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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,  
17 Plaintiff,

18 v.

19 N.C.K. SERVICES, INC.,  
20 CARLA D. BERRY; KAREN D.  
21 BERRY; VALERIE M. DIXON;  
and IVAN T. JOHNSON,

22 Defendants.  
23  
24

No. <sup>ED</sup> CV 04-1566 VAP(SGL&)  
) COMPLAINT FOR PERMANENT  
) INJUNCTION AGAINST THE  
) PREPARATION OF TAX RETURNS AND  
) OTHER EQUITABLE RELIEF

25 COMPLAINT

26 The United States of America, by and through its counsel of  
27 record, alleges as follows:  
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1 taken over and renamed NCK by her daughters, Carla D. Berry  
2 ("Carla Berry") and Karen D. Berry ("Karen Berry"), and Valerie  
3 M. Dixon ("Dixon"), who operate NCK with the assistance of a  
4 former neighbor of Norma Berry's, Ivan T. Johnson ("Johnson").

5 6. Defendant Carla Berry resides in Rialto, California,  
6 which is within the Central District of California. She  
7 currently works as a paid income tax return preparer for NCK and  
8 is listed as the registered agent for NCK on its corporate  
9 documents.

10 7. Defendant Karen Berry resides in Rialto, California,  
11 which is within the Central District of California. She  
12 currently works as a paid income tax return preparer for NCK and  
13 is listed as the owner of NCK on its corporate documents.

14 8. Defendant Dixon resides in Rialto, California, which is  
15 within the Central District of California. She currently works  
16 as a paid income tax return preparer for NCK.

17 9. Defendant Johnson resides in San Bernardino, which is  
18 within the Central District of California. He currently works as  
19 a paid income tax return preparer for NCK.

20 DEFENDANTS' ACTIVITIES

21 10. NCK is a tax return preparation business. Each of the  
22 individual defendants, Carla Berry, Karen Berry, Dixon, and  
23 Johnson (sometimes collectively referred to herein as "the return  
24 preparers") currently offers tax return preparation services to  
25 individuals (sometimes referred to herein as "customers") through  
26 NCK. Each of the individual defendants currently is preparing  
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1 income tax returns as a paid preparer for NCK.

2 11. Each individual defendant has continually or repeatedly  
3 engaged in conduct subject to penalty under Section 6694, Title  
4 26 U.S.C., in that each has, among other things, (1) taken  
5 unrealistic and unsustainable positions on customers' tax  
6 returns, resulting in understatements of tax due, and (2)  
7 willfully or recklessly understated the tax due (and, in nearly  
8 every case, overstated the refund due) on customers' tax returns.

9 12. Each defendant has continually or repeatedly engaged in  
10 conduct subject to penalty under Section 6695(c), Title 26  
11 U.S.C., in that each has failed to comply with regulations that  
12 require the return preparer to sign the return and in that each  
13 has failed to furnish a correct identifying number for NCK on  
14 each return prepared under the auspices of NCK.

15 13. Further, each individual defendant has continually or  
16 repeatedly engaged in fraudulent and deceptive conduct which has  
17 substantially interfered with the proper administration of  
18 internal revenue laws in that each defendant has, among other  
19 things, improperly and purposefully reduced and understated  
20 customers' tax liabilities by claiming false and inflated  
21 itemized deductions for mortgage interest and unreimbursed  
22 employee business expenses resulting, in most cases, in an  
23 undeserved refund.

24 14. Search warrants, obtained in connection with a criminal  
25 investigation into the defendants' conduct, were executed on  
26 NCK's offices in April 2003 and April 2004 and resulted in the

1 seizure of books and records revealing the fraudulent and  
2 improper tax preparation services being performed by the  
3 defendants.

4 15. Each defendant is aware that their conduct is improper  
5 and illegal; however, it is believed that each defendant has  
6 continued to prepare improper tax returns.

7 SPECIFIC ALLEGATIONS REGARDING DEFENDANTS' CONDUCT

8 How the NCK return-preparation scheme worked

9 16. At all times relevant hereto, the defendants' typical  
10 customers were individuals with various income levels, including  
11 police officers and retirees. Advertising was by word of mouth.  
12 Customers typically were referred by friends or relatives who had  
13 received tax refunds through the defendants' tax preparation  
14 business. Based on a government sample, over 95 percent of the  
15 Form 1040 tax returns the defendants prepared resulted in a  
16 refund.

