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CENTRAL DIST. OF CALIF.  
LOS ANGELES

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13 IN THE UNITED STATES DISTRICT COURT FOR THE  
 14 CENTRAL DISTRICT OF CALIFORNIA  
 15 WESTERN DIVISION

16 United States of America,

17 Plaintiff,

18 v.

19 Martin A. Kapp,

20 Defendant.

CV06-2136 GPS FIVx

Case No.

21 **Complaint**

22 1498153.1

23 *Complaint*

1 Plaintiff United States of America, for its complaint against defendant  
2 Martin A. Kapp, states as follows:

3 **Jurisdiction and Venue**

4 1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345  
5 and 26 U.S.C. §§ 7402, 7407, and 7408. This suit is brought under 26 U.S.C.  
6 §§ 7402, 7407, and 7408 to restrain and enjoin Kapp from preparing federal  
7 income tax returns based on the mariner tax deduction described below, or on  
8 other unrealistic positions.

9 2. This action has been requested by the Chief Counsel of the Internal  
10 Revenue Service, a delegate of the Secretary of the Treasury, and commenced at  
11 the direction of a delegate of the Attorney General under 26 U.S.C. §§ 7402, 7407,  
12 and 7408.

13 3. Kapp is a Certified Public Accountant licensed in the State of  
14 California who specializes in preparing federal income tax returns for workers  
15 in the transportation industry, including mariners, airplane pilots, and train  
16 engineers.

17 4. Kapp prepares federal income tax returns for taxpayers throughout  
18 the country through his CPA practice in El Segundo, California, within this  
19 judicial district.  
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1           5.     Kapp has taught tax and accounting courses at Pepperdine  
2 University in Malibu, California and at Los Angeles City College in Los Angeles,  
3 California, within this judicial district.

4           6.     On September 15, 2000, the United States Tax Court issued two  
5 decisions, *Westling v. Commissioner*, 80 T.C.M. (CCH) 873, 2000 WL 13110659  
6 (2000) and *Johnson v. Commissioner*, 115 T.C. 210, 2000 WL 1310661 (2000),  
7 for merchant seamen whose federal income tax returns were prepared by Kapp.

8           7.     In both cases, the Tax Court ruled that the taxpayers' tax home, for  
9 purposes of determining the extent to which travel expenses were deductible, was  
10 the taxpayers' residence, because the taxpayers were merchant seamen with no  
11 principal place of employment.

12          8.     In both cases, the Tax Court determined that although the merchant  
13 seamen were allowed to deduct incidental expenses incurred while away from  
14 home, the merchant seamen were not allowed to deduct the costs of meals that  
15 were furnished to them for free by their employers.

16          9.     Despite the unequivocal holdings of the Tax Court that merchant  
17 seamen cannot deduct the costs of meals that are furnished to them for free by  
18 their employers, and despite the fact that claiming such a deduction is inherently  
19 unrealistic (indeed frivolous), Kapp began to promote the so-called "mariner's tax  
20 deduction" at seminars, in magazine articles intended to recruit customers,  
21 including *Professional Mariner*, and at his websites, [www.mkappcpa.com](http://www.mkappcpa.com) and  
22 [www.sailortax.com](http://www.sailortax.com).

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1           10. After the two Tax Court opinions were issued, Kapp began  
2 preparing federal income tax returns for customers on which Kapp claimed the  
3 “mariner tax deduction.”

4           11. On information and belief, Kapp was the originator or the “mariner  
5 tax deduction.”

6           12. On information and belief, the individual taxpayers for whom Kapp  
7 prepared returns claiming the mariner tax deduction were employed as barge and  
8 tugboat employees (“mariners”), and worked and lived on vessels as part of their  
9 employment.

10          13. On information and belief, as part of their employment, the  
11 mariners’ employers furnished the mariners with meals and other incidentals  
12 without charge.

13          14. It is the usual and customary practice in the barge and tugboat  
14 industry for employers to furnish meals to their employees who live onboard the  
15 employers’ vessels at no cost.

16          15. It is the usual and customary practice in the barge and tugboat  
17 industry to describe meals furnished to employees as “groceries” and for the  
18 employer to claim an expense for these meals at roughly \$10 a day.

