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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 SHUN FUNG INT’L INC., a
14 California corporation,
15 Plaintiff,
16 vs.
17 INTERNAL REVENUE SERVICE,
18 Defendant.

19 **CASE NO.:**
20 **COMPLAINT FOR**
21 **DECLARATORY AND**
22 **INJUNCTIVE RELIEF**
23 **FOR VIOLATION OF THE FREEDOM**
24 **OF INFORMATION ACT,**
25 **5 U.S.C. § 552 et seq.**

26 Plaintiff SHUN FUNG INT’L INC. (collectively, “Plaintiff”), by their
27 undersigned attorney, bring this action for injunctive relief and damages against the
28 Internal Revenue Service (“Defendant” or “IRS”) to compel compliance with the
Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

INTRODUCTION

1. On February 14, 2024, Plaintiff submitted a FOIA request (“FOIA Request”) to the IRS requesting, among other things, information relating to the IRS’s administrative audit of Plaintiff’s tax return for the tax year 2019.

2. Nearly eight months after Plaintiff made their FOIA Requests, no responsive documents have been produced from the Internal Revenue Service. The IRS has not claimed that the records do not exist, that the IRS does not have control over them, or that Plaintiff are not entitled to them. In doing so, the IRS has violated the law.

1 3. Plaintiff bring this action under the Freedom of Information Act, 5
2 U.S.C. § 552 et seq., as amended (“FOIA”), to challenge the implicit denial of the
3 FOIA Request sent starting in February 2024 and to enjoin the IRS from continuing
4 to improperly withhold responsive records to the FOIA Requests. This FOIA action
5 is needed, as the IRS continue to withhold responsive records since Plaintiff made
6 the FOIA Requests nearly seven months ago.

7 **PARTIES**

8 4. Plaintiff SHUN FUNG INT’L INC. is, and at all times material hereto
9 was, a corporation duly organized and existing under the laws of the State of
10 California, with its principal place of business located in City of Industry,
11 California, authorized to do and doing business in the County of Los Angeles,
12 California.

13 5. The IRS is an agency of the Executive Branch of the United States
14 Government, and a division of the Treasury Department. The IRS is an “agency”
15 within the meaning of 5 U.S.C. § 552(f) and as defined in Treas. Reg. §
16 601.702(c)(13).

17 6. The IRS is responsible for the enforcement and administration of the
18 federal tax laws. Plaintiff are informed and believe that IRS has possession and
19 control of the records sought by the FOIA Request.

20
21 **JURISDICTION**

22 7. This Court has subject-matter jurisdiction over this action and
23 personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 701-
24 706, and 28 U.S.C. § 1331.

25 8. Defendant has failed to satisfy the statutory deadline set by FOIA. See
26 5 U.S.C. § 552(a)(6)(A)-(B). Therefore, Plaintiff are deemed to have exhausted
27 their administrative remedies under FOIA. 5 U.S.C. § 552(a)(6)(C).

1 VENUE

2 9. Venue in the Central District of California is proper under 5 U.S.C. §
3 552(a)(4)(B) because Plaintiff's Requests to Defendant occurred in this District, the
4 agency records are situated in this District, and because a substantial part of the
5 events or omissions giving rise to this action occurred in this District. Further,
6 Plaintiff SHUN FUNG INT'L INC. has its principal place of business in this
7 District. For the same reason, venue is also proper under 28 U.S.C. § 1391(e).

8 STATUTORY FRAMEWORK

9 10. Except for records that an agency is required to make available for
10 public inspection, the FOIA generally requires federal agencies to "promptly make
11 available" agency records in response to any request that reasonably describes the
12 records and is made in accordance with the agency's published rules stating the
13 procedures to be followed. 5 U.S.C. §552(a)(3)(A).

14 11. Records are "agency records" governed by the FOIA if the agency
15 created or obtained them and had possession or control of them when the FOIA
16 request was made. *U.S. Department of Justice v. Tax Analysts*, 492 U.S. 136, 144-
17 145 (1989).

18 12. The FOIA requires an agency to determine within 20 business days
19 after receiving a FOIA request whether to comply with the request. The agency must
20 then immediately notify the requestor of its determination and the reasons for the
21 determination. In the case of an adverse determination, the agency must also notify
22 the requestor of the right to appeal or seek dispute resolution services. 5 U.S.C.
23 §552(a)(6)(A)(i). If the agency fails to respond, this Court has jurisdiction upon
24 receipt of a complaint to review, *de novo*, the agency's failure to respond and to
25 order the production of any agency records improperly withheld from the requester.
26 5 U.S.C. § 552(a)(4)(B).

27 13. In "unusual circumstances" as specified in 5 U.S.C.
28 §552(a)(6)(B)(iii), the agency may extend the time to respond to a FOIA request for

1 no more than 10 business days, by notifying the requestor in writing, and providing
2 the information listed in 5 U.S.C. §552(a)(6)(B)(i).

