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23 IN THE UNITED STATES DISTRICT COURT FOR THE
24 CENTRAL DISTRICT OF CALIFORNIA
25 WESTERN DIVISION

19 UNITED STATES OF AMERICA,
20
21 Plaintiff,
22
23 *v.*
24
25 ELTON L. BARNES, JR.,

Defendant.

Case No. 2:14-cv-5621

UNITED STATES' COMPLAINT
FOR PERMANENT
INJUNCTIVE RELIEF

1 Plaintiff, the United States of America, hereby respectfully
2 alleges as follows:

3 1. In this civil action, the United States seeks to permanently
4 enjoin defendant Elton L. Barnes, Jr., from doing any of the following:

- 5 • preparing federal tax returns or assisting in the preparation of
6 federal tax returns for any person other than himself;
- 7 • engaging in any action that is subject to penalty under 26 U.S.C.
8 § 6694 or § 6695, or any criminal conduct prohibited by Title 26 of
9 the United States Code; and
- 10 • engaging in any other fraudulent or deceptive conduct that
11 substantially interferes with the proper administration of the
12 federal internal revenue laws.

13 **Jurisdiction, Authorization, and Venue**

14 2. The Court has jurisdiction over this action pursuant to 26
15 U.S.C. §§ 7401, 7402, and 7407, and 28 U.S.C. §§ 1340 and 1345.

16 3. Pursuant to 26 U.S.C. § 7401, this action is filed with the
17 authorization of, and at the request of, the Secretary of the Treasury of
18 the United States, acting through his delegate, the Area Counsel of the
19 Internal Revenue Service. The United States' Complaint is filed at the
20 direction of the Attorney General of the United States.

21 4. Venue is proper in the Central District of California pursuant
22 to 28 U.S.C. § 1391(b). Barnes resides in this judicial district and he
23 has prepared federal income tax returns in this district.
24
25

Identification of Defendant

5. Defendant Elton Leander Barnes, Jr., is an individual who resides in this judicial district. On information and belief, Barnes resides in Lawndale, California.

6. Over at least the past ten years, and continuing to the present, Barnes has been engaged in the preparation of tax returns, including federal income tax returns, for other individuals.

7. From time to time, Barnes has prepared tax returns under the business name McNair Group.

8. On information and belief, from time to time, Barnes has done business under the name So Cal Financial Services.

9. From time to time, Barnes has done business under the name Anderson Investment Group.

10. As set forth more fully below, while preparing returns for others, Barnes has repeatedly engaged in false and fraudulent conduct, both with respect to the United States and with respect to his clients.

11. Barnes has repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694(a) and (b) by taking unreasonable positions on his clients' tax returns. These unreasonable positions include the following:

- Returns that claim a business loss deduction from income, where no such business existed.
- Returns that claim a charitable donation deduction, where no such donation was made.

- Returns that claim withheld income tax, where the taxpayer was not employed by the entity that purportedly withheld the tax and no such withholding was made.

12. Barnes has repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(b) by intentionally omitting to sign returns he prepared.

13. Barnes has repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695(f) by negotiating taxpayer refund checks and by causing taxpayer refunds to be directly deposited to bank accounts he controlled.

14. On at least one occasion, Barnes has filed a tax return without his client's knowledge or authorization and attempted to direct the IRS to deposit the refund claimed on that return into a bank account that Barnes controlled.

The Criminal Case

15. On September 4, 2002, the United States filed a superseding indictment against Barnes in the case *United States v. Barnes*, 8:02-cr-189-AHS (C.D. Cal.) ("the Criminal Case").

16. On December 16, 2002, pursuant to a plea agreement, Barnes pled guilty to one count of aiding and assisting in the preparation of false tax returns, in violation of 26 U.S.C. § 7206(2), and one count of social security fraud, in violation of 42 U.S.C. § 1383(a)(3).

17. On or about August 29, 2003, the court entered a criminal judgment against Barnes in the Criminal Case and sentenced him to two years in prison, followed by three years of supervised release.

1 18. One of the terms of Barnes's supervised release was that
2 "[a]bsent further order of Court, [Barnes] shall not prepare federal or
3 state income tax returns for anyone but himself."

4 19. In 2006, while on supervised release, Barnes prepared tax
5 returns for other persons.

