

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

Case No. 2:03 CV - 0306

SEAL

MEMORANDUM IN SUPPORT OF
UNITED STATES' *EX PARTE*
MOTION FOR TEMPORARY
RESTRAINING ORDER WITH
BUSINESS BANK ACCOUNT
FREEZE, APPOINTMENT OF
TEMPORARY RECEIVER, AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

ARIZONA N.A., WELLS FARGO BANK	)
NORTHWEST N.A., BANK OF UTAH,	)
BANK OF AMERICAN FORK,	)
M&I MARSHALL & ILSLEY BANK.	)
	)
Defendants.	)

The United States of America has filed a complaint against the defendants seeking a mandatory injunction, pursuant to 26 U.S.C. §7402(a), to prevent the defendants, Paysource LLC, Provident Management Group, Inc., Provident Business Partners, Inc., Scott M. Boley, Douglas C. Morby, Robert A. Langford, Zephyr Trust, Omega Resources Group Trust, Timpview Marketing Trust, Albion Tech Trust and Maritime Group Trust from continuing to operate a payroll service company in the name of Provident Management Group, Inc., or in any other name, or from continuing the operation of any new payroll service company, employee leasing company, or any similar operation; to freeze the assets of these defendants; and to appoint a receiver to take possession of all of the assets of these defendants and determine the proper party to receive the funds and property collected. In short, Provident Management Group's officers, Boley, Morby and Langford, have induced numerous employers in Utah and Arizona to entrust them with the duty of filing their employment tax returns and making required employment tax deposits with the IRS and the State of Utah. Defendants have breached that trust by failing to file hundreds of the required returns and failing to pay millions in employment tax deposits. Instead, defendants have diverted client funds to their own and their businesses' use. Because of the immediate threat of irreparable injury to the Government and the public, the Government also seeks a limited *ex parte* temporary restraining order (TRO) under Fed.R.Civ.P.

65(b) against defendants, Paysource LLC, Provident Management Group, Inc., Provident Business Partners, Inc., Scott M. Boley, Douglas C. Morby, Robert A. Langford, Zephyr Trust, Omega Resources Group Trust, Timpview Marketing Trust, Albion Tech Trust and Maritime Group Trust, with business bank account freeze, appointment of a temporary receiver, and an order to show cause why a preliminary injunction should not issue.

The conduct most likely to cause irreparable injury is the dissipation of funds in the business bank accounts of defendants Paysource LLC, Provident Management Group, Inc., Provident Business Partners, Inc., Zephyr Trust, Omega Resources Group Trust, Timpview Marketing Trust, Albion Tech Trust and Maritime Group Trust. The United States' motion requests that the business bank accounts of these defendants be frozen and that a temporary receiver be immediately appointed to receive all client funds paid over to these defendants and continue the payroll service on behalf of these clients only so long as necessary to terminate the payroll service business. The temporary receiver should also immediately inform all of Provident Management Group's clients of the entry and extent of the TRO. If the Court determines not to appoint a receiver at this juncture, in order to prevent defendants from collecting and misusing additional client funds, we request that the order prevent the defendants from receiving any additional client funds.

STATEMENT OF THE CASE

1. In August 2002, Internal Revenue Service (IRS) Revenue Officer Scott Bowman ("Bowman") was assigned to investigate the failure of a small business, located in Utah, to pay certain quarterly employment taxes and to file quarterly employment tax returns (Forms 941). Bowman contacted the business and was informed that it paid the taxes through a contract that it

had entered into with a payroll service company called Paysource LLC. See Declaration of Scott Bowman ("Bowman Decl.") ¶ 3.

2. It came to Bowman's attention through other revenue officers in his office that other businesses had contracted for payroll services from Paysource LLC. Those businesses had also failed to file tax returns and to make federal tax deposits. At a meeting on December 3, 2002, principals of Paysource LLC (which changed its name to Provident Management Group, Inc. in 2001, see paragraph 7, below) gave the IRS a partial list of its clients. Using this list and a list of other clients of Paysource LLC identified by Bowman and other revenue officers based on filed returns, the IRS conducted a search of its computer records in December 2002. For each client, the IRS searched for assessed balances due and for employment tax returns which the clients should have filed but which had not been filed. The IRS identified 282 employment tax returns which had not been filed and \$2,377,327.00 in past due employment taxes which had not been paid to the United States. Bowman Decl., ¶ 4.

