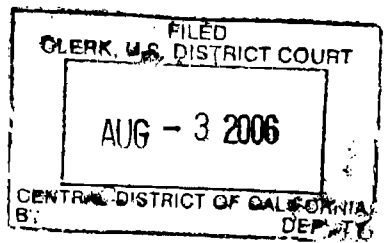


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Attorneys for the United States

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

STEPHEN DRAKE,
individually and doing business as,
BENECORP, LLC,

and

KENNETH SORENSON,
individually and doing business as,
BENECORP, LLC, and
SORENSON & SORENSON, CPAs,

Defendants.

**Amended Complaint for
Permanent Injunction**

Civ. No. 06-4831 JSL (VBKx)

Complaint

1681393.7

1
2 This is a civil action brought by the United States to permanently enjoin
3 Stephen Drake, individually and doing business as Benecorp, LLC, from
4 promoting a tax-fraud scheme by which members of the Santa Ynez Band of the
5 Chumash Indian Tribe illegally take false deductions and fail to pay federal
6 income tax owed on their per capita distributions of casino proceeds. The suit also
7 seeks to permanently enjoin Kenneth Sorenson, individually and doing business as
8 Benecorp, LLC, and as an accountant for Sorenson & Sorenson, CPAs, from
9 promoting that tax-fraud scheme and from preparing and filing false federal
10 income tax returns and forms for the Band and for Band members based on the
11 scheme.

12 **Nature of Action**

13 1. The Santa Ynez Band of the Chumash Indian Tribe operates the
14 Chumash Casino Resort in Santa Ynez, California. Defendants Drake and
15 Sorenson promote and operate a scheme (hereafter referred to as "the Benecorp
16 tax-fraud scheme") that helps some members of the Santa Ynez Band claim bogus
17 federal income tax deductions. The defendants cause their customers to use sham
18 entities (limited liability companies, also known as "LLCs") and sham transactions
19 to create a circular flow of funds of the customers' casino distributions from the
20 Santa Ynez Band through the customers' sham LLCs; through the defendants'
21 bank accounts, and back to the customers. The defendants also cause the Santa
22 Ynez Band to improperly fail to withhold required federal taxes from per capita
23 distributions paid to defendants' customers. The fees the defendants retain from
24 the fraudulent round-trip flow of funds skim off most of the customers' purported
25 tax savings.

1 2. Under the Benecorp tax-fraud scheme the defendants help each of their
2 customers set up a single-member LLC. Then defendants cause the Santa Ynez
3 Band to pay each customer's annual per capita casino-gaming distribution directly
4 to the customer's sham LLC, rather than to the customer. Defendants also
5 illegally caused the Santa Ynez Band to not withhold most of the federal income
6 tax required by law to be withheld from the distribution.

7 3. After the Band makes the per capita distribution to the customer's LLC,
8 defendants cause the LLC to pay the entire distribution to Drake and Sorenson's
9 company, Benecorp. Part of this payment to Benecorp is purportedly a
10 "consulting fee" to Benecorp for its purported "management" of the customer's
11 LLC. In fact the customers' LLCs are shams that do not engage in any business,
12 and Benecorp provides no real management services for the LLCs, other than
13 handling the circular flow of funds. The defendants and their customers make no
14 attempt to justify why the remaining part of the customer's per capita distribution
15 (*i.e.*, the part exceeding the purported consulting fee) is paid to Benecorp.

16 4. As part of the Benecorp tax-fraud scheme, defendants cause their
17 customers to deduct the purported management fees as business expenses on their
18 federal income tax returns, thereby offsetting most of the customers' taxable
19 income from the per capita distributions. Defendants cause Benecorp to transfer
20 to their customers the casino-distributions that the customers' LLCs transferred to
21 Benecorp, less fees that the defendants retain for operating the scheme.
22 Defendants falsely claim that part of the transfer to the customers is a loan.
23 Defendants are unable to explain the reason for the transfer of the remaining part
24 of the funds to the customers

25 5. Thus, under the scheme each customer receives his or her per capita
26 distribution, less the amount defendants retain as fees and less any taxes that are
27

1 withheld. But by claiming (at defendants' direction and with defendants'
2 assistance) a bogus tax deduction for the sham management fee that the LLC
3 purportedly pays to Benecorp, the customer fails to pay federal income tax on
4 most of his or her per capita distribution. The customer's purported federal
5 income tax saving from the bogus deduction exceeds the fees retained by
6 defendants. And when the Band failed to withhold required taxes on the per capita
7 distributions, the customer got the purported tax savings immediately, without
8 having to wait to file his or her federal income tax return.