19          16. In an interview with the IRS, Kapp admitted that he did not contact  
20 any of his customers’ employers or anyone in the barge and tugboat industry  
21 regarding the practice of furnishing meals to employees, or to determine whether  
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1 his customers' employers had furnished meals, before preparing returns for  
2 mariners claiming the mariner tax deduction.

3 17. On information and belief, if Kapp had contacted persons in the barge  
4 and tugboat industry, or his customers' employers, he would have learned that his  
5 customers' employers furnished meals at no cost.

6 18. Even though the mariners were not charged for, and did not  
7 pay for, the meals provided by their employers, Kapp prepared and filed returns  
8 that claimed a "mariner's tax deduction" or business expense deduction, calculated  
9 with reference to the number of days the mariner was on board a vessel and a per  
10 diem allowance.

11 19. On information and belief, the mariners told Kapp (or provided  
12 documentation to him advising) how many days they were on a boat, and Kapp  
13 then multiplied that number by the per diem. Kapp then subtracted a \$10 a day fee  
14 for the amount of "groceries" purportedly provided by the employer. The result  
15 was entered on Schedule A attached to the mariners' Form 1040 and claimed as an  
16 unreimbursed employee business expense for federal tax purposes.

17 20. The so-called mariner's tax deduction (or similar business expense  
18 deduction calculated as above) is improper, and not supported by the Internal  
19 Revenue Code or other law. Because the employers furnish the meals without cost  
20 to the employee, the employee does not incur any expense, and therefore may not  
21 claim a per diem deduction.

22 21. In a letter dated October 25, 2000, shortly after the Tax Court issued  
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1 the decisions referenced above, Kapp requested a meeting with the IRS. Kapp's  
2 expressed intent was to work with the IRS to streamline the filing of amended  
3 federal income tax returns based on the Tax Court's conclusion that mariners  
4 could claim their residences as their tax homes for federal income tax purposes,  
5 and thereby claim certain tax benefits resulting from these decisions.

6 22. Kapp's October 25, 2000 letter to the IRS did not state, suggest, or  
7 imply that Kapp would begin advising mariners to claim the mariner's tax  
8 deduction or would begin preparing returns for mariners claiming deductions for  
9 meals that were provided for free by their employers.

10 23. In a second letter to the IRS dated November 22, 2000, Kapp once  
11 again focused on the narrow legal issue of the tax benefits deriving from the Tax  
12 Court's determination that the "ship was the sailor's tax home."

13 24. Kapp's November 22, 2000 letter to the IRS did not state, suggest, or  
14 imply that Kapp would begin advising mariners to claim the mariner's tax  
15 deduction or would begin preparing returns for mariners claiming deductions for  
16 meals that were provided by their employers.

17 25. In an interview with the IRS, Kapp admitted that he did not seek the  
18 advice of attorneys, CPAs, or IRS enrolled agents regarding the validity of the  
19 mariner tax deduction before preparing returns claiming the mariner tax deduction.

20 26. By letter dated November 21, 2003, Kapp was notified by the IRS  
21 that he was under investigation for his return preparation activities.

22 27. Despite this notice, Kapp continued to prepare returns claiming the

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1 frivolous mariner tax deduction.

2 28. Kapp continued to prepare federal income tax returns based on the  
3 mariner tax deduction long after at least one shipping company had been cautioned  
4 regarding this scheme and the United States Department of Justice had filed suit to  
5 enjoin other return preparers who had prepared returns based on this scheme.

6 29. On October 1, 2004, an IRS revenue agent sent a letter to Galliano  
7 Marine Services, LLC, advising it that certain maritime “employees are claiming  
8 an unreimbursed business expense on their return relating to meals. When an  
9 employer provides his employees with meals, however, the employee has not  
10 ‘incurred or paid’ any expense for meals. Since the employee did not incur any  
11 expense for meals, he is not entitled to a meal expense deduction for Federal tax  
12 purposes.” The letter also cited the two Tax Court decisions referenced above,  
13 noting that the “court said [the taxpayer] was not entitled to any deduction for  
14 meal expenses.”

