IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Jeffrey T. Maehr, Plaintiff,	)	
v.	)	
UNITED STATES/IRS Defendant.	)	Case # 1:22-cv-00830-PAB-NRN

REPLY TO UNITED STATES' MOTION TO DISMISS PLAINTIFF'S COMPLAINT.

Plaintiff comes before this court with the following rebuttal and evidence regarding this instant case and begs the court's attention to the *cause of action* facts in evidence and questions and challenges raised herein, form challenges notwithstanding.**([1])** Plaintiff holds previous filing information and facts in this case as part and parcel of this response and case, many points which Defendant has failed to respond to or rebut at all, making them true. All evidence and argument is presented for Appeal and Supreme Court certiorari purposes, and Court of Claims filing.

Plaintiff reiterates his request for a Grand Jury to review all evidence in this issue and to make their own decision as to the evidence and its weight herein, which is it's rightful authority**([2])** regardless of this case outcome.

Lastly, Plaintiff defends his right for a Jury to hear his evidence (never before provided in any past cases despite this right due to the amount-7th Amendment) and to come to a just and right decision on all facts of the case based on the below argument and evidence of record.

[1] "The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form." *Simon v. Craft*, 182 U.S. 427 (1901).

[2] In *United States* v. *John H. Williams, Jr.,* 504 U.S. 36 (112 S.Ct. 1735, 118 L.Ed.2d 352), the court stated... "...the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not. (See all of Footnote #38, Plaintiff's Statement of Claims).

A. FACTS OF THE CASE

1. The primary Defendant objection at hand in Defendant's Motion to Dismiss ("Defendant's Motion") is the issue of "prior adjudication" (previous due process of law on the issues). Defendant has repeatedly made claims that the Tax Court already "adjudicated"**([3])([4])** Plaintiff's tax liability when in fact, this is not what the Tax Court actually ruled on, and is purely hearsay**([5])** and presumption**([6])** as will be detailed below. Defendant's Motion does not deny Plaintiff's claims regarding the obvious lack of evidence and proof of any liability, despite attack and demands**([7]),** but Defendant is obviously trying to throw anything and everything at this issue hoping something will "stick" and they will not be forced to answer for their activities in this (and perhaps many other) similarly situated cases. Due process of law**([8])** and fair evaluation of

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[3] Defendant's Motion, P. 2, 1, A, second paragraph; P. 5, second paragraph; B, P. 8, "entered a final judgment" - "collateral attack on a previous ruling" - P. 9, "already litigated his tax claim" - "relitigate the tax assessment" - "tax court already adjudicated his liabilities," etc.

[4] Adjudicate: To settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense. United States v. Irwin, 127 U.S. 125,8 S.Ct. 1033, 32 L.Ed. 99; Adjudication: ...**implies** a hearing by a court, after notice, of **legal evidence on the factual issue(s) involved**. Genzer v. Fillip, Tex.Civ.App., 134 S.W.2d 730, 732; Adjudicative facts: those to which law is applied in process of adjudication; they are **facts that, in jury case, normally go to jury**. Grason Elec. Co. v. Sacramento Mun. Utility Dist., D.C. Cal., 571 F.Supp. 1504, 1521. Blacks Law Dictionary, 6th Edition; (Emphasis added).

[5] "Hearsay Evidence is also known as "derivative," "transmitted," "second hand" or "unoriginal" evidence, and is not actual substantive lawful evidence." Nslui Law of Evidence.

[6] "The power to create [false] presumptions is not a means of escape from constitutional restrictions" *Heiner v. Donnan* 285, US 312 (1932) and *New York Times v. Sullivan* 376 US 254 (1964). "This court has never treated a presumption as any form of evidence." See, e.g., *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) "[A] presumption is not evidence."); See also.: *Del Vecchio v. Bowers*, 296 U.S. 280, 286, 56 S.Ct. 190, 193, 80 L.Ed. 229 (1935) ("[A presumption] cannot acquire the attribute of evidence..."); *New York Life Ins. Co. v. Gamer*, 303 U.S. 161, 171, 58 S.Ct. 500, 503, 82 L.Ed. 726 (1938) ("[A] presumption is not evidence and may not be given weight as evidence.") "Conclusive presumptions affecting protected interests: A conclusive presumption may be defeated where its application would impair a party's constitutionally-protected liberty or property interests. In such cases, **conclusive presumptions have been held to violate a party's due process and equal protection rights**. [*Viandis v. Kline* (1973) 412 U.S.441, 449, 93 S.Ct 2230, 2235; *Cleveland Bed, of Ed. v. LaFleur* (1974) 414 U.S. 632, 639-640, 94 S.Ct. 1208, 1215. (Emphasis added).

[7] *Boathe v. Terry,* 713 F.2d 1405, at 1414 (1983): "The taxpayer must be liable for the tax. Tax liability is a condition precedent to the demand. Merely demanding payment, even repeatedly, does not cause liability."

[8] "The essential elements of due process of law are notice and opportunity to defend, and in determining whether such rights are denied, the Court is governed by the substance of things, and not by mere form." *Simon v. Craft*, 182 U.S. 427 (1901); *Pennoyer v. Neff* 96 US. 733, 24 L.Ed. 565. Due process of law implies the right of the person affected thereby... upon the question of life, liberty, or property, (Fifth Amendment-JTM) in its most comprehensive sense; to be heard by testimony or otherwise, **and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or**

the actual evidence has been denied Plaintiff, claims otherwise notwithstanding, and this violates Plaintiff's constitutional rights, plain and simple.

2. In Defendant's Motion, Pgs. 1-3, the Defendant attempts to bias this court**([9])** with Plaintiff's past actions for lawful due process, however, this lacks evidence and facts in support. As the evidence provided by Defendant below reveals, such claims of past adjudication and attempts to "relitigate" (Defendant's Motion, footnote #3) **([10])** this issue is wholly without merit and easily dismissed.

3. It would seem the Defendant is trying hard to persuade the court to ignore the lack of adjudication of the evidence Plaintiff presented that has NEVER been adjudicated in any past court, ***evidence which Plaintiff will prove below***, including the Tax Court, and which provides the jurisdiction under common law (See footnote # 38) for this court to adjudicate via a jury of Plaintiff's peers.

4. The tap dance presented by Defendant (American's hired servants) may sound legitimate and seem under "*color-of-law*" (See footnote # 29) but it is ripe with the misdirection and plain error in stated facts of adjudication, bordering on *fraud on the court*, (See point #32 below) and ignores actual substance of the issue.

B. JURISDICTION

5. Plaintiff addresses the issue of jurisdiction raised by Defendant's Motion, P. 6, II A 1). Plaintiff has always presumed that this and all past courts are Article III, constitutional, due process court, as is his right to access, and has never been informed otherwise. In order for Plaintiff to address jurisdiction of this court, if Defendant insists in challenging this jurisdictional

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liability be conclusively presumed against him, this is not due process of law and in fact is a VIOLATION of due process." [Black's Law Dictionary, Sixth Edition, p. 500;]. (Emphasis added); The Supreme Court has long held that the same substantive due process analysis applied to the states under the due process clause of the Fourteenth Amendment also applies to the federal government under the due process clause of the Fifth Amendment. *See, e.g., Bolling v. Sharpe,* 347 U.S. 497, 500 (1954).

