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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Civil No.
JOSEPH E. WOLF, *et al.*,	)	
Defendants.	)	CIV-04-0037-HE

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Defendants Joseph Wolf, Eric Wolf, Louise Qualls, and Cecil Fisher control and manage over 35 professional employer organizations ("PEOs") for which they consistently fail to file properly federal employment and federal corporate income tax returns and fail to pay fully the employment tax liabilities they report. Moreover, defendants have stymied IRS collection efforts by engaging in an elaborate corporate shell game in which they continually strip debt-ridden PEOs of assets and income. Defendants' actions have cost the United States Treasury nearly six million dollars in only a three-year period. The United States seeks a preliminary injunction to prevent any further losses to the fisc.

STATEMENT OF FACTS

The PEOs controlled by the individual defendants in tax years 2000 through 2003 include A to Z Staffing Services, Inc., Benefit Marketing, Inc., Employer's Administration and Payroll Services, Inc., SSI Temps, Inc., Employers Payroll Services, Inc., Global Staffing, Inc., National Staffing, Inc., Nationwide Staffing Specialties, Inc., Payroll Plus, Inc., PRN Medical Staffing, Inc., Professional Employer's Management, Inc., Select Staffing, Inc., Simplified Staffing, Inc., Source Staffing, Inc., SSI of America, Inc., SSI of Bethany, Inc., SSI of OKC, Inc., SSI

Personnel, Inc., SSI Staffing, Inc., Staff Specialties, Inc., Summit Staffing Services, Inc., Support Staffing Services, Inc., Tecumseh Management, Inc., The Corporate Direct, Inc., The TSI Group, Inc., Titan Management, Inc., Total Staffing Services, Inc., TSI Builders, Inc., TSI Installations, Inc., TSI Installers and Erectors, Inc., TSI Medical, Inc., TSI of Peachtree, Inc., TSI Temps, Inc., Vontres Staffing Services, Inc., and X-Cell Promotions, Inc. (collectively, the "PEO Corporations").[1] Each of these companies employs at least one of the individual defendants as an officer, director, resident agent, and/or bookkeeper.[2] Additionally, all of the individual defendants have signed Oklahoma state documents, checks, employment tax forms, and/or other documents on behalf of one or more of the PEO Corporations.[3]

A PEO contracts with businesses to manage the businesses' human resource matters, and often establishes and maintains an employer relationship with the business' employees.[4] The PEO pays the wages and employment taxes of the employees out of the PEO's accounts; and reports, collects, and deposits employment taxes with federal authorities using the PEO's employer identification number.[5] The client businesses pay the PEO a lump-sum fee to cover all

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[1] *See* Exhibit A, Declaration of Karen Robinson ¶ 6, at 2-5.

[2] *Id.*

[3] *Id.* at ex. 3. The IRS has also identified other PEOs operated by the individual defendants in previous years, including Employer Business Services, Inc. and Staffing Solutions, Inc. *Id.* ¶ 14, at 12; *see also* Exhibit H, Declaration of Charles De Furia ¶¶ 3,4, at 1.

[4] *See* Exhibit B, Definition of Professional Employer Organization. The document attached as Exhibit B is a true and correct printout from www.NAPEO.org. NAPEO is the national association of professional employer organizations.

[5] *Id.*; *See also* Exhibit A, Declaration of Karen Robinson, at ex. 5, pgs 1-11; ex. 6, pgs. 1-11; ex. 10, pgs. 1-11; ex. 11, pgs. 1-12; ex. 12, pgs. 1-11.

employee-related expenses, plus a service fee for the PEO.[6] The relationship between a PEO and its business client is often called an employee-leasing arrangement because, on paper, the business' employees are fired by the business, hired by the PEO, and then leased by the PEO back to the business.