3. IRS computer records show that Paysource LLC was established in September 2000. In addition, wages were reported to the state of Utah under the name Paysource LLC. Bowman Decl., ¶ 5.

4. As a payroll service company, Paysource LLC is in the business of filing federal (Forms 940 and 941) and state employment tax returns and making the required federal and state employment tax deposits, workers compensation payments and health insurance premium payments for its clients, who are employers. Bowman Decl. ¶ 6.

5. An employer is required to withhold and pay over to the United States from the wages of its employees "employment taxes" including IRS Form 941 federal income tax withholding

and Federal Insurance Contributions Act ("FICA") taxes, as well as IRS Form 940, Federal Unemployment Tax Act ("FUTA") taxes. 26 U.S.C. §§ 3102 and 3402.

6. Clients of Paysource LLC informed the IRS that after signing an agreement titled "Limited Power of Attorney and Tax Information Authorization," which would appoint Paysource LLC to be a registered agent for a client with the IRS, the client would pay its payroll over to Paysource LLC, and Paysource LLC would prepare the payroll checks, make the employment tax withholding deposits, prepare the employment tax returns, and pay other benefits provided by the agreement, such as workers compensation and health insurance premiums. Bowman Decl., ¶ 8 and Exhibit A attached thereto.

7. In 2001, Paysource LLC (EIN 87-0661547) began operating under the name Provident Management Group, Inc. The company continued to use the federal identification number assigned to Paysource LLC but changed its name with the Utah Department of Workforce Services to Provident Management Group, Inc. (PMG). Bowman Decl., ¶ 9 and Exhibit B attached thereto.

8. On December 3, 2002, a meeting was scheduled with the officers of PMG and the IRS concerning the unfiled returns and employment tax delinquencies of its clients. Scott Boley, President of PMG, Douglas C. Morby, Chief Executive Officer of PMG, John Brems, attorney for PMG, and Charles Brown, PMG legal counsel attended on behalf of PMG. Mark Howard, an attorney with IRS Associate Area Counsel Office, Cynthia Hutchison, Collections Group Manager, Dave Folkman, Revenue Officer and Scott Bowman, attended on behalf of the IRS. Bowman Decl., ¶ 10.

9. At the December 3, 2002 meeting, Morby confirmed that PMG did not always make

the federal employment tax deposits for its clients with the money it received from its clients.

Bowman Decl., ¶ 11.

10. Morby stated that the three officers of PMG, Morby, Boley and Langford, made all the decisions of how client money would be dispersed. Bowman Decl., ¶ 12.

11. On the day of the meeting, Morby and Boley completed and signed IRS Forms 4180, Report of Interview With Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Tax, in which they each stated that all three owner/officers of PMG, Morby, Boley and Langford, were responsible for authorizing the payment of federal tax deposits and determining company financial policy. Bowman Decl., ¶ 13 and Exhibits C and D attached thereto.

12. On January 23, 2003, Robert Langford, the secretary/treasurer of PMG, was interviewed by the IRS and signed an IRS Form 4180, Report of Interview With Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Tax. In his Form 4180, Langford stated that PMG is owned by three business trusts: Albion Tech, for which Robert Langford is the trustee, Omega Resources Group, for which Douglas Morby is the trustee, and Maritime Group, for which Scott Boley is the trustee. Bowman Decl., ¶ 14 and Exhibit E attached thereto.

13. At the December 3, 2002 meeting, Morby stated that, although the funds that PMG received from its clients were deposited into a client trust account, the client trust account was used by the officers to pay operating expenses of PMG and its related companies; as well as to fund payroll for other clients. Mr. Morby stated that \$750,000.00 of client funds were used to fund the payroll of Xcavate, Inc., one of its clients. Bowman Decl., ¶ 15.

14. An IRS investigation of Xcavate, Inc., following the meeting, revealed that Xcavate, Inc. is actually owned by PMG. On December 5, 2002, Revenue Officer David L. Folkman interviewed Jeff Dalton, the former owner of Dalton Pipelines & Excavation, Inc., which was a client of PMG. Dalton stated that on October 4, 2001, PMG purchased Dalton Pipelines & Excavation, Inc. and changed the name to Xcavate, Inc. However, actual ownership was placed in the name of Zephyr Trust. Bowman Decl., ¶ 16 and Exhibit F attached thereto.

