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CENTRAL DISTRICT COURT
LOS ANGELES

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22 UNITED STATES DISTRICT COURT
23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,) No. ^{ED} CV 04-1566 VAP(SGL&)
25)
26 Plaintiff,) COMPLAINT FOR PERMANENT
27) INJUNCTION AGAINST THE
28 v.) PREPARATION OF TAX RETURNS AND
OTHER EQUITABLE RELIEF
)
N.C.K. SERVICES, INC.,)
)
CARLA D. BERRY; KAREN D.)
)
BERRY; VALERIE M. DIXON;)
)
and IVAN T. JOHNSON,)
)
Defendants.)
)
)

29 COMPLAINT

30 The United States of America, by and through its counsel of
31 record, alleges as follows:
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1 taken over and renamed NCK by her daughters, Carla D. Berry
2 ("Carla Berry") and Karen D. Berry ("Karen Berry"), and Valerie
3 M. Dixon ("Dixon"), who operate NCK with the assistance of a
4 former neighbor of Norma Berry's, Ivan T. Johnson ("Johnson").

5 6. Defendant Carla Berry resides in Rialto, California,
6 which is within the Central District of California. She
7 currently works as a paid income tax return preparer for NCK and
8 is listed as the registered agent for NCK on its corporate
9 documents.

10 7. Defendant Karen Berry resides in Rialto, California,
11 which is within the Central District of California. She
12 currently works as a paid income tax return preparer for NCK and
13 is listed as the owner of NCK on its corporate documents.

14 8. Defendant Dixon resides in Rialto, California, which is
15 within the Central District of California. She currently works
16 as a paid income tax return preparer for NCK.

17 9. Defendant Johnson resides in San Bernardino, which is
18 within the Central District of California. He currently works as
19 a paid income tax return preparer for NCK.

20 DEFENDANTS' ACTIVITIES

21 10. NCK is a tax return preparation business. Each of the
22 individual defendants, Carla Berry, Karen Berry, Dixon, and
23 Johnson (sometimes collectively referred to herein as "the return
24 preparers") currently offers tax return preparation services to
25 individuals (sometimes referred to herein as "customers") through
26 NCK. Each of the individual defendants currently is preparing

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1 income tax returns as a paid preparer for NCK.

2 11. Each individual defendant has continually or repeatedly
3 engaged in conduct subject to penalty under Section 6694, Title
4 26 U.S.C., in that each has, among other things, (1) taken
5 unrealistic and unsustainable positions on customers' tax
6 returns, resulting in understatements of tax due, and (2)
7 willfully or recklessly understated the tax due (and, in nearly
8 every case, overstated the refund due) on customers' tax returns.

9 12. Each defendant has continually or repeatedly engaged in
10 conduct subject to penalty under Section 6695(c), Title 26
11 U.S.C., in that each has failed to comply with regulations that
12 require the return preparer to sign the return and in that each
13 has failed to furnish a correct identifying number for NCK on
14 each return prepared under the auspices of NCK.

15 13. Further, each individual defendant has continually or
16 repeatedly engaged in fraudulent and deceptive conduct which has
17 substantially interfered with the proper administration of
18 internal revenue laws in that each defendant has, among other
19 things, improperly and purposefully reduced and understated
20 customers' tax liabilities by claiming false and inflated
21 itemized deductions for mortgage interest and unreimbursed
22 employee business expenses resulting, in most cases, in an
23 undeserved refund.

24 14. Search warrants, obtained in connection with a criminal
25 investigation into the defendants' conduct, were executed on
26 NCK's offices in April 2003 and April 2004 and resulted in the
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1 seizure of books and records revealing the fraudulent and
2 improper tax preparation services being performed by the
3 defendants.

4 15. Each defendant is aware that their conduct is improper
5 and illegal; however, it is believed that each defendant has
6 continued to prepare improper tax returns.

