

1 Cori E. Flanders-Palmer (WSBA #34893)
2 Chicoine & Hallett, P.S.
3 719 Second Avenue, Suite 425
4 Seattle, WA 98104
5 Telephone: 206-223-0800
6 Facsimile: 206-312-3100
7 E-Mail: Cflanders@c-hlaw.com

8 Edward M. Robbins, Jr. (CSBA #82696)
9 Hochman, Salkin, Rettig, Toscher & Perez, P.C.
10 9150 Wilshire Blvd., Suite 500
11 Beverly Hills, CA 90212
12 Telephone: 310-281-3200
13 Facsimile: 310-859-1430
14 EdR@taxlitigator.com

2009 NOV 19 PM 1:25
FILED
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 JOSEPH R. FRANCIS,
13 Plaintiff,

14 v.

15 UNITED STATES,
16 Defendant.

CV09-8521 CBM (RLX)

Case No.

COMPLAINT

17
18 Plaintiff, Joseph R. Francis, avers as follows:

19 PRELIMINARY STATEMENT

20 1. Plaintiff recently pled guilty to two misdemeanor counts of filing false returns by
21 omitting certain interest income in the amount of approximately \$560,000. Defendant, the
22 Internal Revenue Service, obtained pleadings from the criminal case and attempted to re-
23 determine Plaintiff's tax liabilities based on what it thought amounted to erroneous deductions
24 on Plaintiff's 2001, 2002 and 2003 federal income tax returns that were filed.

25
26 2. Defendant determined Plaintiff's tax deficiency was in excess of \$30 million, and
issued a jeopardy assessment pursuant to sections 6861 and 7429 of the Internal Revenue

1 Code of 1986 ("Code")¹. Defendant further issued Notices of Levy on bank accounts at UBS
2 and Morgan Stanley. The bank levies froze all assets encompassed by the levy. Pursuant to
3 section 6331(a) of the Code, in the case of a jeopardy assessment, Notice and Demand for
4 payment must be made and the taxpayer must refuse or fail to pay prior to the issuance of any
5 levy.
6

7 3. Defendant issued the levy prior to delivering the Notice and Demand for payment,
8 thereby invalidating the levy. Defendant has refused to release the levy. Such levy is
9 preventing Plaintiff from operating his business and may force him into bankruptcy causing
10 undue hardship and irreparable harm.
11

12 JURISDICTION AND VENUE

13 4. This is a civil action seeking injunctive relief from the issuance of an illegal levy which
14 violates the provisions of 26 U.S.C. §§ 6331(a) and 6861, and *Enochs v. Williams Packing &*
15 *Navigation*, 370 U.S. 1 (1962).
16

17 5. Jurisdiction over this action is conferred upon this Court by 26 U.S.C. §§ 7421, 6213,
18 6861 and 6331 and 28 U.S.C. §1340.
19

20 6. Venue is proper in this Court under 28 U.S.C. §§ 1391(e) and 1402 for the reasons that
21 a substantial part of the events giving rise to Plaintiff's claim occurred in the judicial district
22 of the Central District of California and that the Plaintiff resides in California.
23
24
25
26

¹ Codified at Title 26 to the United States Code.

1 THE PARTIES

2 7. Plaintiff is an individual who resides in Bel Air, California and is the Chief Operating
3 Executive for Mantra Films, Inc.

4 8. Defendant is the United States of America.

5 FACTS

6 9. On November 6, 2009 at 8:40 am PST Defendant issued a Notice of Levy on UBS.
7
8 The levy froze all assets in the affected accounts.

9 10. On November 6, 2009 at approximately 12:08 pm PST Defendant issued a Notice of
10 Levy on Morgan Stanley. The levy froze all assets in the affected accounts.

11 11. Plaintiff was served with a Notice of Jeopardy Assessment for the tax years 2001,
12 2002 and 2003 of approximately \$34 million on November 6, 2009 at 12:18 pm PST.
13 Defendant simultaneously served a Notice of Tax Due for the tax years 2001, 2002 and 2003
14 (Collectively "Notice and Demand").
15

16 LAW

17 **A. The IRS Failed To Follow Statutory Procedures; Thus The Levy Is Invalid**

18 12. The IRS issued a jeopardy assessment under § 6861 of the Code which allows the IRS
19 to immediately assess a tax deficiency if the "Secretary believes that the assessment or
20 collection . . . will be jeopardized by delay." The IRS must also give notice and make a
21 demand for payment. 26 U.S.C. § 6861.
22

23 13. Prior to providing notice of the IRS jeopardy assessment of approximately \$34 million
24 in additional tax, penalty and interest under the jeopardy assessment procedures, the IRS
25
26

1 issued a levy pursuant to 26 USC § 6331 in an attempt to collect on the assessment. Section
2 6331 of the Code provides:

3
4 If the Secretary makes a finding that the collection of such tax is in
5 jeopardy, notice and demand for immediate payment of such tax may be
6 made by the Secretary and, upon failure or refusal to pay such tax,
7 collection thereof by levy shall be lawful.