15 30. Sometime after the IRS sent this letter, Galliano Marine Services  
16 distributed the IRS letter to its employees, recommending that “each employee  
17 obtain professional tax advice and make his own personal determination on this  
18 issue.”

19 31. Due to the frivolous nature of the mariner tax deduction and  
20 the harm this scheme caused to the United States Treasury, the United States  
21 Department of Justice filed a series of suits in 2004 to enjoin federal income tax  
22 returns preparers who had prepared returns claiming the mariner tax deduction.

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1           32. In August of 2004 and February and May of 2005, federal courts in  
2 Louisiana and Alabama permanently enjoined several return preparers who had  
3 prepared federal income tax returns based on the mariner tax deduction.

4           33. A Department of Justice press release regarding these  
5 mariner tax deduction case issued on August 24, 2004 stated that the return  
6 preparers “prepared income tax returns for mariners and overstated their allowable  
7 deductions by listing as deductions purported business expenses that were not  
8 incurred by the taxpayers. The complaints alleged that, in the typical case, the  
9 preparers prepared returns claiming business expense deductions for meals or  
10 other incidentals that were provided to the mariners without charge by their  
11 employers.”

12           34. Despite the Department of Justice lawsuits in 2004 seeking  
13 to enjoin this activity and the injunctions issued by federal courts in 2004 and  
14 2005, Kapp continued to assert, as stated in a letter from his attorney to the IRS  
15 dated May 2, 2005, his purported “good faith belief that the practices he  
16 recommended to his tax return clients were correct and based on his reasonable  
17 understanding of the applicable law,” and to prepare returns based on this bogus  
18 deduction.

19           35. Kapp met with the IRS in March of 2005, where he was informed by  
20 the IRS that the mariner tax deduction was not allowed under the Internal Revenue  
21 Code.

22           36. Even after Kapp was informed by the IRS that the mariner tax  
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1 deduction is not allowed under the Internal Revenue Code, Kapp continued to  
2 prepare numerous 2004 federal income tax returns (filed on or before April 15,  
3 2005), claiming bogus mariner deductions that ranged from \$5,581 to \$14,618.

4 37. Although Kapp continued to assert the legitimacy of the mariner's tax  
5 deduction as late as May of 2005, Kapp informed the IRS that he did not want any  
6 of his customers audited.

7 38. On information and belief, Kapp does not want the IRS to audit his  
8 customers because he knows or has reason to know that his customers' employers  
9 furnished meals at no cost to his customers and thus that his customers will owe  
10 additional tax, penalty, and interest if audited by the IRS

11 39. Kapp has failed to acknowledge his culpability for promoting the  
12 mariner tax deduction, for preparing returns based on this unrealistic position, to  
13 show remorse for his illegal conduct, or to voluntarily take steps to remedy the  
14 harm he has caused his customers and the public fisc.

15 40. After he was informed by the IRS that he was preparing returns based  
16 on the frivolous mariner tax deduction, Kapp posted a notice at the mkappcpa.com  
17 website labeling the mariner tax deduction an "urban myth" and correctly stating  
18 that "[i]f meals were provided by the employer and the employee is not charged  
19 for their meals, then no meal deduction should be claimed by the sailor for those  
20 travel days."

21 41. Kapp's website posting is misleading because, on information and  
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1 belief, the “urban myth” that mariners can claim a mariner tax deduction did not  
2 arise *ex nihilo*, but from Kapp’s own promotional activities.

3 42. Kapp’s website posting is also misleading because it deflects  
4 attention from Kapp’s culpability for this scheme, suggesting that “mariners or  
5 other tax preparers” have mistakenly claimed the mariner tax deduction, when  
6 Kapp originated the idea and has improperly claimed the deduction for his  
7 customers for years.

8 43. Kapp’s website posting, although a correct statement of the law, is  
9 not prominently displayed at the website and thus fails to adequately inform the  
10 public of the harm to the U.S. Treasury caused by this scheme and Kapp’s return  
11 preparation activities.

