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*Counsel for the United States*

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BILL SUNGA MODINA, d/b/a 5M Financial, )  
and 6M Financial )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No.

**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
EQUITABLE RELIEF**

The plaintiff, United States of America, for its complaint against defendant Bill Sunga Modina,  
alleges as follows:

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2 1. This is a civil action brought by the United States under 26 U.S.C. ("I.R.C.") §§ 7402(a)  
3 and 7407 to enjoin Bill Sunga Modina, and anyone in active concert or participation with  
4 him, from:

- 5 a. Acting as a federal tax return preparer or requesting, assisting in, or directing the  
6 preparation or filing of federal tax returns, amended returns, or other related  
7 documents or forms for any person or entity other than himself;
- 8 b. Preparing or assisting in preparing or filing federal tax returns, amended returns,  
9 or other related documents or forms that he knows or reasonably should know  
10 will result in an understatement of federal tax liability or the overstatement of  
11 federal tax refunds as prohibited by I.R.C. § 6694;
- 12 c. Preparing returns for customers and failing to provide his identifying number as  
13 required under I.R.C. § 6108(a)(4);
- 14 d. Preparing returns for customers and failing to maintain copies of those returns, or  
15 a list of those returns by taxpayer identification number as required by I.R.C. §  
16 6107(b);
- 17 e. Misrepresenting his experience or education as a tax preparer;
- 18 f. Engaging in any other activity subject to penalty under I.R.C. §§ 6694 or 6695;  
19 and
- 20 g. Engaging in conduct that substantially interferes with the administration or  
21 enforcement of the internal revenue laws.  
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*Jurisdiction and Venue*

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to I.R.C. §§ 7402 and 7407.
3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7407.
4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396 because Bill Sunga Modina resides in Las Vegas, and because a substantial part of the actions giving rise to this suit took place within this judicial district.

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*Defendant and His Activities*

5. Bill Sunga Modina is a tax return preparer as defined by I.R.C. § 7701(a)(36). He prepares his customers' federal tax returns for compensation.
6. Modina does business as 5M Financial Services and 6M Financial Services, both of which are unincorporated entities.
7. Modina has prepared approximately 100 federal income tax returns annually, and has been preparing returns for customers since 1992.
8. Although Modina's principal source of reported income is from gambling, he claims that his primary business is federal income tax return preparation.
9. Modina has little or no training in tax return preparation, and yet he has been known to falsely represent to his clients that he is a former IRS auditor and that he has training in "special deductions." He states that he learned about taxes by reading IRS materials on the internet, including at irs.gov.

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2 10. Modina improperly does not provide preparer identification numbers (PTINs) on the tax  
3 returns he prepares in violation of I.R.C. § 6109(a)(4).

4 11. Modina prepares returns for customers with false information in order to fabricate higher  
5 tax refunds for his customers based on fictitious employee business expenses and  
6 fictitious charitable contributions. When audited by the Internal Revenue Service,  
7 Modina's customers do not know why the expenses and contributions were claimed on  
8 their returns, and they state that they did not provide Modina with any documents  
9 supporting the false and fraudulent claims.

10 12. For example, a medical records supervisor and a crossing guard, "Customers 1 & 2," paid  
11 Modina to prepare their federal income tax returns (IRS Form 1040) for 2009 and 2010.  
12 Customers 1 & 2 mailed their tax information to Modina, but did not include information  
13 about employee business expenses. Despite this, Modina included employee business  
14 expenses on the tax returns he prepared for Customers 1 & 2. The IRS audited these  
15 returns, and disallowed the employee business expenses because Customers 1 & 2 said  
16 they had no such expenses, and had no idea why Modina included these on the tax  
17 returns. As a result of the audit, Customers 1 & 2 paid the IRS an additional \$5,348 in  
18 federal income tax.

19 13. Modina prepared similar false and fraudulent returns for a Defense Department painter  
20 and a secretary in Washington State, "Customers 3 & 4." Modina prepared their 2007  
21 refund claim (IRS Form 1040X), and their 2008 income tax return (IRS Form 1040), both  
22 of which were audited by the IRS. Like Customers 1 & 2, Customers 3 & 4 mailed  
23 Modina their tax information, but did not include information about employee business

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2 expenses, and minimal information about charitable contributions. Despite this, Modina  
3 included employee business expenses and excessive charitable contributions on their  
4 2007 refund claim and 2008 income tax returns. Because Customers 3 & 4 did not have  
5 legitimate employee business expenses and were unable to substantiate the charitable  
6 contributions claimed on their tax return, these amounts were disallowed during the audit,  
7 and Customers 3 & 4 owed over \$12,000 in additional federal income tax.

