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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MARLA L. CUNNINGHAM,
15 Defendant.
16

Case No.: 24-cv-1735-BJC-BLM

**ORDER GRANTING UNITED
STATES' MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND
PERMANENT INJUNCTION**

[ECF No. 9]

17 Before the Court is Plaintiff United States' Motion for Default Judgment and
18 Permanent Injunction against Defendant Marla L. Cunningham ("Cunningham"). ECF
19 No. 9. For the reasons stated below, the motion is **GRANTED**, and judgment shall be
20 entered in favor of the United States and against Cunningham.

21 **I. BACKGROUND**

22 On September 30, 2024, the United States filed a complaint pursuant to Internal
23 Revenue Code (26 U.S.C.) §§ 7402(a) and 7407 to enjoin Cunningham from preparing
24 federal income tax returns or pursuing any other related conduct that interferes with the
25 proper administration and enforcement of the internal revenue laws. ECF No. 1 at 2. On
26 November 27, 2024, the United States filed a proof of service, certifying that Cunningham
27 was served with the summons and complaint for the instant action. ECF No. 3. On
28 February 3, 2025, the Clerk of Court entered default against Cunningham for her failure to

1 file an answer or otherwise respond to the complaint. ECF No. 6. Generally, once the
2 court clerk enters default, the factual allegations of the complaint are taken as true, except
3 for those allegations relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915,
4 917–18 (9th Cir. 1987). Thus, Cunningham is deemed to have admitted all of the well-pled
5 allegations of the complaint.

6 Accordingly, the Court makes the following findings of fact based on Plaintiff's
7 Complaint: Cunningham resides in San Diego, California and operated a tax return
8 preparation business named Cunningham's Tax Service located in El Cajon, California
9 from at least 2010 through 2012. ECF No. 1 at ¶¶ 4, 5. The Internal Revenue Service
10 ("IRS") examined tax returns prepared by Cunningham and discovered the returns included
11 false information including, false business losses, charitable contributions, and medical,
12 dental, education, and unreimbursed employee expenses. *Id.* at ¶ 5. The fraudulent tax
13 returns prepared by Cunningham resulted in a loss of approximately \$1,237,943 in tax
14 revenues to the United States. *Id.* ¶ 15. On July 16, 2015, Cunningham was indicted on
15 36 counts of aiding and assisting in the filing of false tax returns in violation of 26 U.S.C.
16 § 7204(2). *Id.* ¶ 6; *See United States v. Cunningham*, Case No. 3:15-cr-1885-GPC
17 ("*Cunningham*"), ECF No. 1. On December 30, 2016, Cunningham entered a guilty plea
18 on counts 33, 34, and 36 of the indictment. *See* ECF No. 1 ¶ 7; *Cunningham*, ECF Nos. 1,
19 63, 65. Pursuant to the plea agreement, Cunningham agreed to be permanently enjoined
20 under 26 U.S.C. §§ 7402 and 7407. *See* ECF No. 1 ¶ 8; *Cunningham*, ECF No. 65 at 3.
21 On April 17, 2017, Cunningham was sentenced to 37 months in custody. *Cunningham*,
22 ECF No. 80.

23 II. DISCUSSION

24 A. Default Judgment

25 1. Legal Standard

26 Federal Rule of Civil Procedure 55(b)(2) permits a court, following default by a
27 defendant, to enter default judgment in a case. It is within the sound discretion of the
28 district court to grant or deny an application for default judgment. *Aldabe v. Aldabe*, 616

F.2d 1089, 1092 (9th Cir. 1980). In making this determination, the Court considers the following factors, commonly referred to as the *Eitel* factors: (1) “the possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.” *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). “In applying this discretionary standard, default judgments are more often granted than denied.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003) (citation omitted).

2. Evaluation of *Eitel* Factors

a. *Possibility of Prejudice to the Plaintiff*

There is a possibility of prejudice to a plaintiff when denying default judgment would leave them without an alternate recourse. *See PepsiCo Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Here, without an injunction, Cunningham may continue to prepare fraudulent tax returns, which results in harm to the United States and to her clients. To date, the United States claims Cunningham’s actions resulted in a tax loss of \$1,237,943. ECF No. 1 ¶ 15. Additionally, if allowed to continue preparing tax returns, Cunningham’s future clients are at risk of being harmed as they may have to pay substantial interest and penalties on fraudulently filed taxes. Thus, there is a strong possibility of prejudice to Plaintiff and the public.

b. *Substantive Merits and Sufficiency of Claim*

Under the second and third *Eitel* factors, the Court must examine whether the plaintiff has pled facts sufficient to establish and succeed on its claims. *See Eitel*, 782 F.2d at 1471. These factors require the complaint “state a claim on which the plaintiff may recover.” *PepsiCo*, 238 F. Supp. 2d at 1175.

