readings' Argument that Compensation Received by Mr. Reading and Their Similar Assertions.

The crux of the Government's case on the income tax assessments is that James Reading was paid substantial amounts of money by various insurance companies such as Pilot Catastrophe Insurance and Colonial Claims in 1993, 1994 , 1995 and 2008 for working as an insurance adjuster. The facts relied on by the Government are largely unrebutted in that the Readings admit in their response that James Reading worked as an insurance adjuster for the referenced companies *and* that he received the amounts of compensation for the years in question that were asserted by the Government. *See* Readings' Response filed on August 9, 2012 to United States' Statement of Facts ("opp. to facts"), at ¶¶ 10, 13, 16, 19, 22, 25, 26 and 29. The Readings also admit that they altered the 1099-MISC forms that the companies sent to Mr. Reading by changing the amounts of compensation that he received to "zero." *See* opp. to facts, at ¶¶ 12, 18, 24 and 28.

James Reading testified at his deposition that he has not voluntarily paid his federal taxes since 1989 and, in their response, the Readings continue to assert that the compensation that he received as an insurance adjuster is simply not taxable. *See* opp. to facts, at 9:9-11, ¶ 11 (there "is not testimony or evidence to show that 'wages' and 'salary' are 'income'..."); and 5:6-7, ¶ 5 (no "testimony or evidence has been presented that would show that all of the amount paid to [Mr. Reading] is (sic) exchange for his labor is 'income'..."). The Readings apparently believe that the compensation is not taxable on the theory that it was paid in an even exchange for Mr. Reading's labor. *See* Readings' Memorandum of Points and Authorities filed on August 9, 2012 ("Readings'

mem."), at 14:11-21. The Readings' assertions are common tax defier arguments that have been uniformly rejected by courts. *See e.g., Sullivan v. United States*, 788 F.2d 813, 815 (1st Cir. 1986); *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *Stelly v. Commissioner*, 761 F.2d 1113, 1115 (5th Cir. 1985); *In Matter of Blankstyn*, 1994 WL 713730 **4-5 (D. Ariz. 1994).

The Readings' argument that the federal income tax is "an excise tax with respect to certain activities and privileges" (opp. to facts, at 19:20-21, n. 3) is also frivolous. *See e.g., Parker v. Commissioner*, 724 F.2d 469, 471-472 (5th Circuit 1984).

Next, the Readings argue that (1) the IRS did not provide them with the statutes that make them liable for federal taxes; (2) the IRS did not provide them with internal delegation orders; and (3) the IRS's employees do not have proper legal authority to carry out their duties. *See* Readings' mem., at 4:21-5:11. These arguments have also been rejected by courts as frivolous. *See Hughes v. United States*, 953 F.2d 531, 536 (9th Cir. 1992); *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *Rennie v. Internal Revenue Service*, 216 F.Supp.2d 1078, 1082 (E.D.Cal. 2002); and *Van Gaasbeck v. United States*, 2004 WL 541369 *2 (D. Nev. 2004).

The Readings also argue that the taxes asserted by the Government are invalid because the IRS did not prepare proper substitutes for returns for them after they failed to timely file their returns. *See e.g.*, Readings' mem., at 5:12-6:9. That argument is without merit since the IRS is not required to execute such returns before issuing a notice of deficiency. *See Roat v. Commissioner*, 847 F.2d 1379, 1380-82 (9th Cir. 1988); *Geiselman v. United States*, 961 F.2d 1, 5 (1st Cir. 1992).

The Readings also assert that the liabilities in question were not properly assessed. *See* Readings' mem., at 4:1-8. For example they argue that the assessments are invalid since they allegedly were "not properly recorded in the Summary Record of Assessments." *See* opp. to facts, at 28:11-13. Courts have rejected those arguments where the United States, as it did here,[1] filed Certificates of Assessments and Payments that set forth the dates of the relevant assess (also known as 23C dates). *Hughes v. United States*, 953 F.2d 531, 535-536 (9th Cir. 1992) (the Certificates of

[1] *See* Exhibits A-D attached to the Duffy Declaration filed on May 11, 2012.