The PEO Corporations, under the direction of the individual defendants, consistently fail to comply with their federal tax responsibilities. First, the PEO Corporations do not file corporate income tax returns or pay corporate income taxes. Second, the defendant PEO Corporations do not fully pay federal employment taxes, despite having received funds from their customers for this purpose, and the PEO Corporations do not accurately report gross wages paid. Third, the individual defendants operate the PEO Corporations so as to conceal their illegal tax avoidance scheme.

1. The PEO Corporations Do Not File Corporate Income Tax Returns or Pay Corporate Income Taxes.

Corporations are required annually to report their income on a form 1120 and pay corporate income tax.[7] Karen Robinson, the IRS Revenue Agent assigned to investigate this case, reviewed the PEO Corporations' records for 2000 through 2002 and determined that none of the PEO Corporations had filed corporate income tax returns or paid corporate income taxes.[8] Robinson also determined that from 2000 through 2002 the PEO Corporations entered into contracts, received checks from their customers, issued payroll checks, filed employment tax

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[6] *See* Exhibit A, Declaration of Karen Robinson, at ex. 5, pgs 1-11; ex. 6, pgs. 1-11; ex. 10, pgs. 1-11; ex. 11, pgs. 1-12; ex. 12, pgs. 1-11.

[7] 26 U.S.C. § 11; *see* Exhibit C, Sample 1120 Form.

[8] *See* Exhibit A, Declaration of Karen Robinson ¶ 7, at 5.

forms, and otherwise operated and earned income.[9] The PEO Corporations' failure to report and pay their income taxes is a clear violation of the internal revenue code.

2. The PEO Corporations Do Not Properly File or Pay Federal Employment Taxes.

The Internal Revenue Code requires employers to withhold federal income and FICA (Federal Insurance Contribution Act) taxes from their employees' wages and to pay over those amounts, in addition to their own FICA and FUTA (Federal Unemployment Tax Act) contributions, to the IRS.[10] Employers must file employment tax forms on both a quarterly (form 941 for FICA) and annual basis (form 940 for FUTA), and must issue annual W-2 forms to the Social Security Administration, to the IRS, and to each employee.[11]

The PEO Corporations file employment tax forms under their own employer identification numbers, listing the gross wages paid and the taxes due.[12] For tax years 2000 through 2002, the PEO Corporations filed forms showing that they owed $15,022,089.78 in

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[9] *Id.* ¶¶ 8-13, at 5-12.

[10] 26 U.S.C. §§ 3102 (requiring employers to withhold Social Security and Medicare taxes, which together constitute FICA taxes, from their employees' wages), 3402 (requiring employers to withhold income taxes from their employees' wages), 3111 (imposing FICA taxes on employers), and 3301 (imposing FUTA taxes on employers). *See United States v. Energy Resources Co.*, 495 U.S. 545, 546 (1990) ("The Internal Revenue Code requires employers to withhold from their employees' paychecks money representing employees' personal income taxes and Social Security taxes.").

[11] *See* 26 U.S.C. §§ 6011(a) (requiring any person liable for a tax under the Internal Revenue Code to file a return), 6041 (requiring employers to file information wage and tax statements for each employee and to issue each employee a copy of his or her statement); *see also* Exhibit D, Sample Form 941 and Instructions; Exhibit E, Sample Form 940 and Instructions; Exhibit F, Sample W-2 Form and Instructions.

[12] *See* Exhibit A, Declaration of Karen Robinson ¶ 8, at 5-6.

taxes.[13] In addition, the IRS assessed an additional $965,522.74 in penalties and interest.[14] The PEO Corporations paid only $10,450,189.565 to the IRS, however, leaving an unpaid balance of $5,537,422.30 in assessed employment taxes, interest, and penalties as of November 5, 2003.[15] Additionally, although the PEO Corporations collectively reported $61,125,392.22 gross wages paid on the forms 941 for 2000, 2001 and 2002, they reported only $59,745,845.10 gross wages paid on the W-2 forms.[16] These numbers should be substantially equal, and the fact that they are over one million dollars apart shows that the individual defendants are misreporting the gross wages paid.[17]

The PEO Corporations continued to accrue unpaid employment taxes in 2003. TSI Installers and Titan - the individual defendants' two active PEO Corporations - reported gross wages of $1,720,127.24, with taxes due and owing of $379,436.56 for the first two quarters of 2003.[18] The IRS assessed additional penalties and interest totaling $45,754.14.[19] As of November 5, 2003, these two companies had an unpaid balance of $309,235.92.[20]

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[13] *Id.* ¶¶ 9-10, at 6-7; *see also id.* at ex. 4, pg. 10.

