

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ALASKA**

3
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6
7 v.

Case No. 3:19-cv-00134-HRH-KFR

8 ACTION SECURITY, INC., and SCOTT
9 HENKE,¹

10 Defendants.
11

12 **REPORT AND RECOMMENDATION**

13 The Court recommends that Plaintiff's Motion for Sanctions to Dissolve
14 Defendant Action Security, Inc. be **GRANTED**. The Court finds that Defendants have
15 repeatedly violated the orders of the District Court, have consistently engaged in
16 actions designed to frustrate the execution and intent of the District Court's orders,
17 and have willfully refused to abide by their obligation to pay taxes due on income
18 made during their business operations. Because Defendants through their actions
19 have demonstrated that they are unwilling or unable to abide by the District Court's
20 orders, and because there is no reasonable lesser sanction that can be imposed in
21 this case to compel compliance, the Court recommends the following:

- 22 • a permanent injunction against Defendants;
23

24 ¹ The Court notes that Defendant Action Security has never made an appearance in this action
25 and that corporations may not proceed *pro se*, rather they must be represented by counsel.
26 Nonetheless, the Court finds that Defendant Action Security is properly before this Court.
27 The Court has given Defendant Action Security ample opportunity to seek counsel and make
28 an appearance in this action. In addition, Mr. Henke stipulated on behalf of Defendant Action Security to the injunction in this case (thereby properly joining Defendant Action Security) and is considered its privy or actor-in-concert under Rule 65(d)(2)(C). Furthermore, the government properly served Defendant Action Security by delivering the complaint and summons to its registered agent, Mr. Henke, in the District of Alaska. At that point, the Court's personal jurisdiction over Defendant Action Security solidified.

- that Defendants cease accepting new clients within 30 days, cease operating within 120 days, and conspicuously display at Action Security's entrance notice of the injunction;
- that Mr. Henke not be permitted to directly or indirectly own, control, manage, operate, or serve as an officer or director of any business until the earlier of (1) his successful petition for relief if certain conditions are met after one year from the injunction; or (2) 10 years; and
- that Mr. Henke be incarcerated for one or more days if he violates the injunction, with periods of incarceration increasing for successive violations, based on the seriousness of those violations.²

I. PROCEDURAL BACKGROUND

On May 13, 2019, Plaintiff, United States of America, filed a Complaint for Permanent Injunction against Defendants Action Security, Inc. and its owner, Scott Henke, seeking to enjoin Defendants from continuing to pay wages to employees without paying the associated federal employment taxes.³ Plaintiffs properly served Defendants; however, Defendants did not file an Answer or make a timely appearance.⁴ As a result, Plaintiff filed a Motion for Entry of Default against Defendants.⁵ The Clerk of Court entered an Order of Default and on September 18, 2019, Plaintiff filed a Motion for Default Judgment.⁶ On September 23, 2019, Plaintiff filed a Stipulation for Entry of Permanent Injunction against Defendants and withdrew its Motion for Entry of Default Judgment.⁷

The Court issued a Judgment and Permanent Injunction against Defendants on September 25, 2019, with detailed directions to be regularly and consistently

² Doc. 87 at 31-32.

³ Doc. 1.

⁴ Docs. 8-9.

⁵ Docs. 12-13.

⁶ Docs. 14-16.

⁷ Docs. 17-18.

1 completed by the parties (hereinafter “Injunction Order”).⁸ The Court retained
2 jurisdiction over the case for a five-year period to ensure compliance with the
3 injunction.

4 One year later, Plaintiff filed a Motion for Order to Show Cause, alleging that
5 Defendants failed to comply with the requirements of the Injunction Order.⁹
6 Defendants did not timely respond.¹⁰ The Court solicited input from Plaintiff as to
7 how to proceed given Defendants’ failure to respond to the Court’s order directing
8 response,¹¹ and Plaintiff requested appointment of a receiver.¹² The Court ordered
9 Defendants to appear on March 22, 2022, “to show cause why they should not be
10 held in contempt for their failure to comply with the [Injunction Order].”¹³
11 Defendants failed to appear.¹⁴

12 On March 24, 2022, the Court granted Plaintiff’s contempt motion, and the
13 Court appointed Lisa Fink to act as a receiver (hereinafter “Appointment Order”).¹⁵
14 Ms. Fink’s duties included ensuring Defendants complied with the Injunction Order
15 and overseeing Defendants’ business operations.¹⁶ The District Court’s Appointment
16 Order also gave Ms. Fink broad access to Defendants’ business and authority over its
17 operations.¹⁷ The Appointment Order also ordered Defendants’ compliance,
18 enjoining them from interfering with Ms. Fink in the exercise of her duties.¹⁸

19 Three months later, Ms. Fink filed a status report as directed by the District
20 Court.¹⁹ Ms. Fink documented Mr. Henke’s noncompliance with the District Court’s
21 Injunction and Appointment Orders.²⁰ Ms. Fink concluded that the receivership was

22 ⁸ See Doc. 19.

23 ⁹ Doc. 20.

24 ¹⁰ Doc. 24.

25 ¹¹ Doc. 21.

26 ¹² Docs. 26-27.

27 ¹³ Doc. 28.

28 ¹⁴ Doc. 35.

¹⁵ Doc. 37.

¹⁶ *Id.* at 2-5.

¹⁷ *Id.* at 5-8.

¹⁸ *Id.* at 9.

¹⁹ Doc. 39.

²⁰ Doc. 39-1 at 1.

1 “economically unfeasible” due to the “necessary cleanup and overhaul” the
2 receivership required and the fact that she had “already spent 25 hours [working
3 with Defendants] but accomplished little due to [Mr.] Henke’s unresponsiveness.”²¹

4 On July 12, 2022, Plaintiff filed a Motion for Sanctions to Dissolve Defendant
5 Action Security, Inc.²² Mr. Henke requested additional time to respond to this
6 motion, which the Court granted.²³ Mr. Henke then filed a “Motion for Dismissal of
7 Motion” requesting that Plaintiff’s Motion to Dissolve his company not be granted,
8 accompanied by an affidavit where he took issue with Ms. Fink’s status report.²⁴
9 Plaintiff replied and the Court set an evidentiary hearing.²⁵

10 In the meantime, Ms. Fink filed a second status report, warning that she did
11 not think the receivership was sustainable given Mr. Henke’s non-compliance and
12 avoidance, and Defendants requested time to secure counsel.²⁶ The District Court
13 granted Defendants’ motion and reset the evidentiary hearing to November 30,
14 2022.²⁷ On November 30, 2022, Mr. Henke made an oral motion to continue the
15 evidentiary hearing.²⁸ The Court directed the parties to confer and propose
16 alternative dates for an evidentiary hearing. The Court then referred the case to this
17 Court for purposes of the evidentiary hearing and post-judgment proceedings.²⁹

18 This Court held an evidentiary hearing on February 28 and March 1, 2023.³⁰
19 At the hearing Plaintiff called Mr. Henke, IRS Revenue Officer (“RO”) Terence
20 Johnson, Ms. Fink, and Ms. Fink’s assistant, Elizabeth Barr.³¹ Defendants called Mr.
21 Henke.³² At the conclusion of the hearing this Court ordered the parties to file post-

23 ²¹ *Id.*

24 ²² Doc. 40.

25 ²³ Docs. 41-42.

26 ²⁴ Doc. 43.

27 ²⁵ Docs. 45-46.

28 ²⁶ Docs. 48-50.

²⁷ Doc. 51.

²⁸ Doc. 55.

²⁹ Doc. 61.

³⁰ Docs. 65-66.

³¹ Docs. 65-67.

³² *Id.*

1 hearing supplemental briefing with proposed findings of fact and conclusions of
2 law.³³

3 In accordance with the Appointment Order, Ms. Fink filed her third and final
4 status report on March 22, 2023.³⁴ In this report, Ms. Fink gave notice of her
5 resignation due to Defendants' unwillingness to communicate or otherwise work
6 with her or her team as instructed by the Court.³⁵

7 **II. STATEMENT OF FACTS**

8 **a. An Employer's Duty to Report and Pay Taxes**

9 **i. 941 Employment Taxes**

10 Employers must withhold Federal Insurance Compensation Act ("FICA" or
11 Social Security) taxes, Medicare taxes, and income taxes from their workers'
12 paychecks.³⁶ The employer then has until the end of each calendar quarter – either
13 March 31, June 30, September 30, or December 31 – to forward its workers' taxes to
14 the Internal Revenue Service ("IRS").³⁷ Until then, the employer holds the money
15 "in trust for the United States."³⁸

16 An employer must also pay its own Social Security and Medicare taxes each
17 quarter.³⁹ Together with its workers' tax withholdings, these payments are called
18 "employment taxes." An employment tax return, IRS Form 941, comes due a month
19 after the quarter ends.⁴⁰ The IRS uses this return to determine the employment taxes
20 owed for that quarter – and thus, whether the employer paid in full.

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24 ³³ Doc. 74.

25 ³⁴ Doc. 73.

26 ³⁵ *Id.* The Appointment Order stated that the Receiver may file notice of her resignation;
however, such resignation shall not be effective until the Court appoints a successor.

27 ³⁶ See 26 U.S.C. §§ 3102, 3402.

28 ³⁷ See 26 C.F.R. § 31.6071(a)-1(a); see also February 28, 2023 Evidentiary Hearing Transcript
49:7-8 (hereinafter "Feb. 28 Tr.").

³⁸ 26 U.S.C. § 7501.

³⁹ 26 U.S.C. §§ 3111, 3301.

⁴⁰ See 26 C.F.R. § 31.6071(a)-1(a); see also Feb. 28 Tr. at 48:21-22.

1 **ii. 940 Unemployment Taxes**

2 Employers must separately pay Federal Unemployment Tax Act (“FUTA”)
3 taxes equal to 6% of their employees’ wages.⁴¹ Depending on the amount owed,
4 unemployment taxes must be paid either quarterly (every three months) or annually
5 (by January 31).⁴² An unemployment tax return, IRS Form 940, must also be filed by
6 the payment deadline.⁴³

7 **iii. 1120 Corporate Income Taxes**

8 Taxable corporations must file an annual corporate income tax return, IRS
9 Form 1120.⁴⁴

10 **b. Defendants’ Business Falters and Fails to Comply with its**
11 **Obligations to the IRS.**

12 Mr. Henke’s parents founded Action Security, Inc. in 1963.⁴⁵ The firm was
13 incorporated on or about November 25, 1974, and was administratively dissolved by
14 the State of Alaska on or around October 1, 2016. The firm then began operating
15 under the name “Action Security.” Action Security provides locksmith and security
16 services. Mr. Henke acquired shares of the company over the years and eventually
17 became its sole owner, director, president, secretary, shareholder, and treasurer in
18 2016.⁴⁶

19 Between 2010 and 2016, Mr. Henke litigated his divorce proceedings, which
20 resulted in him being able to keep Action Security, but required him to make a payout
21 to his ex-wife that he reported to be more than \$2 million.⁴⁷ The result, according
22 to Mr. Henke, was “financial ruin”⁴⁸ for him and Action Security, which led to the
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25 ⁴¹ See 26 U.S.C. § 3301.

26 ⁴² See 26 C.F.R. § 31.6302(c)-3(a).

27 ⁴³ See 26 C.F.R. § 31.6071(a)-1(a).

28 ⁴⁴ See 26 C.F.R. § 1.6012-2(a); see also Feb. 28 Tr. at 51:25-52:4.

⁴⁵ March 1 Evidentiary Hearing Transcript 50:20-23 (hereinafter “Mar. 1 Tr.”)

⁴⁶ Feb. 28 Tr. at 10:25-11:2; Mar. 1 Tr. at 50:25-51:6.

⁴⁷ Mar. 1 Tr. at 51:5-6; 5:21-6:7.

⁴⁸ *Id.* at 51:8-12.

1 closure of five Action Security offices throughout the State of Alaska and dismissal
2 of 30 employees.⁴⁹

3 In 2014, during the pendency of his divorce, Action Security ceased paying
4 employment taxes or filing returns.⁵⁰ Defendants began spending taxes withheld
5 from their employees' paychecks on their own expenses instead of forwarding the
6 money to the IRS and they ceased filing or paying their own federal taxes.⁵¹

7 **c. The IRS Attempts to Recover Money Owed to It.**

8 Between June 2016 and March 2019, the IRS undertook myriad efforts to bring
9 Defendants into tax compliance, giving them repeated warnings of what might
10 happen if they did not comply. Specifically, the IRS:

- 11 1. advised Mr. Henke on how to follow the Internal Revenue Code;
- 12 2. recorded multiple federal tax liens against Action Security between
13 June 13, 2016, and March 27, 2019;
- 14 3. served notices of intent to levy Action Security's financial accounts
15 and levied on Action Security's bank accounts and credit card
16 merchant account;
- 17 4. assessed trust fund recovery penalties against Mr. Henke, under 26
18 U.S.C. § 6672, for multiple quarterly periods, making him personally
19 liable for Action Security's unpaid 941 employment taxes withheld
20 from the wages of its employees;
- 21 5. threatened to sue for an injunction if Defendants did not file returns
22 and pay taxes; and
- 23 6. delivered an IRS Letter 903 and Notice 931 to Defendants on October
24 12, 2017, which placed Action Security on notice that the IRS might
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27 ⁴⁹ *Id.* at 5:24-6:1.

28 ⁵⁰ Feb. 28 Tr. at 113:1-8.

⁵¹ *Id.* at 161:10-22.

