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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
Plaintiff,

NO. CIV. S 03-1532 FCD GGH

v.

MEMORANDUM AND ORDER

WALTER THOMPSON, a/k/a  
AL THOMPSON d/b/a  
CENCAL SALES COMPANY, d/b/a  
CENCAL AVIATION PRODUCTS,  
Defendants.

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This matter is before the court on motion by plaintiff,  
United State of America ("government") for summary judgment  
pursuant to Rule 56 of the Federal Rules of Civil Procedure, to

1 permanently enjoin defendant Walter Thompson<sup>1</sup> to comply with the  
2 applicable federal tax laws, specifically to withhold and pay  
3 over federal employment and unemployment taxes, and to file all  
4 required federal returns. The government also moves to dismiss  
5 defendant's counterclaim pursuant to 12(b)(6) of the Federal  
6 Rules of Civil Procedure or, in the alternative, to dismiss the  
7 counterclaims pursuant to Rule 56. For the reasons set forth  
8 below,<sup>2</sup> the government's motions are GRANTED.

9 **BACKGROUND**<sup>3</sup>

10 Defendant owned Cencal Sales Co. ("Cencal"), a company that  
11 manufactured and sold travel bags and accessories for aviators.  
12 (Pl.'s Am. Compl. ¶ 7). Cencal employed approximately 25  
13 employees. (Stmt. of Undisp. Facts ¶ 1). From July 2000 until  
14 August 2004, defendant failed to withhold federal employment  
15 taxes from his employees' wages, failed to make federal  
16 employment tax deposits, failed to file his federal employment  
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18 <sup>1</sup> Defendant Walter Thompson is proceeding *pro se* in this  
19 matter.

20 <sup>2</sup> Because oral argument will not be of material  
21 assistance, the court orders this matter submitted on the briefs.  
E.D. Cal. Local Rule 78-230(h).

22 <sup>3</sup> Defendant has not filed a response to the government's  
23 amended complaint and default was entered against him. (No. Civ.  
03-1532, 29, entered Oct. 7, 2003; 44, entered Dec. 12, 2003).  
24 The court therefore must consider the facts alleged in the  
25 complaint as true. See Geddes v. United Financial Group, 559  
26 F.2d 557 (9th Cir. 1977) ("[U]pon default the factual allegations  
27 of the complaint, except those relating to the amount of damages,  
28 will be taken as true.") The government has included facts  
alleged in the amended complaint as well as facts supported by  
declaration in its statement of undisputed facts. Defendant has  
not responded in any way to the government's motion for summary  
judgment. Therefore, the facts as alleged by the government in  
its statement of undisputed facts are taken as true.

1 and unemployment tax returns, and failed to file and issue wage  
2 and tax statements.<sup>4</sup> (Id. ¶ 2). As of September 8, 2005,  
3 defendant has caused an estimated \$559,441.91 in lost revenue to  
4 the United States Treasury. (Id. ¶ 4). According to defendant's  
5 son Anthony Thompson, Cencal ceased operations in August 2004 and  
6 the business property is currently in storage. (Id. ¶¶ 11-12).

7 On July 23, 2003, the government filed a motion seeking a  
8 preliminary injunction to enjoin defendant from (a) failing to  
9 withhold federal taxes from employee wages; (b) failing to file  
10 timely federal employment and unemployment tax returns with the  
11 IRS; (c) failing to file timely wage and tax statements with the  
12 Social Security Administration, and (d) failing to make timely  
13 federal employment and unemployment tax deposits and payments to  
14 the IRS. On September 12, 2003, the court scheduled a hearing on  
15 the government's motion for a preliminary injunction. Defendant  
16 failed to appear for the hearing, despite efforts by the court to  
17 ensure defendant's appearance.<sup>5</sup> The court subsequently granted  
18 the government's motion for preliminary injunction and the clerk  
19 entered default against defendant. (Mem. and Order, filed Sept.  
20 12, 2003; No. Civ. 03-1532, 29, entered Oct. 7, 2003; 44, entered  
21 Dec. 12, 2003). Defendant was also sanctioned under Rule 11 for  
22 filing frivolous motions that were completely unresponsive to the

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23  
24 <sup>4</sup> During the fourth quarter of 2003, from September 16,  
25 2003 to February 2, 2004, defendant's son Anthony Thompson  
26 managed Cencal. Under his management, Cencal withheld federal  
employment taxes from its employees' wages, paid that money to  
the United States, and filed its fourth quarter 2003 returns.  
(Id. ¶¶ 2, 9).

