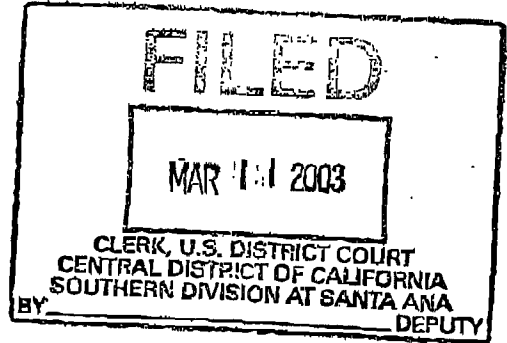


COPY II

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15
16 UNITED STATES OF AMERICA,
17 Plaintiff,

18 v.

19 SAMUEL J. DeANGELO; JOE
20 GORDON SHIELDS, a/k/a
GORDON SHIELDS; ALAN M.
21 HOVEY; JEFFREY R. WRIGHT;
KELLY DAVID, a/k/a DAVID
22 KELLY; and WESTERN TAX
SERVICES, INC.,

23 Defendants.
24

25
26
27
28
SA CV 03-0251
) NO. SA CV 03-0251
)
) UNITED STATES' MEMORANDUM IN
) SUPPORT OF EX PARTE APPLICATION
) FOR TEMPORARY RESTRAINING ORDER
) AND FOR ORDER TO SHOW CAUSE WHY
) DEFENDANTS SHOULD NOT BE
) PRELIMINARILY ENJOINED FROM
) PREPARING INCOME TAX RETURNS

GLT
MLGx

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E. The defendants should be enjoined from preparing returns, not just from engaging in prohibited conduct, because they have continually or repeatedly engaged in prohibited conduct and an injunction prohibiting such conduct would not be sufficient to prevent their interference with the proper administration of the Internal Revenue laws. 13

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15

16 UNITED STATES OF AMERICA,) No. SA CV
17)
Plaintiff,)
18) UNITED STATES' MEMORANDUM IN
v.) SUPPORT OF EX PARTE APPLICATION
19) FOR TEMPORARY RESTRAINING ORDER
20) AND FOR ORDER TO SHOW CAUSE WHY
SAMUEL J. DeANGELO; JOE) DEFENDANTS SHOULD NOT BE
21) PRELIMINARILY ENJOINED FROM
GORDON SHIELDS, a/k/a) PREPARING INCOME TAX RETURNS
22)
HOVEY; JEFFREY R. WRIGHT;)
23)
KELLY DAVID, a/k/a DAVID)
24)
KELLY; and WESTERN TAX)
SERVICES, INC.,)
25)
Defendants.)

26 Issue Presented
27 Internal Revenue Code Section 7407 authorizes injunctions
28 against tax return preparers who violate the tax code,

1 misrepresent their qualifications, or engage in other fraudulent
2 or deceptive conduct. The defendants have systematically
3 prepared thousands of returns claiming bogus deductions to create
4 undeserved refunds. The estimated tax loss from this scheme for
5 the 2000-02 tax seasons alone is \$31.5 million. The 2003 tax
6 season is well underway. Should the defendants be enjoined
7 before they prepare more fraudulent returns?

8 **Statement of Facts**

9 The relevant facts are set forth in the Declaration of David
10 A. Gordon, Revenue Agent filed herewith. The Gordon Declaration
11 is incorporated herein by reference.

12 **Argument**

13 **The Defendants Should Be Enjoined Immediately Under**
14 **I.R.C. § 7407 Before They Prepare Any More Fraudulent**
Returns.