[9] Defendant's Motion, P. 14, "Mr. Maehr's long campaign to thwart the IRS."

[10] Litigate: "...any controversy that must be decided upon evidence in a court of law. To make the subject of a lawsuit; to contest in law; to prosecute or defend **by pleadings, evidence, and debate in a court**. Valley Exp., Inc. v. U. S., D.C.Wis., 264 F.Supp. 1006, *1009."* Black's Law Dictionary, 6th Edition. (Emphasis added).

issue, he must be apprised of the actual status of the court this instant case is subject to.

6. Plaintiff asks the court to declare if this court is an Article III court which has jurisdiction over this issue, as presented below, or if this court is other than an Article III court, such as an Article IV court, Admiralty Court, corporate or statutory court, and to provide the rules for said court for Plaintiff to properly navigate within. Plaintiff notices the court and Defendant that his lawful, legal, given Christian name as a flesh and blood human being is Jeffrey T. Maehr, not JEFFREY T. MAEHR, (or any derivation) which indicates a corporate or admiralty entity and *legal fiction/fiction of law*(**[11]**). Plaintiff notices the court and Defendant to correct all future documents and filings on this issue. (Memorandum of Law addressing the United States Government Printing Office "Style Manual," March 2000 edition, and other government and court legal authority's facts and law on use of capital letters as lawful names is available if needed for supporting evidence on these jurisdictional issues if required).

7. Plaintiff also requests a declaration by Defendant as to what its actual legal status is so that sovereign immunity and jurisdiction can be addressed by this court. Is the Defendant acting as a legitimate government agency under the U.S. Constitution, or is it acting under its "corporate" capacity?(**[12]**) Plaintiff cannot presume the courts jurisdiction without clear declaration by the court and by Defendant as to what capacity either are acting under, and Defendant's claiming sovereign immunity in this instant case.(**[13]**) Until Plaintiff has this information as a flesh and

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[11] *Legal fiction*. Assumption of fact made by court as basis for deciding a legal question. A situation contrived by the law to permit a court to dispose of a matter, though it need not be created improperly; *e.g.* fiction of lost grant as basis for title by adverse possession; *Fiction of law*. An assumption or supposition of law that something which is or may be false is true, or that a state of facts exists which has never really taken place. An assumption, for purposes of justice, of a fact that does not or may not exist. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Ryan v. Motor Credit Co., 30 N.J.Eq. 531, 23 A.2d 607, 621. Black's Law Dictionary, 6th Edition. (Assume = "pretend." Damage has occurred to the living man Jeffrey T. Maehr, without knowingly and willingly having taken any contractual responsibility for the alleged debt... lack of full disclosure... fraud).

[12] The united states "...is a corporation, a legal fiction that existed well before the Revolutionary War." Republica v. Sween, 1 Dallas 43. United States Code Title 28, Part VI, Chapter 176, Subchapter A, § 3002; (15) "United States means, (A) a Federal corporation." The Supreme Court has defined THREE "united States, thus Defendant's status is yet in question for jurisdictional issues. *Hooven & Allison Co. vs Evatt*, 324 U.S. 652 65 S.Ct. 870, 880, 89 L.Ed. 1252 (1945); See also Black's Law Dictionary, Sixth Edition, definition of "United States."

[13] Government becomes a private citizen: The government, by becoming a Corporation (22 U.S.C.A. §286 [e]), lays down its sovereignty and takes on the mantle of a private citizen. It can exercise no power which is not derived from the corporate charter." (*The Bank of the United States vs. Planters Bank of Georgia*, 6 L. Ed. [9 Wheat] 244; U.S. vs. Burr, 309 U.S. 242.)

blood human being, he can only presume this is a constitutional, Article III, common law court of the People for proper due process, and proceeds herein unless otherwise noticed.

8. The Tax Court, and subsequently, the Appeals Court, chose not to exercise "subject matter jurisdiction" in those courts over the issues herein, which is addressed further in D below, and what the tax Court actually litigated, contrary to Defendant's claims.

C. SOVEREIGN IMMUNITY - CONSTITUTIONAL CONFLICT

9. In Defendant's Motion, P. 7, top, Defendant states...

> "*Here, subject matter jurisdiction is tied to sovereign immunity. The United States cannot be sued unless it has explicitly agreed to waive its immunity. Delgado v. Gonzales, 428 F.3d 916, 919 (10th Cir. 2005). If there is no waiver, the Court has no subject matter jurisdiction. See United States v. Nordic Vill.,Inc., 503 U.S. 30, 33-34 (1992); Price v. United States, 7 F.3d 968, 969 (10th Cir. 1993).*"

10. Sovereign immunity being claimed by Defendant has raised a major constitutional **([14])** issue in this court. The government, and all agencies, are created by the will of the People. The federal government and all agencies or branches are NOT sovereign above the People's will, and cannot exercise authority against the People that are not established **BY** the people, anything countering that supreme premise and authority notwithstanding. **The very fact that Defendant has responded to this and past suits has already caused waiver of its immunity by submitting to jurisdiction as a defendant in this suit,([15]) according to never overturned case precedent**.

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[14] "There is no such thing as a power of inherent Sovereignty in the government of the United States. In this country sovereignty resides in the People, and Congress can exercise no power which they (the People) have not, by their Constitution entrusted to it: All else is withheld." *Julliard v. Greenman, 110 U.S. 421.* (Emphasis added); "...under the democratic form of government now prevailing the People are King so the Attorney general's duties are to that Sovereign rather than to the machinery of government." *Hancock v. Terry Elkhorn Mining Co., Inc., Ky., 503 S.W. 2d 710. Hancock v. Paxton. Ky., 516 S.W.2d pg 867 [2] Cl 3;* "Under our form of government, the legislature is not supreme. It is only one of the organs of that absolute sovereignty which resides in the whole body of the people; like other bodies of the government it can only exercise such powers as have been delegated to it, and when it steps beyond that boundary, its acts...are utterly void." - See also *Billings v. Hall*, 7 CA. 1 and *4 Wheat*. 402 (Bouvier's 14th Ed. Law Dictionary: 'Sovereignty').

[15] Defendant has a long history of submitting to and responding to Plaintiff's suits, therefore, sovereign immunity is a mere distraction and should be dismissed. No other past court ever dismissed any case for sovereign immunity reasons but for other defense related reasons. (See Defendant's Motion, footnote #1, for that evidence history).

11. Defendant claiming "sovereign immunity" is in direct conflict with the constitutional facts. The People are sovereign above government, since the People created the very government which is usurping authority and rights above the People. Claiming it cannot be held accountable to the People for its activities against the People**([16])** is dismissed by the Supreme Court, and contrary to the 1st Amendment right to Redress of Greivance. (See Exhibit B and footnote #43).