1 pursue a suit for civil injunction if Action Security continued to fail
2 to comply with its employment tax obligations.⁵²

3 None of this persuaded Defendants to file their tax paperwork or pay the IRS
4 and Action Security's tax debt continued to grow.⁵³ As a result, on May 13, 2019,
5 Plaintiff filed a Complaint to enjoin Defendants from continuing to pyramid their
6 federal tax debt.⁵⁴ To that point, Mr. Henke and Action Security had failed to report
7 or pay employment taxes (Form 941) from the fourth quarter of 2014 onward;
8 unemployment taxes (form 940) for 2015 and 2017 onward; and corporate income
9 taxes for fiscal year 2014 onward.⁵⁵

10 Defendants initially ignored Plaintiff's lawsuit.⁵⁶ After the Clerk entered a
11 default judgment against Defendants,⁵⁷ the government notified Mr. Henke in
12 writing of the default judgment and suggested in a letter that the parties resolve the
13 pending case with a stipulated injunction rather than a default judgment.⁵⁸ The
14 letter included a proposed stipulation and injunction.⁵⁹

15 After approximately one week of negotiation over its terms, and the exchange
16 of three drafts, Mr. Henke stipulated to the injunction.⁶⁰ The District Court entered
17 the Stipulated Injunction on September 25, 2019.⁶¹ The Stipulated Injunction
18 included the following terms:

- 19 1. Defendants shall properly withhold from their employees' paychecks
20 appropriate amounts of income tax and FICA and Medicare taxes;

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22 ⁵² Doc. 40 at 4-5; Doc. 15 at 4.

⁵³ Feb. 28 Tr. at 43:11-20.

23 ⁵⁴ Doc. 1. The term "pyramiding" refers to the accumulation of tax liability from each
24 successive failure to remit payments. One cause for a pyramiding tax debt can be the lack
25 of profit or capital for operating costs, forcing the business owner to use funds that should
26 be deposited into employment tax trust accounts to pay bills, resulting in an accumulation
27 (or "pyramiding") of tax liabilities. See IRS Publication IR-2004-47 (Apr. 5, 2004), available
28 at <https://www.irs.gov/pub/irs-news/ir-04-047.pdf>.

⁵⁵ See Doc. 68, Ex. 4 at 1-89.

⁵⁶ Docs. 8, 9.

⁵⁷ Doc. 14.

⁵⁸ Doc. 16; Doc. 16-1 at 2.

⁵⁹ See Doc. 16-1 at 5-6.

⁶⁰ Docs. 16-1, 17.

⁶¹ Doc. 19.

2. Defendants shall deposit in an appropriate bank employee taxes, employer FICA and Medicare taxes, and FUTA taxes;
3. Defendants shall sign and deliver to the IRS on the first of every month an affidavit stating that the required income, FICA and Medicare, and FUTA taxes had been properly deposited for each pay period during the prior month;
4. Defendants shall timely file IRS Forms 941 and 940 and provide a copy of the filed forms to the IRS within five days of filing;
5. Defendants shall pay all required outstanding liabilities due on each tax return filed pursuant to the District Court's order;
6. Defendants shall not pay other creditors prior to paying amounts owed to the IRS;
7. Defendants shall not pay employee salaries except through an approved payroll services provider;
8. Defendants shall permit periodic inspection by the IRS of its books and records; and
9. Mr. Henke shall inform the IRS if he forms, incorporates, or works in a managerial capacity for any other business.⁶²

The District Court told Defendants that failure to abide by the Stipulated Injunction could result in “a motion for an order to show cause why Defendants should not be held in contempt[.]”⁶³ The District Court stated that possible sanctions for violating the order included being ordered to “cease doing business immediately” and being “permanently enjoined from forming, incorporating, or owning another business entity and working for any business in [any tax-related capacity.]”⁶⁴

⁶² *Id.* at 2-4. The Court adopted the language contained in the Proposed Order submitted by the parties with their Stipulation for Entry of Permanent Injunction. See Doc. 17.

⁶³ Doc. 19 at 5.

⁶⁴ *Id.*

1 Mr. Henke did little to nothing to comply with the Stipulated Injunction. On
2 October 30, 2019, RO Johnson traveled to Anchorage from his duty station in the
3 Lower 48 to review the terms of the injunction with Mr. Henke.⁶⁵ Revenue Officer
4 Johnson scheduled a follow-up trip to Alaska to meet with Mr. Henke on Tuesday,
5 November 19; however, after RO Johnson's arrival on Monday, Mr. Henke cancelled
6 that meeting.⁶⁶ When RO Johnson responded that he could meet any day that week,
7 Mr. Henke said that he was unavailable.⁶⁷ A follow-up meeting between RO Johnson
8 and Mr. Henke never occurred.⁶⁸

9 For the next two and a half years, Mr. Henke continued to fail to comply with
10 the injunction. During this period, Mr. Henke and Action Security paid the IRS
11 exactly twice.⁶⁹ Both times were in November 2019 and totaled \$2,563.40.⁷⁰ All the
12 while, Action Security continued operating as a business, paying other expenses like
13 rent and utilities⁷¹ and withholding its employees' federal tax withholdings. Action
14 Security did not file any federal tax returns during this period.⁷²

15 Attempts by the government to force compliance by Mr. Henke with the terms
16 of the injunction were met with avoidance, resistance, and deception. In June 2020,
17 the government sent a letter to Mr. Henke informing him that he had not paid all
18 employment taxes for the third and fourth quarters of 2019, filed Action Security's
19 tax returns, or sent RO Johnson the required documents, all of which were required
20 under the Stipulated Injunction.⁷³ Mr. Henke replied that he had submitted the
21 unemployment tax returns for the second half of 2019 but would be "more than
22 happy to resend them," and that he would contact RO Johnson in the morning.⁷⁴

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24 ⁶⁵ Feb. 28 Tr. at 64:6-12.

⁶⁶ *Id.* at 65:1-9.

25 ⁶⁷ *Id.* at 65:10-17.

⁶⁸ *Id.*

26 ⁶⁹ Feb. 28 Tr. at 63:6-64:5.

⁷⁰ Doc. 68, Ex. 4 at 2.

27 ⁷¹ Feb. 28 Tr. at 19:2-7.

⁷² Doc. 68, Ex. 4 at 1-89; *see also* Mar. 1 Tr. at 46:3-5.

⁷³ Doc. 20-1 at 2.

28 ⁷⁴ *Id.* at 2, 16; *see also infra* notes 69-70.

1 Twelve days later, after ignoring the government for four of those days because “the
2 fish [were] calling,” and after the government threatened to seek an order to show
3 cause, Mr. Henke finally sent receipts for his two 2019 payments.⁷⁵ (Later
4 accounting would determine that these payments were approximately \$2,000
5 short.⁷⁶) Mr. Henke also explained that he failed to meet with RO Johnson on
6 November 19, 2019, because the two of them “got their dates crossed.”⁷⁷

7 Subsequent attempts by the government to communicate with Defendants
8 went unanswered. On July 20, 2020, the government sent a letter to Mr. Henke
9 seeking the filing of Forms 941, questioning the sufficiency of the tax payments made
10 in 2019, and reminding Mr. Henke that RO Johnson was waiting on documents.⁷⁸
11 The letter also included a table detailing to that point Defendants’ numerous
12 violations of the Stipulated Injunction.⁷⁹ That letter went unanswered.⁸⁰

13 **d. The Court Appoints a Receiver and Warns Defendant of the**
14 **Consequences of Failing to Comply.**

15 In October 2020, Plaintiff asked the Court to hold Defendants in contempt of
16 the injunction.⁸¹ The Court ordered Defendants to respond to the motion within 14
17 days, and to appear at the contempt hearing, but Defendants did neither.⁸² The Court
18 found Defendants in contempt and appointed a Receiver, Lisa Fink, on March 24,
19 2022, to ensure Defendants’ compliance with the Stipulated Injunction going
20 forward.⁸³

21 In the Appointment Order, the District Court ordered Defendants to work with
22 Ms. Fink and enjoined them “from interfering in any manner with the discharge of
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24 ⁷⁵ *Id.* at 2, 21, 24.

25 ⁷⁶ Doc. 68, Ex. 4 at 86.

26 ⁷⁷ Doc. 20-1 at 3, 24.

27 ⁷⁸ *Id.* at 3, 37-38.

28 ⁷⁹ *Id.*

⁸⁰ *Id.* at 6.

⁸¹ Doc. 20.

⁸² Docs. 21, 24, 28.

⁸³ Docs. 36-37.

1 the Receiver's duties and exercising [of] her authorities."⁸⁴ Among other things, the
2 Appointment Order granted Ms. Fink keys to and the alarm code for Action Security's
3 premises, access to its books and records, and copies of all mail and
4 correspondence.⁸⁵ Additionally, the Court granted Ms. Fink authority to implement
5 "accounting and control procedures to facilitate the efficient and proper
6 administration of Action Security."⁸⁶ Like the Stipulated Injunction, the
7 Appointment Order again warned Defendants of the consequences of failing to
8 comply. Specifically, the Appointment Order stated,

9 [i]n the event Action Security remains in violation of the Injunction
10 Order, the Receiver shall take reasonable and appropriate steps to cure
11 those violations as soon as possible. **If the Receiver is unable to cure**
12 **those violations and determines that Action Security is unable or**
13 **unwilling to comply . . . the United States shall immediately seek**
14 **the permanent closure of Action Security.**⁸⁷

15 **e. Defendants Fail to Work with the Receiver in Violation of the**
16 **Court's Order.**

17 On April 26, 2022, Ms. Fink contacted Mr. Henke to set up an initial meeting.⁸⁸
18 During that call, Mr. Henke told Ms. Fink that he was not available for two weeks
19 but would call to set up a meeting to take place during the week of May 9, 2022.⁸⁹
20 Mr. Henke did not call back, however, and only after calling Action Security on three
21 occasions was Ms. Fink able to speak with Mr. Henke and arrange a meeting to take
22 place at close of business on May 9, 2022.⁹⁰ When Ms. Fink called on May 9, 2022,
23 to remind Mr. Henke of this meeting, he asked to reschedule to close of business on
24 the following day.⁹¹

25 ⁸⁴ Doc. 37 at 8.

26 ⁸⁵ *Id.* at 5-6.

27 ⁸⁶ *Id.* at 7.

28 ⁸⁷ *Id.* at 5 (emphasis added).

⁸⁸ Feb. 28 Tr. at 97:1-4, 8-11; Doc. 40-1.

⁸⁹ Doc. 40-1.

⁹⁰ Feb. 28 Tr. at 97:1-4; Doc. 40-1 at 2.

⁹¹ Doc. 40-1 at 2.

1 Ms. Fink and her assistant met with Mr. Henke on May 10, 2022. During this
2 meeting, Mr. Henke showed Ms. Fink his accounting system, which consisted of
3 using the desktop version of QuickBooks to generate employee paychecks and
4 withhold those employees' federal taxes.⁹² Mr. Henke did not use the other features
5 of QuickBooks which would have allowed him to track invoices, debts, and profits
6 and losses.⁹³ Also, because Mr. Henke used only the desktop version of the software,
7 as opposed to a cloud-based system, Ms. Fink was unable to easily access the
8 software remotely.⁹⁴

9 Mr. Henke also explained that he used the point-of-sale platform Square⁹⁵ to
10 process credit card payments and a Wells Fargo account for cash and check
11 payments.⁹⁶ Payments from Square, which were the majority of payments received
12 by Action Security, were then transferred to the Wells Fargo account as needed to
13 pay rent, bills, and payroll.⁹⁷ The rest remained in the Square account to protect the
14 money from creditors,⁹⁸ and was used to pay expenses through a debit card linked
15 to that account.⁹⁹

16 At the initial meeting on May 10, 2022, Ms. Fink gave Mr. Henke instructions
17 to give her materials she needed to fulfill her obligations as a receiver.¹⁰⁰ The items
18 Ms. Fink asked for included keys and alarm access codes for the Action Security shop;
19 logins and passwords to Action Security's QuickBooks, Square, and Wells Fargo
20 accounts; a summary of Action Security's inventory; a daily sales report; and a list
21 of Action Security's invoices and debts.¹⁰¹ Ms. Fink also told Mr. Henke to install

22 ⁹² Feb. 28 Tr. at 98:10-102:17.

23 ⁹³ Feb. 28 Tr. at 98:25-99:6, 101:25-6.

24 ⁹⁴ *Id.* at 109:8-13.

25 ⁹⁵ Square is a business that allows retailers to process credit card payments through a retail
terminal or other digital reader connected to a smart phone or tablet. See SQUARE,
<https://squareup.com/us/en> (last accessed Jan. 5, 2024).

26 ⁹⁶ Feb. 28 Tr. at 99:13-23, 100:1-4.

27 ⁹⁷ *Id.* at 102:15-18; see also Doc. 68, Ex. 7.

28 ⁹⁸ Mar. 1 Tr. at 54:9-12.

⁹⁹ Feb. 28 Tr. at 102:18-22.

¹⁰⁰ *Id.* 104:1-4; Doc. 40-1.

¹⁰¹ Feb. 28 Tr. at 105:11-19, 116:24-117:5, 169:8-13; Doc. 40-1. Access to these items was
explicitly ordered by the District Court in its order appointing Ms. Fink. Doc. 37 at 5-6.

1 RemotePC on his computer so she could access his desktop version of QuickBooks
2 from her office.¹⁰² Mr. Henke said that he would “get it done.”¹⁰³

3 Ms. Fink then met with Mr. Henke later in May at a Wells Fargo Bank in order
4 to get access to his bank account.¹⁰⁴ At that point in time, the account had no money,
5 and Mr. Henke had overdrawn it several times.¹⁰⁵ The account statements also
6 showed that Mr. Henke had made withdrawals from the account of approximately
7 “\$7,000, \$8,000” soon after the receivership began.¹⁰⁶ The account statements did
8 not show any similar patterns of withdrawals before this.¹⁰⁷ Mr. Henke told Ms. Fink
9 that the withdrawals were for cashier’s checks to pay vendors; however, he was
10 unable to provide her with copies of those checks.¹⁰⁸

11 Ms. Fink returned to Action Security on June 9, 2022, to log into QuickBooks
12 from Mr. Henke’s desktop computer and access information necessary to prepare
13 delinquent tax returns.¹⁰⁹ Working with Mr. Henke to access his financial records,
14 Ms. Fink “pulled everything off QuickBooks” so that she could “prepare all of the
15 940s, all of the 941s that were due.”¹¹⁰ That evening, Mr. Henke texted Ms. Fink:
16 “Thank you for your help today. I appreciate the help.”¹¹¹

17 Ms. Barr, Ms. Fink’s assistant, used Mr. Henke’s payroll history to prepare
18 every delinquent employment and unemployment tax return up to the first quarter
19 of 2022 – the most recent deadline.¹¹² Ms. Barr then brought Mr. Henke the
20 completed returns to review and sign, which he did.¹¹³ As a result of these filings,

22 ¹⁰² Feb. 28 Tr. at 109:7-18. RemotePC is software that allows a user at one internet-
23 connected computer to access and run an internet-connected computer in another location.
See REMOTEPC, <https://www.remotedesktop.com/> (last accessed Jan. 5, 2024).