7 SPECIFIC ALLEGATIONS REGARDING DEFENDANTS' CONDUCT

8 How the NCK return-preparation scheme worked

9 16. At all times relevant hereto, the defendants' typical
10 customers were individuals with various income levels, including
11 police officers and retirees. Advertising was by word of mouth.
12 Customers typically were referred by friends or relatives who had
13 received tax refunds through the defendants' tax preparation
14 business. Based on a government sample, over 95 percent of the
15 Form 1040 tax returns the defendants prepared resulted in a
16 refund.

17 17. NCK operated a high-volume business. From the 2000
18 return season (i.e., tax returns for 1999) to the 2004 return
19 season (i.e., tax returns for 2003), the IRS identified more than
20 10,000 individuals for whom returns were prepared through the
21 defendants' tax preparation business.

22 18. The defendants generally prepared each return during a
23 single conference with the customer at Norma Berry's residence
24 or, after the business location moved, at NCK's offices in
25 Rialto, California. The conferences with customers sometimes
26 lasted only a few minutes. During the conference, the return
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1 preparers typically told customers that there was a change in the
2 tax law that permitted higher deductions on Schedule A of the
3 U.S. individual income tax return for home mortgage interest
4 deductions and for unreimbursed employee business expenses.
5 Returns were typically prepared manually and were usually not
6 signed by the preparers.

7 19. The customer was told to bring the customer's Form W-2
8 to the meeting. Spouses typically were advised to file their
9 returns separately instead of jointly regardless of the
10 customers' income level and, sometimes, spouses were advised to
11 file as single despite their married status.

12 20. On some occasions, customers would receive completed
13 returns prepared by the defendants at the conclusion of the
14 customer conference. On other occasions, customers were asked to
15 come back to the offices to pick up the completed returns.
16 Generally, the return preparers did not discuss any of the Form
17 1040 line items with the customers other than the tax refund
18 amount.

19 21. In most cases, the customer did not pay as much
20 mortgage interest as was stated on Schedule A of the Forms 1040
21 that were prepared by the defendants. In some cases, no mortgage
22 interest was paid by the customer at all. Nonetheless, the
23 defendants claimed fictitious or inflated mortgage interest
24 payment amounts to reduce customers' taxable income.

25 22. In many cases, the defendants set forth fictitious
26 amounts for unreimbursed employee expenses on Schedule A of the
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1 Forms 1040.

2 23. The defendants did not point out or explain these bogus
3 deductions to the customers.

4 24. In nearly every case, the defendants appear to have
5 improperly generated false deductions large enough to create a
6 refund.

7 25. The defendants charged fees ranging from \$80 to \$150
8 per return.

9 26. After a return was completed, the defendants would make
10 a copy and give the copy and the original return to the customer,
11 who would then sign the original and mail the return to the IRS.

12 Particular customers' experiences

13 27. In 2002, one customer, referred to Norma Berry's tax
14 preparation business by a co-worker, called the defendants'
15 business and made an appointment to have his 2001 income tax
16 returns prepared. He was told over the phone to bring his
17 current Form W-2, the previous year's tax return, and \$100 cash.
18 In about January 2002, he went to the defendants' office, which
19 was then located in a residence, and met with Carla Berry. Carla
20 Berry prepared his return in approximately 15 minutes. Carla
21 Berry did not ask about or discuss any of the Form 1040 line
22 items other than the refund amount. Carla Berry told the
23 customer that her mother, Norma Berry, had worked for the
24 Internal Revenue Service ("IRS") and that all the return
25 preparers at the business knew all the legal shortcuts. The
26 customer did not own a home and had paid no mortgage interest