8 14. It is explicit in this section that “prior to levy and seizure by the Internal Revenue
9 Service, taxpayers are to be given a period of time after Notice and Demand in which to either
10 refuse or neglect to pay the taxes assessed and demanded by the Internal Revenue Service,
11 pursuant to a Jeopardy Assessment under Title 26, United States Code, Section 6861.”
12 *Clayton v. Comm’r*, 43 AFTR 2d 79-465, 79-466 (M.D. Fl. 1978).

13 15. The levy was issued before the Notice and Demand was received by the taxpayer.
14 Accordingly, the levy is invalid pursuant to section 6331(a) of the Code.

15 16. Plaintiff was deprived of his statutory rights and had no opportunity whatsoever to
16 “fail or refuse to pay” because the levy was issued at least three hours before Plaintiff ever
17 received the Notice and Demand for payment.

18
19 **B. The Taxpayer Is Entitled To An Injunction Under *L.O.C. Industries v. U.S. and*
20 *Enochs v. Williams Packing Co.***

21 17. In *L.O.C. Industries, Inc. v. United States*, 423 F. Supp. 265, 38 AFTR 2d 76-5494 (M.D.
22 Tenn. 1976), when the IRS has issued a levy before it served notice upon the taxpayer, the levy
23 was held invalid and an injunction was issued. Moreover, under these circumstances, the
24 Anti-Injunction Act does not bar the taxpayer’s requested relief and thus the taxpayer is not
25 required to show irreparable harm or that an adequate remedy at law does not exist. *L.O.C.*
26 *Industries*, 38 AFTR 2d at 5501-02.

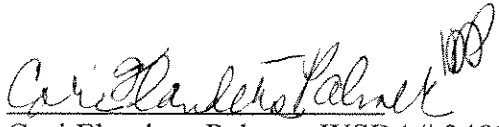
1 18. Alternatively, Plaintiff is entitled to an injunction because he meets the standards set
2 forth in *Enochs v. Williams Packing Co.*, 370 U.S. 1, 7 (1962) where the Court held that an
3 injunction may be obtained against the collection of any tax if: (1) it is "clear that under no
4 circumstances could the government ultimately prevail" and (2) "equity jurisdiction"
5 otherwise exists, i.e., the taxpayer shows that he would otherwise suffer irreparable injury. *Id.*
6 at 7.

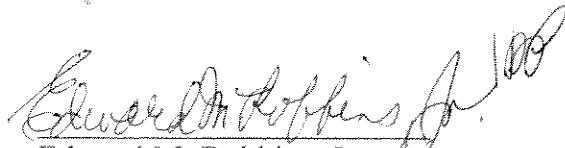
8 RELIEF REQUESTED

9
10 19. Plaintiff requests a temporary restraining order that Defendant immediately cease and
11 refrain from directly or indirectly obtaining funds from illegally issued levies; and

12 20. Plaintiff requests an injunction ordering Defendant to release funds subject to the
13 illegally issued levies.

14 Dated: November 18, 2009.

15
16 
17 Cori Flanders-Palmer, WSBA# 34893
18 Attorney for Joseph Francis
19 719 Second Avenue, Suite 425
20 Seattle, WA 98104
21 Telephone: (206) 223-0800
22 Facsimile: (206) 467-8170
23 Email: cflanders@c-hlaw.com

24 
25 Edward M. Robbins, Jr.
26 Hochman, Salkin, Rettig, Toscher & Perez,
P.C.
9150 Wilshire Blvd., Suite 500
Beverly Hills, CA 90212
Telephone: 310-281-3200
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Name & Address:
Cori E. Flanders-Palmer (WSBA #34893)
Chicoine & Hallett, P.S.
719 Second Avenue, Suite 425
Seattle, WA 98104

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Joseph R. Francis

CASE NUMBER

PLAINTIFF(S)

CV 09-8521 CBM (RZX)

v.

United States

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S): United States of America

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Cori E. Flanders-Palmer chicoine & hallett, whose address is Hallett P.S. 719 Second Avenue, Suite 425 Seattle, WA 98104. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: 19 NOV 2009

By: Shea Brejon

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Joseph R. Francis	DEFENDANTS United States of America
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(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Edward M. Robbins, Jr. Hochman, Salkin, Rettig, Toscher & Perez, P.C. 9150 Wilshire Blvd., Suite 300, Beverly Hills, CA 90212	Attorneys (if Known)
--	----------------------

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT. JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 26 U.S.C., Section 6331(a); invalid jeopardy levy

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus General <input type="checkbox"/> 530 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

CV09-8521

FOR OFFICE USE ONLY: Case Number: _____
 AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	District of Columbia

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date November 17, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
361	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
362	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
363	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
363	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
364	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
365	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))