[14] *Id.*

[15] *Id.*

[16] *Id.* ¶ 10, at 7.

[17] *Id.*

[18] *Id.*¶ 11, at 7. These companies have undesignated tax deposits totaling $119,000 with the IRS. It is unclear whether this money will be designated for third-quarter payroll or second quarter. If it is designated for the second quarter, then the amount due is $191,257.63. *Id.*

[19] *Id.*

[20] *Id.*

The PEO Corporations, based on their own self-assessments for tax years 2000 through 2002, have unpaid employment tax liabilities exceeding $5.5 million. Further, the PEO Corporations' tax liabilities are growing quarterly, with unpaid 2003 assessments totaling $309,235.92. The PEO Corporations, through the individual defendants, are not complying with the internal revenue laws.

3. The Individual Defendants Manage the PEO Corporations so as to Conceal their Scheme.

The individual defendants have orchestrated an elaborate shell game with their PEO Corporations. They constantly incorporate new companies, many with similar sounding names, and shift employees amongst these entities.[21] When one PEO corporation incurs a substantial tax debt, the employees are shifted to a different PEO corporation.[22] The result is that most of these PEO corporations are in existence for only a few years and then are abandoned by the individual defendants, who take the income stream and assets to a new, debt-free PEO corporation.[23] The IRS is then faced with the herculean task of monitoring, tracing, and connecting an ever-changing and increasing number of different corporations and their interchanging assets.[24]

Defendants' scheme is most obviously seen by reviewing (A) the PEO Corporations

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[21] *See* Exhibit G, Declaration of Marion Goyette. *See also infra.*

[22] *See* Exhibit A, Declaration of Karen Robinson at ex. 4 (showing the employment tax liabilities of the PEO Corporations).

[23] *See* Exhibit G, Declaration of Marion Goyette (corporate status of virtually all of the PEO Corporations has been suspended); Exhibit A, Declaration of Karen Robinson, at exhibit 4 (most of the PEO Corporations filed employment tax returns for no more than 2 years); Exhibit H, Declaration of Charles De Furia (the individual defendants' companies do not have assets).

[24] *See* Exhibit H, Declaration of Charles De Furia.

themselves, (B) the PEO Corporations' interactions with their customers, (C) the PEO Corporations' interactions with their leased employees, and (D) the IRS's collection efforts. The details of the IRS investigation are set forth in the accompanying declarations of Karen Robinson and Charles De Furia.

A. The PEO Corporations.

Robinson located 35 Oklahoma PEO Corporations controlled or managed by one or more of the individual defendants during the years 2000 through 2003. Eric Wolf is the registered agent and/or an officer for 9 of the PEO Corporations.[25] Louise Qualls is the resident agent, the bookkeeper, and/or an officer for 19 of the PEO Corporations.[26] Joseph Wolf is the registered agent and/or an officer for 25 of the PEO Corporations.[27] Cecil Fisher is the registered agent and/or an officer for 22 of the PEO Corporations.[28] Additionally, all of the individual defendants

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[25] *See* Exhibit A, Declaration of Karen Robinson ¶ 6; *see also* Exhibit G, Declaration of Marion Goyette, at ex. 1. These nine PEO Corporations are Employer's Administrative and Payroll Services, The TSI Group, Total Staffing Services, TSI Builders, TSI Installations, TSI Installers and Erectors, TSI Medical, TSI of Peachtree, and TSI Temps.