24 ¹⁰³ Feb. 28 Tr. at 105:21.

25 ¹⁰⁴ *Id.* at 105:25-106:1-11.

26 ¹⁰⁵ *Id.* at 106:13-16.

27 ¹⁰⁶ *Id.* at 106:17-107:2.

28 ¹⁰⁷ *Id.* at 157:9-13.

¹⁰⁸ *Id.* at 106:23-25.

¹⁰⁹ *Id.* at 107:7-108:2. RemotePC access had not been provided.

¹¹⁰ *Id.* at 107:20-108:2; Mar. 1 Tr. at 34:5-8.

¹¹¹ Doc. 68, Def. Ex. D.

¹¹² Feb. 28 Tr. at 107:20-108:9.

¹¹³ *Id.* at 38:18-19, 199:14-16; Doc. 40-1 ¶ 19.

1 the IRS determined that Action Security owed \$1,893,951.33 in unpaid employment
2 taxes and \$2,189.64 in unpaid unemployment taxes.¹¹⁴

3 This was the apex of Mr. Henke's cooperation with Ms. Fink and the last
4 substantive action Ms. Fink was able to accomplish as Receiver. Despite her request,
5 Mr. Henke failed to provide Ms. Fink with all of the items she requested during their
6 initial meeting.¹¹⁵ As a result, Ms. Fink was not able to prepare Action Security's
7 corporate income tax returns because she had no data on the business's income.¹¹⁶
8 Her lack of access also meant that she could not prepare the employment and
9 unemployment tax returns that came due after the first quarter of 2022.¹¹⁷

10 In its Appointment Order, the District Court directed Ms. Fink to file periodic
11 status reports.¹¹⁸ In her first status report on June 24, 2022, Ms. Fink stated that in
12 her professional opinion Mr. Henke showed "no desire to become whole on his
13 federal tax debt," noting that it took multiple phone calls with Mr. Henke to arrange
14 both her initial meeting in May 2022 and the follow-up meeting in June 2022.¹¹⁹ Ms.
15 Fink also described how Mr. Henke had failed to complete the "simple accounting
16 tasks" she had instructed him to complete,¹²⁰ and had not given her the keys and
17 codes to Action Security, nor had he given her passwords or completed an
18 inventory.¹²¹ In addition, Ms. Fink reported that Mr. Henke continued to
19 misappropriate nearly all the federal taxes withheld from his employees'
20 paychecks,¹²² and further warned the District Court that Mr. Henke's
21 unresponsiveness "may make this receivership economically unfeasible."¹²³

22 ¹¹⁴ Doc. 68, Govt. Exs. 4 and 5.

23 ¹¹⁵ Feb. 28 Tr. at 111:17-22.

24 ¹¹⁶ *Id.* at 111:1-15.

25 ¹¹⁷ *Id.* 109:19-110:9.

26 ¹¹⁸ Doc. 37 at 9. The order directed a Status Report to be filed at the end of three months,
27 six months, 12 months, 18 months, and 24 months after entry of the order.

28 ¹¹⁹ Doc. 39-1.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Doc. 48-1 at 1.

¹²³ Doc. 39-1. Ms. Fink stated to the Court during the evidentiary hearing that a turning point
for a company often occurs between three and six months of engagement. See Feb. 28 Tr.
at 155:4-5. At that point, it becomes clear, "[t]hey either follow up or they avoid." Feb. 28
Tr. at 155:8.

1 On July 12, 2022, Plaintiff moved for an injunction to permanently close Action
2 Security and enjoin Mr. Henke from starting a new business.¹²⁴ In its motion,
3 Plaintiff argued that it had already tried everything short of shuttering the business,
4 yet Defendants' lawbreaking persisted.¹²⁵ Plaintiff asked the Court to (1) hold
5 Defendants in contempt of the Stipulated Injunction, (2) dissolve Action Security,
6 and (3) enjoin Mr. Henke from owning or operating another business for 10 years.¹²⁶
7 Shortly thereafter, Action Security missed the deadline to file a second quarter
8 employment tax return.¹²⁷

9 Mr. Henke submitted an affidavit on August 16, 2022, disputing the assertions
10 made in Ms. Fink's status report and asking for more time to resolve the matter.¹²⁸
11 Mr. Henke asked the Court to deny the United States' motion, claiming that: (1)
12 Action Security had filed all 941 tax returns; and (2) Action Security was current on
13 its third quarter 941 taxes.¹²⁹ Mr. Henke claimed that Action Security's sales had
14 increased "at the rate of 40%-50%...[a]llowing opportunity to repay IRS debt."¹³⁰
15 Mr. Henke also reported that prior to Ms. Fink's appointment, he had been
16 "attempt[ing] to find legal and accounting support without any success."¹³¹

17 After reading Mr. Henke's affidavit, Ms. Fink proposed a new arrangement to
18 him: If Mr. Henke gave the receivership another try, as he said he would, then he
19 could work with her assistant, Ms. Barr, instead of Ms. Fink.¹³² Ms. Fink saw her
20 assistant as "the calming factor" and hoped that communicating through Ms. Barr
21 would help compel Mr. Henke to take action.¹³³

24 ¹²⁴ Doc. 40.

25 ¹²⁵ Doc. 87 at 18.

26 ¹²⁶ Doc. 40.

27 ¹²⁷ *Id.* Ex. 4 at 84-85; Feb. 28 Tr. at 50:3-12.

28 ¹²⁸ Doc. 43.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Feb. 28 Tr. at 114:14-25.

¹³³ *Id.* at 153:23-154:4.

1 On Thursday, August 18, 2022, two days after Mr. Henke submitted his
2 affidavit, Ms. Barr called Mr. Henke to remind him of the items that Ms. Fink still
3 needed.¹³⁴ In a follow-up email sent that same day, Ms. Fink listed 10 action items
4 for Mr. Henke to complete, including numerous QuickBooks-related matters, access
5 to the Square payment system, keys and an access code to the Action Security
6 building, emailed daily sales reports, and a completed inventory.¹³⁵ Ms. Barr also
7 volunteered her office's IT personnel to assist Mr. Henke with restoring his
8 computer, which Mr. Henke said had been down since July 15, 2022.¹³⁶

9 Ms. Barr asked for the items to be completed by close of business Monday,
10 August 22, 2022.¹³⁷ Mr. Henke missed this deadline.¹³⁸ Consequently, Ms. Barr
11 emailed Mr. Henke that day to remind him of the things that she needed done.¹³⁹

12 On August 23, 2022, Ms. Barr spoke with Mr. Henke.¹⁴⁰ During that
13 conversation, Mr. Henke informed Ms. Barr that he had completed several of the
14 items, including creating a backup copy of his QuickBooks, generating a payroll
15 summary, paying his second quarter 2022 unemployment taxes, providing a login
16 for the Square account, and cutting a key to the Action Security building and
17 arranging for a new alarm access code.¹⁴¹ However, neither Ms. Fink nor Ms. Barr
18 ever received any of these materials from Mr. Henke despite his representation to
19 Ms. Barr that he would send them the following day.¹⁴² Reminder emails and phone
20

21
22 ¹³⁴ *Id.* at 168:24-25-169:1-23.

¹³⁵ Doc. 68, Ex. 9.

23 ¹³⁶ *Id.*; Feb. 28 Tr. at 170:1-24.

¹³⁷ Feb. 28 Tr. at 171:21-22.

24 ¹³⁸ *Id.* at 172:20-25-173:1-16.

¹³⁹ Doc. 68, Ex. 10.

¹⁴⁰ Doc. 68, Ex. 11.

25 ¹⁴¹ *Id.*

26 ¹⁴² Feb. 28 Tr. at 175:23-179:25, 181:11-22. A backup QuickBooks copy was apparently
27 provided to Ms. Fink by Mr. Henke; however, the file was inaccessible. *Id.* at 176:13-22. In
28 addition, Mr. Henke did ultimately provide a password for the Square account. However,
because two-factor authentication was needed to remotely log in, attempts by Ms. Fink and
Ms. Barr to access the Square information required Mr. Henke to forward them a randomly
generated authentication code. After initially providing the information, Mr. Henke stopped
providing Ms. Fink and Ms. Barr with the authentication code.

1 calls from Ms. Barr on August 25, 28, and 29, 2022, failed to produce the entirety of
2 the requested information.¹⁴³

3 Ms. Fink filed her second status report on September 23, 2022.¹⁴⁴ This report
4 presented the same negative outlook toward Defendants' ability or willingness to
5 comply with the terms of the injunction. According to Ms. Fink, Mr. Henke

6 [showed no] willingness to cooperate with [Ms. Fink], adopt proper
7 accounting practices, and ultimately ensure that his federal taxes are
8 reported and paid on time. Since May, [Mr. Henke] has persistently
failed to complete the often-simple assignments [Ms. Fink] gave him,
usually without so much as requesting an extension.¹⁴⁵

9 Mr. Henke's unresponsiveness and non-compliant behavior were consistent, despite
10 reminders and requests from Ms. Fink and Ms. Barr.¹⁴⁶ Without access to Mr.
11 Henke's QuickBooks, Ms. Fink reported that she would not be able to prepare returns
12 and did not expect his returns to be filed on time.¹⁴⁷ Ms. Fink also informed the
13 District Court that Mr. Henke's business "appear[ed] to be insolvent," based on Mr.
14 Henke going over a month without paying his salaried employees and overdrawing
15 "his only bank account 6 times since May [2022]."¹⁴⁸ And again, Ms. Fink put the
16 District Court and Mr. Henke on notice that she did not think the receivership was
17 feasible and that it should not continue due to Mr. Henke's refusal to cooperate.¹⁴⁹

18 The parties appeared on November 30, 2022, for a scheduled evidentiary
19 hearing on Plaintiff's Motion for Sanctions to Dissolve Action Security.¹⁵⁰ Mr. Henke
20 asked to postpone the hearing, claiming that he had an intestinal flu and 102-degree
21 fever.¹⁵¹ Mr. Henke also represented to the District Court that he had hired a
22 Colorado-based company, Financial Integrity, "to help me get all my ducks in a

23 ¹⁴³ Doc. 68, Exs. 12, 13, 15.

24 ¹⁴⁴ Doc. 48.

25 ¹⁴⁵ Doc. 48-1.

26 ¹⁴⁶ *Id.*

27 ¹⁴⁷ *Id.*

28 ¹⁴⁸ *Id.*

¹⁴⁹ *Id.* Ms. Fink could not prepare Action Security's corporate income tax returns since she
had no data on the business's income. Feb 24. Tr. at 111:2-112:5. Nor could she prepare the
employment and unemployment tax returns that came due after the first quarter of 2022.
Id. at 108:2-111:16.

¹⁵⁰ Doc. 55.

¹⁵¹ November 30, 2022 Hearing Transcript 2:21-3:17 (hereinafter "Nov. 30 Tr.")

row”¹⁵² and that he planned to bring on an accountant for the same reason.¹⁵³ The District Court granted Mr. Henke a one-time continuance but cautioned, “‘I’m not feeling well,’ isn’t going to work another time.”¹⁵⁴ The Court also again admonished Mr. Henke to start communicating with Ms. Fink “a lot.”¹⁵⁵ Mr. Henke agreed to do so.¹⁵⁶

Mr. Henke did not follow through on his representation to the District Court. A series of emails from Ms. Barr to Mr. Henke between December 7, 2022, and January 17, 2023, went unanswered.¹⁵⁷ Ms. Barr left phone messages with Mr. Henke on December 14, 2022, and January 17, 2023, that went unreturned.¹⁵⁸ She left a last phone message with Mr. Henke’s mother in mid-February 2023 requesting the authentication code for the Square login so that she could “update the financial information.”¹⁵⁹ Mr. Henke did not return that message.¹⁶⁰

Ms. Fink filed her third status report on March 23, 2022. In that report, Ms. Fink repeated what she had previously told the District Court about Mr. Henke’s failure to work with her. Specifically, Ms. Fink stated that Mr. Henke continued to withhold information, reform his business, follow directions, or otherwise work with Ms. Fink or Ms. Barr.¹⁶¹ Ms. Fink stated that her office had had no out-of-court correspondence with Mr. Henke since August 2022.¹⁶² Because of Mr. Henke’s refusal to work with her or Ms. Barr, Ms. Fink gave her notice of resignation from the receivership, effective April 21, 2023.¹⁶³

III. APPLICABLE LAW

Internal Revenue Code § 7402 grants district court’s jurisdiction “to make

¹⁵² *Id.* at 5:8–17.

¹⁵³ *Id.* at 5:16–17.

¹⁵⁴ *Id.* at 9:14–15.

¹⁵⁵ *Id.* at 8:25–9:19.

¹⁵⁶ *Id.* at 9:20–21.

¹⁵⁷ Doc. 68, Exs. 17–20; *see generally* Feb. 28 Tr. at 190–198.

¹⁵⁸ Doc. 68, Ex. 20; Feb. 28 Tr. at 197:7–13.

¹⁵⁹ Feb. 28 Tr. at 205:5–10.

¹⁶⁰ *Id.* at 205:12–13.

¹⁶¹ Doc. 73.

¹⁶² Doc. 73–1.