27 <sup>5</sup> The courtroom deputy clerk contacted defendant by  
28 telephone on September 11, 2003 to remind him that the hearing  
was scheduled for the following day.

1 government's motions and that were entirely without merit. (Mem.  
2 and Order, filed Nov. 18, 2003).

3 After the court entered a preliminary injunction by default  
4 against defendant, he was twice incarcerated for failure to  
5 comply with the preliminary injunction. Defendant's two terms in  
6 the Sacramento County Jail had no apparent effect on his  
7 willingness to comply with the preliminary injunction, and the  
8 court ultimately concluded that further confinement would be  
9 punitive. Defendant was ordered to be released from custody on  
10 September 9, 2004. (Mem. and Order, filed Sept. 9, 2004).

11 On November 17, 2004, the United States filed a 14-count  
12 indictment against defendant, charging him with filing a false  
13 claim against the United States, filing a false income tax  
14 return, and failing to withhold taxes from the paychecks of  
15 Cencal employees. On January 28, 2005, defendant was convicted  
16 on 13 counts. Defendant is currently serving a 72-month  
17 sentence. (Stmt. of Undisp. Facts ¶ 13).

18 During the course of the criminal proceedings, defendant  
19 filed his first amended counterclaim to the government's civil  
20 suit, alleging damages for injuries caused by the government and  
21 individual government employees arising out of the enforcement of  
22 the internal revenue laws. Defendant asserts that "all internal  
23 revenue laws were repealed in 1939" and that there are "no  
24 underlying statutes" for the Internal Revenue Code. He alleges  
25 that "without any law there cannot be any transgression." (Df.'s  
26 Countercl., filed Dec. 30, 2004, at 1). Therefore, defendant  
27 claims that the government's civil prosecution for federal tax  
28

1 law violations and any actions associated therewith have caused  
2 him unlawful injuries. (Id.)

3 The government brought this motion for summary judgement for  
4 a permanent injunction requiring defendant to comply with the  
5 applicable federal tax laws. The government also seeks to  
6 dismiss defendant's counterclaims.

7 **STANDARD**

8 **A. Motion to Dismiss**

9 On a motion to dismiss, the allegations of the complaint  
10 must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322  
11 (1972). The court is bound to give plaintiff the benefit of  
12 every reasonable inference to be drawn from the "well-pleaded"  
13 allegations of the complaint. Retail Clerks Int'l Ass'n v.  
14 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff  
15 need not necessarily plead a particular fact if that fact is a  
16 reasonable inference from facts properly alleged. See id.

17 Given that the complaint is construed favorably to the  
18 pleader, the court may not dismiss the complaint for failure to  
19 state a claim unless it appears beyond a doubt that the plaintiff  
20 can prove no set of facts in support of the claim which would  
21 entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45  
22 (1957); NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.  
23 1986). Nevertheless, the court "need not assume the truth of  
24 legal conclusions cast in the form of factual allegations."  
25 United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2  
26 (9th Cir. 1986).

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1 **B. Summary Judgment**

2 Summary judgment is appropriate when "the pleadings,  
3 depositions, answers to interrogatories, and admissions on file,  
4 together with affidavits, if any, show that there is no genuine  
5 issue as to any material fact and that the moving party is  
6 entitled to a judgment as a matter of law." Fed. R. Civ. P.  
7 56(c). One of the principal purposes of the rule is to dispose  
8 of factually unsupported claims or defenses. Celotex Corp. v.  
9 Catrett, 477 U.S. 317, 325 (1986).