12. In *Dalehite v. United States*, 346 U.S. 15 (1953), the court held that sovereign immunity is established only "*because the decisions found culpable were all responsibly made in the exercise of judgment at a planning rather than an operational level*" where the tort or error occurred in the planning stages of the administrative activities and NOT the execution of those activities. It is obvious that "someone" within Defendant agency performed the activities necessary for the assessment, "allegedly" basing it on normal "...acts of subordinates in carrying out the operations of government in accordance with official directions..." (*Dalehite*, P. 1). Is Defendant claiming their assessment actions against Plaintiff were "planned," meaning originally lawfully authorized by Congress? Such activities as has occurred to Plaintiff are NOT lawfully "normal," nor are they "official directions" that are part of Defendant agency's lawful, authorized duties.

13. In addition, given the question as to the "corporate" status of Defendant (See Footnotes #12 & #13 above), Defendant appears to be acting in the capacity of a "private citizen" and cannot claim statutory or any other kind of sovereign immunity for this suit.

D. TAX COURT - WHAT IT ACTUALLY LITIGATED - SUBJECT MATTER JURISDICTION!

14. Defendant repeatedly claims that the elements of this instant case have already been "adjudicated." This is not in evidence and this fact is even substantiated by Defendant's own Motion, along with the Appeals Court's ruling. This case has nothing to do with "setting aside" the Tax Court's ruling on Plaintiff's "failure to state a claim..." which caused the dismissal, or in negating the Tax Court's authority to rule on liability "amounts" alone as it did.

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[16] A hired servant who suddenly begins to steal from and oppress the master of those who hired them can be held accountable by them, at will. This servant cannot claim to be immune to this authority and escape justice and being held accountable for their crimes any less than Defendant or any others involved being held accountable under due process of law for its malfeasance, misfeasance or nonfeasance, and possibly RICO violations. (See Exhibit B)

15. In Motion, P. 9, bottom, Defendant states for the record...

> "*If Mr. Maehr wanted to dispute the IRS's calculations, he was responsible for showing what he believed his taxable income to be in the Tax Court. He now suggests he has not received fair hearings because, until his 2019 FOIA request, he did not have documents he believes the IRS used to determine his taxes or evidence that the IRS lacked such documents.* ***That is backwards****. In general,* ***taxpayers are required to file returns reporting their incomes****. 26 U.S.C. § 6012.* ***Gross income*** *is defined to include "all income from whatever source derived", unless specifically excepted under the Internal Revenue Code. 26 U.S.C. § 61.*" (Emphasis added).

16. Defendant raises the multiple issues of "backwards," "taxpayer," "required to file returns," and "gross income definition" in this quote, all of which are relevant to the issues in this case and each issue will be discussed in detail below. However, the first "hurdle" for Plaintiff is on "prior adjudication," as the court stated in the first status conference.

17. The Tax court had but one "*subject matter*" focus before it which Defendant acknowledges:

> "*Mr. Maehr had 'fail[ed] to specifically identify errors related to the determination of his income tax deficiencies' even though the Tax Court had given him opportunities to amend. Maehr, 480 Fed. Appx. at 923." (Motion, P. 9 first paragraph)."*

18. Plaintiff does not explain how Plaintiff could "*show... what his liabilities should be*" (Defendant's quote in Footnote #21 below) if there ARE none he could possibly show. Plaintiff cannot produce evidence that does not exist, as Defendant has proven in the previous FOIA case. There are no other words that can be stated to simply declare that "there is no liability, because there are no taxable assets." THAT is exactly what Plaintiff has repeatedly declared throughout these proceedings. Defendant is merely presuming that Plaintiff had tax liabilities and that he failed to show them to the Tax Court, or argue "amounts" of the alleged liability.

19. Plaintiff asks this court to consider how the Tax Court could "uphold" Plaintiff's tax liability when the Defendant provided no evidence of this alleged tax liability into evidence in this court as determined in the previous FOIA case**([17]).** Defendant provided no proof of liability or personal

[17] *Maehr v United States*, 19-cv-03464, Docket 51, P.12, #45.

documents of any assets that Plaintiff has ever had that substantiates the assessment and garnishment of ALL Plaintiff's social security for years. The Tax Court could not rule on something not in evidence, and did not, as further proven below.

20. Plaintiff asks this court to consider the fact that the ONLY *subject matter* the Tax Court adjudicated is the "*amount*" of the assessment,**([18])** but this was NOT the primary *subject matter or cause of action* which was brought before the Tax Court by Plaintiff. Plaintiff made this extremely clear in all pleadings. Plaintiff was following IRS rules for challenging the Debt, (Tax Court being something he was required to do) but it was impossible for Plaintiff to raise any issue of "amount" discrepancies when he clearly and repeatedly denied ANY and all tax liability existing, and could provide no evidence of "amount discrepancies" because they did not exist.

21. Plaintiff clearly made his "claim" (*cause of action*) regarding the assessment itself in the Tax Court and all past courts, but the court had but one subject matter jurisdictional issue it addressed... that of **no discrepancies of "amount" being provided** by Plaintiff because he couldn't. Plaintiff was denied his lawful right to argue the entire alleged tax liability itself with Defendant, (discussed in detail below at I), thus, he had to file suits to receive due process **after** the Tax and Appeal's Court's ruled on the "amount" issue alone and because Plaintiff's *cause of action* was left intact and un-adjudicated.

22. Plaintiff was required to utilize the Tax Court as part of his seeking remedy, which he did. The dismissal of the case in no way dismissed the *cause of action* evidence and challenge of the assessment not ruled upon, and therefore, could not dismiss future litigation.**([19])** The Tax Court, and subsequent courts, failed to provide any "*findings and conclusions*" on any "*issues of fact,*

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[18] Defendant states in Motion, P. 9... "The Tax Court has already adjudicated his liabilities. The Tax Court's opinion (Ex. A) shows that the court dismissed Mr. Maehr's petition and made a finding as to each of the 2003-2006 tax years. (The Tax Court's dismissal for failure to state a claim counts as a final decision for res judicata purposes. *Springer*, 2010 U.S. Dist. LEXIS 18802, at *44-45.) The Tenth Circuit affirmed, observing that Mr. Maehr had "fail[ed] to specifically identify errors related to the determination of his income tax deficiencies" even though the Tax Court had given him opportunities to amend. *Maehr*, 480 Fed. Appx. at 923."

[19] Any court proceeding that does not rule on some elements of the case, such as the Appeals and Supreme Court's oft examples, does NOT negate those elements and make future due process on those *cause of action* elements void. (See footnote #22).

law, or discretion presented on the record"**([20])** by Plaintiff (which was required if adjudication on the issues occurred), apart from "amount," thus, adjudication of these issues did not occur in the past because that was not the subject matter the court addressed, thus "*subject matter jurisdiction*" in those courts was not valid on the subject matter and *cause of action* in this instant case.

23. Defendant clearly admits the Tax Court ONLY "*made a finding as to each of the 2003-2006 tax years*" on "deficiencies" and that was the crux of the adjudication because of no "claim" (Defendant's Motion, P. 9, middle paragraph), and goes on to quote the Appeals Court...