¹⁶³ *Id.*

1 and issue in civil actions, writs and orders of injunction, and of ne exeat republica,
2 orders appointing receivers, and such other orders and processes, and to render such
3 judgments and decrees as may be necessary or appropriate for the enforcement of
4 the internal revenue laws.”¹⁶⁴ Section 7402(a) “was intended to provide the district
5 courts with a full range of powerful tools to ensure the enforcement of both the spirit
6 and the letter of the internal revenue laws.”¹⁶⁵ The statute “has been construed
7 broadly, to allow courts the full panoply of remedies necessary to effectuate the
8 enforcement of federal tax laws.”¹⁶⁶

9 The Ninth Circuit has held that “[t]he standard requirements for equitable
10 relief need not be satisfied when an injunction is sought to prevent the violation of
11 a federal statute which specifically provides for injunctive relief.”¹⁶⁷ Because
12 § 7402(a) grants the court injunctive power, it is likely that the government need
13 only show that an injunction is appropriate for the enforcement of the internal
14 revenue laws, without reference to the traditional equitable factors.¹⁶⁸ Courts that
15 have taken this approach have held that injunctive relief is appropriate if the
16 defendant is reasonably likely to violate the federal tax laws again.¹⁶⁹ In similar
17 contexts, the Ninth Circuit has instructed courts “predicting the likelihood of future
18 violations[] to assess the totality of the circumstances surrounding the defendant
19 and his violations.”¹⁷⁰

20 Because neither the Supreme Court nor the Ninth Circuit Court of Appeals has
21 provided express guidance regarding the standard applied to requests

22 ¹⁶⁴ 26 U.S.C. § 7402(a).

23 ¹⁶⁵ *United States v. Raymond*, 78 F. Supp. 2d 856, 877 (E.D. Wis. 1999).

24 ¹⁶⁶ *United States v. Bartle*, No. IP01-0768, 2002 WL 75437, at *4 (S.D. Ind. Jan. 16, 2002).

25 ¹⁶⁷ *Trailer Train Co. v. State Bd. of Equalization*, 697 F.2d 860, 869 (9th Cir. 1983).

26 ¹⁶⁸ *United States v. Stoll*, No. Civ. CO5-0262, 2005 WL 1763617, at *8 (W.D. Wash. June 27,
2005) (citing *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (holding, in a
27 bankruptcy case, that where a statute, such as IRC § 7402(a), grants the court injunctive
28 power, the court is not “confined to traditional equity jurisprudence”)).

¹⁶⁹ See *United States v. Harkins*, 355 F. Supp. 2d 1175, 1180 (D. Or. 2004) (citing *United States
v. Kaun*, 827 F.2d 1144, 1150 (7th Cir. 1987)).

¹⁷⁰ See *SEC v. Murphy*, 626 F.2d 633, 655 (9th Cir. 1980); see also *La Quinta Worldwide, LLC
v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 880 (9th Cir. 2014) (“It is important to consider the
totality of circumstances bearing on whether a permanent injunction is appropriate
equitable relief.”).

1 for injunctive relief pursuant to § 7402(a), however, other courts have analyzed
2 such requests under the equitable factors traditionally applied to a request for a
3 permanent injunction.¹⁷¹ These factors are: (1) the likelihood of substantial and
4 immediate irreparable injury; (2) the inadequacy of remedies at law; (3) actual
5 success on the merits of a claim; (4) the balance of hardships between the plaintiff
6 and defendant; and (5) the public interest.¹⁷² When the government is a party, the
7 balance of hardships and public interest factors merge.¹⁷³

8 Out of an abundance of caution, the Court evaluates the appropriateness of a
9 permanent injunction under both standards.

10 IV. ANALYSIS

11 a. The Court Finds the Government's Evidence and Witnesses to Be 12 Credible and Does Not Find Mr. Henke to Be a Credible Witness.

13 In making its findings, the Court has considered the evidence in the record,
14 including the sworn declarations filed in conjunction with this motion and others,
15 as well as the sworn testimony and exhibits submitted during the evidentiary
16 hearing. The Court finds the government's witnesses' statements and declarations,
17 given under penalty of perjury and supported by admissible evidence, to be credible.

18 The Court does not find Mr. Henke to be credible and has discounted his
19 evidence and testimony accordingly. Mr. Henke failed to abide by the clear mandates
20 of the Stipulated Injunction despite his agreement to do so. He failed to heed the
21 District Court's warnings as to what might happen were he not to work with the
22 Receiver despite his claim that he understood the Court's admonition. And most

23 ¹⁷¹ See, e.g., *United States v. China China Inc.*, No. C 11-2065 SC, 2011 WL 4404941, at *4-7
24 (N.D. Cal. Aug. 31, 2011) (noting lack of clarity regarding proper standard and analyzing
25 motion for default judgment seeking injunctive relief under the standard set forth in 26
U.S.C. § 7402(a) and under traditional equitable principles), *adopted by*, 2011 WL 4404154
(N.D.Cal. Sept. 21, 2011). *U.S. v. Merritt*, 2011 WL 5026074, at *6 (E.D.Cal., 2011).

26 ¹⁷² *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *Amoco Prod. Co. v. Village of*
27 *Gambell*, 480 U.S. 531, 546 n.12 (1987) ("The standard for a preliminary injunction is
essentially the same as for a permanent injunction with the exception that the plaintiff must
show a likelihood of success on the merits rather than actual success.").

28 ¹⁷³ *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
556 U.S. 418, 435 (2009)).

1 importantly, throughout the course of this litigation he has made statements – both
2 unsworn and sworn – to the District Court, this Court, the IRS, and others that are
3 simply inconsistent with the facts.

4 For instance, at the Court’s November 30, 2022 Status Conference, Mr. Henke
5 informed the Court that he had met with Ms. Barr and that he had “made all of the
6 payments” and “done everything [he] possibly could.”¹⁷⁴ However, for the first
7 quarter of 2022, Mr. Henke paid only \$343.74 of the required \$4,757.18 owed in
8 employment taxes.¹⁷⁵ Moreover, at that point in time, Mr. Henke had not provided
9 passwords to Ms. Fink to permit her to access his accounts or to use those accounts
10 to pay taxes owed, had not prepared an inventory, had not responded to Ms. Fink or
11 Ms. Barr’s requests for pertinent financial information, and had avoided meeting and
12 communicating with Ms. Fink and Ms. Barr.¹⁷⁶ Each of these actions was required
13 under the Stipulated Injunction and Appointment Order.

14 Mr. Henke’s false statements about his cooperation with Ms. Fink and Ms. Barr
15 continued at the evidentiary hearing. Mr. Henke testified under oath that he had
16 timely provided Ms. Fink and Ms. Barr everything they had requested except for the
17 “alarm code and a key to the front door.”¹⁷⁷ As explained above, this statement is
18 false.¹⁷⁸

19
20
21 ¹⁷⁴ Nov. 30 Tr. at 4:7-8.

22 ¹⁷⁵ Doc. 40-1. This payment would have been due April 30, 2022, only six months prior to
the Court’s Status Conference.

23 ¹⁷⁶ See, e.g., Feb 28 Tr. at 178:20-179:1 (Testimony from Ms. Barr that Mr. Henke never
provided Ms. Fink with a key or building alarm code for the Action Security location); see
24 also *id.* at 116:17-22 (Testimony from Ms. Fink that she did not have keys or alarm access);
id. at 105:24-25 (testimony from Ms. Fink that “[t]o this day, there is still no inventory[.]”);
25 *id.* at 108:13-109:1, 116:17-22, 187:7-188:16 (Testimony from Ms. Fink and Ms. Barr detailing
how Mr. Henke stopped providing Ms. Fink with the dual-factor authentication code login
needed to access Square account); see also Status Reports at Docs 39-1, 48-1, and 73-1; Doc.
26 68, Exs. 17-20 (emails from Ms. Barr to Mr. Henke attempting to obtain information); Doc.
48-1 (status report by Ms. Fink describing difficulties communicating with Mr. Henke and
failures by Mr. Henke to provide QuickBooks account access, copies of incoming and
27 outgoing mail, daily accounting of Action Security’s revenue and expenditures, or a business
inventory).

28 ¹⁷⁷ Feb. 28 Tr. at 23:7-8.

¹⁷⁸ See *supra* notes 114, 133-142.

1 Mr. Henke claimed that one of the reasons for his failure to provide
2 information to Ms. Fink and Ms. Barr as required under the receivership order was
3 because, despite being “available seven days a week,” Ms. Fink and Ms. Barr had
4 “not reached out to [him] at all saying anything that they need[ed] from [him].”¹⁷⁹
5 However, this claim by Mr. Henke attempting to place blame on Ms. Fink and Ms.
6 Barr for not communicating with him is not supported by the record. The credible
7 testimony from Ms. Fink and Ms. Barr, supported by multiple government exhibits,
8 was that they attempted to contact Mr. Henke through both phone and email (and
9 were occasionally successful) and requested specific items from him on multiple
10 occasions.¹⁸⁰

11 In addition to the government’s evidence, Mr. Henke’s own testimony and
12 exhibits undermine his claim about being available and not being told what was
13 needed. In one text message with Ms. Fink following his June 9, 2022 meeting, Mr.
14 Henke wrote that “his homework is done,” a clear indication to this Court that he
15 had in fact been given a list of tasks to be completed.¹⁸¹ Contemporaneous
16 statements recorded by Ms. Barr and contained in emails sent to Mr. Henke show
17 that Mr. Henke was provided with lists of tasks to complete and acknowledged those
18 tasks.¹⁸² When asked about communications with Ms. Barr, Mr. Henke admitted that
19 she had “reached out to [him]” and that “[s]he’s emailed [him].”¹⁸³

20 The facts similarly do not support Mr. Henke’s testimony concerning his entry
21 into the Stipulated Injunction. Mr. Henke testified that he signed the injunction
22 under some duress after being “very intimidated” by an IRS agent who showed up at
23 his door unannounced and said, “sign this.”¹⁸⁴ He also testified that he did not have
24

25 ¹⁷⁹ *Id.* at 30:19-20.

26 ¹⁸⁰ *See supra* note 176.

27 ¹⁸¹ Doc. 68, Ex. D.

28 ¹⁸² *See id.*, Ex. 9 (“Scott, these are the items we discussed earlier this morning in our phone conversation...”).

¹⁸³ Feb. 28 Tr. at 22:16-25.

¹⁸⁴ Mar. 1 Tr. at 80:1-3.

1 a “clue what [the stipulation] was.”¹⁸⁵ This testimony is undermined by the
2 considerable back-and-forth between Mr. Henke and the IRS regarding the proposed
3 stipulation and Mr. Henke’s own email containing his signature on the stipulation.

4 The IRS sent Mr. Henke a letter and proposed stipulation on September 3,
5 2019. Mr. Henke wrote back that he was “interested in resolving this issue and
6 signing the injunction with a few changes.”¹⁸⁶ He then went on to detail several
7 specific changes to the proposed injunction that he wanted to see, including the dates
8 on which payments were to be made, changes to the time period for inspection of
9 books, and the lifting of liens that had been placed on Action Security.¹⁸⁷ The IRS
10 agreed to some changes and sent a modified proposed injunction back to Mr. Henke
11 on September 10, 2019.¹⁸⁸ On September 12, 2019, Mr. Henke replied with additional
12 proposed changes, referencing specific line items he was seeking to renegotiate.¹⁸⁹
13 The IRS again agreed to some of Mr. Henke’s proposed changes and sent him a third
14 draft of the proposed injunction that same day.¹⁹⁰ When the IRS had not heard back
15 from Mr. Henke by September 16, it emailed again asking for an update. Mr. Henke
16 replied several hours later saying that he had been working in a location in Alaska
17 without cell service and that he would try to review the proposed injunction “later
18 today” or “tomorrow.”¹⁹¹ He then signed the proposed stipulation and sent via email
19 a photo of his signature on September 19, 2019.¹⁹²

20 The record makes clear that Mr. Henke was clearly well-informed about the
21 contents of the proposed injunction he signed, and that nothing about his contacts
22 with the IRS could be considered intimidating. Mr. Henke had versions of each draft
23 of the proposed injunction for several days. He appears to have used that time to
24

25 ¹⁸⁵ *Id.* at 80:9-10.

26 ¹⁸⁶ Doc. 16-1 at 7.

27 ¹⁸⁷ *Id.*

28 ¹⁸⁸ *Id.* at 6.

¹⁸⁹ *Id.* at 5.

¹⁹⁰ *Id.* at 4-5.

¹⁹¹ *Id.* at 4.

¹⁹² Doc. 68, Ex. 22 at 1.

1 review the proposed injunction because he made multiple requests for specific
2 changes to the document. He then sent an email containing a photograph of his
3 signature on the stipulation's signature page. It is not credible for Mr. Henke to
4 testify under oath that he didn't have a "clue" what was in the stipulation or that he
5 was somehow forced into signing it.

6 Mr. Henke has also hedged and been inconsistent about other aspects of his
7 case, further undermining his credibility. To convey the financial straits he found
8 himself in following his divorce, Mr. Henke repeatedly highlighted the measures he
9 took to downsize his business and the short time frame he had to accomplish those
10 actions. However, on each occasion, the size of his inventory, the amount of time to
11 accomplish the move, and the space into which he moved all materially varied.¹⁹³

12 Mr. Henke also failed to provide consistent information about his purported
13 retention of various professionals to assist him in this matter. Of greatest concern
14 was Mr. Henke's statement to the District Court in November 2022 that he had in
15 fact retained a financial services firm to assist him.¹⁹⁴ Mr. Henke subsequently told
16 Ms. Barr¹⁹⁵ and testified before this Court¹⁹⁶ that he had hired or was in the process

17 ¹⁹³ Compare Mar. 1 Tr. at 6:5-6 ("I moved 30,000 feet into 2,300 feet") with Feb. 1 Tr. at
18 36:16-20 ("I put 50,000 feet in 2,800 feet of locations" and "I'm sitting in a 2,200 square-
19 foot place with 30,000 feet of inventory") with Feb. 1 Tr. at 164:3-5 ("Did I also tell you, I
20 had to move my company, in less than 20 days, from 18,000 feet into 2,300 feet" with Doc.
43 at 1 ("Action moved 30000 square feet of inventory, vehicle, equipment and furniture
into 2700 square feet in less than 10 days.").