3 14. Upon receiving a FOIA request, the IRS has twenty working days to
4 respond. 5 U.S.C. § 552(a)(6)(A)(i). A requestor exhausts his administrative
5 remedies, and may seek immediate judicial review of the matter, if the IRS fails to
6 comply with its legal obligations within the time limits. *Id.* § 552(a)(6)(C)(i). A
7 District Court “has jurisdiction to enjoin the [IRS] from withholding agency records
8 and to order the production of any agency records improperly withheld from the
9 complainant.” *Id.* § 552(a)(4)(B).

10 15. A requestor is deemed to have exhausted his administrative remedies
11 under the FOIA if the agency fails to provide a complete response within the
12 applicable time limits – i.e., 20 business days, extended by no more than 10 business
13 days. 5 U.S.C. §552(a)(6)(C)(i).

14 **FACTS**

15 16. Defendant, a bureau of the Department of the Treasury, is responsible
16 for the administration and enforcement of the federal tax laws.

17 17. On February 14, 2024, Plaintiff submitted, through their authorized
18 representative, the following nine FOIA requests to the IRS:

- 19 a) For the period from January 1, 2017 to the present, all documents
20 contained in the Examination Division Administrative File for the
21 audit and papers and dividers included therein for 2019 Tax Year
22 (hereinafter “IRS Audit”) relating to the Taxpayer. This
23 information should include any worksheets, schedules, reports of
24 interviews, memoranda of interviews, information received from
25 third parties, telephone call slips, workpapers, notes, work logs,
26 activity logs, supervisor comments, review notes, investigative
27 histories, fraud referral form, emails, computations and all other
28 similar type of materials prepared or accumulated relative to this

1 examination by employees of the IRS, any other governmental
2 agency, or otherwise, including internal documents, memoranda,
3 memoranda of all interviews of persons regarding the tax liabilities
4 of the identified Taxpayer, copies of all statements (including bank
5 records obtained by IRS, letters, affidavits of witnesses
6 interviewed, sworn or otherwise) given by individuals and/or
7 entities in connection with the investigation of the tax liabilities of
8 the Taxpayer, Case Activity record, fraud referral, written reports
9 and manager recommendations concerning the proposed
10 assessment of additional tax and penalties and any other
11 information, as it applies, that is related to the determinations by
12 the IRS as set forth in the Revenue Agents Report (30 Day Letter),
13 whether maintained in electronic or hardcopy format.

14 b) For the period from January 1, 2017 to the present, more
15 specifically, the IRS's entire file that may or does not relate to the
16 audit of Taxpayer for 2019 Tax Year, including, without
17 limitation: all intra-IRS correspondence and referrals; all inter-
18 agency correspondence and referrals; all inter-governmental entity
19 (e.g., state governmental entity) correspondence and referrals; and
20 all whistleblower filings or public complaints howsoever
21 documented and regardless of whether on Form 211, Form 13909,
22 or otherwise), whether maintained in electronic or hardcopy
23 format.

24 c) For the period from January 1, 2017 to the present, a list of any
25 information and documents maintained electronically that are
26 responsive to this FOIA request identifying each document by
27 subject matter and format (i.e., tape, disk, etc.), whether
28 maintained in electronic or hardcopy format.

- 1 d) For the period from January 1, 2017 to the present, any and all
2 files relative to the audits of the Taxpayer for 2019 Tax Year that
3 include information and documents obtained pursuant to
4 summonses issued to third parties which are not otherwise
5 included in the Administrative File pertaining to the Taxpayer,
6 whether maintained in electronic or hardcopy format.
- 7 e) For the period from January 1, 2017 to the present, any and all
8 files relative to the audits of Taxpayer for 2019 Tax Year that may
9 have been prepared by independent consultants, international
10 examiners, economists, engineers, and any other specialists
11 assigned to this case which are not otherwise included in the
12 Administrative File pertaining to the Taxpayer, whether
13 maintained in electronic or hardcopy format.
- 14 f) For the period from January 1, 2017 to the present, the entire file
15 relating to the tax returns filed by Taxpayer for 2019 Tax Year
16 including, but not limited to, all returns, including amended
17 returns, documents, notices, reports, work papers, transcripts,
18 notes, schedules, information received from third parties, and all
19 similar type papers prepared or accumulated, whether maintained
20 in electronic or hardcopy format.
- 21 g) For the period from January 1, 2017 to the present, all
22 communications with anyone, **including emails**, involving
23 employees of the IRS, or contractors, regarding, referring, or
24 relating to the Taxpayer for 2019 Tax Year, whether maintained in
25 electronic or hardcopy format.
- 26 h) For the period from January 1, 2017 to the present, all documents
27 constituting any Tax Litigation Division Legal File, Tax Litigation
28 Advice File, Miscellaneous Law File, Chief Counsel Office Files,

1 or Regional Counsel Office Files regarding, referring, or relating
2 to the Taxpayer for 2019 Tax Year, whether maintained in
3 electronic or hardcopy format.