Assessments and Payments are presumptive proof of valid assessments); *United States v. Chila*, 871 F.2d 1015, 1017 (11th Cir. 1989); and *Geiselman v. United States*, 961 F.2d 1, 5-6 (1st Cir. 1992).

**B. The Readings' Notice and Demand/Notice of Deficiency Arguments.**

The Readings argue that Notices and Demand were not properly sent to them by the IRS under 26 U.S.C. § 6303. *See* Readings' mem., at 10:16-19 (the Reading's use the acronym "NAD"). The Government denies the Readings' assertion that the subject notices were not sent[2] but, in any event, the assertion is irrelevant in this case since this is a judicial collection action, not an administrative one, and a Section 6303 notice is not a prerequisite to such a judicial action. *United States v. Chila*, 871 F.2d 1015, 1018 (11th Cir. 1989); *Anuforo v. Commissioner*, 614 F.3d 799, 805 (10th Cir. 2010).

The Readings also raise arguments about the IRS's Notice of Deficiencies. *See* Readings' mem., at 10:8-15 and 10:18-19:23 (they use the acronym "NOD"). The arguments are only relevant to the income tax assessments made for their 1993, 1994 and 1995 tax years since (1) the Readings admit that Mr. Reading received a notice of deficiency for his 2008 tax year (opp. to facts, at ¶ 38); and (2) the notice of deficiency procedures do not apply to the Section 6702 penalty assessments at issue in the Fourth and Fifth Claims. *See Danner v. United States*, 208 F.Supp.2d 1166, 1171 (E.D.Wash. 2002); *Williamson v. United States*, 84 F.Supp.2d 1217, 1223 (D.N.M. 1999).

The Readings' specific arguments are that they "never received" copies of the subject notices of deficiency and "**HAVE NO SUFFICIENT KNOWLEDGE**" if they were mailed. *See* opp. to facts, at ¶¶ 30 and 35 (emphasis in original). The baseless nature of the arguments is evidenced by the fact that, with their response, the Readings filed a copy of a letter from the IRS to Mrs. Reading dated November 30, 2000 which indicates that the IRS - on that date - sent her *an additional copy* of the November 15, 2000 notice of deficiency that they are now asserting they did not receive. *See* court docket number 83-6, at Exhibit MM, 2 of 6. Based on another document filed by the Readings

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[2] The "Statutory Notice of Balance Due" entries on the Certificates of Assessments and Payments filed by the Government evidence that the notices and demand were properly issued. *See* e.g., *United States v. Scott*, 290 F. Supp.2d 1201, 1206-07, n. 4 (S.D.Cal. 2003).

(which they apparently obtained under the Freedom of Information Act), it appears that at least Mrs. Reading may have refused delivery of the original notice of deficiency. *Id.*, at Exhibit MM, 1 of 6.[3]

The applicable law in this area is that the Government does not have to prove that the Readings received the notices of deficiency, only that they were mailed to their "last known address." *See* 26 U.S.C. §§ 6212(a) and (b)(1); *Jones v. United States*, 889 F.2d 1448, 1450 (5th Cir. 1989). To support the argument that the notices of deficiency were sent by certified mail on November 15, 2000 for the relevant years, the United States filed copies of the notices (Exhibits E and F to the Declaration of Debbie Vahe filed on May 11, 2012) and a certified copy of a certified mail list, PS Form 3877, with a postal stamp of November 15, 2000 (Vahe Exhibit L-1). The notice of deficiency sent to Clare Reading for her 1994 and 1995 income tax years (Vahe Exhibit F[4]) sets forth the November 15, 2000 date and the number on the Receipt for Certified Mail (Z096928396 per Vahe Exhibit F) ties to the number on the certified mail list (Vahe Exhibit L-1, page 2).

The November 15, 2000 date on the notice of deficiency sent to James Reading (Vahe Exhibit E) is smudged but, extrapolating backwards, it is clear from the February 13, 2001 date set forth thereon by which Mr. Reading had to file a Tax Court Petition to challenge the referenced deficiencies that the mailing date of the notice of deficiency is November 15, 2000 (*i.e.*, 90 days before February 13, 2001). *See* 26 U.S.C. § 6213(a) (United States resident has 90 days to file a Tax Court petition after the notice of deficiency is mailed).