12 44. On information and belief, Kapp’s website posting appeared only  
13 after he was informed that an injunction suit would be brought against him and  
14 possible penalties assessed against him under 26 U.S.C. § 6701, and thus does not  
15 reflect Kapp’s remorse over the harm his illegal conduct has caused or a sincere  
16 effort to remedy that harm.

17 45. On information and belief, Kapp has not published any retraction in  
18 *Professional Mariner* magazine or any other publication in which he published  
19 articles regarding the mariner tax deduction, has not posted a retraction at his  
20 website adequately explaining why the mariner’s tax deduction is untenable and  
21 his role in promoting it, and has not otherwise informed his customers throughout  
22 the country that the mariner’s tax deduction cannot be claimed when meals are

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1 furnished by the employer. Nor, on information and belief, has Kapp taken steps  
2 to assist his customers in filing corrected amended returns to report their accurate  
3 tax liabilities.

4 46. In Kapp's May 2, 2005 letter to the IRS, Kapp also failed to accept  
5 responsibility for his intentional misreading of the Tax Court cases discussed  
6 above, which expressly concluded that the taxpayers were not allowed to deduct  
7 the costs of meals that were furnished to them by their employers.

8 47. In this letter, Kapp dismisses the court's unequivocal language--  
9 which expressly prohibits deductions for meals provided by the employer, the  
10 legal basis for the mariner tax deduction--as "non-binding dicta of the Tax Court."

11 48. In this May 2, 2005 letter, Kapp also misleadingly states that the  
12 "issue of whether barge and tugboat mariners are entitled to deduct the difference  
13 between the value of the meals provided and the standard MI&E remains  
14 unaddressed in all other federal case law," when cases interpreting the "paid or  
15 incurred" language of IRC § 162(a) have repeatedly required taxpayers to  
16 substantiate that they actually "paid or incurred" an expenses--including meals--in  
17 order to claim a deduction.

18 49. In the May 2, 2005 letter, Kapp also encouraged the IRS to not seek  
19 injunctive relief against him, misleadingly stating that he had "generally refrained  
20 from preparing tax returns for merchants until there was IRS or Tax Court  
21 approval for merchant sailor travel deductions," when in fact Kapp prepared  
22 returns claiming this deduction when two Tax Court decisions expressly stated

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1 taxpayers may not deduct the costs of meals that were furnished to them by their  
2 employers.

3 50. Another example of Kapp's refusal to accept responsibility for his  
4 actions is Kapp's attempt to scapegoat the IRS by claiming in his March 2, 2005  
5 letter that it was the IRS's failure to bless his mariner tax deduction that led him  
6 "to believe that his position on the issue was correct."

7 51. On information and belief, before preparing returns claiming the  
8 mariner tax deduction, Kapp never advised the IRS, or otherwise sought a legal  
9 opinion from the IRS, about the proposition that an employee can claim a  
10 deduction for meals provided by an employer.

11 52. As a federal income tax return preparer, Kapp knew or should have  
12 known that the under IRC § 162(a)(1) employee business expenses are only  
13 deductible if "paid or incurred" by the employee, and that this does not occur  
14 when meals are furnished for free by the employer.

15 53. As a federal income tax return preparer, Kapp knew or should have  
16 known that the IRS is prohibited under Revenue Procedure 2003-3, Section  
17 3.01(21), 2003 WL 69168 (Jan. 6, 2003), from issuing notices or determination  
18 letters on the issue of whether taxpayers who are traveling away from home "may,  
19 in lieu of substantiating the actual cost of meals, deduct a fixed per-day amount for  
20 meal expenses that differs from the amount prescribed in the revenue procedure  
21 providing optional rules for substantiating the amount of travel expenses for the  
22 period in which the expense was paid or incurred."

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1           54. Another example of Kapp's refusal to accept responsibility for  
2 his actions is Kapp's misleading statement in his May 2, 2005 letter to the IRS that  
3 he had no knowledge that the mariner tax deduction was frivolous, stating that  
4 "[he] does not necessarily agree with the position [the IRS] articulated for the first  
5 time at our meeting last month."

6           55. As a federal income tax return preparer and purported specialist in  
7 mariner tax issues, Kapp knew or should have known before the April 2005  
8 meeting with the IRS that the mariner tax deduction is not supported or authorized  
9 by the Internal Revenue Code.

