

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

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GERARD MARCHELLETTA, SR.,
GERARD MARCHELLETTA JR.,
CIRCLE GROUP, LLC,
and CIRCLE INDUSTRIES, INC.,

Plaintiffs,

v.

INTERNAL REVENUE SERVICE,

Defendant.

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Case No. 1:09-cv-3037

DECLARATION OF VALDINE YOUNG IN SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

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I, VALDINE YOUNG, pursuant to the provisions of 28 U.S.C. § 1746, declare
and say:

1. I am a Disclosure Specialist in the IRS Disclosure Office in Atlanta,
Georgia. I have been employed by the IRS since 1978 and have been in the Disclosure
function since 1997.

2. As part of my official duties, I am responsible for responding to requests
for documents made pursuant to the Freedom of Information Act, 5 U.S.C. § 552
[FOIA].

3. By letter dated April 29, 2009 plaintiffs' attorney submitted a FOIA request
to the IRS's Nashville Disclosure office. The request was submitted on behalf of
Gerard Marchelletta, Sr. [Marchelletta, Sr.] and requested that Marchelletta, Sr. be
provided with:

- 1. A complete copy of the system of records identified as "Treasury/IRS 26.006,"
Form 2209, Courtesy Investigations, OP:C—Treasury/IRS, bearing
Marchelletta, Sr.'s name and/or account number for the years 1999 through

2008.

2. A complete copy of the records, documents, and information's maintained in a system of records called "Case Management and Time Reporting System," Criminal Investigation Division-Treasury/IRS 46.002 bearing Marchelletta, Sr.'s name and/or account number for the years 1999 through 2008.
3. A complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing Marchelletta, Sr.'s name and/or account number for the years 1999 through 2008.

Marchelletta, Sr. executed a Power of Attorney [POA] authorizing his attorney to represent Marchelletta, Sr. before the IRS with respect to this request and other income tax matters. (A copy of the request, with the POA, is attached to this declaration as Exhibit A.)

4. By letter dated April 30, 2009, plaintiffs' attorney submitted a FOIA request to the IRS's Nashville Disclosure office. The request was submitted on behalf of Gerard Marchelletta, Jr. ("Marchelletta, Jr.") and requested that Marchelletta, Jr. be provided with

1. A complete copy of the system of records identified as "Treasury/IRS 26.006," Form 2209, Courtesy Investigations, OP:C—Treasury/IRS, bearing Marchelletta, Jr.'s name and/or account number for the years 1999 through 2008.
2. A complete copy of the records, documents, and information's maintained in a system of records called "Case Management and Time Reporting System," Criminal Investigation Division-Treasury/IRS 46.002 bearing Marchelletta, Jr.'s name and/or account number for the years 1999 through 2008.
3. A complete copy of the system of records identified as "Treasury/IRS 46.051" Criminal Investigation Audit Trail Records System, bearing Marchelletta, Sr.'s name and/or account number for the years 1999 through 2008.

Marchelletta, Jr. executed a POA authorizing his attorney to represent Marchelletta, Jr. before the IRS with respect to this request and other income tax matters and attached the POA to the request. (A copy of the request, with the POA, is attached to this declaration as Exhibit B.)

1 5. By letter dated April 30, 2009, plaintiffs' attorney submitted an additional
2 FOIA request to the IRS's Nashville Disclosure office. The request was submitted on
3 behalf of Circle Group, LLC and requested that Circle Group, LLC be provided with

- 4 1. A complete copy of the system of records identified as "Treasury/IRS 26.006,"
5 Form 2209, Courtesy Investigations, OP:C—Treasury/IRS, bearing Circle
6 Group LLC's name and/or account number for the years 1999 through 2008.
- 7 2. A complete copy of the records, documents, and information's maintained in
8 a system of records called "Case Management and Time Reporting System,"
9 Criminal Investigation Division-Treasury/IRS 46.002 bearing Circle Group,
10 LLC's name and/or account number for the years 1999 through 2008.
- 11 3. A complete copy of the system of records identified as "Treasury/IRS 46.051"
12 Criminal Investigation Audit Trail Records System, bearing Circle Group,
13 LLC's name and/or account number for the years 1999 through 2008.