10 In considering a motion for summary judgment, the court must  
11 examine all the evidence in the light most favorable to the  
12 non-moving party. United States v. Diebold, Inc., 369 U.S. 654,  
13 655 (1962). Once the moving party meets the requirements of Rule  
14 56 by showing there is an absence of evidence to support the  
15 non-moving party's case, the burden shifts to the party resisting  
16 the motion, who "must set forth specific facts showing that there  
17 is a genuine issue for trial." Anderson v. Liberty Lobby, Inc.,  
18 477 U.S. 242, 256 (1986). Genuine factual issues must exist that  
19 "can be resolved only by a finder of fact, because they may  
20 reasonably be resolved in favor of either party." Id. at 250.  
21 Conclusory, speculative testimony in affidavits and moving papers  
22 is insufficient to raise genuine issues of fact and defeat  
23 summary judgment. See Falls Riverway Realty, Inc. v. City of  
24 Niagara Falls, 754 F.2d 49, 57 (2d Cir. 1985); Thornhill Publ'g  
25 Co., Inc. v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

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1 **ANALYSIS**

2 **A. Defendant's Counterclaims**

3 The government argues that defendant's counterclaims should  
4 be dismissed.<sup>6</sup> Defendant filed his first amended counterclaim on  
5 December 30, 2004.<sup>7</sup> Counterclaims are to be filed at the time  
6 the defendant serves the answer. Fed. R. Civ. P. 13. However, a  
7 party may obtain leave of the court to assert a counterclaim when  
8 the claim was omitted "through oversight, inadvertence, or  
9 excusable neglect, or when justice requires." Id.

10 Defendant never filed a responsive pleading to the  
11 government's complaint and the court entered default against the  
12 defendant. Defendant waited over a year from the government's  
13 filing of the amended complaint to raise this counterclaim.  
14 Defendant did not apply for leave of the court to file this  
15 counterclaim. Moreover, justice does not require that the court  
16 give defendant leave to assert the first amended counterclaim.  
17 Defendant has a history of filing frivolous and dilatory motions  
18 in this matter, which has resulted in the court's issuance of  
19 Rule 11 sanctions. This counterclaim does not depart from  
20 defendant's pattern of improper conduct, as a cursory review of  
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22 <sup>6</sup> The government first moved to dismiss defendant's  
23 counterclaim filed on August 25, 2003. The court ordered this  
24 claim stricken from the record on November 18, 2003. Thus, the  
25 court need not evaluate the merits of the government's argument  
as to this counterclaim.

26 <sup>7</sup> The government contends that defendant failed to effect  
27 service, the time for service has expired, and that the court  
should therefore dismiss the counterclaim in its entirety.  
28 However, defendant submitted proof of service to all named  
individual defendants and the United States Department of Justice  
dated December 27, 2004. Therefore, this argument is unavailing.

1 the law would reveal that his claim is entirely without merit.  
2 Defendant's counterclaims are thus dismissed as untimely.

3 Furthermore, even if the court were to consider the merits  
4 of defendant's counterclaim, he fails to state a claim upon which  
5 relief may be granted. Fed. R. Civ. P. 12(b)(6). Defendant  
6 asserts claims against the government and individual government  
7 officials for "damages for injuries that bred the result of  
8 untold misery, distress, violation of rights, loss of good name,  
9 and financial ruin." (Df.'s Countercl., filed Dec. 30, 2004, at  
10 1). All of these alleged injuries arise out of the government's  
11 civil action against him for violating federal tax laws. The  
12 gravamen of defendant's claim is that there are no valid internal  
13 revenue laws because they were repealed in 1939; therefore, the  
14 government's actions associated with the enforcement of these  
15 laws have violated his rights and caused him injury.

16 Contrary to defendant's assertions, the Internal Revenue  
17 Code is in full force and effect. Therefore, his claims for  
18 injuries resulting from the government's enforcement of allegedly  
19 invalid internal revenue laws are dismissed. The government's  
20 motion is GRANTED.