17 17. NCK operated a high-volume business. From the 2000  
18 return season (i.e., tax returns for 1999) to the 2004 return  
19 season (i.e., tax returns for 2003), the IRS identified more than  
20 10,000 individuals for whom returns were prepared through the  
21 defendants' tax preparation business.

22 18. The defendants generally prepared each return during a  
23 single conference with the customer at Norma Berry's residence  
24 or, after the business location moved, at NCK's offices in  
25 Rialto, California. The conferences with customers sometimes  
26 lasted only a few minutes. During the conference, the return  
27

1 preparers typically told customers that there was a change in the  
2 tax law that permitted higher deductions on Schedule A of the  
3 U.S. individual income tax return for home mortgage interest  
4 deductions and for unreimbursed employee business expenses.  
5 Returns were typically prepared manually and were usually not  
6 signed by the preparers.

7 19. The customer was told to bring the customer's Form W-2  
8 to the meeting. Spouses typically were advised to file their  
9 returns separately instead of jointly regardless of the  
10 customers' income level and, sometimes, spouses were advised to  
11 file as single despite their married status.

12 20. On some occasions, customers would receive completed  
13 returns prepared by the defendants at the conclusion of the  
14 customer conference. On other occasions, customers were asked to  
15 come back to the offices to pick up the completed returns.  
16 Generally, the return preparers did not discuss any of the Form  
17 1040 line items with the customers other than the tax refund  
18 amount.

19 21. In most cases, the customer did not pay as much  
20 mortgage interest as was stated on Schedule A of the Forms 1040  
21 that were prepared by the defendants. In some cases, no mortgage  
22 interest was paid by the customer at all. Nonetheless, the  
23 defendants claimed fictitious or inflated mortgage interest  
24 payment amounts to reduce customers' taxable income.

25 22. In many cases, the defendants set forth fictitious  
26 amounts for unreimbursed employee expenses on Schedule A of the  
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1 Forms 1040.

2 23. The defendants did not point out or explain these bogus  
3 deductions to the customers.

4 24. In nearly every case, the defendants appear to have  
5 improperly generated false deductions large enough to create a  
6 refund.

7 25. The defendants charged fees ranging from \$80 to \$150  
8 per return.

9 26. After a return was completed, the defendants would make  
10 a copy and give the copy and the original return to the customer,  
11 who would then sign the original and mail the return to the IRS.

12 Particular customers' experiences

13 27. In 2002, one customer, referred to Norma Berry's tax  
14 preparation business by a co-worker, called the defendants'  
15 business and made an appointment to have his 2001 income tax  
16 returns prepared. He was told over the phone to bring his  
17 current Form W-2, the previous year's tax return, and \$100 cash.  
18 In about January 2002, he went to the defendants' office, which  
19 was then located in a residence, and met with Carla Berry. Carla  
20 Berry prepared his return in approximately 15 minutes. Carla  
21 Berry did not ask about or discuss any of the Form 1040 line  
22 items other than the refund amount. Carla Berry told the  
23 customer that her mother, Norma Berry, had worked for the  
24 Internal Revenue Service ("IRS") and that all the return  
25 preparers at the business knew all the legal shortcuts. The  
26 customer did not own a home and had paid no mortgage interest

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1 during the year, yet Carla Berry prepared a tax return for the  
2 customer that claimed bogus mortgage interest of \$27,069. The  
3 return prepared by Carla Berry also claimed bogus employee  
4 business expenses of \$5,369.00. The customer paid \$100 cash for  
5 the tax return. Carla Berry did not sign the return as the paid  
6 preparer. The customer initially received a refund based on the  
7 return prepared by Carla Berry. The customer returned to  
8 defendants' tax preparation business to have his income tax  
9 returns prepared for 2002 and 2003. The process was essentially  
10 the same each year. The 2003 returns were prepared at the  
11 defendants' new business office location. Since the time that  
12 customer's last return was prepared by the defendants' business,  
13 the customer has filed amended returns to remove the bogus  
14 deductions initially claimed on the returns prepared by Carla  
15 Berry. The amended returns reveal that Carla Berry understated  
16 the taxes due on the customer's 2001, 2002, and 2003 returns by a  
17 total of more than \$20,000.