6 20. On or about February 9, 2007, Barnes stipulated that he had
7 violated the term of his supervised release requiring him to refrain from
8 preparing tax returns for others.

9 21. On April 23, 2007, the Court entered a judgment in the
10 Criminal Case revoking Barnes's supervised release. The sentence the
11 Court initially imposed was vacated by the Ninth Circuit and the case
12 remanded. Barnes was released from custody on or about January 22,
13 2008, pending his resentencing.

14 22. On March 17, 2008, the Court entered a judgment in the
15 Criminal Case revoking Barnes's supervised release and sentencing him
16 to 18 months of imprisonment, followed by one year of supervised
17 release on the same terms and conditions as the August 2003 judgment
18 in the Criminal Case.

19 23. After serving the imprisonment portion of his sentence for
20 revocation of his supervised release, Barnes was released from prison
21 on or about May 26, 2009.

22 24. On information and belief, Barnes prepared at least one federal
23 income tax return for another person during the period between April
24 23, 2007, and May 26, 2009.
25

1 25. On information and belief, Barnes prepared at least one federal
2 income tax return for another person during the period between May
3 26, 2009, and May 25, 2010.

4 **The General Course of Barnes's Conduct**

5 26. Barnes used a private mailbox at 7211 Haven Ave., #E300,
6 Rancho Cucamonga, California, for correspondence with his customers
7 and the IRS.

8 27. Under 26 U.S.C. § 6107(b), Barnes was required to maintain,
9 for at least three years after the close of the tax period, either a copy of
10 all of the returns he prepared or a list of all of the returns he prepared.

11 28. On or about March 1, 2013, the IRS requested that Barnes
12 provide it with copies of all of the tax returns he prepared between
13 January 1, 2011, and December 31, 2012, or a list of the returns he
14 prepared.

15 29. Barnes did not provide the copies or the list as the IRS
16 requested.

17 30. Barnes did not appear at a scheduled interview with the IRS,
18 provide other requested documents, or return telephone calls from the
19 investigating Revenue Agent.

20 31. The IRS has selected for examination more than 180 returns
21 prepared by Barnes and filed after Barnes was released from prison in
22 2009.

23 32. The IRS has rejected refund claims totaling more than
24 \$820,000 made on Barnes-prepared returns.

25

1 33. The IRS has determined tax deficiencies totaling more than
2 \$1,160,000 based on Barnes-prepared returns.

3 34. The figures in paragraphs 32 and 33 do not include refunds
4 that the IRS paid out because Barnes-prepared returns were accepted
5 without examination, or returns that Barnes prepared but that the IRS
6 has been unable to identify because Barnes did not sign the returns as
7 required. Furthermore, the IRS has not completed its examinations of
8 all 180-plus returns selected for audit, so the figures in paragraphs 32
9 and 33 may increase as the examinations are finished.

10 35. In addition to money the United States has lost due to
11 understated tax liabilities and overstated refunds, the United States
12 has had to spend limited enforcement resources to identify returns that
13 Barnes prepared and to examine them.

14 36. On at least 50 separate occasions, Barnes has caused federal or
15 state tax refunds for someone other than himself to be deposited into a
16 bank account he controls.

17 **Specific Instances of Barnes's Conduct**

18 37. In the paragraphs below, the United States sets out allegations
19 concerning five particular customers of Barnes's. In this Complaint, the
20 United States uses only the customers' first names.

21 **1. Dawn and Shane**

22 38. Dawn and Shane are a married couple. They live in Riverside
23 County, California.

24 39. Dawn and Shane were referred to Barnes through a colleague
25 of Shane's.

1 40. Barnes prepared amended federal income tax returns for 2009,
2 2010, and 2011 for Dawn and Shane.

3 41. Barnes met with Dawn and Shane at their home. Barnes told
4 Dawn and Shane that their tax returns were previously done
5 incorrectly, and took their receipts. In stating his qualifications to the
6 Sullivans, Barnes falsely claimed to have previously worked for the
7 Internal Revenue Service. Barnes charged the Sullivans a fee plus a
8 percentage of their refund for preparing the amended returns.

9 42. After the IRS opened an examination of the Sullivans' 2010 and
10 2011 income tax returns, Barnes began avoiding their telephone calls.