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1 during the year, yet Carla Berry prepared a tax return for the
2 customer that claimed bogus mortgage interest of \$27,069. The
3 return prepared by Carla Berry also claimed bogus employee
4 business expenses of \$5,369.00. The customer paid \$100 cash for
5 the tax return. Carla Berry did not sign the return as the paid
6 preparer. The customer initially received a refund based on the
7 return prepared by Carla Berry. The customer returned to
8 defendants' tax preparation business to have his income tax
9 returns prepared for 2002 and 2003. The process was essentially
10 the same each year. The 2003 returns were prepared at the
11 defendants' new business office location. Since the time that
12 customer's last return was prepared by the defendants' business,
13 the customer has filed amended returns to remove the bogus
14 deductions initially claimed on the returns prepared by Carla
15 Berry. The amended returns reveal that Carla Berry understated
16 the taxes due on the customer's 2001, 2002, and 2003 returns by a
17 total of more than \$20,000.

18 28. In 2002, another customer went to the defendants'
19 business, which was then located in a residence, and asked to
20 have her 2001 tax return prepared. She met with Karen Berry, who
21 prepared her return in approximately 30 minutes. Karen Berry
22 asked the customer no questions about home ownership and did not
23 ask about or discuss any of the Form 1040 line items with the
24 customer other than the refund amount. The customer and her
25 spouse had paid mortgage interest in the amount of \$19,477, yet
26 Karen Berry prepared a tax return for the customer that claimed
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1 bogus mortgage interest of \$21,699. The customer's spouse's
2 return, which was prepared by another return preparer for NCK,
3 claimed mortgage interest in the amount of \$26,515. The return
4 prepared by Karen Berry also claimed bogus employee business
5 expenses of \$4,235. The customer and her spouse each paid
6 approximately \$80 cash for the tax returns. Karen Berry did not
7 sign the return as the paid preparer. The customer initially
8 received a refund based on the return prepared by Karen Berry.
9 The customer returned to defendants' tax preparation business to
10 have her income tax returns prepared for 2002 and 2003. The
11 process was essentially the same each year, except that the
12 customer made an appointment before going to the defendants'
13 office. The 2003 returns were prepared at the defendants' new
14 business office location. Since the time that the customer's
15 last return was prepared by the defendants' business, the
16 customer has filed amended returns to remove the bogus deductions
17 initially claimed on the returns, including the 2001 return
18 prepared by Karen Berry.

19 29. Another customer, referred to Norma Berry's tax
20 preparation business by a neighbor, used the defendants' tax
21 preparation business to prepare his 2000, 2001, 2002, and 2003
22 income tax returns, each of which contained bogus mortgage
23 interest deductions totaling more than \$87,000. When he
24 initially went to the defendants' business to have his 2000 tax
25 return prepared, Norma Berry told the customer that she had
26 worked for the IRS for many years, that she knew tax law, and
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1 that she never had a problem with the IRS. The customer most
2 recently used the defendants' business for the preparation of his
3 2003 tax return. The customer's 2003 return was prepared by
4 Valerie Dixon. When Dixon prepared the customer's 2003 return,
5 the customer did not own a home and had not paid any mortgage
6 interest during the 2003 year. Nevertheless, Dixon prepared a
7 tax return for the customer that claimed bogus mortgage interest
8 of \$19,720. The return prepared by Dixon also claimed bogus
9 employee business expenses of \$5,377. The customer paid \$120
10 cash for the tax return prepared by Dixon. Dixon did not sign
11 the return as the paid preparer. The customer initially received
12 a refund based on the return prepared by Dixon. Since then, the
13 customer has filed an amended return for 2003 to remove the bogus
14 deductions initially claimed on the returns prepared by Dixon.
15 The amended return reveals that Dixon understated the taxes due
16 on the customer's 2003 return by more than \$5,000.