[26] *Id.* These 19 PEO Corporations are Benefit Marketing, Employer's Administrative and Payroll, Nationwide Staffing, Payroll Plus, Select Staffing, Source Staffing, SSI of America, SSI of Bethany, SSI of OKC, SSI Personnel, SSI Staffing, Staff Specialties, Support Staffing Services, Tecumseh Management, The Corporate Direct, Titan Management, TSI Medical, TSI of Peachtree, and Vontres Staffing Services.

[27] *Id.* These 25 PEO Corporations are A to Z Staffing, Benefit Marketing, Employer's Administrative and Payroll, Employers Payroll Service, Global Staffing, Legion Enterprises, National Staffing, Nationwide Staffing, PRN Medical Staffing, Professional Employer's Management, Select Staffing, Source Staffing, SSI of America, SSI of Bethany, SSI of OKC, SSI Personnel, SSI Staffing, Staff Specialties, Summit Staffing, Support Staffing Services, The Corporate Direct, TSI of Peachtree, TSI Temps, Vontres Staffing Services, and X-Cel Promotions.

[28] *Id.* These 22 PEO Corporations are A to Z Staffing, Benefit Marketing, Employer's

(continued...)

have signed Oklahoma state documents, checks, employment tax forms, and/or other documents on behalf of one or more of the PEO Corporations.[29]

Of these 35 PEO Corporations, 5 were incorporated prior to 1998, 6 were incorporated in 1998, 5 were incorporated in 1999, 11 were incorporated in 2000, 6 were incorporated in 2001, and 2 were incorporated in 2002.[30] The Oklahoma Secretary of State has suspended the corporate status of all of the PEO Corporations except PRN Medical Staffing, Inc. and Titan Management, Inc.[31]

From 2000 through 2002, the majority of the PEO Corporations filed employment tax forms for no more than two years, and if filed, employment tax forms for the second year often reported the gross wages paid and taxes owed as zero.[32] Twenty-eight of the PEO Corporations owe unpaid employment taxes. Vontres Staffing has the largest tax liability, with $811,864.89 owed for tax years 2000 and 2001.[33] SSI of Bethany, SSI of OKC, SSI Personnel, SSI Staffing, TSI Installers and Erectors, and The Corporate Direct each have total employment tax liabilities

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[28](...continued)
Administrative and Payroll, Global Staffing, Legion Enterprises, National Staffing, Nationwide Staffing Services, Select Staffing, Simplified Staffing, Source Staffing, SSI of America, SSI of Bethany, SSI of OKC, SSI Personnel, SSI Staffing, Staff Specialties, Summit Staffing, Support Staffing Services, The Corporate Direct, The TSI Group, Total Staffing Services, and Vontres Staffing Services.

[29] *See* Exhibit A, Declaration of Karen Robinson, at ex. 3.

[30] *See* Exhibit G, Declaration of Marion Goyette, at ex. 1.

[31] *Id.*

[32] *See* Exhibit A, Declaration of Karen Robinson, at ex. 4.

[33] *Id.* at ex. 4.

of between $300,000 and $600,000 for tax years 2000 through 2003.[34] A to Z Staffing, Employer's Administrative and Payroll, Global Staffing, National Staffing, Summit Staffing, Titan Management, TSI Builders, TSI Installations, TSI Medical, and TSI Temps each have total employment tax liabilities of between $100,000 and $300,000 for tax years 2000 through 2003.[35] The remaining 11 PEO Corporations each owe less the $100,000.[36]

B. The Customers.

Robinson located eight customers of the PEO Corporations: Pier Drillers, Inc., Breeden Painting, LLC, Kalka Construction, Inc., Wilds Green Grass Sod Farm, Inc., Builders Surplus, Inc., Doyle Austin & Sons Construction, Co., Ervin Findley, Inc., and Great Plains Tire Service.[37] These eight customers received invoices from 15 different PEO Corporations over the 2000-2002 time period.[38] Virtually every year, and sometimes multiple times within a year, the customers received an invoice from a different PEO Corporation.[39] In all cases, the customers paid the invoices, and those payments included funds for federal employment taxes.[40] Subsequently, the PEO Corporations issued payroll checks to the employees showing that federal taxes had been

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See* Exhibit A, Declaration of Karen Robinson ¶ 13, at 8-12.

