IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA **Plaintiff**	)	
vs.	)	**Case No.: WMN 05 CV 1297**
JOHN BAPTIST KOTMAIR, JR., et al., **Defendants**	)	

NOTICE OF SERVICE OF RESPONSE TO DEFENDANT SAPF'S TO MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to Local Rule 104.8.a., Thomas M. Newman hereby certifies that on May 8, 2006, a RESPONSE TO DEFENDANT SAPF'S MOTION TO COMPEL was served on Defendants by United States mail, postage prepaid. The response is attached to this notice for electronic filing with the United States District Court for the District of Maryland.

/s/Thomas M. Newman
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing RESPONSE TO DEFENDANT SAPF'S MOTION TO COMPEL has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 8th day of May, 2006.

John Baptist Kotmair, Jr.
P.O. Box 91
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George Harp, Esq.
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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' RESPONSE TO DEFENDANT SAPF'S MOTION TO COMPEL DISCOVERY RESPONSES

I. BACKGROUND

On February 17, 2006, the discovery deadline for this case, the United States received written discovery from Defendant SAPF. Despite the fact that the discovery was untimely, the United States agreed to, and did, respond on February 28, 2006.[1] On April 3, 2006, thirty-five days after the United States served responses, and forty-five days after the discovery deadline set by the Court, Defendant SAPF served a Notice of Motion to Compel.[2] The United States now files this response.[3]

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[1] SAPF, through its attorney, asserts that the requests were served on January 16, 2006 (a federal holiday in which there was no mail service). Since there was some dispute as to when the requests were sent, the United States agreed to respond notwithstanding that the discovery requests were received on the Court's deadline. *See* Docket No. 24. Even though the discovery was sent on January 16, it was nevertheless untimely under the local rules. Responses to discovery served on January 16 would not be due until February 21, after the discovery deadline. See Fed.R.Civ.P. 6(e), 6(a).

[2] Docket No. 27 (which is entered as a "Motion to Compel.")

[3] On April 12, 2006, the United States requested, and the Court granted, until May 8, 2006 to respond.

SAPF seeks to compel production and identification of documents, trial preparation materials, and the identity of individuals who do not possess relevant information related to this case. SAPF's requests include: (1) producing and listing documents that were previously provided to defendants, (2) the identity and testimony of plaintiff's potential trial witnesses, (3) plaintiff's trial exhibits, and (4) the identity of government employees participating in the decision-making process to prosecute this lawsuit. SAPF's arguments are baseless, as all responsive documents were previously supplied prior to the discovery request, there is an absolute bar to compelling an attorney's trial preparation materials, including witness testimony and potential exhibits, and the identity of employees with decision-making authority to prosecute this lawsuit are not relevant to this case.

II. THIS COURT SHOULD STRIKE SAPF'S MOTION TO COMPEL

SAPF's motion to compel should be struck because the discovery was untimely. Here, the Court's October 5, 2005 Scheduling Order set a February 17, 2006 discovery deadline.[4] The Court's order further stated that "[a]ll discovery requests must be served in time to assure that they are answered before the discovery deadline." While the parties can mutually agree to extend the time to respond to discovery, "no extension of time limits set in any scheduling order entered by the Court shall be made without the Court's *prior* approval."[5]

The alleged January 16, 2006 date of service required responses by February 21, after the discovery deadline. Thus, the discovery is untimely. As such, SAPF was required to seek Court

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[4] *See* Docket No. 12.

[5] *See* L.R. 104.7.a (emphasis added).

approval *prior* to serving the discovery. For this reason, this Court should strike SAPF's motion to compel.

III.THE UNITED STATES DID NOT WAIVE ANY OBJECTIONS

SAPF's argument that the United States's responses are untimely is a misstatement to this Court which SAPF, despite numerous requests, has not corrected.[6] In the Motion to Compel, SAPF fails to note that the discovery requests were only received by the United States on February 17, 2006.[7] Parties can, pursuant to mutual agreement, allow additional time to respond to discovery.[8] SAPF agreed that the United States would respond within two weeks of receipt and did not waive any possible objections.[9] Thus, the responses are timely by agreement.

Moreover, waivers of objections are not granted if "good cause" is established.[10] The relevant factors Courts consider to determine "good cause" include: "(1) the length of the delay or failure to particularize; (2) the reason for the delay or failure to particularize; (3) whether there was any dilatory or bad faith action on the part of the party that failed to raise the objection properly; and (4) whether the party seeking discovery has been prejudiced by the failure."[11]

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[6] Declaration of Thomas M. Newman ¶¶ 2-9, 19-24

[7] Docket No. 24, ¶ (b).

[8] *See* Fed.R.Civ.P. 33(b)(3).

[9] The United States has requested that Mr. Harp correct this misstatement at least four times. *See* Declaration of Thomas M. Newman ¶¶ 19-23.

[10] *Hall v. Sullivan*, 231 F.R.D. 468 (D. Md. 2005).