16. At the meeting on December 3, 2002, Scott Boley stated that he owned the beneficial interest in Zephyr Trust. He also stated that Zephyr Trust gave no consideration to PMG for the transfer of the ownership interest in Xcavate, Inc. Bowman Decl., ¶ 17.

17. Michael Burton, a former employee of PMG, informed the IRS that PMG owns real estate located at 4670 Nelson Court, Park City, Utah. Summit County real property records indicate that PMG acquired the property on June 30, 2002 and that the market value of the property is \$554,667.00. Bowman Decl., ¶ 18 and Exhibit G attached thereto.

18. At the meeting on December 3, 2002, the IRS requested that PMG provide it with a list of its clients. At the conclusion of the meeting, PMG provided the IRS a list of 155 clients. The IRS has now identified 280 clients of PMG. Bowman Decl., ¶ 19.

19. At the December 3, 2002 meeting, Morby stated that PMG had estimated that it was delinquent in making federal employment tax deposits for its clients in the amount of \$3,000,000.00 to \$3,500,000.00. Mr. Morby stated that PMG planned to pay the outstanding employment tax liabilities with monies that were currently being collected from other PMG clients. Bowman Decl., ¶ 20.

20. At the meeting on December 3, 2002, Bowman asked that PMG provide the IRS

copies of bank statements, canceled checks and signature cards for all accounts used by PMG or other entities in operating the business. The IRS received some of these requested documents - consisting of some bank statements - on January 9, 2003. The IRS did not receive any of the canceled checks or all of the requested bank statements and signature cards on all identified accounts. Bowman Decl., ¶ 21.

21. Bowman reviewed the bank statements provided to the IRS for the "trust account" at Central Bank, account no. 121102453, owned by "Paysource LLC." In August 2002, the account holder was changed to show "Paysource LLC dba Provident Management Group, Inc." The records provided to the IRS for this account did not include statements for December, 2000; January, February and November of 2001; and May 2002. A review of the year 2002 statements (not including the month of May) provided to the IRS for this account reveal a number of transactions inconsistent with a client trust account, including:

- a. a total of \$106, 013.76 transferred by electronic remittance through American Express;
- b. a total of \$41,000 electronically transferred to "partner;"
- c. a total of \$9,600 electronically transferred to "franchise;"
- d. on March 21, 2002, June 4, 2002, and July 3, 2002, the amounts of \$150,000, \$18,600 and \$50,000, respectively, transferred to Central Bank account no. 121103337, an account not identified to the IRS by PMG; and
- e. each month, hundreds of thousands of dollars transferred from the trust account to an operating account at Central Bank, account no. 121102446.

Bowman Decl., ¶ 22. and Exhibit H attached thereto.

22. Bowman reviewed the bank records provided to the IRS for Central Bank account

no. 121102446 owned by "Paysource LLC," which in August 2001 was changed to show "Provident Management Group." The bank records show that in December 2001, Central Bank designated this account as a "commercial" account. The records provided to the IRS for this account did not include statements for November 2001 and February 2002. A review of the statements provided to the IRS for this account also reveal suspicious large dollar amount transfers, including:

- a. transfers in the total amount of \$191,000 to "PS ACH Partner GP;"
- b. electronic funds transfers in the total amount of \$60,000 to "partner;" and
- c. transfers totaling \$17,000 to Central Bank account no. 121103337 (referred to in paragraph 21(d), above).

Bowman Decl., ¶ 23 and Exhibit I attached thereto.

23. Bowman reviewed the bank records provided to the IRS for Central Bank account no. 121104178 listed as owned by "Provident Management Group, Inc., Arizona Division." The records provided to the IRS for this account only included statements for months beginning with August 2002. A review of the statements provided to the IRS for this account reveals that \$18,500 was electronically transferred to "OTS Management," a corporation for which Robert Langford is president, and \$6,000 was electronically transferred to "Albion Tech," a trust account controlled by Robert Langford. Bowman Decl., ¶ 24 and Exhibit J attached thereto..

