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14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA, )  
18 )  
19 Plaintiff )  
20 )  
21 v. )  
22 )  
23 DAVID MEALS, )  
24 )  
25 Defendant )

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1 The United States of America, for its complaint, alleges as  
2 follows:

- 3 1. This is a civil action brought pursuant to 26 U.S.C.  
4 §§ 7402, 7407, and 7408: (1) to permanently enjoin the  
5 defendant David Meals from preparing federal income tax  
6 returns for others; (2) to permanently enjoin defendant from  
7 preparing and encouraging or advising the preparation of  
8 federal income tax returns for others that understate tax  
9 liability by asserting unrealistic or frivolous positions,  
10 including the position that per capita distributions of  
11 gaming proceeds paid to members of Native American tribes

1 that operate casinos are exempt from taxation; (3) to  
2 compel defendant to provide a list of all customers for whom  
3 he has prepared returns that asserted that income received  
4 by Native Americans is exempt from taxation; and (4) to  
5 compel defendant to advise his customers that returns he  
6 prepared for them asserting that per capita distributions of  
7 gaming proceeds are exempt from taxation pursuant to a  
8 Native American Treaty are incorrect and need to be amended.

9  
10 Jurisdiction

11 2. This action has been requested by the Chief Counsel of the  
12 Internal Revenue Service (IRS), a delegate of the Secretary  
13 of the Treasury, and commenced at the direction of a  
14 delegate of the Attorney General of the United States,  
15 pursuant to 26 U.S.C. §§ 7402, 7407, and 7408.

16 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§  
17 1340, 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

18 Venue

19 4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391  
20 and 1396 because the defendant resides in this judicial  
21 district.

22 Defendants

23 5. Defendant David Meals resides in Dinuba, California. On  
24 information and belief, defendant is a former IRS employee.  
25 Since 2003 he has worked as a federal income tax return  
26 preparer, preparing returns for customers for compensation.

Allegations Common To All Counts

A. Defendant Prepared and Directed Others to Prepare Federal Income Tax Returns That Frivolously Claimed that Per Capita Distributions of Gaming Proceeds Paid to Native Americans Were Exempt from Federal Income Taxes

6. During the 2005 tax season, defendant was the manager of the Jackson Hewitt Tax Services Inc. franchise operated by Inheritance Management, Inc. in Hanford, California ("the Hanford Jackson Hewitt Franchise").

7. On information and belief, defendant misrepresented the length and nature of his employment with the IRS when he applied for the manager position with the Hanford Jackson Hewitt Franchise. Defendant was employed by the IRS for approximately 15 years, from 1986 to 2001. However, on information and belief, defendant's resume provided to the Hanford Jackson Hewitt Franchise indicated that he had 27 years of experience with the IRS.

8. On information and belief, defendant supervised several other tax return preparers at the Hanford Jackson Hewitt Franchise.

9. In early February 2005, the Hanford Jackson Hewitt Franchise began preparing federal income tax returns for members of the Tachi Yokut Tribe ("the Tribe"), a Native American Tribe that operates a casino on the Santa Rosa Rancheria reservation in Lemoore, California.

10. On information and belief, the Tribe makes per capita distributions of its casino gaming proceeds to its individual members.

1 11. Income earned by Native Americans is taxable to the same  
2 extent as income earned by any other person living in the  
3 United States. *See Squire v. Capoeman*, 351 U.S. 1, 6  
4 (1956). Indeed, the only time income received by a Native  
5 American is exempt from taxation is when there is "a clearly  
6 expressed" exemption to the tax laws. *Squire v. Capoeman*,  
7 351 U.S. at 6; see also *Chickasaw Nation v. United States*,  
8 534 U.S. 84, \_\_\_, 122 S.Ct. 528, 535-36 (2001) (citing  
9 cases).

10 12. There is no treaty or statute that exempts distributions  
11 from casino earnings from federal income tax.

12 13. To the contrary, the statute that regulates Native American  
13 gaming activities, the Indian Gaming Regulatory Act, 25  
14 U.S.C. § 2701 *et seq.*, expressly states that all per capita  
15 distributions of gaming proceeds made to tribe members are  
16 subject to federal income taxes. Indeed, the Indian Gaming  
17 Regulatory Act states that tribes may make per capita  
18 distributions of casino proceeds to members *only if* "the per  
19 capita payments are subject to Federal taxation and tribes  
20 notify members of such tax liability when payments are  
21 made." 25 U.S.C. § 2710(b)(3)(D).