11 ***2010 Amended Return***

12 43. The 2010 amended return claimed a refund of \$19,072.

13 44. Barnes signed the 2010 amended return as its preparer.

14 45. The 2010 amended return listed Shane as single, even though
15 he and Dawn were married.

16 46. On the 2010 amended return, Barnes stated that Dawn and
17 Shane had made \$17,486 in charitable donations.

18 47. On information and belief, Dawn and Shane made materially
19 less than \$17,486 in charitable donations during 2010.

20 48. On the 2010 amended return, Barnes stated that Dawn and
21 Shane were entitled to a "repayment" deduction of \$9,886.

22 49. On information and belief, Dawn and Shane were not entitled
23 to claim the "repayment" deduction.

24 50. On the 2010 amended return, Barnes stated that Shane had a
25 sole proprietorship electrician business. Barnes claimed that the

1 business had \$2,437 in income and \$50,392 in expenses, for a loss of
2 \$47,955. The loss was claimed as a deduction against Shane's income.

3 51. On information and belief, Shane did not have a sole
4 proprietorship electrician business in 2010.

5 52. Barnes knew that the positions he was taking on Dawn and
6 Shane's amended 2010 return were false. In the alternative, Barnes
7 failed to take reasonable steps to investigate the truth of the positions
8 he was taking on Dawn and Shane's amended 2010 return.

9 ***2011 Amended Return***

10 53. The 2011 amended return claimed a refund of \$28,017.

11 54. Barnes signed the 2011 amended return as its preparer.

12 55. On the 2011 amended return, Barnes stated that Dawn and
13 Shane had made \$18,148 in charitable donations.

14 56. On information and belief, Dawn and Shane made materially
15 less than \$18,148 in charitable donations during 2010.

16 57. On the 2010 amended return, Barnes stated that Dawn and
17 Shane were entitled to a "repayment" deduction of \$5,879.

18 58. On information and belief, Dawn and Shane were not entitled
19 to claim the "repayment" deduction.

20 59. On the 2011 amended return, Barnes stated that Shane had a
21 sole proprietorship electrician business. Barnes claimed that the
22 business had \$5,577 in income and \$54,097 in expenses, for a loss of
23 \$48,470. The loss was claimed as a deduction against Dawn and
24 Shane's income.

25

1 60. On information and belief, Shane did not have a sole
2 proprietorship electrician business in 2011.

3 61. Barnes knew that the positions he was taking on Dawn and
4 Shane's amended 2011 return were false. In the alternative, Barnes
5 failed to take reasonable steps to investigate the truth of the positions
6 he was taking on Dawn and Shane's amended 2011 return.

7 **2. Robin and Dawn**

8 62. Robin and Dawn are a married couple. They live in Orange
9 County, California.

10 63. Robin and Dawn were referred to Barnes by a family member.

11 64. Barnes prepared amended federal income tax returns for 2009,
12 2010, and 2011 for Robin and Dawn.

13 65. Before preparing the amended returns, Barnes met with Robin
14 and Dawn at Robin and Dawn's house. He told them that their
15 amended returns would be correctly prepared in order to maximize
16 their refund. During the meeting, Barnes did not review any
17 documents other than Robin and Dawn's original returns. Dawn asked
18 Barnes if he needed receipts; Barnes said no. Barnes did not ask Robin
19 and questions regarding non-employee compensation.

20 66. On or about June 5, 2012, Barnes signed Robin and Dawn's
21 amended returns as the preparer. He listed "McNair Group" as the
22 name of his firm.

23 ***2009 Return***

24 67. The amended 2009 return claimed a refund of \$13,845.
25

1 68. On the amended 2009 return, Barnes stated that Robin had a
2 sole proprietorship business as a “time keeper.” Barnes stated that
3 Robin’s sole proprietorship business had \$2,174 in income and \$35,063
4 in expenses, for a loss of \$32,889. The loss was claimed as a deduction
5 from Robin and Dawn’s income.

6 69. In fact, Robin did not have a sole proprietorship business in
7 2009.

8 70. On the amended 2009 return, Barnes stated that Robin and
9 Dawn had made \$18,653 in charitable donations.

10 71. On information and belief, Robin and Dawn donated materially
11 less than \$18,653 in cash and property to charitable organizations
12 during 2009.

