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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT ERIC HOLCOMB,  
Plaintiff,  
v.  
INTERNAL REVENUE SERVICE,  
Defendant.

Case No.: 19cv1482-LAB

**ORDER DEEMING PLAINTIFF'S  
RESPONSE STRICKEN IN  
PART; AND  
ORDER OF DISMISSAL**

**Background**

After Plaintiff Robert Holcomb filed his motion to quash a summons served on Wells Fargo Bank by the I.R.S., the Court issued several orders to show cause in an effort to determine whether there was more than one Plaintiff, and what he or they were asking for, as well as to confirm its jurisdiction. After Holcomb responded to the first order, it became clear he was the only Plaintiff who was properly before the Court. Although the initiating pleading suggested that Brother's Keeper Ministry might also be a Plaintiff, the Ministry could not proceed either *pro se* or represented by a non-lawyer such as Holcomb. It also appeared likely the Court lacked jurisdiction.

The Court's next orders focused on jurisdiction. *See Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939, 954 (9th Cir. 2011) (en banc) (court must raise

1 jurisdictional issues such as standing, even if the parties do not). Holcomb was  
2 cautioned that he was required to establish that the Court had jurisdiction to hear  
3 his claims, and that until he did so, the Court was presumed to lack it. See  
4 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). He was  
5 also cautioned that if he failed to establish jurisdiction, the action would be  
6 dismissed. After his response to the first order proved inadequate, the Court on  
7 September 23 ordered him specifically to show that he had complied with the  
8 procedural requirements of 26 U.S.C. § 7609(b). (Docket no. 8.) Fully compliance  
9 with these requirements is jurisdictional. *Ponsford v. United States*, 771 F.2d 1305,  
10 1309 (9th Cir. 1985).

### 11 **Striking Arguments**

12 The Court's September 23 order required Holcomb to file a declaration  
13 complying with 28 U.S.C. 1746, addressing four issues. (Docket no. 9.) The Court  
14 ordered him not to include any legal arguments or other material—particularly  
15 requests for reconsideration—and cautioned him that if he attempted to do so, the  
16 declaration may be rejected for filing. (*Id.* at 4:19–22.)

17 Holcomb has now filed a document including several pages of legal  
18 arguments taking issue with the Court's earlier rulings, and his declaration. Under  
19 Fed. R. Civ. P. 12(f)(1), the Court may *sua sponte* strike from a pleading “any  
20 redundant, immaterial, impertinent, or scandalous matter.” Holcomb's legal  
21 arguments, beginning just below the caption on page 1 of his response and  
22 continuing through page 4, just above the subheading “Court Requested  
23 Declaration” are impertinent and improper for any number of reasons. They are  
24 legally frivolous, they violate Fed. R. Civ. P. 11(b), and they include unauthorized  
25 requests for reconsideration in violation of both the Court's order and the  
26 Chambers standing order. And of course, he was ordered not to include them here.  
27 These arguments are **DEEMED STRICKEN** and the Court will not address them.

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1 **Jurisdiction**

2 The Court's September 23 order required Holcomb's declaration to state  
3 what date he first knew the I.R.S. had sent the summons to Wells Fargo, and the  
4 date he first received a copy of it. The order also required him to specify what steps  
5 he took to comply with the notice requirements of 26 U.S.C. § 7609(b)(2)(B). That  
6 order pointed out that a copy of his petition had to have been mailed by registered  
7 or certified mail to both Wells Fargo and the I.R.S. (Docket no. 8 at 4:15–17.) He  
8 was also ordered to attach to his declaration a copy of the receipts showing his  
9 compliance with these requirements. (*Id.* at 4:18–19.)

10 It is uncertain whether, or when the I.R.S. gave Holcomb notice of the  
11 summons as required under 26 U.S.C. § 7609(a)(2). Bearing in mind that Holcomb  
12 may not have a "last known address," the service date may be the date the  
13 summons was mailed to Wells Fargo, see *id.*, which must have been some time  
14 before July 15, the date Wells Fargo sent Holcomb a letter about the summons. In  
15 that case, the motion would be untimely and the Court would lack jurisdiction for  
16 that reason.