24. Bowman reviewed the bank records provided to the IRS for Wells Fargo Bank account no. 009-9089427 owned by "Paysource LLC." The records provided to the IRS for this account only included statements for the months of June 2001 through December 2002. A review of the statements provided to the IRS for this account reveal that a total of \$25,077.23

was electronically transferred to pay the First USA credit card of Robert Langford. In addition, \$118,000 was electronically transferred to bank accounts at Central Bank, which were not identified to the IRS. Bowman Decl., ¶ 25 and Exhibit K attached thereto.

25. Bowman reviewed the bank records provided to the IRS for Bank of Utah account no. 3042251 owned by "Provident Management Group, Inc., Douglas C. Morby, Scott M. Boley." The records provided to the IRS for this account included statements for the months of May 2002 through December 2002, but missing October 2002. Principals of PMG said they set up this account to accommodate a client with many Latin American employees who had the ability to cash checks at that bank. The bank records show smaller transactions typical of the payroll of a small company, with deposits averaging under \$20,000 and checks averaging under \$300, until August 2002. On August 14, 2002 and August 23, 2002, the account statements show deposits of \$53,928.54 and \$29,629.15, respectively, and on August 22, 2002, September 10, 2002, and September 19, 2002, withdrawals of \$40,000, \$14,000, and \$20,000, respectively. Bowman Decl., ¶ 26 and Exhibit L attached thereto.

26. An examination of the bank account statements identified in paragraphs 22 through 26, above, reveals numerous checks written over \$10,000. However, without the canceled checks it is impossible to determine the purpose of those checks. The IRS asked for the checks at the meeting with the officer/owners of PMG on December 3, 2002. Initially, the officer/owners of PMG agreed to provide the checks, but later they advised the IRS that they would not. Bowman Decl., ¶ 27.

27. From Bowman's examination of the bank statements, set forth in paragraphs 22 through 26, above, he determined that the integrity of the client trust account is not being

maintained. The owner/officers are electronically transferring money at will for purposes other than client needs and are using client funds to pay their own personal expenses, such as credit card debt. Bowman Decl., ¶ 28.

28. Over the last two months, the IRS has contacted clients of PMG and informed them of the failure to file their employment tax returns and the failure to pay their employment tax liabilities. A majority of the PMG clients that the IRS contacted did not know that they had any unpaid liabilities on their accounts. The clients did not know of these delinquencies because the IRS sent the notices of the delinquencies to the address listed by PMG on the client returns. PMG had listed its own address on those returns and did not give their clients the notices of the delinquencies which the IRS had sent out. Bowman Decl., ¶ 29.

29. PMG clients informed Bowman that when they confronted PMG about the nonpayment of their employment taxes, PMG first told their clients that there was a bookkeeping error and that their accounts had been paid in full. Later, the clients were told by PMG that there was mismanagement in the company and that the responsible manager had been fired. Recently, PMG has been misinforming its clients that they are negotiating with the IRS to pay off all the taxes that are due. Bowman Decl., ¶ 30.

30. Scott M. Boley, the president of PMG, resides at 1749 N 1200 E, Heber City, Utah 84032-3404. County property records indicate that his residence has a value of \$2,275,000.00. Bowman Decl., ¶ 31 and Exhibit M attached thereto.

31. Douglas C. Morby, the chief executive officer of PMG, resides at 826 E 700 North, American Fork, Utah 84003-1321. County real property and IRS records indicate that Morby's residence has a market value of \$707,415.00 and that on March 19, 2002 ownership of the real

property was transferred to the Timpview Marketing Trust of which he is the trustee. Bowman Decl., ¶ 32 and Exhibit N attached thereto.

32. Robert A. Langford, the secretary/treasurer of PMG resides at 1252 E Halifax Street, Mesa, Arizona 85203-3822. Property records indicate that he purchased this residence in 1986 for \$106,000.00 and that on October 19, 2000 he transferred ownership of his residence to the Langford Trust. Bowman Decl., ¶ 33 and Exhibit O attached thereto.

