

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil No. 4:09-cv-00062 JAJ-CFB
)	
HOWARD MUSIN, et al.)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF UNITED STATES' MOTION FOR
PRELIMINARY INJUNCTION**

Howard Musin, and Jill Schwartz-Musin prepare blatantly false federal income tax returns. They conduct their fraudulent return preparation business through several corporate entities, but primarily through SSC Services. The federal income tax returns Defendants prepare overstate their customers' business expenses and understate their customers' income. Defendants invent expenses their customers never incurred, inflate those expenses customers did incur, and deduct their customers' personal expenses as business expenses. For these reasons, as explained more fully below, this Court should preliminarily enjoin Defendants from preparing federal tax returns.

I. DEFENDANTS' ACTIVITIES

A. *Defendants are federal income tax preparers.*

Howard Musin (“Musin”) and his wife Jill Schwartz-Musin (“Schwartz-Musin”) prepare fraudulent federal income tax returns through SSC Services Corporation (“SSC Services”).¹ Although Musin only began signing federal income tax returns in 2002, Schwartz-Musin has a long, dismal history of engaging in various types of misconduct while preparing federal income tax returns.²

In 1987, the IRS barred Schwartz-Musin from representing taxpayers in disputes with the IRS because Schwartz-Musin was falsely holding herself out to customers as a CPA.³ Despite being ineligible to practice before the IRS, Schwartz-Musin has attempted—on at least eight occasions between 2001 and 2003—to serve as a taxpayer’s representative during IRS investigations.⁴ Then, between 1996 and 1997, the IRS audited 49 returns Schwartz-Musin prepared—mostly for self-employed individuals.⁵ Of these 49 returns, 44 contained

¹Exhibit A, Declaration of Revenue Agent Jean Lane (hereinafter “Lane Decl.”) at ¶¶ 4-8.

²Lane Decl. at ¶¶ 9-18.

³Lane Decl. at ¶ 9.

⁴Lane Decl. at ¶ 9; Exhibits A1-A8. On these forms, Schwartz-Musin used a mark that is neither clearly a “b,” which would indicate Schwartz-Musin is a Certified Public Accountant, nor an “h,” which would indicate that Schwartz-Musin is an unenrolled return preparer.

⁵Lane Decl. at ¶¶ 10-11.

impermissible rent deductions.⁶ As a result of these impermissible rent deductions, the IRS assessed Schwartz-Musin \$500 in penalties pursuant to 26 U.S.C. § 6694.⁷

During the audits that led to these penalties, Schwartz-Musin submitted back-dated leases to IRS auditors in an attempt to substantiate the impermissible deductions she claimed on the audited returns.⁸ As a result of her fraud, in 2000, a grand jury sitting in the Southern District of Iowa charged Schwartz-Musin with eleven counts of obstructing the administration of the internal revenue laws, as well as four counts of willfully failing to file federal income tax returns for a corporation Schwartz-Musin operated.⁹ Schwartz-Musin pled guilty to one count of obstructing the administration of the internal revenue laws and was sentenced to three months in a community corrections center program, five months of home confinement, a \$15,000 fine, and one year of probation.¹⁰

After serving her criminal sentence, Schwartz-Musin enlisted Musin to prepare and sign fraudulent tax returns. During a recent series of 168 audits of Defendants' customers by IRS agents, 98 percent of the returns that SSC Services prepared and Musin signed contained

⁶Lane Decl. at ¶ 11. Schwartz-Musin claimed on one return that her customer was renting from her spouse property the customer and the spouse jointly owned. Id. Schwartz-Musin claimed these deductions for her customers even though the Internal Revenue Code explicitly says that rent is only a permissible deduction when paid to lease property in which the taxpayer "has no equity." 26 U.S.C. § 162(a)(3) (2006).

⁷Lane Decl. at ¶ 13.

⁸Lane Decl. at ¶ 16.

⁹Lane Decl. at ¶ 17.

¹⁰Lane Decl. at ¶ 7.

significant errors.¹¹ The inaccuracies on their customers' returns are far from the occasional clerical error. Instead, these audits show Defendants intentionally disregard accuracy in their attempt to fraudulently reduce their customers' federal income tax liabilities.¹²

B. *Defendants intentionally understate customers' tax liability on federal income tax returns they prepare.*

As explained below, the returns SSC Services prepares—and that Musin signs—are littered with fabricated and inflated expense deductions. Musin, Schwartz-Musin, and/or other SSC Services employees fabricate or inflate expense deductions when preparing customers' federal income tax returns to lower their customers' federal tax liabilities.¹³ These falsehoods and other improper deductions fall into five general categories. First, SSC Services overstates the expenses customers incur in using their homes for a business purpose. Second, SSC Services inflates deductions for other business expenses. Third, SSC Services impermissibly deducts non-deductible personal expenses customer incur in maintaining “a professional image.” Fourth, SSC Services deducts other non-deductible, personal expenses. Finally, SSC Services fails to report all income its customers earn.

¹¹Lane Decl. at ¶ 76 (describing results from 116 audits, including 115 where taxpayers underpaid their true tax liability); *id.* at ¶ 72 (describing the results of 52 audits, including 51 where taxpayers underpaid their true tax liability).

¹²See Declaration of Kathleen Roberts (“Roberts Decl.”) at ¶¶ 108-09.

¹³See Roberts Decl. at ¶ 12.

1. Overstated Rent Expense and Business Use of the Home Expense Deductions

Musin and SSC Services cater to many customers who are self-employed and operate an incorporated or unincorporated business out of their homes.¹⁴ In order for home-based business owners and corporations to claim a tax deduction for rent (corporations) or use of the business owner's home (unincorporated businesses), they must meet certain requirements.¹⁵ If a corporation rents space in the home of a shareholder, the corporation may claim a rent expense deduction if (1) the corporation has exclusive control over the space, (2) the corporation actually makes rent payments to the owner, and (3) the deduction does not exceed the fair market rental value of the space the corporation occupies.¹⁶

An unincorporated business owner may also claim deductions for expenses associated with the business use of his or her home, but the owner must use a portion of his home exclusively for a business purpose and under no circumstances may the business owner claim a deduction larger than the business's gross income.¹⁷ The portion of the space in an owner's

¹⁴Lane Decl. at ¶ 39.

¹⁵Only certain of the limitations on business use of the home deductions are discussed here and in the Lane Decl. at ¶ 46. For an explanation of the full panoply of requirements and limitations on the business use of the home, see INTERNAL REVENUE SERVICE, PUBLICATION 587, BUSINESS USE OF YOUR HOME 2-5 (2007), available at <http://www.irs.gov/pub/irs-pdf/p587.pdf>.

¹⁶Lane Decl. at ¶ 46; see also 26 U.S.C. § 162(a)(3) (“There shall be allowed as a deduction all the ordinary and necessary expenses *paid or incurred* during the taxable year in carrying on any trade or business, including . . . rentals or other payments *required to be made* as a condition to the continued use or possession”) (emphases supplied).

¹⁷See PUBLICATION 587, supra note 15, at 7 (explaining that to calculate the business use of the home deduction, the owner subtracts from gross income the business percentage of mortgage interest and real estate taxes, as well as all business expenses not connected to the use of the home; the difference is the maximum deduction permissible for expenses such as utilities, (continued...))

home that an unincorporated business occupies is known as the “business percentage,” and this figure is also used to determine what portion of other home expenses may be attributed to the business for tax purposes.¹⁸ Musin signs returns on which his customers claim rent expense deductions or business use of the home deductions vastly exceeding the deduction to which the customer is actually entitled.¹⁹

For example, SSC Services customers Roy and Jolyn Pilger operate an unincorporated business from their home.²⁰ This business incurred net losses during 2004 and 2005, and accordingly, the Pilgers were ineligible to claim any business-use-of-the-home deductions in these years.²¹ Even so, in both years, Musin improperly claimed a \$2,000 deduction for utility costs associated with the use of the Pilgers’ home for a business purpose.²²

Another SSC Services customer, Doris Johnson, submitted documents to SSC Services indicating that, in 2003, her unincorporated business occupied 150 square feet of her 1500 square-foot home.²³ Although Johnson reported her business occupied only 10% of her home, Musin more than doubled Johnson’s business-use-of-the-home deduction by calculating her

¹⁷(...continued)
maintenance, insurance, and depreciation).

¹⁸PUBLICATION 587, supra note 15, at 6-7.

¹⁹Lane Decl. at ¶ 39.

²⁰Lane Decl. at ¶ 52.

