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7 Trucept, Inc. fka Smart Tek Solutions Inc.

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11
12 TRUCEPT, INC., fka SMART TEK
13 SOLUTIONS INC..

14 Plaintiff.

15 v.

16 UNITED STATES INTERNAL
17 REVENUE SERVICE.

18 Defendant.
19

Case No. '15CV447 BTM JMA

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

20 **INTRODUCTION**

21 1. Plaintiff Trucept, Inc. fka Smart Tek Solutions Inc. brings this action
22 for declaratory and injunctive relief under the Freedom of Information Act
23 (“FOIA”), 5 U.S.C. § 552.

24 2. Plaintiff seeks to compel disclosure of agency records that are being
25 unlawfully withheld by the United States Internal Revenue Service.

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1 **JURISDICTION AND VENUE**

2 3. This Court has subject matter jurisdiction over this action and
3 personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. §
4 552(a)(6)(C)(i). This Court also has jurisdiction over this action under 28 U.S.C. §
5 1331.

6 4. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B).

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8 **PARTIES**

9 5. Plaintiff Trucept, Inc., fka Smart Tek Solutions Inc., is a public traded
10 company incorporated under the laws of the Nevada, but with its principal place of
11 business at 500 La Terraza Blvd, Suite 150, Escondido, CA 92025.

12 6. Defendant United States Internal Revenue Service is an agency within
13 the meaning of 5 U.S.C. § 552(f)(1) and is subject to the requirements of FOIA.
14 Defendant has possession, custody, and control of records to which Plaintiff seeks
15 access.

16
17 **BACKGROUND**

18 7. The FOIA requires federal government agencies to release requested
19 agency records to the public unless a statutory exemption applies. 5 U.S.C. §
20 552(a)(3)(A).

21 8. An agency has 20 working days after receipt of a FOIA request in
22 which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i).

23 9. If the federal agency fails to respond to the FOIA request, a district
24 court may order the production of any agency records improperly withheld from
25 the complainant. 5 U.S.C. § 552(a)(4)(B).

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STATEMENT OF FACTS

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2 10. On or around May 12, 2014, Plaintiff sent a written FOIA request to
3 the Defendant United States Internal Revenue Service for agency records.

4 11. On or around June 26, 2014, Defendant sent Plaintiff a response
5 acknowledging receipt of the FOIA request but failed to make any determination
6 about the request.

7 12. Plaintiff attempted to work in good faith with Defendant by permitting
8 extensions of time to provide the requested documentation.

9 13. However, Plaintiff still had not received any of the requested
10 documents more than seven months after making the request.

11 14. On January 8, 2015, Plaintiff sent a certified letter to the disclosure
12 specialist handling the request, informing her that if Plaintiff did not receive the
13 requested documents by January 31, 2015, it would be forced to bring this action.

14 15. To date, Defendant has provided no documentation responsive to the
15 request.

16 16. Plaintiff has exhausted its administrative remedies under 5 U.S.C. §
17 552(a)(6)(C)(i).

18 **COUNT 1**

19 **VIOLATION OF THE FOIA: FAILURE TO COMPLY WITH**
20 **STATUTORY DEADLINES**

21 17. Plaintiff asserts and incorporates by reference the above paragraphs.

22 18. Plaintiff properly requested records within Defendant's control and
23 possession under the FOIA.

24 19. Defendant wrongfully withheld the requested records in violation of
25 the FOIA.

26 20. Defendant's response to Plaintiff's FOIA request violated the
27 statutory deadlines imposed by the FOIA, including the deadlines set forth in 5
28 U.S.C. § 552(a)(6)(A).