[38] *Id.*

[39] *Id.*

[40] *Id.*

withheld.[41]

The different PEO Corporations that invoiced these eight customers include Benefit Marketing, Corporate Direct, Pro-Em Staffing, Professional Employment Management d/b/a Pro-Em, Select Staffing, Source Staffing, SSI, SSI of Bethany, SSI Personnel, SSI-Support Staffing, Staff Specialties, Tecumseh Management, TSI Temps, and Vontres Staffing.[42] Also, although Legion and Simplified Staffing did not invoice any of the customers, some of the customers made their payments to Legion and Simplified Staffing.[43] Benefit Marketing, Corporate Direct, Professional Employment Management, SSI of Bethany, SSI Personnel, Support Staffing, Staff Specialties, Tecumseh Management, TSI Temps, and Vontres Staffing all have unpaid employment taxes, and Legion has never filed an employment tax return.[44]

C. The Leased Employees.

Although Robinson's investigation of the individual defendants focused on tax years 2000 through 2003, in the early stages of the investigation Robinson reviewed Employer Business Services, Inc., another PEO Corporation controlled by the individual defendants which operated in 1998 and 1999.[45] Robinson researched approximately 12 employees of Employer Business Services on the Oklahoma Employment Security Commission database. Her search revealed that during 1998 and 1999 those 12 employees were listed as working for 8 different

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[41] *Id.* ¶¶ 13b, 13c, at 9.

[42] *Id.*¶ 13, at 8-12.

[43] *Id.*

[44] *Id.* at ex. 4.

[45] *Id.* ¶ 14, at 12.

PEO companies.[46] Defendants Joseph Wolf, Cecil Fisher, Louise Qualls, and/or Eric Wolf were directors and/or officers of all 8 companies.[47]

D. Collection Efforts.

In 1999, Revenue Officer Charles De Furia was assigned to collect unpaid employment taxes from Staffing Solutions, Inc. (which changed its name to Employer Business Services, Inc.).[48] The company was owned and controlled by Louise Qualls, Cecil Fisher, and Joe Wolf.[49] De Furia's investigation revealed that Staffing Solutions operated for only a short time period (approximately 2 years), had no assets, no bank accounts, no bank credit, no insurance, and no accounts receivable.[50] In short, the IRS could not collect from Staffing Solutions.

De Furia next investigated the finances of Cecil Fisher and Joe Wolf in an attempt to locate funds from which he could collect the trust fund portion of the taxes. He found virtually no assets in their names.[51] Ultimately, the matter was resolved when the IRS was paid, through monthly installments of $20,000, the trust fund portion only of the tax.[52] The source of this money is unknown, considering that the individual defendants' financial statements and the financial statements of the company showed no income or assets sufficient to make those

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[46] *Id.*

[47] *Id.*

[48] *See* Exhibit H, Declaration of Charles De Furia ¶ 3, at 1.

[49] *Id.* ¶ 4, at 1.

[50] *Id.* ¶ 5, at 1.

[51] *Id.* ¶¶ 6-8, at 2. De Furia requested financial records for Louise Qualls, but she refused to provide the information.

[52] *Id.* ¶ 9, at 2.

payments.[53]

During his investigation, De Furia also spoke with revenue officers Verna Elling and Lynda ValBracht, who were trying to collect unpaid employment taxes from other PEOs owned and/or managed by the individual defendants.[54] Like De Furia, Elling and ValBracht found their targets without assets and out of business.[55]

Based on the investigations of De Furia, ValBracht, Robinson, and Elling, the IRS determined that the best way to handle the individual defendants and their PEO Corporations was to seek the present injunction because the individual defendants controlled numerous PEOs with outstanding employment tax liabilities, the active PEOs were constantly changing, and the tax liabilities were growing.[56] By the time a PEO Corporation was assigned to a revenue officer for collection, the company was already out of business with few or no assets.[57] Unless the individual defendants are stopped, there is little chance that the IRS will be able to keep up with the changing corporations and mounting tax liabilities.[58]

ARGUMENT

The Government seeks a preliminary injunction requiring defendants Joseph Wolf, Eric Wolf, Louise A. Qualls, and Cecil Fisher:

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[53] *Id.* ¶ 10, at 2.