21 **B. Permanent Injunction**

22 Internal Revenue Code § 7402(a) provides that the district  
23 courts "have jurisdiction to make and issue in civil actions  
24 writs and orders of injunction . . . as may be necessary or  
25 appropriate for the enforcement of the internal revenue laws."  
26 Because § 7402(a) grants the court injunctive power, the  
27 government need only show that an injunction is appropriate for  
28 the enforcement of the internal revenue laws, without reference



1 to the traditional equitable factors. United States v. Stoll,  
2 No. Civ. C05-0262, 2005 WL 1763617, \*8 (W.D. Wash. June 27, 2005)  
3 (citing In re Dow Croning Corp., 280 F.3d 648, 658 (6th Cir.  
4 2002) (holding, in a bankruptcy case, that where a statute, such  
5 as IRC § 7402(a), grants the court injunctive power, the court is  
6 not "confined to traditional equity jurisprudence")). Injunctive  
7 relief is appropriate if the defendant is reasonably likely to  
8 violate the federal tax laws again. See United States v.  
9 Harkins, 355 F. Supp. 2d 1175, 1180 (D. Or. 2004) (citing United  
10 States v. Kaun, 827 F.2d 1144, 1150 (7th Cir. 1987). "In  
11 predicting the likelihood of future violations, a court must  
12 assess the totality of the circumstances surrounding the  
13 defendant and his violations." SEC v. Murphy, 626 F.2d 633 (9th  
14 Cir. 1980). Courts may consider factors such as:

15 (1) the gravity of harm caused by the offense; (2) the  
16 extent of the defendant's participation, and her degree  
17 of scienter; (3) the isolated or recurrent nature of  
18 the infraction and the likelihood that the defendant's  
19 customary business activities might again involve her  
in such transaction; (4) the defendant's recognition of  
her own culpability; and (5) the sincerity of her  
assurances against future violations.

20 Harkins, 355 F. Supp. 2d at 1181 (citing United States v.  
21 Raymond, 228 F.3d 804, 813 (7th Cir. 2000).

22 In this case, the government has presented evidence to  
23 demonstrate there is a likelihood of future tax violations by  
24 defendant. The government estimates that the United States  
25 Treasury has lost an estimated \$559,441.91 as a result of  
26 defendant's conduct. The government has presented evidence of  
27 defendant's past conduct of knowingly and continuously acting in  
28 a manner that violates federal tax laws. The government has also

1 presented evidence of defendant's persistent and obstinate  
2 refusal to comply with both the federal tax laws and this court's  
3 preliminary injunction, despite contempt charges and subsequent  
4 incarceration. Defendant's business property is currently being  
5 held in storage while he is incarcerated for federal criminal tax  
6 violations. Defendant has not acknowledged the illegality of his  
7 conduct, nor has he denied any of the factual allegations against  
8 him. "Defendant instead has chosen to respond to the lawsuit  
9 with several frivolous filings, primarily containing nonsensical  
10 challenges to the authority of the courts and the entire federal  
11 tax system." Harkins, 355 F. Supp. 2d at 1181 (holding that a  
12 statutory injunction under § 7402(a) was necessary). Because of  
13 defendant's past violations of federal tax laws, his continuous  
14 challenges to the authority of the courts and the entire federal  
15 tax system, and his ability to reopen his business after his term  
16 of incarceration, a statutory injunction under IRC § 7402(a) is  
17 necessary for the enforcement of internal revenue laws.<sup>8</sup>

18 **CONCLUSION**

19 For the foregoing reasons, the government's motion for entry  
20 of default judgment is GRANTED.

21 IT IS SO ORDERED.

22 DATED: September 27, 2005

23 \_\_\_\_\_  
24 /s/ Frank C. Damrell Jr.  
25 FRANK C. DAMRELL, Jr.  
26 UNITED STATES DISTRICT JUDGE

27 <sup>8</sup> In light of the court's order, the court does not  
28 address the alternative basis for injunctive relief advanced by  
the government.