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 CENTRAL DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,) Case No. CV 03-07016 DDP (PJWx)
 12)
 13 Plaintiff,) ORDER GRANTING PLAINTIFF'S MOTION
 14) FOR CONTEMPT AND SECOND AMENDED
 15 v.) INJUNCTION
 16 JAMES A. MATTATALL,) [Motion filed on 6/15/04]
 17)
 18 Defendant.)
 19)

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

17 The instant matter is before the Court on the United States's
 18 (the "Government") motion for contempt and for a second amended
 19 injunction. The motion is unopposed. After reviewing the
 20 materials submitted by the parties, and hearing oral argument, the
 21 Court grants the motion.

22 I. Background

23 On May 3, 2004, the Court granted default judgment against the
 24 defendant, James Mattatall. The complaint was brought to
 25 permanently enjoin the defendant (a) from acting as an income tax
 26 preparer; (2) from organizing or selling abusive trust
 27 arrangements, or other plans or arrangements that advise or
 28 encourage taxpayers to attempt to evade the assessment or

35

1 collection of their correct federal taxes; (3) from engaging in any
2 activity subject to penalty under I.R.C. §§ 6400, 6701, or 6694;
3 and (4) from engaging in other conduct that substantially
4 interferes with the enforcement of the internal revenue laws.
5 (Compl. at 2.)

6 The complaint alleged that Mattatall organizes and promotes
7 abused tax schemes whereby the defendant advises his customers to
8 put their assets into trust both in this country and offshore.
9 Under his plan, the customers maintain control of the assets in the
10 trust, and are able to access the funds through credit cards issued
11 from banks in tax haven countries. (Id. at 3.) Mattatall charges
12 \$5,000 or more to each individual purchaser of his multiple-trust
13 scheme. (Id. at 4.) Mattatall made false or fraudulent statements
14 regarding the tax advantages available to those who purchase his
15 trust packages, including statements that his multiple-trust scheme
16 results in no federal tax liability to either the customer or the
17 trust. (Id. at 5.)

18 The complaint also charged Mattatal with making false tax
19 returns. Mattatal prepared 165 returns in 2001; 228 returns in
20 2002; and 189 returns in 2003. He charges customers fees for
21 preparing tax returns. (Id. at 4.) Some of the returns prepared
22 by Mattatal indicate the use of the multiple-trust scheme; others
23 simply underreport the tax liabilities of the taxpayer. (See
24 Szollosi decl. at ¶¶ 3-4.)

25 The government also asserted that Mattatall deliberately
26 attempts to delay and obstruct the IRS examination into his trust
27 scheme and other taxpayers by: refusing to provide the financial
28 records and information of taxpayers for whom he prepared tax.

1 returns; refusing to allow his customers to provide the records and
2 information requested by the IRS; counseling his customers not to
3 respond to IRS notices and correspondence unless they are signed
4 under penalty of perjury. (Compl. at 6.)

5 The IRS advised the defendant that his conduct was subject to
6 penalty and injunction, but Mattatall did not stop promoting his
7 trust schemes or preparing false and fraudulent returns. (Id.) At
8 the time the complaint was filed, the government had selected 140
9 Form 1040 income tax returns prepared by Mattatall for audit. A
10 review of only 18 returns resulted in the assertion of audit
11 deficiencies totaling nearly \$1 million in tax and penalties.
12 (Id.)

13 The defendant was found in default on February 20, 2004. The
14 Court entered default judgment on April 6, 2004. The Court found
15 that the Government's requested relief was appropriate, and granted
16 the requested injunctive relief. The injunction included the
17 following provisions relevant to the instant motion:

18 Following the above Findings of Fact and Conclusions of
19 Law, it is hereby ORDERED that Defendant James A.
20 Mattatall is restrained and enjoined from directly or
indirectly:

21 (e) Further acting as a return preparer or assisting in
22 or directing the preparation of federal tax returns which
knowingly will result in the understatement of any tax
liability;

23 It is further ORDERED, that Defendant James A. Mattatall
24 provide within 10 days a complete list of his clients
(including names, addresses, phone numbers, and social
25 security numbers or employer identification numbers) who
have purchased trust plans from him, for whom he has
26 created one or more trust, or for whom he has performed
trustee services.

27 (5/3/04 Amended Injunction at 4,5.)

28

1 II. Discussion

2 By the instant application, the Government seeks an order
3 finding the defendant in contempt for failing to turn over client
4 lists, and seeks to impose a second amended injunction to clarify
5 section (e) of the Amended Injunction.

6 A. Legal Standard for Contempt

7 A finding of civil contempt is proper when a party disobeys a
8 specific and definite court order by failing to take all reasonable
9 steps within his or her power to comply. In re Dual-Deck Video
10 Cassette Recorder Antitrust Litigation, 10 F.3d 693, 695 (9th Cir.
11 1993). The contempt "need not be willful," and there is no good
12 faith exception to the requirement of obedience to a court order.
13 But a person should not be held in contempt if his action "appears
14 to be based on a good faith and reasonable interpretation of the
15 [court's order]." Id. (citation & quotation omitted).

