

Leah Rose, Claimant
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JUN 26 2006
DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 45-00167A
	)	
Case No. 39576	)	<u>REPLY BRIEF TO RESPONSE</u>
	)	<u>BRIEF OF OBJECTOR</u>

COMES NOW the CLAIMANT, Leah Grace Rose, and files this REPLY BRIEF to the *Response Brief to Claimant's Opposition to Objector's Motion to Strike Affidavits*. Additionally, Claimant intends that this also be used to supplement any previous replies thus far. In reply to the brief of Michael Tribe, attorney for Objector, William A. Poulton, dated the 15th of June, 2006, claimant would like to target the following Points:

I. IN THE INTEREST OF JUSTICE, THE SPECIAL MASTER SHOULD CONSTRUE CLAIMANT AFFIDAVIT AS REQUESTED OR GRANT LEAVE TO FILE CORRECTED AFFIDAVITS, SUPPLEMENTAL MEMORANDA, OR AMENDED MOTIONS.

While there is Idaho case law that holds *pro se* litigants to the same legal standard as attorneys, (Suitts v. Nix, 141 Idaho 706, 708, 117 p. ed 120, 123 {2005}) and "*pro se* litigants are held to the same standards and rules as those represented by an attorney" (Twin Falls County v. Coates, 139 Idaho 442, 445, 80 p. 3d 1043, 1046 {2003}), there is also authority that a court in

examining a *pro se* complaint or pleading should hold it to less stringent standards than those applied to pleadings drafted by attorneys (Graham v. Ault, 466 S.E. 2d 213 {Ga. 1996}.) Furthermore, *pro se* complaints are to be construed liberally (Lewis v. Sullivan, 524 N. W. 2d 630 ({Wis. 1994}).) The U.S. Supreme Court has recognized that *pro se* complaint is held to less stringent standard than formal pleadings drafted by lawyers (Haines v. Kerner, 404 U.S. 519, 520-521, {1972}, also, Robinson v. Adams, 847 F. 2d 1315, 1319 {9th Cir. 1987}) Also, “a layperson bringing a Title VII action *pro se* is appropriately afforded a liberal construction of the statute’s technical requirements” citing Rice v. Hamilton AFB Commissary, 720 F. 2d 1082, 1084 {9th Cir. 1983}.) The claim of forfeiture is akin to a state action to take a vested property right and should be accorded the utmost protections of Due Process of the 14th Amendment. Therefore, even though a *pro se* litigant is held to the same legal standard, the court has discretion to modify the scheduling order or to grant leave to file corrected or additional memoranda, motions and affidavits. The court has power to construe my pleadings, affidavits and memoranda in such a way as to ensure that justice is served despite deficiencies in form. To the extent that the court deems my pleadings, memoranda and motions to be deficient or untimely, I respectfully request the Special Master to grant leave to file a supplemental memorandum in opposition to the Motion for Summary Judgment, file a motion to strike the *Affidavit of William A. Poulton*, and a motion to allow the filing of additional affidavits and for fair and appropriate time to do so.

II. AFFIDAVITS SUBMITTED BY CLAIMANT SHOULD NOT BE STRICKEN.

Objector characterization of my reasons for not striking the affidavits is incorrect. I characterized my affidavit as intending to be my argument in opposition to the objector's motion for summary judgment. It could be considered a sort of verified memorandum or pleading. As for the *Affidavit of Blane K. Rose*, it contains statements made to Mr. Rose by Mr. Poulton, the objector. It is a restatement of Mr. Poulton's own statement and is being used by a party against their opponent. As for *Paragraph 6* of the *Affidavit of Leah Rose*, statements made to me by Mr. Poulton's agent are clearly within rule of 801 (d) (2). Mr. Poulton's attorney is his agent and acts in a representative capacity.

III. TO THE EXTENT THAT CLAIMANT'S EXHIBITS ARE DEFECTIVE, THE COURT SHOULD GRANT LEAVE TO CURE THE DEFECTS.

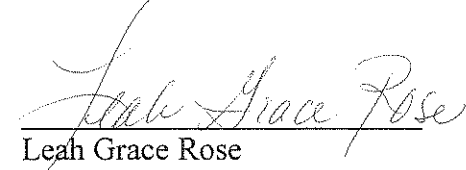
As previously requested, if my exhibits are defective or deficient, I respectfully ask the court for leave to cure the defects and for additional time to secure affidavits to authenticate the exhibits.

Dated the 22nd day of June, 2006.


Leah Grace Rose
Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of June, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by United States Mail, with correct postage affixed.


Leah Grace Rose

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