17 30. Another customer and his spouse heard about Norma
18 Berry's tax preparation business approximately five years ago.
19 He and his spouse used the defendants' tax preparation business
20 to prepare their 2000, 2001, 2002, and 2003 income tax returns
21 each of which contained bogus mortgage interest deductions
22 totaling more than \$125,000. The customer most recently used the
23 defendants' business for the preparation of his 2003 tax return.
24 The customer's 2003 return was prepared by Ivan Johnson. When
25 Johnson prepared the 2003 return, the customer and his spouse did
26 not own a home and had not paid any mortgage interest during the

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1 2003 year. Nevertheless, Johnson prepared a tax return for the
2 customer and his spouse that claimed bogus mortgage interest of
3 \$27,997. The return prepared by Johnson also claimed bogus
4 employee business expenses of \$5,979. The customer and his
5 spouse paid \$100 cash for the tax return prepared by Johnson.
6 Johnson did not sign the return as the paid preparer. The
7 customer and his spouse initially received a refund based on the
8 return prepared by Johnson. Since then, the customer and his
9 spouse have filed an amended return for 2003 to remove the bogus
10 deductions initially claimed on the returns prepared by Johnson.
11 The amended return reveals that Johnson understated the taxes due
12 on the customer's and his spouse's 2003 return by more than
13 \$3,000.

14 31. Another customer went to the defendants' business to
15 have her 2001 tax return prepared. Karen Berry prepared the
16 return, which set forth itemized deductions for mortgage interest
17 in the amount of \$23,096 even though the customer did not own a
18 home and had paid no mortgage interest during the year. In
19 December 2003, the customer received a letter from the IRS
20 regarding her 2001 income tax return. In January 2004, the
21 customer brought the IRS's letter to the defendants' business.
22 Norma Berry's former spouse, Matthew Berry, who works at the
23 defendants' business, told the customer that he would create all
24 the receipts that she needed for the IRS audit and directed the
25 customer not to inform the IRS as to how she obtained the
26 receipts. The customer refused Berry's offer to provide the IRS
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1 with falsified receipts. The IRS audit eventually resulted in an
2 additional tax due of \$3,901.

3 INJURY TO THE UNITED STATES

4 32. The IRS has interviewed fourteen former customers of
5 NCK and has reviewed the returns prepared for those customers by
6 the defendants for years 2000 through 2003. Every one of the
7 approximately 45 tax returns reviewed by the IRS sets forth
8 inflated or fictitious mortgage interest deductions. 100 percent
9 of those returns generated a refund. This percentage is higher
10 than the overall percentage of Form 1040 returns claiming refunds
11 nationally.

12 33. The errors contained in the returns prepared by the
13 defendants cannot be automatically detected by cross-checking
14 information reported to the IRS by employers or other third
15 parties. Time-intensive audits by revenue agents, including
16 interviews with the taxpayer-customers, are usually necessary to
17 ferret out the bogus deductions claimed by the defendants.

18 34. The IRS is currently examining approximately 2,441 tax
19 returns of the more than 10,000 returns prepared by the
20 defendants for the 2000-2004 tax seasons (i.e., returns for years
21 1999-2003). Of the 2,441 returns being audited, 1,908 are from
22 the 2002 tax year and 533 are from the 2003 tax year. It is
23 anticipated that at least another 1,600 returns prepared by the
24 defendants will be audited.

25 35. Based on a comparison of the mortgage interest reported
26 on the returns currently being audited and the mortgage interest
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1 reported on Forms 1098 submitted to the IRS, the mortgage
2 interest deduction was overstated on 96% of the 2002 returns
3 being audited and on 90% of the 2003 returns being audited.

4 36. Of the 2,441 returns currently being examined, the IRS
5 selected 50 from the 2002 tax year and 50 from the 2003 tax year
6 to analyze. Based on the IRS's analysis, the average loss per
7 return for the 2002 tax year is \$2,722 and the average loss per
8 return for the 2003 tax year is \$2,230. Applying that average
9 loss per return to all of the returns being audited, the
10 estimated tax loss to the government from the 2,441 returns being
11 audited will be over \$5 million for 2002 and over \$1.1 million
12 for 2003.