13 72. Barnes knew that the positions he was taking on Robin and
14 Dawn’s amended 2009 return were false. In the alternative, Barnes
15 failed to take reasonable steps to investigate the truth of the positions
16 he was taking on Robin and Dawn’s amended 2009 return.

17 ***2010 Return***

18 73. The amended 2010 return claimed a refund of \$10,035.

19 74. On the amended 2010 return, Barnes stated that Robin had a
20 sole proprietorship business as a “time keeper.” Barnes stated that
21 Robin’s sole proprietorship business had \$2,110 in income and \$33,620
22 in expenses, for a loss of \$31,510. The loss was claimed as a deduction
23 from Robin and Dawn’s income.

24 75. On the amended 2010 return, Barnes claimed a deduction of
25 \$11,924 in charitable donations.

1 76. On information and belief, Robin and Dawn donated materially
2 less than \$11,924 in cash and property to charitable organizations
3 during 2010.

4 77. Barnes knew that the positions he was taking on Robin and
5 Dawn's amended 2010 return were false. In the alternative, Barnes
6 failed to take reasonable steps to investigate the truth of the positions
7 he was taking on Robin and Dawn's amended 2010 return.

8 **3. Sam**

9 78. Sam lives in Los Angeles County, California.

10 79. On or about February 19, 2013, a federal income tax return for
11 2012 was electronically submitted for Sam. The return claimed a
12 refund of \$7,642.

13 80. On information and belief, Barnes prepared and submitted the
14 return.

15 81. The return claimed a deduction of \$13,167 for charitable
16 donations during 2012.

17 82. On information and belief, Sam did not make \$13,167 in
18 charitable donations during 2012.

19 83. The return claimed that Sam had a sole proprietorship
20 business as a "journeymen [sic] linemen," and that the business had
21 gross receipts of \$3,455 and expenses of \$38,537. The return claimed a
22 net loss as a deduction against income of \$35,082.

23 84. On information and belief, Sam did not have a sole
24 proprietorship business in 2012.

25

1 85. The return claimed that \$25,917 in federal income tax had been
2 withheld from Sam's paychecks during 2012.

3 86. In fact, only \$5,917 in federal income tax had been withheld.

4 87. On February 27, 2013, the IRS deposited the requested \$7,642
5 refund into a checking account at Wells Fargo Bank with an account
6 number ending in the digits 50 ("the '50 account"). The '50 account is
7 held in Barnes's name.

8 88. On information and belief, Barnes knew that the positions he
9 was taking on the return were false. In the alternative, Barnes failed to
10 take reasonable steps to investigate the truth of the positions he was
11 taking the return.

12 89. On information and belief, Barnes deliberately made the false
13 statements in order to defraud the United States.

14 **4. Bruce**

15 90. Bruce is a retiree and military veteran. He lives in Riverside
16 County, California. Since 2003, Bruce's only income has been social
17 security and veteran's benefits.

18 91. In 2008, Bruce met Barnes at a store. Barnes was soliciting
19 business for a newly-formed tax preparation business. Bruce
20 approached Barnes to ask a question about a possible deduction.

21 92. The following week, Barnes visited Bruce at Bruce's residence.
22 Bruce gave Barnes information regarding the deduction about which he
23 had a question. Bruce also gave Barnes other personal identification
24 information. Barnes told Bruce that he would review the documents
25

1 and contact him soon. Bruce never heard from Barnes again and was
2 unable to contact him.

3 93. On or about October 14, 2009, a 2008 federal individual income
4 tax return for Bruce was filed electronically.

5 94. On information and belief, the return was filed by Barnes.

6 95. The return was filed without Bruce's knowledge or approval.

7 96. The 2008 return for Bruce included a W-2 showing that Bruce
8 worked for Los Angeles County in 2008, earned more than \$70,000.00 in
9 wages, and had more than \$24,000.00 in federal income tax withheld.

10 97. The 2008 return for Bruce also included claimed deductions for
11 unreimbursed employee business expenses.

12 98. Bruce was not employed in 2008. The W-2 was fraudulent.
13 The unreimbursed employee business expenses were false.

14 99. The 2008 return for Bruce claimed a refund of more than
15 \$21,000.