> *"The Tenth Circuit affirmed, observing that Mr. Maehr had "fail[ed] to specifically identify errors related to the determination of his income tax deficiencies" even though the Tax Court had given him opportunities to amend. Maehr, 480 Fed. Appx. at 923."*

24. The dismissal for "*failure to state a claim*" (Defendant's Motion, Exhibit A) was ONLY addressing the issue of Plaintiff NOT having provided any documentation to challenge actual assessment "amounts" and did NOT address the *cause of action* issues of the assessment itself, any actual liability, and proving Plaintiff had ANY taxable "income" which Defendant based the assessment on. If Defendant is claiming that such judgments were made on the assessment merits itself without *Findings and Conclusions* addressing those elements, then it is likely we are dealing with VOID judgments (See Footnote's #26 and #27) because due process was denied, given the false representations made by Defendant of Plaintiff's taxpayer status and liability, and will be challenged.

25. Not one of the *cause of action* issues within this instant case have been adjudicated in the past, and the Tax Court's dismissal of the single issue purely on this limited "amount" review element does not impact these present issues. The Tax court, once it dismissed the case for *failure to state a claim* on amount issues, dismissed any subject matter jurisdiction over ANY other aspect of the evidence. The Tax Court merely "made a finding as to each of the 2003-2006

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[20] "The parties are entitled to know the findings and conclusions on all of the issues of fact, law, or discretion presented on the record." Citing *Butz v. Economou* 438 U.S. 478, 98 S. Ct. 2894, 57 L. Ed. 2d 895, (1978). *Federal Maritime Commission V. South Carolina State Ports Authority et al*. certiorari to the united states court of appeals for the fourth circuit No. 01-46. 2.535 U.S. 743, 122 S. Ct. 1864, 152 L. Ed. 2d 962, (2002). See also FRCPA Rule 52(a) and *United States v. Lovasco* 431 U.S. 783 (06/09/77), 97 S. Ct. 2044, 52 L. Ed. 2d 752, and *Holt v. United States* 218 U.S. 245 (10/31/10), 54 L. Ed. 1021, 31 S. Ct.

tax years" but this was based ONLY on "amount" and not on evidence of debt, and ONLY based on hearsay Defendant-manufactured documents, (if any were even part of the Tax Court's evidence) and did NOT adjudicate any factual and proven proof of debt documents of record supporting the debt.

26. If the Defendant did not, in the Tax Court, and can not now, provide one single document proving Plaintiff's liability or income, then the Tax Court's rulings couldn't possibly have adjudicated the issues in this present case. The Tax Court's rulings couldn't possibly reach across the dismissal and impact the very assessment and liability *cause of action* issues NOT adjudicated in that court. This is smoke and mirrors being used to distract this court from the true limited, narrowly-focused extent of the Tax Courts ruling, and inflating it to be "all encompassing" over Plaintiff's *cause of action* arguments and evidence in this case when that cannot be proven. That is not due process.

27. The fact that the Appeals Court "affirmed" the Tax Court's ruling also does not reach this instant case, again, due to *subject matter* and *cause of action*. The Defendant's quote in #23 above, in fact, shows the 10th Circuit confirms what was actually, and ONLY, adjudicated, and it does not reach to ANY aspect of this instant case *subject matter* and *cause of action*.

28. In neither of these two courts was the evidence and *cause of action* in this instant case "adjudicated" in any way. The same pattern can be shown in every other past case related to the *subject matter* of the assessment and liability itself, and therefore, due process on these issues remains undone and ripe for addressing, and is NOT a "do-over," any "deductions"**([21])** argument notwithstanding. The very fact that the courts, and Defendant, have continued hearing**([22])** and defending against, these issues shows that they have merit and *cause of action* not being addressed, obviously due to subject matter jurisdiction, or procedural or form issues and not the merits of the evidence provided.

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[21] Motion, P. 10, top paragraph: "The Code permits numerous deductions from income, but the burden is on the taxpayer to substantiate them. *See, e.g.*, *INDOPCO, Inc. v. Comm'r*, 503 U.S. 79, 84 (1992) (a 'deduction is a matter of legislative grace and [] the burden of clearly showing the right to the claimed deduction is on the taxpayer.'). Mr. Maehr had the opportunity to show the Tax Court what his liabilities should be. If he chose to focus on other arguments, he does not get a do-over now."

[22] Not one case (save the FOIA case) to Plaintiff's awareness has ever been dismissed ***with prejudice*** and all un-adjudicated *cause of action* elements have always been left "open" to future attack. There is an obvious reason the courts have chosen this open litigation route, and that is because the evidence has never been adjudicated under due process of law and Plaintiff's rights, or it would be in the record, but it is not.

29. Of course, the very concept of "deductions" on an unproven debt and liability have no bearing or relevance on the issues at hand. This is simply more distraction and presumption by Defendant that Plaintiff had a "liability." Defendant is trying to get the court to accept the Tax Court's ruling as "adjudication" of all elements and *cause of action* of this present case. Because Plaintiff could not present argument on "amounts" by showing liability challenges through not taking advantage of "deductions" or showing other amount contest that ultimately led to "failure to state a claim" in the Tax Court is a frivolous position here.

30. The Tax Court, therefore, essentially declared that it did NOT adjudicate the *cause of action* evidence of debt or any other elements of the assessment of this present challenge because of the dismissal, and thus, the *Res Judicata* argument**([23])** can be set aside as moot. None of this present evidence was considered by the Tax Court, and therefore this court has subject matter jurisdiction to hear and adjudicate, for the first time, all the *cause of action* evidence, or lack of proof of debt. There was no confusion as to the *cause of action* issues at hand in those past courts, including the Tax Court.

31. In Defendant's Motion quote in footnote #21 above, it is rather ironic that Defendant quotes requirements regarding "*burden is on the taxpayer*" to prove any "deductions" while implying out of the other side of their mouth that they do not have any "burden" to prove the debt, and the courts have no responsibility to have Defendant prove adjudication of the *cause of action* issues, and the underlying liability for the assessment in question. In fact, Defendant hasn't even been able to prove to this court that Plaintiff ***IS*** a "taxpayer," (subject to the alleged tax) and is simply providing presumptive testimony to this court that is without evidence, engaging in semantics and subterfuge tactics.

32. Plaintiff believes we are entering a "*fraud on the court*"**([24])** arena - "*schemes considered to*

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[23] Defendant's Motion, P. 8, B, Defendant claims that a "final judgment on a claim" bars Plaintiff from "bringing the same claims in a different court" under the res judicata doctrine. This is true ONLY where the elements of the final judgment were, in fact, actually adjudicated. "Final judgment: The last decision from a court that **resolves all issues in dispute** and settles the parties' rights with respect to those issues." https://www.law.cornell.edu/wex/final_judgment (Emphasis added).

[24] "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all,

be unconscionable attempting to deceive or make misrepresentations through the court system" that are clearly not of record in this issue, in "*attempts to undermine the integrity of the judicial process and influences the decision of the court*"**([25])** using clearly inaccurate presentations to overcome Plaintiff's due process rights. The "prior court adjudication" claims by Defendant on the issues at hand is clearly a "misrepresentation" of the facts in evidence, and claiming past court decisions "adjudicated" all the *cause of action* evidence herein suggests such rulings are VOID**([26])** on their face for lack of such *subject matter* and *cause of action* evidence in said courts. Such judgments are not under statute of limitations**([27])** and can be raised at any time.