[54] *Id.* ¶ 11, at 2.

[55] *Id.* ¶ 12, at 2.

[56] *Id.* ¶ 14, at 3.

[57] *Id.*

[58] *Id.*

1. to dissolve, close, and otherwise stop operating all professional employer organizations that they own, manage, and/or control, including, but not limited to, Legion Enterprises, Inc., Tecumseh Management, Inc., Titan Management, Inc., and TSI Installers and Erectors, Inc;

2. to stop volunteering for, working for, consulting for, or being in any way affiliated or associated, directly or indirectly, with any and all professional employer organizations;

3. to file federal corporate income tax returns (with a copy to the Government's attorney of record in this case) for the 2000 through 2002 tax years for all companies that the individual defendants own, manage, or control within thirty days of the date of the preliminary injunction order, including, but not limited to, the PEO Corporations; and

4. to stop engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

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."[59] In *United States v. Ernst & Whinney*, 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."[60] Rule 65 of the Federal Rules of Civil Procedure and section 7402(a) provide the Court with the jurisdiction to issue the preliminary injunction requested herein.

To obtain a preliminary injunction under I.R.C. § 7402(a), the United States need only

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[59] *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957); *See also*, *United States v. First National City Bank*, 568 F.2d 853, 855-56 (2nd Cir.1977); *United States v. Moore*, 1993 WL 534303 (N.D. Okl. 1993), *aff'd*, 21 F.3d 1122 (10th Cir. 1994).

[60] 735 F.2d 1296, 1300 (11th Cir. 1984).

meet the requirements of that statute — a showing that an injunction is necessary or appropriate for the enforcement of the internal revenue laws.[61] The individual defendants are violating the internal revenue code by not filing corporate income tax returns, not paying corporate taxes, not properly reporting gross wages paid, and not paying employment taxes. These violations will stop if this preliminary injunction is issued. Moreover, the traditional equitable standards are satisfied here as well.

The United States Court of Appeals for the Tenth Circuit requires a movant to establish four elements for issuance of a 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.[62] In cases where the preliminary injunction, if issued, would be "mandatory as opposed to prohibitory," the Government must show that the four injunction factors weigh heavily and compellingly in its favor.[63] As outlined below, the United States has met its burden.

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[61] *See* 26 U.S.C. § 7402(a). *See also Davis v. Huttig Sash & Door Co.*, 288 F. Supp. 82, 85 (W.D. Okl. 1968) ("It appears to be settled that where Congress has set the standard for the issuance of an injunction (as in Section 10(j) if deemed 'just and proper') these standards and no others need be satisfied to obtain the injunctive relief."); *Duke v. Uniroyal, Inc.*, 777 F. Supp. 428, 433 (E.D.N.C. 1991) (finding that where an injunction is expressly authorized by statute, and the statutory conditions have been satisfied, the moving party is not required to establish irreparable injury before obtaining injunctive relief); *but see Ernst & Whinney*, 735 F.2d at 1301.

[62] *SCFC ILC, Inc. v. Visa 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).

[63] *SCFC ILC*, 936 F.2d at 1098-99.

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

The individual defendants are in the business of preparing and filing federal employment tax returns and making federal tax deposits with the Internal Revenue Service. The individual defendants have failed and continue to fail to make the federal tax deposits in full, despite receiving funds for this purpose from their customers. For tax years 2000 through 2002, the PEO Corporations collectively owe approximately $5.5 million in assessed employment taxes, interest, and penalties. Without court involvement the tax liabilities will continue to increase. For only two quarters of 2003, employment tax liabilities total over $300,000.