9 6. In 2003 and 2004, 32 of the 156 Santa Ynez Band members who receive
10 per capita distributions participated in the Benecorp tax-fraud scheme.

11 7. This suit is brought to enjoin Drake from:

- 12 a. organizing or selling tax shelters, plans, or arrangements that
13 advise or assist customers to attempt to evade the assessments
14 or collection of their correct federal tax, including the
15 Benecorp tax-fraud scheme described below;
16 b. engaging in activity subject to penalty under I.R.C. §§ 6694,
17 6700, 6701, or any other penalty provision of the IRC; and
18 c. engaging in other conduct that interferes with the
19 administration or enforcement of the internal revenue laws.

20 8. This suit is brought to enjoin Sorenson from:

- 21 a. organizing or selling tax shelters, plans, or arrangements that
22 advise or assist customers to attempt to evade the assessments
23 or collection of their correct federal tax, including the
24 Benecorp tax-fraud scheme described below;
25 b. preparing or filing federal income tax returns, amended returns,
26 or other related documents and forms for others based on the
27 Benecorp tax-fraud scheme;
28 c. assisting in the preparation of federal income tax returns or
forms that he knows will, if used, result in understating other
persons' federal tax liability;

d. engaging in activity subject to penalty under I.R.C. §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and

e. engaging in other conduct that interferes with the administration or enforcement of the internal revenue laws.

Jurisdiction and Venue

9. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and Internal Revenue Code (IRC) (26 U.S.C.) §§ 7401, 7402(a), 7407, and 7408.

10. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

Defendants

11. Defendant Kenneth Sorenson resides in Buellton, California, within this district.

12. Sorenson conducts business as a certified public accountant through Sorenson & Sorenson, CPAs, in Solvang, California, within this district.

13. Defendant Stephen Drake, a certified public accountant and certified financial planner, resides in Prescott, Arizona and conducts business through Benecorp, LLC, in Prescott, Arizona and Solvang, California, within this district.

14. Drake and Sorenson's customers are members of the Santa Ynez Band of Chumash Indians, who reside at the Santa Ynez Reservation in Santa Barbara County, California, within this district.

15. Because Sorenson resides in this district, Drake and Sorenson conduct business in this district, Drake and Sorenson's customers who participated in the Benecorp tax-fraud scheme reside in this district, and a substantial part of the events giving rise to this case occurred in this district, venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396.

The Santa Ynez Band's Per Capita Distribution of Casino Proceeds

16. The Santa Ynez Band owns and operates the Chumash Casino Resort and makes per capita distributions of casino earnings to band members.

17. In 2005, the Santa Ynez Band distributed \$428,969 in casino earnings to each band member. In 2004 it distributed \$340,704 to each member.

18. Under the Internal Revenue Code, Native Americans are required to pay federal income tax on distributions of casino proceeds and tribes are required to withhold federal income tax when making distributions of casino proceeds.

19. Under the Benecorp tax-fraud scheme, Drake and Sorenson falsely advised Santa Ynez Band members that they could legally reduce federal income tax on distributions of casino proceeds by claiming deductions for sham management.

Drake and Sorenson's CapNet7 Plan

20. In 2003 defendants Drake and Sorenson developed a purported deferred-income plan to be offered by Benecorp to members of Native American tribes. In 2003 defendants and Benecorp began promoting that plan, known as the "CapNet7 plan" to Native American tribes and tribe members.

21. Drake is the president and Sorenson is the vice president of Benecorp, LLC.

22. Drake and Sorenson told Native American tribes and tribe members that they could use the CapNet7 plan to maximize tribe members' income (derived largely or exclusively from per capita distributions), by deferring their

1 current income from casino-gaming distributions and thereby reducing their
2 current federal income tax.

