

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
) Plaintiff,
)
) v. Civil No. WMN 05 CV 1297
)
JOHN BAPTIST KOTMAIR, JR., et al.,)
)
) Defendants.)

UNITED STATES' MOTION TO COMPEL DEFENDANTS' DISCOVERY RESPONSES

Defendants John Baptist Kotmair, Jr. and Save-A-Patriot Fellowship (SAPF) have refused to answer several of the United States' interrogatories and requests for production of documents based on groundless objections. In addition, they have failed to verify their responses to the interrogatories. Pursuant to L.R. 104.7, the undersigned has conferred in good faith with both Kotmair and SAPF's counsel, George Harp, regarding these matters. They were steadfast, however, in their refusal to answer certain of the United States' discovery requests. The Court should enter an order compelling them to answer these discovery requests in full.

In support of this motion, the United States submits herewith a memorandum and the

United States' L.R. 104.7 Certificate of Conference, with exhibits.

Respectfully submitted,

ROD J. ROSENSTEIN
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/s/Anne Norris Graham

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MOTION TO COMPEL DEFENDANTS' DISCOVERY RESPONSES has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 30th day of December, 2005.

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UNITED STATES OF AMERICA,)
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**UNITED STATES' BRIEF IN SUPPORT OF
MOTION TO COMPEL DEFENDANTS' DISCOVERY RESPONSES**

Defendants John Baptist Kotmair, Jr. and Save-A-Patriot Fellowship (SAPF) have refused to answer several of the United States' interrogatories and requests for production of documents based on groundless objections. In addition, they have failed to verify their responses to the interrogatories. Pursuant to L.R. 104.7, the undersigned has conferred in good faith with both Kotmair and SAPF's counsel, George Harp, regarding these matters. They were steadfast, however, in their refusal to answer certain of the United States' discovery requests. The Court should enter an order compelling them to answer these discovery requests in full.

I. INTRODUCTION

The United States filed a complaint against Kotmair, doing business as Save-A-Patriot Fellowship (SAPF) and National Workers Rights Committee (NWRC), and SAPF, an unincorporated association, seeking a permanent injunction under Internal Revenue Code (I.R.C., 26 U.S.C.) §§ 7402(a) and 7408 prohibiting them from interfering with the administration of the internal revenue laws, from organizing and selling tax-fraud schemes, and from assisting in the preparation of false documents relating to federal tax matters.

For membership fees ranging from \$99 to \$697, defendants provide their customers, whom defendants call “members,” with access to the SAPF staff to answer the customers’ tax questions. Defendants’ websites claim that the SAPF staff consists of paralegals and “case workers” who draft court pleadings, including bankruptcy petitions, on behalf of SAPF members to block IRS collection efforts.

The SAPF membership fee also enrolls the SAPF customers in defendants’ “Member Assistance Program,” also known as the “Victory Express,” which defendants advertise as providing financial incentives for SAPF members to violate the internal revenue laws. Defendants describe the Member Assistance Program/Victory Express as giving members “insurance-like protection” against IRS levies and seizures, as well as against criminal convictions for tax crimes. According to defendants, the Member Assistance Program/Victory Express pays members “above and beyond” the value of the property seized by the IRS, and pays their beneficiaries \$25,000 per year while the member is incarcerated. For an additional \$35 per year, SAPF members can join the “Patriot Defense Fund,” which also provides financial incentives for them to violate federal tax laws. Defendants promise that the Patriot Defense Fund will pay participating members up to \$10,000 for the litigation costs of a criminal tax trial and \$5,000 per appeal if the member is convicted.

In 1996, the United States District Court for the District of Maryland entered a decision discussing SAPF’s Member Assistance Program/Victory Express in *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D. Md. 1996), a wrongful levy suit. Both Kotmair and SAPF argue, in their amended answers, that this 1996 decision has collateral estoppel effect in the current litigation. The Court’s discussion of SAPF’s Member Assistance Program demonstrates

that SAPF seeks to reward members who obstruct the enforcement of the internal revenue laws with “delaying tactics:”

Essentially, when a member suffers a “qualified” loss of property or freedom, he/she submits a claim to the SAP Fellowship which, after validation, supposedly results in reimbursement for civil losses (to a \$150,000 maximum) and a stipend of \$25,000 per year of incarceration. The payments are to be made by the membership directly to the validated claimant or the claimant’s family.

