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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
RIVERSIDE

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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) No. EDCV 04-1566 VAP (SGGLx)
16)
Plaintiff,)
17)
v.) UNITED STATES' MEMORANDUM IN
18) SUPPORT OF EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING ORDER
19) AND ORDER TO SHOW CAUSE WHY
N.C.K. SERVICES, INC.,) DEFENDANTS SHOULD NOT BE
20) PRELIMINARILY ENJOINED FROM
BERRY; and IVAN T. JOHNSON,) PREPARING INCOME TAX RETURNS
21)
Defendants.)
22)
23)

24 The United States of America respectfully submits this
25 memorandum in support of its *ex parte* application for a temporary
26 restraining order and an order to show cause why Defendants
27 should not be preliminarily enjoined from preparing tax returns.
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1 required identifying information (e.g., employer identification
2 number), and routinely destroy incriminating books and records.
3 As simple as Defendants' scheme may be, it has far-reaching and
4 disastrous consequences, including a direct tax loss to the
5 government estimated to exceed \$25 million. Immediate injunctive
6 relief - in the form of an order restraining Defendants from
7 preparing any additional 2005 tax returns pending a trial on the
8 merits - is the only way to stop Defendants from wreaking further
9 havoc on the administration and enforcement of the internal
10 revenue laws.

11 ISSUE PRESENTED

12 Internal Revenue Code Sections 7402(a) and 7407, Title 26
13 U.S.C., authorize injunctive relief against income tax return
14 preparers who violate the tax code, engage in fraudulent or
15 deceptive conduct, or otherwise interfere with the administration
16 and enforcement of the internal revenue laws. Defendants N.C.K.
17 Services, Inc. ("NCK"), Carla D. Berry ("Carla Berry"), Karen D.
18 Berry ("Karen Berry"), and Ivan T. Johnson ("Ivan Johnson")
19 (collectively, "Defendants") have intentionally and
20 systematically prepared thousands of federal tax returns claiming
21 bogus deductions to create undeserved refunds.¹

22 ¹ For ease of reference, the term "Defendants" as used
23 herein generally includes former Defendant Valerie M. Dixon. Ms.
24 Dixon was employed as an income tax return preparer along with
25 Carla Berry, Karen Berry, and Ivan Johnson during the 2000
26 through 2004 return preparation seasons. Dixon Declaration, ¶¶
27 3-4, Exhibit 7 to Hulbig Declaration. Ms. Dixon was dismissed
28 from this suit on May 9, 2005, after agreeing to stop preparing
tax returns for 10 years, among other terms. Therefore, Ms.
Dixon is excluded from any reference herein to (i) Defendants'
preparation activities or other conduct occurring after May 9,
2005 and (ii) the injunctive relief the United States now seeks.

1 Based on an analysis of IRS audits to date, the combined tax loss
2 from this scheme for the 2002-2005 return preparation seasons
3 alone is estimated to exceed \$25 million. The issue is whether
4 Defendants should be enjoined from preparing federal tax returns
5 for others pursuant to I.R.C. Sections 7402(a) and 7407 pending a
6 trial on the merits.

7 STATEMENT OF FACTS

8 The relevant facts are set forth in the Declarations of
9 Hannah Lee, IRS Revenue Agent ("Lee Declaration"), former
10 Defendant Valerie M. Dixon ("Dixon Declaration"), and Adam F.
11 Hulbig, Trial Attorney for the U.S. Department of Justice, Tax
12 Division ("Hulbig Declaration"), which are attached hereto and
13 incorporated herein by this reference.²

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25 ² Although it does not rely upon them in support of its
26 application, in this memorandum the United States refers the
27 Court to its Requests for Admissions to Defendants ("RFAs"). The
28 RFAs are deemed admitted as a matter of law pursuant to Fed. R.
Civ. P. 36(a) because Defendants did not serve timely answers
thereto.