14 Circle Group, LLC executed a POA authorizing its attorney to represent Circle Group,
15 LLC before the IRS with respect to this request and other income tax matters and
16 attached the POA to the request. (A copy of the request, with the POA, is attached to
17 this declaration as Exhibit C.)

18 6. By letter dated May 1, 2009, plaintiffs' attorney submitted a FOIA request
19 to the IRS's Nashville Disclosure office. The request was submitted on behalf of
20 Marchelletta, Sr. and requested that Marchelletta, Sr. be provided with a copy of Form
21 2797 entitled Referral Report for Potential Fraud Cases and any attachments filed
22 thereto and a copy of any other documents in his file that were drafted by any IRS
23 employee referring Marchelletta, Sr.'s file to the Criminal Investigation Division. The
24 letter further requests that Marchelletta, Sr. be provided with a complete transcript that
25 includes all information on the master file account maintained under Marchelletta, Sr.'s
26 name for the years 1999 through 2008. Marchelletta, Sr. executed a POA authorizing
27 his attorney to represent Marchelletta, Sr. before the IRS with respect to this request

1 and other income tax matters. (A copy of the request, with the POA, is attached to this
2 declaration as Exhibit D.)

3 7. By letter dated May 2, 2009, plaintiffs' attorney submitted a FOIA request
4 to the IRS's Nashville Disclosure office. The request was submitted on behalf of
5 Marchelletta, Jr. and requested that Marchelletta, Jr. be provided with a copy of Form
6 2797 entitled Referral Report for Potential Fraud Cases and any attachments filed
7 thereto and a copy of any other documents in his file that were drafted by any IRS
8 employee referring Marchelletta, Jr.'s file to the Criminal Investigation Division.
9 Marchelletta, Jr. executed a POA authorizing his attorney to represent him before the
10 IRS with respect to this request. (A copy of the request, with the POA, is attached to
11 this declaration as Exhibit E.)
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13 8. By letter dated May 5, 2009, plaintiffs' attorney submitted a FOIA request
14 to the IRS's Nashville office. The request was submitted on behalf of Circle Industries,
15 Inc. and requested that Circle Industries, Inc. be provided with
16

- 17 1. A complete copy of the system of records identified as "Treasury/IRS 26.006,"
18 Form 2209, Courtesy Investigations, OP:C—Treasury/IRS, bearing Circle
19 Industries, Inc.'s name and/or account number for the years 1999 through
20 2008.
- 21 2. A complete copy of the records, documents, and information's maintained in
22 a system of records called "Case Management and Time Reporting System,"
23 Criminal Investigation Division-Treasury/IRS 46.002 bearing Circle Industries,
24 Inc.'s name and/or account number for the years 1999 through 2008.
- 25 3. A complete copy of the system of records identified as "Treasury/IRS 46.051"
26 Criminal Investigation Audit Trail Records System, bearing Circle Industries,
27 Inc.'s name and/or account number for the years 1999 through 2008.

28 Circle Industries, Inc. executed a POA authorizing his attorney to represent Circle
Industries, Inc. before the IRS with respect to this request and other income tax
matters. (A copy of the request, with the POA, is attached to this declaration as Exhibit
F.)

1 9. On May 12, 2009, I was assigned to process Marchelletta, Sr.'s FOIA
2 requests. On May 14, 2009, I was assigned to process Marchelletta, Jr.'s FOIA
3 requests and Circle Industries, Inc.'s FOIA request. On June 2, 2009, I was assigned to
4 process Circle Group, LLC's FOIA request.