22 14. Furthermore, two publications available on the IRS website  
23 clearly indicate that per capita distributions of casino  
24 proceeds are subject to federal income tax. *See* IRS Pub.  
25 3908: *Gaming Tax Law*,  
26 <http://www.irs.gov/govt/tribes/article/0,,id=140000,00.html>,  
27 and *FAQs Regarding Gambling Winnings: What are allocations*  
28 *under the IGRA?*,

1 <http://www.irs.gov/govt/tribes/article/0,,id=108436,00.html#>  
2 [A6](#).

3 15. In accordance with the Indian Gaming Regulatory Act, the  
4 Tribe withholds federal income taxes from the per capita  
5 distributions of gaming proceeds it makes to its members.  
6 The Tribe reports this income and the federal income tax  
7 withheld to the IRS and individual members of the Tribe by  
8 issuing a 1099-MISC Form ("1099 Forms") for each Tribe  
9 member.

10 16. On information and belief, at all relevant times, the 1099  
11 Forms issued by the Tribe advised tribe members that the  
12 casino distributions were taxable income. On information  
13 and belief, at all relevant times, the 1099 Forms issued by  
14 the Tribe stated:

15 This is important tax information and is  
16 being furnished to the Internal Revenue  
17 Service. If you are required to file a tax  
18 return, a negligence penalty or other  
sanction may be imposed upon you if this  
income is taxable and the IRS determines that  
it is not reported.

19 17. On information and belief, when members of the Tribe came to  
20 the Hanford Jackson Hewitt Franchise, defendant falsely  
21 advised the franchise employees whom he supervised that per  
22 capita distributions of gaming proceeds paid to individual  
23 tribe members were exempt from federal income taxes. On  
24 information and belief, defendant directed these Hanford  
25 Jackson Hewitt Franchise employees to assert that the per  
26 capita distributions of gaming proceeds were exempt from  
27 federal income taxes pursuant to a Native American Treaty.  
28

1 18. On information and belief, when the Hanford Jackson Hewitt  
2 Franchise owners and customers questioned defendant  
3 regarding this position, he claimed that, as a former IRS  
4 employee, he knew the position was correct. On information  
5 and belief, defendant further claimed that he had taken this  
6 position on tax returns he had prepared while employed by a  
7 different employer.

8 19. On March 16, 2005, a representative of the IRS Office of  
9 Indian Tribal Governments held a meeting at the Santa Rosa  
10 Rancheria to advise Tribe members that per capita  
11 distributions of casino gaming proceeds were subject to  
12 federal income taxes. Defendant attended this meeting and,  
13 during the question-and-answer period that followed the IRS  
14 presentation, defendant challenged the IRS position that per  
15 capita distributions of casino gaming proceeds were taxable.  
16 During this meeting, defendant continued to assert that such  
17 proceeds were not subject to federal income taxes.

18 B. Defendant's Action Caused Significant Harm to the  
19 United States

20 20. Defendant and those under his supervision at the Hanford  
21 Jackson Hewitt Franchise prepared approximately 103 federal  
22 income tax returns that understated the tax liability of  
23 members of the Tachi Yokut Tribe by taking the frivolous  
24 position that per capita distributions of gaming proceeds  
25 paid to Native Americans is exempt from federal income tax.  
26 Defendant personally prepared 40 of these frivolous returns.  
27 Furthermore, defendant was identified as the third-party  
28 designee who would represent the taxpayer in any meeting

1 with the IRS on 34 federal income returns that were prepared  
2 by other Hanford Jackson Hewitt Franchise employees.

3 21. The 103 frivolous federal income tax returns prepared by the  
4 Hanford Jackson Hewitt Franchise sought more than \$833,900  
5 in improper tax refunds. The 40 frivolous tax returns that  
6 defendant personally prepared sought approximately \$335,600  
7 in improper refunds.

8 22. As a result of the frivolous income tax returns prepared by  
9 the Hanford Jackson Hewitt Franchise, the IRS erroneously  
10 issued refunds of approximately \$688,500 to Native American  
11 customers of the Hanford Jackson Hewitt Franchise.

12 23. As a result of the 40 frivolous income tax returns  
13 personally prepared by defendant, the IRS issued improper  
14 refunds of approximately \$265,900 to Native American  
15 customers of the Hanford Jackson Hewitt Franchise.