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1 ARGUMENT

2 I. Defendants Should Be Enjoined Immediately under I.R.C.
3 §§ 7402(a) and 7407 Before They Prepare Any More Fraudulent
4 Tax Returns.

5 A. Legal Standards for TRO and Preliminary Injunction

6 1. *Temporary restraining order under Fed. R. Civ. P.*
7 *65(b).*

8 Rule 65(b) of the Federal Rules of Civil Procedure provides
9 in relevant part:

10 A temporary restraining order may be granted
11 without written or oral notice to the adverse party
12 or that party's attorney only if (1) it clearly
13 appears from specific facts shown by affidavit or
14 by the verified complaint that immediate and
15 irreparable injury, loss, or damage will result to
16 the applicant before the adverse party or that
17 party's attorney can be heard in opposition, and
18 (2) the applicant's attorney certifies to the court
19 in writing the efforts, if any, which have been
20 made to give the notice and the reasons supporting
21 the claim that notice should not be required.

22 Fed. R. Civ. P. 65(b).

23 The attached declarations meet Rule 65(b)'s requirement to
24 prove "specific facts" showing that "immediate and irreparable
25 injury, loss, or damage will result" to the United States if a
26 temporary restraining order is not issued. *See, e.g., United*
27 *States v. Venie*, 691 F. Supp. 834 (M.D. Pa. 1988) (issuing a TRO
28 prohibiting defendant from preparing further tax returns where
defendant had consistently claimed head of household status for
his customers, regardless of whether the customers were entitled
to that status under law, and where he had overstated their child
care expenses).

As discussed below, the injunctive relief sought in this

1 satisfied).

2 Section 7402(a) provides, in relevant part, that "[t]he
3 district courts of the United States at the instance of the
4 United States shall have jurisdiction to make and issue in civil
5 actions . . . orders of injunction . . . and to render such
6 judgments and decrees as may be necessary or appropriate for the
7 enforcement of the internal revenue laws." I.R.C. § 7402(a).

8 This broad grant of authority provides the United States with an
9 independent basis upon which to seek an injunction against those
10 who interfere with the enforcement of the internal revenue laws.

11 See Senate Finance Committee, Tax Equity and Fiscal
12 Responsibility Act of 1982, S. Rep. No. 494, 97th Cong., 2d
13 Sess., reprinted in 1982 U.S. Code Cong. & Adm. News, pp. 781,
14 1016-17; see also *Brody v. United States*, 243 F.2d 378, 384 (1st
15 Cir. 1957) ("[i]t would be difficult to find language more
16 clearly manifesting a congressional intention to provide the
17 district courts with a full arsenal of powers to compel
18 compliance with the internal revenue laws.")

19 In addition to the broad injunctive relief available under
20 Section 7402, Section 7407 separately authorizes a court to
21 enjoin a person from acting as an income tax return preparer if
22 that person has continually or repeatedly: (1) engaged in conduct
23 subject to penalty under I.R.C. Section 6694, which prohibits the
24 preparation or submission of a return containing an
25 understatement of tax due to an unrealistic position or willful
26 or reckless conduct; (2) engaged in conduct subject to penalty
27 under I.R.C. Section 6695, which mandates that return preparers

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1 sign and include their identifying number on each return they
2 prepare (among other things); (3) engaged in conduct subject to
3 any criminal penalty under the internal revenue laws; (4)
4 misrepresented his or her eligibility to practice before the IRS,
5 or otherwise misrepresented his or her experience or education as
6 a return preparer; or (5) engaged in any other fraudulent or
7 deceptive conduct substantially interfering with the proper
8 administration of the tax laws. I.R.C. § 7407. In addition,
9 Section 7407 provides that a court must find that (1) injunctive
10 relief is appropriate to prevent the recurrence of such conduct,
11 and (2) a narrower injunction prohibiting only such conduct would
12 be insufficient to prevent further interference with the
13 administration of the internal revenue laws. *Id.*

14 **B. The Evidence Is Sufficient to Establish the Elements of**
15 **I.R.C. Section 7407.**