5 10. By letters dated June 2, 2009 I responded to plaintiffs' April 29, 2009 and
6 April 30, 2009 requests on behalf of Marchelletta, Sr. and Marchelletta, Jr. respectively
7 by informing plaintiffs that I would not be able to provide them with a substantive
8 response within the 20 business days as prescribed by statute and asking for an
9 extension of time to respond; these letters also advised plaintiffs of their statutory rights
10 under the FOIA. (Copies these letters are enclosed as Exhibits G and H to this
11 Declaration).

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13 11. I began my search for records responsive to these requests on the IRS's
14 Integrated Data Retrieval System [IDRS]. IDRS is the Service's computer system for
15 maintaining tax records. It enables Service employees to obtain visual and hardcopy
16 access to certain taxpayer accounts. I used INOLE, IMFOLI(T), and BMFOLI(T)
17 command codes on the IDRS database to access tax data for plaintiffs. I entered
18 identifying information of each plaintiff in the Service's IDRS. INOLE, which is an
19 acronym for Individual Online-Entity, is a command code used to display information
20 about entities. IMFOLI(T), which is an acronym for individual master file online system,
21 displays the individual master files of the taxpayer and BMFOLI(T), which is an acronym
22 for business master file online system, displays the business master file of the taxpayer.

23
24 12. When I entered the INOLE, IMFOLI(T), and BMFOLI(T) command codes,
25 the screens for these commands indicated that a case for Marchelletta, Sr.,
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1 Marchelletta, Jr., Circle Group, LLC, and Circle Industries, Inc. was assigned to Criminal
2 Investigation [CI].

3 13. In May of 2009, I prepared an email to Special Agents Dawn Kirkpatrick
4 and Patricia Bergstrom, requesting their assistance in identifying responsive documents
5 and determining whether any documents could be released to the requestors. Ms.
6 Kirkpatrick and Ms. Bergstrom are my Disclosure office's contacts in CI. Ms. Bergstrom
7 is our primary contact and Ms. Kirkpatrick serves in Ms. Bergstrom's absence.
8

9 14. In early June 2009, I met with Patricia Bergstrom. Ms. Bergstrom is both
10 a Special Agent and, since March, 2006, a Public Information Officer in CI. In her
11 capacity as Public Information Officer, Ms. Bergstrom acts as a liaison to the IRS's
12 Disclosure function when FOIA requests are made for documents relating to CI
13 investigations. Ms. Bergstrom informed me that she had worked the criminal
14 investigation of the plaintiffs as an agent and that several boxes of records from that
15 grand jury investigation were being stored in CI's office. She told me that from her
16 reading of the requests, she thought plaintiffs were seeking administrative data that is
17 normally maintained in the IRS's Criminal Investigation Management Information
18 System [CIMIS]. CIMIS is a management and information system for tracking the
19 status and progress of CI investigations. Because of the sensitive nature of the data
20 that is maintained in the CIMIS database, *i.e.* the names, social security numbers and
21 details revealing specifics of alleged criminal activity of ongoing (and completed)
22 criminal investigations of individuals, CIMIS can only be accessed by CI agents. Ms.
23 Bergstrom told me that the plaintiffs were currently appealing their criminal conviction
24 which resulted from the grand jury investigation and she was concerned that disclosure
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1 of the requested material could impede the ongoing investigation related to the
2 plaintiffs' appeal.