10          56. Kapp has prepared, or assisted in preparing, tax returns and refund  
11 claims that Kapp knows, or should have known, understate the claimant's tax  
12 liability or overstate the amount of tax refund claimed, and that Kapp knows, or  
13 should have known, are frivolous.

14          57. The understatements of tax liability reflected on such returns or  
15 amended returns prepared by the Kapp are due, at least in material part, to the  
16 assertion of a position for which there is no realistic possibility that it will be  
17 sustained.

18          58. Returns containing a mariner's tax deduction in the aforesaid  
19 circumstances, or similar mariner business expense claims, interfere with the  
20 proper administration and enforcement of the internal revenue laws.

21          59. Kapp's conduct, unless enjoined, is likely to cause the United States  
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1 to expend significant resources to locate and process tax returns and refund claims  
2 containing frivolous claims, and to assess and collect proper tax liabilities and  
3 penalties.

4 60. If not enjoined, Kapp's actions will continue to sow confusion about  
5 the tax laws, by causing taxpayers to believe, falsely, that the United States  
6 Government is allowing a tax deduction or refund for the mariner's tax deduction  
7 described above, or a similarly calculated business expense deduction.

8 61. Kapp's actions require the Internal Revenue Service to devote  
9 resources to detecting and correcting a substantial volume of false and fraudulent  
10 returns and claims for tax refund.

11 62. Kapp's conduct results in irreparable harm to the United States, for  
12 which the United States has no adequate remedy at law.

13 **Count I**

14 (Injunction under I.R.C. § 7407)

15 The United States incorporates herein by reference the allegations and  
16 averments in paragraphs 1 through 62.

17 63. Section 7407 of the Internal Revenue Code authorizes a court to  
18 enjoin an income tax return preparer if, *inter alia*, the court finds that the return  
19 preparer has engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695,  
20 and that injunctive relief is appropriate to prevent recurrence of the conduct.

21 64. Section 6694 of the Internal Revenue Code imposes penalties on  
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1 income tax return preparers who prepare returns that contain frivolous positions,  
2 unrealistic positions, or who willfully understate the tax liability of another  
3 person.

4 65. Kapp, an income tax return preparer, has engaged in conduct subject  
5 to the I.R.C. § 6694 penalty because he knew, or should have known, that the so-  
6 called mariner's tax deduction (or similar business expense deduction claim) is a  
7 frivolous position with no realistic possibility of being sustained on the merits, and  
8 because he willfully prepared or assisted in preparing returns that understated the  
9 tax liability of other persons.

10 66. I.R.C. Section 7407 also authorizes a court to enjoin an income tax  
11 return preparer from engaging in further misconduct if the court finds (i) that the  
12 return preparer has engaged in any fraudulent or deceptive conduct that  
13 substantially interferes with the proper administration of the internal revenue laws,  
14 and (ii) that injunctive relief is appropriate to prevent recurrence of such conduct.

15 67. Kapp engaged in fraudulent or deceptive conduct that substantially  
16 interferes with the proper administration of the internal revenue laws by, among  
17 other things, filing false returns or amended returns that contained improper tax  
18 deductions.

19 68. Due to the gravity of harm caused by Kapp, the extent of his  
20 participation, his repeated filing of returns claiming the mariner tax deduction and  
21 continued operation of a CPA practice specializing in preparing federal income  
22 returns for merchant seamen and others, his statement that the Tax Court decisions

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1 prohibiting deductions for meals provided by employers is “non-binding dicta,”  
2 and his failure to acknowledge that his conduct was improper and to take remedial  
3 action, there is a significant likelihood that Kapp will again prepare returns  
4 claiming the mariner tax deduction or otherwise asserting other unrealistic and  
5 frivolous positions absent an injunction.

6 **Count II**

7 (Injunction under I.R.C. § 7408 for violations of I.R.C. §§ 6700 and 6701)

8 69. The United States incorporates herein by reference the allegations and  
9 averments in paragraphs 1 through 69.