18 28. In 2002, another customer went to the defendants'  
19 business, which was then located in a residence, and asked to  
20 have her 2001 tax return prepared. She met with Karen Berry, who  
21 prepared her return in approximately 30 minutes. Karen Berry  
22 asked the customer no questions about home ownership and did not  
23 ask about or discuss any of the Form 1040 line items with the  
24 customer other than the refund amount. The customer and her  
25 spouse had paid mortgage interest in the amount of \$19,477, yet  
26 Karen Berry prepared a tax return for the customer that claimed





1 that she never had a problem with the IRS. The customer most  
2 recently used the defendants' business for the preparation of his  
3 2003 tax return. The customer's 2003 return was prepared by  
4 Valerie Dixon. When Dixon prepared the customer's 2003 return,  
5 the customer did not own a home and had not paid any mortgage  
6 interest during the 2003 year. Nevertheless, Dixon prepared a  
7 tax return for the customer that claimed bogus mortgage interest  
8 of \$19,720. The return prepared by Dixon also claimed bogus  
9 employee business expenses of \$5,377. The customer paid \$120  
10 cash for the tax return prepared by Dixon. Dixon did not sign  
11 the return as the paid preparer. The customer initially received  
12 a refund based on the return prepared by Dixon. Since then, the  
13 customer has filed an amended return for 2003 to remove the bogus  
14 deductions initially claimed on the returns prepared by Dixon.  
15 The amended return reveals that Dixon understated the taxes due  
16 on the customer's 2003 return by more than \$5,000.

17 30. Another customer and his spouse heard about Norma  
18 Berry's tax preparation business approximately five years ago.  
19 He and his spouse used the defendants' tax preparation business  
20 to prepare their 2000, 2001, 2002, and 2003 income tax returns  
21 each of which contained bogus mortgage interest deductions  
22 totaling more than \$125,000. The customer most recently used the  
23 defendants' business for the preparation of his 2003 tax return.  
24 The customer's 2003 return was prepared by Ivan Johnson. When  
25 Johnson prepared the 2003 return, the customer and his spouse did  
26 not own a home and had not paid any mortgage interest during the  
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1 2003 year. Nevertheless, Johnson prepared a tax return for the  
2 customer and his spouse that claimed bogus mortgage interest of  
3 \$27,997. The return prepared by Johnson also claimed bogus  
4 employee business expenses of \$5,979. The customer and his  
5 spouse paid \$100 cash for the tax return prepared by Johnson.  
6 Johnson did not sign the return as the paid preparer. The  
7 customer and his spouse initially received a refund based on the  
8 return prepared by Johnson. Since then, the customer and his  
9 spouse have filed an amended return for 2003 to remove the bogus  
10 deductions initially claimed on the returns prepared by Johnson.  
11 The amended return reveals that Johnson understated the taxes due  
12 on the customer's and his spouse's 2003 return by more than  
13 \$3,000.

14 31. Another customer went to the defendants' business to  
15 have her 2001 tax return prepared. Karen Berry prepared the  
16 return, which set forth itemized deductions for mortgage interest  
17 in the amount of \$23,096 even though the customer did not own a  
18 home and had paid no mortgage interest during the year. In  
19 December 2003, the customer received a letter from the IRS  
20 regarding her 2001 income tax return. In January 2004, the  
21 customer brought the IRS's letter to the defendants' business.  
22 Norma Berry's former spouse, Matthew Berry, who works at the  
23 defendants' business, told the customer that he would create all  
24 the receipts that she needed for the IRS audit and directed the  
25 customer not to inform the IRS as to how she obtained the  
26 receipts. The customer refused Berry's offer to provide the IRS

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1 with falsified receipts. The IRS audit eventually resulted in an  
2 additional tax due of \$3,901.