Here, the United States seeks to permanently enjoin Cunningham from directly or indirectly:

1. Acting as a federal tax return preparer or requesting the preparation or filing of federal tax returns for any person or entity other than herself;
2. Assisting in the preparation or filing of federal tax returns for any person or entity other than herself;
3. Assisting in the preparation of federal tax returns that she knows will result in the understatement of any tax liability or the overstatement of federal tax refunds or credits;
4. Directing the preparation or filing of federal tax returns for any person or entity other than herself;
5. Representing, or appearing on behalf of, any person or entity before the Internal Revenue Service;
6. Preparing, filing, or assisting in preparing or filing federal income tax returns or other related documents and forms, for anyone other than herself;
7. Instructing, advising, or assisting others in the violation of tax laws;
8. Engaging in activity subject to penalty under 26 U.S.C. § 6694;
9. Engaging in activity subject to penalty under 26 U.S.C. § 6701; and
10. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

ECF No. 1 at 9.

Under 26 U.S.C. § 7407(a), the United States may seek “to enjoin any person who is a tax return preparer from further engaging in any conduct described in subsection (b) or from further acting as a tax return preparer.” Section 7407(b)(1) identifies four categories of preparer misconduct: “(A) engag[ing] in any conduct subject to penalty under section 6694 or 6695, or subject to any criminal penalty provided by this title, (B) misrepresent[ing] his eligibility to practice before the IRS, or otherwise

1 misrepresent[ing] his experience or education as a tax return preparer, (C) guarantee[ing]
2 the payment of any tax refund or the allowance of any tax credit, or (D) engag[ing] in any
3 other fraudulent or deceptive conduct which substantially interferes with the proper
4 administration of the Internal Revenue laws.” 26 U.S.C. § 7407(b)(1).

5 The Court can enter an injunction to prevent recurrence of such conduct. 26 U.S.C.
6 § 7407(b)(2). Further, if the preparer “has continually or repeatedly engaged in” the types
7 of misconduct set forth in the statute, and “an injunction prohibiting such conduct would
8 not be sufficient to prevent such person’s interference with the proper administration of
9 this title,” the Court may enter an injunction preventing the person from preparing returns
10 altogether. *Id.*; *see also* 26 U.S.C. § 7402(a).

11 Here, it is clearly established that Cunningham has repeatedly engaged in the
12 conduct subject to penalty. Cunningham was convicted of federal criminal crimes for
13 willfully aiding, assisting, advising, procuring, and counseling related to preparing false
14 and fraudulent tax returns in violation of 26 U.S.C. § 7602. ECF No. 1 at 3. In her written
15 plea agreement, Cunningham agreed to be permanently enjoined from preparing or filing
16 federal taxes. *Cunningham*, ECF No. 65 at 3 (“Defendant agrees, as part of this Plea
17 Agreement, to be permanently enjoined under U.S.C. §§ 7402 and 7407, from preparing or
18 filling federal tax returns for anyone other than herself. Defendant understands that the
19 United States will file a civil complaint against her seeking this relief. Defendant agrees
20 to consent to a permanent injunction.”).¹ On October 20, 2024, Cunningham informed
21 Plaintiff’s counsel that she intended to retain counsel and challenge the injunction. ECF
22 No. 9-2, Lee Decl. ¶ 7. However, she has failed to obtain counsel or communicate further
23 with the United States regarding this matter since that date. *Id.* ¶¶ 2, 7, 10. Therefore, the
24 Court finds the United States has pled facts sufficient to establish and succeed on its request
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27 ¹ In the Judgment filed after Cunningham’s sentencing hearing, the Court referenced the impending
28 injunction. *Cunningham*, at ECF No. 82 (prohibiting various actions, including “not engag[ing] in the
employment or profession of tax preparation, accounting, or any fiduciary responsibilities”).

1 to enjoin Cunningham.

2 c. *Amount of Money at Issue*

3 The fourth *Eitel* factor is the amount of money at issue in the action. The United
4 States is not seeking any damages, but rather seeking to enjoin Cunningham from acting
5 as a tax-return preparer. Here, this factor “weighs in favor of a default judgment” where,
6 “there is no money at stake in an action and only permanent injunctive relief is sought.”
7 *U.S. v. McIntyre*, 715 F. Supp. 2d 1103, 1008 (C.D. Cal. 2010); *see also United States v.*
8 *Barnes*, No. CV 14-05621 SJO(PLAx), 2015 WL 2386190, at *6 (C.D. Cal. Apr. 3, 2015).