²¹Lane Decl. at ¶¶ 51-52.

²²Lane Decl. at ¶ 52.

²³Roberts Decl. at ¶ 38.

deduction with a business use percentage of 23%.²⁴ Further, Johnson incorporated her business during the 2004 tax year into Doris Folk Johnson, Inc. (“DFJ Inc.”).²⁵ Although DFJ Inc.’s general ledger does not indicate that the corporation paid any rent to Ms. Johnson during 2004, Musin deducted an \$18,000 rent expense on DFJ Inc.’s 2004 federal income tax return.²⁶

Similarly, Musin prepared the federal income tax returns for RS Tyson, Inc. (“RS Tyson”) in 2003, 2004, and 2005.²⁷ In 2003, RS Tyson’s general ledger shows it paid \$9,300 in rent, but Musin claim a rent expense deduction of \$24,000 on the corporation’s return.²⁸ Then, in 2004, RS Tyson’s general ledger shows the corporation paid \$5,200 in rent, but Musin claimed a \$36,000 rent expense deduction.²⁹ Finally, in 2005, RS Tyson’s owners provided Musin with a summary of the corporation’s 2005 expenses, including the corporation’s rent expense of \$3220. The summary even contained a handwritten note from the corporation’s owners stating “[t]his is the amount I actually wrote a check for rent for office.”³⁰ Nevertheless,

²⁴Id. (SSC Services’ internal documents show SSC Services prepared the return as if Johnson used 350 square-feet in her home exclusively for a business purpose).

²⁵Roberts Decl. at ¶ 33

²⁶Roberts Decl. at ¶ 40.

²⁷Roberts Decl. at ¶ 50.

²⁸Roberts Decl. at ¶ 52.

²⁹Roberts Decl. at ¶ 53.

³⁰Roberts Decl. at ¶ 54.

Musin inflated the rent expense from \$3220 to \$9695 on RS Tyson's 2005 federal income tax return.³¹

These examples are typical of returns SSC Services prepares and Musin signs.³²

Although Musin denies any involvement in aiding his customers to calculate their rent expense or business use of the home deductions, customers tell a different story.³³ SSC Services customers report that Musin and Schwartz-Musin determined the rent expense deductions their corporations claimed without reference to an estimate of their home's fair market rental value.³⁴ For example, SSC Services customer Steven Toovell said that Schwartz-Musin informed him how much his corporation, Toovell Associates, should pay to him and his wife annually for rent without knowing the fair market rental value of their home.³⁵

That Musin and Schwartz-Musin are contriving these numbers arbitrarily is reinforced by the values of rent expense deductions themselves. Several corporations claimed rent expense deductions of exactly \$36,000, exactly \$24,000, and exactly \$18,000.³⁶ Because of the method

³¹Roberts Decl. at ¶ 54.

³²Lane Decl. at ¶ 39.

³³Lane Decl. at ¶ 41 (describing an interview with IRS agents in which Musin claimed to not be involved in calculating these deductions for customers).

³⁴Lane Decl. at ¶¶ 43-44; see also id. at ¶ 48 (stating that Musin claims to base his rent expense deductions on third-party estimates but was unable to produce any estimates that were dated before the IRS began auditing returns he signed).

³⁵Exhibit C, Declaration of Steven Toovell (hereinafter "Toovell Decl.") at ¶¶ 12-14.

³⁶Lane Decl. at ¶ 45.

by which a corporation must calculate its rent expense when leasing from a corporate owner,³⁷ it is extremely unlikely that—calculated properly—multiple corporations using the same tax return preparer would owe their owners precisely the same amount of rent as so many other corporations using the same return preparer.³⁸

2. Other Overstated Business Expenses

As with rent expense and business-use-of-the-home deductions, SSC Services and Musin disregard customers' actual expenses when claiming other business expense deductions on federal income tax returns. The returns SSC Services prepares and Musin signs are replete with business expense deductions that either (1) exceed the customer's actual expense or (2) allow the customer to claim a business expense deduction for both the deductible and non-deductible portions of an expense that is only partially deductible. Both kinds of overstated business expense deduction are improper because only "ordinary and necessary expenses paid or incurred . . . in carrying on any trade or business" may be claimed as deductions on federal income tax returns.³⁹

³⁷See supra note 15 and accompanying text; see also Maschmeyer's Nursery, Inc. v. Comm'r, 71 T.C.M. (CCH) 2188, 1996 WL 78462, at *3 (1996) ("Although the statutory standard does not expressly limit the deduction to a reasonable amount, where the lessor and lessee are closely related and there is no arm's-length dealing between them, an inquiry into what constitutes a reasonable rental is necessary to determine whether the sums paid exceed what the lessee would have been required to pay in an arm's-length transaction with an unrelated party.").

³⁸Lane Decl. at ¶ 47. For other instances of overstated rent expense on federal income tax returns SSC Services prepared, see Roberts Decl. at ¶¶ 19, 41, 69.

³⁹26 U.S.C. § 162(a) (2006).

The returns SSC Services prepares are rife with fabricated expenses. The following are a few examples of instances in which SSC Services prepared returns on which it claimed deductions for expenses that Defendants fabricated:

- On Ulrich Associates' 2004 return, SSC Services reported a \$10,205.25 deduction for "promotional expenses" the company did not incur; in 2005, SSC Services claimed a supplies expense deduction of \$14,000 more than the company reported spending on supplies.⁴⁰
- Musin signed a 2005 federal tax return on which DFJ, Inc. claimed a \$9112 deduction for office expenses when the corporation only reported incurring \$4112 of office expenses.⁴¹
- On RS Tysons' 2003 federal income tax return, Musin claimed as a deduction a \$12,000 "Equipment Lease and Rental" expense the corporation did not incur.⁴²
- In 2005, Toovell Associates provided financial information to SSC Services including seven "advertising" expenses that total \$8,665. The Defendants prepared Toovell Associates' 2005 federal income tax return and claimed a \$14,232 advertising expense deduction.⁴³
- In 2004, the partners in Becker & Chaney Associates provided SSC Services with expense information indicating the partnership incurred \$13,419 in "advertising

⁴⁰Roberts Decl. at ¶¶ 26, 29.

⁴¹Roberts Decl. at ¶ 46.

⁴²Roberts Decl. at ¶ 55.

⁴³Roberts Decl. at ¶ 76.

and promotional” expenses. SSC Services claimed a \$23,419 “promotional advertising expense deduction on the partnership’s return.”⁴⁴

The following chart summarizes other instances of SSC Services claiming inflated or fabricated business expense deductions as reported in IRS Revenue Agent Kathleen Roberts’ declaration:

Customer	Year	Amount	Inflated, fabricated, or duplicated expense	Location in Declaration
Ulrich Associates	2005	\$3,000	Fabricated automobile expense deduction	¶ 23
Ulrich Associates	2004	\$3,144.25	Fabricated gifts expense	¶ 24
Doris Johnson	2003	\$1,360	Fabricated meals and entertainment expenses included in base amount from which 50% deduction claimed	¶ 35
Doris Johnson	2003	\$1,000	Inflated freight and postage deduction	¶ 36
DFJ, Inc.	2004	\$3,248	Inflated advertising and promotion expense deduction	¶ 42
DFJ, Inc.	2005	\$4,000	Inflated advertising expense deduction	¶ 44
DFJ, Inc.	2005	\$4,000	Inflated supplies expense deduction	¶ 45
Gottlieb Associates	2004	\$1,000	Inflated supplies expense deduction	¶ 61
Gottlieb Associates	2005	\$1,000	Inflated supplies expense deduction	¶ 61
Gottlieb Associates	2004	\$2,482	Fabricated travel expense deduction	¶ 62
Toovell Associates	2003	\$5,717	Home interest expense deducted on both corporate and individual returns	¶ 73
Becker & Chaney Associates	2003	\$3,050	Fabricated legal fees expense deduction	¶ 80
Becker & Chaney Associates	2003	\$4,560	Fabricated travel expenses included in base amount from which 50% deduction claimed	¶ 81

⁴⁴Roberts Decl. at ¶ 83.