15 **1. Legal standards for TRO and preliminary injunction.**

16 **A. Temporary restraining order under Fed. R. Civ. P.**
17 **65(b).**

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

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

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

The Gordon Declaration meets Rule 65(b)'s requirement to

1 prove "specific facts" showing that "immediate and irreparable
2 injury, loss, or damage will result" to the United States if a
3 temporary restraining order is not issued.¹ As discussed below,
4 the injunction sought in this case is authorized by Internal
5 Revenue Code Section 7407, and irreparable injury is presumed
6 from proof of violation of the statute.² The Gordon Declaration
7 supplies such proof. Further, the Gordon Declaration
8 demonstrates that the threat of irreparable injury is immediate
9 if the requested TRO is not issued; the defendants operate a
10 high-volume business, this is the busiest time of the year for
11 tax return preparation, and the IRS lacks the resources to audit
12 every return the defendants prepare and collect every dollar of
13 additional tax resulting from such audits. See Gordon
14 Declaration, ¶¶ 117-32.

15 *B. Preliminary injunction under I.R.C. Section 7407.*

16 This case is governed by Internal Revenue Code Section 7407.
17 Thus the government need not satisfy the traditional equitable
18 requirements for a preliminary injunction. See United States v.
19

20
21 ¹ The court in United States v. Venie, 691 F. Supp. 834
22 (M.D. Pa. 1988) issued a TRO prohibiting the defendant from
23 preparing any further tax returns. The defendant was preparing
24 refund returns by consistently claiming head of household status
25 for his customers, regardless of whether the customers were
26 entitled to that status under law, and by overstating their child
27 care expenses.

28 ² United States v. Odessa Union Warehouse Co-op, 833 F.2d
172, 175 (9th Cir. 1987) ("Where an injunction is authorized by
statute, and the statutory conditions are satisfied as in the
facts presented here, the agency to whom the enforcement of the
right has been entrusted is not required to show irreparable
injury").

1 Estate Preservation Services, Inc., 202 F.3d 1093, 1098 (9th Cir.
2 2000) (in an action for a statutory injunction under Section 7408
3 to enjoin a promoter of an abusive tax shelter, meeting the
4 traditional equitable requirements was not necessary so long as
5 the statutory requirements were satisfied).³

6 Section 7407 authorizes a court to enjoin a person from
7 acting as a return-preparer if that person has continually or
8 repeatedly: (1) violated Code Section 6694, which prohibits the
9 preparation or submission of a return containing an
10 understatement of tax due to unrealistic position or willful or
11 reckless conduct, or Section 6695, which mandates that return
12 preparers include their identifying number on each return they
13 prepare, or any criminal statute; (2) misrepresented his
14 eligibility to practice before the IRS, or otherwise
15 misrepresented his experience or education as a return preparer;
16 or (3) engaged in any other fraudulent or deceptive conduct
17 substantially interfering with the proper administration of the
18 tax laws. In addition, Section 7407 provides that the court must
19 find that a narrower injunction prohibiting only specific
20 misconduct would be insufficient to prevent further

21
22
23 ³ In non-statutory injunction cases, "the moving party must
24 show either (1) a combination of probable success on the merits
25 and the possibility of irreparable injury or (2) that serious
26 questions are raised and the balance of hardships tips in its
27 favor." Oakland Tribune, Inc. v. Chronicle Publishing Co., 762
28 F.2d 1374, 1376 (9th Cir. 1985). "These two formulations
represent two points on a sliding scale in which the required
degree of irreparable harm increases as the probability of
success decreases." Id.

1 interference.⁴

2 2. The elements of Section 7407 are satisfied.

3 A. The defendants are "income tax return preparers."

4 Each of the defendants is an "income tax return preparer"

5
6 ⁴ Sec. 7407. Action to enjoin income tax return preparers.

7 (a) Authority to seek injunction.--A civil action in the name of
8 the United States to enjoin any person who is an income tax
9 return preparer from further engaging in any conduct described in
10 subsection (b) or from further action as an income tax return
11 preparer may be commenced at the request of the Secretary. Any
12 action under this section shall be brought in the District Court
13 of the United States for the district in which the income tax
14 preparer resides or has his principal place of business or in
15 which the taxpayer with respect to whose income tax return the
16 action is brought resides. The court may exercise its
17 jurisdiction over such action (as provided in section 7402(a))
18 separate and apart from any other action brought by the
19 United States against such income tax preparer or any taxpayer.