3 23. Drake and Sorenson promote the CapNet 7 plan at their website,
4 www.CapNet7.com, in articles in *Indian Gaming*, and at National Indian Gaming
5 Association and other conferences of interest to Native American tribes and tribe
6 members.
7

8 24. Drake and Sorenson's CapNet7 plan requires tribe members to defer
9 receipt of a portion of their per capita distribution until some point in the future or
10 until after death.

11 25. Under Drake and Sorenson's CapNet7 plan, the deferred income
12 is paid to the tribe member or his beneficiary after the tribe member dies or after a
13 prearranged deferral period expires.
14

15 26. Drake and Sorenson assert that under the CapNet7 plan, the deferred
16 portion of the per capita distribution is not taxable to the tribe member until it is
17 distributed to the tribe member or his or her beneficiary.

18 27. Under the Indian Gaming Regulatory Act, because Native American
19 tribes, not individual tribe members, have the exclusive authority to determine
20 how to distribute casino proceeds, individual tribe members are not able to use the
21 CapNet7 plan unless the plan is approved and implemented by the tribal
22 government.
23

24 28. In late 2003 and early 2004, Drake and Sorenson presented the
25 CapNet7 plan to the Santa Ynez Band.

26 29. On information and belief, the Santa Ynez Band refused to adopt the
27

1 CapNet7 plan because, among other reasons, it had not been approved by the IRS.

2 30. On information and belief, as part of the promotion of the CapNet7
3 plan to the Santa Ynez Band and other Native American tribes, Drake and
4 Sorenson falsely stated that individual Band members could legally reduce their
5 federal income taxes and increase their monthly cash flow from per capita
6 distributions by participating in the Benecorp tax-fraud scheme discussed below.
7

8 **Overview of the Benecorp Tax-Fraud Scheme**

9 31. Drake and Sorenson began promoting the Benecorp tax-fraud scheme
10 to Santa Ynez Band members in July of 2003.

11 32. As part of the scheme, Drake and Sorenson advise and assist Band
12 members to form LLCs so that Band members can claim they are engaged in a
13 legitimate business activity as "advisor[s] to Indian tribes" considering adopting
14 the CapNet7 plan.
15

16 33. Drake and Sorenson assert that the Band members' LLCs are engaged
17 in a legitimate business activity because they undertake "marketing activities,"
18 including lobbying the Santa Ynez Band to adopt the CapNet7 plan.

19 34. Drake and Sorenson assert that Band members' LLCs are engaged in
20 a legitimate business activity because Band members' LLCs enter into a contract
21 with Benecorp entitling the LLC to an "Incentive Fee" if Benecorp contracts with
22 the Santa Ynez Band or other Native American tribes to implement the CapNet7
23 plan.
24

25 35. Under the "Incentive Fee" plan entered into between Band members'
26
27

1 LLCs and Benecorp, Benecorp purports to pay the Band members' LLCs 10% of
2 the amount Benecorp earns from any Native American tribe that enters into the
3 CapNet7 plan, "multiplied by the percentage of such amount that is derived from
4 the Tribal Agreement [adopting the CapNet7 plan] attributable to the tribal
5 member's LLC."

6 36. Drake and Sorenson assert that any payments under the Incentive Fee
7 arrangement will be offset by "advances" made by Benecorp to the LLCs
8 discussed below.
9

10 37. The "advances" Benecorp makes to the LLCs are shams. They are
11 simply the final step of the circular flow of casino distributions designed to create
12 bogus tax deductions.

13 38. On information and belief, no tribes have adopted the CapNet 7 plan
14 and thus the tribe members' LLCs are not entitled to any "incentive fee" from
15 Benecorp.
16

17 39. On information and belief, because no tribes have adopted the
18 CapNet 7 plan, Benecorp has not paid an "incentive fee" to any of the customers'
19 LLCs. Moreover, the amounts of the purported advances bear no relationship to
20 any work or services provided by Band members or their LLCs to Benecorp.
21 Rather, the advances, like the earlier sham transactions in the circular flow of
22 casino distributions, are a thinly veiled disguise intended to conceal the
23 defendants' efforts to help customers evade federal income taxes.

24 **The Mechanics of the Benecorp Tax-Fraud Scheme**

25 40. Under the Benecorp tax-fraud scheme, Drake and Sorenson furnish
26 documents to Band members and assist them in forming single-member LLCs.
27