The address set forth on each of the notices of deficiency sent to the Readings (Vahe Exhibits E and F) and the certified mail list (Vahe Exhibit L-1, page 2) is the Readings' home address in Mesa where they have resided since 1979. *See* the address used currently by the Readings on their court filings and also opp. to facts, at ¶ 55.

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[3] The copy of the envelope filed by the Readings was received at the IRS on November 27, 2000 (per the received stamp) so it probably contained the November 15, 2000 notice of deficiency rather than the November 30, 2000 letter.

[4] In their response, at 10:20-21 (court docket number 83-1), the Readings appear to mistakenly refer to Duffy Declaration Exhibit H instead of Vahe Exhibit F.

The notices of deficiency and the Form 3877 filed by the Government are sufficient as a matter of law to prove that the subject notices were sent to the Readings. *United States v. Zolla,* 724 F.2d 808, 810 (9th Cir.), *cert. denied,* 469 U.S. 830 (1984) (Form 3877 is "highly probative" and is sufficient, in the absence of contrary evidence, that the notice of deficiency was properly sent). The Readings' vague, general assertion that they "have no sufficient knowledge" about whether the notices were mailed is obviously not enough to defeat the summary judgment motion especially in light of other facts, such as that they filed a document that evidences that the IRS sent Mrs. Reading another copy of her notice of deficiency on November 30, 2000.

**C. The United States is Agreeable that the Compensation Received by Mr. Reading in 1994 and 1995 Should be Divided Between the Readings on a 50-50 Basis**.

The Readings admit that James Reading received over $112,000 in compensation from Pilot Catastrophe Services and $44,575 in compensation from Pilot and Associates in 1994 and over $117,000 from Pilot Catastrophe Services in 1995. *See* Readings' opp. to fact, at ¶¶ 19 and 25. When the Readings filed their untimely 1994 and 1995 tax returns, they wrongly stated that Mr. Reading received zero compensation from such companies.[5] When the IRS was trying to piece together the Readings' tax picture in the context of preparing the notices of deficiency, it taxed Mr. Reading on 100 percent of his compensation (*i.e.*, $44,574 and $112,015 in 1994 and $117,648 in 1995) and Clare Reading on 50 percent (*i.e.*, $22,287 and $56,008 in 1994 and $58,824 in 1995). *See* Vahe Declaration Exhibits E (at Bates page US05815) and F (at Bates page US06382).

The Readings agree that Mr. Reading received the compensation that was asserted by the United States but they believe the IRS should have split Mr. Reading's compensation equally between he and Mrs. Reading when determining their separate 1994 and 1995 liabilities. *See* the document filed by the Readings as court docket number 82, at 3:21-4:9. The United States is agreeable to reducing the amount of compensation received by Mr. Reading by 50 percent for purposes of determining the correct liabilities for his 1994 and 1995 tax years. (This issue only

[5] *See* the Readings' altered 1099-Misc Forms in Vahe Exhibits B and C.

impacts the Readings' 1994 and 1995 tax years since Mrs. Reading was not assessed income taxes for the 1993 and 2008 tax years.) If the Court grants summary judgment on Mr. Readings' 1994 and 1995 income tax years, the United States will provide updated calculations to reflect the balances that are owed based on the 50 percent downward adjustments for those years.[6]

**D. The Reading's Capital Gain Arguments Regarding their 1993 and 1994 Tax Years.**

The Readings correctly point out that the IRS calculated in its November 15, 2000 notice of deficiency issued for his 1993 tax year that Mr. Reading had $85,889 in capital gains. *See* court docket number 82, at 4:14-18. After the notice of deficiency was issued on November 15, 2000, the Readings provided the IRS with more information about the capital gains. As a result, the IRS reduced the $85,889 capital gain by $86,103.59 for Mr. Reading's 1993 tax year and he now has a $214.59 capital loss for that year, which is 50 percent of the total capital loss calculated by the IRS (*i.e.*, $429.18). *See* Exhibits B (at line 1a), E and F (page 1) attached to the declaration of Elizabeth Marriaga filed on May 11, 2012. (In paragraphs 4, 5 and 6 of the Marriaga declaration, the Readings 1993 and 1994 tax years were mistakenly referred to as 2003 and 2004. A "Corrected" declaration that properly sets forth the 1993 and 1994 years is filed herewith).