16 1. *Defendants are "income tax return preparers."*

17 Each of the Defendants is an "income tax return preparer"
18 within the meaning of I.R.C. Section 7701(a)(36)(A). Under
19 Section 7701(a)(36)(A), "income tax return preparer" is defined
20 to mean "any person who prepares for compensation, or who employs
21 one or more persons to prepare for compensation, any return of
22 tax imposed by subtitle A [income taxes] or any claim for refund
23 of tax imposed by subtitle A." Defendants have prepared and
24 continue to prepare tax returns for compensation at Defendant
25 NCK's office in Rialto, California. *See generally* Customer
26 Declarations, Exhibits H-T to Lee Declaration; *see also* Dixon
27 Declaration, ¶ 4. NCK is owned and principally operated by

1 Defendants (and sisters) Carla Berry and Karen Berry, who have
2 been in the business of preparing income tax returns for
3 compensation since at least the 2002 return preparation season
4 (i.e., tax returns for 2001). Carla Berry Tr. 70:1-4, Exhibit 6
5 to Hulbig Declaration; see also Lee Declaration, ¶¶ 28-31.

6 Defendant NCK also employs Defendant Ivan Johnson as a return
7 preparer. *Id.* at ¶ 28. Like the Berry Defendants, Ivan Johnson
8 has prepared income tax returns for compensation since at least
9 the 2002 return preparation season. *Id.* at ¶ .

10 2. *Defendants have engaged in conduct subject to*
11 *penalty under I.R.C. Sections 6694 and 6695, and*
conduct subject to criminal penalty.

12 (a) I.R.C. Section 6694

13 A return preparer is subject to penalty under I.R.C. Section
14 6694 if the preparer willfully understates a taxpayer's liability
15 on a return or claim for refund, recklessly or intentionally
16 disregards IRS rules or regulations, or both. I.R.C. §§
17 6694(b)(1), (2).

18 In their capacity as return preparers, Defendants have
19 violated I.R.C. Section 6694(b)(1) by willfully understating the
20 tax liability of thousands of customers through the use of false
21 and inflated deductions for home mortgage interest, among other
22 fraudulent Schedule A deductions. Lee Declaration, ¶¶ 32-33; see
23 also Dixon Declaration, ¶¶ 6-11. The Lee Declaration establishes
24 that over 90% of the 2001-2004 returns audited by the IRS to date
25 show understatements of tax resulting from Defendants' abusive
26 deduction scheme, and that the average tax loss per return is
27 \$3,160. *Id.* at ¶ 39. This scheme has resulted in actual tax
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1 losses to the United States in excess of \$14 million. *Id.* at 36.
2 If the unaudited returns are included, and it is assumed that 90%
3 of these returns also suffer from an average tax loss of \$3,160,
4 the aggregate tax loss to the United States is estimated to
5 exceed \$25 million. *Id.* at ¶ 38. Notably, these totals do not
6 include tax losses attributable to Defendants' systematic and
7 reported use of other improper Schedule A deductions (e.g.,
8 miscellaneous business expenses). *Id.* at ¶ 31; see also Dixon
9 Declaration at ¶ 6-11.

10 Defendants overstated home mortgage interest on the
11 overwhelming majority of the returns they prepared, even where
12 the customers did not own homes (meaning there were no Forms 1098
13 mortgage interest statements ever prepared and filed by third-
14 party lenders for these customers). *Id.* at ¶¶ 37, 45; see also
15 Dixon Declaration at ¶ 7; see generally Customer Declarations,
16 Exhibits H-T to Lee Declaration; See RFA Nos. 8-9, Exhibit 2 to
17 Hulbig Declaration at p. 12 (admitting that Defendants prepared
18 federal tax returns for customers containing overstated home
19 mortgage interest deductions, even where the customers did not
20 own homes). Defendants' systematic inclusion of overstated and
21 fictitious deductions for home mortgage interest on their
22 customers' returns had the desired effect of reducing the taxable
23 income of those customers, resulting in undeserved refunds in the
24 majority of cases. Lee Declaration at ¶¶ 47, 49; see also RFA
25 No. 10, Exhibit 2 to Hulbig Declaration at p. 12 (admitting that
26 Defendants prepared federal tax returns containing false home
27 mortgage interest deductions in order to maximize the refunds due

1 to their customers). Defendants did not explain the bogus
2 deductions to their customers, however. *Id.* at ¶ 46; see
3 generally Customer Declarations, Exhibits H-T to Lee Declaration.