16 24. Defendant's action also caused the IRS to incur significant  
17 expenses to investigate this scheme. The IRS estimates that  
18 it has incurred expenses of approximately \$51,600  
19 investigating this matter. This does not include the cost  
20 of this lawsuit or the cost of auditing customer returns and  
21 assessing and collecting unpaid taxes.

22 C. Defendant Did Not Cooperate With The IRS Investigation

23 25. The IRS has attempted to contact defendant on several  
24 occasions to discuss the frivolous income tax returns  
25 prepared by the Hanford Jackson Hewitt Franchise.  
26 Defendant has not, however, responded to the IRS inquiries.  
27  
28

1 D. Defendant Has Failed to Corrective Measures, Thereby  
2 Causing Significant Harm to His Customers

3 26. On information and belief, despite having been advised by  
4 the IRS that per capita distributions of gaming proceeds  
5 paid to individual members of Native American Tribes are not  
6 exempt from taxation, neither defendant nor the Hanford  
7 Jackson Hewitt Franchise notified affected customers that  
8 they should file amended returns correcting the frivolous  
9 assertion on their Jackson Hewitt Franchise-prepared returns  
10 that per capita distribution are exempt from federal income  
11 taxes. Indeed, IRS records indicate that only 11 of the 103  
12 customers who filed frivolous tax returns have filed  
13 corrected income tax returns with the IRS.

14 27. As a result of defendant's actions, approximately 103  
15 customers of the Hanford Jackson Hewitt Franchise filed  
16 incorrect tax returns and are thus liable to the United  
17 States for federal income taxes, interest, and penalties  
18 related to their incorrect filings.

19 COUNT I

20 Request for An Injunction Pursuant to 26 U.S.C. § 7407(b)(1)  
21 Enjoining Defendants From Engaging In Prohibited Conduct

22 28. The United States incorporates by reference the allegations  
23 in paragraphs 1-27.

24 29. Pursuant to 26 U.S.C. § 7407(b)(1)(A), the United States may  
25 obtain an injunction barring a party from engaging "in any  
26 conduct subject to penalty under 26 U.S.C. § 6694."

27 30. Section 6694(a) authorizes the imposition of penalties  
28 against a tax preparer for preparing tax returns that  
understate tax liability based on positions that have no



1 realistic possibility of being sustained, 26 U.S.C.  
2 § 6694(a)(1), where the tax preparer knew or should have  
3 known that the position would not be sustained, 26 U.S.C.  
4 § 6694(a)(2), and the position taken was either not  
5 disclosed to the IRS or was frivolous. 26 U.S.C.  
6 § 6694(a)(3).

7 31. Section 6694(b) authorizes the imposition of penalties  
8 against a tax preparer who willfully or recklessly prepares  
9 tax returns that understate tax liabilities.

10 32. Defendant engaged in conduct subject to penalties under 26  
11 U.S.C. § 6694(a) and 26 U.S.C. § 6694(b) because, in his  
12 capacity as a tax preparer and as a manager of the Hanford  
13 Jackson Hewitt Franchise, he prepared or supervised the  
14 preparation of at least 103 federal income tax returns that  
15 understated the tax liability of members of the Tachi Yokut  
16 Tribe by asserting that per capita distributions of gaming  
17 proceeds are not taxable. Defendant's conduct is subject to  
18 penalties under § 6694(a) because this position did not have  
19 a realistic possibility of being sustained and because it  
20 was frivolous. Furthermore, defendant is liable for  
21 penalties under § 6694(b) because he acted willfully or with  
22 reckless or intentional disregard of the applicable laws,  
23 rules and regulations.

24 33. Furthermore, as a former IRS employee who has made his  
25 living preparing income tax returns, defendant either knew  
26 or should have known the position he was taking was  
27 frivolous. Moreover, he is likely to act as a tax preparer  
28 in the future and to tout his experience as a former IRS

1 employee and to encourage and assist in the preparation and  
2 filing of frivolous and unrealistic tax returns. Thus, in  
3 the absence of injunctive relief, defendant will likely  
4 continue to prepare tax returns that assert frivolous or  
5 unrealistic positions.