33. For the record, Plaintiff points this court to Supreme Court rulings regarding case precedent on improper dismissal for *failure to state a claim*. (See Exhibit A). Plaintiff is NOT trying to "relitigate" anything regarding any aspect of the presumed issue of "amount" of the alleged debt, since that was obviously NOT Plaintiff's *cause of action*. Plaintiff clearly made a "claim" (*cause of action*) but it was NOT the sole "amount" claim that the court was looking for, despite all other *cause of action* claims of record clearly being stated.

34. In order for Defendant to prove past adjudication on any one of the issues herein, let alone all of them, they must show in the record where any of the evidence such as proof of debt, proof of liability and proof of taxable "income" are in evidence in any record in any past court, including

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and never becomes final." ("The maxim that fraud vitiates every transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393 (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill. App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935). 37 Am Jur 2d at section 8.

[25] See "Fraud on the Court Discussion" attached.

[26] "It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8,27 S. Ct. 236 (1907). "Judgment is a void judgment if court that rendered judgment **lacked jurisdiction of the subject matter**, or of the parties, **or acted in a manner inconsistent with due process**, Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const." Klugh v. U.S., 620 F. Supp. 892 (D.S.C. 1985) (Emphasis added);

[27] A party affected by VOID judicial action need not appeal. State ex rel. Latty, 907 S.W.2d at 486. "It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring); A void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n, 874 S.W.2d 192, 194 (Tex. App.—Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at *1 (Tex. App.—Tyler Aug. 30, 1999, no pet. h.).

the Tax Court, or that Plaintiff had any requirement to even file an income tax return in the first place, as Defendant is presuming and is expecting this court to embrace, without ANY evidence whatsoever.

35. Plaintiff challenges Defendant to provide evidence that "proof of debt" was provided to the Tax Court that could, in the slightest way, prove the alleged liability and assessment as being claimed as "upheld" under valid due process. Plaintiff challenges Defendant to prove that any of his past *cause of action* challenges were actually "adjudicated" as Defendant repeatedly claims in their Motion, and actual evidence provided to ANY past court. It cannot be done.

36. This court should not dismiss this suit because of hearsay and presumptive claims that any aspect of these present *cause of action* issues have ever been adjudicated, especially since Defendant has not proven this adjudication on the alleged liabilities and other evidence in any form. The Tax Court and subsequent Appeals Court concur with Plaintiff's position on exactly what was actually adjudicated under due process, and it was the "amount" alone.

E. CONSTITUTIONAL, STATUTORY AND LIABILITY ISSUES RAISED

37. Defendant's Motion, P. 6, Defendant discusses Fed. R. Civ. P. 12(b)(1) & (6), which concerns "cognizable claim" and the "sufficiency of the complaint." The facts presented herein are far "above the speculative level" and certainly do "provide real reason to believe that the plaintiff has 'a reasonable likelihood of mustering factual support for these claims.'" In fact, there is no "mustering" necessary as all facts are already in evidence, jurisdictional "magic words" notwithstanding. Since all these federal *cause of action* issues have not been adjudicated, this court has jurisdiction to finally and fully hear and adjudicate them.

38. Defendant's Motion, P. 11, bottom paragraph, Defendant states...

> *"the Anti-Injunction Act (the "AIA") and the Declaratory Judgment Act (the "DJA") bar suits to restrain the assessment or collection of federal taxes."*

The Anti-Injunction Act ("AIA") and the Declaratory Judgment Act ("DJA") can be put out of view as moot since this suit is not attempting to stop government from lawful duties, in any way. It IS defending Plaintiff's personal right to NOT pay a tax on unproven income, **(***Gregory v.*

Helvering **[28])** and to have returned what has been wrongfully taken under *color of law*.**([29])**

39. While Plaintiff appreciates Defendant's consideration of his ability to "restrain the assessment or collection of federal taxes," Defendant is apparently equating the challenge of the assessment and Plaintiff's lawful liability with somehow attempting to prevent Defendant from exercising their lawful duties. Defendant appears to stand against the *Helvering*, supra, ruling, claiming Plaintiff is somehow barred from this right.

40. Defendant's Motion, P. 11, D, Defendant again states...

> "*Mr. Maehr's current suit, like the others, is an attempt to prevent the IRS from assessing and collecting taxes*."

Plaintiff has never claimed that the government's right to collect lawful taxes doesn't exist, from anyone whom owes it. Rather, he has repeatedly stated this right exists but that it is limited to lawful, constitutional taxes on lawful "income" and on those "subject to" and "liable for" said taxes. Defendant is arguing against Plaintiff's right to not pay any taxes more than he is liable for. This is NOT, in any form, "*an attempt to prevent the IRS from assessing and collecting taxes*."

41. This is *libel* against Plaintiff. Nothing in Plaintiff's activities have been unlawful or an "attempt to prevent the IRS from assessing and collecting taxes." Defendant is claiming that Plaintiff's right to lower or eliminate any taxes is somehow wrong and should be prevented, but has no authority to claim such a thing. Plaintiff's continued attempts to have Defendant "prove" the alleged debt with actual evidence (*cause of action*) is being interpreted as somehow an "*attempt to prevent the IRS from assessing and collecting taxes.*" This is obfuscation at the least, and clearly erroneous, and is an attempt to dismiss Plaintiff's constitutional rights of due process under *color of law*.

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[28] *Gregory v. Helvering,* 293 U.S. 465 (1935): "The legal right of the taxpayer to decrease the amount of what otherwise would be his taxes or altogether avoid them by means which the law permits, cannot be doubted."

[29] Color of law. The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of state law." *Atkins v. Lanning*, D.C.Okl., 415 F.Supp. 186, 188. Black's Law Dictionary, 6th Edition; (See also 18 U.S.C. §242, §245 and 42 U.S.C., 1983).

F. "TAXPAYER" BIAS LABEL

42. In Defendant's Motion, P. 13, footnote 7, and in #15 above, Defendant labels Plaintiff by using the biasing, presumed, hearsay and unproven term of "taxpayer" to this court. Defendant is claiming Plaintiff is a said "taxpayer" without proving any liability that would place him in such a category before this court, or any jury. Therefore, such a label is merely creating a bias of presuming Plaintiff "obviously owes taxes because he is a 'taxpayer' and hasn't paid those taxes." Unproven name calling.

43. Plaintiff points out, as a "technical matter" of record, The word "taxpayer" is defined in 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313, Definitions, and states... (14) Taxpayer: "The term 'taxpayer' means any person subject to any internal revenue tax."**([30])** Obviously then, if any person is NOT "subject to" and "liable for" such a tax, they are, then, "nontaxpayers"**([31])** and cannot be the subject of any liability, let alone any unproven assessment by Defendant.

G. "SUBJECT TO" AND "LIABLE FOR..."

44. Defendant Motion, P. 5, footnote 13, states, in part...

> "*As a technical matter, a 'deficiency' arises when the IRS believes that a taxpayer's true liability is greater than what the taxpayer reported on his or her return. 26 U.S.C. § 6211(a)*."

Herein, a conundrum begins to form...

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[30] See also 26 U.S.C §6012, (a) General rule; Returns with respect to income taxes under subtitle A shall be made by the following: (1) (A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount, **except that a return shall not be required of an individual—(A)(1)(ii); who is a head of a household (as so defined) and for the taxable year has gross income of less than the sum of the exemption amount plus the basic standard deduction applicable to such an individual...** (Emphasis added).