A civil claim is validated: “. . . only after S.A.P. has determined that a judgment does exist and that the claimant, to the best of his ability, dragged the plunderers through every agency and court proceedings feasibly possible, using delaying tactics in each and everyone.”

A criminal claim is validated: “. . . only after S.A.P. has determined that the claimant member is actually incarcerated and is given physical proof that said member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasibly possible.”

Id. at 698 (citation omitted).

In addition to these financial incentives for tax evasion, defendants also draft letters to the IRS on behalf of SAPF members, for a fee. These letters make numerous frivolous arguments to the IRS to the effect that the SAPF members are not liable for federal tax. Kotmair signs these letters under the pretense that he is the SAPF members’ power of attorney, notwithstanding that under IRS regulations, because he is neither an attorney, an accountant, a tax-return preparer, the member’s employee, nor an enrolled agent, he is unauthorized to represent anyone before the IRS. Under the name of NWRC, defendants also sell letters for their customers to send to their employers, demanding that the employers cease withholding federal taxes from the customers’ wages.

Defendants' activities interfere with the enforcement of the internal revenue laws. They make false statements regarding the tax benefits of participation in their schemes, and they submit false documents to the IRS and their customers' employers that they know would, if relied upon, result in the understatement of their customers' federal tax liabilities. Accordingly, the United States is seeking a permanent injunction against defendants under I.R.C. §§ 7402(a) and 7408.

II. KOTMAIR'S OBJECTIONS TO THE UNITED STATES' DISCOVERY REQUESTS

On October 25, 2005, the United States served interrogatories and requests for production of documents upon Kotmair. United States' L.R. 104.7 Certificate of Conference, Ex. A. Kotmair's responses were received by the United States on November 30; he amended those responses on December 27. *Id.*, Exs. C and G. Answering only a handful of the United States' discovery requests, he objected to the remainder based on relevancy, burdensomeness, or constitutional grounds. These objections, set forth below with the United States' discovery requests, are meritless and should be overruled.

Interrogatory No. 3: Identify all sources of income that you have had, including the amounts of income, at any time since January 1, 2002.

Kotmair's Response: Objection: irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion of Interrogatory No. 3: The information sought in this interrogatory is relevant because it would show the compensation Kotmair has received from SAPF, NWRC, and any other tax-fraud promotion in which he is or has been engaged, and thus may lead to the discovery of admissible evidence concerning defendants' abusive tax schemes.

Interrogatory No. 7(a):¹ Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all members (both associate and full) of SAPF from January 1, 2000 to the present.

Kotmair's Response: Objection: irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This information is also protected by the 1st, 4th, and 14th Amendments to the United States Constitution.

Discussion of Interrogatory No. 7(a): This information is directly relevant to the United States' suit. The United States needs the identities of SAPF's members in order to investigate the schemes defendants have sold the members, the extent to which the members have used those schemes, and the extent to which the members have evaded federal tax. This information will assist the United States in obtaining the permanent injunction it seeks in this case, in recovering revenue lost due to defendants' abusive tax schemes, and, once a permanent injunction has been entered, monitoring defendants' compliance with it. Kotmair's claim that producing this information would be burdensome is unsupported. He has offered no explanation for how producing the member list would cause any burden at all, nor has he suggested any less burdensome means for the United States to obtain this information. Even if it were burdensome for Kotmair to comply with this interrogatory, the burden would not be undue, because this information is central to the United States' suit.

¹ The United States inadvertently numbered two of its interrogatories as 7.

As for Kotmair's constitutional objections, he was unable to articulate to the undersigned counsel what his objections were under the Fourth and Fourteenth Amendments. He merely repeated, when the undersigned asked, that his objection was based on the freedom of association, which arises under the First Amendment. Accordingly, the United States can only respond to that objection, as Kotmair does not appear to have any actual objection under the Fourth and Fourteenth Amendments.

