

FILED

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**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CIV-S-03-1531 DFL GGH

Plaintiff,

ORDER

v.

JAMES O. MOLEN and SANDRA L.
MOLEN, d/b/a/ TOUCH OF CLASS
FLORIST,

Defendants.

On October 1, 2003, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within ten days. Defendants filed objections on October 10, 2003, which were stricken by Magistrate Judge Hollows on October 16, 2003.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. V. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of

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1 fact to which no objection has been made, the court assumes its
2 correctness and decides the motions of the applicable law. See
3 Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The
4 magistrate judge's conclusions of law are reviewed de novo. See
5 Britt v. Simi Valley Unified School Dist., 708 F.2d 452,454 (9th
6 Cir. 1983).

7 The court has reviewed the applicable legal standards and,
8 good cause appearing, concludes that it is appropriate to adopt
9 the Proposed Findings and Recommendations in full. Accordingly,
10 IT IS ORDERED that:

11 1. The Proposed Findings and Recommendations filed October
12 1, 2003, are ADOPTED; and

13 2. A preliminary injunction is issued in the following
14 form:

15 a. That defendants fully comply with the tax payment,
16 withholding and reporting requirements set forth in 26 U.S.C. §§
17 3101, 3102, 3111, 3301, 3402, 6011 and 6041;

18 b. No actual past payment of taxes, interest and
19 penalties allegedly due will be ordered paid in this preliminary
20 injunction;

21 c. No security need be posted by the United States;

22 d. Defendants (individually and doing business as
23 Touch of Class Florist or any other name or using any other
24 entity), and their representatives, agents, servants, employees,
25 attorneys, and those persons in active concert or participation
26 with them, are enjoined from failing to withhold and pay over to

1 the IRS all employment taxes, including federal income, FICA, and
2 FUTA taxes, required by law.

3 e. Defendants shall file timely employment tax
4 returns, including Forms 940 and 941, with the IRS, and file
5 timely Forms W-2 with the Social Security Administration (SSA)
6 and send copies of such returns and Forms W-2 to counsel for the
7 United States at the same time that the originals are filed.

8 f. Effective immediately, pending final adjudication
9 of this action, within three days of each business payroll,
10 defendants shall make employment tax deposits with their bank and
11 send by fax to IRS Revenue officer Charles Delao at 530-343-2438,
12 a receipt for each employment tax deposit;

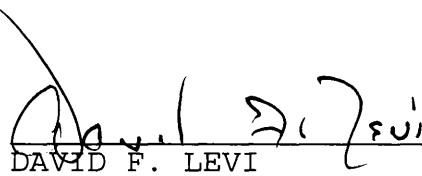
13 g. Defendants shall amend and correct their Form 941
14 for all quarters of 2000-2003.

15 h. Defendants shall file with the SSA and issue to
16 their employees amended Forms W-2 for 2000 and send copies of
17 these Forms W-2 to counsel for the United States at the same time
18 the originals are filed.

19 i. Defendants shall within ten days of the date of
20 this Order deliver to all current employees, and any former
21 employees employed at any time since January 1, 2000, a copy of
22 this court's findings and preliminary injunction. Defendants
23 shall bear all expenses associated with this mailing. Defendants
24 must file a sworn certificate of compliance, swearing compliance
25 with this portion of the order, within twelve days of the date of
26 this Order.

1 j. Defendants shall within ten days of the date of
2 this Order post and keep posted in one or more conspicuous places
3 on their business premises where notices to employees are
4 customarily posted, a copy of this court's findings and
5 preliminary injunction.

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7 Dated: 11 December 2003.

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9 DAVID F. LEVI
10 United States District Judge
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United States District Court
for the
Eastern District of California
December 12, 2003

* * CERTIFICATE OF SERVICE * *

2:03-cv-01531

USA

v.

Molen

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on December 12, 2003, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Rex K Lee
United States Department of Justice
Tax Division
PO Box 683
Ben Franklin Station
Washington, DC 20044-0683

HV/DFL

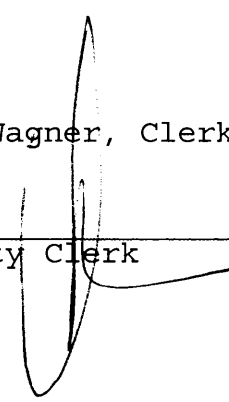
VC/GGH

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Jack L. Wagner, Clerk

BY: 
Deputy Clerk