20 (b) Adjudication and decrees.--In any action under subsection (a),
21 if the court finds--

22 (1) that an income tax return preparer has--

23 (A) engaged in any conduct subject to penalty under
24 section 6694 or 6695, or subject to any criminal penalty provided
25 by this title,

26 (B) misrepresented his eligibility to practice before
27 the Internal Revenue Service, or otherwise misrepresented his
28 experience or education as an income tax return preparer,

(C) guaranteed the payment of any tax refund or the
allowance of any tax credit, or

(D) engaged in any other fraudulent or deceptive
conduct which substantially interferes with the proper
administration of the Internal Revenue laws, and

(2) that injunctive relief is appropriate to prevent the
recurrence of such conduct,

the court may enjoin such person from further engaging in such
conduct. If the court finds that an income tax return preparer
has continually or repeatedly engaged in any conduct described in
subparagraphs (A) through (D) of this subsection and that an
injunction prohibiting such conduct would not be sufficient to
prevent such person's interference with the proper administration
of this title, the court may enjoin such person from acting as an
income tax return preparer.

26 U.S.C. § 7407.

1 within the meaning of Code Section 7701(a)(36). Under Section
2 7701(a)(36)(A), "income tax return preparer" is defined to mean
3 "any person who prepares for compensation, or who employs one or
4 more persons to prepare for compensation, any return of tax
5 imposed by subtitle A [income taxes] or any claim for refund of
6 tax imposed by subtitle A." The Gordon Declaration, ¶¶ 17-24,
7 shows that the defendants have prepared and continue to prepare
8 tax returns for compensation at offices in Orange County,
9 California. WTS is owned and operated by DeAngelo, who has been
10 in the business of preparing income tax returns for compensation
11 for approximately 30 years. Gordon Declaration, ¶ 17. WTS does
12 business at 5757 E. La Palma Avenue in Anaheim. Gordon
13 Declaration, ¶ 9. WTS employs Wright, David and Hovey as return
14 preparers. Gordon Declaration, ¶ 21. Shields formerly worked as
15 a WTS preparer but now works as a preparer with Tax Matters,
16 Inc., at 12155 Magnolia Avenue, #6G, in Riverside.

17 *B. The defendants have violated Sections 6694 or 6695 of*
18 *the Code, or have engaged in conduct subject to*
criminal penalty.

19 (1) *Section 6694.*

20 Section 6694 provides for civil penalties against tax return
21 preparers who prepare tax returns containing understatements of
22 tax liability based on either an unrealistic position, Section
23 6694(a), or willful or reckless conduct, Section 6694(b).

24 As shown by the Gordon Declaration, the defendants have
25 systematically prepared and submitted returns containing
26 understatements of tax due within the meaning of Section 6694.

27

28

1 The Gordon Declaration shows that over 90 percent of the returns
2 audited to date show understatements of tax.⁵ Gordon
3 Declaration, ¶¶ 3-4. The average understatement of tax on
4 returns prepared by the defendants is \$1,919. Gordon
5 Declaration, ¶ 4.

6 These understatements have been due in most cases to false
7 or inflated deductions claimed for charitable contributions and
8 employee "business expenses," including depreciation. See Gordon
9 Declaration, ¶ 4.

10 (A) *False and inflated charitable contributions.*⁶

11 The defendants did not ask their customers how much they
12 contributed to charity, and generally disregarded what the
13 customers told them about the amount of their contributions. See
14 generally the declarations of individual customers attached as
15 Exhibits to the Gordon Declaration.⁷ The defendants did not ask
16
17

18 ⁵ In Section 6694(e), "understatement of liability" is
19 defined to mean any understatement of the tax due or any
overstatement of the credit or refund due.

20 ⁶ A "charitable contribution" is a donation or gift to, or
21 for the use of, a qualified organization. It is voluntary and is
made without getting, or expecting to get, anything of equal
22 value. Treas. Pub. 17, Tax Guide 2002, page 164 (excerpts from
23 Pub. 17 are attached hereto as **Exhibit A** for convenience of
reference). A gift of property to a qualified organization (for
24 example, a church or other religious organization, Goodwill,
Salvation Army) generally can be deducted at the fair market
value at the time of the contribution. Id. at page 165.