33. PMG has not kept current on filing its own Forms 941, Employer's Quarterly Federal Tax Return, or on making its federal employment tax deposits for its own employees. The Form 941 for the period ending September 30, 2001 was not filed until December 31, 2002. The Forms 941 for the quarters ending December 31, 2001, March 30, 2002, June 30, 2002, and September 30, 2002 were not filed until December 20, 2002. In addition, PMG owes outstanding federal employment taxes, penalties and interest in the amount of \$65,631.60 for the quarter ending March 31, 2002, \$75,703.86 for the quarter ending June 30, 2002 and \$52,167.47 for the quarter ending September 30, 2002. Bowman Decl., ¶ 34.

34. Despite the meeting with the IRS, PMG has continued its practice of not filing Forms 941 for its clients or making federal employment tax deposits for its clients. The IRS has limited ability to take immediate collection action against PMG for the tax liabilities of its clients. While PMG may have direct liability as a statutory employer pursuant to 26 U.S.C. § 3401(d)(1), in those limited circumstances where it funds the payroll for its clients, in general, PMG's liability for the employment taxes is indirect pursuant to 26 U.S.C. §§ 6672 or 3505, as a third party. This leaves the IRS unable to require PMG to make monthly filings or special deposits. It also does not allow the IRS to place a lien on or levy on PMG assets, or enter into installment

agreements or offers in compromise with PMG for the tax liabilities of PMG's clients.

ARGUMENT

Section 7402(a) of the Internal Revenue Code (26 U.S.C.) specifically authorizes district courts to issue injunctions "as may be necessary and appropriate for the enforcement of the internal revenue laws." Courts have repeatedly held that the language of section 7402(a) is broad and clearly manifests "a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws." Brody v. United States, 243 F.2d 378, 384 (1st Cir. 1957). In United States v. Ernst & Whinney, 735 F.2d 1296, 1300 (11th Cir. 1984), the court noted that section 7402(a) "has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." Rule 65(b) of the Federal Rules of Civil Procedure and section 7402(a) provide the Court with the jurisdiction to issue the TRO requested herein.

The United States Court of Appeals for the Tenth Circuit requires a movant to establish four elements as the basis for issuance of a TRO or preliminary injunction: (1) the moving party will suffer irreparable injury unless the injunction issues; (2) the threatened injury to the moving party outweighs any damage to the opposing party; (3) the injunction, if issued, will not be adverse to the public interest; and (4) a substantial likelihood exists that the moving party will prevail on the merits. SCFC ILC, Inc. v. Vias USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991); Seneca-Cayuga Tribe v. State ex rel. Thompson, 874 F.2d 709, 716 (10th Cir. 1989). When the first three elements are clearly satisfied, the Tenth Circuit has indicated that a more lenient "fair ground for litigation" standard should be substituted for the prerequisite of "a substantial likelihood that the moving party will prevail on the merits." Resolution Trust Corp. v. Cruce,

972 F.2d 1195, 1199 (10th Cir. 1992); Otero Savings & Loan Association v. Federal Reserve, 665 F.2d 275, 278 (10th Cir. 1981).

A. The United States Will Suffer Irreparable Harm If The Relief Is Not Granted.

As shown above, PMG is in the business of preparing and filing federal employment tax returns and making federal tax deposits with the Internal Revenue Service for its clients. However, PMG has failed and continues to fail to file the employment tax returns or make the federal tax deposits. Instead, PMG, through the direction of its officer/owners, Scott Boley, Douglas Morby and Robert Langford, is using clients' federal employment tax deposits to purchase assets - for example, Dalton Pipelines & Excavation, Inc. and the real estate located in Park City, Utah - and pay the operating expenses of PMG and personal expenses of the officer/owners. In December 2002, Douglas Morby, the president of PMG estimated that PMG was delinquent in making federal employment tax deposits for its clients in the amount of \$3 to \$3.5 million.

Sections 3102 and 3402 of the Internal Revenue Code require employers to withhold federal social security and income taxes ("trust fund taxes") from the wages of their employees. The money withheld from each employee's wages constitutes a special fund in trust for the benefit of the United States pursuant to I.R.C. § 7501. Finley v. United States, 123 F.3d 1342, 1344 (10th Cir. 1997). If an employer withholds the taxes but fails to pay them over to the United States, the employee is nonetheless credited with payment, and the Government does not require any additional payment from the employee. Slodov v. United States, 436 U.S. 238, 243 (1978). Thus, unless the Government has recourse against the person or persons responsible for the collection and nonpayment of the tax, the revenues are lost to the Government.