8 14. Modina prepared 2007 and 2008 federal income tax returns for Customers 5 & 6, also  
9 claiming fictitious business expenses and schedule C expenses that were disallowed when  
10 audited by the IRS. When Customers 5 & 6 asked Modina why he claimed such  
11 excessive employee business expenses on the returns he prepared for them, Modina told  
12 them that he previously worked as an IRS auditor, and that the amounts he listed were the  
13 minimum allowed for that deduction. Neither of Modina's statements were true. When  
14 their returns were selected for audit, Modina instructed Customers 5 & 6 to not meet with  
15 the IRS. These emails were turned over to the IRS. Customers 5 & 6 ignored his advice,  
16 met with the IRS examiner, and were shocked to learn that the copy of the return Modina  
17 gave them was different than the return he sent to the IRS on their behalf. The version  
18 Modina sent to the IRS contained additional deductions, many of which were disallowed  
19 on audit. Customers 5 & 6 owed the IRS over \$5,000 in additional federal income tax.

20 15. Modina also prepared a 2010 federal income tax return for Customer 7, a hotel clerk and  
21 Army reservist. Customer 7 sent Modina only W-2 information and did not discuss her  
22 employment circumstances in connection with his return preparation. Customer 7 said  
23 this was the largest refund she ever received, and expressed concern to Modina, but he

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2 told her he had ten years' experience and was trained in taking "special deductions." The  
3 IRS audited this return, disallowed the fabricated employee business expenses, and  
4 Customer 7 paid the IRS an additional \$3,676 in federal income tax.

5 16. Modina refused to comply with an IRS administrative summons seeking information  
6 about his return preparation. As a result, a summons enforcement action was filed before  
7 the Honorable Judge Kent Dawson, and was heard by Magistrate Judge George Foley,  
8 Jr., No. 2:12-cv-634-KJD-GWF. After much delay and continued hearing dates, Modina  
9 agreed to meet with the investigating revenue agent, and told the agent that he would stop  
10 preparing tax returns and would consent to an injunction barring him from doing so.

11 *Harm to the United States*

12 17. Modina's conduct harms the United States because his customers are underreporting and  
13 underpaying their tax liabilities. The IRS has examined 47 returns of 23 Modina  
14 customers, resulting in \$210,093 in additional tax assessments, not including penalties  
15 and interest. The estimated tax loss alone averages over \$4,400 per return. Modina has  
16 prepared approximately 100 federal income tax returns annually, and has been preparing  
17 returns for customers since 1992, resulting in the preparation of over 2,200 returns. The  
18 estimated annual tax loss resulting from Modina's conduct is as much as \$440,000.  
19 Modina has caused as much as an estimated \$9,680,000 in tax loss alone due to his false  
20 and fraudulent return preparation.

21 18. In addition to the direct harm caused by preparing tax returns that understate customers'  
22 tax liabilities, Modina's activities undermine public confidence in the administration of  
23 the federal tax system and encourage noncompliance with the internal revenue laws.

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2 19. Modina's conduct further harms the United States because the IRS must devote its  
3 limited resources to identifying his customers, ascertaining their correct tax liabilities,  
4 recovering any refunds erroneously issued, and collecting additional taxes and penalties.

5 20. The full harm to the government from Modina's conduct cannot be known because the  
6 IRS has been unable to identify all tax returns prepared by Modina on behalf of his  
7 customers. Despite repeated requests, Modina has failed to provide the IRS with his  
8 customer list. As such, the government has no way of detecting and examining all  
9 Modina-prepared tax returns.

10 *Harm to Modina's Customers*

11 21. Modina's customers have been harmed because they paid him fees to prepare proper tax  
12 returns, but Modina prepared returns that substantially understated his customers' correct  
13 tax liabilities or created or inflated improper refunds.