25 ⁷ Maria Flint told Hovey she had \$250 in charitable
26 deductions, yet he inserted \$4,680 on her return. See Gordon
27 Declaration **Exhibit 14**. Leah Spann told DeAngelo that she had
charitable contributions of less than \$500, yet he inserted
\$2,600 on her return. Id., **Exhibit 15**.

1 if the customers had proper substantiation.⁸ They usually just
2 asked a few standard yes-or-no questions such as "do you go to
3 church?" They did not ask the customers questions calculated to
4 determine the correct deductible amounts of their contributions.
5 They generally inserted a false and inflated total amount on the
6 returns.⁹ That amount was, in most cases, determined simply by
7 what was necessary to generate a refund.

8 (B) *False or inflated employee "business expenses,"*
9 *including depreciation.*¹⁰

10 As with charitable contributions, the defendants generally
11 did not ask the customers to provide them with verifiable amounts
12 spent on home computers or home office equipment. They did not
13 ask for substantiation for the amounts spent or the dates when

14 ⁸ Contributions over \$250 must be substantiated by an
15 acknowledgment from the recipient qualified organization. *Treas.*
16 *Pub. 17*, page 170. The acknowledgment must be in writing and
17 generally must be received by the taxpayer before the return is
18 filed. *Id.*

19 ⁹ Of the 10 returns described in the 10 declarations of
20 former customers attached as Exhibits to the Gordon Declaration,
21 9 contained false and inflated charitable contributions. The one
22 exception was the return for Eva C. Marez, whose actual
23 contributions of \$6,700 were high enough so that the preparer did
24 not need to inflate them to obtain a refund in the amount of
25 \$5,362. *See Exhibit 13*, Gordon Declaration.

26 ¹⁰ Unreimbursed employee expenses must equal or exceed 2
27 percent of adjusted gross income in order to be deductible. *See*
28 *Pub. 17*, page 201. Further, such expenses, to be deductible,
must be (1) paid or incurred during the tax year, (2) for
carrying on the trade or business of being an employee, and (3)
ordinary and necessary. *Id.* Depreciation on computers is
allowed only if the computer's use is (1) for the convenience of
the employer and (2) required as a condition of employment. *Id.*
Home office expenses may be claimed only if that part of the home
is used (1) regularly and exclusively for business and (2) for
the convenience of the employer--not if merely appropriate or
helpful in the taxpayer's job. *Id.* at page 202.

1 the items were purchased or placed in service. They simply asked
2 the customers questions to determine whether they had such items
3 in their homes (or military barracks) and whether the customers
4 used them for business purposes during the tax year. They did
5 not ask the customers questions calculated to determine the
6 correct deductible amounts, such as whether they were purchased
7 as a condition of employment. They generally inserted a false
8 and inflated total amount on Schedule A of the returns. That
9 amount was, in most cases, determined simply by what was
10 necessary to generate a refund.¹¹

11 These false and inflated deductions for charitable
12 contributions and business expenses were due to willful or
13 reckless conduct under Section 6694(b). They resulted from
14 willful attempts to understate the customers' tax liability,
15 Section 6694(b)(1), or from reckless or intentional disregard of
16 the rules and regulations, Section 6694(b)(2). The errors were
17 nearly always on the high side; the preparers rarely if ever
18 understated the allowable deductions.

19 At the very least, these false and inflated deductions were
20 due to unrealistic positions under Section 6694(a). They did not
21 have a realistic possibility of being sustained on their merits,
22 Section 6694(a)(1), the defendants knew or should of known of

24 ¹¹ For example, when preparing a 2000 Form 1040 for customer
25 Michele Gonzalez, a meat clerk at a grocery store, defendant
26 Hovey claimed false employee business expenses of \$10,927--nearly
27 40 percent of her taxable wages of \$27,393. See Gordon
28 Declaration, Exhibit 5. These expenses, along with \$2,600 in
false charitable contributions, generated an improper refund of
\$1,953. See *id.*

1 this, Section 6694(a)(2), and they failed to disclose the
2 relevant facts on the returns, Section 6694(a)(3).