[31] "The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, **and no attempt is made to annul any of their rights and remedies in due course of law**. With them Congress does not assume to deal, and **they are neither of the subject nor of the object of the revenue laws**." *Long v. Rasmussen*, 281 F. 236, 238 (D. Mont. 1922). (Emphasis added).

45. Anyone "subject to" and "liable for" such an income tax (meaning having made enough of such "income") MUST file a return by law. (Footnote #30). Plaintiff agrees with this law. The issue is, the ONLY thing that can make someone liable to file a 1040 form is making "income" that would lawfully make Plaintiff "subject to" and "liable for" such a tax. Defendant has not met that burden of proof against Plaintiff.

46. Plaintiff repeatedly demanded proof that he is somehow forced into being a "taxpayer" verses a "nontaxpayer" merely by an assessment and demand for payment, (which does not create liability-see footnote #7). However, Defendant apparently manufactured an assessment by some mysterious mechanism, seeing Plaintiff had made no "*income*" subject to the revenue tax for those and many other years before, and since.

47. Plaintiff further declares, as a "technical matter" of record, that he did not file "**any**" tax return for the assessed years 2003-2006, having no taxable income and thus no liability to file, and is NOT a "taxpayer" until that is proven otherwise. If Defendant can prove Plaintiff is a "taxpayer," it is not in any record in past courts or in this instant case, (See #19 FOIA case as evidence) and this court should disregard any reference to this biasing and presumed term against Plaintiff, until proven otherwise.

H. BASELESS AUTHORITY TO ASSESS

48. The ***elephant in the room*** question arises, therefore, as to how Defendant could "*believe*" (#43 above) that Plaintiff's "*true liability is greater than what the taxpayer reported on his or her return*," given that no tax return was filed that Defendant could actually use to base any assessment and liability "*belief*" on. Defendant has provided no documents showing evidence of any taxable assets that might make Defendant "*believe*" Plaintiff's liability was anything other than what he has repeatedly stated, even prior to any lawsuits or assessments, and is highly suspect with no support. It cannot be any more clear as to the lack of evidence and due process on this very issue and the repeated attempts by Defendant to present false statements to this court on Plaintiff's presumed liability. Defendant is attempting to use the court as a club with which to beat its way around the law and *cause of action* facts.

49. As a further "technical matter" of record, by what authority did Defendant manufacture a

"Substitute for Return" replacement[32] for a nonexistent return never required to be filed, and what data could such a created assessment be based on where no such financial records exist, and of course, ***why***? What triggered the manufacture of a "return" for Plaintiff if no asset records exist, and if Defendant can not show that Plaintiff is a "taxpayer" and "liable for" this assessment? The evidence for willful, wanton, and collusive fraud[33] is mounting.

50. Defendant deprived Plaintiff of his lawfully earned and deserved social security assets despite being a disabled Navy veteran since 1972, under *color of law* and with zero evidence of alleged assets, and without any support of any genuine mechanism of law. This cannot be allowed to exist and continue against Plaintiff and other Americans.

51. Plaintiff is not being unreasonable here and is merely defending his rights under due process and the Constitution, if they exists any more in America. He is defending his finances as a disabled veteran, who lived purely on his very limited disability compensation, in poverty, with his social security property having been "fully" garnished (not the 15% as required by law[34]) for years, until mid 2020, when Plaintiff stopped the benefits. More Grand Jury evidence.

52. Plaintiff's due process rights have been repeatedly denied. His requests for evidence of debt has been denied. His request to be heard on the *cause of action* lack of evidence has been denied and Plaintiff had to force the Defendant to comply with the law in a previous FOIA court case.

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[32] The IRS can file a "Substitute for Return" (SFR - IRC section 6020(b)) against any American, but for that SFR, the IRS uses the information it has (usually information statements about income, like Forms W-2 and 1099) to file for Plaintiff. See... (https://www.hrblock.com/tax-center/irs/audits-and-tax-notices/can-the-irs-file-a-return-for-me/). Said information is allegedly garnered because... "(1) it has what it considers to be adequate information about income and (2) the estimated tax liability is at or above a certain level. IRS receives this income information from third parties, such as banks and employers, who make payments to individuals." https://famguardian.org/PublishedAuthors/Govt/GAO/GAO-GGD-00-60R-SFR.pdf.
Plaintiff never received such a SFR, and no such form is in evidence, let alone any "third party" documents, W2, 1099 or any other documents or forms.

[33] "Fraud in its elementary common law sense of deceit — and this is one of the meanings that fraud bears in the statute, see United States v. Dial, 757 F.2d 163, 168 (7th Cir.1985) — includes the deliberate concealment of material information in a setting of fiduciary obligation. A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud. . . ." *McNally v. United States*, 483 U.S. 350, 371 (1987), quoting Judge Posner in *United States v. Holzer*, 816 F.2d 304 (1987). (This also raises the issue of RICO violations).

[34] "*Taxpayer Relief Act - Public Law 105-34 Section 1024 - Continuous levy on certain payments*" which clearly states "up to 15%" of said funds could be subject to garnishment, which was repeatedly raised by Plaintiff, but also ignored by Defendant, to Plaintiff's damage over garnishment time, adding to the wrongful taking.

Considering that Plaintiff obtained what he was seeking, he didn't need to "appeal" (Defendant's Motion, P. 10, C, bottom) the fact that Defendant was FORCED to comply with their violated FOIA laws (*Maehr v. United States*, No. 19-cv-03464, U.S. District Court, Colorado) to produce the evidence they used to manufacture the original assessment, the eventual dismissal notwithstanding. The dismissal of the FOIA suite does not somehow negate the actual *cause of action* evidence provided by Defendant regarding the lack of proof of liability and any lawful debt existing.

I. PROVING LIABILITY TO FILE ON PRESUMED INCOME

53. Defendant has never proven Plaintiff's liability for the assessment, let alone produced any documents in support of same...

> "..liability for taxation must clearly appear [from statute imposing tax]." *Higley v. Commissioner of Internal Revenue*, 69 F.2d 160 (1934)]; "Liability to taxation must be read in statute, or it does not exist." *Bente v. Bugbee*, 137 A. 552; 103 N.J. Law. 608 (1927)];

54. Liability is addressed in 26 U.S.C. §7701(a)(14) and 26 U.S.C. §1313 on someone who is "liable for" and "subject to" the income tax. Liability exists ONLY when lawful "income" is made or received in lawful amounts. If that condition is met, THEN, and ONLY then, is someone a "taxpayer" and "liable for" a tax, and is required to voluntarily self-assess in filing a 1040 tax return. No where else is liability created through some other mechanism of law or code. Defendant is presuming and making categorical claims of liability about Plaintiff without proof. (*Bothke*, supra).

55. Defendant is attempting to persuade this court that Plaintiff made lawful "income" for the years 2003-2006, is therefore a "taxpayer," and was required to file a 1040 form, but didn't for those taxable years. Defendant's position is that Plaintiff should be punished for this "failure to file" position, regardless of the actual evidence. "Everyone is a taxpayer" is Defendant's obvious claim, "until proven otherwise." Guilty until proven innocent. This is contrary to the rule of law and constitutional due process.