4 i) For the period from January 1, 2017 to the present, all documents
5 contained in the administrative files of the IRS National Office and
6 Area Counsel relating to any request for field service advice,
7 technical assistance, or other advice in connection with the
8 Taxpayer for 2019 Tax Year, whether maintained in electronic or
9 hardcopy format.

10 j) For the period from January 1, 2017 to the present, all documents,
11 **including email**, evidencing communication between the IRS and
12 the IRS Office of Chief Counsel and/or the IRS and other offices
13 with the Treasury Department regarding, referring, or relating to
14 the Taxpayer for 2019 Tax Year, whether maintained in electronic
15 or hardcopy format.

16 k) For the period from January 1, 2017 to the present, any and all
17 files, notes, correspondence, memoranda, or e-mails reflecting
18 discussions or comments by any Internal Revenue Service
19 employee or representative [including, but not limited to the agents
20 immediate supervisor(s)] with and from the agent assigned to audit
21 the taxpayer for Tax Year 2019 relating to the taxpayer or the
22 taxpayer's representative(s)), whether maintained in electronic or
23 hardcopy format.

24 l) For the period from January 1, 2017 to the present, a list or record
25 of "persons contacted" as required by Internal Revenue Code §
26 7602(c)(2)), whether maintained in electronic or hardcopy format.

27 m) For the period from January 1, 2017 to the present, all
28 communication, **including emails**, related to or referencing the

1 audit of the Taxpayer for 2019 Tax Year, including, but not limited
2 to any communications involving: Mariana Bernal and Cornette A.
3 Hamilton.

4 18. Plaintiff also requested a Vaughn index of each record or portion
5 thereof not disclosed, along with a statement describing the statutory basis for not
6 disclosing each record or portion thereof. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C.
7 1973).

8 19. Attached as **Exhibit A** is a true and correct copy of the FOIA
9 Request.

10 20. Plaintiff are informed and believe that on March 4, 3024, Defendant
11 acknowledged receipt of the FOIA Request and assigned FOIA NO. 2024-09877.

12 21. On June 18, 2024, Defendant sent a letter to Plaintiff seeking
13 extension to December 26, 2024 to complete the review of the records. A true and
14 correct copy of that letter is attached hereto as **Exhibit B**.

15 22. There has been no further written response from the IRS.

16 23. Plaintiff did not agree to any of Defendant's requests to extend the
17 FOIA's statutory deadline.

18 24. As of the date of this Complaint, the IRS has failed to produce any
19 requested records in response to the FOIA Request or otherwise demonstrate that the
20 requested records are exempt from production. Therefore, the IRS cannot possibly
21 demonstrate due diligence in respond to Plaintiff' FOIA Request.

22 25. Because the IRS failed to meet FOIA's statutory deadlines, the
23 Plaintiff are deemed to have exhausted their administrative remedies as to all nine of
24 the FOIA requests at issue here. 5 U.S.C. §552(a)(6)(C)(i); Treas. Reg. §
25 601.702(c)(10) and Treas. Reg. § 601.702(c)(10).

26 26. Plaintiff have a right to prompt access to the requested records under
27 5 U.S.C. § 552(a)(3)(A), and the IRS has wrongfully withheld the sought-after
28 documents.

1 27. Plaintiff are entitled to recover their reasonable attorney fees and costs
2 incurred to maintain this action. 5 U.S.C. §552(a)(4)(E).

3 **FIRST CAUSE OF ACTION**

4 **(Violation of FOIA)**

5 28. Plaintiff reallege and incorporates the allegations contained in the
6 preceding paragraphs as if fully set forth herein.

7 29. Defendant is subject to the FOIA.

8 30. Plaintiff' FOIA Request properly seeks records within Defendant's
9 possession and control. Plaintiff are entitled under FOIA to access the requested
10 records.

11 31. Defendant has failed to produce any responsive records to Plaintiff'
12 FOIA Request by the statutory deadline imposed by the FOIA. Plaintiff have a legal
13 right under FOIA to obtain the records they requested in their FOIA request, and
14 there exists no legal basis for Defendant's failure to timely respond to Plaintiff'
15 FOIA Request and to make responsive records available.

16 32. Defendant's failure to make promptly available the records sought by
17 Plaintiff' FOIA Request violates FOIA, 5 U.S.C. § 552 (a)(3)(A) and (a)(6)(A)(ii),
18 and applicable regulations promulgated thereunder.

19 33. Plaintiff are entitled to declaratory relief finding that the IRS has
20 violated FOIA and that Plaintiff are immediately entitled to receive all records
21 responsive to their request.

22 34. Plaintiff are entitled to declaratory relief finding that the IRS has
23 violated FOIA and that Plaintiff are immediately entitled to receive all records
24 responsive to its request.

25 35. Plaintiff are further entitled to injunctive relief, ordering the IRS to
26 immediately produce copies of all records responsive to Plaintiff' FOIA Request
27 without further delay.

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