21 ¹⁹⁴ Nov 30 Tr. at 5:10-6:11 (statement by Mr. Henke to the District Court that he had "hired
[Financial Integrity] to try and get [him] back in line" and further description of
communications with three possible lawyers).

22 ¹⁹⁵ Feb 28 Tr. at 190:19-24 ("Scott, per Judge Holland's instructions, we met in court on
Wednesday, November 30, 2022. He requested that you communicate with Lisa. He also
23 asked that you provide her with the contact's name at the financial firm you stated you
hired. It has been eight days, and we are notifying you that you have not complied with the
judge's orders."); *id.* at 197:15-22 ("Scott, I just left a voicemail message for you at 3:14 p.m.
24 on your cell, 907-227-2911. I've sent you two emails, December 7th and 14th, and left a
voicemail message for you on December 14th, and I have not heard back from you. Judge
25 Holland instructed you to communicate with Lisa and provide her with a contact name at
the financial firm you hired. Neither Lisa nor I have heard from you or your new financial
26 firm.").

27 ¹⁹⁶ See Mar. 1 Tr. at 73-98 (Discussion of different individual attorneys, financial firms, IRS
agents, and payments); *id.* at 22:4-22. ("I'm in the process of hiring a company called Focus
28 Financial, which is a local company that writes checks that will handle all my 941s, all my
payroll, all my taxes, and complete everything that is taking time away from me servicing

1 of hiring professional assistance to help him resolve his tax problems. However, the
2 record does not contain any evidence of the hiring of any financial services firms
3 until May 16, 2023.¹⁹⁷ Yet even when Mr. Henke provided this evidence, he
4 simultaneously represented to the Court that he was still seeking to “obtain a
5 company to assist [him] in resolving [his] debts.”¹⁹⁸ Mr. Henke’s statements
6 regarding his attempts to retain legal counsel were similarly contradictory and
7 unsupported by documentary evidence.¹⁹⁹

8 In addition, while attempting to explain his failure to communicate with Ms.
9 Fink and Ms. Barr following the November 30, 2022 Status Conference, Mr. Henke
10 provided multiple shifting justifications, none of which satisfactorily explained his
11 failure to comply with the District Court’s direct admonition to him that he start
12 communicating with Ms. Fink “a lot.”²⁰⁰ As it related to email communications, Mr.
13 Henke first claimed that he did not receive emails sent by Ms. Barr because they
14 were sent to the email “shenke@actionsecurity,” an email account he was “not

15 our customers. I've got a company called Phoenix that is wanting to do a retroactive filing
16 for a program called ERC, which is employment retention credit, to where credits are given
17 for our entire 2020 and 2021 payroll. And this is a program that's being given out by the
18 United States of America, and they are willing to work with me on that. I have communicated
19 to a number of companies that said that the receivership is not your friend. These are
20 professional companies that do these jobs. They have looked at the documentation and was
21 trying to see if they could contact the IRS to take it over. And due to the fact that it's in court,
22 they were not able to do it, but they were very willing and said that they could handle this
23 and gets my books in line and get back in line with the IRS.”).

24 ¹⁹⁷ Mr. Henke provided a letter dated May 16, 2023, stating that “Integrity Financial
25 Associates (“IFA”) has been contracted by Action Security, Inc. to help resolve their federal
26 tax issues.” Doc. 88-1.

27 ¹⁹⁸ Doc. 88 at 1.

28 ¹⁹⁹ Mr. Henke repeatedly asserted that he had hired or was attempting to hire an attorney to
help him resolve his tax problems. None of those attempts bore fruit, though, and the record
does not contain any documentary evidence to support Mr. Henke’s statements that he had
spent over \$10,000 attempting to hire various attorneys. See Doc. 16-1 at 7 (2019 email from
Mr. Henke to the IRS stating that he had “spoken with a number of attorneys and [hadn’t
decided if he could] afford to proceed forward with their help”); Feb. 28 Tr. at 7:20-8:8
 (“Your Honor, I tried to obtain representation for two months. I hired a company, paid
\$5,000 to them, and less than two weeks ago, they told me they couldn't represent me
because the case was in court. I then proceeded to find another attorney that I gave money
-- \$5,000 to as well, and he told me that he couldn't represent me because of where it was
at in the court session. I went to the Anchorage Bar Association, the Alaska Bar Association,
everywhere, trying to find someone to represent me, and I think that you're aware that
there's a shortage of attorneys. All of the attorneys that were practicing this type of stuff
have quit or are not back practicing at this point in time or overloaded with cases. So I am
by myself at this point in time.”).

²⁰⁰ Nov. 30 Tr. at 8:25-9:19.

1 checking at [the] time.”²⁰¹ When informed by the Court that some of the emails were
2 sent to the account that he testified he was regularly using,
3 “dispatch@actionsecurity,” Mr. Henke pivoted and said that he was out of the office
4 during that time, bedridden with COVID.²⁰² Mr. Henke then admitted that he
5 “obviously” had spoken to Ms. Barr about the contents of those emails, thereby
6 admitting that he had received and reviewed them, but added that “if” they had
7 spoken, he was not “100 percent coherent at the time” because he was “under the
8 weather.”²⁰³ He then added that his failure to respond and cooperate was the result
9 of legal advice he had been given.²⁰⁴

10 Mr. Henke told a similar story when it came to attempts by Ms. Barr to speak
11 to him. Mr. Henke said that he had not received any of the calls Ms. Barr had left
12 following the November 30 Status Conference, but then conceded that Ms. Barr had
13 “left messages.”²⁰⁵ Mr. Henke did not have an answer for why he failed to respond
14 to those calls.²⁰⁶

15 This record leaves the Court with a firm conviction that Mr. Henke’s testimony
16 regarding his actions in this matter is simply not credible. Mr. Henke has failed to
17 abide by his promises and representations to the District Court, has repeated false
18 statements about his interaction with the Receiver, and has been inconsistent as to
19 other material matters in this case. Accordingly, the Court places little to no weight
20 in the testimony of Mr. Henke at the evidentiary hearing or in the supporting
21 documentation provided by him during this litigation.

22

²⁰¹ Mar. 1 Tr. at 47:18-20.

23 ²⁰² *Id.* at 69:3-9, 69:17-22. The Court notes that Mr. Henke communicated with the IRS in
24 2019 about the stipulated injunction using his shenke@actionsecurity email account.
25 However, when asked about why he did not respond to Ms. Barr’s emails in August and
26 November 2022, Mr. Henke testified that he did not recall seeing any of them because it was
27 sent to the “shenke” account, which he does not regularly check “due to the fact that [he’s]
28 never at his desk anymore.” *Id.* at 67:19-24. Mr. Henke testified that the account he was
primarily using in 2022 was dispatch@actionsecurity, and that it was the one he was “most
likely to receive emails at.” *Id.* at 68:12-14.

²⁰³ *Id.* at 69:17-22.

²⁰⁴ *Id.* at 47:23-48:2.

²⁰⁵ *Id.* at 48:7-16.

²⁰⁶ *Id.* at 48:21-22.

1 **b. Plaintiff Has Met the Standard for Granting a Permanent**
2 **Injunction.**

3 Plaintiff has provided sufficient evidence showing that a permanent
4 injunction is warranted. Plaintiff has shown that a permanent injunction is
5 appropriate for the enforcement of the internal revenue laws, and that a permanent
6 injunction is warranted based on the traditional equitable factors.

7 In determining the appropriateness of a permanent injunction for the
8 enforcement of the internal revenue laws, the Court considers the totality of the
9 circumstances, including the following factors: (1) the gravity of harm caused by the
10 offense; (2) the extent of the defendant's participation, and his degree of scienter;
11 (3) the isolated or recurrent nature of the infraction and the likelihood that the
12 defendant's customary business activities might again involve him in such
13 transaction; (4) the defendant's recognition of his own culpability; and (5) the
14 sincerity of his assurances against future violations.²⁰⁷ As detailed herein, the Court
15 finds that each of these factors weighs strongly in Plaintiff's favor.

16 **i. The Gravity of the Harm Caused by Defendants' Violation of**
17 **the District Court's Order Is Significant.**

18 The first factor the Court considered is the harm caused by Defendants'
19 conduct. Defendants have failed to pay nearly all their unemployment, employment,
20 and corporate taxes since 2014.²⁰⁸ As a result, according to the IRS, Action Security
21 owes \$1,896,140.97 to the United States in unpaid taxes.²⁰⁹ Defendants' continued
22 refusal to comply with the Court's orders has caused that figure to balloon to
23 \$4,467,738.53 when accounting for penalties and interests,²¹⁰ and that debt appears
24 to be growing unabated.

25
26

²⁰⁷ *Harkins*, 355 F. Supp. 2d at 1181 (citing *United States v. Raymond*, 228 F.3d 804, 813 (7th
27 Cir. 2000)); *Murphy*, 626 F.2d at 655.

²⁰⁸ Doc. 87 at 9.

²⁰⁹ Doc. 68, Ex. 5.

²¹⁰ Doc. 45 at 2-3.

1 The Court notes that Mr. Henke confidently maintained during the evidentiary
2 hearing that he could pay off his debt and rebound his company. Mr. Henke testified
3 that “customers are coming back”²¹¹ and that he can “pretty much” earn whatever it
4 takes to square his debts.²¹² However, Mr. Henke admitted that he had no strategy
5 to pay off what he owed, much less the additional taxes that may have accrued since
6 the commencement of this proceeding.²¹³

7 Moreover, Mr. Henke’s confidence flies in the face of the record in this case.
8 Defendants have consistently failed to pay their required employment,
9 unemployment, and income taxes since 2014. This failure to pay accruing taxes or
10 to attempt to make good on amounts past due exists even though Mr. Henke claimed
11 that business was increasing following the COVID-19 pandemic with the return of
12 customers, a portfolio of statewide clients, large corporate clients who he claims
13 generate revenues of “40 to 50 thousand dollars” per year, and new “lucrative”
14 revenue streams creating “automotive keys to the tune of \$300 to make a key.”²¹⁴
15 However, according to Ms. Fink, in actuality Action Security was “insolvent...because
16 it’s not making enough money to support anybody.”²¹⁵

17 Mr. Henke’s only evidence of future financial solvency and ability to pay his
18 taxes was a spreadsheet showing that credit card receipts from January 1, 2023, to
19 February 28, 2023, were 33.5% higher in 2023 than in 2022.²¹⁶ That may be so.
20 However, as Plaintiff pointed out, it fails to prove the business grew more profitable
21 in 2023 and does not account for inflation nor does it prove that total revenue
22 increased. Further, the data compares only the first two months of 2023 to the entire
23

24 ²¹¹ Mar. 1 Tr. at 28:24, 25:21-22.

25 ²¹² *Id.* at 27:1-7; *see also id.* at 56:7-9 (“And I’m telling you I’m on target, and I told you that
when we first spoke, is that I am bound and determined to pay back everything I owe.”).

26 ²¹³ *Id.* at 45:1-4.

27 ²¹⁴ *Id.* at 62:2-63:6.

28 ²¹⁵ Feb. 28 Tr. at 122:10-12. During the time that Ms. Fink has access to Action Security’s
finances, she observed that it made a profit of \$23,000, but that Mr. Henke had personal
expenses of \$26,000, putting him in a \$3,000 hole. *Id.* at 122:4-7. As a result, Mr. Henke
had multiple overdrawn checks from his Wells Fargo account. *Id.* at 106:14-17.

²¹⁶ Doc. 68, Ex. G.

1 previous year. This brief snapshot of revenue into one account is of limited value to
2 the Court and is overcome by the bleak financial picture for Action Security painted
3 by the evidence in this case. The first factor, therefore, weighs in Plaintiff's favor.

4 **ii. The Defendant Is Aware of His Obligations Under the Law**
5 **and Has Willfully Violated the Court's Order.**

6 The second factor the Court considers is the extent of Defendants'
7 participation and their degree of scienter. Mr. Henke is the sole owner and operator
8 of Action Security, and thus any failure to file or pay taxes for nine years is a direct
9 result of his inaction. The Court finds Mr. Henke was intimately aware of his
10 violations and understood he was conducting his business in violation of IRS tax laws
11 and warnings.

12 As detailed above, the IRS has attempted since 2016 to bring Defendants into
13 tax compliance via myriad efforts. Mr. Henke agreed to the Stipulated Injunction
14 directing his compliance in 2019. The District Court found Mr. Henke in contempt
15 in 2021 and appointed a receiver to bring him into compliance. In November 2022,
16 the District Court admonished Mr. Henke to work with the Receiver. And at the
17 evidentiary hearing, Mr. Henke admitted to not paying his taxes or complying with
18 the Stipulated Injunction because he prioritized paying creditors first.²¹⁷ The second
19 factor thus weighs in favor of Plaintiff.

20 **iii. Defendants Are Likely to Continue to Break the Law and**
21 **Violate the District Court's Order.**

22 The third factor involves the frequency of the infraction, i.e., whether it was
23 isolated or is recurrent in nature, and the likelihood that Defendants will continue
24 to violate the tax laws and the Stipulated Injunction. The frequency of the
25 Defendants' failure to file or pay taxes has persisted for nine years, making it highly
26 recurrent in nature. Given the prolonged, consistent duration of tax avoidance, and
27 Mr. Henke's willingness to continue to avoid paying taxes during the pendency of

28 ²¹⁷ Feb. 28 Tr. at 19:2-7; see also Mar. 1 Tr. at 55:16-56:6.

1 this action, it appears inevitable that Defendants will fail to meet their tax
2 obligations if allowed to continue as currently structured, or if Mr. Henke is allowed
3 to assume a role in another organization with responsibility for tax compliance.