13 37. Assuming that 90 percent of the approximately 10,000
14 returns prepared by the defendants for tax years 1999 through
15 2003 contained understatements of tax, and assuming further an
16 average tax loss per return of \$2,230 (which represents the
17 lesser of the two averages calculated by the government with
18 respect to the samples from returns currently being audited), the
19 IRS estimates the aggregate tax loss at \$20 million.

20 INJURY TO THE DEFENDANTS' CUSTOMERS

21 38. As a result of the defendants' improper actions, acting
22 either in concert or individually, many of their customers have
23 been required to file amended returns or undergo audits by the
24 IRS. They have incurred severe, and in most cases unanticipated,
25 financial burdens due to their liability for additional tax
26 beyond the amount reported on their original returns, plus
27

1 statutory interest.

2 39. As a result of the defendants' improper actions, acting
3 either in concert or individually, many of their customers will
4 be required to file amended returns or undergo audits by the IRS.
5 They will incur severe financial, and in most cases
6 unanticipated, financial burdens due to their liability for
7 additional tax beyond the amount reported on their original
8 returns, plus statutory interest (and perhaps civil penalties).

9 COUNT I

10 (Engaging in Conduct Prohibited by Sections 6694 and 6695)

11 40. Plaintiff realleges and incorporates by reference
12 paragraphs 1 through 39 of the Complaint.

13 41. The defendants, by reason of their preparation, or
14 assistance in the preparation, of federal income tax returns for
15 which they were compensated, are income tax return preparers
16 within the meaning of Section 7701(a)(36) of the Internal Revenue
17 Code ("the Code"), Title 26, U.S.C.

18 42. The defendants have continually or repeatedly engaged
19 in conduct subject to penalty under Section 6694 of the Code by
20 either (a) recklessly or intentionally disregarding rules and
21 regulations in preparing the return of another person, resulting
22 in an understatement of federal tax liability for that person; or
23 (b) willfully or recklessly understating the federal tax
24 liability of another person in preparing the return of that
25 person; or both.

26 43. The defendants have continually or repeatedly engaged
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1 in conduct subject to penalty under Section 6695 of the Code in
2 that they have failed to consistently furnish the correct
3 identifying number for NCK on the returns they have prepared
4 under the auspices of NCK.

5 44. Unless enjoined by the Court, the defendants will
6 continue to engage in the above-described conduct.

7 45. The defendants must be enjoined from further acting as
8 income tax return preparers because an injunction prohibiting
9 their engaging in conduct subject to penalty under Sections 6694
10 and 6695 of the Code would not be sufficient to prevent their
11 further interference with the proper administration of the tax
12 laws.

13 COUNT II

14 (Unlawful Interference with the Internal Revenue Laws)

15 46. Plaintiff realleges and incorporates by reference
16 paragraphs 1 through 45 of the Complaint.

17 47. The defendants' fraudulent and deceptive conduct as set
18 forth above has the effect of substantially interfering with the
19 proper administration of the Internal Revenue laws by causing the
20 filing of improper and illegal tax returns or claims for refunds,
21 as well as the filing of tax returns containing improper and
22 illegal deductions, all of which contributes to undermining the
23 respect for, and deterring voluntary compliance with, the federal
24 tax laws.

25 48. Unless enjoined by this Court, the defendants will
26 continue to engage in this conduct.

1 d. Public interest. Members of the public whom the
2 defendants aided, advised, or assisted have been harmed
3 because such persons paid the defendants for their services
4 in preparing tax returns, and if their returns are examined
5 by the IRS, they will likely be assessed with deficiencies
6 in tax, be required to pay statutory interest on the tax
7 deficiencies resulting from the defendants' improper
8 preparation, and may also be subject to civil penalties
9 resulting from the deficiencies. Moreover, the defendants'
10 behavior encourages a reckless disregard for the internal
11 revenue laws and erodes public confidence in the fairness of
12 the federal income tax system, thus causing irreparable
13 injury to the government and the nation as a whole.