3 INJURY TO THE UNITED STATES

4 32. The IRS has interviewed fourteen former customers of  
5 NCK and has reviewed the returns prepared for those customers by  
6 the defendants for years 2000 through 2003. Every one of the  
7 approximately 45 tax returns reviewed by the IRS sets forth  
8 inflated or fictitious mortgage interest deductions. 100 percent  
9 of those returns generated a refund. This percentage is higher  
10 than the overall percentage of Form 1040 returns claiming refunds  
11 nationally.

12 33. The errors contained in the returns prepared by the  
13 defendants cannot be automatically detected by cross-checking  
14 information reported to the IRS by employers or other third  
15 parties. Time-intensive audits by revenue agents, including  
16 interviews with the taxpayer-customers, are usually necessary to  
17 ferret out the bogus deductions claimed by the defendants.

18 34. The IRS is currently examining approximately 2,441 tax  
19 returns of the more than 10,000 returns prepared by the  
20 defendants for the 2000-2004 tax seasons (i.e., returns for years  
21 1999-2003). Of the 2,441 returns being audited, 1,908 are from  
22 the 2002 tax year and 533 are from the 2003 tax year. It is  
23 anticipated that at least another 1,600 returns prepared by the  
24 defendants will be audited.

25 35. Based on a comparison of the mortgage interest reported  
26 on the returns currently being audited and the mortgage interest  
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1 reported on Forms 1098 submitted to the IRS, the mortgage  
2 interest deduction was overstated on 96% of the 2002 returns  
3 being audited and on 90% of the 2003 returns being audited.

4 36. Of the 2,441 returns currently being examined, the IRS  
5 selected 50 from the 2002 tax year and 50 from the 2003 tax year  
6 to analyze. Based on the IRS's analysis, the average loss per  
7 return for the 2002 tax year is \$2,722 and the average loss per  
8 return for the 2003 tax year is \$2,230. Applying that average  
9 loss per return to all of the returns being audited, the  
10 estimated tax loss to the government from the 2,441 returns being  
11 audited will be over \$5 million for 2002 and over \$1.1 million  
12 for 2003.

13 37. Assuming that 90 percent of the approximately 10,000  
14 returns prepared by the defendants for tax years 1999 through  
15 2003 contained understatements of tax, and assuming further an  
16 average tax loss per return of \$2,230 (which represents the  
17 lesser of the two averages calculated by the government with  
18 respect to the samples from returns currently being audited), the  
19 IRS estimates the aggregate tax loss at \$20 million.

20 INJURY TO THE DEFENDANTS' CUSTOMERS

21 38. As a result of the defendants' improper actions, acting  
22 either in concert or individually, many of their customers have  
23 been required to file amended returns or undergo audits by the  
24 IRS. They have incurred severe, and in most cases unanticipated,  
25 financial burdens due to their liability for additional tax  
26 beyond the amount reported on their original returns, plus  
27

1 statutory interest.

2 39. As a result of the defendants' improper actions, acting  
3 either in concert or individually, many of their customers will  
4 be required to file amended returns or undergo audits by the IRS.  
5 They will incur severe financial, and in most cases  
6 unanticipated, financial burdens due to their liability for  
7 additional tax beyond the amount reported on their original  
8 returns, plus statutory interest (and perhaps civil penalties).

9 COUNT I

10 (Engaging in Conduct Prohibited by Sections 6694 and 6695)

11 40. Plaintiff realleges and incorporates by reference  
12 paragraphs 1 through 39 of the Complaint.

13 41. The defendants, by reason of their preparation, or  
14 assistance in the preparation, of federal income tax returns for  
15 which they were compensated, are income tax return preparers  
16 within the meaning of Section 7701(a)(36) of the Internal Revenue  
17 Code ("the Code"), Title 26, U.S.C.

18 42. The defendants have continually or repeatedly engaged  
19 in conduct subject to penalty under Section 6694 of the Code by  
20 either (a) recklessly or intentionally disregarding rules and  
21 regulations in preparing the return of another person, resulting  
22 in an understatement of federal tax liability for that person; or  
23 (b) willfully or recklessly understating the federal tax  
24 liability of another person in preparing the return of that  
25 person; or both.

26 43. The defendants have continually or repeatedly engaged  
27

1 in conduct subject to penalty under Section 6695 of the Code in  
2 that they have failed to consistently furnish the correct  
3 identifying number for NCK on the returns they have prepared  
4 under the auspices of NCK.