56. As a "technical matter" of record, (referencing #15 above, Defendant's Motion quote on P. 4, top), Defendant's use of "*all income from whatever source derived*" as the definition for "*gross income*" is frivolous, and does not answer Plaintiff's simple request to actually define "income" with a sensible definition that is not ambiguous and nonsensical and merely presumed. Defining a "bushel of oranges" as "oranges mines the ones removed for other reasons" does NOT define what an orange is, and neither does "*all income from whatever source derived*" define what "income" legally and constitutionally is so that Petitioner (or any American) can "know" what his liabilities are. Presumptions and "everyone knows" are moot explanations with no lawful validity in defining "income."

57. Defendant is claiming that Plaintiff has a legal duty that he is... "*required to file returns reporting their incomes, 26 U.S.C. § 6012*" (Defendant's Motion, P. 9 bottom) but fails to define, let alone show, how "income" is something that Plaintiff had, and which was assessed as taxable, especially lacking ANY documents to substantiate the assessment or SFR. Plaintiff clearly provided never overturned Supreme Court definitions of "income" (Plaintiff's Statement of Claims, Docket #1, Footnote # 28) but Defendant appears to be holding that said Supreme Court cases are invalid**([35])** and have no impact on the IRS or its activities. This issue is being ignored by Defendant and must be addressed in this case as one of the *causes of action*, and a Grand Jury and jury of Plaintiff's peers must hear this evidence.

58. Defendant appears to be claiming that Plaintiff must file returns to report as "income" something that is not lawful "income" according to the Supreme Court, on assets which are not lawfully liable for taxation, or even exist. "That is backwards" (#15 above) is Defendant's claim regarding the challenge to the assessment. The assessment came FIRST before any filing and regardless of any lack of evidence of taxable assets that are liable for taxation. Defendant appears to be suggesting Plaintiff is required to file a return stating he has no "income" that is lawfully taxable in order to have standing under due process to defend against this frivolous assessment. Defendant has things "backwards" here.

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[35] All agencies and courts are bound by the rule that they must follow applicable Supreme Court precedent unless and until it is overruled by the Supreme Court. *Agostini v. Felton*, 521 U.S. 203, 237 (1997); *Internal Revenue Manual:* 4.10. 7.2.9.8 (0l-0l-2006) Importance of Court Decisions; 1. Decisions made at various levels of the court's system are considered to be interpretations of tax laws and may be used by either examiners **or taxpayers** to support a position. 2. Certain court cases lend more weight to a position than others. A case decided by the U.S. Supreme Court becomes the law of the land and **takes precedence over decisions of lower courts**. **The Internal Revenue Service must follow Supreme Court decisions**. (Emphasis added).

J. MISCELLANEOUS RELATED ISSUES

59. For the record, Plaintiff made his request for a Due Process or Equivalent Hearing many years ago but Defendant failed to provide said hearing, to this day (See footnote #42 below). This was repeatedly raised in the past with Defendant and the courts. Defendant has no evidence that this required hearing was provided, by passing due process yet again. This precipitated further court actions by Plaintiff in an attempt to be heard and for all *cause of action* evidence of record to be considered.

60. Defendant's Motion, P. 11, top, states...

> *"Mr. Maehr has already obtained the only applicable relief under the statute: the IRS has already reversed his certification. (See Ex. B). Thus, there is no further controversy regarding his passport."*

61. Plaintiff contests this "only applicable" relief. This is in essence stating...

> "*We garnished ALL of your social security and revoked your passport based on no evidence of actual debt, and just our hearsay and presumption, but because our time to collect has run out, we now have 'reversed' your certification" and you can get your passport back.*"

62. All Plaintiff's social security assets were wrongfully taken, and the fact that the statute of limitations now prevents further wrongful taking does not mitigate past irreparable damage to Plaintiff or to wrongful taking. The "passport controversy" involves the loss of Plaintiff's ability to use his passport and to travel for business, for years.**([36])** That is damage done, irreparably. Nothing can change that past loss of work opportunity, which can be proven if necessary.

63. Plaintiff's request for a Grand Jury still stands given the evidence of record, and holds that Defendant is clearly engaged in malicious activities in this case against him, regardless of the

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[36] Plaintiff has recently reapplied (June 24, 2022) for his passport with the State Department, but this was complicated by the apparent destruction of his last passport which was required for reapplying. Plaintiff has received a response from the State Department stating he must re-apply as if he never had a passport in the past. Plaintiff lost approximately 3 years of his old passport life as well, costing him yet more money and now this inconvenience of having to apply in person at an appropriate passport facility and not through the mail.

outcome of this case, which does not hamper or prevent this court from presenting the evidence to the Grand Jury foreman. There is nothing "vague" about the evidence of "wrongdoing." (Defendant's Motion, P. 11, D). Let the Grand Jury make this decision if there is nothing to hide, cover up, and suppress.**([37])**

64. As an aside, the Defendant, in its reversal of certification letter, failed to provide any information as to what mechanism triggered the reversal, and failed to provide any subsequent explanation as required. Plaintiff filed a FOIA request (dated Feb. 22, 2022, tracking # 7019-2280-0000-9750-0013) to the Defendant (received on March 1, 2022) to inquire as to the exact state of the disputed assessment, any tax owed, and any other details on the reversal, including authorization names, dates, etc.

65. Because the certification is triggered by an alleged tax debt of over $50,000**([38]),** the status of the alleged debt amount was still then unknown and Defendant provided no help in this issue until the Motion to Dismiss, keeping Plaintiff in the dark. No required response to the FOIA, nor reference to it herein has been received to date. It is now well over the 21 business day requirement for a proper FOIA response by Defendant to Plaintiff's requests for complete documentation of reversal process. (FOIA available for required information request).

66. Another question arises from Defendant's Motion, Exhibit A. This Exhibit A shows Levy Payments beginning in 2-24-2016, starting at $697, rising to $713, but at 3-26-2018, it drops to $579. On 12-17-2018, it goes to $597, and then changes again to $600 on 12-13-2019, and a last payment on 7-24-2020. Plaintiff's social security was originally at $697, so the question arises as to why the payments changed multiple times as they did with no changes in Plaintiff's social

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[37] "Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading. *United States v. Sclafani*, 265 F.2d 408 (2d Cir.), cert. den., 360 U.S. 918, 79 S.Ct. 1436, 3 L.Ed.2d 1534 (1959); c.f., Avery v. Clearly, 132 U.S. 604, 10 S.Ct. 220, 33 L.Ed. 469 (1890); *Atilus v. United States*, 406 F.2d 694, 698 (5th Cir. 1969); *American Nat'l Ins. Co., etc. v. Murray*, 383 F.2d 81 (5th Cir. 1967)." *United States v. Prudden*, 424 F.2d 1021 (5th Cir. 1970)."