The IRS's Capital gain adjustment for the 1993 tax year resulted in a tax decrease of $32,866.00 and a downward penalty adjustment to the assessments made against Mr. Reading. *See* Duffy Declaration Exhibit A-1 and the corrected Marriaga Declaration filed herewith, at ¶ 6.

The Readings contend that Mr. Reading is entitled to a $2,171 loss "and not a gain of $85,889.00" for his 1993 year. *See* court docket number 82, at 4:19-25. But the Readings are wrong about the Government asserting "a gain of $85,889.00" since they are ignoring the IRS's adjustments made after the notice of deficiency was issued. Also, their assertion that Mr. Reading is entitled to a capital loss of $2,171 for 1993 rather than a capital loss of $214.59 (which is what the Government is contending) is without merit as a matter of law since they appear to be relying on the notes of someone at the IRS other than Revenue Agent Marriaga, who made the adjustments in question. *See*

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[6] The current interest calculations for those years are Exhibits J-2 and J-3 attached to the Vahe Declaration filed on May 11, 2012.

court docket number 82, at 4:19-25 (citing to Exhibit JJ) and Exhibit JJ (page 1 of 2) in court docket number 83-6.

Regarding their 1994 tax years, the Readings correctly point out that the IRS calculated in the November 15, 2000 notices of deficiency that each of them should have reported $11,948.00 in capital gains. *See* court docket number 82, at 4:10-13. Subsequently, when the Readings provided the IRS with more information about the capital gains, the IRS reduced each $11,948.00 capital gain by $7,807.47, thus, the resulting capital gain for each is $4,140.53. *See* Exhibits B and C (at line 1a), D, E and F (page 2) attached to the Marriaga declaration filed on May 11, 2012.

The IRS's Capital gain adjustment for the 1994 tax year resulted in tax decreases of $3,092 and $2,916 respectively against Mr. and Mrs. Reading for that year and also related downward penalty adjustments. *See* Duffy Declaration Exhibits A-2, at 6 and B-1, at 5 and the corrected Marriaga Declaration filed herewith, at ¶¶ 5 and 6.

The Readings allege that the Government is asserting a "bogus $11,948 [g]ain for 1994" (opp. to facts, at 29:15-17 ) but, again, they are ignoring the adjustments made by the IRS after the notice of deficiency was issued.

Regarding the 1994 tax year, the information provided to the IRS by the Readings after the notices of deficiency were issued relates to their investment in American Cap Funds/American Services Company and the IRS reduced the $15,537.00 gain from that company to a loss of $77.94. *See* Marriaga declaration Exhibit F (at page 2) filed on May 11, 2012. The Readings apparently did not provide evidence to reduce the part of the capital gain for the 1994 tax year that relates to their Merrill Lynch holdings and, thus, the gains relating to those holdings remain in effect. *Id.*

The Readings assert that they are entitled to a capital loss of $83.94 for the 1994 tax year. *See* Court docket number 82, at 4:16-18. But in making that argument, it appears that the Readings are only considering the loss from their American Cap Funds (they believe the loss arising for the American Cap Funds is $83.94; the IRS believes the loss is a few dollars less) and they are ignoring the gain from their Merrill Lynch holdings. In any event, the Readings do not appear to cite admissible evidence for their argument that they are entitled to a capital loss of $83.94 and, thus,

summary judgment in favor of the United States is proper.

**II.**

**THE UNITED STATES IS ENTITLED TO SUMMARY JUDGMENT ON SECTION 6702 PENALTIES AT ISSUE IN THE FOURTH AND FIFTH CLAIMS**

The United States also moved for summary judgment on the twenty-one (21) separate frivolous return penalties assessed against the Readings under 26 U.S.C. § 6702 that are at issue in the Fourth and Fifth Claims. To support its motion, the United States filed copies of the returns that are the basis for the assessments. *See* Exhibits D, H-1 to H-1 and I-1 to I-9 to the Vahe Declaration filed on May 11, 2012.