4 Since the outset of this case, Mr. Henke has steadfastly refused to take any
5 significant action that would demonstrate to the Court that he has a genuine desire
6 to bring Action Security into tax compliance. For example, starting in 2016, the IRS
7 attempted to advise him on how to follow the tax code. To this end, RO Johnson
8 communicated with Mr. Henke in person, through letters, and telephonically about
9 what Defendants needed to do to comply with the relevant tax laws.²¹⁸ Mr. Henke
10 did not comply with RO Johnson's instructions.²¹⁹

11 Mr. Henke's failure to work with RO Johnson ultimately led to referral of his
12 case for civil injunction.²²⁰ As detailed above, Mr. Henke failed to follow through on
13 his obligations under the Stipulated Injunction. That failure led to the appointment
14 of a receiver, Ms. Fink, and an order to cooperate. Mr. Henke failed to comply with
15 that order.

16 Despite his repeated statements that he wished to resolve this matter, Mr.
17 Henke appeared unable to take basic steps to bring Action Security's affairs in order.
18 Mr. Henke disregarded essentially all of Ms. Fink's assignments: He did not give her
19 a summary of his inventory,²²¹ a daily sales report,²²² remote access to
20 QuickBooks,²²³ consistent access to his Square account,²²⁴ keys to his shop,²²⁵ or a
21 list of his invoices and debts.²²⁶ As of the date of the final Status Report from Ms.
22 Fink, he still had not accomplished any of these tasks.²²⁷ Mr. Henke's actions, or lack

23 ²¹⁸ Feb. 28 Tr. at 43:6-15.

24 ²¹⁹ *Id.* at 43:16-20.

25 ²²⁰ *Id.* at 43:21-24.

26 ²²¹ *Id.* at 116:11-15.

27 ²²² *Id.* at 179:11-17.

28 ²²³ *Id.* at 109:5-18.

²²⁴ *Id.* at 108:12-109:1, 116:18, 120:2-8.

²²⁵ *Id.* at 116:17.

²²⁶ *Id.* at 116:23-117:6.

²²⁷ Doc. 73-1; *see also supra* notes 174-176 and accompanying text. Mr. Henke provided brief access to his Square account but failed to respond to requests from Ms. Fink or Ms. Barr for additional information needed to maintain that access.

1 thereof, confirm Ms. Fink's conclusion that Mr. Henke was "horrible"²²⁸ at
2 communicating and that the receivership was impossible.²²⁹

3 Even when Ms. Fink was able to accomplish anything of substance on Mr.
4 Henke's behalf, Mr. Henke failed to follow through with his legal obligations. During
5 his initial period of cooperation with Ms. Fink, Mr. Henke gave her access to his
6 QuickBooks, allowing Ms. Fink to prepare Defendants' Forms 940 and 941 through
7 the first quarter of 2020. Despite this, Mr. Henke paid less than 10% of the first
8 quarter employment taxes due on March 1, 2022.²³⁰

9 Even the District Court's admonishment at the November 30 Status
10 Conference that it "expect[ed] there to be a lot of communication Mr. Henke,
11 between you and Ms. Fink" failed to spur Mr. Henke into action.²³¹ The District Court
12 plainly told Mr. Henke:

13 THE COURT: You have got to inform her as to what you're doing. You
14 have got to put her in touch with the people that you say you're working
15 with, because at this point, quite frankly, I'm suspicious as to whether
16 you really have a viable operation going. You're talking about getting
investors, and, sir, I'm afraid that's a pipe dream, but if it's real, you
have got to be communicating what's going on to the receiver.

17 MR. HENKE: Okay.

18 Tellingly, neither Ms. Fink nor Ms. Barr have had any out-of-court contact with Mr.
19 Henke since the District Court's advisement despite repeated emails and phone
20 messages.²³²

21 Indeed, it appears as if some of the steps taken – or not taken – by Mr. Henke
22 were taken with the express purpose of frustrating the work of the Receiver.
23 Immediately after her appointment, Ms. Fink was able to meet with Mr. Henke and
24 gain access to his Wells Fargo account, the account from which he told her that he
25 paid his rent and wages. But prior to gaining that access, and shortly after Ms. Fink's

26 ²²⁸ Feb. 28 Tr. at 113:25.

27 ²²⁹ Doc. 48-1.

28 ²³⁰ Doc. 39-1 at 1.

²³¹ Nov. 30 Tr. at 8:25-9:2.

²³² Doc. 68, Exs.17-20; *see also* Feb. 28 Tr. at 116:6-10.

1 appointment, Mr. Henke withdrew a significant amount of money from the account
2 and failed to provide Ms. Fink with documentation supporting Mr. Henke's
3 insistence that the withdrawals were to pay vendors.²³³ To date, no such
4 documentation has been provided.²³⁴

5 Mr. Henke then kept the balance in the Wells Fargo account low to protect it
6 from "people coming in and taking money out of [the] account,"²³⁵ and appeared to
7 shift most financial activity to the Square account, from which Mr. Henke could deny
8 access to Ms. Fink by failing to provide her with the two-factor authentication code
9 needed to remotely access that account.²³⁶ The result of Mr. Henke's actions
10 following the appointment of the Receiver was to drain and then starve the Wells
11 Fargo account, the only account from which Ms. Fink could pay taxes owed by Mr.
12 Henke and Action Security, thereby denying her the ability to perform a key
13 component of her role as Receiver.

14 Mr. Henke also denied Ms. Fink access to his business. Curiously, Mr. Henke,
15 a locksmith by trade, was never able to provide Ms. Fink with a key to his property,
16 and claimed that he could not provide Ms. Fink with the alarm code for his security
17 system because he had "not been able to figure out how to change the alarm code."²³⁷
18 And Mr. Henke's repeated assertions that he was available any time to meet with
19 Ms. Fink or Ms. Barr are undermined by the frequency with which he cancelled
20

21 ²³³ Feb. 28 Tr. at 106:13-107:5; *see also id.* at 157:13-21 (Testimony by Ms. Fink that this
22 withdrawal suggested that Mr. Henke was "taking money out of the account real quick
before a receiver comes in.").

23 ²³⁴ Mar. 1 Tr. at 8:2-6; *see also* Doc. 68. Exs. B, C. At the evidentiary hearing, Mr. Henke
24 produced records showing a similar \$7,000 withdrawal two months after Ms. Fink's
25 appointment, and testified that this withdrawal was made in order to pay a vendor. Mr.
26 Henke's credibility on this issue is undermined by his ability to selectively produce
documentation only for those issues that appear to inure in his favor, while withholding
production for those that might undermine it. *See supra* notes 194-199 and accompanying
text. Moreover, even if the questioned withdrawals were for the purchase of inventory, they
would violate the injunction, which prohibited Mr. Henke from paying any commercial bills
prior to his federal taxes. Doc. 38.

27 ²³⁵ Mar. 1 Tr. at 54:9-12.

28 ²³⁶ *See, e.g.,* Feb. 28 Tr. at 108:12-109:1, 116:17-22, 187:7-188:16 (Testimony from Ms. Fink
and Ms. Barr detailing how Mr. Henke stopped providing Ms. Fink with the dual-factor
authentication code login needed to access Square account).

²³⁷ *Id.* at 23:8-9.

1 meetings, missed phone calls claiming he was unavailable due to working in remote
2 parts of the state, or simply did not respond to email and voice message requests to
3 communicate.

4 Mr. Henke repeatedly claimed at the evidentiary hearing that he was working
5 tirelessly to keep his business afloat.²³⁸ In Mr. Henke's view, it was more important
6 to him to do business than it was to comply with the injunction. However, nothing
7 precluded Mr. Henke from doing both, and indeed, much of what Ms. Fink and Ms.
8 Barr completed on Mr. Henke's behalf and were prepared to undertake going
9 forward – the filing of required paperwork, the implementation of accounting and
10 inventory systems – would have freed Mr. Henke to run his business more efficiently.
11 In the Court's view, the steps Mr. Henke took to frustrate Ms. Fink were the result
12 of his unwillingness, rather than an inability, to get her what she needed.

13 The only step that Mr. Henke appears to have taken to address his tax
14 compliance issues was to hire at the 11th hour a financial firm. However, the Court
15 is not swayed by this effort. Mr. Henke told the IRS and District Court multiple times
16 during this litigation that he either did, or intended to, hire an outside firm to assist
17 him with his tax issues.²³⁹ However, it is only when faced with the imminent
18 possibility of closure that it appears he might actually have.²⁴⁰ In addition, Mr.
19 Henke has consistently failed to follow the tax laws and the District Court's orders,
20 even when given multiple opportunities to work with Plaintiff and the resources of
21 a qualified receiver. This abysmal track record gives the Court no confidence that
22 Mr. Henke intends to follow through with his retained financial services firm in such
23 a way that will result in his compliance with the tax laws and will allow him to
24 address his debt to the United States.

25 Mr. Henke testified at the evidentiary hearing on this motion that he “was
26 trying to comply [with the injunction] and move on with [his] life so he can get [his

27 ²³⁸ *Id.* at 35:1-5; Mar. 1. Tr. at 6:17, 7:6, 29:2, 49:8-14, 56:1-6.

28 ²³⁹ Mar. 1 Tr. at 22:1-14; Nov. 30 Tr. at 5:10-25, 6:1-11.

²⁴⁰ Doc. 88-1.

1 tax problems] eliminated.”²⁴¹ However, his actions belie that testimony. Since the
2 outset of this matter and continuing to this day, Mr. Henke has acted in ways that
3 demonstrate to this Court that Defendants’ primary objective is avoidance of their
4 tax problems, as opposed to their elimination. The Court finds that the third factor
5 weighs heavily in Plaintiff’s favor.

6 **iv. Mr. Henke Has Not Acknowledged His Own Culpability.**

7 The fourth factor is Defendant’s recognition of his own culpability. While Mr.
8 Henke has expressed in words his willingness to pay his debts and bring his company
9 into tax compliance, his actions belie that intent. The Court has before it little to no
10 evidence of him accepting responsibility for his actions. Rather, Mr. Henke’s
11 statements relating to his failure to pay taxes owed are surrounded by excuses, and
12 he has consistently blamed others – RO Johnson, Ms. Fink, Ms. Barr – for his inability
13 to comply with the law and the orders of the District Court.

14 The most telling demonstration of Mr. Henke’s lack of recognition of his own
15 culpability has been his response to Ms. Fink’s appointment. At the evidentiary
16 hearing, Mr. Henke faulted the District Court for giving “Ms. Fink the receivership
17 without [his] knowledge,”²⁴² despite having been served with a copy of the motion
18 and the District Court’s order appointing Ms. Fink.²⁴³ He went on to then assert that
19 despite its obvious impact on his business, and the potential sanctions that could
20 result were he not comply with the District Court’s order, he had not read the
21 Appointment Order²⁴⁴

22 It would seem apparent that anyone facing a significant tax liability would
23 welcome the opportunity to work with a court-appointed receiver to help resolve the
24 matter. The Court will not speculate why Mr. Henke has spurned this opportunity;

25 ²⁴¹ Feb. 28 Tr. at 33:14-15.

26 ²⁴² *Id.* at 6:19-20.

27 ²⁴³ Docs. 29, 30.

28 ²⁴⁴ Mar. 1 Tr. at 31:14. According to Mr. Henke’s testimony at the evidentiary hearing, he did not read the Appointment Order when it was served on him and still “still [hadn’t] read it to this day. Okay?” *Id.* at 15. Mr. Henke made this assertion despite Ms. Fink’s testimony that she reviewed the receivership order with him “line by line.” Feb. 28 Tr. at 98:3-4.

1 however, his hostility toward Ms. Fink, her assistant Ms. Barr, and their collective
2 assistance has been jarring and continues Mr. Henke's trend of seeking to address
3 his tax problems by attempting to ignore them or blaming others. Mr. Henke claims
4 his hostility toward Ms. Fink was based on her purported faults and inexperience.²⁴⁵
5 However, it is apparent from Ms. Fink's resume and experience that she was more
6 than capable of assisting Mr. Henke in this case.

7 At the evidentiary hearing, Mr. Henke sought to cast blame on Ms. Fink,
8 criticizing her for not guiding him sufficiently through the process²⁴⁶ or sending
9 reminders of things he needed to accomplish.²⁴⁷ Only on cross-examination did Mr.
10 Henke concede that Ms. Fink did give him a "list of assignments," that he had
11 reviewed that list, and that reminders about these actions items were sent to him on
12 multiple occasions.²⁴⁸ Indeed, the record shows that between their initial meeting
13 on May 10, 2022, and the evidentiary hearing in early 2023, Ms. Fink or Ms. Barr
14 met with Mr. Henke or communicated with him through phone, text, or email no
15 fewer than 15 times.²⁴⁹ Among these communications were emails that included a
16 list of 10 specific action items Mr. Henke needed to accomplish.²⁵⁰ The Court is
17 uncertain how much more hand-holding could have been done in this case.²⁵¹

18 Indeed, Mr. Henke appears to want it both ways. On the one hand, he criticizes
19 Ms. Fink for not "writ[ing] [instructions] down for [him] so [he] could get a punch
20 list done[.]"²⁵² On the other hand, when given specific tasks to get done, he fails to

21 ²⁴⁵ Mar. 1 Tr. at 21:15-19 ("She mentioned that she's done 700, blah, blah, blah, or something
22 along those lines, and then it later came up that this is her first receivership. And I believe
23 that it being her first receivership, that Action Security has been a receiver of her lack of
24 experience.").

25 ²⁴⁶ *Id.* at 79:18 ("I just need my hand held.").

26 ²⁴⁷ *Id.* at 20:15-22.

27 ²⁴⁸ *Id.* at 37:15-18 (Question: "You said that she verbally gave you a list of assignments that
28 you needed to do, correct? She told you, here's X, Y and Z, do these things? Answer: She
went down the list. Okay?); see also *id.* at 48:23-25 ("[T]hey sent you, a number of times, a
list of things you had to do for them").