6 34. Accordingly, pursuant to 26 U.S.C. § 7407(b)(1)(A)), because  
7 the defendant's misconduct was repeated and continual, the  
8 United States requests the Court to enter an injunction  
9 that:

- 10 a. prohibits defendant from acting as a federal income tax  
11 return preparer and filing federal income tax returns  
12 on behalf of others, or in the alternative, engaging in  
13 conduct subject to penalty under 26 U.S.C. §§ 6694 by  
14 preparing, supervising, or advising with respect to the  
15 preparation or filing of tax returns that assert  
16 unrealistic positions, including preparing returns  
17 asserting the frivolous position that per capita  
18 distributions paid to individual members of any Native  
19 American Tribe are exempt from tax;
- 20 b. prohibits defendant from taking any action that  
21 interferes with the administration or enforcement of  
22 the internal revenue laws and,
- 23 c. requires defendant to give to the United States a  
24 complete and accurate list of all customers for whom he  
25 has prepared tax returns that claim that per capita  
26 distributions paid to individual members of any Native  
27 American Tribe are exempt from federal income tax.
- 28

COUNT II

Request for An Injunction Pursuant to 26 U.S.C. § 7408  
Enjoining Defendants From Engaging In Prohibited Conduct

35. The United States incorporates by reference the allegations in paragraphs 1-34.

36. Pursuant to 26 U.S.C. § 7408, the United States may obtain an injunction prohibiting a person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 (which penalizes persons who aid or abet the understatement of another person's tax liability) if an injunction is necessary to prevent the recurrence of this conduct. See 26 U.S.C. § 7408(a)-(c).

37. Defendant engaged in conduct subject to penalties under 26 U.S.C. § 6701 by preparing and supervising the preparation of at least 103 federal income tax returns that understated the tax liabilities of members of the Tochi Yokut Tribe by frivolously asserting that per capita distributions of gaming proceeds are not taxable.

38. Defendant knew or should have known the position he was taking would understate his customers' tax liabilities. Moreover, he continued to assert this position after being advised by the IRS that it was incorrect. Defendant is likely to act as a tax preparer in the future and to tout his experience as a former IRS employee to encourage the preparation and filing of tax returns that understate tax liability. Thus, in the absence of injunctive relief, defendant will likely continue to prepare and encourage or counsel the preparation of tax returns that understate tax liability.

1 39. Accordingly, pursuant to 26 U.S.C. § 7408, the United States  
2 requests the Court to enter an injunction which:

- 3 a. prohibits defendant from acting as a tax preparer or  
4 filing and filing federal income tax returns on behalf  
5 of others, or in the alternative, from engaging in  
6 conduct subject to penalty under 26 U.S.C. § 6701,  
7 including preparing or advising others to prepare tax  
8 returns that assert frivolous or unrealistic positions,  
9 including but not limited to the position that per  
10 capita distributions paid to individual members of any  
11 Native American Tribe are exempt from tax, and  
12 b. prohibits defendant from engaging in any other conduct  
13 subject to penalty under any provision of the Internal  
14 Revenue Code.

15 COUNT III

16 Request for An Injunction Pursuant to 26 U.S.C. § 7402(a)

17 40. The United States incorporates by reference the allegations  
18 in paragraphs 1-39.

19 41. Pursuant to 26 U.S.C. § 7402(a), the United States may obtain  
20 an injunction "as may be necessary or appropriate for the  
21 enforcement of the internal revenue laws." The remedies  
22 available pursuant to the United States pursuant to section  
23 7402(a) are "in addition to and not exclusive of any and all  
24 other remedies of the United States." 26 U.S.C. § 7402(a).

25 42. As described above, defendant's actions have substantially  
26 interfered with the enforcement of the internal revenue  
27 laws. Indeed, as a result of defendant's action, the IRS  
28 issued more than \$688,500 in erroneous refunds.

1 Furthermore, as a result of defendant's failure to take  
2 prompt corrective action, the IRS has been forced to expend  
3 significant resources to review and audit tax returns  
4 prepared by defendant or prepared under defendant's  
5 supervision.

6 43. Defendant's failure to notify his customers regarding the  
7 need to file amended tax returns has interfered with the  
8 administration of the internal revenue laws by needlessly  
9 delaying, if not precluding, the timely assessment and  
10 collection of the federal income taxes that these customers  
11 owe to the United States.

12 44. The United States will suffer irreparable harm in the  
13 absence of injunctive relief. In the absence of the  
14 injunctive relief requested by the United States, the IRS  
15 will likely be forced to continue to devote resources to  
16 identifying unrealistic and frivolous returns prepared by  
17 defendant. Moreover, defendant's actions have and will  
18 continue to harm the United States by interfering with the  
19 proper and efficient administration of the revenue laws.  
20 The harm caused to the United States is likely to be  
21 irreparable as the United States may not be able to assess  
22 or collect all the taxes, interest, and penalties that  
23 defendant's customers owe to the United States.