16 100. The 2008 return for Bruce instructed the IRS to make a direct
17 deposit of the refund to a checking account at Wachovia Bank with an
18 account number ending with the digits '04 ("the '04 account").

19 101. In October 2009, the '04 account was jointly held by Barnes and
20 his ex-wife, Patricia Cullors.

21 102. The IRS did not allow the refund claimed on the 2008 return
22 submitted for Bruce.

23 103. On information and belief, Barnes knew that he was falsely and
24 fraudulently claiming a refund in Bruce's name.

25

1 **5. Jason**

2 104. Jason lives in Riverside County, California.

3 105. No federal income tax return has been filed for Jason for 2008
4 or earlier years, or for 2011 or later years.

5 106. On information and belief, Barnes prepared and filed 2009 and
6 2010 federal income tax returns in Jason's name.

7 ***2009 Return***

8 107. On or about September 21, 2010, a federal income tax return
9 was electronically submitted for Jason. The return requested a refund
10 of \$8,909.

11 108. Although the return was submitted in Jason's name and with
12 Jason's social security number, the address listed on the return was
13 Barnes's residential address.

14 109. The return included a Form W-2 that claimed that Jason was
15 an employee of "Maximum Financial Services." The address given for
16 Maximum Financial Services on the W-2 was an address Barnes used
17 for mail to So Cal Financial Services. The address given for Jason on
18 the W-2 was Barnes's residential address.

19 110. The W-2 stated that Jason earned \$48,779 in wages, of which
20 \$14,553 was withheld for federal income tax.

21 111. On information and belief, "Maximum Financial Services" did
22 not exist. In the alternative, it did not employ Jason.

23 112. On information and belief, Barnes deliberately and
24 fraudulently created the W-2 in order to induce the IRS to issue a
25 refund.

1 113. The return requested that the refund be deposited to an
2 account with Santa Barbara Bank & Trust, N.A., now part of Union
3 Bank. The deposit was made to Santa Barbara Bank & Trust as part of
4 a refund anticipation loan.

5 114. The IRS issued the requested refund of \$8,909 on October 25,
6 2010.

7 ***2010 Return***

8 115. On or about February 21, 2011, a federal income tax return was
9 electronically submitted for Jason. The return requested a refund of
10 \$4,151.

11 116. Although the return was submitted in Jason's name and with
12 Jason's social security number, the address listed on the return was
13 Barnes's private mailbox mailing address.

14 117. The return included a Form W-2 that claimed that Jason was
15 an employee of "Riverside School District." The address given for Jason
16 on the W-2 was Barnes's private mailbox mailing address.

17 118. The W-2 stated that Jason earned \$36,775 in wages, of which
18 \$7,446 was withheld for federal income tax.

19 119. On information and belief, the Riverside School District did not
20 employ Jason.

21 120. On information and belief, Barnes deliberately and
22 fraudulently created the W-2 in order to induce the IRS to issue a
23 refund.
24
25

1 121. The return requested that the refund be deposited to an
2 account with University National Bank. The deposit was made to
3 University National bank as part of a refund anticipation loan.

4 122. The IRS issued the requested refund of \$4,151 on February 21,
5 2011.

6 **Barnes's Recent Conduct**

7 123. Barnes continues to prepare federal income tax returns.

8 124. Barnes continues not to observe the requirements for federal
9 income tax return preparation, as shown by his failure to abide by the
10 rules prohibiting return preparers from negotiating refund checks or
11 depositing refund checks into their own accounts.

12 125. On or about September 5, 2013, a federal income tax refund for
13 a person whose first name is Hokok was electronically deposited in an
14 account held in Barnes's name.

15 126. On or about October 23, 2013, a federal income tax refund for a
16 person whose first name is Peter was electronically deposited in an
17 account at Wells Fargo Bank held in the name of Anderson Investment
18 Group. The account number ends with the digits '86 ("the '86 account").

19 127. Barnes has signature authority over the '86 account.

20 128. On information and belief, in October 2013, Barnes paid
21 personal expenses from the '86 account.

22 129. On information and belief, on or about October 29, 2013,
23 Barnes negotiated a federal income tax refund check made out to a
24 person whose first name is Lonnie.

