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CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA
 BY _____
 DEPUTY CLERK

9 **IN THE UNITED STATES DISTRICT COURT FOR THE**
 10 **EASTERN DISTRICT OF CALIFORNIA**
SACRAMENTO DIVISION

11 **UNITED STATES OF AMERICA,**
 12 **Plaintiff,**

13 v.

14 **JAMES O. MOLEN and SANDRA L. MOLEN,**
 15 **d/b/a TOUCH OF CLASS FLORIST,**
 16 **Defendants.**

CMC 03 - 1531 DFL GGH

Civil No.

Complaint for Permanent Injunction

17 Plaintiff, the United States of America, states as follows for its complaint against
 18 defendants James O. Molen and Sandra L. Molen, doing business as Touch of Class Florist:

Jurisdiction

20 1. This Court has jurisdiction over this action to enjoin the Molens from interfering with
 21 the administration of the internal revenue laws pursuant to 28 U.S.C. §§ 1340 and 1345 and
 22 Internal Revenue Code (I.R.C.) (26 U.S.C.) § 7402(a).

Venue

24 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because the
 25 Molens reside in this judicial district.

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 28

1 **Nature of Action**

2 3. This action has been requested by the Chief Counsel of the Internal Revenue Service,
3 a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the
4 Attorney General, pursuant to I.R.C. § 7402.

5 4. The United States is bringing this complaint to permanently enjoin the Molens from
6 failing to (a) withhold federal taxes from employee wages, (b) file timely federal employment
7 and unemployment tax returns, (c) file timely wage and tax statements (IRS Forms W-2) with
8 the Social Security Administration (SSA) and issue them to their employees, and (d) make
9 timely federal employment and unemployment tax deposits and payments to the IRS.

10 5. An injunction is warranted based on the Molens' continuing violation of the internal
11 revenue laws, including I.R.C. §§ 3102, 3111, 3301, 3402, 6011, and 6041. Since January 2000,
12 the Molens have failed to withhold federal taxes from their employees' wages, to file federal
13 employment and unemployment tax returns, to file and issue accurate Forms W-2, and to pay the
14 federal employment and unemployment taxes that are lawfully owing.

15 **Defendants**

16 6. James O. Molen resides at 189 Connors Avenue, Chico, California. He does business
17 as Touch of Class Florist, located at 1915 The Esplanade, Chico, California, a sole
18 proprietorship. He is Sandra L. Molen's husband.

19 7. Sandra L. Molen also resides at 189 Connors Avenue, Chico, California. She also
20 does business as Touch of Class Florist, located at 1915 The Esplanade, Chico, California, a sole
21 proprietorship. She is James O. Molen's wife.

22 **Defendant's Activities**

23 8. The Molens have approximately four employees, to whom they pay wages and other
24 compensation.

25 9. I.R.C. §§ 3102, 3111, 3301, and 3402 require employers to withhold federal income
26 and Federal Insurance Contributions Act (FICA) taxes from their employees' wages, and to pay

1 over those withholdings, along with the employer's own FICA and Federal Unemployment Tax
2 Act (FUTA) taxes, to the IRS.

3 10. I.R.C. § 6011 and Treasury Regulation (26 C.F.R.) § 31.6071(a)-1 require employers
4 to file Employer's Quarterly Federal Tax Returns (IRS Forms 941) and Employer's Annual
5 Federal Unemployment (FUTA) Tax Returns (IRS Forms 940) with the IRS.

6 11. I.R.C. §§ 6011 and 6041 and Treasury Regulation § 1.6041-2 require employers to
7 file annually with the SSA a Form W-2 for each employee, and to give each employee a copy of
8 his or her Form W-2.

9 12. On August 3, 2000, and again on November 30, 2000, the Molens wrote the IRS
10 requesting a refund of withheld federal income and FICA taxes from the first quarter of 1997
11 through the second quarter of 2000, and FUTA taxes from 1997 through 2000.

12 13. The Molens claimed in their August 3, 2000, letter to the IRS that they did not pay
13 any gross income or taxable income to their employees, and stated that they based this claim on
14 their interpretation of I.R.C. § 861, known as the "§ 861 argument."

15 14. The patently frivolous § 861 argument posits that I.R.C. § 861 and Treasury
16 Regulation § 1.861-8(f) provide the exclusive list of income sources subject to federal income
17 tax. Because that narrow list focuses on foreign income, § 861 proponents argue that U.S.-
18 source income is not subject to federal income taxation.

19 15. Every court that has considered the § 861 argument has rejected it as frivolous.
20 Courts have sanctioned people for asserting the § 861 argument and enjoined people from
21 promoting it and preparing tax returns asserting it.

22 16. The Molens provided their employees with W-2 Forms falsely stating that they had
23 paid the employees \$0 in 2000, 2001, and 2002.

24 17. In 2000, the Molens filed with the IRS multiple Supporting Statements to Correct
25 Information (IRS Forms 941C), requesting that their previously filed Forms 941 for the first
26 quarter of 1997 through the last quarter of 1999 be adjusted to report that they paid their
27 employees \$0 in those quarters.

1 G. That this Court require the Molens to deliver to all of their current employees, and any
2 former employees employed at any time since January 1, 2000, a copy of the Court's findings
3 and permanent injunction;

4 H. That this Court require the Molens to post and keep posted for two years in one or
5 more conspicuous places on their business premises where notices to employees are customarily
6 posted, a copy of this Court's findings and permanent injunction;

7 I. That the Court retain jurisdiction over this case to ensure compliance with this
8 injunction; and

9 J. That this Court grant the United States such other relief, including costs, as is just and
10 equitable.

11 Dated: 7/18/03

12 Respectfully submitted,

13 McGREGOR W. SCOTT
14 United States Attorney

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