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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

11

12 UNITED STATES OF AMERICA,)
13)
Plaintiff,)
14)
v.)
15)
JOSHUA D. FLUSHMAN, ET AL,)
16)
Defendants.)
17)
18)

Case No. 2:15-cv-01531-JAD-NJK
**[PROPOSED] STIPULATED ORDER
OF INJUNCTION**

18

19 Plaintiff, the United States of America, and Defendants Joshua D. Flushman
20 (“Flushman”) and Joshua D. Flushman, D.C., Ltd. (“Flushman Ltd”), stipulate as follows:
21 1. The United States filed a complaint alleging that defendants repeatedly failed to meet
22 their filing and payment obligations under the Internal Revenue Code with respect to
23 employment tax liabilities for Flushman Ltd.
24 2. Defendants admit that this Court has jurisdiction over them and over the subject matter
25 of this action.

1 3. Defendants waive the entry of findings of fact and conclusions of law under Federal
2 Rule of Civil Procedure 52 and 26 U.S.C. §§ 7402.

3 4. Defendants enter into this Stipulated Order of Injunction voluntarily.

4 5. Defendants waive any rights they may have to appeal from the Stipulated Order of
5 Injunction.

6 6. Defendants acknowledge that entry of this Stipulated Order of Injunction neither
7 precludes liability (c.g. the assessment of taxes, interest, or penalties) against them for asserted
8 violations of the Internal Revenue Code, nor precludes defendants from contesting any such
9 liability.

10 7. Defendants consent to the entry of this Stipulated Order of Injunction without further
11 notice and agree that this Court shall retain jurisdiction over them for the purpose of
12 implementing and enforcing this Stipulated Order of Injunction. Defendants further understand
13 that if they violates this Stipulated Order of Injunction, they may be found to be in contempt of
14 court and may be sanctioned for that.

15 8. Entry of this Stipulated Order of Injunction resolves only the government's civil
16 injunction claim, and neither precludes the government from pursuing any other current or future
17 civil or criminal matters or proceedings against Defendants, nor precludes them from contesting
18 their liability in any other matter or proceeding. Nothing in this Stipulated Order of Injunction
19 should be construed as an admission of the allegations contained in the United States' complaint.

20 9. If Defendants violate the Injunction, they may be subject to civil and criminal
21 sanctions for contempt of court.

22 WHEREFORE, the Court hereby FINDS, ORDERS, and DECREES:

23 A. The Court has jurisdiction over this action under 28 U.S.C. § 1340 and 1345 and
24 under 26 U.S.C. §§ 7402.

1 B. Defendants Joshua D. Flushman and Joshua D. Flushman, D.C., Ltd., consent to
2 the entry of this injunction and agree to be bound by its terms.

3 C. As an employer, Defendant Flushman Ltd. is required by law to withhold from its
4 employees' wages federal income and Federal Insurance Contributions Act ("FICA") taxes, and
5 to pay over to the IRS those withholdings, along with the employer's own FICA and Federal
6 Unemployment Tax Act ("FUTA") taxes (collectively referred to as "employment taxes" or
7 "federal employment taxes"), under 26 U.S.C. §§ 3102, 3111, 3301, 3402, and 3403, make
8 periodic deposits of the FICA taxes withheld from its employees' pay, as well as the employer's
9 share of employment taxes, in an appropriate federal depository bank in accordance with the
10 federal deposit regulations, under 26 U.S.C. §§ 6302, 6157; 26 C.F.R. §§ 31.6302-1, 31.6302(c)-
11 1, 31.6302(c)-3, and file with the IRS certain quarterly employment tax returns, Employer's
12 Quarterly Federal Tax Returns (Form 941), and annual FUTA Tax Returns (Form 940)
13 (collectively "employment tax returns"), under 26 U.S.C. § 6011; 26 C.F.R. § 31.6071(a)-1.

14 D. Defendant Flushman determines financial policy for Defendant Flushman Ltd.,
15 directs the payments of Flushman Ltd.'s bills, authorizes payroll to Flushman Ltd. employees,
16 authorizes or makes federal tax deposits for Flushman Ltd., and prepares and transmits Flushman
17 Ltd.'s payroll tax returns.

18 E. Defendants have repeatedly failed to meet their obligations described in
19 Paragraph C, above, conduct that substantially interferes with the enforcement of the internal
20 revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct
21 pursuant to the Court's inherent equity powers and I.R.C. § 7402(a).

22 F. IT IS ORDERED under 26 U.S.C. § 7402 that Defendants shall for a period
23 continuing three years from the date of this order:

24 i. Timely withhold and deposit withheld FICA taxes, as well as Flushman
25 Ltd.'s share of FICA taxes, employment taxes, and unemployment taxes, as they become

1 due, in an appropriate federal depository bank in accordance with federal deposit
2 regulations;

3 ii. Timely deposit FUTA taxes, as they become due, in an appropriate federal
4 depository bank each quarter in accordance with federal deposit regulations;

5 iii. Timely file Form 941 employment tax returns and Form 940
6 unemployment tax returns, as they become due, with a designated IRS revenue officer or
7 at such other location as the IRS may designate and deem appropriate;

8 iv. Timely file all corporate and personal income tax returns as they become
9 due;

10 v. Timely pay all outstanding liabilities due on each return required to be
11 filed by items iii. and iv., above;

12 vi. File amended Form 941 and Form 940 returns for all periods for which
13 returns have been previously been filed covering the periods starting with the second
14 quarter of 2015 through the current quarter and such amended returns will indicate that
15 Flushman was an employee of Flushman Ltd during all such periods and will include
16 substantiation of the wages paid to Flushman for each such quarter;

17 vii. File past due Form 940 returns for tax years 2012 and 2014;

18 viii. File past due Form 1120 corporate income tax returns for the tax years
19 2011 through 2015, inclusive;

20 ix. File past due Form 1040 personal income tax returns for the tax years
21 2011 through 2015, inclusive;

22 x. File all of the returns required to be filed by items vi., vii., viii., and ix.,
23 above no later than April 17, 2017;

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1 G. IT IS FURTHER ORDERED that the United States be entitled to conduct
2 discovery to monitor Defendants' compliance with the terms of the injunction entered against
3 them; and

4 H. IT IS FURTHER ORDERED that the Court retain jurisdiction over the
5 Defendants and this action to enforce any terms of the injunction entered against them.

6 I. IT IS FURTHER ORDERED that all pending motions [#34] are DENIED
7 as moot, this action is DISMISSED, and the Clerk of Court is directed to CLOSE
8 THIS CASE. Should the government require additional action of the court to
enforce the injunction, it must file a Motion to Reopen Case to seek that relief.

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11 Jennifer Dorsey, U.S. District Judge
12 November 23, 2016
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Prepared by:

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Dated: 11/22, 2016.

By: 

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Reviewed and Agreed:

Dated: November 22, 2016



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