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MAY 7 2009
DISTRICT COURT
DISTRICT OF NEVADA

2009 MAY -7 A 11: 20

DISTRICT COURT
DISTRICT OF NEVADA

CLERK OF COURT
DEPUTY

I am: Sam
In care of: 2430 Lappin Lane
Council, Idaho state

Restricted Appearance

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-000-

UNITED STATES OF AMERICA,	)	2:09-CR-00078-JCM-RJJ
)	
PLAINTIFF,	)	DEFENDANT SAMUEL DAVIS'
	)	OBJECTION TO GOVERNMENT'S
vs.	)	MOTION TO CONTINUE CALENDAR
	)	CALL AND TRIAL DATE FILED APRIL
SAMUEL DAVIS, and	)	27, 2009 INCLUDING COURT'S DENIAL
SHAWN RICE,	)	OF DEFENDANT SAMUEL DAVIS'
	)	MOTION TO DISMISS FILED APRIL 28,
DEFENDANTS.	)	2009; EX PARTE MOTION FOR COURT
	)	TO SET ITS APRIL 28, 2009 DENIAL
	)	ASIDE FOR ERROR AND CONSIDER
	)	DEFENDANT DAVIS' MEMORANDUM;
	)	VERIFICATION AND ORDER,
	)	PROOF OF SERVICE
)	

I am, Sam, and as Authorized Representative for SAMUEL DAVIS, I state:

DEFENDANT SAMUEL DAVIS' OBJECTION
TO GOVERNMENT'S MOTION TO CONTINUE CALENDAR CALL AND TRIAL DATE

DEFENDANT SAMUEL DAVIS ("Defendant"), through its undersigned authorized representative (UCC § 3-402), Sam, (hereinafter *sui juris* "Me, My, Myself, Mine, and/or I"), HEREBY OBJECTS to Government's Motion to Continue Calendar Call and Trial Date filed April 27, 2009 including Court's denial of Defendant's motion to dismiss filed April 28, 2009 for error and possible fraud on the above-entitled Court ("Objection").

DEFENDANT SAMUEL DAVIS' MEMORANDUM IN SUPPORT OF EX PARTE

MOTION FOR COURT TO SET ASIDE COURT'S APRIL 28, 2009 DENIAL FOR ERROR

Defendant asks the Court to take judicial notice of facts, as authorized by Federal Rule of Evidence 201.

INTRODUCTION

1. Plaintiff is UNITED STATES OF AMERICA; Defendant is SAMUEL DAVIS or SAMUEL LYNN DAVIS.
2. Plaintiff had Defendant Indicted for allegedly breaching a legal duty or obligation to perform as required under certain United States Statutes and Regulations per Plaintiff and Defendant's agreed upon charge of office.
3. Defendant responded to Plaintiff's Indictment by asserting the defenses found in Rule 2 and Rule 17 of the FRCivP, which declare in part: Rule 2 *Id.* "One Form of Action... There shall be one form of action to be known as 'civil action'" and Rule 17 *Id.* "Every action shall be prosecuted in the name of the real party in interest... No action shall be dismissed... until a reasonable time has been allowed after objection for ratification of commencement ("Ratification")... and such "Ratification" shall have the same effect as if the action had been commenced in the name of the real party in interest." Emphasis throughout Defendant's.
4. Defendant asks Court to take judicial notice of the following facts:
 - a. On March 6, 2009, Court held an administrative arraignment hearing before the honorable Judge Lawrence R. Leavitt ("Leavitt") where Defendant reserved its time to plead by objecting to further proceedings until Court received into its possession the Ratification, however, Court continued the proceedings and entered Defendant's plea of NOT GUILTY without the Ratification or personal jurisdiction over Defendant of record. Doc #10.
 - b. On March 10, 2009, Judge Howard D. McKibben ("McKibben") entered his recusal due to his personal bias, prejudice or notice of the unlawful entry of Defendant's plea. Doc #18 and #19.

- c. On April 15, 2009, Defendant motioned Court to dismiss Plaintiff's Indictment against Defendant SAMUEL DAVIS for failure to provide Ratification of Commencement to constitutionally maintain action in Court. Doc #39.
- d. On April 27, 2009, in lieu of Ratification, Plaintiff motioned Court to continue trial on grounds that Plaintiff is not ready for trial. Doc #42.
- e. On April 28, 2009, Court denied Defendant's motion to dismiss Indictment against Defendant SAMUEL DAVIS ("Judgment"), but failed to rule on the missing Ratification from whence Court's cognizance is derived. Doc #43.