17 But even assuming the I.R.S. failed to follow the notification procedures set  
18 forth in 26 U.S.C. § 7609(a)(2), the twenty-day clock for him to file his motion to  
19 quash does not stop indefinitely. See *Kalra v. United States*, 2013 WL 1749385,  
20 at \*3 (N.D. Ill., Apr. 23, 2013) (citing *Sylvestre v. United States*, 978 F.2d 25, 27–  
21 28 (1st Cir. 1992); *Cook v. United States*, 104 F.3d 886, 890 (6<sup>th</sup> Cir. 1997))  
22 (holding that I.R.S.'s failure to follow notification procedures under 26 U.S.C. §  
23 7609(a)(2) can be excused where movant was not prejudiced). As soon as  
24 Holcomb received actual notice of the summons, he was no longer prejudiced by  
25 any possible defect in the I.R.S.'s notification procedures. See *Kalra* at \*4.  
26 Holcomb's reply shows that he knew on July 20, 2019. that Wells Fargo had  
27 received the I.R.S. summons. He therefore had at most 20 days from that date to  
28 both file his motion to quash and to serve it as required under 26 U.S.C. § 7609(b).

1 Although the government's failure to comply with notice requirements under  
2 26 U.S.C. § 7609 may be excused, the rule does not work in reverse to excuse a  
3 movant's failure to comply. Because sovereign immunity is at stake, movants must  
4 strictly comply with the requirements of 26 U.S.C. § 7609(a)(2). *Mollison v. United*  
5 *States*, 568 F.3d 1073, 1075 (9th Cir. 2009). Although Holcomb was ordered to  
6 show that he has complied with these requirements, he failed to do so.

7 Holcomb's declaration, along with the attached receipts, shows only that a  
8 copy of his motion was mailed to the I.R.S. by Priority mail, not certified or  
9 registered mail. See *Env'tl Law & Pol'y Ctr. v. U.S. Envir. Agy.*, 349 F. Supp. 3d  
10 703, 713 n.6 (N.D. Oh. 2018) (pointing out that service by priority mail was not the  
11 same as service by certified or registered mail); *Shupe v. Gen. Servs. Admin.*,  
12 2017 WL 6209142, at \*2–3 (D. Ariz., Apr. 25, 2017) (finding that *pro se* plaintiff's  
13 use of priority mail rather than certified or registered mail did not satisfy service  
14 requirement). Although priority mail may also be sent as certified mail, the two are  
15 not the same. See *Ming Kuo Yang v. City of Wyoming, Mich.*, 31 F. Supp. 3d 925,  
16 932 n.6 (W.D. Mich., 2014). Certified mail is ordinarily documented by a green  
17 mailing receipt, which Holcomb has not attached.

18 Furthermore, Holcomb did not mail Wells Fargo a copy at all. Instead, he  
19 followed Wells Fargo's instructions in its letter to someone else, and merely faxed  
20 the bank a copy. Even if Wells Fargo's request for fax notice could excuse strict  
21 compliance with § 7609(a)(2)—which they cannot—Wells Fargo did not purport to  
22 instruct Holcomb on how to file and give notice of a motion to quash. Its letter  
23 requested immediate notice that a motion to quash had been filed, so that it would  
24 know how to proceed. Wells Fargo had previously disclaimed any suggestion that  
25 it was giving or could give legal advice or assistance:

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1 If you'd like to take any action related to this legal order [the summons],  
2 we recommend you contact an advisor of your choice, such as an  
3 attorney, for guidance as soon as possible; Wells Fargo cannot advise  
you in this matter.

4 (Docket no. 1 at 7 (Wells Fargo letter dated July 15).)

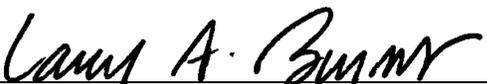
5 Holcomb's failure to mail a copy of his motion to Wells Fargo by registered  
6 or certified mail means the Court lacks jurisdiction, and the motion must be  
7 dismissed. *See Ramirez v. United States*, 604 Fed. Appx. 575, 576 (9<sup>th</sup> Cir. 2015).  
8 Furthermore, because the 20-day window has already passed, he cannot correct  
9 this defect.

### 10 **Conclusion and Order**

11 The Court lacks jurisdiction to grant the relief Holcomb seeks. The motion to  
12 quash is **DISMISSED WITHOUT LEAVE TO AMEND.**

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14 **IT IS SO ORDERED.**

15 Dated: October 10, 2019

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18 Hon. Larry Alan Burns  
19 Chief United States District Judge  
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