Because the individual defendants are constantly incorporating new PEO corporations and shifting the leased employees, assets, and income streams to these new entities, it is impossible for the IRS to track the funds and collect the overdue taxes. Nor can the IRS readily collect this money from the individual defendants because they do not keep a substantial amount of assets in their own names.

The irreparable harm to the United States is shown by the PEO Corporations' accumulated unpaid employment tax liabilities totaling collectively almost $6 million as of November 5, 2003. The IRS cannot administratively prevent the continued pyramiding of employment taxes by the PEO Corporations or the individual defendants' continued misuse of funds, and cannot collect the overdue employment taxes.

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

The Government seeks an order requiring the individual defendants to shut down their business during the pendency of this case. The Government seeks this relief because the defendants' elaborate shell game makes it impossible for the Government to monitor whether the

defendants are complying with the tax laws. Defendants are not using the money that their customers have given them to pay the IRS. Because they are not properly using the money for its purpose, granting the preliminary injunction will not harm the defendants. Instead, granting this preliminary injunction will prevent the further dissipation of funds.[64]

The Government also seeks an order requiring the individual defendants to file past-due tax returns for the PEO Corporations. Injunctions requiring compliance with the law are typically permitted because they do not cause harm.[65]

3. Issuance Of A Preliminary Injunction Serves The Public Interest.

"[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need."[66] The public interest is served when misleading and fraudulent commercial practices are stopped, and when proper taxes are collected. Under the guise of a legitimate professional employer organization, the individual defendants have collected huge sums of money from their unsuspecting customers and diverted those funds from their intended use - the payment of federal taxes. Currently, for tax year 2003, Titan and TSI Installers are in arrears over $300,000. Without an injunction, that tax liability will surely increase. In this case, the public interest is clearly served by a preliminary injunction against defendants.

4. There Is A Substantial Likelihood That the USA Will Prevail On The Merits.

The individual defendants' continued noncompliance with federal tax laws, *i.e.*, their

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[64] *See generally United States v. First Nat'l. City Bank*, 379 U.S. 378, 385 (1965).

[65] *United States v. Campbell*, 897 F.2d 1317, 1324 (5th Cir. 1990); *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (Injunctions requiring people to follow the law do not cause hardship).

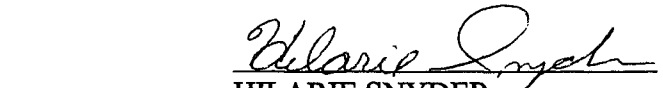
[66] *Bull v. United States*, 295 U.S. 247, 259 (1934).

failure to file complete and accurate federal employment and corporate income tax returns and their pyramiding of employment taxes as demonstrated in the statement of facts, shows that the government will succeed on the merits of this case.

CONCLUSION

The United States' motion for a preliminary injunction should be granted under both section 7402(a) and the Court's equitable power to prevent the irreparable harm to the Government and the public caused by the individual defendants' continued noncompliance with federal tax laws, including their pyramiding of employment taxes and their elaborate efforts to stymie legitimate IRS collection.

Respectfully Submitted,
ROBERT G. McCAMPBELL



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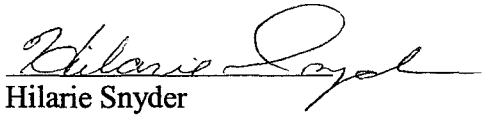
CERTIFICATE OF SERVICE

It is hereby certified that a copy of the Motion for Preliminary Injunction, Memorandum in Support, exhibits, and proposed Order will be served in accordance with Federal Rule of Civil Procedure 4 with the summons and complaint to Joseph Wolf, Eric Wolf, Cecil Fisher, Louise Qualls, Anthony Wolf, Jim Fisher, Sam Humphrey, and Shelli Bun.



Hilarie Snyder