DISCUSSION

5. The Court has the authority to take judicial notice of adjudicative facts. The Court can take judicial notice of facts that are not subject to reasonable dispute if the facts are either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458-59 (9th Cir. 1995); see *Dippin' Dots, Inc. v. Frosty Bites Distrib.*, 369 F.3d 1197, 1204-05 (11th Cir. 2004).
6. The adjudicative facts that require adjudication touch Defendant's questions *ab initio*:
 - a. If in fact the Leavitt/Mckibben Court erroneously entered Defendant's plea (Doc #10 and Doc #18) in light of courts are constrained to one form of action known as civil action, Rule 2 *Id.*, is it not safe to say that this Court also entered a void Judgment (Doc #43) because the Judgment does not appear to be based on law, but either on an Indictment that lacks a grand jury foreperson's signature and a missing jurisdictional statement or by an erroneous assumption that Judge Leavitt's plea for Defendant is valid when in fact Defendant rightfully reserved its plea until after the Ratification should be recorded within the reasonable time limit? Otherwise Defendant would've demanded a bill of particulars before it could enter a fully informed plea.

- b. Defendant knows of no rule or law that would allow a court to act as defendant's attorney for the entry of a defendant's plea and believes that none exist. (EMPHASIS ADDED)
 - c. The *prima facie* fact is why is Court's Judgment missing the law that might overrule Rule 2 and Rule 17 *Id.* if such Rules are illegal for defendants to use at arraignment?
7. Court's Judgment (Doc #43) necessarily questions Court's impartiality, as Court appears to prejudice Defendant by allegedly answering in Plaintiff's behalf while overlooking the importance of Plaintiff's missing Ratification while erroneously accusing Defendant of declaring: "...the indictment should be dismissed because the United States cannot charge him [Defendant] with a crime", which Defendant never declared and could never declare without first witnessing the Ratification, resulting in Court's misrepresentation of Defendant, also note that Doc #38 is missing. Judgment Lines 15, 17-18 and 24.
8. The aforesaid Judgment further questions Court's impartiality by stating: "*This argument [that the United States is not the real party in interest] is without merit. Davis has allegedly engaged in conduct that is considered a crime...*", whereas Defendant has not argued anything, let alone given a plea, but waited patiently for Plaintiff to bring forth the Ratification, which "...shall have the same effect as if the action had been commenced in the name of the real party in interest." Judgment Line 19 and Paragraph 3 *Id.*
9. Thus far it would appear that Court is unfair in basing its findings on the insufficient accusatorial Indictment instead of evidence fixed in Defendant's initiated charge if any.
10. Court knows or should know of the jurisdictional requirement found in *Murray v. I.R.S.*, 923 F. Supp. 1289 at 1290, 1294 (1996), which principal in truth says that Federal courts are courts of limited jurisdiction, and both subject matter and personal jurisdiction must be affirmatively established, whereas Defendant believes and based thereon finds that the Ratification is the proper vehicle in which to support both subject matter and personal jurisdiction, as defendants are unable to make fully informed pleas without witnessing the initiating charging document that is necessarily contained in the Ratification. See *Erie v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 and Statutes of Fraud and Perjury.
11. This Court's assumption of jurisdiction over Defendant and its property will offend traditional notions of fair play and substantial justice and will be inconsistent with the

1 constitutional requirements of due process. *See Int'l Shoe*, 326 U.S. at 316, 66 S. Ct. at
 2 158. The court should decline to exercise jurisdiction over Defendant because Plaintiff
 3 did not fulfill its duty to bring forth the Ratification or file the requirements of the
 4 receiver(s) under 28 USC § 754, which is also part of Defendant's defense at Rule 17 *Id.*

5 12. To date Plaintiff and Court lack both the Ratification and a plea from the Defendant due
 6 to prosecution's suppression of the evidentiary Ratification and if Court holds the timely
 7 Trial against Defendant on May 18, 2009, it would be in error because a legal trial cannot
 8 be had without a plea to the indictment. *Garland v. State of Washington*, 232 U.S. 642 at
 9 645 and 646.

10 13. Plaintiff's silence will support no claim against Defendant, whereas on the other hand
 11 Court should take judicial notice of the decision in *U.S. v. Tweel*, 550 F2d 297, 299-300
 12 where its principal of truth reads:

13 *"Silence can only be equated with fraud when there is a legal or moral duty*
 14 *to speak, or when an inquiry left unanswered would be intentionally*
 15 *misleading...We cannot condone this shocking conduct...If that is the case we*
 16 *hope our message is clear. This sort of deception will not be tolerated and if this*
 17 *is routine it should be corrected immediately"*

18 CONCLUSION

19 14. Defendant now asks Court to render dismissal judgment against Plaintiff for
 20 government's defects in the Indictment and defects in the institution of the prosecution by
 21 violating due process and exhausting its stipulated time limitation for production of the
 22 Ratification, irrespective of the good or bad faith of the prosecutor; as such Ratification is
 23 material to the guilt or punishment of the accused. Rule 12(a) and (b) of the FedRCrimP
 24 and 12(b)(1), (2) and (6) of FRCivP, *see Brady v. Maryland*, 373 U.S. 83.