Courts have repeatedly held that the freedom of association does not apply to customer lists. Despite defendants' choice in terminology, the SAPF "members" are in reality customers—they pay fees in exchange for products and services designed to assist them in dodging federal tax. Their membership fees give them access to SAPF's paralegals and caseworkers who give them tax advice and draft court filings to help them forestall IRS collections, and their membership fee buys them "insurance-like" protection that defendants advertise will pay them "above and beyond" the cost of any property the IRS seizes and compensate them for any time they spend in jail after they have been convicted of tax crimes. SAPF members pay SAPF for frivolous letters to the IRS claiming that they are not liable for federal tax. They pay SAPF (or NWRC) for frivolous letters to their employers demanding that the employers stop withholding federal tax from their wages. They pay SAPF for audiotapes, videotapes, and books that defendants advertise will show them how to avoid the IRS. SAPF is, in short, a commercial enterprise, not a political advocacy group.

Defendants' attempts to wrap themselves in the First Amendment, by calling themselves and their members "patriots," does not conceal that the sole focus of their business is to obstruct the assessment and collection of federal tax. Calling SAPF a political association does not make

it so, nor does calling its customers “members” disguise the commercial nature of their relationship with SAPF. This Court, in the 1996 decision quoted *supra*, explained that SAPF offers its members financial incentives to obstruct the IRS. SAPF’s terminology is irrelevant; the focus of its enterprise is its own and its customers’ financial interests.

Producing customer lists does not offend the First Amendment because commercial transactions do not give rise to associational rights. *IDK, Inc. v. County of Clark*, 836 F.2d 1185, 1193 (9th Cir.1988) (escort/client relationship not protected by freedom of association); *In re PHE, Inc.*, 790 F. Supp. 1310, 1317 (W.D. Ky. 1992) (holding that commercial relationship between publisher and its customers was not protected “associational right” under First Amendment); *In re Grand Jury Subpoena Served Upon Crown Video Unlimited, Inc.*, 630 F. Supp. 614, 619 (E.D.N.C. 1986) (“commercial relationship arising from the sale of videotapes by the subpoenaed corporations to their customers is not protected by the first amendment’s freedom of association,” even though videotapes themselves were protected form of speech). Accordingly, Kotmair’s claim fails because First Amendment rights do not attach to a commercial enterprise such as SAPF.

Even in cases involving membership organizations, courts have upheld similar customer-list requests against First Amendment challenges where illegal activity is at issue. The Third Circuit case of *United States v. Thurston Paul Bell* involved a former associate of SAPF, who, like his mentor Kotmair, ran a business and a website selling bogus strategies to clients endeavoring to avoid paying taxes. 414 F.3d 474, 475 (3d Cir. 2005). Also like the defendants in this action, Bell drafted letters and pleadings to the IRS on behalf of his customers, and charged them for his advice and services. *Id.* Bell argued that the district court’s order that he

produce a customer list to the United States violated his customers' First Amendment freedom of association. *Id.* at 485. The Third Circuit rejected this argument because "Bell's operation was primarily a commercial enterprise, not a political group," and because the "government's interest in enforcement of the tax laws outweigh[ed] rights of association that [might] be implicated by disclosure." *Id.*

The lower court's order compelling Bell's discovery responses is equally illustrative in this case. *United States v. Bell*, 217 F.R.D. 335 (M.D. Pa. 2003). Bell had argued there, as he did on appeal of the permanent injunction, that to produce his customer list in response to the United States' discovery requests would violate his customers' freedom of association. The court rejected this claim because the "freedom of association does not extend to . . . unlawful activity" such as Bell's abusive tax schemes. *Id.* at 343. "The First Amendment does not make a social club a sanctuary for crime." *Id.* (citation omitted). The court noted that the purpose of the United States' discovery requests was not to curb Bell's customers' freedom of association but "to establish Bell's act of advising and facilitating an abusive tax scheme for profit." *Id.* The same is true of the United States' discovery requests in this case.