14 22. As a result of Modina's improper actions, many of his customers have been required to  
15 file amended returns or undergo audits by the IRS. They have incurred substantial and  
16 unanticipated financial burdens due to their liability for additional tax beyond the amount  
17 reported on their original returns, in addition to penalties and statutory interest.

18 **Count I:**  
19 **Injunction under I.R.C. § 7407**

20 23. The United States incorporates by reference the allegations made in paragraphs 1 through  
21 22.

22 24. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax  
23 return preparer from:

- a. Engaging in conduct subject to penalty under I.R.C. §§ 6694 or 6695;

- 1
- 2 b. Misrepresenting his or her eligibility to practice before the IRS, or otherwise
- 3 misrepresenting his or her experience or education as a tax return preparer;
- 4 c. Guaranteeing the payment of any tax refund or the allowance of any tax credit;
- 5 and
- 6 d. Engaging in any other fraudulent or deceptive conduct that substantially interferes
- 7 with the proper administration of the internal revenue laws,
- 8 if the court finds that the preparer has engaged in such conduct and that injunctive relief
- 9 is appropriate to prevent the recurrence of the conduct.

10 25. If the court finds that a return preparer has continually or repeatedly engaged in such

11 conduct, and the court also finds that a narrower injunction (i.e., prohibiting only that

12 specific enumerated conduct) would not be sufficient to prevent that person's interference

13 with the proper administration of the internal revenue laws, the court may enjoin the

14 person from further acting as a return preparer.

15 26. Modina has continually and repeatedly engaged in conduct subject to penalty under

16 I.R.C. § 6694 by willfully preparing tax returns for customers that understate their tax

17 liability by fabricating fictitious employee business expenses and charitable

18 contributions. Modina knew or had reason to know that there was no authority for the

19 claims he made on behalf of customers, and his preparation of these returns exhibits a

20 reckless and intentional disregard of rules or regulations within the meaning of I.R.C. §

21 6694(b)(2).

22 27. Modina has continually and repeatedly engaged in conduct subject to penalty under

23 I.R.C. §6695 by 1) failing to furnish his preparer identifying number when preparing



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2 federal tax returns as required by I.R.C. § 6109(a)(4), for which failure was due to willful  
3 neglect and Modina did not have reasonable cause; and 2) failing to retain a copy of the  
4 returns he prepared for customers or to retain a list of all returns prepared by taxpayer  
5 identification number.

6 28. Modina has continually and repeatedly engaged in fraudulent or deceptive conduct that  
7 substantially interferes with the proper administration of the federal tax laws.

8 29. Modina's repeated and continual violations of I.R.C. §§ 6694 and 6695 fall within I.R.C.  
9 § 7407(b)(1)(A), (B) and (D), and thus are subject to an injunction under I.R.C. § 7407.

10 30. If Modina is not enjoined, he is likely to continue to prepare and file false and fraudulent  
11 federal tax returns, causing economic loss to the United States, causing the United States  
12 to commit finite, scarce, and unrecoverable resources to the examination of Modina and  
13 his customers, and exposing his customers to large tax liabilities, penalties and interest.

14 31. Modina's continual and repeated conduct subject to injunction under I.R.C. § 7407,  
15 including the false and fraudulent fabrication of fictitious employee business expenses  
16 and charitable contributions, and failure to provide his preparer identification number,  
17 demonstrates that a narrow injunction prohibiting only specific conduct would be  
18 insufficient to prevent his interference with the proper administration of the internal  
19 revenue laws. Thus, Modina should be permanently barred from acting as a return  
20 preparer.

21 **Count II:**  
22 **Injunction under I.R.C. § 7402(a)—Necessary to Enforce the Internal Revenue Laws**

23 32. The United States realleges and incorporates by reference paragraphs 1 through 31 of the  
Complaint.

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2 33. Section 7402 of the Internal Revenue Code authorizes a district court to issue orders of  
3 injunction as may be necessary or appropriate for the enforcement of the internal revenue  
4 laws.

5 34. Modina, through the actions described above, has engaged conduct that substantially  
6 interferes with the enforcement of the internal revenue laws.

