

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

IN RE EX PARTE DISCLOSURE OF TAX ) 1:19-GJ-00034 (BAH)  
RETURNS AND RETURN INFORMATION )  
FOR MYKALAI KONTILAI AND )  
COLLECTOR'S COFFEE, INC. ) FILED UNDER SEAL

**APPLICATION FOR EX PARTE ORDER TO  
DISCLOSE TAX RETURNS AND RETURN INFORMATION**

The United States of America, the applicant in this matter, by and through its undersigned attorney, hereby makes this application to the Court pursuant to 26 U.S.C. § 6103(i)(1) for an ex parte order directing the Internal Revenue Service ("IRS") to disclose all income tax, employment tax, payroll tax, transcripts of accounts, information returns, and return information relating to the following individual and business:

NAME: Mykalai Kontilai (formerly Michael Contile)  
ADDRESS: 566 Tam O Shanter, Las Vegas, NV 89109  
SOCIAL SECURITY NUMBER: 361-66-0255  
DATE OF BIRTH: 10/04/1969

NAME: Collector's Coffee, Inc. (formerly known as Ultimate  
Collector Incorporated)  
TIN: 352300138  
ADDRESS: 400 South 4<sup>th</sup> Street, Suite 100, Las Vegas, NV 89109  
(formerly 402 W Broadway Suite 400, San Diego, CA 92101)

for the taxable periods January 1, 2007 to the present. The requested tax return and related information specifically includes, but is not limited to, income tax returns, employment tax returns, information returns and all supporting schedules, attachments or lists; related information returns, and transcripts of account for the individual and entity, including: IRS Forms 1120, Forms 1120S, Forms 1065, Forms 940, Forms 941, Forms 1099, Forms W-2, etc.; certificates of non-filing if

returns or return information have not been filed; and documents identifying the nature, source or amount of the subject's income, receipts, assets, expenditures and liabilities.

In support of this application, applicant alleges and states the following:

(1) As part of an ongoing criminal investigation into Mykalai Kontilai, who serves as the President and Chief Executive Officer of Collector's Coffee, Inc. (formerly Ultimate Collector Incorporated) ("Collector's Coffee"), the government uncovered evidence indicating that Kontilai obstructed justice by falsifying documents to justify personal expenses he paid/pays with income belonging to Collector's Coffee. The government has also uncovered evidence that Collector's Coffee maintained few to no records documenting payment of employee compensation, which could lead to charges of mail and wire fraud if the company did not accurately account for payroll or federal income taxes.

(2) Specifically, there is reasonable cause to believe that Kontilai falsified an employment agreement bearing the date of May 14, 2007, that states Collector's Coffee would pay Kontilai an annual salary of \$300,000. The document was produced by Kontilai in response to an investigative subpoena by the Securities and Exchange Commission ("SEC") and was represented to be an original version. A reference to a 2018 copyright on the document indicates the document was falsified.

(3) Additionally, there is reasonable cause to believe that Kontilai falsified a convertible note and Bank of America statement bearing the date June 11, 2007, that states Kontilai loaned Collector's Coffee \$5 million to be repaid with interest. These documents were also produced by Kontilai in response to an investigative subpoena by the SEC and were represented to be original versions. A copy of the bank statement for the same account and time period produced by Bank of America shows a deposit of only \$1,000. Kontilai admitted to a witness that he created documents

in 2018 that purported to be from the 2007 time-frame for the purpose of providing the documents to the SEC.

(4) There is also reasonable cause to believe that Kontilai and Collector's Coffee conspired to commit mail and wire fraud by failing to file payroll tax returns and withhold federal income tax from employee paychecks. A former executive-level employee of Collector's Coffee told investigators that Kontilai paid the employees (referred to by Kontilai as "consultants") of Collector's Coffee by check, often at the demand of employees, and did not otherwise maintain records of employee compensation. An investigation by the SEC has revealed scant record-keeping by Collector's Coffee that accounts for company expenses or income.

(5) Bank records belonging to accounts in the name of Collector's Coffee reveal millions of dollars in investor funds moving from the company's accounts into accounts in the names of Kontilai and his wife. Kontilai testified in an SEC proceeding that he was not aware of any documentation showing the amount Collector's Coffee had paid him in deferred compensation or as repayments on the \$5 million convertible note.

(6) The above-described returns and return information therefore may be relevant to this investigation to the extent that they reflect Kontilai's reporting of relevant income, including the source and nature of the income, as well as whether Collector's Coffee paid income taxes or filed accurate tax returns with the Internal Revenue Service ("IRS"). The tax-return information provides a statement under penalty of perjury which may serve as circumstantial evidence of Kontilai's misrepresentations of his compensation to the SEC and, potentially, to investors. In addition, the tax returns and return information may identify additional percipient witnesses who are relevant to this investigation. For example, tax-return information could name accountants and tax preparers who may be knowledgeable about the alleged fraud to investors, the IRS, or the SEC.

(7) The returns and return information are sought exclusively for use in a federal criminal investigation or proceeding concerning such conduct, including a Grand Jury investigation now pending in this District.

(8) The information sought to be disclosed cannot reasonably be obtained from other sources under the circumstances.

(9) The undersigned attorney is a Trial Attorney with the Department of Justice, Criminal Division, Fraud Section and is personally and directly engaged in the investigation as it relates to the enforcement of the above-mentioned violations of federal law, i.e., 18 U.S.C. § 1001 (false statements), 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1349 (conspiracy), 18 U.S.C. § 1512 (obstruction of justice), 18 U.S.C. § 1519 (falsification of records). The information sought herein is solely for our use in connection with this purpose, and no disclosure will be made to any other person except in accordance with the provisions of 26 U.S.C. § 6103 and 26 C.F.R. § 301.6103(i)-1.

(10) In addition to applicant, the following individuals are personally and directly engaged in the investigation of the above-mentioned violations, and applicant therefore requests that disclosure be permitted to the following: Henry Van Dyck, Deputy Chief, Securities and Financial Fraud Unit, Fraud Section, Criminal Division, United States Department of Justice, Tony Lopez, Assistant United States Attorney, District of Nevada; and, Federal Bureau of Investigation Special Agents Dawn Tomazich and John Schettler.

(11) Applicant further states that the subject of this Application is the subject of a pending grand jury investigation in this District, publication of the Application and Order would compromise that investigation, and the failure to seal the Application and Order would result in

the public disclosure of confidential information relating to the identified taxpayer and entities related to him.

(12) This application is authorized by Brian A. Benczkowski, Assistant Attorney General, Criminal Division, United States Department of Justice.

WHEREFORE, the Applicant respectfully requests this Court to enter an Order under seal granting disclosure by the Internal Revenue Service of the returns and return information specified in this Application, and further ordering that this Application be filed and maintained under seal.

Respectfully submitted,

Robert Zink  
Acting Chief, Fraud Section  
U.S. Department of Justice

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Filed: May 24, 2019

# **ATTACHMENT A**

# **ATTACHMENT B**