3 15. With respect to the plaintiffs' requests dated May 1, 2009 and May 2,
4 2009, Ms. Bergstrom informed me that no Forms 2797 had been created for the
5 plaintiffs as the IRS's criminal investigation grew out of an earlier criminal investigation
6 commenced by the United States Customs Service. By letter dated June 8, 2009, I
7 responded to plaintiffs' May 1, 2009 request on behalf of Marchelletta, Sr. and May 2,
8 2009 request on behalf of Marchelletta, Jr. and stated that no documents specifically
9 responsive to these requests were found. (Copies of these letters are enclosed as
10 Exhibits I and J to this Declaration.)
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12 16. On June 11, 2009, by email, I informed Ms. Bergstrom that I needed
13 additional information in order to make a determination to withhold the responsive
14 records responsive to the April and May, 2009 requests on the basis that the release
15 would harm an enforcement proceeding. Specifically I needed to know the approximate
16 volume of records and the current location of the records. See Internal Revenue
17 Manual [IRM] section 11.3.13.7.2.7.1(3), attached as Exhibit K to this Declaration.
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19 17. By letter dated June 11, 2009, I responded to plaintiffs' May 5, 2009
20 request on behalf of Circle Industries, Inc. by informing plaintiffs that I would not be able
21 to provide them with a substantive response within the 20 business days as prescribed
22 by statute and asking for an extension of time to respond; this letter also advised
23 plaintiffs of their statutory rights under the FOIA. By letter dated June 12, 2009 I
24 responded to plaintiffs' April 30, 2009 request on behalf of Circle Group, LLC by
25 informing plaintiffs that I would not be able to provide them with a substantive response
26 within the 20 business days as prescribed by statute and asking for an extension of
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1 time to respond; this letter also advised plaintiffs of their statutory rights under the
2 FOIA. (Copies these letters are enclosed as Exhibit L and M to this Declaration).

3 18. By letters dated July 1, 2009, I again contacted plaintiffs and explained to
4 them that I was seeking additional time to respond to their April 29, 2009 and April 30,
5 2009 requests on behalf of Marchelletta, Sr. and Marchelletta, Jr. respectively. (Copies
6 of these letters are enclosed as Exhibits N and O to this Declaration.) By letter dated
7 July 10, 2009 I again contacted plaintiffs and explained that I was seeking additional
8 time to respond to their May 5, 2009 request on behalf of Circle Industries, LLC. (A
9 copy of this letter is enclosed as Exhibit P to this Declaration.)
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11 19. By letter dated July 8, 2009 the plaintiffs submitted a FOIA request to the
12 IRS's Nashville Disclosure office. The request was submitted on behalf of Marchelletta,
13 Jr. and requested that Marchelletta, Jr. be provided with:
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- 15 1. All documents and information related to any inquiries made by Special Agent
16 Patricia Bergstrom, or tasks performed by Special Agent Patricia Bergstrom,
17 pertaining to Marchelletta, Jr., including but not exclusively any Special Agent
18 Reports, recommendation for prosecution reports and/or tax fraud referral
19 reports.
- 20 2. Any and all referrals from the U.S. Attorney's Office—N.D. Ga. to DOJ-Tax
21 with respect to the prosecution of Marchelletta, Jr.
- 22 3. Copies of all documents and information related to any investigative
23 workplans (Form 6085) developed by Special Agent Bergstrom and/or
24 Special Agent Henry Chavis in the investigation of Marchelletta, Jr.
- 25 4. Copies of all documents and information related to and including Form 6544
26 (Request for Cooperating Examiner) resulting from the investigation of
27 Marchelletta, Jr.
- 28 5. Copies of all documents and information related to and including Form 9838
(Criminal Investigation Report Control Log) relating to the investigation of
Marchelletta, Jr.
6. Copies of all documents and information related to and including Form 6082
(Assessment of Closed General/Subject Seizure/Primary/Subject
Investigation Narrative Appraisal) relating to the investigation of Marchelletta,
Jr.
7. Copies of all documents and information related to the Special Agent in
Charge, N.D. GA.—Atlanta, referral authority for prosecution
recommendation to the DOJ-Tax Division for Marchelletta, Jr.

- 1 8. Copies of all documents and information related to and including Criminal
2 Tax Counsel's criminal evaluation report regarding Case No. 1:07-CR-107-
3 TCB in the Northern District of Georgia and/or Marchelletta, Jr.
- 4 9. Copies of all documents and information related to and including Forms 5043
5 and 5043A (Criminal Investigation monthly activity reports) relating to the
6 investigation of Marchelletta, Jr.
- 7 10. Copies of all documents and information related to and including Form 4930
8 used to initiate general investigations and/or primary investigations of
9 Marchelletta, Jr.
- 10 11. Copies of all documents and information related to and including Form 211's
11 filed by or on behalf of Shawn Andrew McBride, account number [REDACTED]
12 [REDACTED]

13 The request was for the period January 1, 1999 through December 31, 2008.

14 Marchelletta, Jr. executed a POA authorizing his attorney to represent Marchelletta, Jr.
15 before the IRS with respect to this request and other income tax matters. (A copy of
16 the request, with the POA, is attached to this declaration as Exhibit Q.)