Becker & Chaney Associates	2003	\$8,000	Inflated supplies expense deduction	¶ 82
ABS Partnership	2003	\$2,677.50	Inflated business phone expense deduction	¶ 89
ABS Partnership	2003	\$1,723	Inflated travel expense deduction	¶ 90
ABS Partnership	2004	\$2,373	Fabricated supplies expense deduction	¶ 92

Where the customer has incurred expenses that are only partially deductible, SSC Services claims both the deductible and non-deductible portions of the expense as a business expense deduction. These are a few examples:

- Doris Johnson reported to SSC Services that she drove her car 9100 miles in 2003, and that 55% of those miles were for a business purpose. SSC Services prepared Johnson's federal income tax return as if 81% of the miles she drove arose from a business purpose.⁴⁵
- Similarly, on the 2005 federal income tax return for DFJ Inc., which operates from Johnson's home, the Defendants deducted all expenses associated with cleaning Johnson's home instead of only the expense associated with cleaning the portion of Johnson's home that DFJ, Inc. occupies.⁴⁶
- In 2003 and 2004, Ulrich Associates' owners provided SSC Services with the corporation's expense information, including \$14,415 and \$17,805 of automobile

⁴⁵Roberts Decl. at ¶ 37; see also *id.* at ¶ 68 (describing a similar failure to reduce automobile expenses for personal use).

⁴⁶Roberts Decl. at ¶ 47; see also *id.* at ¶ 75 (describing an identical error included on Toovell Associates' 2005 federal income tax return); *id.* at ¶ 91 (describing an identical error included on ABS Partnership's 2003 federal income tax return).

expenses, respectively.⁴⁷ Even though the owners provided their personal automobile expenses combined with their business automobile expenses, Musin claimed 100% of the reported automobile expenses as deductions without any reduction for the owners' personal use.⁴⁸

- In 2003, 2004, and 2005, Toovell Associates had significant expenditures associated with food purchased for sales meetings.⁴⁹ Musin claimed a deduction for the full amount of these expenditures, even though only 50% of these expenditures could be deducted by statute.⁵⁰

The errors on SSC Services are not attributable to incorrect or incomplete information provided by SSC Services' customers or attributable to additional information supplied to SSC Services that was not supplied to IRS auditors.⁵¹ SSC Services customers have learned through IRS audits that when they submitted correct expense information to SSC Services, SSC Services ignored or disregarded this information in order to fabricate larger expense deductions for its

⁴⁷Roberts Decl. at ¶ 22.

⁴⁸Roberts Decl. at ¶ 22 (explaining that neither Musin nor the corporation owners could produce a log indicating what percentage of the automobile expenses were attributable to personal use); see also id. at ¶ 24 (describing Musin's failure to reduce Ulrich Associates' deduction for cellular telephone expenses by the amount attributable to the owner's personal use in 2003, 2004, and 2005).

⁴⁹Roberts Decl. at ¶ 71.

⁵⁰26 U.S.C. § 274(n) (2006); Roberts Decl. at ¶ 71 (explaining that SSC Services inflated the entertainment and food expense in addition to not reducing the expenses incurred by 50%).

⁵¹Roberts Decl. at ¶¶ 4-12 (describing Agent Roberts' diligence in matching customer-reported expense information to SSC Services' interview sheets and the returns customers filed); Lane Decl. at ¶ 29 (explaining that SSC Services keeps electronic records of the expense information customers provide to it).

clients. The following examples demonstrate that significant errors on federal tax returns arose—not because customers failed to provide correct or complete information—but because SSC Services ignored this information to create larger expense deductions:

- Steve Toovell reports that in 2003, 2004, and 2005 he provided Schwartz-Musin with (1) receipts for all of the Toovells' automobile expenses, and (2) mileage logs indicating the total number of miles driven in a year and the number of those miles that were attributable to a business purpose.⁵² In each of these three years, SSC Services prepared returns that contained little or no reduction for the Toovells' personal use of their cars, even though such a position was not justified by the mileage logs the Toovells submitted.⁵³ Moreover, Schwartz-Musin falsely advised Toovell that he could log as business miles the trip from his principal place of business to his home office.⁵⁴
- Marlyn Gottlieb asserts that SSC Services also ignored the automobile expense information that she provided.⁵⁵ Schwartz-Musin instructed Gottlieb to include all of the Gottliebs' automobile expenses (personal and business) on the summary

⁵²Toovell Decl. at ¶¶ 22-24.

⁵³Toovell Decl. at ¶¶ 28-29.

⁵⁴Toovell Decl. at ¶ 26. The expenses a person incurs in commuting from his or her principal place of business to home are never deductible. See INTERNAL REVENUE SERVICE, PUBLICATION 463, TRAVEL, ENTERTAINMENT, GIFT, AND CAR EXPENSES 14 (2007), available at <http://www.irs.gov/pub/irs-pdf/p463.pdf> (containing a graphic that shows that travel between one's main job and home are never deductible).

⁵⁵Exhibit D, Declaration of Marlyn Gottlieb (hereinafter "Gottlieb Decl.") at ¶¶ 22-29.

of expenses Gottlieb provided to SSC Services.⁵⁶ In 2003 and 2004, SSC Services deducted on Gottlieb Associates' return 95% and 100%, respectively, of the automobile expenses the Gottliebs reported. The mileage logs the Gottlieb provided Schwartz-Musin, however, showed the Gottliebs used their cars for a business purpose less often.⁵⁷ In 2005, Gottlieb reported incurring \$9,135 in automobile expenses, but the return SSC Services prepared claimed a \$18,223 automobile expense deduction.⁵⁸ Gottlieb offered SSC Services no information justifying a larger deduction.⁵⁹ Similarly, each year, Gottlieb's husband informed Schwartz-Musin that only 50% of the airplane expenses he reported arose from a business purpose; each year, SSC Services deducted 100% of the expenses associated with the airplane on the Gottliebs' return.⁶⁰

- SSC Services customer Debbie Habeck Williams provided SSC Services with expense information indicating her corporation incurred \$5,273.75 in automobile expenses during 2003.⁶¹ On her corporation's 2003 return, SSC Services claimed

⁵⁶Gottlieb Decl. at ¶ 23

⁵⁷Gottlieb Decl. at ¶¶ 25-26.

⁵⁸Gottlieb Decl. at ¶¶ 27-29.

⁵⁹Id.

⁶⁰Gottlieb Decl. at ¶¶ 31-33.

⁶¹Exhibit E, Declaration of Debbie Habeck Williams (hereinafter "Williams Decl.") at ¶ 28.

\$8,984 in automobile expenses.⁶² Williams offered SSC Services no information justifying a larger deduction.⁶³ For the 2004 tax year, Williams mailed Schwartz-Musin expense information indicating her corporation had incurred a cost of goods sold of \$82,901.⁶⁴ The return SSC Services prepared contained an expense deduction for cost of goods sold of \$113,901.⁶⁵ Williams provided no information to SSC Services indicating she had a higher cost of goods sold.⁶⁶

- SSC Services customer Maureen Shaw informed Musin that the expense information she was providing SSC Services contained a category called “consulting fees” in which she was recording payments her corporation was making for the purchase of a Shaklee customer list.⁶⁷ SSC Services prepared returns on which it improperly amortized the corporation’s purchase price of the customer list over five years instead of the required fifteen years.⁶⁸ Then, SSC Services claimed a “consulting” expense deduction for the money the corporation

⁶²Williams Decl. at ¶ 29.

⁶³Id.

⁶⁴Williams Decl. at ¶ 31.

⁶⁵Williams Decl. at ¶ 32.

⁶⁶Id.

⁶⁷Exhibit F, Declaration of Maureen Shaw (hereinafter “Shaw Decl.”) at ¶¶ 15-16.

⁶⁸Shaw Decl. at ¶ 17; see 26 U.S.C. § 197(a)-(d) (providing that customer-based intangibles, including any value “resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers,” may only be deducted ratably over a 15-year period).

was paying to purchase the customer list over a five year period.⁶⁹ Thus, SSC Services claimed two deductions for the purchase of one customer list on the corporation's return.⁷⁰

In each of these cases, customers correctly reported their expense information to SSC Services, and each time, SSC Services disregarded that information to inflate the deduction to which the customer was legitimately entitled.

3. "Image" Expense Deductions

Musin and Schwartz-Musin encouraged their customers to deduct as business expenses personal expenditures made to benefit the customer's personal appearance, including expenses associated with hair care, nail care, tanning, and personal clothes.⁷¹ Musin and Schwartz-Musin falsely claim that because many of their customers sell cosmetics, they are "selling an image" and that, consequently, they may deduct "amounts spent to maintain a professional image" as valid business deductions.⁷² To the contrary, personal expenses such as hair care, nail care, and clothing are not deductible for a cosmetics salesperson just as they are not deductible for anyone else.⁷³

⁶⁹Shaw Decl. at ¶¶ 18-19.

⁷⁰Shaw Decl. at ¶¶ 19-21.