In their response, the Readings admit that they filed the returns that are being relied on by the United States (opp. to facts, at ¶¶ 49 and 53) but they oppose the penalties by making various arguments that are without merit. For example, they argue that the Government has refused to identify the frivolous parts of the subject returns (opp. to facts, at 31:13-16) but that is incorrect since the Government did provide specific examples of how the returns are frivolous. *See* U.S. brief in support filed on May 11, 2012, at 12:15-13:2 (*e.g.*, the Readings stated in the returns that the United States is a "federal corporation" and that compensation received by them is not taxable).

The Readings also argue that the penalties were not assessed properly (Readings' mem., at 7:18-8:14) but the Government filed IRS Certificates of Assessments and Payments that relate to the assessments (Duffy Declaration Exhibits C and D) and, as discussed above, such forms are presumptive proof of valid assessments. They also attack the penalties by improperly arguing that the compensation that Mr. Reading received is not taxable (Readings' mem., at 7:13-16).

**III.**

**THE UNITED STATES IS ENTITLED TO SUMMARY JUDGMENT ON THE FIFTH, SIXTH AND SEVENTH CLAIMS IN THE COMPLAINT**

In support of their assertion in the that the Court should allow foreclosure of the IRS's tax liens against the Readings' residence, the United States asserted that the purported transfer of the residence on June 10, 2005 from the Readings to the Fox Group Trust was a fraudulent conveyance

which has no effect as to the United States and should be set aside and, in the alternative, the Fox Group Trust is the nominee/alter ego of the Readings. In their response, the Readings admit almost all of the facts that the United States relied on, including that:

a. The Readings purchased the residence in 1979 and are still personally obligated on the note that is secured by a mortgage on the residence (opp. to facts, at ¶¶ 55 and 63);

b. The Readings have lived in the residence rent free since the purported transfer of the residence to the Fox Group Trust (¶¶ 62 and 64);

c. The Readings still pay the mortgage, real estate taxes and utilities on the residence (¶¶ 66, 67 and 68);

d. The Fox Group Trust did not pay monetary consideration for the residence even though it was worth $110,000 at the time of the "transfer" (¶¶ 59 and 61) and the "consideration" supposedly given by the trust was allowing the Readings live in the residence, which is a right that the Readings already had before the "transfer" (¶ 60);

e. The 2005 "transfer" to the Fox Group Trust occurred long after Mr. Reading stopped paying his federal taxes, which was in 1989 (¶ 4);

f. The Readings are "Administrative Trustee[s]" of the trust and acted on behalf of the Fox Group Trust regarding the residence after the 2005 "transfer" (¶¶ 69 and 70); and

g. Mrs. Reading testified at her deposition that the "transfer" occurred after she learned of the IRS's tax liens (Duffy Ex. I at 46:15-18). (The Readings did not admit this fact in addressing U.S. fact 58 even though Mrs. Reading so testified).

Regarding the foreclosure issue, the Readings filed a Declaration "Regarding Deposition of Fox Group Trust Trustee." *See* court docket 83-4, page 110 of 114. The assertions in the declaration are indecipherable and/or frivolous. For example, the Readings discuss the 1848 "Treaty of Guadalupe Hidalgo" and "Land Patent[s]" and assert that the Government "can point to" no statute which requires them "to pay a tax on the fruits of their labor." *See* the declaration, at ¶¶ 4-6.

It appears from the declaration that the Readings may now arguing that the Fox Group Trust was set up for estate planning to pass the residence to a nephew (*Id.*, at ¶¶ 11 and 12) but there is no

evidence of an estate planning motive in the document that created the Fox Group Trust and, furthermore, the trust was created by a person (Aage Nost) who was not an attorney but rather, was a host of a local radio show dealing with health and nutrition. *See* Duffy Exhibit M (copy of document that created the trust) and opp. to facts, at ¶¶ 72, 92 and 93. Also, the Readings continue to treat the residence as their own even though it is supposedly owned by the trust. Thus, even assuming *arguendo* that the estate planning assertion is somehow relevant and supported by admissible evidence (or any evidence), it is self-serving and not the type of "significant probative evidence" that could defeat the Government's summary judgment motion. *See e.g., United States v. Lawrence*, 27 F.3d 193, 197 (5th Cir. 2001). The United States has presented overwhelming evidence that the Readings are unrepentant tax defiers who fraudulently conveyed the residence to avoid paying their taxes and also that the Fox Group Trust is their nominee or alter ego.

