



1 violation of 18 U.S.C. § 371; aiding and assisting in the  
2 preparation of a false tax return, in violation of 26  
3 U.S.C. § 7206(2); and wilfully filing a false tax return,  
4 in violation 26 U.S.C. § 7206(1). (See Plea Agreement  
5 for Def. Carla Denine Berry ("Ex. E") (Doc. No. 56-9) at  
6 2; Plea Agreement for Karen Denise Berry ("Ex. F") (Doc.  
7 No. 56-10) at 2.) Observing that the Berrys appear to be  
8 prisoners proceeding pro se, the Court provided them  
9 additional notice of these proceedings via its September  
10 2, 2011, Order. (Doc. No. 58.) The Court has received  
11 no opposition from the Berrys to the United States'  
12 Motion for Summary Judgment; pursuant to Local Rule 7-12,  
13 the Berrys consent to the Motion. The Court has  
14 independently reviewed the record and the facts, and  
15 GRANTS the United States' Motion for Summary Judgment.

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**I. BACKGROUND**

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The Berrys' parents, Matthew and Norma Berry,  
operated a tax preparation business from their house in  
Rialto, California. (Ex. E at 19.) Norma taught Karen  
and Carla how to prepare taxes "her way," which meant  
writing on tax returns what was necessary to get back a  
desired refund. (Karen Berry Dep. ("Ex. H") 55:25-56:12  
(Doc. No. 56-12).) In 2003, after Internal Revenue  
Service agents executed a search warrant on Matthew's and  
Norma's house, the family relocated the tax preparation  
business to an office and named it N.C.K. Services, Inc.

1 (i.e., Norma, Carla, Karen). (See Ex. H. 27:3-28:11,  
2 106:19-120:7; Ex. E at 19.)

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4 N.C.K., through its proprietors and employees,  
5 including specifically Carla and Karen Berry, charged its  
6 clients between \$100.00 and \$120.00 to prepare tax  
7 returns in which it sought mortgage deductions routinely  
8 for filers who were ineligible to claim them. (See Decl.  
9 of John Farrell ("Ex. B") (Doc. No. 56-6) ¶ 4 ; Decl. of  
10 Anthony Renteria ("Ex. C") (Doc. No. 56-7) ¶ 4; Decl. of  
11 Eric Anderson ("Ex. D") (Doc. No. 56-8) ¶ 4.) The Berrys  
12 also fabricated "un-reimbursed employee expenses . . .  
13 real estate taxes . . . and charitable contributions . .  
14 . , as well as selecting 'single' for the filing status  
15 of couples who they knew were in fact married." (Ex. E  
16 at 19; Ex. F. at 19.) The Berrys did not sign these  
17 falsified tax returns as preparers, and instead gave them  
18 to their clients to sign as if their clients had prepared  
19 the returns themselves. (Ex. E at 21; Ex. F. at 20.)  
20 The clients were not, however, given an opportunity to  
21 review their returns fully before being instructed to  
22 sign them. (Ex. E at 20; Ex. F at 20.)

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24 The Berrys' culpable conduct persisted through 2006,  
25 and resulted in losses to the United States in excess of  
26 \$14,000,000. (Ex. E at 19, 21; Ex. F. at 19, 21.) Over  
27 the course of that time, N.C.K. held copies of those tax  
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1 returns it prepared legitimately, while destroying those  
2 it prepared fraudulently. (Decl. of Valerie M. Dixon  
3 ("Ex. A") ¶ 17 (Doc. No. 56-5).) Despite that attempt to  
4 evade law enforcement, both Karen and Carla Berry were  
5 indicted for various crimes related to their tax evasion  
6 scheme, and, as discussed above, pled guilty.

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**II. LEGAL STANDARD**

9 A motion for summary judgment shall be granted when  
10 there is no genuine issue as to any material fact and the  
11 moving party is entitled to judgment as a matter of law.  
12 Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc.,  
13 477 U.S. 242, 247-48 (1986). The moving party must show  
14 that "under the governing law, there can be but one  
15 reasonable conclusion as to the verdict." Anderson, 477  
16 U.S. at 250.