Courts have found that the Government's interest in enforcing the tax laws outweighs any associational rights that may be implicated. *See, e.g., Kerr v. United States*, 801 F.2d 1162, 1164 (9th Cir. 1986) (enforcing an IRS summons even though it required producing names of organization's members); *St. German of Alaska Eastern Orthodox Catholic Church v. United States*, 840 F.2d 1087, 1094 (2d Cir. 1988) (enforcing summons that sought "disclosure of contributors' names" because the IRS's "compelling governmental interest" in "enforcement of the tax laws" outweighed associational rights of organizations' members). The Government

similarly has a compelling interest in enforcing the tax laws here. The Government needs SAPF's member list, among other reasons, to investigate SAPF's sales of its abusive tax schemes and to determine how those schemes are being used to avoid federal tax. Such information will assist the United States in obtaining the permanent injunction it seeks in this case, in collecting revenue lost due to SAPF's schemes, and in monitoring defendants' compliance with any orders the Court may issue in this case. *See, e.g., Abdo v. United States*, 234 F. Supp. 2d 553, 569 (M.D.N.C. 2002) (ordering promoter to mail court's order to his customers and "provide evidence of his compliance with the foregoing" by filing a "complete list of names and addresses" of those customers), *aff'd mem.*, 63 Fed. Appx. 163 (4th Cir. 2003); *United States v. Bell*, 238 F. Supp. 2d 696, 706 (M.D. Pa. 2003). Moreover, to the extent that defendants' customers have used defendants' schemes, it is likely that they, and possibly their employers, have violated the tax laws and are subject to, among other things, civil penalties. The IRS's interest in investigating such violations is a "compelling interest" that outweighs any associational rights. *First Nat'l Bank of Tulsa v. Dep't of Justice*, 865 F.2d 217, 220 (10th Cir. 1989); *see also United States v. Hutchinson*, 633 F.2d 754, 757 (9th Cir. 1980) (noting difference between customer list and list of political attendees at a tax-protest meeting).

Finally, even if defendants' customers or members, however they are styled, did have a *freedom of association right that would have protected their identities from disclosure*, the customers who purchased defendants' letters to the IRS have waived that right. Kotmair has written numerous letters to the IRS on behalf of SAPF members. These letters disclose the members' names, addresses, taxpayer identification numbers, *and* their association with

defendants. Defendants cannot now claim that their members' identities are somehow confidential.

Accordingly, the Court should overrule defendants' constitutional objections to producing their membership list and order them to answer this interrogatory in full.

Interrogatory No. 9: Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all persons for whom you have drafted letters to be sent to the IRS at any time from January 1, 2000, to the present.

Kotmair's Response: Objection: irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, this interrogatory is unreasonably duplicative, since the IRS has all the letters sent to it by the Members or their agents, which contain all the relevant information. The United States has produced these letters as part of the discovery process, showing that it possesses this information already. Relative to telephone numbers and email addresses, which may not be contained in the letters, such information is protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 9: These letters, which are one of the United States' reasons for bringing this suit, are directly relevant. Kotmair's constitutional objections are disposed of *supra* in the discussion regarding Interrogatory No. 7(a). His claim that these requests are "duplicative" appears to be based on the fact that the IRS should possess any letters that he sent to the IRS on behalf of his customers. While the IRS has identified some of letters that it has received signed by Kotmair, it has no way of telling whether it has identified all of

them without Kotmair producing a list of the persons for whom he and SAPF wrote letters. Any letters drafted by defendants that did not contain Kotmair's signature block would not have been identified by the IRS, and it is more than possible, given the size and complexity of the IRS, that some letters containing Kotmair's signature block may have been overlooked. Defendants should be ordered to produce a list of the persons for whom they drafted letters so that the United States can verify that it has identified all such letters.

Interrogatory No. 10: Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all persons for whom you have provided any tax-related services from January 1, 2000, to the present.

Kotmair's response: To the extent that the letters SAPF prepares can be deemed "tax-related services," this request is unduly burdensome and financially prohibitive. Moreover, it is duplicative, since the Internal Revenue Service already has the names and other information of the individuals this interrogatory refers to.