25 15. Defendant is entitled to relief against Plaintiff for the reasons mentioned above and asks
 26 the Court to grant this motion and render a dismissal judgment/order in favor of
 27 Defendant and thereby grant Defendant appropriate relief.

28 Respectfully executed without the United States on this 7th day of May 2009, at Las Vegas,
 Nevada.

I am: Sam

 Authorized Representative UCC § 3-402
 For Defendant SAMUEL DAVIS

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PLAINTIFF,

VS.

SAMUEL DAVIS, and
SHAWN RICE,

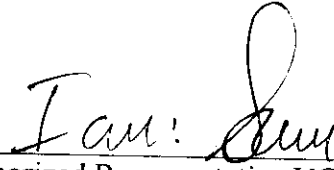
DEFENDANTS.

I am, I, me, my, mine, myself as authorized representative of the NAME, SAMUEL DAVIS, or any derivative thereof, make the following VERIFICATION OF MISTAKE AND SPECIFIC NEGATIVE AVERMENT before the Court in the interests of justice:

- 28

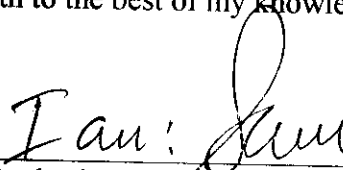
1 E. I made a fundamental mistake by virtue of misplaced confidence and mental
2 inadvertence as I failed to inform the court that I was the authorized
3 representative; and

4 Further, I saith not.

5
6 
7 _____
8 Authorized Representative UCC § 3-402
9 For Defendant SAMUEL DAVIS
10

11 **VERIFICATION**

12 I am, I, me, my, mine and myself, and do so herein verify the above to be the truth, the
13 whole truth, and nothing but the truth to the best of my knowledge and belief.

14
15 
16 _____
17 Authorized Representative UCC § 3-402
18 For Defendant SAMUEL DAVIS
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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

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7 UNITED STATES OF AMERICA,)

2:09-CR-00078-JCM-RJJ

8 PLAINTIFF,)

9 vs.)

10)
11 SAMUEL DAVIS, and)
12 SHAWN RICE,)

13 DEFENDANTS.)
14

15 **ORDER ON DEFENDANT'S**
16 **MOTION TO DISMISS FOR PLAINTIFF'S FAILURE TO PLEAD**

17 After considering defendant SAMUEL DAVIS' motion to dismiss for Plaintiff's failure to
18 properly plead and/or respond within the stipulated reasonable time parameters, the court

19 GRANTS the motion and dismisses plaintiff's suit against defendant SAMUEL DAVIS
20 with/without prejudice and retains the case as to the remaining defendant.

21 IT IS ORDERED, ADJUDGED AND DECREED that defendant SAMUEL DAVIS' motion
22 to dismiss is GRANTED.

23 DATED this ____ day of May, 2009.

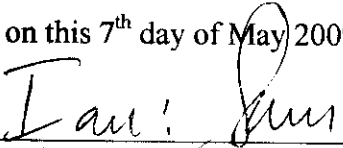
24
25 UNITED STATES DISTRICT JUDGE
26
27
28

PROOF OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing to which this Proof of Service is attached will be duly served upon the following by depositing same in the United States Postal Service's First Class Mail Postage Prepaid and addressed as follows:

GREGORY A BROWER	and	The Honorable D.C. Judge James C. Mahan
United States Attorney		C/O Clerk of Court
ERIC JOHNSON		United States Courthouse
Assistant United States Attorney		Las Vegas, Nevada 89101
333 Las Vegas Blvd. South, Suite 5000		
Las Vegas, Nevada 89101		

Executed without the United States on this 7th day of May 2009, at Las Vegas, Nevada.



Authorized Representative UCC § 3-402
For Defendant SAMUEL DAVIS

AO 42 (Rev. 10/03) Warrant for Arrest

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

WARRANT FOR ARREST

Case Number: 2:05-CR-196-KJD(LRL)

Robin William Wernli

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest Robin William Wernli
Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

☐ Indictment ☐ Information ☐ Complaint ☐ Probation Violation
Petition ☒ Supervised Release
Violation Petition ☐ Violation Notice

Charging him or her with (brief description of offense) : Violation of conditions of supervised release

in violation of Title 18 United States Code, Section(s) 3583

LANCE S. WILSON

CLERK

Lance S. Wilson

(By) DEPUTY CLERK



April 29, 2009 Las Vegas, Nevada

DATE

RETURN

This warrant was received and executed with the arrest of the above-named defendant at

DATE RECEIVED <i>05-04-09</i>	NAME AND TITLE OF ARRESTING OFFICER <i>Thomas Hall</i>	SIGNATURE OF ARRESTING OFFICER <i>[Signature]</i>
DATE OF ARREST <i>05-04-09</i>		