⁷¹Lane Decl. at ¶¶ 64, 66; Shaw Decl. at ¶¶ 11-12.

⁷²Lane Decl. at ¶¶ 55, 64; Gottlieb Decl. at ¶¶ 41-44; Shaw Decl. at ¶¶ 11-13; Williams Decl. at ¶¶ 14-17; Toovell Decl. at ¶¶ 30-33.

⁷³Lane Decl. at ¶ 54; see INTERNAL REVENUE SERVICE, PUBLICATION 535, BUSINESS EXPENSES (2007), available at <http://www.irs.gov/publications/p535/index.html>.

Many of the returns SSC Services prepares and Musin signs contained deductions for personal health and beauty expenses labeled as “Image” expense deductions (prior to 2003) or other line item deductions (after 2003).⁷⁴ Musin and Schwartz-Musin tell customers that these expenses are legitimate deductions.⁷⁵ The form SSC Services uses to collect information about its customers’ expenses includes a space prompting the customer to include expenses used to maintain their image, and Musin and Schwartz-Musin assure customers these deductions are legitimate.⁷⁶

Numerous SSC Services customers have improperly claimed “Image” expense deductions.⁷⁷ Lorraine Ulrich claimed a \$5928 “Image” expense deduction on her 2003 federal income tax return that Musin signed.⁷⁸ Of this amount, \$4154 arose from non-deductible personal expenditures such as a gym membership, hair care, and clothing; the other \$1774 was fabricated.⁷⁹ On Howard Pond and Christine DeClark’s 1998 through 2001 federal income tax returns, Musin claimed deductions for expenses that arose from DeClark’s haircuts, trips to a nail

⁷⁴Lane Decl. at ¶ 66. Prior to 2003, Musin included “Image” expense deductions as a separate line item on returns. After 2003, Musin began including these expenses as part of existing deduction line items to decrease the likelihood of an audit. *Id.* at ¶ 64. For example SSC Services customer Gottlieb Associates claimed an “Image” expense deduction on its 2003 return for expenditures that benefitted its owners, the Gottliebs, personally. Roberts Decl. at ¶ 63. In 2004 and 2005, these same types of expenditures were deducted as “Advertising Expenses.” *Id.* Similarly, Schwartz-Musin told Debbie Habeck Williams to begin labeling her “Image” expenses as “promotional” expenses in 2003 or 2004. Williams Decl. at ¶ 17.

⁷⁵Lane Decl. at ¶ 66.

⁷⁶Lane Decl. at ¶ 63.

⁷⁷Lane Decl. at ¶ 65.

⁷⁸Roberts Decl. at ¶ 20.

⁷⁹*Id.*

salon, and maternity clothes.⁸⁰ Similarly, Musin claimed “image” expense deductions for Doris Johnson,⁸¹ the Tysons,⁸² the Gottliebs,⁸³ the Toovells,⁸⁴ Maureen Shaw,⁸⁵ the Bruns,⁸⁶ and Debbie Habeck Williams.⁸⁷

Customers report that Musin and Schwartz-Musin actively encouraged them to record and submit to SSC Services information about the money they spend maintaining a professional appearance. SSC Services customers Maureen Shaw, Deborah Williams, Steve Toovell, and Marlyn Gottlieb all indicate that Musin or Schwartz Musin assured them that expenses associated with hair care, nail care, and professional clothing were valid business expense deductions.⁸⁸

4. Other Impermissible Personal Expense Deductions

From the mundane to the extraordinary, SSC Services deducts any personal goods or services the business’s owners purchase.⁸⁹ SSC Services deducted as business expenses a

⁸⁰Exhibits A9, A10.

⁸¹Roberts Decl. at ¶¶ 34, 43.

⁸²Roberts Decl. at ¶ 51.

⁸³Roberts Decl. at ¶ 63.

⁸⁴Roberts Decl. at ¶ 70.

⁸⁵Shaw Decl. at ¶¶ 12-13.

⁸⁶Roberts Decl. at ¶¶ 86-88.

⁸⁷Williams Decl. at ¶¶ 15-18.

⁸⁸Gottlieb Decl. at ¶¶ 41-44; Shaw Decl. at ¶¶ 11-13; Williams Decl. at ¶¶ 14-17; Toovell Decl. at ¶¶ 30-33.

⁸⁹Section 2 above addressed improper business expense deductions that were partially a
(continued...)

customer's personal trips to Sweden, Cancun, and Florida⁹⁰ and the price of a hot tub a corporation purchased for the benefit of one of its owners.⁹¹ SSC Services also deducted expenses associated with other less-glamorous personal items such as homeowners' insurance,⁹² utility bills of a shareholder's home,⁹³ a personal coach,⁹⁴ and products used from a business's inventory.⁹⁵

Two particularly egregious examples:

- For one customer, SSC Services deducted as a business expense money spent on her daughter's wedding.⁹⁶ Debbie Habeck Williams asked Schwartz-Musin if she (Williams) could deduct the cost of inviting a few business associates to her daughter's wedding.⁹⁷ The correct answer to that question is "no."⁹⁸ Schwartz-

⁸⁹(...continued)
valid business expense and partially a personal expense or partially non-deductible by statute. The improper deductions mentioned here are not partially deductible.

⁹⁰Roberts Decl. at ¶ 21.

⁹¹Roberts Decl. at ¶ 56.

⁹²Roberts Decl. at ¶ 28.

⁹³Roberts Decl. at ¶¶ 27, 72.

⁹⁴Roberts Decl. at ¶ 57.

⁹⁵Roberts Decl. at ¶ 64.

⁹⁶Williams Decl. at ¶ 20.

⁹⁷Williams Decl. at ¶ 19.

⁹⁸McReavy v. C.I.R., 57 T.C.M. (CCH) 133, 1989 WL 35579 ("Although the McReavys allege that many of the guests invited to the wedding receptions were clientele or referral sources for Washburn-McReavy, the McReavys, as the parents of the brides, held the receptions primarily to celebrate the marriages of their daughters. They did not conduct any business for

(continued...)

Musin told Williams that because all of the guests were either past, present, or possible future customers, Williams could deduct the entire cost of her daughter's wedding, including the flowers.⁹⁹ In fact, either Musin or Schwartz-Musin told Williams that they had deducted the entire cost of their own child's wedding for the same reason.¹⁰⁰ The Defendants thus claimed over \$6,400 in wedding-expense deductions on Williams' return.¹⁰¹ This sum included \$836 spent on flowers and \$380 spent at a nail salon.¹⁰² Moreover, these fraudulent deductions appeared in at least seven different categories on the return.¹⁰³ On audit, the IRS properly disallowed all wedding-related deductions.

- SSC Services claimed a deduction on Toovell Associates' 2004 and 2005 corporate income tax returns for depreciation on nearly \$30,000 of furniture the Toovells purchased to decorate their personal vacation home in Florida.¹⁰⁴ SSC Services allowed this deduction even though Schwartz-Musin kept the Toovells'

⁹⁸(...continued)

Washburn-McReavy and any goodwill in the corporation acquired by holding the receptions was purely incidental.”).

⁹⁹Williams Decl. at ¶ 20.

¹⁰⁰Williams Decl. at ¶ 21.

¹⁰¹Lane Decl. at ¶ 86.

¹⁰²Lane Decl. at ¶ 84.

¹⁰³Lane Decl. at ¶ 86.

¹⁰⁴Toovell Decl. at ¶¶ 17-21; Roberts Decl. at ¶ 69.

books of account and knew that these acquisitions were not business assets that could be depreciated.¹⁰⁵

5. Failure to Report Income

On several returns SSC Services prepared and Musin signed, the corporation claimed a deduction for expenses incurred in paying its owners, but the owners do not report receiving the payment as income. Because Musin is signing returns for both the business and its owners, he knows what expenses the business is claiming and what income the owner is reporting. Thus, Musin knows that either he is misreporting the owner's income or misreporting the business's expenses.

For example, Ulrich Associates purportedly paid its officer \$26,000 during 2003; Musin claimed a deduction on the corporation's 2003 return for that amount. But the corporation's only officer, Lorraine Ulrich, did not report receiving \$26,000 on her 2003 tax return.¹⁰⁶ Also, on its 2005 return, DFJ, Inc. claimed a deduction for "Outside Labor" including \$11,285 allegedly paid as an "Owner's Draw."¹⁰⁷ DFJ Inc.'s owner, however, did not report receiving \$11,285 from the corporation on her personal 2005 federal income tax return.¹⁰⁸ In 2003, SSC Services claimed a \$6,377 deduction for compensation of officers on Toovell Associates' federal income tax

¹⁰⁵Roberts Decl. at ¶ 76; Toovell Decl. at ¶¶ 17-21 (stating that the list of items Toovell provided to Schwartz-Musin "included items such as mattresses, bedroom sets, outdoor furniture, driveway sealing, pillows, dining room fixtures, kitchen appliances, and towels.").