Discussion of Interrogatory No. 10: Clearly, defendants' letters to the IRS are not their only tax-related service. They also draft court pleadings, including bankruptcy petitions, to assist their customers in obstructing IRS collections. They sell instructional videotapes, audiotapes, and books advising customers how to dodge federal tax. They provide financial incentives for tax evasion. And they draft letters for customers to send to their employers to stop the employers from withholding tax from their wages. The United States does not have the identities of the customers of those schemes. As for the letters that the IRS has identified as having been

authored by defendants, the United States does not necessarily have the names of all the customers for whom defendants drafted such letters. *See supra* Discussion of Interrogatory No. 9.

As Kotmair did not raise his “unduly burdensome and financially prohibitive” objection within thirty days of the United States’ discovery requests (these objections do not appear until Kotmair’s amended discovery responses, dated December 27), he has waived them. *See* Federal Rules of Civil Procedure 33(b) and 34(b); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992); *Dorrough v. Mullikin*, 563 F.2d 187, 191 (5th Cir. 1977). Nonetheless, even if the Court were to consider these untimely objections, they are meritless. Kotmair has not explained how it would create any burden, financial or otherwise, let alone an undue burden, for him to identify his customers.

Interrogatory No. 11: Identify all persons, by name, address, telephone number, and e-mail address, having knowledge of your relationship with SAPF.

Kotmair’s Response: Objection: unduly burdensome. I don’t know the names of all such persons, which must surely number in the thousands, perhaps the tens of thousands, and which certainly must include DOJ and IRS personnel, as well as anyone who has ever visited the Save-A-Patriot website. Relative to persons having knowledge of my relationship with Save-A-Patriot Fellowship, who are also members of Save-A-Patriot, such information is protected by the 1st, 4th, and 14th Amendments of the United States Constitution. Additionally, it is impossible to answer this interrogatory.

Discussion of Interrogatory No. 11: Kotmair has made an unreasonable interpretation of this interrogatory. The purpose of this interrogatory is to allow the United States to identify persons having discoverable information regarding Kotmair's relationship with SAPF. The United States is not interested in persons having only passing knowledge, such as visitors to his websites. Kotmair claims that thousands of people know about his relationship with SAPF, but he has failed to identify a single one. His constitutional objections, as discussed *supra* in relation to Interrogatory No. 7(a), are without merit. The Court should compel him to identify these people.

Interrogatory No. 12: Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all persons whom you have represented before the IRS since January 1, 2000.

Kotmair's Response: Objection: irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. In addition, this request is unduly burdensome and financially prohibitive. Moreover, this interrogatory is unreasonably duplicative, since the IRS has all the relevant information contained within the letters written to it under my power of attorney. The United States has produced these letters as part of the discovery process, showing that it possesses this information already. Relative to telephone numbers and email addresses, which may not be contained in the letters, such information is protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 12: This information is directly relevant to the United States' suit. Kotmair has not explained how it would be burdensome for him to produce it. As discussed *supra* regarding Interrogatory No. 10, he has waived his "financially prohibitive" objection by not raising it until December 27. Also, as discussed *supra* regarding Interrogatory No. 9, the United States may not have identified all the persons for whom Kotmair has sent letters to the IRS; in any event, Kotmair's letters may not be the only instances in which he has represented people before the IRS. His constitutional objections, addressed *supra* regarding Interrogatory Nos. 7(a), are also groundless.

Request for Production No. 7: Produce copies of all correspondence to the IRS on behalf of any person, including yourself, that you have drafted or assisted in drafting at any time since January 1, 2000.

Kotmair's Response: Objection: this request for production is financially prohibitive, unduly burdensome and unreasonably duplicative, since the IRS has all the letters sent to it by me.

Discussion of Request for Production No. 7: As discussed *supra* in response to Interrogatory No. 9, the United States may not have identified all the letters that Kotmair has sent to the IRS. Again, Kotmair did not raise the "financially prohibitive" objection until December 27, and so has waived it. *See supra* discussion of Interrogatory No. 10.

Request for Production No. 8: Produce copies of all files or other records, including records kept in electronic format, pertaining to all SAPF members (both associate and full) and other persons who have purchased SAPF's products or services at any time since January 1, 2000.