17 20. I forwarded the plaintiffs' July 8, 2009 request to Special Agent Patricia
18 Bergstrom. Based on the wording of the request, Ms. Bergstrom determined that some
19 of the records requested by the plaintiffs were grand jury material and therefore, subject
20 to the grand jury confidentiality rules. Ms. Bergstrom determined that the request also
21 encompassed database material such as time reporting entries on the plaintiffs' criminal
22 investigation done by Ms. Bergstrom and Special Agent, Henry Chavis. Ms. Bergstrom
23 advised me that some of the records were also subject to the deliberative process,
24 attorney-client, and attorney work product privileges. Because the plaintiffs had
25 appealed their criminal convictions, the administrative documents were not discoverable
26 during the criminal proceeding and because the appellate court could remand the case
27 for a new trial, Ms. Bergstrom believed that the release of these records could interfere
28 with enforcement proceedings in the ongoing case. Ms. Bergstrom advised me that
none of the responsive documents should be released to the plaintiffs. Ms. Bergstrom

1 determined that she had approximately 3 boxes and 195 pages of material responsive
2 to this request. Because the database records were maintained electronically, it was
3 difficult to estimate the number of pages of records.

4 21. On or about July 17, 2009 I received a memorandum, signed by Supervisory
5 Criminal Investigator Reginael McDaniel, which stated that CI reviewed the records
6 requested in the plaintiffs' April and May, 2009 requests and that their release could
7 interfere with pending or prospective criminal proceedings and would jeopardize CI's
8 ability to enforce the Internal Revenue Code. The memorandum recommended that
9 the documents be withheld in full under FOIA exemptions (b)(7)(A), (b)(7)(C), (b)(7)(E),
10 and (b)(3) in conjunction with I.R.C. § 6103(b)(2). (A copy of this memorandum is
11 enclosed as Exhibit R to this Declaration.)
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13 22. With respect to those initial requests made in April and May, 2009, based
14 on CI's characterization of the responsive records, I determined that the responsive
15 documents should be withheld in full under FOIA exemptions (b)(7)(A), (b)(3) supported
16 by I.R.C. § 6103(e)(7), (b)(7)(E), (b)(7)(F), and (b)(3) supported by I.R.C. §
17 6103(b)(2)(A). In order to withhold on this basis, I needed a statement from CI of the
18 approximate volume of records and the location of the records. I requested this
19 information from Special Agent Patricia Bergstrom by email on July 23, 2009.
20

21 23. By letter dated July 23, 2009 I again contacted plaintiffs and explained
22 that I was seeking additional time to respond to their April 30, 2009 request on behalf of
23 Circle Group, LLC. (A copy of this letter is enclosed as Exhibit S to this Declaration.)
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25 24. By letters dated July 30, 2009 I again contacted plaintiffs and explained to
26 them that I was seeking additional time to respond to their April 29, 2009, April 30,
27 2009, and May 5, 2009 requests on behalf of Marchelletta, Sr., Marchelletta, Jr., and
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1 Circle Industries, Inc. respectively, (A copy of these letters are enclosed as Exhibits T,
2 U, and V to this Declaration.)