¹⁰⁶Roberts Decl. at ¶ 18 (observing also that this expense is not listed in Ulrich's general ledger of expenses); see also id. at ¶ 30 (describing how Ms. Ulrich's reported income declined precipitously after Musin began preparing her returns).

¹⁰⁷Roberts Decl. at ¶ 48.

¹⁰⁸Id.

return.¹⁰⁹ Although the Toovells are their corporation's only officers, Defendants did not report this \$6,377 as income on the Toovells' individual 2003 federal income tax return.¹¹⁰

C. *Defendants manufactured documentation to justify a fraudulent position on a federal tax return.*

As if Defendants' utter disregard for truth and accuracy in preparing returns were not enough, Defendants have manufactured evidence in an effort to substantiate to the IRS the untenable positions they took on federal income tax returns.

The IRS audited the 2004, 2005, and 2006 federal income tax returns of Shristi, Inc. and its owners, Arindam Chatterjee and Devlina Lahiri.¹¹¹ During the audits, Musin served as Chatterjee and Lahiri's representative.¹¹² Even though Musin signed all the returns at issue, Schwartz-Musin had been intimately involved in preparing Shristi Inc.'s 2004 and 2005 returns.¹¹³ The IRS asked Chatterjee and Lahiri to provide documentation of a \$19,831 salary expense deduction Shristi, Inc. claimed on its 2004 return.¹¹⁴

In response to this request, Musin provided IRS agents with two 2004 Forms 1099-MISC.¹¹⁵ One of these Forms 1099-MISC indicated that Shristi, Inc. paid Shymali Lahiri \$8295

¹⁰⁹Roberts Decl. at ¶ 73.

¹¹⁰Id.

¹¹¹Roberts Decl. at ¶ 94.

¹¹²Roberts Decl. at ¶ 95.

¹¹³Roberts Decl. at ¶ 96.

¹¹⁴Roberts Decl. at ¶ 97.

¹¹⁵Roberts Decl. at ¶ 98; see Lane Decl. at ¶ 22 ("Businesses file Forms 1099 with the IRS to document certain types of income paid to sub-contractors or non-employees. These forms can be used in an audit to assist in verifying a business's sub-contractor or non-employee

(continued...)

during 2004, and listed a Social Security number for Shymali Lahiri.¹¹⁶ IRS records, however, indicated that Shristi, Inc. did not file any Forms 1099-MISC during 2004.¹¹⁷ Mr. Chatterjee has stated that neither he nor his wife (Devlina Lahiri) prepared the Form 1099-MISC for Shristi, Inc.¹¹⁸ Further, Shymali Lahiri, Devlina's mother, does not have a Social Security number because she is a citizen of India.¹¹⁹

Musin was present for an interview with IRS agents at which Mr. Chatterjee and Ms. Lahiri denied creating the Form 1099-MISC.¹²⁰ Confronted with a Form 1099-MISC that was not filed with the IRS, and that contained an erroneous Social Security number, Musin claimed to be unable to explain the origin of the very document he had previously provided to the IRS.¹²¹

The Form 1099-MISC bearing Shymali Lahiri's name and fictitious Social Security number contains the code "DXA" on the lower left corner.¹²² This code is used on IRS forms created and distributed by CFS Income Tax, a company operating from California.¹²³ CFS

¹¹⁵(...continued expenses.”).

¹¹⁶Roberts Decl. at ¶ 98.

¹¹⁷Lane Decl. at ¶ 23.

¹¹⁸Lane Decl. at ¶¶ 25-26 (indicating that SSC Services would have been responsible for preparing Forms 1099 for Shrishti, Inc. in 2004).

¹¹⁹Lane Decl. at ¶ 26.

¹²⁰Lane Decl. at ¶ 26.

¹²¹Lane Decl. at ¶ 27.

¹²²Roberts Decl. at ¶¶98, 105 and Exhibit B3.

¹²³Roberts Decl. at ¶ 106; Exhibit G, Declaration of Paul Finger at ¶¶ 10-11.

Income Tax sold SSC Services a package of 2004 IRS forms, including Forms 1099-MISC.¹²⁴

The evidence, albeit circumstantial, is clear: Musin fabricated a 1099-MISC during the course of an audit in an attempt to obstruct the IRS's investigation.

II. DEFENDANTS' CONDUCT IS LIKELY TO RECUR WITHOUT AN INJUNCTION

Defendants' past conduct indicates they will not cease their fraudulent activities without a court order. Schwartz-Musin falsely represents herself to customers as a Certified Public Accountant (CPA).¹²⁵ She has been doing so for quite some time. In 1987, the IRS permanently barred Schwartz-Musin from representing taxpayers before the IRS because she falsely told her customers she was a CPA.¹²⁶ Despite being ineligible to represent taxpayers before the IRS, between April, 2001 and September, 2003, Schwartz-Musin attempted to represent at least eight taxpayers before the IRS.¹²⁷ Thus, the administrative remedies available to the IRS were not sufficient to prevent Schwartz-Musin from attempting to represent taxpayers before the IRS.

Schwartz-Musin has also pled guilty to one count of interfering with administration of the internal revenue laws (26 U.S.C. § 7212(a)) in this Court.¹²⁸ In July, 2000, Schwartz-Musin pled guilty to a charge that she had presented IRS auditors with a lease that she falsely represented was signed on the date indicated in an effort to justify rent expense deductions to the

¹²⁴Roberts Decl. at ¶ 106 and Exhibit B4.

¹²⁵Lane Decl. at ¶ 9.

¹²⁶Lane Decl. at ¶ 9.

¹²⁷Lane Decl. at ¶ 9.

¹²⁸See United States v. Musin, No. 00-CR-0066 (S.D. Iowa).

IRS.¹²⁹ Judging from the falsified Form 1099-MISC that Musin submitted to IRS agents during the Chatterjee/Lahiri audits, an earlier \$15,000 fine and a year of probation were not enough to convince Musin and Schwartz-Musin that they should not submit fraudulent documents to IRS auditors.¹³⁰

Finally, Musin has continued to advise customers to claim “Image” expense deductions despite knowing from experience that these types of personal expenses are not deductible. In 2003, the IRS disallowed “Image” expenses during an audit of a return Musin signed.¹³¹ During that 2003 audit, an IRS employee explained to Musin why these so-called “Image” expenses are not deductible.¹³² As part of that audit, Musin signed a Revenue Agent Report on December 3, 2003 on which the IRS disallowed “Image” expenses.¹³³ Musin prepared all of the returns described in this memorandum after the IRS disallowed the so-called “Image” expenses during this 2003 audit.¹³⁴ Then again in 2005, the IRS notified Musin that it disallowed “Image” expense deductions claimed on another customer’s federal returns, which Musin had prepared.¹³⁵ That Musin ignored the lesson of these audits is clear: Musin and Schwartz-Musin continued to

¹²⁹Lane Decl. at ¶ 17.

¹³⁰Lane Decl. at ¶ 17.

¹³¹Lane Decl. at ¶ 57.

¹³²Lane Decl. at ¶ 59 and Exhibit A9 to Lane Decl.

¹³³Lane Decl. at ¶ 59 and Exhibit A10 to Lane Decl.

¹³⁴Lane Decl. at ¶ 60.

¹³⁵Lane Decl. at ¶ 61.

improperly claim “Image” expense deductions;¹³⁶ Musin and Schwartz-Musin continued to falsely teach customers that these kinds of expenses are deductible;¹³⁷ and the form SSC Services used to collect expense information from customers prompted customers to include “Image” expenses as late as 2007.¹³⁸ Musin defended the propriety of “Image” expense deductions to the IRS in October, 2007.¹³⁹

Although the current version of the form that SSC Services distributes to solicit expense information from customers no longer requests information about “Image” expenses, the form itself still invites inaccuracy.¹⁴⁰ The SSC Services-created form is unclear about whether customers should include all of their expenses or only those expenses attributable to their business. When the IRS asked Musin how customers using an earlier version of the form (attached as Exhibit A11) would determine whether to include all their expense information or only their business’s expenses, Musin told the IRS that the form is self-explanatory. The current incarnation of this “self-explanatory” form, however, specifically asks only about business expenses for some categories but not others, inviting customers to conclude they should include all their expense information. For example, the current version of the form does not specify whether customers should provide their total expenses or only their business-related expenses

¹³⁶Lane Decl. at ¶¶ 57-66.