9 d. *Possibility of Dispute*

10 The next *Eitel* factor considers whether there are disputed material facts. As
11 previously mentioned, “[u]pon entry of default, all well-pleaded facts in the complaint are
12 taken as true, except those relating to damages.” *PepsiCo*, 238 F. Supp. 2d at 117. Here,
13 Plaintiff has alleged sufficient facts to support its claims, as analyzed above. Plaintiff
14 adequately alleges that Cunningham agreed to be permanently enjoined from being a tax
15 preparer as part of her December 30, 2016, plea agreement. *See* ECF No. 1 ¶ 8;
16 *Cunningham*, ECF No. 65 at 3. Of note, Plaintiff’s declaration mentions a call where
17 Cunningham may have expressed intent to challenge the injunction. ECF No. 9-1, Lee
18 Decl. ¶ 7. However, Cunningham has not made an appearance in this case, hired an
19 attorney, filed a response to the Complaint, or filed an opposition to United States’ Motion.
20 Cunningham’s inaction suggests a decreased likelihood that there are disputed material
21 facts. Despite having the opportunity, Cunningham has not disputed the alleged facts in
22 any way. Since there is no dispute of material facts, this factor favors the entry of default
23 judgment against Defendant.

24 e. *Excusable Neglect*

25 Cunningham was personally served with a summons and copy of the Complaint.
26 ECF No. 3. Where a defendant has received a copy of the complaint, the possibility of
27 excusable neglect is remote. *Elektra Entertainment Grp., Inc. v. Crawford*, 226 F.R.D.
28 388, 393 (C.D. Cal. 2005); *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d

1 1065, 1071–72 (D. Ariz. 2006). Defendant acknowledged receipt of the complaint in a call
2 with Plaintiff’s counsel on October 8, 2024. ECF No. 9-2, Lee Decl. ¶ 5. Defendant
3 indicated that she would retain an attorney and fight the case, but she has failed to do
4 anything in that regard in the six months since making that proclamation. *Id.* at ¶¶ 7–10.
5 Because excusable neglect is absent, this factor supports default judgment against the
6 Defendant.

7 f. *Policy Favoring Decision on the Merits*

8 Although default judgment is disfavored, a decision on the merits is impractical, if
9 not impossible, when the defendant takes no part in the action. *Penpower Technology Ltd.*
10 *v. S.P.C. Technology*, 627 F. Supp. 2d 1083, 1093 (N.D. Cal. 2008). Given that
11 Cunningham has failed to respond, the general preference for resolution on the merits is
12 not equally applicable. *See, e.g., id.* Accordingly, based on the above, the United States’
13 request for default judgment is appropriate.

14 **B. Permanent Injunction**

15 The United States seeks injunctive relief under 26 U.S.C. §§ 7402(a) and 7407.
16 Under 26 U.S.C. § 7402(a), this Court is authorized to issue an injunction “as may be
17 necessary or appropriate for the enforcement of the internal revenue laws.” As described
18 above, Cunningham has engaged in conduct that substantially interferes with the
19 administration and enforcement of the internal revenue laws and is able to continue to
20 engage in such conduct if a permanent injunction is not issued. The United States asserts
21 that if Cunningham is not enjoined, the United States will be prejudiced because
22 Cunningham could continue defrauding the government by fabricating tax returns. ECF
23 No. 1 at ¶¶ 25, 32. Further, the United States asserts that a more limited injunction will not
24 be sufficient to stop Cunningham from interfering with the proper administration of the
25 internal revenue laws. *Id.* ¶ 33. Accordingly, the Court will permanently enjoin
26 Cunningham under 26 U.S.C. § 7402 and, as described in detail below, order her to provide
27 a list of individuals for whom she prepared tax returns in the past three years.

28 Under 26 U.S.C. § 7407, the Court must determine whether the tax-return preparer

1 has engaged in conduct subject to civil penalty under 26 U.S.C. §§ 6694 and/or 6695, or
2 criminal penalty under the Internal Revenue Code, or whether the tax return preparer has
3 engaged in other fraudulent or deceptive conduct that substantially interferes with the
4 administration of the internal revenue laws. *See* 26 U.S.C. § 7407(b)(1)(A), (D). As
5 explained above, Cunningham continuously and repeatedly prepared federal tax returns
6 that she knew contained inflated, exaggerated, and fictitious deductions and/or credits. She
7 also submitted returns that willfully understated her clients' tax liabilities and overstated
8 their refunds. Significantly, Cunningham was criminally prosecuted and sentenced to 37
9 months in custody after pleading guilty to the tax crimes previously mentioned.
10 Accordingly, Cunningham has engaged in conduct subject to being permanently enjoined
11 under 26 U.S.C. §§ 6694 and 6701, as well as other fraudulent or deceptive conduct within
12 the meaning of 26 U.S.C. § 7407.