Response: No records are maintained relative to the “products or services” sold except that Save-A-Patriot Fellowship has copies of letters sent by or on behalf of members, to the Internal Revenue Service. Moreover, this request is objected to because it is duplicative, is unduly burdensome, and is financially prohibitive; and such documents and records, to the extent that they exist, contain information that would be protected under the 1st, 4th, and 14th Amendments to the United States Constitution.

Discussion of Request for Production No. 8: This response is less than candid, as SAPF admitted in response to Request for Production No. 16 that it has copies of membership agreements executed by individual members (though it refuses to produce them, *see infra*). So Kotmair, as SAPF’s “fiduciary,” has, in addition to the letters he references in this response, the membership agreements. His refusal to produce the letters is addressed *supra* regarding Request for Production No. 7, and, as discussed *supra* regarding Interrogatory Nos. 7(a), his constitutional objections are baseless. Moreover, Kotmair’s “financially prohibitive” objection is untimely as he did not raise it until December 27. *See supra* discussion regarding Interrogatory No. 10. He should be compelled to produce all records pertaining to SAPF’s customers and members.

Request for Production No. 13: Produce copies of all audiotapes, videotapes, books, and other products that you, SAPF, and NWRC offer for sale.

Kotmair’s Response: Neither I nor the National Worker’s Rights Committee offer “audiotapes, videotapes, books, and other products” for sale. Certain “audiotapes, videotapes, books and other products” are offered by the Save-A-Patriot Fellowship.

Discussion of Request for Production No. 13: Although Kotmair and SAPF's attorney, Mr. Harp, both told the undersigned counsel during the week of December 19 that they had shipped to the United States copies of the audiotapes, videotapes, books, and other products SAPF sells, the United States has not received such documents as of the date of this motion. If the United States does receive them, it will so advise the Court; but in the event that SAPF has not shipped the documents, the United States asks the Court to order them to do so.

III. SAPF'S RESPONSES TO THE UNITED STATES' DISCOVERY REQUESTS

The United States served interrogatories and requests for production of documents on SAPF on October 27, 2005. United States' L.R. 104.7 Certificate of Conference, Ex. B. On December 5, 2005, the United States received SAPF's response; SAPF amended its responses on December 29. *Id.*, Exs. D and H. Answering only handful of the United States' discovery requests, SAPF raised groundless objections to the remainder. The United States' discovery requests and SAPF's objections are set forth below:

Interrogatory No. 6. Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all members (both associate and full) of SAPF from January 1, 2000 to the present.

SAPF's Response: Objection as not relevant and not reasonably calculated to lead to the discovery of admissible evidence. This information is also protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 6: *See supra* discussion regarding Kotmair's response to Interrogatory No. 7(a). SAPF's attorney, like Kotmair, was unable to articulate to the undersigned counsel any basis for SAPF's Fourth and Fourteenth Amendment objections, and

further indicated that SAPF would not be pursuing those objections but would rely on the First Amendment freedom of association. United States' L.R. 104.7 Certificate of Conference ¶ 8.

Interrogatory No. 9(a):² For each person identified in response to the two preceding interrogatories [requesting the identity of SAPF staff], state the nature of the position held, the nature of the services performed, the dates of performance, and the amounts (if any) paid for such services.

SAPF's Response: SAPF responded to a portion of this interrogatory but "object[ed] to furnishing any amounts paid these individuals on the basis of relevancy."

Discussion of Interrogatory No. 9(a): The amounts paid to SAPF staff is relevant because this information may shed light on the amounts received by SAPF, where those amounts go, whether defendants are engaged in any other abusive tax schemes, and how much money defendants are making from their abusive tax schemes. The Court should order SAPF to produce this information.

Interrogatory No. 9(b): Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all persons for whom you have drafted letters to be sent to the IRS at any time from January 1, 2000, to the present.

SAPF's Response: Respondent objects on the basis that this is unduly burdensome. Further, this interrogatory is unreasonably duplicative, since the IRS has all the letters sent to it by the Members or their agents.