4 Even more troubling is that Defendants used a "formula
5 sheet" to claim fraudulent home mortgage interest and other
6 Schedule A deductions (e.g., charitable contributions and
7 miscellaneous business expenses) based solely on the amount of a
8 given customer's income. Dixon Declaration at ¶¶ 9-11. The
9 "formula sheet" set forth income ranges and corresponding ranges
10 for Schedule A itemized deductions that were used by Defendants
11 to randomly 'assign' deduction sub-totals on the returns.³
12 *Id.* at ¶ 9. As a result, the deductions claimed on the returns
13 were based only on the income of customers, and not on any actual
14 interest, expenses, taxes, or charitable contributions paid by
15 those customers. *Id.* To facilitate the operation of this
16 abusive and unlawful system, Defendants routinely told customers
17 that the tax law allowed for deductions up to a certain amount
18 based on the customer's income level. *Id.* at ¶ 10. In the
19 course of engaging in the conduct described above, Defendants
20 have clearly violated I.R.C. Section 6694(b)(1).

21 Defendants have also violated I.R.C. Section 6694(b)(2) by
22 recklessly or intentionally disregarding IRS rules and
23 regulations governing the use of Schedule A deductions,

24
25 ³ Presumably, Defendants selected a range of deduction
26 values that they believed were least likely to subject customers
27 to IRS audits. In this way, Defendants created the illusion that
the claimed Schedule A deductions were reasonable, i.e., a
customer earning \$20,000 would take a smaller home mortgage
interest deduction than a customer earning \$60,000.

1 particularly the use of the home mortgage interest deduction.
2 Since all three Defendants have formal training in the
3 preparation of federal income tax returns, Lee Declaration at ¶
4 29, Defendants can hardly deny their awareness of the relevant
5 rules regarding the use of Schedule A deductions.⁴ See RFA No.
6 3, Exhibit 2 to Hulbig Declaration at p. 11 (admitting that
7 "[Defendants] have read the instructions published by the
8 Internal Revenue Service for IRS Form 1040 and Form 1040X."); see
9 also RFA No. 12, Exhibit 2 to Hulbig Declaration at p. 13
10 (admitting that "[Defendants] are responsible for determining
11 that information on a federal income tax return is true,
12 accurate, and complete") To the contrary, Defendants' tax
13 preparation activities, as demonstrated by the declarations
14 submitted herewith, evince a flagrant disregard for those rules
15 in order to maximize customer refunds. See, e.g., Dixon
16 Declaration, ¶¶ 6-11.

17 (b) I.R.C. Section 6695

18 A return preparer is subject to penalty under I.R.C. Section
19 6695 if he or she fails to sign a return or, under I.R.C. Section
20 6109(a)(4), fails to furnish an identifying number, unless the
21 preparer shows that the failure was due to a reasonable cause and
22 not due to willful neglect. I.R.C. § 6695(b), (c). Section
23 6109(a)(4) provides, in relevant part, that "[a]ny return or
24 claim for refund prepared by an income tax return preparer shall

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26 ⁴ The rules applicable to the home mortgage interest
27 deduction and other Schedule A deductions are set forth in IRS
28 Publication 17, which is publicly available on the IRS' website.

1 bear such identifying number for securing proper identification
2 of such preparer, his employer, or both, as may be prescribed."
3 The IRS regulations prescribed under Section 6109(a)(4) require
4 that individual preparers include their social security number,
5 and that preparers employed by a corporate preparer also include
6 the corporate preparer's employer identification number ("EIN").
7 Treas. Reg. § 1.6109-2.