10 70. Section 7408 of the Internal Revenue Code authorizes a court to  
11 enjoin a person from engaging in conduct subject to penalty under I.R.C. §§ 6700  
12 or 6701, if injunctive relief is appropriate to prevent recurrence of such conduct.

13 71. Section 6701 of the Internal Revenue Code imposes a penalty on any  
14 person who (i) aids or assists in, procures, or advises with respect to, the  
15 preparation or presentation of any portion of a return, affidavit, claim or other  
16 document; (ii) who knows (or has reason to believe) that such portion will be used  
17 in connection with any material matter arising under the internal revenue laws; and  
18 (iii) who knows that such portion (if so used) would result in an understatement of  
19 the liability for tax of another person.

20 72. Kapp has engaged in conduct subject to penalty under I.R.C. § 6701  
21 by preparing or assisting in the preparation of documents that falsely claimed that  
22 mariners who did not incur any expense for meals or incidentals while on board

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1 vessels could nonetheless claim a tax deduction measured by the federal per diem  
2 allowance for such expenses. Kapp knew or had reason to believe that the  
3 documents would be used in connection with material matters arising under the  
4 internal revenue laws. Kapp also knew that, if so used, the documents would  
5 result in understatements of tax liabilities.

6 73. Injunctive relief is appropriate to prevent the recurrence of such  
7 conduct.

8 74. An injunction is appropriate under I.R.C. § 7408 to prevent the Kapp  
9 from engaging in conduct subject to penalty under I.R.C. § 6701.

10 **Count III**

11 (Unlawful Interference with the Enforcement of the Internal Revenue Laws, I.R.C.  
12 § 7402)

13 75. The United States incorporates herein by reference the allegations and  
14 averments in paragraphs 1 through 74.

15 76. Section 7402(a) of the Internal Revenue Code authorizes federal  
16 district courts to issue injunctions as may be necessary or appropriate to enforce  
17 the internal revenue laws.

18 77. Kapp, through the conduct described above, engaged in conduct that  
19 substantially interferes with the administration and enforcement of the internal  
20 revenue laws. Kapp's conduct causes irreparable injury to the United States, and  
21 an injunction under I.R.C. § 7402(a) is necessary and appropriate.

22 78. Injunctive relief is appropriate under IRC § 7402(a).

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1           **WHEREFORE**, the United States respectfully requests the following  
2 relief:

3           A.     That the Court find that Kapp has engaged in conduct subject to  
4 penalty under I.R.C. §§ 6694, and that injunctive relief is appropriate under I.R.C.  
5 § 7407 to prevent recurrence of that misconduct or other similar misconduct.

6           B.     That the Court find that Kapp has engaged in fraudulent or  
7 deceptive conduct that substantially interferes with the proper administration of  
8 the internal revenue laws, and that injunctive relief is appropriate under I.R.C. §  
9 7407 to prevent recurrence of that conduct.

10          C.     That the Court find that Kapp has engaged in conduct subject to  
11 penalty under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. §  
12 7408 to prevent recurrence of that conduct.

13          D.     That the Court find that Kapp has engaged in conduct that  
14 substantially interferes with the enforcement of the internal revenue laws, and that  
15 injunctive relief is appropriate to prevent recurrence of that conduct, pursuant to  
16 the Court's inherent equity powers and I.R.C. § 7402(a).

17          E.     That the Court, pursuant to I.R.C. § 7407, enter a permanent  
18 injunction prohibiting Kapp, individually, and anyone in active concert or  
19 participation with him, including any agent, servant, or employee, from directly or  
20 indirectly, by the use of any means or instrumentalities:

- 21                 (1)     engaging in any conduct subject to penalty under I.R.C. § 6694,  
22                         *i.e.*, preparing any part of a return, amended return, or claim for

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1 refund that includes an unrealistic position, including, without  
2 limitation, a claim for a “mariner’s deduction” based on meals  
3 or incidentals that are provided to an employee without cost;  
4 (2) assisting or aiding others to evade the payment of taxes or to  
5 prepare false or fraudulent federal income tax returns;  
6 (3) engaging in conduct that substantially interferes with the  
7 administration or enforcement of the internal revenue laws.