3 In sum, the Gordon Declaration contains evidence clearly
4 establishing that the defendants have violated Section 6694 of
5 the Code.

6 (2) Section 6695.

7 Section 6695(c) provides in relevant part that "[a]ny person
8 who is an income tax return preparer with respect to any return
9 or claim for refund and who fails to comply with section
10 6109(a)(4) with respect to such return or claim shall pay a
11 penalty of \$50 for such failure, unless it is shown that such
12 failure is due to reasonable cause and not due to willful
13 neglect." Section 6109(a)(4) provides in relevant part that
14 "[a]ny return or claim for refund prepared by an income tax
15 preparer shall bear such identifying number for securing
16 proper identification of such preparer, his employer, or both, as
17 may be prescribed." The regulations promulgated under Section
18 6109(a)(4) require that where, as here, individual preparers were
19 employed by a corporate preparer, i.e., WTS, the corporate
20 preparer's identification number must be included on the return
21 along with the individual's identification number. Treas. Reg. §
22 1.6109-2.

23 The Gordon Declaration, paragraph 7, shows that the
24 defendants have violated Section 6695(c) by consistently failing
25 to furnish the correct identifying number for WTS on the returns
26 they prepared while in the employment of WTS.

1 (3) Criminal law.

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

11 C. Shields has misrepresented his eligibility to practice
12 before the IRS.

13 As shown by paragraph 24 of the Gordon Declaration, Shields'
14 status as an enrolled agent eligible to practice before the IRS
15 was terminated in 1993. Yet Shields continues to use the "E.A."
16 designation when preparing returns. See Gordon Declaration, ¶
17 24. Therefore, Shields is misrepresenting his eligibility to
18 practice before the IRS in violation of Section 6695.

19 D. Injunctive relief is appropriate to prevent the
20 recurrence of prohibited conduct.

21 Factors that the Court may consider in determining the
22 likelihood of future violations of Sections 6694 and 6695 or
23 criminal law, and thus the need for an injunction under Section
24 7407(b) (2), include:

25 (1) the gravity of the harm caused by the offense; (2)
26 the extent of the defendant's participation; (3) the
27 defendant's degree of scienter; (4) the isolated or
28 recurrent nature of the infraction; (5) the defendant's
recognition (or non-recognition) of his own culpability; and
(6) the likelihood that defendant's occupation would place

1 him in a position where future violations could be
2 anticipated.

3 United States v. Estate Preservation Services, Inc., 202 F.3d
4 1093, 1098 (9th Cir. 2000).¹²

5 These factors are satisfied here. First, the harm caused is
6 grave. The IRS estimates a tax loss of \$31.5 million for tax
7 years 2000, 2001 and 2002. Second, the extent of the defendants'
8 participation is broad. They prepared an estimated 18,240
9 returns during the 2000-02 return seasons. Third, scienter may
10 be presumed from the consistent results obtained from audits
11 conducted to date. It is perhaps most obvious in the number of
12 egregious cases involving enlisted Marine Corps personnel, which
13 prompted the VITA officers at Camp Pendleton and Miramar to warn
14 of the scheme and to help at least 22 Marine customers to file
15 correct amended returns. See Gordon Declaration, Exhibits 18-21.
16 Fourth, the conduct was recurrent. Fifth, the defendants are not
17 expected to concede any culpability on their part. Sixth, given
18 that all of the defendants remain in business and presumably are
19 continuing to collect unreasonably large fees, future violations
20 are anticipated.

21 ///

22 ///

23
24 ¹² Section 7408 of the Code provides for an injunction
25 against a person engaging in conduct prohibited by Section 6700
26 (promoting abusive tax shelters) or Section 6701 (aiding and
27 abetting understatement of tax liability) if the court finds that
28 (1) the person has engaged in any conduct subject to penalty
under Sections 6700 or 6701 and (2) injunctive relief is
appropriate to prevent recurrence of such conduct.