16 "The party alleging civil contempt must demonstrate that the
17 alleged contemnor violated the court's order by "clear and
18 convincing evidence," not merely a preponderance of the evidence."
19 Id. Then the burden shifts to the contemnor to show why he or she
20 should not be held in contempt of court. FTC v. Affordable Media,
21 LLC, 179 F.3d 1228, 1238 (9th Cir. 1999) (quoting Stone v. City and
22 County of San Francisco, 968 F.2d 850, 856 n.9 (9th Cir. 1992)).

23 Sanctions for civil contempt may be imposed to coerce
24 obedience to a court order, or to compensate the party pursuing the
25 contempt action for injuries resulting from the contemptuous
26 behavior, or both. General Signal Corp. v. Donallco, Inc., 787
27 F.2d 1376, 1379-80 (9th Cir. 1986) (citing United States v. United
28 Mine Workers, 330 U.S. 258, 303-04 (1947)). The Government in the

1 instant case is seeking a coercive sanction. A coercive sanction
2 should be designed to bring about the desired result and to reflect
3 the character and magnitude of harm if the desired result is not
4 achieved. Id. (citing United States v. United Mine Workers, 330
5 U.S. 258, 304 (1947)). A coercive sanction may involve payment of
6 a fine to the Court, or imprisonment of the contemnor until he or
7 she complies with the Court's order. See Uphaus v. Wyman, 360 U.S.
8 72, 81 (1959).

9 B. Application

10 The Government offers evidence that the defendant has not
11 turned over a complete list of his clients. Norma Schrock, the
12 attorney with the Tax Division who was assigned to this case,
13 declares, "I have not received any communication from defendant
14 James Mattatall in response to the court's order directing him to
15 supply a listing of his clients who have purchased trusts from him,
16 for whom he has created one or more trusts, or for whom he has
17 performed trustee services. To my knowledge, Mr. Mattatall has not
18 made any efforts to comply with this order." (Schrock Decl. at 2.)

19 The defendant has made no showing as to why he has not
20 complied with the Court order. Furthermore, the order requiring
21 the defendant to supply a list of clients is clear, and the
22 defendant has not argued otherwise.

23 The Court finds that the defendant is in contempt of court.
24 The Government requests that the defendant be fined \$500 a day
25 until he provides the list to the Government, and that if the
26 defendant has not produced the list in 14 days, that the defendant
27 be imprisoned. The Court finds that a coercive fine of \$500 a day
28 for up to fourteen days is appropriate. The fourteen day period

1 shall commence ten (10) days from the date of this order. If the
2 defendant has not complied with the Court's order after the
3 fourteen day period, the defendant shall be imprisoned thereafter,
4 until the defendant provides the list of client names. The Court
5 finds that these sanctions are in line with the character and
6 magnitude of the defendant's contumacy.

7 C. The Second Amended Injunction

8 The Government also seeks to impose a Second Amended
9 Injunction that replaces section (e) above with the following
10 section:

11 [I]t is hereby ORDERED that Defendant James A. Mattatall
12 is restrained and enjoined from directly or indirectly:

13 (e) Further acting as return preparer or assisting in or
14 directing the preparation of federal tax returns for any
15 person or entity other than himself, or further appearing
16 as a representative on behalf of any person or
17 organization whose tax liabilities is under examination
18 by the IRS.

19 (Proposed Second Amended Injunction at 5.) The Government argues
20 that this change is necessary because the defendant has continued
21 to act on behalf of other individuals and make frivolous arguments
22 why the IRS's requests need not be obeyed.¹ (Mot. at 5.) The
23 current injunction generally prohibits Mattatall from providing

24 ¹ In support of its position, the Government attaches the
25 transcript of an interview between the IRS and a taxpayer who
26 brought Mattatall along as his tax preparer and representative. At
27 the interview, the defendant insisted that the taxpayer could
28 choose to submit an affidavit that his tax return was correct, and
that regardless of the IRS's request for documents or other
information, the affidavit is all that the taxpayer need provide.
(Schrock Decl., Ex. B (Transcript) at 59.) The Government argues
that Mattatall's position is frivolous, and the Court agrees.
Section 7602 of the Internal Revenue Code authorizes the IRS to
examine "any books, papers, records, or other data" which "may be
relevant" to an inquiry into "the correctness of any [tax] return."
26 U.S.C. § 7602(a)(1). The defendant's assertion that an
affidavit is sufficient is unfounded.

1 inaccurate tax information to others and from interfering with the
2 enforcement of tax laws. The Government contends that Mattatall
3 "will likely insist that he has not provided any inaccurate
4 information and that his position is consistent with the accurate
5 interpretation of the tax laws. Mattatall has not admitted that he
6 is wrong, and therefore he is likely to assert that he is entitled
7 to continue asserting his positions." (Mot. at 7.)

8 The Court finds that the Government has offered sufficient
9 evidence that the Amended Injunction currently in effect must be
10 clarified to enjoin the defendant from substantially interfering
11 with the internal revenue laws.

12 **III. Conclusion**

13 In light of the foregoing considerations, the Court grants the
14 Government's motion for contempt and to enter the Second Amended
15 Injunction.

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17

18 IT IS SO ORDERED.

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21 Dated: 8-17-04

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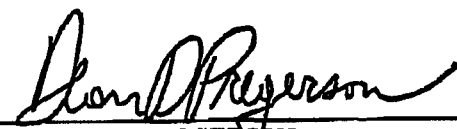
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DEAN D. PREGERSON
United States District Judge