[38] Because the reversal of certification to the State Department is triggered by a $50,000 or greater alleged tax debt, hypothetically, if the tax debt somehow was lowered below that trigger amount, there could still be an alleged debt that is hanging around in the system. Obtaining this information is part of the FOIA filing and this suit, and Plaintiff can now legally file yet another suit for FOIA violations once again. Defendant is making extremely poor use of judicial economy, and is showing a clear malicious pattern of behavior. According to Defendant's Motion, the statute of limitations is in effect and all alleged liabilities, and the tax assessment amounts against Plaintiff, have been "written off" and the alleged tax debt is at zero, unless otherwise stated.

security status, or Defendant's tax assessment. Plaintiff requests this accounting information be provided as well.

K. CONCLUSION

67. Plaintiff has shown that he is not attempting to "relitigate" already adjudicated elements of this case. What was adjudicated by the court was the "amount" which was NOT presented as *cause of action* evidence by Plaintiff, and all other evidence was NOT adjudicated nor commented on.

68. The evidence is clear. It is beyond credulity, or any rational basis to conclude that there was any original evidence whatsoever that was previously "adjudicated" based on the fact that Defendant simply did not produce even one page of Plaintiff's bank statements, business records, third party summonsed documents, W2's, 1099's, or anything allegedly used to manufacture the SFR and original assessment, or any other evidence other than hearsay, which is "not actual substantive lawful evidence" **(**Nslui Law of Evidence, supra), to the Tax Court, any other court, or to Plaintiff.

69. Any fair minded jury or Grand Jury would look at this blinding lack of evidence and substance to support any assessment or adjudication as prima facie evidence, times 1000, that the assessment was arbitrary, erroneous and frivolous, and possibly criminal in nature.

70. This court does have *subject matter jurisdiction*, which it would know of and would stand on, because this is a federal *cause of action* which addresses a Federal government agency and its administrative activities acting contrary to standing law. There is no other past court that exercised *cause of action, subject matter jurisdiction* to adjudicate the actual evidence in fact that has never been addressed or adjudicated, and never proven to have been so adjudicated. Defendant is engaging in obstruction of justice**([39])** by its claims against Plaintiff that lack evidence, and claiming extraneous excuses as to why it shouldn't have to answer valid *cause of action* challenges under due process.

71. Plaintiff challenged said debt repeatedly without receiving a single bit of financial data to

[39] 18 U.S. Code Chapter 73 - OBSTRUCTION OF JUSTICE - Obstruction of justice in the federal courts is governed by a series of criminal statutes (18 U.S.C.A. l50l-1517). Federal courts have read the Omnibus Clause expansively to procscribe any conduct that interferes with the judicial process.

validate the debt. This issue has never been adjudicated on the level of assessment challenge based on the actual evidence. Only by a FOIA evidence suit, which was successful in the above referenced FOIA case, was "evidence" provided, that it is impossible to substantiate the original assessment. This is "newly acquired"**([40])** proof that was denied Plaintiff in all past cases, despite repeated requests for same. That evidence clearly proves that there was, and is, nothing in evidence to support the original assessment, and Plaintiff's remedies should be granted.

72. In addition, the very fact that this pattern of evidence denial, and unfounded claims, has persisted over many court cases on this issue, (including discovery) and has only recently been established, provides yet more evidence that any jury (or Grand Jury) would find extremely troubling. It is an insult to our justice system, it is an insult to our constitution, it is an insult to our government's existence for this to be dismissed, and for a jury of Plaintiff's peers to not hear and consider all the actual *cause of action* evidence, or lack thereof, for once, which is Plaintiff's right under the 5th, 7th, **([41])**, and 14th Amendments.

73. At best, this entire thing has been gross negligence and misfeasance, but the Defendant's actual persistence and wanton presentation of false testimony and plain disregard of Defendant's own Taxpayer Rights document**([42])** in dealing with Plaintiff and not facing the actual facts is prima facie evidence of willful fraud. Defendant has deliberately ignored, deliberately obfuscated and deliberately fought against justice and even their own laws (FOIA, "prompt

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[40] Defendant might argue that said FOIA could have been previously filed and the newly obtained evidence is not "new" and not relevant, but Plaintiff clearly made repeated *cause of action* requests for evidence of debt and for discovery of said documents supporting the assessment, and was denied throughout. The intent to obtain said evidence repeatedly in past is clear.

[41] Amendment VII: In suits at common law, **where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved**... (Emphasis added). Plaintiff fully engages the common law court jurisdiction preserving this right for a jury of his peers, rightfully, in the county of his abode and living for the past 21 years. (***Common law***. As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution. People v. Rehman, 253 C.A.2d 119, 61 Cal. Rptr. 65, 85. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. Bishop v. U. S., D.C.Tex., 334 F.Supp. 415,418." (Black's Law Dictionary, 6th Edition).

[42] Taxpayer Bill of Rights, IRS Publication 1, #1, #2, #3, #4, #10, primarily - (See attached);

notice" of any changes in Plaintiff's alleged tax debt status never received, etc.) being ignored and not followed.

74. Where do we draw the line as to how far Defendant can travel into unlawful and very unjust activities as a public servant government agency? Defendant has been focusing on the paint on the walls and ignoring the elephant in the room. *Devolution/Continuity of Government* in play now may be the only true remedy left if all *cause of action* evidence is dismissed, and a very certain appeal and Supreme Court petition fail.

75. Plaintiff moves this court to allow actual *cause of action* due process on the actual evidence of record, to assign counsel to assist in this case if necessary, to convene a grand jury to review all evidence, to allow a jury of Plaintiff's peers to hear all evidence, and to not be sidetracked by form issues, and to promote due process that has long been denied.

76. Defendant has worked so hard for so many years, and spent well over 40 thousand dollars of taxpayer money trying to cover up this issue and defend against the evidence. Plaintiff is merely attempting to defend his rights and his living, and if there were even a hint of actual evidence of any tax liability being remotely in existence and which Defendant would surely have in its possession, it is not of record, and has never been litigated.**([43])**

77. This case should proceed to the next level and all *cause of action* elements not be dismissed on certainly erroneous**([44])** claims. Any defects in presentation are certainly reversible, and "conclusive presumptions"**([45])** and plain denial of due process on the *cause of action* evidence in fact is substantial.

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[43] "[T]he citizen … has the right to come to the seat of government to assert any claim he may have upon that government..." *Crandall v. Nevada*, 73 U.S. at 43-44.

[44] The judge's findings must stand unless "clearly erroneous." Fed. Rules Civ. Proc., 52 (a). "A finding is 'clearly erroneous' when, although there is evidence to support it, (In THIS instant case, NO EVIDENCE TO SUPPORT-Plaintiff) **the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed**." *United States v. United States Gypsum Co*., 333 U.S. 364, 395. Rule 52, findings and conclusions. (Emphasis added). A "mistake" is the bare minimum of what has occurred to Plaintiff.

[45] "... conclusive presumptions have been held to violate a party's due process and equal protection rights. *Viandis v. Kline,* supra. (Footnote #6)

Respectfully submitted,

Date: July 20, 2022

_____

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CERTIFICATE OF SERVICE

Plaintiff certifies that he timely filed a true and complete copy of this Reply, with exhibits and attachments, to E. CARMEN RAMIREZ, at E.Carmen.Ramirez@usdoj.gov, counsel for the defense, and to the District Court at cod_prose_filing@cod.uscourts.gov, on July 20, 2022.

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