1 E. The defendants should be enjoined from preparing
2 returns, not just from engaging in prohibited conduct,
3 because they have continually or repeatedly engaged in
4 prohibited conduct and an injunction prohibiting such
5 conduct would not be sufficient to prevent their
6 interference with the proper administration of the
7 Internal Revenue laws.

8 That the defendants have continually and repeatedly engaged
9 in prohibited conduct should be without dispute. The Gordon
10 Declaration incorporates as exhibits ten separate declarations
11 from ten former customers. Each declaration contains evidence in
12 the form of testimony from an individual customer of at least one
13 violation of Section 6694 and/or criminal law. The spreadsheets
14 attached to the Gordon Declaration as Exhibits 1, 2 and 21
15 summarize the statistical evidence. There has been a clear
16 pattern of abuse over several years.

17 More to the point, the threat of harm is continuing. An
18 injunction limited to prohibiting the defendants from engaging in
19 prohibited conduct would be insufficient to prevent their
20 continued interference with the proper administration of the
21 federal tax laws. An injunction to stop them from preparing any
22 further returns is necessary.

23 The defendants have a powerful financial incentive for
24 continuing to do business improperly. Through their reputation
25 for obtaining refunds, and through their policy of allowing
26 customers to defer payment until they receive their refunds, the
27 defendants have been able to charge fees well in excess of what
28 is reasonable. Gordon Declaration, ¶ 119.

WTS's records show that it grossed the following fees for

1 return preparation for the relevant tax seasons:

2 Tax Season	3 Tax Year	4 Revenue Earned by DTS/WTS
5 2001	6 2000	7 \$6.1 million (Jan. 2001-Jun. 2001)
8 2000	9 1999	10 \$2.8 million
11 1999	12 1998	13 \$1.3 million

14 Gordon Declaration, ¶ 120.

15 During the current tax season, WTS has sent out a letter to
16 customers boasting of its "aggressive nature" in claiming
17 deductions. Gordon Declaration, ¶ 121. A true copy of this
18 letter, dated January 15, 2003, is attached as **Exhibit 22** to the
19 Gordon Declaration. The letter emphasizes that, "as always," WTS
20 stands ready to help customers claim "every possible deduction."
21 Id. But only two deductions are mentioned by name--charitable
22 contributions and business expenses (italics added):

23 We at Western Tax Service, as always are
24 here to help you with *every possible*
25 *deduction* that you are legally entitled to
26 and because of this *aggressive nature* we need
27 to make sure that we fully document all of
28 your deductions. This includes
contributions, business expenses, etc.

29 WTS has sent out another letter, dated January 1, 2003,
30 containing instructions to customers who have been selected for
31 an IRS audit. Gordon Declaration, ¶ 122. A true copy of that
32 letter is attached to the Gordon Declaration as **Exhibit 23**.

33 The January 1, 2003 letter advises customers about defending
34 their charitable contributions and employee "business expenses."
35 Gordon Declaration, ¶ 123. Specifically, the January 1, 2003

1 letter provides detailed guidelines for creating receipts and
2 other documentation after the fact to support the deductions for
3 charitable contributions and employee business expenses taken on
4 returns prepared by WTS. Id. at ¶ 124.

5 To the extent the January 1, 2003 letter suggests that
6 creating such receipts and other documentation is acceptable way
7 of substantiating deductions on prior returns, it is improper.
8 Gordon Declaration, ¶ 125. The necessary substantiation to
9 support a deduction generally should exist at the time the return
10 is prepared. Id.

11 For example, to substantiate a deduction on a prior year's
12 return for automobile expenses, it is not proper to "recreate a
13 mileage log" as advised in the January 1, 2003 letter. Gordon
14 Declaration, ¶ 126. Regularly kept contemporaneous records are
15 generally necessary for that purpose. Id.