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18 Generally, the burden is on the moving party to  
19 demonstrate that it is entitled to summary judgment.  
20 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998);  
21 Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707  
22 F.2d 1030, 1033 (9th Cir. 1983). The moving party bears  
23 the initial burden of identifying the elements of the  
24 claim or defense and evidence that it believes  
25 demonstrates the absence of an issue of material fact.  
26 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

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1           When the non-moving party has the burden at trial,  
2 however, the moving party need not produce evidence  
3 negating or disproving every essential element of the  
4 non-moving party's case. Celotex, 477 U.S. at 325.  
5 Instead, the moving party's burden is met by pointing out  
6 there is an absence of evidence supporting the non-moving  
7 party's case. Id.

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9           The burden then shifts to the non-moving party to  
10 show that there is a genuine issue of material fact that  
11 must be resolved at trial. Fed. R. Civ. P. 56(e);  
12 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The  
13 non-moving party must make an affirmative showing on all  
14 matters placed in issue by the motion as to which it has  
15 the burden of proof at trial. Celotex, 477 U.S. at 322;  
16 Anderson, 477 U.S. at 252; see also William W. Schwarzer,  
17 A. Wallace Tashima & James M. Wagstaffe, Federal Civil  
18 Procedure Before Trial, 14:144. "This burden is not a  
19 light one. The non-moving party must show more than the  
20 mere existence of a scintilla of evidence." In re Oracle  
21 Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir.  
22 2010) (citing Anderson, 477 U.S. at 252). "The  
23 non-moving party must do more than show there is some  
24 'metaphysical doubt' as to the material facts at issue."  
25 In re Oracle, 627 F.3d at 387 (citing Matsushita Elec.  
26 Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586  
27 (1986)).

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1 A genuine issue of material fact exists "if the  
2 evidence is such that a reasonable jury could return a  
3 verdict for the non-moving party." Anderson, 477 U.S. at  
4 248. In ruling on a motion for summary judgment, the  
5 Court construes the evidence in the light most favorable  
6 to the non-moving party. Barlow v. Ground, 943 F.2d  
7 1132, 1135 (9th Cir. 1991); T.W. Elec. Serv. Inc. v. Pac.  
8 Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir.  
9 1987).

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11 **III. DISCUSSION**

12 The evidence the United States provides in support of  
13 its Motion for Summary Judgment is sufficient both to  
14 support judgment in the United States' favor and to merit  
15 the award of a permanent injunction preventing the Berrys  
16 from continuing to act as tax preparers or to defraud the  
17 United States further through means of falsified tax  
18 returns.<sup>1</sup>

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20 <sup>1</sup> The United States asks the Court to base an  
21 adverse inference on both Karen Berry's and Carla Berry's  
22 invocations of their Fifth Amendment rights in their  
23 respective depositions. (Mem. in Supp. of United States'  
24 Mot. for Summ. J. (Doc. No. 56-1) at 9-13.) In a civil  
25 case, the Court is permitted to draw an adverse inference  
26 from a party's invocation of her Fifth Amendment right to  
27 avoid self-incrimination. S.E.C. v. Colello, 139 F.3d  
28 674, 677 (9th Cir. 1998). The Court may only draw such  
an inference, however, when "there is a substantial need  
for the information" excluded due to a witness's  
invocation of the Fifth Amendment, "and there is not  
another less burdensome way of obtaining that  
information." Nationwide Life Ins. Co. v. Richards, 541  
F.3d 903, 912 (9th Cir. 2008) (internal quotation  
omitted). There is enough evidence of the Berrys'

(continued...)