¹³⁷Lane Decl. at ¶ 66; Gottlieb Decl. at ¶¶ 41-44; Shaw Decl. at ¶¶ 11-13; Williams Decl. at ¶¶ 14-17; Toovell Decl. at ¶¶ 30-33.

¹³⁸Lane Decl. at ¶ 63 and Exhibit A11 to Lane Decl.

¹³⁹Lane Decl. at ¶ 62.

¹⁴⁰Exhibit H, Declaration of Nicholas S. Bahnsen at ¶¶ 2-4; Exhibit H1.

with regard to homeowners' insurance, legal and accounting fees, repairs, supplies, taxes, travel, utilities, telephone bills, cleaning, books and publications, or bank charges.¹⁴¹

Musin and Schwartz-Musin's recidivism indicates that, unless enjoined, they and their corporate entities are likely to continue to flout the internal revenue laws to the detriment of the United States. Should they violate an injunction, the Government and the Court will be able to use civil and criminal contempt remedies to stop them.

III. HARM TO THE PUBLIC

Defendants' return-preparation practice is large. Since 2002, SSC Services has prepared tax returns for approximately 1022 customers per year.¹⁴² These customers are located in at least 45 different states.¹⁴³

Due to the size of their practice, the harm that the Defendants have caused to the United States is profound. Beginning in April, 2006, the IRS audited a total of 168 returns prepared by SSC Services and signed by Musin. Of these, 52 returns were for individuals who earned wage income or operated unincorporated businesses, and 116 returns were for individuals operating a business entity such as a partnership or corporation.¹⁴⁴ For each return SSC Services prepares and Musin signs for a customer who does not conduct business through a business entity, the customer underpays his or her actual federal income tax liability by an average of \$1,757.¹⁴⁵ For

¹⁴¹Exhibit H1.

¹⁴²Lane Decl. at ¶ 8.

¹⁴³Id. at ¶ 8.

¹⁴⁴Lane Decl. at ¶¶ 72, 76.

¹⁴⁵Lane Decl. at ¶ 73 (explaining that this figure is a conservative estimate because it discounts the harm to the government to reflect the average amount for which individual

(continued...)

each return SSC Services prepares and Musin signs for an individual who conducts business through a business entity, the customer underpays his or her actual federal income tax liability by an average of \$9,274.¹⁴⁶ Based on the number of each type of these returns Musin has signed between 2003 and 2007, the IRS estimates that Musin, Schwartz-Musin, and SSC Services have deprived the United States of over \$21.3 million in tax revenue to which it is entitled.¹⁴⁷ This estimate does not include the significant cost to the IRS in investigating Defendants' returns or collecting back taxes owed by SSC Services's customers.

IV. ARGUMENT

The United States seeks a preliminary injunction against Musin, Schwartz-Musin, and their corporate entities under three statutes, 26 U.S.C. §§ 7402, 7407, and 7408. These statutes specifically authorize the Court to issue an injunction to stem certain statutorily-described conduct. These statutes authorize the Court to order injunctive relief to remedy particular types of misconduct, and consequently, the Court need not consider the traditional equitable factors in determining whether to grant a preliminary injunction.¹⁴⁸ Because of the urgent need to prevent

¹⁴⁵(...continued)
taxpayers have settled their debt to the United States through the IRS Office of Appeals).

¹⁴⁶Lane Decl. at ¶ 77 (explaining that this number is also a conservative estimate because it discounts the harm to the government by the average amount for which individual taxpayers without associated business entities settled their debt to the United States through the IRS Office of Appeals).

¹⁴⁷Lane Decl. at ¶ 79.

¹⁴⁸United States v. White, 769 F.2d 511, 515 (8th Cir. 1985). Similarly, the Court need not consider the traditional equitable factors when determining whether to grant a permanent injunction. White, 769 F.2d at 515; United States v. Landsberger, 692 F.2d 501, 503-04 (8th Cir. 1982) (affirming order of injunction entered by the District of Minnesota under sections 7407 and 7402 without consideration of traditional equitable factors); see United States v. Estate Preservation Services, 202 F.3d 1093, 1098 (9th Cir. 2000) ("The traditional requirements for
(continued...)

harm, “a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. A party is thus not required to prove his case in full at a preliminary-injunction hearing.”¹⁴⁹

The facts presented above provide “reasonable cause” for this Court to find that the United States is entitled to injunctive relief against Musin, Schwartz-Musin and their corporate entities under 26 U.S.C. §§ 7402, 7407, and 7408. The United States has provided reasonable cause for this Court to find that Musin, Schwartz-Musin, and their corporate entities have violated provisions of the Internal Revenue Code and they will continue to do so unless enjoined. Accordingly, this Court should enter a preliminary injunction against the Defendants.

A. *An injunction is necessary and appropriate under 26 U.S.C. § 7407 due to Defendants’ violations of 26 U.S.C. § 6694 and other fraudulent and deceptive conduct.*

In order for the United States to obtain an injunction under 26 U.S.C. § 7407, it must demonstrate that a return preparer has engaged in statutorily-specified categories of misconduct and that an injunction is necessary to prevent a recurrence of that conduct. Musin, Schwartz-Musin and their corporate entities have engaged in two categories of statutorily-specified misconduct. First, Musin has engaged in conduct subject to penalty under 26 U.S.C. § 6694.¹⁵⁰ Second, Musin, Schwartz-Musin, and their corporate entities have engaged in fraudulent and

¹⁴⁸(...continued)

equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction”); see also United States v. Gleason, 432 F.3d 678, 682 (6th Cir. 2005) (“Because section 7408 expressly authorized the issuance of an injunction, the traditional requirements for equitable relief need not be satisfied.”).

¹⁴⁹Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981).

¹⁵⁰26 U.S.C. § 7407(b)(1)(A) (2006).

deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.¹⁵¹ Finally, section 7407 authorizes a Court to enjoin a person from preparing federal income tax returns if the Court finds the person has continually or repeatedly engaged in the statutorily-specified misconduct, and that a more limited injunction would not be sufficient to prevent the person from interfering with the internal revenue laws.¹⁵²

1. Musin has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694.

Section 6694 imposes a penalty on any tax return preparer “who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to “an unreasonable position.”¹⁵³ An unreasonable position is one (1) that the preparer knew of or reasonably should have known of; (2) that the preparer could not reasonably believe would more likely than not be sustained on the merits; and (3) for which there is no reasonable basis.¹⁵⁴ Musin has continuously and repeatedly engaged in conduct subject to penalty under section 6694 by understating his customers’ federal tax liability with returns that contain unreasonable positions.

The facts presented above make quite clear that Musin has engaged in conduct subject to penalty under section 6694. The fraudulent deductions described above appeared on returns Musin signed, thus Musin knew or should have known of the positions he was taking on those returns. Further, Musin signed returns on which his customers claimed as deductions expenses

¹⁵¹26 U.S.C. § 7407(b)(1)(D).

¹⁵²26 U.S.C. § 7407(b) (flush language).

¹⁵³26 U.S.C. § 6694(a)(1).

¹⁵⁴26 U.S.C. § 6694(a)(2)(A)-(C).

they did not incur or did not incur in the amounts claimed on their federal income tax returns.

Claiming fabricated or overstated deductions on a federal income tax return—without more—establishes a violation of section 6694 because there is neither a reasonable basis for such deductions nor a reasonable belief that such deductions would be sustained on the merits.¹⁵⁵

Musin also prepared returns for his customers in which he deducted personal expenses, including the so-called “Image” expenses. Musin could not have had a reasonable belief that these deductions would be sustained on the merits because personal expenses of an employee are not valid business expense deductions.¹⁵⁶ Further, when the returns discussed in this motion were prepared, the IRS had already disallowed “Image” expense deductions on a return Musin

¹⁵⁵See United States v. Sperl, 2008 WL 2699402, at *8-*10 (M.D. Tenn. June 30, 2008) (finding that a return preparer who fabricated expenses was subject to penalty under section 6694); United States v. Kyle, 2008 WL 509254, at *4-*5 (S.D. Cal. Feb. 23, 2008) (“Kyle has engaged in conduct subject to penalty under I.R.C. § 6694 by preparing returns that understate his customers’ tax liabilities based on positions for which there is no realistic possibility of being sustained on the merits. Specifically, Kyle prepares returns that contain inflated or fabricated employee business expenses, other business expenses, and false charitable contribution deductions.”); United States v. White, 2007 WL 1413004, at *2 (E.D. Mo. Mar. 9, 2007) (“Because White fabricated or greatly overstated the deductions, there was no possibility the deductions could be substantiated or allowed on examination. Therefore, there was no possibility, realistic or otherwise, that White’s positions on those tax returns could be sustained on the merits.”).