24 45. The injunctive relief requested by the United States will  
25 not harm defendant. Indeed, there is no legally cognizable  
26 harm that results from being compelled to obey the law.

27 46. In addition, defendant's actions have harmed and will  
28 continue to harm his customers, and this harm will continue

1 in the absence of injunctive relief. As a result of  
2 defendant's actions, defendant's customers may be liable for  
3 penalties for filing inaccurate and frivolous tax returns  
4 and will also be liable for interest owed on taxes that they  
5 have not timely paid or erroneous refunds they received.  
6 This harm is continuing because the interest on these tax  
7 debts is compounded daily. Accordingly, defendant's failure  
8 to notify customers of the need to file amended returns is  
9 causing continuing harm to his customers, which will  
10 continue in the absence of injunctive relief.

11 47. Injunctive relief will serve the public interest by  
12 preventing the defendant from (1) interfering with the  
13 prompt and efficient administration of the revenue laws, and  
14 (2) interfering with the prompt and efficient assessment and  
15 collection of revenue.

16 48. Therefore, pursuant to 26 U.S.C. § 7402(a), the United  
17 States respectfully requests the Court to enter an  
18 injunction that:

19 a. prohibits defendant from acting as a federal income tax  
20 return preparer and filing federal income tax returns  
21 on behalf of others, or in the alternative, prohibits  
22 defendant from preparing, supervising, or counseling  
23 the preparation of federal income tax returns that  
24 assert frivolous or unrealistic positions, including  
25 the position that per capita distributions paid to  
26 individual members of any Native American Tribe are  
27 exempt from federal income tax,  
28

1 b. prohibits defendant from taking any action that  
2 interferes with the administration or enforcement of  
3 the revenue laws,

4 c. compels defendant to cooperate with this and any future  
5 investigation initiated by the IRS by responding fully  
6 and truthfully to any questions or requests for  
7 documents and by providing the IRS with a complete and  
8 accurate list of all clients for whom he prepared tax  
9 returns which claim that per capita distributions paid  
10 to individual members of any Native American Tribe are  
11 exempt from taxation and,

12 WHEREFORE, the United States respectfully prays for the following  
13 relief:

14 A. That the Court find that defendant has continually and  
15 repeatedly engaged in conduct subject to penalty under 26  
16 U.S.C. §§ 6694 and 6701;

17 B. That the Court enter an injunction, pursuant to 26 U.S.C. §§  
18 7402(a); 7407; and 7408, that prohibits defendant from  
19 acting as a federal income tax return preparer and filing  
20 federal income tax returns on behalf of others or, in the  
21 alternative, prohibits defendant from preparing or  
22 supervising, or advising with respect to the preparation of  
23 federal income tax returns that assert frivolous or  
24 unrealistic positions, including preparing tax returns that  
25 assert that per capita distributions of gaming proceeds paid  
26 to individual members of any Native American Tribe are  
27 exempt from tax; and from counseling, advising, assisting  
28

1 in, or advocating the preparation or filing of any such  
2 return;

3 C. That the Court enter an injunction compelling defendants to  
4 produce to counsel for the United States, within 10 days of  
5 the Court's order, a list of all customers for whom he has  
6 prepared or supervised or advised with respect to the  
7 preparation of federal income tax returns that asserted that  
8 any income, of whatever kind, was exempt from taxation due  
9 to a purported "Native American Treaty;" and for each such  
10 customer, provide the customer's name, social security  
11 number, address, e-mail address, telephone number, and the  
12 year(s) for which such returns were filed;

13 D. That the Court enter an injunction compelling defendant to  
14 produce to counsel for the United States either copies of  
15 all customer federal income tax returns, including amended  
16 returns, he prepared that claim that any income is exempt  
17 from tax pursuant to a Native American Treaty or a list  
18 containing the names, addresses, telephone numbers, and  
19 Social Security numbers of such customers;

20 E. That the Court retain jurisdiction over defendant for the  
21 purpose of enforcing any permanent injunction;

22 F. That the Court grant the United States the right to conduct  
23 post-judgment discovery for the purpose of monitoring  
24 defendant's compliance with the terms of any injunction;



1 G. That the Court grant the United States all other relief,  
2 including costs and fees, as it deems just and equitable.  
3

4 Respectfully submitted,

5 MCGREGOR W. SCOTT  
6 United States Attorney

7 /s/ Janene M. Marasciullo

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