## IV.

## CONCLUSION

The Court should enter summary judgment in favor of the Government and against the Readings and the Fox Group Trust. If summary judgment is granted, the United States could provide updated calculations on the issues discussed in Section I(C), above, and also an order of foreclosure and sale regarding the residence.

DATED this 24th day of August, 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:

JOHN S. LEONARDO
United States Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th 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 24th day of August, 2012, I served the foregoing on the undersigned by first class mail:

James Leslie Reading
Clare Louise Reading
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/s/ Charles M. Duffy
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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

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| UNITED STATES OF AMERICA,<br><br>Plaintiffs,<br><br>v.<br><br>JAMES LESLIE READING, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, STATE OF ARIZONA<br><br>Defendants. | Civ. No. 11-0698-PHX-FJM<br><br><br><br>**UNITED STATES' NOTICE OF ERRATA REGARDING THE DECLARATION OF ELIZABETH MARRIAGA FILED ON MAY 11, 2012** |

Paragraphs 4, 5 and 6 of the Declaration of Elizabeth Marriaga filed by the United States on May 11, 2012 mistakenly referred to the 1993 and 1994 tax years of James and Clare Reading as 2003 and 2004. A "Corrected" declaration that properly references the 1993 and 1994 tax years in

the referenced paragraphs is attached hereto as Exhibit A.

DATED this 24th day of August, 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:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th 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 24th day of August, 2012, I served the foregoing on the undersigned by first class mail:

James Leslie Reading
Clare Louise Reading
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/s/ Charles M. Duffy
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District of Arizona
*Of Counsel*

**Government Exhibit**
Exhibit A

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiffs,<br><br>v.<br><br>JAMES LESLIE READING, CLARE L. READING, FOX GROUP TRUST, MIDFIRST BANK, CHASE, FINANCIAL LEGAL SERVICES, STATE OF ARIZONA<br><br>Defendants. | Civ. No. 11-0698-PHX-FJM<br><br>**CORRECTED DECLARATION OF ELIZABETH MARRIAGA** |

I, ELIZABETH MARRIAGA, declare that:

1. I am a Revenue Agent for the Internal Revenue Service ("IRS") in Mesa, Arizona.

2. As part of my duties as an IRS Revenue Agent, I have personal knowledge concerning facts, described below, relating to James Reading and Clare Reading (hereafter "the Readings").

3. As part of my official duties, I made adjustments to assessments made for the 1994 income tax year of Clare Reading and the 1993 and 1994 income tax years of James Reading.

4. The adjustments were made in 2011 based on information that was presented to the IRS after the due dates of the returns for 1993 and 1994 by one or both of the Readings concerning certain stock transactions in those years.

5. Attached hereto as Exhibit A is a copy of IRS Form 4549 that I prepared in or about April, 2011 that relates to the adjustments that I made regarding Clare Reading's 1994 tax year. Exhibit C is a true and correct copy of the corrected IRS Form 4549 that I prepared in early May, 2012 regarding Clare Reading's 1994 tax year. Based on Exhibit C, Clare Reading's tax liability for 1994 was decreased by $2,916.00. *See* Exhibit C, page 1 (line 16).

6. Attached hereto as Exhibit B is a copy of IRS Form 4549 that I prepared in or about April, 2011 that relates to the adjustments that I made regarding James Reading's 1993 and 1994 tax years. Based on Exhibit B, James Reading's 1993 tax liability was decreased by $32,866.00 and his 1994 tax liability was decreased by $3,092.00. *See* Exhibit B, page 1 (line 16).

7. Attached hereto as Exhibits D and F (Attachment B) are copies of supporting documents that relate to the IRS Form 4549, a copy of which is attached hereto as Exhibit C.

8. Attached hereto as Exhibits E and F (Attachments A and B) are copies of supporting documents that relate to the IRS Form 4549, a copy of which is attached hereto as Exhibit B.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

8-14-12
Date

ELIZABETH MARRIAGA
IRS Revenue Agent
Mesa, Arizona