8 Defendants have violated I.R.C. Sections 6695(b) and (c) by
9 consistently failing to sign the returns they prepared for others
10 and by failing to provide the appropriate identifying
11 information. Lee Declaration, ¶ 34; see also Dixon Declaration,
12 ¶¶ 14, 15; RFA Nos. 4-6, Exhibit 2 to Hulbig Declaration at p. 11
13 (admitting that Defendants failed to sign and provide identifying
14 information on returns they prepared for customers). By way of
15 illustration, the IRS has determined that Defendants failed to
16 sign and provide identifying information on at least 1,946
17 returns they prepared during the 2004 preparation season alone
18 (i.e., tax returns for 2003). Lee Declaration, ¶ 34. According
19 to a search of IRS records, Defendant NCK does not have an
20 employer identification number, even though it began operations
21 in January 2004. *Id.*

22 The IRS also cross-checked Defendants' social security
23 numbers with returns on file. *Id.* Although Defendants are known
24 to have prepared at least 1,946 total returns in 2004, Defendants
25 Carla Berry and Karen Berry reported their social security on
26 only 41 total returns. *Id.* Ivan Johnson did not report
27 preparation of any returns in 2004, using his social security

1 number or otherwise. *Id.* Because Defendants do not include
2 identifying information on the overwhelming majority of returns
3 they prepare for others, their fraudulent tax preparation
4 activities are extremely difficult to track. *Id.* This, in turn,
5 places a substantial administrative burden on the IRS.

6 A return preparer is also subject to penalty under I.R.C. §
7 6695(d) if, under I.R.C. § 6107(b), he or she fails to retain
8 completed copies of client tax returns or, alternatively, a list
9 of clients and their taxpayer identification numbers for a three-
10 year period after the close of the applicable return period,
11 unless the preparer shows that the failure was due to a
12 reasonable cause and not due to willful neglect. I.R.C. §§
13 6695(d).

14 At a minimum, Defendants have violated I.R.C. 6695(d) by
15 failing to maintain a complete list of their 2005 clients (*i.e.*,
16 tax returns for 2004) with corresponding taxpayer identification
17 numbers. Lee Declaration, ¶¶ 54, 56-57. Defendants, as part of
18 their Fed. R. Civ. P. 26(a)(1) disclosures, provided the United
19 States with what they represented was their complete 2005 client
20 list. Hulbig Declaration, ¶ 14; Exhibit 1 to Hulbig Declaration.
21 The purported client list contained names and addresses of
22 approximately 230 taxpayers, but no taxpayer identification
23 numbers were provided (*i.e.*, social security numbers, since all
24 of the clients are individuals). See Exhibit 1 to Hulbig
25 Declaration. Apart from being facially defective, the IRS has
26 also determined that Defendants' 2005 client list is incomplete.
27 Lee Declaration, ¶¶ 56 - 57; see also RFA No. 14, Exhibit 2 to
28

1 Hulbig Declaration at p. 14 (admitting that "the 2005 customer
2 list [Defendants] provided to the United States as part of [its]
3 Initial Disclosures under Fed. R. Civ. P. 26(a)(1) is
4 incomplete"). To date, the IRS has identified at least 33
5 individuals who had their 2004 returns prepared by Defendants but
6 were not included on Defendants' client list.⁵ *Id.* Declarations
7 from 7 of those individuals are attached to the Lee Declaration
8 as Exhibits N-T. Not surprisingly, the vast majority of the
9 undisclosed individuals overstated deductions for home mortgage
10 interest, whereas the disclosed individuals overstated home
11 mortgage interest at a rate of only 10%. *Id.* at ¶ 55; see also
12 RFA No. 14, Exhibit 2 to Hulbig Declaration at p. 13 (admitting
13 that "a number of the 2004 federal income tax returns
14 [Defendants] prepared for customers contained false home mortgage
15 interest deductions"). Defendants have refused to provide the
16 United States with a complete 2005 client list, and they continue
17 to withhold responsive documents used to create the defective
18 list that they did provide, despite the United States' repeated
19 requests for these materials (both informal and formal). Hulbig
20 Declaration, ¶¶ 14-24. It is presumed that the 2005 client list
21 is defective and incomplete due to NCK's liberal document-
22 destruction policies. Dixon Declaration, ¶¶ 16-17.