3 25. On August 6, 2009 I again asked Special Agent, Patricia Bergstrom to
4 provide an estimated number of records. I received an e-mail response from Ms.
5 Bergstrom, who estimated that approximately 20 boxes of records existed from the
6 grand jury expansion but none were responsive to the Marchellettas' April and May,
7 2009 requests and did not include any duplicative records. Also, the records
8 maintained in CIMIS are not in hard copy, making it difficult to accurately estimate the
9 amount of boxes and pages responsive to the requests and the 20 boxes did not
10 include these records. I informed Ms. Bergstrom that pursuant to IRM section
11 11.3.13.7.2, attached as Exhibit W to this Declaration, the responsive records must be
12 maintained by CI and clearly identified. Under this procedure, disclosure offices do not
13 personally review these types of records when responding to FOIA requests.
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16 26. By letter dated August 14, 2009 I again contacted plaintiffs and explained
17 to them that I was seeking additional time to respond to their April 30, 2009 request on
18 behalf of Circle Group, LLC. (A copy of this letter is enclosed as Exhibit X to this
19 Declaration.)

20 27. By letters dated August 19, 2009, I responded to Marchelletta, Sr.'s April
21 29, 2009 request, Marchelletta Jr.'s April 30, 2009 request, Circle Group, LLC's April
22 30, 2009 request, and Circle Industries, Inc.'s May 5, 2009 request. In these letters, I
23 stated that approximately 20 boxes of documents related to the requests had been
24 located but were being withheld pursuant to FOIA exemptions (b)(7)(A), (b)(3)
25 located but were being withheld pursuant to FOIA exemptions (b)(7)(A), (b)(3)
26 supported by I.R.C. § 6103(e)(7), (b)(7)(E), (b)(7)(F), and (b)(3) supported by I.R.C. §
27 6103(b)(2)(A). (A copy of these August 19, 2009 letters are attached as Exhibit Y, Z,
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1 AA, BB.) I prepared these letters for signature by Timothy Christian, my office's
2 Disclosure Manager.

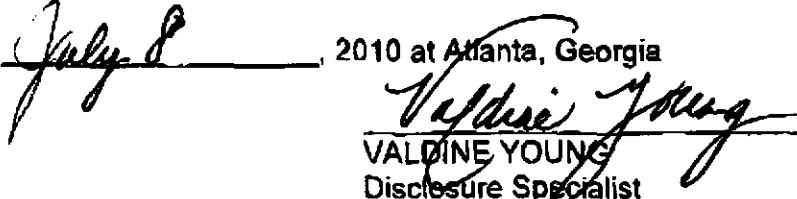
3 28. By letter dated September 23, 2009 I responded to Marchelletta, Jr.'s July
4 8, 2009 request. In this letter I stated that approximately 3 boxes and 195 pages of
5 documents related to the requests but were being withheld in full pursuant to FOIA
6 exemptions (b)(3) supported by I.R.C. § 6103(b)(2), 6103(e)(7), and Fed. R. Crim. Pro.
7 6(e), (b)(5), (b)(7)(A), (b)(7)(C), and (b)(7)(E). (A copy of this letter is attached as
8 Exhibit CC.) I prepared this letter for signature by Timothy Christian, my office's
9 Disclosure Manager. Sharon Evans, Tax Specialist, signed the letter on Mr. Christian's
10 behalf.
11

12 29. On October 16, 2009, I learned that the plaintiffs had filed an
13 administrative appeal for their April and May 2009, FOIA requests. (A copy of this
14 appeal is attached as Exhibit DD to this Declaration).
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16 30. I am unaware of any administrative appeal filed by the plaintiffs for their
17 July 8, 2009 FOIA request.
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1 31. In December 2009, I was contacted by Deborah Lambert-Dean of the
 2 Office of Chief Counsel (Procedure & Administration) in Washington, D.C. Ms.
 3 Lambert-Dean informed me that the plaintiffs had filed a FOIA lawsuit with respect to
 4 the April and May, 2009 FOIA requests.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on July 8, 2010 at Atlanta, Georgia
 7 
 8 VALDINE YOUNG
 9 Disclosure Specialist
 10 Internal Revenue Service
 11 Disclosure Office 8 (Nashville)
 12 401 W. Peachtree Street
 13 Atlanta, GA 30308

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