16 The January 1, 2003 letter is misleading in other respects.
17 Gordon Declaration, ¶ 127. Using a table listing numerous
18 examples, it indicates that deductions for in-kind charitable
19 contributions (for example, contributions of clothing or
20 household items to Goodwill) may be taken at original cost rather
21 than at fair market value at the time of contribution:

Item	Cost
12 boxes of clothing	3,600
1 couch	825
1 mountain bike	300
1 Maytag washer & dryer	1,050
1 bedroom set	2,000

28

1	4 lamps	400
2	1 32" Hitachi television	675
3	1 Sony stereo system	500
4	7 suits	2,400
5	25 pairs of shoes	650
6	1 dishware set	425
7		Total

8
9 See id., Exhibit 23. Using acquisition cost rather than fair
10 market value at time of contribution would nearly always
11 significantly overstate the allowable amount of the deduction.
12 Gordon Declaration, ¶ 127.

13 Further, the January 1, 2003 letter represents that
14 customers can validly create and sign their own receipts for
15 charitable contributions in excess of \$250, providing suggested
16 language ("I, John Doe, gave Calvary Chapel of Costa Mesa
17 \$2,500.00 for the 2000 year"). Gordon Declaration, ¶ 128; see
18 Exhibit 23 thereto. This is incorrect advice. Gordon
19 Declaration, ¶ 128. Contributions of \$250 or more are deductible
20 only if substantiated by an acknowledgment of the contributions
21 from the qualified organization or certain payroll deduction
22 records. Id.

23 The January 1, 2003 letter also implies that computers and
24 other home office equipment can be depreciated and deducted as
25 miscellaneous Schedule A "business expenses" if the customer uses
26 them even occasionally for business purposes ("Depreciation
27 relates to an item that you either purchased or placed in service

1 that year which you use for business purposes such as a computer
2 or office equipment"). Gordon Declaration, ¶ 129; see Exhibit 23
3 thereto. That is not the law. Gordon Declaration, ¶ 129. Such
4 items are deductible only if their use is for the convenience of
5 the employer and required as a condition of employment. Id.
6 Home office deductions are subject to additional requirements.
7 See note 9 above.

8 If the defendants are not enjoined from preparing income tax
9 returns, it is Revenue Agent Gordon's opinion, based on the facts
10 set forth in his declaration, that the defendants will continue
11 to prepare false and fraudulent tax returns, understating their
12 customers' tax liability through the use of bogus deductions for
13 charitable contributions and miscellaneous "business expenses."
14 Gordon Declaration, ¶ 130. (The defendants may also be engaging
15 in other abusive schemes as well; with respect to the 1999 tax
16 year, DeAngelo claimed a bogus "slave reparation credit" of
17 \$40,000 on behalf of an African-American customer.) Id.

18 Allowing the defendants to continue doing business as they
19 have in the past will result in a continuing and severe loss of
20 tax revenue. Gordon Declaration, ¶ 131. It will result in a
21 continuing strain on IRS resources, because the IRS cannot audit
22 every return the defendants prepare. Id. And it will cause
23 financial hardship to customers who will be audited--many will be
24 required to pay unexpected tax liabilities, including interest
25 accruing from the due date of the return to the date of payment,
26 and perhaps penalties. Id.

27
28

1 In sum, allowing the defendants to continue doing business
2 as usual will cause further substantial interference with the
3 proper administration of the internal revenue laws.

4 **Conclusion**

5 As discussed above, the Court is requested to enter (i) a
6 temporary restraining order enjoining the defendants, and all
7 persons in active concert with them, from preparing federal
8 income tax returns and (ii) an order to show cause why a
9 preliminary injunction should not issue, after the TRO expires,
10 to continue enjoining the defendants, and all persons in active
11 concert with them, from return preparation pending a trial on the
12 merits of the complaint for permanent injunctive relief. A
13 proposed temporary restraining order and show-cause order is
14 filed herewith.

15 Respectfully submitted,

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17 United States Attorney
18 EDWARD M. ROBBINS, JR.
19 Assistant United States Attorney
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19 Dated: March 11, 2003

Robert F. Conte
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21 Dated: March 11, 2003

W. Carl Hankla by RFC
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