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27 ⁵ Declarations from seven of those individuals are
attached to the Lee Declaration as Exhibits N-T.

1 (c) Criminal Law

2 Inserting fictitious deductions on a customer's return is
3 conduct subject to criminal penalty as well as civil penalty.
4 *See, e.g., United States v. Kellog*, 955 F.2d 1244 (9th Cir. 1992)
5 (sustaining conviction under I.R.C. Section 7206(2) of return
6 preparer who claimed "excessive or wholly fictitious deductions
7 for charitable contributions, dependents, interest payments,
8 business expenses, tax return preparation fees, and the like.")
9 This serves as an additional basis for injunctive relief pursuant
10 to I.R.C. Section 7407(b) (1) (A).

11 3. *Defendants have engaged in other fraudulent and*
12 *deceptive conduct substantially interfering with*
13 *the administration of the tax laws.*

14 In addition to authorizing injunctive relief for the
15 specific statutory violations, I.R.C. Section 7407 authorizes
16 injunctive relief against an income tax preparer that has
17 "engaged in any other fraudulent or deceptive conduct which
18 substantially interferes with the proper administration of the
19 Internal Revenue Code." I.R.C. § 7407(b) (D). Certain of
20 Defendants' tax preparation activities fit squarely within the
21 purview of this subpart. First, Defendants have engaged in
22 fraudulent and deceptive conduct by regularly destroying books
23 and records that should otherwise be used to maintain complete
24 and accurate client information. Dixon Declaration, ¶ 16. By
25 destroying these books and records, they prevent the IRS from
26 easily tracing the effects of their tax preparation activities to
27 individual clients, which substantially interferes with the
28 proper administration of the Internal Revenue Code. *Id.* at ¶ 17.

1 include: (1) the gravity of the harm caused by the offense; (2)
2 the extent of the defendant's participation, and her degree of
3 scienter; (3) the isolated or recurrent nature of the infraction
4 and the likelihood that Defendant's customary business activities
5 might again involve her in such transaction; (4) the defendant's
6 recognition of her own culpability; and (5) the sincerity of
7 assurances against future violations. See *United States v.*
8 *Thompson*, 395 F.Supp.2d 941, 945 (E.D. Cal. 2005). All of these
9 factors are satisfied here.

10 First, the harm caused by Defendants' misconduct is grave.
11 Based on audited returns, the IRS has calculated actual tax
12 losses in excess of \$14 million resulting solely from Defendants'
13 abusive home mortgage interest scheme for tax years 2001, 2002,
14 2003, and 2004. If the unaudited returns are considered, the
15 aggregate tax losses are estimated to exceed \$25 million.⁶

16 Second, the extent of Defendants' participation is broad.
17 Defendants are known to have prepared approximately 8,000 tax
18 returns during the 2002-2005 return seasons. Given Defendants'
19 liberal policy of destroying business records, however, it is
20 assumed that Defendants prepared many more returns than that.
21 Defendants' scienter is demonstrated by, among other things: (i)
22 the consistently egregious audit results obtained to date; (ii)
23 the evidence set forth in the Dixon declaration, which describes
24 Defendants' intentional, systematic, and knowing violations of

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26 ⁶ This estimate does not include tax losses attributable
27 to Defendants' systematic and known use of other improper
28 Schedule A deductions (e.g., miscellaneous business expenses).
Lee Declaration, ¶ 33; Dixon Declaration, ¶¶ 6-11.