13 **III. CONCLUSION**

14 Based on the foregoing, the Court **GRANTS** the United States' motion for default
15 judgment and permanent injunction, and it is hereby **ORDERED, ADJUDGED, AND**
16 **DECREED** that:

17 1. A **PERMANENT INJUNCTION IS HEREBY ENTERED** against
18 Defendant Marla L. Cunningham from the date of this Order, and Defendant Marla L.
19 Cunningham is permanently enjoined from directly or indirectly:

- 20 a) Acting as a federal tax return preparer or requesting the preparation or
21 filing of federal tax returns for any person or entity other than herself;
- 22 b) Assisting in the preparation or filing of federal tax returns for any person
23 or entity other than herself;
- 24 c) Assisting in the preparation of federal tax returns that she knows will result
25 in the understatement of any tax liability or the overstatement of federal
26 tax refunds or credits;
- 27 d) Directing the preparation or filing of federal tax returns for any person or
28 entity other than herself;

- e) Representing, or appearing on behalf of, any person or entity before the Internal Revenue Service;
- f) Preparing, filing, or assisting in preparing or filing federal income tax returns or other related documents and forms, for anyone other than herself;
- g) Instructing, advising, or assisting others in the violation of the tax laws;
- h) Engaging in activity subject to penalty under 26 U.S.C. § 6694;
- i) Engaging in activity subject to penalty under 26 U.S.C. § 6701;
- j) Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

2. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Marla L. Cunningham is prohibited from owning, controlling, or managing any business involving tax return preparation and/or the provision of tax advice, or maintaining a professional presence in any premises, whether an office, place of business, dwelling, or other abode, where tax returns are being prepared for a fee or professional tax services are being provided.

3. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Marla L. Cunningham shall:

- a) Within 30 days of the Court's order, and at her own expense, prominently post at all physical locations where she offered federal tax return preparation services a sign, placard, or similar object, in every case with dimensions of at least 8.5 in. x 11 in., saying, in font of at least point size 42, "Marla L. Cunningham does not offer federal tax return preparation services, per Court order." Defendant Marla L. Cunningham shall also post a copy of this order of permanent injunction with that sign.
- b) Within 30 days of the Court's order, and at her own expense, prominently post an electronic copy, or a link—in font of at least point size 14—to an electronic copy of this order of permanent injunction on any active

1 website, social media site, or social media profile under her control if the
2 website, social media site, or social media profile was or is used to
3 advertise federal tax return preparation services. Alternatively, Defendant
4 Marla L. Cunningham may deactivate any active website, social media
5 site, or social media profile under her control that is or was used to
6 advertise federal tax return preparation services.

7 c) Within 60 days of the Court's order, and at her own expense, contact by
8 certified mail, and, if an e-mail address is known, by e-mail, to each person
9 or entity for whom Defendant Marla L. Cunningham has prepared or
10 assisted in preparing federal income tax returns during the last three years,
11 to inform them of the permanent injunction entered against her, and
12 include a copy of the Court's Permanent Injunction Order, but not
13 enclosing any other documents or enclosures unless agreed to by counsel
14 for the United States or approved by the Court;

15 d) Within 60 days of the Court's order, turn over to the United States a list
16 that identifies by name, social security number, address, e-mail address,
17 telephone number, and tax period(s), all persons, or entities for whom
18 Defendant Marla L. Cunningham prepared federal tax returns or claims for
19 refund in the last three years;

20 e) Surrender to the Secretary of the Treasury or his delegate all PTINs held
21 by, assigned to, or used by Defendant Marla L. Cunningham pursuant to
22 26 U.S.C. § 6109, as well as any EFINs held by, assigned to, or used by
23 her, and the IRS is authorized to cancel any such PTIN or EFIN;

24 f) Within 90 days of the Court's order, provide a declaration to counsel for
25 the Department of Justice, signed under penalty of perjury, confirming that
26 Defendant Marla L. Cunningham has received a copy of the Court's order
27 and has timely complied with the terms described in this order.
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1 4. The United States is permitted to engage in post-judgment discovery to ensure
2 Defendant Marla L. Cunningham's compliance with the terms of this Order of Permanent
3 Injunction entered against her.

4 5. This Court shall retain jurisdiction over this action for purposes of
5 implementing and enforcing the permanent injunction.

6 **IT IS SO ORDERED.**

7 Dated: May 9, 2025

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10 Honorable Benjamin J. Cheeks
11 United States District Judge
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