²⁴⁹ Doc. 40-1; Feb. 1 Tr. at 97:2-10; Doc. 68, Exs. 9-20.

²⁵⁰ Doc. 68, Exs. 9-11, 13, 15, 17-19.

²⁵¹ The Court notes that Ms. Fink and Ms. Barr even went so far as to attempt to provide IT
help to Mr. Henke when his computer apparently crashed and he was unable to access his
QuickBooks, an offer Mr. Henke spurned. Feb. 28 Tr. at 170:22-171:10.

²⁵² Mar. 1. Tr. at 40:23-24.

1 follow through on the assignments.

2 Mr. Henke also criticizes Ms. Fink because she only “met with [him for] three
3 to four hours, and then sent a letter to the United States government saying that [he]
4 need[s] to be shut down.”²⁵³ In making this claim, Mr. Henke fails to appreciate that,
5 in addition to their in-person meetings, Ms. Fink and her firm spent time preparing
6 overdue tax returns based upon information obtained during those initial
7 meetings.²⁵⁴ Furthermore, the record demonstrates that Ms. Fink attempted to work
8 with Mr. Henke to carry out the receivership order, that communications during the
9 summer of 2022 after the initial meeting appeared to be improving,²⁵⁵ and that some
10 progress was made in providing information to the IRS. Moreover, when Ms. Fink’s
11 communications broke down several months into the relationship, Ms. Fink tasked
12 Ms. Barr with attempting “to try to move forward with this case.”²⁵⁶

13 Mr. Henke nevertheless insists that Ms. Fink should have spent more time
14 with him, should have been “in his corner,” and should have “showed up at [his]
15 office and looked [him] in the eye and said, ‘Let’s get busy.’”²⁵⁷ But the record
16 evidence in this case shows that Ms. Fink’s attempts to work with Mr. Henke to
17 resolve his tax problems were reasonable. Even after filing her first status report
18 documenting her issues with Mr. Henke and her conclusion that Mr. Henke’s
19 business was not viable, Ms. Fink agreed to continue working with Mr. Henke
20 following his assurances in August 2022 that he was “willing and needing to resolve
21 this matter as quickly as possible[.]”²⁵⁸ This representation spurred Ms. Barr’s
22 involvement, and her repeated phone calls and emails to Mr. Henke requesting
23 information and access, which largely went unfulfilled.²⁵⁹

24
25 ²⁵³ *Id.* at 77:3-7.

26 ²⁵⁴ Feb. 28 Tr. at 107:19-108:8.

27 ²⁵⁵ *Compare id.* at 98:6-9 (“He seemed a little angry, a little upset.”) *with* Mar. 1 Tr. at 33:2-
28 13.

²⁵⁶ Feb. 1 Tr. at 114:14-25.

²⁵⁷ Mar. 1 Tr. at 77:7-10.

²⁵⁸ Doc. 43 at 3.

²⁵⁹ See *supra* notes 157-160.

1 Even after being ghosted in August 2022, Ms. Barr tried a second time to work
2 with Mr. Henke following the November 30 Status Conference.²⁶⁰ This outreach also
3 went unanswered despite the District Court’s stern admonition to Mr. Henke that he
4 start communicating with Ms. Fink “a lot,” and Mr. Henke’s assurance that he
5 would.²⁶¹ The Court does not fault Ms. Barr or Ms. Fink for refusing to spend
6 additional time and resources on Mr. Henke’s case given Mr. Henke’s unwillingness
7 to do the simple tasks asked of him, all of which were either directly ordered as part
8 of the District Court’s order appointing the Receiver,²⁶² or clearly consistent with
9 the duties of the Receiver.²⁶³

10 All in all, Ms. Fink and Ms. Barr did not, as Mr. Henke claims, sit back and
11 “throw[] darts at [him].”²⁶⁴ Rather, Ms. Fink and Ms. Barr repeatedly attempted to
12 engage with Mr. Henke and fulfill the mandate of the District Court’s receivership
13 order, yet Mr. Henke failed to cooperate. In light of Mr. Henke’s stonewalling, it is
14 understandable that Ms. Fink would ultimately throw her hands up and walk away.
15 The fault is not with Ms. Fink for failing to throw a lifeline to Mr. Henke; the failure
16 is with Mr. Henke for not grabbing that lifeline when it came his way.²⁶⁵ Mr. Henke’s
17 refusal to acknowledge this while continuing to blame Ms. Fink does not indicate any
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19 ²⁶⁰ Mar. 1 Tr. 47:6-22.

20 ²⁶¹ Nov. 30 Tr. at 9:1-3.

21 ²⁶² Compare Doc. 37 at 5 (“The Receiver shall have access and control over Action Security’s
22 records, including...and electronically kept records such as those using QuickBooks.”) with
23 Doc. 68, Exs. 9-13, 15, 17-20 (Emails from Ms. Barr to Ms. Henke requesting access to, among
24 other things, QuickBooks backup, login and password, and access.).

25 ²⁶³ Compare Doc. 37 at 12 (“The Receiver may...implement such accounting and control
26 procedures to facilitate the efficient and proper administration of Action Security.”) with
27 Doc. 68, Ex. 9-13, 15, 17-20 (Emails from Ms. Barr to Ms. Henke requesting that an inventory
28 of Action Security’s assets be completed.).

29 ²⁶⁵ The Court notes the irony of Mr. Henke’s complaints about Ms. Fink refusing to work
30 with him given that nearly every stage in this case it has been Mr. Henke who has missed
31 deadlines or failed to show for meetings. Mr. Henke failed to answer the Complaint. During
32 Mr. Henke’s communications with the IRS about the stipulated injunction, he failed to
33 respond with proposed edits to the injunction by the time he said he would. RO Johnson
34 testified that Mr. Henke cancelled a meeting at the last minute and failed to follow-up like
35 Mr. Henke said he would. Ms. Fink testified that it took multiple calls over several weeks to
36 set up her initial meeting and follow-up meeting with Mr. Henke. Mr. Barr’s
37 communications with Mr. Henke demonstrate that he consistently failed to respond to her
38 requests for information despite repeated assurances that he would.

1 acceptance of responsibility. Factor four weighs heavily in favor of Plaintiff.

2 **v. Defendants Will Not Meet their Legal Obligations Going**
3 **Forward.**

4 Finally, the fifth factor relates to the sincerity of Defendants' assurances
5 against future violations.²⁶⁶ As detailed above, Mr. Henke has repeatedly assured
6 the IRS, the Receiver, and the District Court that he wanted to resolve this matter
7 and was working diligently toward that end. For instance, in his emails with the IRS
8 in August 2019 prior to the stipulated injunction, Mr. Henke wrote that he "plan[ned]
9 on resolving this issue myself with your office's help."²⁶⁷ In his declaration filed
10 August 16, 2022, in response to Ms. Fink's first status report, Mr. Henke claimed that
11 Action Security's sales had increased "at the rate of 40%-50%...[a]llowing
12 opportunity to repay IRS debt."²⁶⁸ At the November 30 Status Hearing, Mr. Henke
13 told the District Court that he was "back on [his] feet again and...able to start getting
14 this resolved."²⁶⁹ At the evidentiary hearing Mr. Henke testified that he was "on
15 target" and "bound and determined to pay back everything [he owed]."²⁷⁰ Mr. Henke
16 added that he would "continue to do what [he's] doing so that the company can be
17 profitable and [he] can pay off [his] debt."²⁷¹

18 The evidence demonstrates that what Mr. Henke has done since at least 2014
19 is avoid paying his taxes. And since at least 2016, he has failed to work with those
20 who have attempted to help him resolve these issues, despite his representations to
21 the IRS, the District Court, and this Court at every turn that that was his desire.
22 Simply put, there is no evidence in the record of Mr. Henke making any sustained,
23 dedicated attempt to comply with his legal obligations, comply with the obligations
24 in the Stipulated Injunction, or comply with this District Court's orders and
25 admonitions. And there is nothing to indicate that if given another opportunity, he

26 ²⁶⁶ *Harkins*, 355 F. Supp. 2d at 1181.

27 ²⁶⁷ Doc. 16-1 at 7.

28 ²⁶⁸ *Id.*

²⁶⁹ Nov. 30 Tr. at 4:16-17.

²⁷⁰ Mar. 1 Tr. at 56:7-9.

²⁷¹ *Id.* at 85:1-2.

1 would do so.

2 Mr. Henke's actions, and in some instances his inactions, speak louder than
3 his words and tell the Court that without stringent sanctions, future tax violations
4 will occur and Defendants will continue to violate the Court's orders. Without
5 evidence of any significant good faith efforts by Defendants during the four years
6 since entry of the Stipulated Injunction, the Court struggles to see how any remedy
7 short of shutting down Defendants' business and enjoining Mr. Henke from engaging
8 in any other businesses that would make him responsible for tax compliance could
9 prevent future loss. "[T]ime and experience" have demonstrated to this Court that
10 the previous injunction was not enough to compel Mr. Henke to bring his company
11 into tax compliance and to stop the pyramiding scheme.²⁷² The District Court has
12 been unable to accomplish its objectives with less stringent sanctions. The fifth
13 factor, therefore, weighs in favor of Plaintiff.

14 In sum, Plaintiff presented evidence demonstrating there is a likelihood of
15 future tax violations by Defendants. Plaintiff estimates that, as of July 10, 2022,
16 Defendants owe the United States Treasury approximately \$4,467,738.53,
17 accounting for both the underlying \$1,896,140.97 in unpaid taxes and the interest
18 and penalties that have accrued on that sum.²⁷³ Because of Defendants' conduct (or
19 lack thereof), there is no sign this amount will decrease. Plaintiff likewise presented
20 evidence of Defendants' past conduct of knowingly and continuously acting in a
21 manner that violates federal tax laws, despite the repercussions, offers of assistance
22 by the IRS and the Receiver, and numerous warnings from the IRS and District Court.
23 Plaintiff also presented evidence of Defendants' persistent and obstinate refusal to
24 comply with both the federal tax laws, and the District Court's preliminary
25 injunction and receivership order, again despite numerous warnings. Mr. Henke has
26 not acknowledged the illegality of his conduct, nor has he credibly denied any of the

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28 ²⁷² See *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 249 (1968).

²⁷³ Doc. 45 at 2-3; Doc. 68, Ex. 5.

1 factual allegations against him. Plaintiff has therefore shown that a permanent
2 injunction is appropriate for the enforcement of the internal revenue laws.

3 **vi. The Equitable Factors Warrant a Permanent Injunction.**

4 In addition to showing that a permanent injunction is appropriate for the
5 enforcement of the internal revenue laws, Plaintiff has established each of the
6 factors that would warrant a permanent injunction in equity: (1) substantial
7 irreparable harm; (2) the inadequacy of remedies at law; (3) actual success on the
8 merits; and (4) a balance of equities tipping in Plaintiff's favor.²⁷⁴

9 First, Plaintiff has shown that Defendants' activities, if not curbed, will result
10 in substantial irreparable harm through lost revenues and interference with the
11 proper administration of the revenue laws. Second, Defendants' failure to make any
12 dent in their steadily growing tax debt, and their apparent unwillingness to tackle
13 the problem despite being subject to various court orders, indicate that remedies at
14 law are inadequate to compel Defendants' compliance with the revenue laws. Third,
15 Plaintiff has demonstrated actual success on the merits. As detailed above, there is
16 abundant evidence in the record of Defendants' refusal to comply with the revenue
17 laws or to cooperate with the District Court's orders, or to otherwise reform their
18 business in an attempt to stop pyramiding debt and repay it.²⁷⁵ And fourth, Plaintiff
19 has shown that the balance of hardships tips in its favor. Although the Court
20 recognizes that Plaintiff's requested relief places a significant burden on Defendants'
21 freedom of contract,²⁷⁶ Defendants' own behavior—namely, their repeated violations
22 of the revenue laws and challenges to court orders—has prompted the necessity of a
23 severe sanction. Permanent injunctive relief advances the significant public interest
24 in collecting and recovering tax obligations, or, in this case, imposing appropriate
25 sanctions where Defendants have flagrantly disregarded their duty to address these

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27 ²⁷⁴ See *eBay Inc.*, 547 U.S. at 391; *Amoco Prod. Co.*, 480 U.S. at 546 n.12; *Drakes Bay Oyster*
Co., 747 F.3d at 1092.

28 ²⁷⁵ See *supra* sections IV.iii & v.

²⁷⁶ See *infra* Part V.a.

1 obligations.²⁷⁷

2 The Court therefore finds that the traditional equitable factors further
3 establish that Plaintiff is entitled to a permanent injunction.

4 **V. SANCTIONS**

5 **a. The Court Recommends Closure of Action Security and Enjoining**
6 **Mr. Henke from Controlling a Business.**

7 Having recommended that Defendants be found in contempt, the Court turns
8 to the appropriate remedy. The government seeks a permanent injunction ordering
9 Defendants to cease accepting new clients within 30 days, cease operating within
10 120 days, and placement of a notice of the injunction on Defendants' store door. The
11 government also requests that this injunction prohibit Mr. Henke from directly or
12 indirectly owning, controlling, managing, operating, or serving as an officer or
13 director of any business until the earlier of (1) his successful petition for relief if
14 certain conditions are met after one year from the injunction, or (2) 10 years. Finally,
15 the government asks that the injunction provide that Defendant be incarcerated for
16 three or more days if he violates its terms.²⁷⁸

17 Mr. Henke requests the appointment of a second receiver and an opportunity
18 to continue operating the business.²⁷⁹

19 The government's requested remedy is extraordinary. The Court has
20 been able to find only a limited number of cases in which a court not only ordered
21 an individual or entity facing similar issues to dissolve their business operation, but
22 also enjoined any future operations.²⁸⁰ Indeed, such an extraordinary resolution
23 directly impacts Defendants' clients, third parties who are wholly innocent in this

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²⁷⁷ See *Perez v. Ledesma*, 401 U.S. 82, 108 (1971) ("Taxes are the lifeblood of government,
25 and their prompt and certain availability an imperious need.").