The irreparable harm to the United States is shown by PMG's accumulating unpaid employment tax liabilities totaling between \$3 to \$3.5 million as of December 2002. The Internal Revenue Service has no practical collection power that will deter the continued pyramiding of employment taxes by PMG. With full repayment unlikely and the continued dissipation of funds by PMG, the harm to the public fisc may never be repaired.

The traditional purpose of a TRO is to preserve the status quo until a trial on the merits. See Otero Saving and Loan Association, 665 F.2d at 277. A TRO is necessary in this case to prevent the further dissipation of funds from the defendants' bank accounts. As set forth above, and in detail in the Declaration of Scott Bowman, filed herewith, the owner/officers of PMG have not maintained the integrity of PMG's client trust account. There are numerous large dollar wire transfers from the client trust account to other accounts not identified to the IRS, and to pay the personal expenses of the owner/officers. These wire transfers show that there is a clear and present danger that, without freezing the business bank accounts of PMG, the funds that are in the accounts will be further dissipated, and client funds will not be available to pay the delinquent federal employment taxes.

Moreover, unless a temporary receiver is appointed immediately, PMG clients will continue to deposit funds with PMG with little chance that the funds will be used for their intended purpose - the payment of employment taxes. It is necessary for a temporary receiver to be appointed to continue the payroll service business - make the required federal tax deposits, and ensure that the employees of the clients of PMG continue to receive their pay checks- only so long as necessary to wind up and terminate the payroll service business. The temporary receiver should also immediately contact the clients to inform them of the entry and extent of the

TRO.

B. Defendants Will Not Suffer Harm If The Relief Being Sought Is Granted.

Defendants are using the money that their clients have paid over to them to make the client's federal employment tax deposits for their own benefit. Because they are not properly using the money for the purpose of the business in any event, granting the TRO will not harm the defendants. Granting a TRO will restore the status quo, and prevent the further dissipation of funds. See United States v. First Nat'l. City Bank, 379 U.S. 378, 385 (1965).

Central Bank, Wells Fargo Bank Northwest N. A., Wells Fargo Bank Arizona N.A., Bank of Utah, Bank of American Fork, and M&I Marshall & Ilsley Bank are named as defendants merely because they are the financial institutions at which defendants have accounts into which client funds have been deposited. These financial institutions will not be harmed by an order directing them to freeze all of the defendants' accounts.

C. Issuance Of A TRO Serves The Public Interest.

"[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." Bull v. United States, 295 U.S. 247, 259 (1934). The public interest is served when misleading and fraudulent commercial practices are stopped. Under the guise of a legitimate payroll service, PMG's officers have collected huge sums of money from its unsuspecting clients and diverted those funds for unintended uses, including their own personal gain. In doing so, they have exposed their clients to liability for unpaid employment taxes those clients assumed were already paid.

When the public interest is invoked as the irreparable harm, as under I.R.C. § 7402(a), appropriate equitable relief for the United States may go further than if only private interests

were involved. United States v. First Nat'l City Bank, 379 U.S. at 383 (enjoining the transfer of a taxpayer's bank account to prevent dissipation of assets overseas). In this case, the public interest is clearly served by a TRO against defendants.

D. There Is A Substantial Likelihood That Plaintiff Will Prevail On The Merits.

As set forth above, when the other three requirements for an injunction are satisfied a more liberal interpretation of the "probability of success" requirement will be employed. "[I]t will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." Otero, 665 F.2d at 279. The United States has shown that it will suffer irreparable injury if the TRO is not issued, that the defendants will not be injured by the issuance of a TRO, and that the issuance of the TRO is in the public interest. Thus, the United States need only show that there are "fair grounds for litigation."

PMG's deliberate noncompliance with federal employment tax laws, *i.e.*, the nonfiling of employment tax returns and nonpayment of federal employment taxes, and the dissipation of client funds from PMG's bank accounts, reveals that there are "fair grounds for litigation" in this matter.

CONCLUSION

For the foregoing reasons, the United States' *ex parte* motion for a TRO with business bank account freeze, appointment of a temporary receiver, and order to show cause why a

preliminary injunction should not issue should be granted under both section 7402(a) and under the Court's equitable power to prevent irreparable harm to the Government and the public.

Respectfully submitted,

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