8 F. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a  
9 permanent injunction prohibiting Kapp, individually, and anyone in active concert  
10 or participation with him, including any agent, servant, or employee, from directly  
11 or indirectly, by the use of any means or instrumentalities:

- 12 (1) engaging in any conduct subject to penalty under I.R.C. § 6701,  
13 *i.e.*, preparing or assisting others in preparing any document (i)  
14 that is to be used in connection with any material matter arising  
15 under the internal revenue laws and (ii) that he or such other  
16 person knows will (if so used) result in understating the income  
17 tax liability of another person;  
18 (2) engaging in conduct subject to any other provision in the  
19 Internal Revenue Code, or any other conduct that interferes  
20 with the administration or enforcement of the internal revenue  
21 laws, including preparing or assisting in preparing any return,  
22 amended return, refund claim, or other document to be filed

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1 with the IRS claiming a credit or refund based on the so-called  
2 “mariner’s deduction” or purported per diem meal expenses for  
3 mariners.

4 G. That the Court, pursuant to I.R.C. § 7402, enter an injunction  
5 requiring Kapp, at his own expense, within 21 days of entry of the injunction, to  
6 contact, in writing:

7 all persons for whom he prepared or assisted in preparing any  
8 federal income tax return, amended return, or refund claim that  
9 contained a “mariner’s deduction” or claim based on purported  
10 per diem meal or incidental expenses of mariners, from January  
11 1, 2000 through the present, and inform each such person of (i)  
12 the entry of Final Judgment in this case, (ii) the possibility of  
13 the imposition of penalties against them, and (iii) the  
14 possibility that the United States may seek to collect additional  
15 federal income taxes, penalties, and interest that they may owe.

16 H. That the Court, pursuant to I.R.C. § 7402, enter an injunction  
17 requiring Kapp:

- 18 (1) to provide to counsel for the United States, within fourteen (14)  
19 days after entry of its order or judgment of injunction against  
20 Kapp, a complete list of the persons for whom Kapp has  
21 prepared any federal income tax return, amended return, or  
22 refund claim containing or including a “mariner’s deduction”

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1 or claim based on purported per diem meal expenses of  
2 mariners, at any time from January 1, 2000 through the present,  
3 such list to include for each such person the name, address,  
4 phone number, e-mail address, social security number or  
5 employer identification number, and the tax period(s) to which  
6 or for which each such return, amended return, or refund claim  
7 relates;

8 (2) to file with the Clerk of this Court, within twenty-two (22) days  
9 after entry of the Court's order or judgment of injunction a  
10 sworn certificate of compliance, signed under penalty of  
11 perjury, stating that he has complied with the foregoing  
12 directives.

13 (3) to display prominently at the top of on the first page of the  
14 www.mkappcpa.com and www.sailortax.com  
15 websites, and any other websites Kapp uses to promote his  
16 return preparation business, a complete copy of the Court's  
17 permanent injunction within 14 days of the entry of this Order,  
18 and to keep the Order posted there for one year.

19 (4) to submit a retraction to *Professional Mariner* magazine  
20 notifying readers that he will not prepare federal income tax  
21 returns or amended returns claiming the mariner tax deduction,  
22 that the mariner tax deduction cannot be claimed where

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1 employers furnish meals at no cost, and that a copy of the  
2 permanent injunction entered against him is posted at the  
3 mkappcpa.com and sailortax.com websites referenced above.

4 I. That this Court order that the United States may engage in post-  
5 judgment discovery to ensure compliance with the permanent injunction; and

6 J. That this Court retain jurisdiction over this action for the purpose of  
7 implementing and enforcing the final judgment and all additional decrees and  
8 orders necessary and appropriate to the public interest.

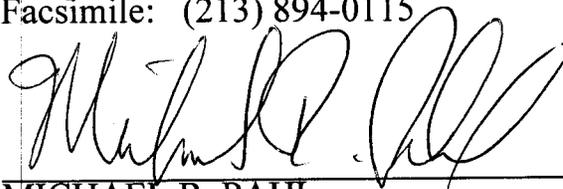
9 K. That this Court grant the United States such other and further relief,  
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1 including its costs, as is just and equitable.

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