² The United States inadvertently numbered two interrogatories as number 9.

Discussion of Interrogatory No. 9(b): *See supra* discussion of Kotmair's response to Interrogatory No. 9.

Interrogatory No. 10: Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all persons for whom you have provided any tax-related services from January 1, 2000, to the present.

SAPF's Response: Respondent objects on the basis that the term "tax-related services" is undefined, vague and ambiguous. Save-A-Patriot Fellowship shows that it does not file or prepare income tax returns for anyone nor does it advise anyone regarding the content of any income tax return.

Discussion of Interrogatory No. 10: *See supra* discussion of Kotmair's response to Interrogatory No. 10.

Interrogatory No. 11: Identify by case name, court name, and docket number, all cases (bankruptcy or otherwise) in which SAPF or anyone working under its direction or supervision has drafted or assisted in the drafting of any court filing (including pleadings and other documents) from January 1, 2000, to the present.

SAPF's Response: Respondent objects to this interrogatory on the basis of relevance.

Discussion of Interrogatory No. 11: This information is clearly relevant to the suit. The United States has alleged in its complaint that defendants interfere with the administration of the internal revenue laws by, *inter alia*, drafting or assisting in the drafting of court filings. SAPF's objection should be overruled.

Interrogatory No. 21: Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all participants in the Member Assistance Program.

SAPF's Response: Objection: irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. As it deals with members, this information is also protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 21: This information is directly relevant to the United States' suit. The United States has addressed these constitutional objections *supra* regarding Kotmair's objections to Interrogatory No. 7(a).

Interrogatory No. 22. Identify, by name, taxpayer identification number (*i.e.*, Social Security or employer identification number), address, telephone number, and e-mail address all participants in the Victory Express.

SAPF's Response: Objection: irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. As it deals with members, this information is also protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 22: *See supra* Discussion of Interrogatory No. 21.

Interrogatory No. 24: List, by recipient name, date of payment, and amount, all benefits or other payments made to any participant in the Member Assistance Program, the Victory Express, and the Patriot Defense Fund.

SAPF's Response: As it deals with members, this information is also protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Interrogatory No. 24: The United States has addressed these objections *supra* regarding Kotmair's objections to Interrogatory No. 7(a).

Request for Production No. 7. Produce copies of all correspondence to the IRS on behalf of any person that SAPF or anyone working with SAPF has drafted or assisted in drafting at any time since January 1, 2000.

SAPF's Response: Respondent objects to this request as this request for production is over broad, unduly burdensome and unreasonably duplicative.

Discussion of Request for Production No. 7: *See supra* discussion of Kotmair's response to Request for Production No. 7.

Request for Production No. 8: Produce copies of all files or other records, including records kept in electronic format, pertaining to all SAPF members (both associate and full) and other persons who have purchased SAPF's products or services at any time since January 1, 2000.

SAPF's Response: Save-A-Patriot Fellowship does not maintain any records relative to "products or services" sold, except that Save-A-Patriot Fellowship has certain records pertaining to letters sent by or on behalf of members to the IRS, and FOIA or Privacy Act requests.

Discussion of Request for Production No. 8: *See supra* discussion regarding Kotmair's response to Request for Production No. 8. Moreover, SAPF admits in this response that it has records "pertaining to letters sent by or on behalf of members to the IRS, and FOIA and Privacy

Act requests.” It has not, however, produced these records, nor offered an explanation here for its failure to do so. The Court should order it to produce these records.

Request for Production No. 10: Produce copies of all bankruptcy petitions and other court filings that SAPF or anyone working with SAPF has drafted or assisted in drafting.

SAPF’s Response: Respondent objects to this request for production of documents as the requested documents are not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

Discussion of Request for Production No. 10: This information is directly relevant to the suit. The United States alleges in its complaint that defendants interfere with the administration of the internal revenue laws by, *inter alia*, drafting or assisting in the drafting of court documents to obstruct IRS collection efforts. Accordingly, this objection should be overruled.

Request for Production No. 16. Produce a copy of all contracts or agreements with SAPF members (both full and associate) and other persons regarding the Member Assistance Program, the Victory Express, and the Patriot Defense Fund.