7 35. Unless enjoined, Modina is likely to continue to engage in such improper conduct and  
8 interfere with the enforcement of the internal revenue laws. If he is not enjoined from  
9 engaging in such fraudulent and deceptive conduct, the United States will suffer  
10 irreparable injury by wrongfully providing federal tax refunds to individuals not entitled  
11 to them, much of which may not be discovered and recovered. The United States will also  
12 suffer irreparable injury because it will have to devote substantial unrecoverable time and  
13 resources auditing Defendant's customers to detect future returns understating the  
14 customers' liabilities or overstating their refunds.

15 36. While the government will suffer irreparable injury if Modina is not enjoined, he will not  
16 be harmed by being compelled to obey the law.

17 37. Enjoining Modina is in the public interest because an injunction, backed by the Court's  
18 contempt powers if needed, will stop his illegal conduct and the harm it causes the United  
19 States.

20 38. The Court should therefore impose injunctive relief under I.R.C. § 7402(a).

21 WHEREFORE, plaintiff, United States of America, prays for the following relief:

22 A. That the Court find that Modina has continually and repeatedly engaged in  
23 conduct subject to penalty under I.R.C. §§ 6694 and 6694 and has continually and

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2 repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes  
3 with the administration of the tax laws, and that injunctive relief is appropriate under  
4 I.R.C. § 7407 to bar him from acting as a federal tax return preparer and from engaging in  
5 conduct subject to penalty under I.R.C. §§ 6694 and 6694;

6 B. That the Court find that Defendant has engaged in conduct that substantially  
7 interferes with the enforcement of the internal revenue laws, and that injunctive relief is  
8 appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent  
9 equity powers and I.R.C. § 7402(a);

10 C. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter a permanent  
11 injunction prohibiting Modina, and all those in active concert or participation with him,  
12 from:

- 13 1. Acting as federal tax return preparers, or requesting, assisting in, or  
14 directing the preparation or filing of federal tax returns, amended returns, or other  
15 related documents or forms for any person or entity other than themselves;
- 16 2. Preparing or assisting in preparing or filing federal tax returns, amended  
17 returns, or other related documents or forms that they know or reasonably should  
18 know will result in an understatement of tax liability or the overstatement of  
19 federal tax refunds;
- 20 3. Preparing returns for customers and failing to provide identifying numbers  
21 as required under I.R.C. § 6108(a)(4);
- 22 4. Preparing returns for customers and failing to maintain copies of those  
23 returns, or a list of those returns by taxpayer identification number as required by

1  
2 I.R.C. § 6107(b);

3 5. Misrepresenting experience or education as a tax preparer;

4 6. Engaging in any other activity subject to penalty under I.R.C. §§ 6694 and  
5 6694 or any other penalty provision in the Internal Revenue Code; and

6 7. Engaging in any conduct that substantially interferes with the proper  
7 administration and enforcement of the internal revenue laws.

8 D. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an injunction  
9 requiring that Modina, within 30 days of entry of the injunction, contact by United States  
10 mail and, if an email address is known, by email, all persons for whom he prepared a  
11 federal tax return, amended return, or any other federal tax form since January 1, 2008, to  
12 inform them of the permanent injunction entered against him, and include a copy of the  
13 Court's permanent injunction order, but no other documents or enclosures unless agreed  
14 to by counsel for the United States or approved by the Court, and file with the Court a  
15 sworn certificate stating that he has complied with this requirement;

16 E. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an injunction  
17 requiring Modina to produce to counsel for the United States within 30 days a list that  
18 identifies by name, social security number, address, e-mail address, telephone number,  
19 and tax period(s) all persons for whom he prepared federal tax returns or claims for  
20 refund since January 1, 2008;

21 F. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an injunction  
22 requiring Defendant to provide a copy of the Court's order to all of the principals,  
23 officers, managers, employees, and independent contractors of his tax return preparation

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2 business within three days of the Court's order, and provide to counsel for the United  
3 States within 30 days a signed and dated acknowledgment or receipt of the Court's order  
4 for each person to whom he provided a copy of the Court's order;

5 G. That the United States be entitled to conduct discovery to monitor Modina's  
6 compliance with the terms of any permanent injunction entered against him;

7 H. That the Court retain jurisdiction over Modina and this action to enforce any  
8 permanent injunction entered against him; and

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

11 Dated this 31<sup>st</sup> day of March, 2014

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14 KATHRYN KENEALLY  
15 Assistant Attorney General

16  
17 By: 

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