¹⁵⁶26 U.S.C. § 162 (2006) (allowing business expense deductions for “ordinary or necessary expenses paid or incurred during the taxable year in carrying on any trade or business”); id. at § 262(a) (“Except as otherwise provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.”); Henderson v. C.I.R., T.C. Memo 1983-372 (“[W]here both sections 162(a) and 262 may apply, the latter section takes priority over the former.”); Moran v. C.I.R., 236 F.2d 595, 597 (8th Cir. 1956) (“A personal expense exists when it is incurred by all people generally, regardless of occupation. . . . The fact that such expense is incidentally incurred at the place of business does not convert the expense into a purely business item.”).

prepared.¹⁵⁷ Thus, Musin also engaged in conduct subject to penalty under section 6694 by allowing customers to claim personal expenses as business expense deductions on returns he prepared.¹⁵⁸

2. Musin, Schwartz-Musin, and their corporate entities have engaged in fraudulent and deceptive conduct substantially interfering with the proper administration of the internal revenue laws.

Musin, Schwartz-Musin, and their corporations have engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws. Musin and Schwartz-Musin fabricate and overstate their customers' expenses in order to fraudulently reduce their customers' tax liabilities. This deceptive conduct deprives the United States of tax revenue to which it is lawfully entitled and requires the United States to dedicate scarce resources to recovering unpaid taxes from Musin and Schwartz-Musin's customers. Musin and Schwartz-Musin also falsely persuade their customers that plainly non-deductible personal expenses may be claimed as valid business deductions, even though Musin knows from personal experience that these deductions are not valid. Most damning, however, is that Musin

¹⁵⁷Lane Decl. at ¶¶ 56-62.

¹⁵⁸See Sperl, 2008 WL 2699402 at *9 (finding that the defendants violated section 6694 where they "asserted that personal and other household expenses, such as personal vehicle mileage, furniture, equipment, telephones, and paying children for services could be deducted as business expenses, without the qualification that (1) a home-based business have a business purpose and the intent to make a profit and (2) the business expenses be necessary and related to the business purpose"); United States v. Baisden, 2007 WL 1087162, at *17 (E.D. Cal. Apr. 10, 2007) ("Baisden has engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns for customers containing understatements of liability based on positions for which there was no reasonable basis for avoiding tax liability. . . . Baisden has done so by: (a) Preparing some federal tax returns claiming deductions for business expenses that are in fact non-deductible personal expenses, and/or for which he and his customers have not produced supporting documentation . . .").

and Schwartz-Musin are willing to use falsified records to attempt to justify their fraudulent deductions.

3. An injunction is necessary to prevent a recurrence of the conduct.

As explained above, the administrative remedies available to the IRS have not been sufficient to prevent Schwartz-Musin from continuing to attempt to represent taxpayers before the IRS. A criminal sentence from this Court against his wife was not sufficient to prevent Musin from offering falsified documents to IRS examiners during audits. Two audits in which the IRS disallowed “Image” expenses were insufficient to prevent Musin from allowing customers to claim personal health and beauty expenses as business deductions on their federal income tax returns. In short, only an order backed by the contempt power of this Court will prevent Musin and Schwartz-Musin from continuing to violate the internal revenue laws.

4. A more limited injunction will not be sufficient to prevent Musin and Schwartz-Musin from interfering with the administration of the internal revenue laws.

Only an injunction barring Musin and Schwartz-Musin from preparing federal income tax returns will prevent them from continuing to defraud the United States during the pendency of this action. The pervasive fabrications and overstatements on the returns SSC Services prepares appear in nearly every category of expense, including advertising, promotional expenses, supplies, officer compensation, wages, cost of goods sold, and rent. In fact, Musin told IRS investigators that beginning in 2004 he began listing non-deductible “Image” expenses as promotional or advertising expenses in order to decrease the risk his customer’s return would be audited. Given Musin’s and Schwartz-Musin’s disregard for the rules governing the preparation of federal income tax returns, and their willingness to abuse any category of expense, this Court

should enjoin Musin and Schwartz-Musin from preparing federal income tax returns during the pendency of this action.

B. *An injunction is necessary and appropriate under 26 U.S.C. § 7408 due to Defendants' violations of 26 U.S.C. § 6701.*

The United States is also entitled to an injunction under 26 U.S.C. § 7408. Section 7408 allows a court to enjoin a person who engaged in conduct subject to penalty 26 U.S.C. § 6701 (among other conduct subject to penalty) if an injunction is appropriate to prevent a recurrence of the conduct.¹⁵⁹ A person is subject to penalty under section 6701 if he or she aids, assists, procures, or advises with respect to the preparation and presentation of any portion of a return, affidavit, claim, or other document, that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and who also knows that, if used, would result in an understatement of another's tax liability.¹⁶⁰ Musin and Schwartz-Musin have engaged in conduct subject to penalty under section 6701 and an injunction is appropriate—and, in fact, necessary—to prevent a recurrence of their fraudulent conduct.

1. Musin and Schwartz-Musin aid, assist, procure, and advise with respect to the preparation and presentation of returns and other documents

Musin prepares and signs federal income tax returns, thus he assists and advises with both the preparation and presentation of federal income tax returns.

Schwartz-Musin falsely advises customers on what business expenses are validly deductible. Her customers use this information when preparing the expense summaries that they submit to SSC Services and become the basis of the returns SSC Services prepares. For example,

¹⁵⁹26 U.S.C. § 7408(b)-(c) (2006).

¹⁶⁰26 U.S.C. § 6701(a)(1)-(3) (2006).

Schwartz-Musin advised one customer that the entire cost of her daughter's wedding was a deductible expense.¹⁶¹ Accordingly, the customer recorded this information in her expense summaries, and Musin deducted the entire cost of the wedding on her federal income tax return.¹⁶² Schwartz-Musin falsely advised customers that they could deduct expenses associated with maintaining their professional image.¹⁶³ She falsely advised Steven Toovell that he could log as business use miles he drove from his principal place of business to his residence.¹⁶⁴ Customers followed this advice and reported these expenses to SSC Services, which deducted these impermissible expenses on its customers returns. Thus, Schwartz-Musin's advice becomes the bedrock upon which her customers constructed their expense summaries, which SSC Services employees use in turn to prepare federal income tax returns.

Further, Musin and Schwartz-Musin both use customers' expense information to complete SSC Services' internal interview sheets.¹⁶⁵ Many of the inflations and fabrications on returns that were described above began as inflations or fabrications on the SSC Services interview sheets.¹⁶⁶ These interview sheets are given to SSC Services' Data Entry department where the information appearing on those documents is entered in a tax-return preparation

¹⁶¹Williams Decl. at ¶¶ 18-21.

¹⁶²Williams Decl. at ¶ 20.

¹⁶³Gottlieb Decl. at ¶¶ 41-44; Shaw Decl. at ¶¶ 11-13; Williams Decl. at ¶¶ 14-17; Toovell Decl. at ¶¶ 30-33.

¹⁶⁴Toovell Decl. at ¶ 26.

¹⁶⁵Lane Decl. at ¶¶ 30-31; Gottlieb Decl. at ¶¶ 11-22 (describing the detailed expense information Marlyn Gottlieb brought to meetings with Schwartz-Musin and how Schwartz-Musin disregard that detailed information in favor of the summary of expense Gottlieb prepared, and indicating also that Schwartz-Musin did not take the mileage logs Gottlieb offered).

¹⁶⁶Roberts Decl. at ¶ 11.

software.¹⁶⁷ Thus, both Musin and Schwartz-Musin know when they are preparing SSC Services' interview sheets that these documents will be used to generate their customers' federal income tax returns. Musin and Schwartz-Musin know that when fabricating or inflating numbers on the interview sheets, or when including non-deductible expenses on the interview sheets, that these numbers will appear as fraudulent deductions on customers' federal income tax returns.

2. Musin and Schwartz-Musin know or have reason to believe these returns and other documents will be used in connection with material matters arising under the internal revenue laws.

