

1 Chad D. Nardiello, Bar No. 224837
Chad@NardielloLaw.com
2 NARDIELLO LAW FIRM, PLC
1880 Century Park East, Suite 716
3 Los Angeles, CA 90067
(310) 201-0123 Tel
4 (310) 201-0126 Fax
Chad@NardielloLaw.com

5 Attorney for Plaintiff
6

7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 EASTERN DIVISION

10 THE COMPLETE LOGISTICS
11 COMPANY, INC.,

12 Plaintiff,

13 v.
14

15 INTERNAL REVENUE SERVICE,

16 Defendant.
17

CASE NO. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF UNDER THE FREEDOM
OF INFORMATION ACT**

18
19 Plaintiff THE COMPLETE LOGISTICS COMPANY, INC. (“Complete
20 Logistics”) alleges as follows:

21 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552
22 (“FOIA”), to compel Defendant INTERNAL REVENUE SERVICE (the “IRS”) to
23 release a copy of its Form 9984 Activity Record (“Activity Record”), or its equivalent,
24 for the Complete Logistics audit. That Activity Record serves as the best evidence of
25 whether materials sought by the IRS through Summonses issued in the related audit
26
27
28

1 of Robert and Rene Rains, indirect owners of Complete Logistics, are already in the
2 IRS's possession.

3
4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §
6 552(a)(4)(B) and 28 U.S.C. § 1331, because this is an action arising under the laws of
7 the United States, that is, FOIA.

8
9 3. Venue lies in the Central District of California pursuant to 5 U.S.C. §
10 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Complete Logistics resides in this
11 District, the agency records are situated in this District, and because a substantial part
12 of the events or omissions giving rise to this action occurred in this District.

13
14 **PARTIES**

15
16 4. Plaintiff Complete Logistics, which requested the agency records that
17 have been withheld improperly, resides at 1670 South Etiwanda Avenue, Ontario,
18 California. Complete Logistics is wholly owned by a living trust, of which Robert
19 and Rene Rains serve as co-trustees.

20
21 5. Defendant IRS, a component entity of the Department of Treasury, is an
22 agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). The IRS has
23 possession and control over the records sought by Complete Logistics.

24
25 **FACTUAL BACKGROUND**

26
27 6. In June 2009, the IRS commenced a civil audit against Complete
28 Logistics for the tax years 2007 and 2008, which the IRS later expanded to include

1 tax years 2009 and 2010. The primary purpose of the audit was to examine certain
2 business expenses that the IRS believed had been deducted improperly, including
3 expenses incurred by Robert and Rene Rains.
4

5 7. The audit – which spanned five years, followed by another two years in
6 United States Tax Court – required Complete Logistics to produce thousands of pages
7 of material to the IRS.
8

9 8. In August 2016, just months after the Complete Logistics investigation
10 resolved, the IRS opened a new audit of Robert and Rene Rains covering the same
11 issues, the same four-year period, and led by the same Revenue Agent who
12 investigated Complete Logistics.
13

14 9. In connection with the Rains audit, the IRS has served three separate
15 third-party Summonses seeking documents and information that Complete Logistics
16 believes the IRS almost certainly already has. If true, the Summonses would fail to
17 satisfy the factors set forth in *Powell v. United States*, 379 U.S. 48 (1964), and would
18 be invalid.
19
20

21 10. To test its theory, Complete Logistics filed an initial FOIA request on
22 the IRS on August 11, 2017, seeking, among other things, a copy of all materials
23 contained in the IRS’s administrative file regarding Complete Logistics, which would
24 include the IRS’s Activity Record. Complete Logistics renewed its request on
25 September 19, 2017. True and correct copies of these letters are attached as Exhibit
26
27
28 A.

1 11. After withholding 29 pages of material that the IRS said pertained to
2 “other taxpayers,” the IRS produced 304 pages of material on November 7, 2017. A
3 true and correct copy of this letter is attached as Exhibit B. The Activity Record was
4 not among them.
5

6 12. Accordingly, on April 11, 2018, Complete Logistics filed a second FOIA
7 request, this time seeking only the Activity Record. A true and correct copy of this
8 letter is attached as Exhibit C.
9

10 13. Initially, the IRS asked in writing for additional time beyond the
11 statutory twenty days to search for the Activity Record. A true and correct copy of
12 the IRS’s written request dated May 9, 2018 is attached as Exhibit D.
13

14 14. Less than one week later, however, on May 14, 2018, the IRS sent
15 additional correspondence explaining that it “found no documents specifically
16 responsive to” the request. A true and correct copy of this letter is attached as Exhibit
17 E.
18

19 15. That prompted a *third* FOIA request from Complete Logistics on August
20 15, 2018. In it, Complete Logistics questioned how the IRS could deny the existence
21 of the Activity Record given that the Internal Revenue Manual expressly requires
22 Revenue Agents to prepare and maintain them. A true and correct copy of this letter
23 is attached as Exhibit F.
24

25 16. On September 11, 2018, the IRS requested another two weeks, through
26 September 27, 2018, to search for the Activity Record and authorized Complete
27
28

1 Logistics to file suit thereafter should no records be produced. A true and correct
2 copy of this letter is attached as Exhibit G.

3
4 17. To date, despite three FOIA requests, the IRS has not provided Complete
5 Logistics with the Activity Record, or its equivalent.

6
7 18. Pursuant to 5 U.S.C. § 552(a)(6)(C), Complete Logistics has exhausted
8 its administrative remedies with respect to its FOIA request to the IRS.

9
10 19. The IRS is wrongfully withholding the requested record from Complete
11 Logistics.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff Complete Logistics prays that this Court:

- 14 (1) Order Defendant IRS to disclose the requested Activity Record or its
15 equivalent in its entirety, and make a copy available to Plaintiff;
16
17 (2) Provide for expeditious proceedings in this action;
18
19 (3) Award Plaintiff its costs and reasonable attorney's fees incurred in this
20 action; and
21
22 (4) Grant such other relief as the Court may deem just and proper.

23 Dated: 10/26/2018

Respectfully submitted,

24
25 By /s/ Chad D. Nardiello
26 Chad D. Nardiello
27 Attorney for Plaintiff
28