SAPF’s Response: Respondent objects to furnishing individual members’ agreements as the personal membership information contained thereon is protected by the 1st, 4th, and 14th Amendments of the United States Constitution.

Discussion of Request for Production No. 16: *See supra* discussion regarding Kotmair’s response to Interrogatory No. 7(a).

IV. CONCLUSION

For the foregoing reasons, the Court should enter an order compelling defendants to respond in full to the above-listed discovery requests.

Respectfully submitted,

ROD J. ROSENSTEIN
United States Attorney

/s/Anne Norris Graham
ANNE NORRIS GRAHAM
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION TO COMPEL has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 30th day of December, 2005.

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

George Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

/s/Anne Norris Graham
ANNE NORRIS GRAHAM
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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil No. WMN 05 CV 1297
)
 JOHN BAPTIST KOTMAIR, JR., et al.,)
)
 Defendants.)

UNITED STATES' L.R. 104.7 CERTIFICATE OF CONFERENCE

1. I am a trial attorney with the United States Department of Justice, Tax Division, and am assigned to the above-captioned matter.

2. On October 25, 2005, I served discovery requests on defendant John B. Kotmair, Jr. A copy of these discovery requests is attached as Exhibit A.

3. On October 27, I served discovery requests on defendant Save-A-Patriot Fellowship (SAPF). A copy of these discovery requests is attached as Exhibit B.

4. I received Kotmair's responses, a copy of which is attached as Exhibit C, on November 30.

5. I received SAPF's responses, a copy of which is attached as Exhibit D, on December 5.

6. On December 20, I wrote defendants regarding their deficient discovery responses and requested a conference with them. A copy of my letter is attached as Exhibit E.

7. On December 21, 2005, I spoke with SAPF's attorney, George Harp, regarding his client's discovery responses. I discussed in detail SAPF's responses to Interrogatories Nos.2-3,

6-7, 9(a) and (b), 10-11, 21-22, and 24-25, and Requests for Production of Documents Nos. 4, 7-8, 10, and 16.

8. With regard to SAPF's constitutional objections to several of the discovery requests, Mr. Harp stated that the objection was focused on the First Amendment, rather than the Fourth and Fourteenth Amendments, and was based on the First Amendment freedom of association. He did not articulate the basis of his Fourth and Fourteenth Amendment objections, and indicated that he would not be pursuing those objections. The undersigned explained the United States' position regarding SAPF's First Amendment objection and, at Mr. Harp's request, sent him an e-mail with several citations supporting the United States' position. A copy of that e-mail is attached as Exhibit F.

9. On December 22, I called Mr. Kotmair to discuss his answers to the United States' Interrogatories Nos. 2 to 7(a) and 9 to 13 and Requests for Production Nos. 4 to 8 and 11 to 13. I went over each of these discovery requests with Mr. Kotmair in detail, explaining to him why his responses were deficient.

10. As for his constitutional objections, Mr. Kotmair was unable to explain what his Fourth and Fourteenth Amendment objections were, but stated that his First Amendment objection was based on the freedom of association. The undersigned explained, as she did to Mr. Harp, the United States' position on that matter, and invited Mr. Kotmair to review the citations she had sent to Mr. Harp.

11. The undersigned explained to both Mr. Kotmair and Mr. Harp that she would filing a motion to compel on December 29 unless the parties could resolve these discovery disputes before then.

12. On December 27, Kotmair faxed to the United States an amended response to the United States' discovery requests. That amended response is attached as Exhibit G.

13. On December 28, Mr. Harp told me that SAPF would not produce that information absent a court order.

14. On December 29, Mr. Harp faxed me SAPF's amended discovery responses, which are attached as Exhibit H.

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

Executed this 30th day of December, 2005.

/s/Anne Norris Graham
ANNE NORRIS GRAHAM

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' L.R. 104.7
CERTIFICATE OF CONFERENCE has been made upon the following by depositing a copy in
the United States mail, postage prepaid, this 30th day of December, 2005.

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

George Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

/s/Anne Norris Graham
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