Musin knows that the federal income tax returns he prepares will be filed with the IRS. Thus he knows that these returns will be used in a material matter under the internal revenue laws.

Schwartz-Musin knows that the expense summaries SSC Services' customers create will be used to prepare their federal income tax returns because she knows SSC Services' internal processes. As described above, Schwartz-Musin advises customers as to what expenses are deductible. She knows or has reason to believe that customers will follow the advice they are paying her to provide and will provide expense information to SSC Services in accordance with her advice. Schwartz-Musin knows that the expense information customers provide is placed into interview sheets, and then later, into federal tax returns. Thus, Schwartz-Musin knows or has reason to believe that the erroneous advice she provides to customers at the expense summary stage will eventually result in her company preparing erroneous tax returns.¹⁶⁸

¹⁶⁷Lane Decl. at ¶¶ 32-35.

¹⁶⁸See United States v. Rivera, 2003 WL 22429482, at *8 (C.D. Cal. July 18, 2003) (finding that advice given to customers regarding their tax liability was subject to penalty under section 6701 where the advisor knew the advice would result in an understatement of federal tax (continued...))

Finally, Musin and Schwartz-Musin prepare the interview sheets from customers expense information. They know these documents are then sent to SSC Services' "Data Entry Department" to be transformed into federal income tax returns. Accordingly, they know that falsehoods they include on the interview sheets will result in falsehoods on the customer's federal income tax return.

3. Musin and Schwartz-Musin know that these documents will result in an understatement of their customers' federal income tax liabilities.

Musin and Schwartz-Musin know that falsehoods included on the SSC Services interview sheets will result in an understatement of their customers' federal income tax liabilities. Musin and Schwartz-Musin fabricate or inflate their customers' expense information when preparing interview sheets, and intentionally include customers' non-deductible personal expenses as business expenses on these interview sheets. Musin and Schwartz-Musin are both professional return preparers, and both know that preparing a return that includes expense deductions to which the customer is not entitled will result in the return understating the customer's federal income tax liability.

4. Injunctive relief is appropriate to prevent a recurrence of the conduct.

For the reasons set forth above in section IV.A.3, an injunction is necessary to prevent a recurrence of Musin's and Schwartz-Musin's fraudulent conduct.

¹⁶⁸(...continued)
liability).

C. *An order of injunction is necessary and appropriate under 26 U.S.C. § 7402.*

Under 26 U.S.C. § 7402, a district court has the authority to issue orders of injunction that “may be necessary or appropriate for the enforcement of the internal revenue laws.” The statute makes explicitly clear that this remedy is “in addition to and not exclusive of any and all other remedies” the United States may have to enforce the internal revenue laws.¹⁶⁹ The facts presented above demonstrate that an injunction is both necessary and appropriate to prevent Musin, Schwartz-Musin and their corporate entities from preparing fraudulent federal income tax returns.

It is an open question whether the “necessary or appropriate” standard of section 7402 provides a sufficiently specific statutory standard for issuing an injunction.¹⁷⁰ Even if this Court finds it must evaluate the traditional equitable factors to grant a preliminary injunction under section 7402, these factors favor granting a preliminary injunction. Generally, in determining whether to grant preliminary injunctions, courts traditionally weigh “(1) the threat of irreparable harm to the movant; (2) the state of balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the

¹⁶⁹26 U.S.C. § 7402 (2006).

¹⁷⁰Compare United States v. Landsberger, 692 F.2d 501, 503-04 (8th Cir. 1982) (affirming order of injunction entered by the District of Minnesota under sections 7407 and 7402 without consideration of traditional equitable factors) with Sharp v. Parents in Cmty. Action, Inc., 172 F.3d 1037, 1039 (8th Cir. 1999) (finding that a statute allowing for district courts to order “just and proper” temporary injunctive relief to remedy violations of section 10(j) of the National Labor Relations Act invited application of the traditional equitable factors as articulated in Dataphase).

merits; and (4) the public interest.”¹⁷¹ These factors must be considered together, and “[i]n balancing the equities, no single factor is determinative of propriety of preliminary injunctive relief.”¹⁷²

Without a preliminary injunction preventing Musin, Schwartz-Musin, and their corporate entities from preparing federal income tax returns, the United States will be forced to expend the public fisc in auditing returns Defendants prepare and in collecting unpaid taxes from the Defendants’ customers. On average, Defendants prepare over 1000 returns per year.¹⁷³ If Defendants are allowed to prepare federal income tax returns for the 2008 tax year, the United States will have to expend substantial funds and man-hours auditing the 2008 federal income tax returns Defendants prepare in the coming months. The previous audits suggest that 98 percent, or 980, of these returns would underreport customers’ federal income tax liability.¹⁷⁴ The United States would likely be unable to recover all of this revenue.

Consequently, allowing the Defendants to continue preparing federal tax returns during the pendency of this action will inflict an incalculable injury on the United States. Not only will the United States not receive the tax revenue to which it is legally entitled, but this injury will be compounded by the expense the United States will be forced to bear in evaluating each return Defendants’ prepare in order to ascertain the taxpayer’s true tax liability. Although Defendants

¹⁷¹Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109, 114 (1981); Planned Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724, 732-33 (8th Cir. 2008).

¹⁷²Dataphase, 640 F.2d at 113.

¹⁷³Lane Decl. at ¶ 8.

¹⁷⁴Lane Decl. at ¶ 72 (only one audited income tax return resulted in the taxpayer not owing the United States money of the 52 returns examined for taxpayers that do not operate a business entity); Lane Decl. at ¶ 76 (indicating that only one of 116 audits Agent Roberts conducted resulted in either no change or a change in the taxpayer’s favor).

will be forced to cease their tax preparation services while this action is pending, based on estimates from previous years, *the United States stands to lose \$4.26 million in foregone tax revenue each year Defendants are allowed to prepare federal income tax returns.*¹⁷⁵

The preceding sections of this argument explain why the United States will ultimately prevail on its claims for permanent injunctive relief. At this stage, the United States need only establish that it have a “fair chance of prevailing” on its claims for relief.¹⁷⁶ In light of the Defendants’ egregious conduct and flagrant disrespect for the provisions of the Internal Revenue Code, the United States has—at a minimum—a fair chance of prevailing on its claims for relief.

The public interest favors granting a preliminary injunction. First, the Defendants cause substantial harm to the United States by preparing federal income tax returns that falsely understate the tax revenue to which the United States is legally entitled and by forcing the United States to expend money in auditing returns Defendants prepare. Second, Defendants are harming their customers, who pay to have their federal income tax liabilities properly calculated, but instead are subject to audit, and possible penalties and interest as a result of the fraudulent and error-ridden tax returns Defendants prepare. A preliminary injunction will prevent Defendants from preparing federal income tax returns that expose customers to the burden and expense of an audit and that deprive the United States of federal income taxes.

V. CONCLUSION

¹⁷⁵Lane Decl. at ¶¶ 72-79 (estimating conservatively that the United States has lost \$21.3 million in foregone tax revenue alone between 2003 and 2007, which averages to a harm of \$4.26 million per year).

¹⁷⁶Planned Parenthood Minn., N.D., S.D. v. Rounds, 530 F.3d 724, 732-33 (8th Cir. 2008).

For the foregoing reasons, the United States requests this Court grant the United States' Motion for Preliminary Injunction and order the following relief:

A. That, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 and Fed. R. Civ. P. 65, Defendants be enjoined for the pendency of this action from

- (1) preparing or filing, or assisting in the preparation or filing of federal tax returns for anyone other than themselves;
- (2) engaging in any conduct subject to penalty under 26 U.S.C. § 6694, including preparing any part of a return or claim for refund that includes an unrealistic or a willful understatement of tax;
- (3) engaging in any conduct subject to penalty under 26 U.S.C. § 6701, including preparing any part of a return, claim for refund, or other document that Defendants know or have reason to believe will be used to understate another's federal income tax liability;
- (4) engaging in any conduct that interferes with the administration or enforcement of the internal revenue laws;
- (5) engaging in conduct subject to penalty under any other section of the internal revenue laws (Title 26, U.S.C.);

B. That, pursuant to 26 U.S.C. § 7402, within 30 days of the date of the Court's order, Defendants be ordered to contact all persons and entities for whom they prepared any federal income tax returns or other tax-related documents after January 1, 2003, and inform those persons of the entry of the Court's findings concerning the falsity of representations Defendants made on their customers' tax returns, and that a preliminary injunction has been entered against them; and

C. Such other and further relief as the Court deems just and appropriate.

Dated this 13th day of February, 2009.

Respectfully submitted,

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