1 the internal revenue laws; and (iii) the evidence set forth in
2 the declarations of Defendants' customers, all of whom were
3 subjected to audits as a result of bogus tax returns prepared by
4 Defendants.

5 Third, the conduct has been recurrent and continuing. In
6 fact, Defendants' fraudulent tax preparation activities have
7 continued unabated despite the execution of two search warrants,
8 a criminal investigation, and the filing of the United States'
9 complaint for injunctive relief.

10 Fourth, Defendants are not expected to concede culpability
11 on their part. To the contrary, Defendants' conduct evinces a
12 palatable lack of remorse for their unlawful tax preparation
13 activities.

14 Fifth, given Defendants' pattern of conduct to date, which
15 has continued without interruption, current and future violations
16 are fully expected.

17 5. *A Narrower Injunction Prohibiting Such Conduct*
18 *Would Not Be Sufficient to Prevent Defendants'*
19 *Interference with the Proper Administration of the*
20 *Internal Revenue Law.*

21 That Defendants have continually and repeatedly engaged in
22 prohibited conduct is beyond dispute based on all of the evidence
23 submitted herewith. The Lee Declaration incorporates as exhibits
24 13 separate declarations from Defendants' former customers. Each
25 declaration, in turn, reflects at least one violation of Section
26 6694 and criminal law. The declaration of Valerie Dixon, who
27 personally observed Defendants' fraudulent tax preparation
28 activities, describes a continuing pattern of conduct that

1 violates Section 6694, Section 6695, criminal law, and otherwise
2 demonstrates Defendants' unswerving commitment to interfering
3 with the administration of the internal revenue laws through
4 their fraudulent and deceptive practices. The Hulbig Declaration
5 highlights Defendants' misconduct during discovery, including
6 their refusal to provide the United States with a complete 2005
7 client list and related documents. In this regard, Defendants'
8 actions in this litigation strongly suggest that they have
9 something to hide (and indeed they do, considering the
10 preponderance of the evidence).

11 Most importantly, the threat of harm is continuing. An
12 injunction limited to prohibiting Defendants from engaging in the
13 conduct described herein would be woefully insufficient to
14 prevent their continued interference with the proper
15 administration of the internal revenue laws. This sort of "obey
16 the law" injunction would have the effect of rewarding Defendants
17 for their refusal to do just that over at least the past four tax
18 seasons. Under the circumstances, an injunction to stop
19 Defendants from preparing any further returns pending a trial on
20 the merits is the only appropriate remedy.

21 If Defendants are not immediately enjoined from preparing
22 income tax returns, they will undoubtedly continue to prepare
23 false and fraudulent tax returns, understating their customers'
24 tax liability through the use of bogus Schedule A deductions.
25 Lee Declaration, ¶ 61. Allowing Defendants to continue doing
26 business as usual will also result in a continuing and severe
27 loss of tax revenue. *Id.* at ¶ 62. Moreover, it will result in a

1 continuing strain on IRS resources because the IRS cannot audit
2 every return Defendants prepare. *Id.* And it will cause
3 financial hardships to customers who will be audited - many of
4 whom will be required to pay unexpected tax liabilities,
5 including interest accruing from the date of the return to the
6 date of payment, and perhaps penalties. *Id.*

7 Finally, it should be emphasized that this is not a case
8 where the United States will deprive Defendants of their
9 livelihood should it obtain the requested injunctive relief.
10 Rather, each of the Defendants suggested in their depositions
11 that they prepare tax returns to supplement their income from
12 their regular jobs. For example, Karen and Carla Berry both
13 completed beauty college and have been working at a salon, which
14 they now own, for 14 years. See Karen Berry Tr. 17:4-10, 19:4-9,
15 Exhibit 5 to Hulbig Declaration. Ivan Johnson has an
16 undergraduate degree in civil engineering, a master's degree in
17 computer science, and he currently holds a position with the
18 California Department of Transportation ("Caltrans") making
19 \$60,000 per year. See Johnson Tr. 13:22-24, 14:11-14, 30:12-13
20 Exhibit 4 to Hulbig Declaration. Certainly, the United States,
21 and more importantly the taxpayer base, should not be forced to
22 endure the panoply of Defendants' fraudulent activities and the
23 resulting harm to the public fisc just so that Defendants can
24 have an additional source of income.