14 RELIEF REQUESTED

15 **WHEREFORE**, plaintiff, the United States of America, prays
16 for the following:

17 1. That the Court find that the defendants, NCK, Carla
18 Berry, Karen Berry, Dixon, and Johnson, have continually or
19 repeatedly engaged in conduct subject to penalty under Sections
20 6694 and 6695; that an injunction prohibiting such conduct would
21 not be sufficient to prevent the defendants' interference with
22 the proper administration of Title 26; and that the defendants
23 therefore should be permanently enjoined from acting as income
24 tax return preparers pursuant to Sections 7407 and 7402 of the
25 Internal Revenue Code.

26 2. That the Court find that the defendants, NCK, Carla
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1 Berry, Karen Berry, Dixon, and Johnson, have continually or
2 repeatedly engaged in fraudulent or deceptive conduct that
3 substantially interferes with the proper administration and
4 enforcement of the internal revenue laws by the IRS; that an
5 injunction prohibiting such conduct would not be sufficient to
6 prevent the defendants' interference with the proper
7 administration of Title 26; and that the defendants therefore
8 should be permanently enjoined from acting as income tax return
9 preparers pursuant to Sections 7407 and 7402 of the Internal
10 Revenue Code.

11 3. That the Court enter a Final Judgment of Permanent
12 Injunction enjoining the defendants, NCK, Carla Berry, Karen
13 Berry, Dixon, and Johnson, and all other persons in active
14 concert or participation with them, directly or indirectly, by
15 use of any means or instrumentality, from:

16 a. Acting as income tax return preparers within the
17 meaning of Section 7701(a)(36) of the Code;

18 b. Taking any action in furtherance of aiding,
19 assisting, advising, or preparing for compensation tax
20 returns of third-party taxpayers;

21 c. Further engaging in conduct subject to penalty
22 under Sections 6694 and 6695 of the Code; or

23 d. Substantially interfering with and/or impeding the
24 proper administration of the internal revenue laws.

25 4. That this Court further order and decree, as part of its
26 permanent injunctive relief, that the defendants notify, in
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1 writing, all persons whose tax returns they have prepared from
2 January 1, 1999 to the date of the Court's order, of the findings
3 and relief ordered by the Court, including in such notice to each
4 person a copy of the Complaint and of the Court's Final Order of
5 Permanent Injunction; and that the defendants file with the Court
6 and provide to plaintiff's attorneys a list of the names, Social
7 Security numbers, addresses, e-mail addresses, and telephone
8 numbers of all persons so notified within thirty (30) days of the
9 date the Order is entered.

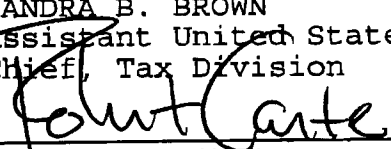
10 5. That this Court retain jurisdiction of this action for
11 the purpose of implementing and enforcing the final judgment and
12 all additional decrees and orders necessary and appropriate to
13 the public interest.

14 6. That this Court award plaintiff all its costs in
15 prosecution of this action.

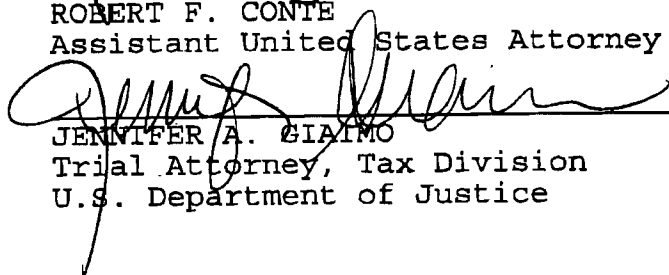
16 Respectfully submitted,

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19 SANDRA B. BROWN
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20 Dated: December 15, 2004


ROBERT F. CONTE
Assistant United States Attorney

21
22 Dated: December 13, 2004


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