25

1 130. On or about February 20, 2014, a federal income tax refund for
2 a person whose first name is Isaiah was electronically deposited in the
3 '86 account.

4 131. On or about March 26, 2014, a federal income tax refund for a
5 person whose first name is Robert was electronically deposited in the
6 '86 account.

7 **Count I: Permanent Injunctive Relief**
8 **under 26 U.S.C. §§ 7402 and 7407**

9 132. The United States incorporates by reference the allegations in
10 paragraphs 1 through 131.

11 133. As set forth more fully above, Barnes has engaged in
12 “fraudulent or deceptive conduct which substantially interferes with the
13 proper administration of the Internal Revenue laws” by taking positions
14 that Barnes knows are contrary to the facts.

15 134. As set forth more fully above, Barnes has engaged in conduct
16 that is “subject to penalty under [26 U.S.C.] section 6694” by preparing
17 returns and claims for refund based on positions for which there is no
18 substantial authority.

19 135. As set forth more fully above, Barnes has engaged in conduct
20 that is “subject to penalty under [26 U.S.C.] section 6695” by failing to
21 sign returns that he prepared.

22 136. As set forth more fully above, Barnes has engaged in conduct
23 that is “subject to penalty under [26 U.S.C.] section 6694” by
24 negotiating refund checks made out to others.
25

1 137. As set forth more fully above, Barnes has engaged in conduct
2 that interferes with the enforcement of the internal revenue laws.

3 138. Barnes is likely to continue to engage in the conduct unless he
4 is permanently enjoined.

5 139. Unless Barnes is permanently enjoined from preparing tax
6 returns, the IRS will have to devote substantial time and resources to
7 examining tax returns Barnes prepared.

8 140. Unless Barnes is permanently enjoined from preparing tax
9 returns, those relying on his services may be subjected to tax
10 deficiencies, penalties, and interest as a result of Barnes's failure to
11 prepare accurate returns.

12 141. The United States is entitled to a permanent injunction against
13 Barnes under 26 U.S.C. § 7407.

14 142. The United States is entitled to a permanent injunction against
15 Barnes under 26 U.S.C. § 7402.

16
17 **For the foregoing reasons, the United States respectfully**
18 **requests the following relief:**

19 A. That the Court find that Elton L. Barnes, Jr., individually and
20 doing business under the names McNair Group, So Cal Financial
21 Services, and Anderson Investment Group, has repeatedly and
22 continually engaged in conduct subject to penalty under 26 U.S.C.
23 §§ 6694 and 6695.

24 B. That the Court find that Elton L. Barnes has engaged in
25 fraudulent and deceptive conduct that substantially interferes

1 with the proper administration of the internal revenue laws and
2 that interferes with the enforcement of the internal revenue laws.

3 C. That the Court find that injunctive relief against Barnes is
4 necessary and appropriate in order to prevent the recurrence of
5 Barnes's conduct.

6 D. That the Court enter a permanent injunction against Barnes, both
7 individually and doing business under any other name, and any
8 person in active concert or participation with him, from preparing
9 federal tax returns or assisting in the preparation of federal tax
10 returns for any person other than himself, engaging in any action
11 that is subject to penalty under 26 U.S.C. § 6694 or § 6695, or any
12 criminal conduct prohibited by Title 26 of the United States Code;
13 and engaging in any other fraudulent or deceptive conduct that
14 substantially interferes with the proper administration of the
15 federal internal revenue laws.

16 E. That the Court order Barnes to cooperate with the United States
17 to identify all federal income tax returns he has prepared in the
18 last three years.

19 F. That the Court retain jurisdiction to enforce this injunction and
20 that the United States shall be permitted to engage in post-
21 judgment discovery in accordance with the Federal Rules of Civil
22 Procedure to ensure compliance with the permanent injunction.

23 G. That the United States shall be granted its costs.
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1 H. That the Court grant the United States any other and further
2 relief as may be appropriate under the circumstances.
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6 Respectfully submitted this 21st day of July, 2014.
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8 ANDRE BIROTTE, JR.
9 United States Attorney
10 SANDRA R. BROWN
11 Assistant United States Attorney
12 Chief, Tax Division

13 /s/ Adam Strait
14 ADAM D. STRAIT
15 Trial Attorney, Tax Division
16 U.S. Department of Justice
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