1 As noted above, the United States offers evidence  
2 that both Karen and Carla Berry for years engaged in a  
3 business that obtained tax refunds for its clients by  
4 falsifying their tax returns. The Berrys sought to avoid  
5 detection by failing to sign the fraudulent tax returns  
6 as preparers. The fruit of the Berrys' labors was the  
7 payment of excess tax refunds on the order of  
8 \$14,000,000.

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10 In light of their fraudulent activities, the United  
11 States asks the Court to enjoin each of the Berrys,  
12 individually and under the aegis of N.C.K. Services,  
13 Inc., from:

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- 15 • Organizing, promoting, marketing, or selling any tax  
16 service that advises or incites customers to attempt  
17 to violate the internal revenue laws or unlawfully  
18 evade the assessment or collection of their federal  
19 tax liabilities;
- 20  
21 • Making false or fraudulent statements about the  
22 securing of any tax benefit by reason of  
23 participating in any tax plan or arrangement;

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<sup>1</sup>(...continued)  
26 wrongdoing in the record to merit summary judgment and  
27 the issuance of a permanent injunction against the  
28 Berrys. Consequently, the Court need not draw an adverse  
inference from either Carla or Karen Berry's invocation  
of the Fifth Amendment.

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- Encouraging, instructing, advising and assisting others to violate the tax laws, including to evade the payment of taxes;
- Acting as a federal income tax preparer, or preparing or providing or filing federal income tax returns for anyone other than herself;
- Assisting or advising anyone in connection with preparing or filing a federal income tax return;
- Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, or 6701; and
- Engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax schemes.

The United States has set forth facts sufficient to justify the issuance of an injunction under 26 U.S.C. 7408.<sup>2</sup> Under Section 7408, the Court may enjoin a defendant tax preparer's conduct if "injunctive relief is

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<sup>2</sup> "The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction." United States v. Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000).

1 appropriate to prevent recurrence of such conduct," and  
2 if the preparer has:

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4 (A) engaged in any conduct subject to penalty  
5 under section 6694 or 6695, or subject to any  
6 criminal penalty provided by this title,

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8 (B) misrepresented [her] eligibility to practice  
9 before the Internal Revenue Service, or otherwise  
10 misrepresented [her] experience or education as a  
11 tax return preparer;

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13 (C) guaranteed the payment of any tax refund of  
14 the allowance of any tax credit, or

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16 (D) engaged in any other fraudulent or deceptive  
17 conduct which substantially interferes with the  
18 proper administration of the Internal Revenue laws  
19 . . . .

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21 26 U.S.C. § 7408(b).

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23 Here it is undisputable that the Berrys engaged in  
24 conduct falling within the scope of Section 7408: each  
25 of them pled guilty to "conduct . . . subject to [a]  
26 criminal penalty provided by [Title 26]." 26 U.S.C. §  
27 7408(b). Specifically, both pled guilty to violations of

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1 26 U.S.C. § 7206, a felony under Title 26. Moreover, as  
2 discussed above, the facts show the Berrys committed  
3 these unlawful acts on multiple occasions, over the  
4 course of years, costing the United States millions of  
5 dollars in tax revenue - and they attempted to conceal  
6 evidence of their wrongdoing, to be better able to  
7 continue their business of defrauding the United States.  
8 The United States has satisfied its burden under Rule 56:  
9 there are no disputed issues of material fact for trial.  
10 The Court is also satisfied that the evidence warrants  
11 issuance of a permanent injunction under 26 U.S.C. §  
12 7408. Accordingly, the Court GRANTS the United States'  
13 Motion for Summary Judgment.

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15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court GRANTS the  
17 United States' Motion for Summary Judgment.

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23 Dated: October 28, 2011

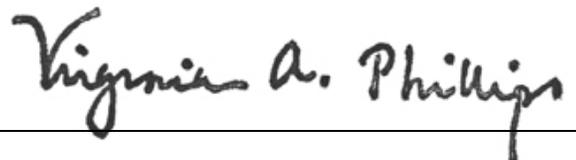
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VIRGINIA A. PHILLIPS  
United States District Judge