²⁷⁸ Doc. 87 at 31-32.

²⁷⁹ Doc. 88 at 1-2.

²⁸⁰ See, e.g., *United States v. ITS Fin., LLC*, 592 Fed. App'x 387, 397 (6th Cir. 2014); *United States v. Ireland*, 2019 WL 3759533 (E.D. Mich. July 24, 2019) (permanently enjoining defendant from acting as tax preparer and owning and operating a tax preparation business); *United States v. Pugh*, 717 F. Supp. 2d 271, 302 (E.D.N.Y. 2010); *United States v. Franchi*, 756 F. Supp. 889, 893 (W.D. Pa. 1991).

1 matter, and also appears to run counter to the Constitutional guarantees of liberty
2 and freedom of contract.²⁸¹

3 However, as the limited case law in this area demonstrates, those guarantees
4 are not absolute. And Defendants' conduct in this case leaves this Court no viable
5 option but to concur with the government's proposed sanction. Mr. Henke has
6 repeatedly violated the lawful orders of the District Court, even after being warned
7 that failure to abide could result in the very sanction being recommended at this
8 time. The Court finds that no lesser sanction will deter Defendants from continuing
9 to commit willful violations of the tax laws and the District Court's orders.

10 **b. Other Sanctions Are Not Appropriate in this Case.**

11 The Court has considered other sanctions ranging from doing nothing to
12 recommending Mr. Henke's incarceration. A recommendation to maintain the status
13 quo ignores two obvious truths. First, Ms. Fink has provided her notice of
14 resignation and is no longer available to serve as a receiver.²⁸² Second, such an order
15 would grant Mr. Henke additional time to continue with his tax avoidance,
16 rewarding him for his obstinacy and deliberate avoidance of his obligations under
17 the law, the injunction, and the District Court's orders.

18 The appointment of a second receiver, as requested by Mr. Henke, is also not
19 a viable option. Defendant refused to work with Ms. Fink or Mr. Barr, and since Ms.
20 Fink's resignation, there is no evidence in the record of any meaningful attempts by
21 Defendant to comply with the tax laws or pay what is owed. There is no evidence in
22 the record that appointing a second receiver – a step that would amount to “do-
23 over” – would be effective. The District Court appointed a competent and capable
24 receiver to work with Defendants to assist with the resolution of their tax issues. As
25 detailed above, Mr. Henke ultimately refused this help, spurned the Receiver, and
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28 ²⁸¹ See Const. art. I, § 10.

²⁸² Doc. 73-1.

1 blamed the Receiver and the District Court for his predicament. Given Defendants'
2 history, appointment of a second receiver is very likely to end in a similar fashion.

3 Mr. Henke also seeks to work with an outside firm. In his final briefing to this
4 Court, Mr. Henke provided a letter from a service which appears to indicate that the
5 service has been retained to assist with Defendants' ongoing tax problems.
6 However, as previously stated, the apparent retention of this firm does not alter the
7 Court's recommendation. Mr. Henke has frequently misled the Court as to his
8 retention of professionals that he claimed were assisting him or were going to be
9 retained to assist him.²⁸³ Given Mr. Henke's record with the Receiver, the Court has
10 doubts about whether Mr. Henke will follow through with this firm or how
11 effectively he will be able to work with them to address his significant tax
12 delinquency.

13 Financial penalties are an option that the Court has considered and similarly
14 rejected. In its original motion for a show cause order filed on October 14, 2020, the
15 government requested a per diem fine, along with compensation for costs accrued
16 by the government because of Defendants' contemptuous behavior.²⁸⁴ Such a per
17 diem fine for each day a contemnor fails to comply with an affirmative court order
18 is valid and enforceable.²⁸⁵

19 The Court finds that a financial penalty to induce compliance would be
20 ineffective. This is so because Mr. Henke has already demonstrated that he
21 prioritizes paying himself and his vendors over his taxes, even when the law and
22 District Court tell him otherwise.²⁸⁶ Furthermore, at best, a per diem fine would
23 likely induce only temporary compliance before Defendants reverted to past practice
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25 ²⁸³ See *supra* notes 196, 199.

26 ²⁸⁴ Doc. 20 at 13. The government withdrew this request for financial penalties in its
27 Response to Order dated January 26, 2022. Doc. 26. In that order, the District Court solicited
28 soliciting "input from Plaintiff as to what action the court should take to enforce [the
injunction.]" Doc. 25.

²⁸⁵ See *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994); *United
States v. Ayres*, 166 F.3d 991, 995 (9th Cir. 1999).

²⁸⁶ See Feb. 28 Tr. at 19:2-7; see also Mar. 1. Tr. at 72:14-24.

1 of ignoring the Court's order, failing to pay taxes, and failing to cooperate with a
2 receiver. The parties would then find themselves right back where they began with
3 the filing of this motion. Moreover, where the fundamental issue is an individual's
4 refusal to properly pay taxes owed, it makes little sense to the Court to order a
5 person to pay money to the Court as part of a civil contempt fine, as opposed to
6 where that money should be sent, the IRS.²⁸⁷

7 The Court has also considered a shorter duration for the permanent
8 injunction, or alternative conditions for lifting of the injunction after one year. The
9 Court finds that a shorter term for the injunction and alternative conditions are not
10 appropriate. This is so given the duration and magnitude of the willful tax avoidance
11 by Defendants, and Defendants' unwillingness to comply with multiple prior orders
12 and instructions of the District Court. A 10-year injunction and the imposition of
13 strict conditions that must be met prior to an early release from that injunction are
14 appropriate under the facts of this case.

15 The Court has also considered incarceration as a sanction. Incarceration is an
16 appropriate coercive sanction for civil contempt so long at "the contemnor can avoid
17 the sentence imposed on him, or purge himself, by complying with the terms of the
18 original order."²⁸⁸ The government is not seeking incarceration in this civil matter
19 and the Court is not recommending it.

20 The Court finds that anything less than the recommended sanction on these
21 facts would undermine the authority of the District Court. On two occasions the
22 District Court has clearly warned Mr. Henke of the consequences of failing to comply
23 with its order. When ordering the Stipulated Injunction – to which Mr. Henke
24 voluntarily agreed – the Court wrote that violating its order could result in Mr.
25 Henke and Action Security being ordered to "cease doing business immediately" and

26 ²⁸⁷ *But see United States v. Moore*, No. 16-6054, 2017 WL 3718529 at 4 (D. N.J. Aug. 29, 2017)
27 (denying permanent injunction seeking closure of dental office in part because motion was
28 "premature" and "cut[] off [Defendant's] only real chance to repay his and practice's
liabilities").

²⁸⁸ *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 635 n. 7 (1988).

1 being “permanently enjoined from forming, incorporating, or owning another
2 business entity and working for any business in [any tax-related capacity.]”²⁸⁹
3 Similarly, in the Appointment Order, the District Court wrote, “[i]f the Receiver is
4 unable to cure those violations and determines that Action Security is unable or
5 unwilling to comply . . . the United States shall immediately seek the permanent
6 closure of Action Security.”²⁹⁰

7 It does not appear that the incentives that might motivate a businessperson to
8 work with a receiver or otherwise take the necessary steps to comply with the law
9 and the Court’s orders work with Mr. Henke. The initial involvement of the IRS
10 failed. The Stipulated Injunction failed. The District Court’s receivership order
11 failed. The filing of the government’s motion seeking closure of Defendant Action
12 Security and a permanent injunction against Mr. Henke forbidding him from owning
13 or operating a similar business for 10 years failed. The looming threat of this Court’s
14 potential finding and recommendation granting the government’s motion and
15 proposed remedy failed.

16 Nothing has prevented Mr. Henke from recognizing the seriousness of his
17 dilemma and taking advantage of the opportunities provided to him by the IRS, the
18 District Court, and Ms. Fink. However, since breaking off contact with the Receiver,
19 there is nothing in the record demonstrating that Defendants have taken any steps
20 to comply with the District Court’s orders. Defendants’ inaction has occurred in spite
21 of the fact that *any* positive steps by Mr. Henke toward complying with the District
22 Court’s order would likely have been viewed favorably and would in no way have
23 harmed his position in this litigation.

24 In the Court’s view, Mr. Henke did not want to be told by anyone – the IRS,
25 the District Court, or Ms. Fink – how to run his business. However, that is precisely
26 what the District Court ordered. There is nothing in the record indicating that Mr.

27 ²⁸⁹ Doc. 19 at 5.

28 ²⁹⁰ Doc. 37 at 5.

1 Henke's mindset has changed and that any action short of what is recommended
2 herein will be any more successful.

3 Mr. Henke expressed the opinion that, "[Action Security] is not a business that
4 you just can dissolve."²⁹¹ Unfortunately for him, that is simply not true. The District
5 Court can dissolve Action Security for Defendants' nine-year streak of violating IRS
6 tax laws and failing to comply with multiple court orders. That is why this Court
7 recommends Action Security be dissolved and Mr. Henke enjoined from running a
8 business until Mr. Henke can demonstrate concrete actions he has taken to ensure
9 he can comply with the tax laws.

10 VI. CONCLUSION

11 For nearly a decade, Defendants have defied taxation with impunity. As of July
12 10, 2022, Action Security's pyramiding tax debt totaled \$4,467,738.53, with no sign
13 of decreasing despite numerous offers and directions of help from the District Court,
14 the IRS, and the Receiver. Defendants have not shown any willingness to respect our
15 nation's tax laws or the District Court's authority. And Mr. Henke's promises of
16 change ring hollow. Mr. Henke's actions during this case demonstrate that he will
17 not reform and that the Court should grant Plaintiff's Motion for Sanctions to
18 Dissolve Action Security.

19 Defendants have been warned countless times that Action Security may be
20 shut down and that Mr. Henke might be enjoined from running a business if they did
21 not comply with tax laws, work with the Receiver, or follow court orders. These
22 warning were given upon commencement of this action by the IRS, with the filing of
23 the Stipulated Injunction, with the Appointment Order, throughout Defendants'
24 correspondence with Plaintiff, and by the District Court. This Court therefore sees
25 no feasible lesser remedy at this stage.

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28 ²⁹¹ Doc. 43 at 3.

1 Accordingly, this Court recommends that the District Court **GRANT** Plaintiff's
2 Motion for Sanctions to Dissolve Action Security and **ORDER** a permanent injunction
3 containing the following provisions:

- 4 1. Scott Henke and Action Security shall cease accepting new clients within 30
5 days;
- 6 2. Action Security shall cease operating as a going concern within 120 days.
7 After that time, it may not, under any circumstance, perform services for
8 existing clients, sell products, or advertise to the public;
- 9 3. Within three days of service of the District Court's order, Mr. Henke shall
10 conspicuously display at Action Security's entrance a copy of this injunction
11 and a notice that the business will close by the date ordered which shall
12 include the following language;

13 Due to Action Security's failure to pay taxes and comply with
14 court orders, the District Court for the District of Alaska has
15 found Action Security and its owner, Scott Henke, in contempt
16 of court. As a result of being found in contempt, the District
17 Court has entered a permanent injunction against Action
18 Security and Scott Henke. Action Security and Scott Henke
19 shall cease accepting new clients within 30 days of the date of
20 the District Court's injunction and shall close its doors within
21 120 days of that injunction.

- 22 4. Mr. Henke shall not directly or indirectly own, control, manage, operate, or
23 serve as an officer or director of any business until the earlier of (1) his
24 successful petition for relief under paragraph 5; or (2) 10 years;
- 25 5. Mr. Henke may petition the Court for relief from this Permanent Injunction,
26 no earlier than one year after its entry, by demonstrating that he is capable
27 and likely to run a business in compliance with all federal tax laws. In
28 reviewing any petition for relief, the Court may consider, among other
factors, whether:

- a. A certified public accountant approved by the Court, or by the United
States, attests that Mr. Henke has implemented sufficient internal

controls to ensure that all future federal taxes are reported and paid on time;

b. Mr. Henke has reported and paid his own federal income taxes, in full and on time, for the past five years;

c. Mr. Henke has reported and paid any state and local taxes due, in full and on time, for the past five years;

d. Mr. Henke owes no outstanding debts; and

e. Mr. Henke has maintained a positive credit history; and

6. If Mr. Henke violates this injunction, he shall be incarcerated for up to three days, or for as long as the contempt remains.

The Court also recommends that:

1. As recommended by Ms. Fink at Docket 48-1, the receivership ordered at Docket 37 be terminated; and

2. Ms. Fink's request to resign at Docket 73-1 be GRANTED.

DATED this 10th day of January, 2024 at Anchorage, Alaska.

s/ Kyle F. Reardon
KYLE F. REARDON
United States Magistrate Judge
District of Alaska

NOTICE OF RIGHT TO OBJECT

Under 28 U.S.C. § 636(b)(1), a district court may designate a magistrate judge to hear and determine matters pending before the Court. For dispositive matters, a magistrate judge reports findings of fact and provides recommendations to the presiding district court judge.²⁹² A district court judge may accept, reject, or modify, in whole or in part, the magistrate judge's order.²⁹³

²⁹² 28 U.S.C. § 636(b)(1)(B).

²⁹³ *Id.* § 636(b)(1)(C).

1 A party may file written objections to the magistrate judge's order within 14
2 fourteen days.²⁹⁴ Objections and responses are limited to five (5) pages in length
3 and should not merely reargue positions previously presented. Rather, objections
4 and responses should specifically identify the findings or recommendations objected
5 to, the basis of the objection, and any legal authority in support. Reports and
6 recommendations are not appealable orders. Any notice of appeal pursuant to Fed.
7 R. App. P. 4(a)(1) should not be filed until entry of the district court's judgment.²⁹⁵
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28 ²⁹⁴ *Id.*

²⁹⁵ *See Hilliard v. Kincheloe*, 796 F.2d 308 (9th Cir. 1986).