5 44. Unless enjoined by the Court, the defendants will  
6 continue to engage in the above-described conduct.

7 45. The defendants must be enjoined from further acting as  
8 income tax return preparers because an injunction prohibiting  
9 their engaging in conduct subject to penalty under Sections 6694  
10 and 6695 of the Code would not be sufficient to prevent their  
11 further interference with the proper administration of the tax  
12 laws.

13 COUNT II

14 (Unlawful Interference with the Internal Revenue Laws)

15 46. Plaintiff realleges and incorporates by reference  
16 paragraphs 1 through 45 of the Complaint.

17 47. The defendants' fraudulent and deceptive conduct as set  
18 forth above has the effect of substantially interfering with the  
19 proper administration of the Internal Revenue laws by causing the  
20 filing of improper and illegal tax returns or claims for refunds,  
21 as well as the filing of tax returns containing improper and  
22 illegal deductions, all of which contributes to undermining the  
23 respect for, and deterring voluntary compliance with, the federal  
24 tax laws.

25 48. Unless enjoined by this Court, the defendants will  
26 continue to engage in this conduct.







1 Berry, Karen Berry, Dixon, and Johnson, have continually or  
2 repeatedly engaged in fraudulent or deceptive conduct that  
3 substantially interferes with the proper administration and  
4 enforcement of the internal revenue laws by the IRS; that an  
5 injunction prohibiting such conduct would not be sufficient to  
6 prevent the defendants' interference with the proper  
7 administration of Title 26; and that the defendants therefore  
8 should be permanently enjoined from acting as income tax return  
9 preparers pursuant to Sections 7407 and 7402 of the Internal  
10 Revenue Code.

11 3. That the Court enter a Final Judgment of Permanent  
12 Injunction enjoining the defendants, NCK, Carla Berry, Karen  
13 Berry, Dixon, and Johnson, and all other persons in active  
14 concert or participation with them, directly or indirectly, by  
15 use of any means or instrumentality, from:

16 a. Acting as income tax return preparers within the  
17 meaning of Section 7701(a)(36) of the Code;

18 b. Taking any action in furtherance of aiding,  
19 assisting, advising, or preparing for compensation tax  
20 returns of third-party taxpayers;

21 c. Further engaging in conduct subject to penalty  
22 under Sections 6694 and 6695 of the Code; or

23 d. Substantially interfering with and/or impeding the  
24 proper administration of the internal revenue laws.

25 4. That this Court further order and decree, as part of its  
26 permanent injunctive relief, that the defendants notify, in  
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1 writing, all persons whose tax returns they have prepared from  
2 January 1, 1999 to the date of the Court's order, of the findings  
3 and relief ordered by the Court, including in such notice to each  
4 person a copy of the Complaint and of the Court's Final Order of  
5 Permanent Injunction; and that the defendants file with the Court  
6 and provide to plaintiff's attorneys a list of the names, Social  
7 Security numbers, addresses, e-mail addresses, and telephone  
8 numbers of all persons so notified within thirty (30) days of the  
9 date the Order is entered.

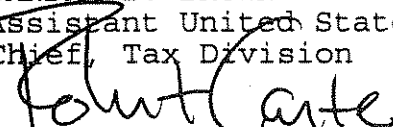
10 5. That this Court retain jurisdiction of this action for  
11 the purpose of implementing and enforcing the final judgment and  
12 all additional decrees and orders necessary and appropriate to  
13 the public interest.

14 6. That this Court award plaintiff all its costs in  
15 prosecution of this action.

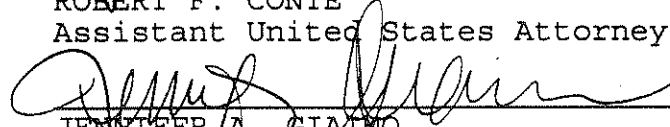
16 Respectfully submitted,

17 DEBRA W. YANG  
18 United States Attorney  
19 SANDRA B. BROWN  
Assistant United States Attorney  
Chief, Tax Division

20 Dated: December 15, 2004

  
ROBERT F. CONTE  
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21  
22 Dated: December 13, 2004

  
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