1 C. Injunctive Relief under I.R.C. Section 7402(a) is
2 Necessary for the Enforcement of the Internal Revenue
3 Laws.

4 Defendants, through their actions described above and in the
5 attached declarations, have engaged in conduct that substantially
6 interferes with the administration and enforcement of the
7 internal revenue laws. For this reason, injunctive relief
8 pursuant to I.R.C. Section 7402(a) is also necessary and
9 appropriate. See *United States v. Moser*, 2005 WL 3277965, slip
10 copy (D. Hawaii 2005) (permanently enjoining defendant from
11 acting as a tax preparer based on abusive deduction scheme
12 pursuant to I.R.C. Section 7402(a) and I.R.C. Section 7407).

12 CONCLUSION

13 For the foregoing reasons, and based on the evidence
14 submitted herewith, the Court is respectfully requested to
15 exercise its statutory authority under I.R.C. Sections 7402(a)
16 and 7407 to enter (i) a temporary restraining order enjoining
17 Defendants, and all persons acting in concert with them, from
18 preparing federal income tax returns, and (ii) an order to show
19 cause why a preliminary injunction should not issue, after the
20 temporary restraining order expires, to continue enjoining
21 Defendants, and all persons acting in concert with them, from
22 preparing federal income tax returns pending the trial on the
23 merits of the United States' complaint for permanent injunctive
24 relief. A proposed temporary restraining order and show-cause
25 order is filed herewith.

1 Respectfully submitted this 10th day of March, 2006,

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3 United States Attorney
4 SANDRA B. BROWN
5 Assistant United States Attorney
6 Chief, Tax Division
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17 Attorneys for the United States of
18 America

1 CERTIFICATE OF SERVICE

2 I, GINA HERNANDEZ, declare:

3 That I am a citizen of the United States and resident or employed in Los Angeles
4 County, California; that my business address is the Office of United States Attorney, 3880
5 Lemon Street, Suite 210, Riverside, CA 92501; that I am over the age of eighteen years,
6 and am not a party to the above-entitled action; That I am employed by the United States
7 Attorney for the Central District of California who is a member of the Bar of the United
8 States District Court for the Central District of California, at whose direction I served a
9 copy:

10 **UNITED STATES' MEMORANDUM IN SUPPORT OF *EX PARTE* APPLICATION FOR**
11 **TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY**
12 **DEFENDANTS SHOULD NOT BE PRELIMINARILY ENJOINED FROM PREPARING**
13 **INCOME TAX RETURNS**

14 Placed in a closed
15 envelope, for collection
16 and interoffice delivery
17 addressed as follows:

14 Placed in a sealed
15 envelope for collection and
16 mailing via United States Mail,
17 addressed as follows:

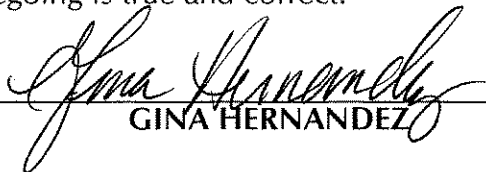
18 By hand-delivery
19 addressed as follows:

18 By facsimile as follows:
19 **(909) 981-7508**

20 By Fed Ex

21 **DUANE D. DADE**
22 **DUANE D. DADE & ASSOCIATES**
23 **1317 WEST FOOTHILL BOULEVARD, SUITE 232**
24 **UPLAND, CALIFORNIA 91786**

25 This Certificate is executed on March 10, 2006, in Riverside, California. I
26 certify under penalty of perjury that the foregoing is true and correct.

27 
28 GINA HERNANDEZ