[11] *Id.*

Here, there was no "delay" in responding. The United States responded within two weeks of receiving the requests and by mutual agreement with SAPF.[12] Moreover, prior to receiving the requests, the United States had already provided SAPF with the names of all potential witnesses and documents in its possession.[13] Thus, the discovery requests were essentially answered prior to being served or received. Since the United States has not acted in bad faith, and the alleged two-week delay will not prejudice SAPF's trial preparation —because the documents were already in its possession— the objections should not be deemed waived.

IV. THE UNITED STATES ASSERTED A VALID PRIVILEGE UNDER THE WORK-PRODUCT DOCTRINE

Defendant SAPF's motion to compel misrepresents the United States' valid work-product claim by implying that documents and witnesses are being withheld. This is not the case. The work-product privilege is asserted *only* to protect plaintiff's counsel from being required to identify prematurely which documents and witnesses will be proffered at trial.[14]

The United States asserted the privilege after providing over 8,000 pages of documents as part of its initial disclosures, which includes frivolous correspondence mailed to the IRS by defendants. In addition, those disclosures were supplemented as the IRS receives additional correspondence from defendants, which are forwarded to this office.[15] Moreover, the United States disclosed, and defendants deposed, the two IRS Revenue Agents assigned to this

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[12] Declaration of Thomas M. Newman ¶¶ 2-9.

[13] Id. at ¶¶ 6, 9-10.

[14] Id. at ¶ 9.

[15] Id. at ¶¶ 5-10.

investigation.[16] The United States has not withheld any responsive documents or the names of any potential trial witness.[17] As all responsive documents and known witnesses have been disclosed, the United States fully responded to SAPF requests —with the exception of providing protected work-product.[18]

In arguing the privilege does not apply, SAPF's motion to compel fails in at least three respects. First, defendant as the moving party *has the burden* of proving it is entitled to trial preparation materials and must establish a "*substantial need* of the materials." Without explanation, SAPF seeks to compel the United States to prepare trial exhibits and witness testimony two months prior to the Court ordered disclosure.[19] This is clearly inadequate, as SAPF did not state any need, much less a *substantial* need for plaintiff's exhibits and witness testimony prior to the pre-trial order.

Moreover, SAPF must prove an "*undue hardship* to obtain the substantial equivalent of the materials by other means."[20] As stated previously, SAPF deposed the IRS Revenue Agents who investigated defendants and were supplied all responsive documents prior to the discovery requests.[21] Thus, all potential government witnesses and documents have been supplied. Courts

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[16] Id. at ¶ 8 Exs. 7, 8 (During her deposition Revenue Agent Rowe stated that she was unaware of any other IRS employee involved in this case other than Mr. Metcalfe).

[17] Id. at ¶¶ 4-7, 9, & 19.

[18] Work-product includes an attorney's thoughts, such as impressions, theories, and conclusions in preparation for litigation. Blacks Law Dictionary (8th Ed. 2004).

[19] The pre-trial must be filed with the Court by August 25, 2006. L.R. 106.4.a.

[20] Fed.R.Civ.P. 26(b)(3) (emphasis added).

[21] Declaration of Thomas M. Newman ¶ 8.

routinely reject the notion that a party requesting trial preparation materials can demonstrate undue hardship or good cause when, as here, the witnesses and documents are available to both parties.[22] Thus, SAPF failed to prove any undue hardship that will result from being supplied trial exhibits and a witness list as part of the pre-trial order.[23]

Moreover, even if the required showing of good cause had been made, "court[s] shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney."[24] In that regard, there is an absolute bar to revealing the mental impressions and legal theory of an attorney during ongoing litigation.[25] The selection of trial witnesses, their

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[22] *Hickman v. Taylor*, 329 U.S. 495 (1947); *Guilford National Bank v. Southern Railway Co.*, 297 F.2d 921, 926 (4th Cir. 1962)(noting that good faith cannot be demonstrated if the party requesting witness testimony had the opportunity to interview that individual.)

[23] Put simply, SAPF is requesting that the United States supply its entire trial strategy, including witnesses and exhibits months in advance of trial, which is not condoned by courts. *Hickman*, 329 U.S. 495, 516 (" Discovery was hardly intended to enable a learned profession to perform its functions either without wits or on wits borrowed from the adversary. The real purpose and the probable effect of the practice ordered by the district court would be to put trials on a level even lower than a 'battle of wits.' I can conceive of no practice more demoralizing to the Bar than to require a lawyer to write out and deliver to his adversary an account of what witnesses have told him.")

[24] Fed.R.Civ.P. 26(b)(3).

[25] *Duplan Corp. v. Moulinage et Retorderie de Chavanoz*, 509 F.2d 730 (4th Cir. 1974)(no showing of relevance, substantial need or undue hardship should justify compelled disclosure of an attorney's mental impressions, conclusions, opinions or legal theories;" and noting that the absolute privilege against compelled disclosure extends to discussions with witnesses in preparation for trial); In *Sporck v. Peil*, 759 F.2d 312 (3rd Cir. 1985), the court held that the District Court had committed a clear error of law in ordering the identification of those documents, which comprised a portion of the hundreds of thousands of documents previously produced by a party in response to discovery requests, that the party's counsel had selected for his client's review prior to the client's deposition, and ruled that the process of selecting the documents itself represented counsel's mental impressions and legal opinions as to how the evidence within the documents related to the issues and defenses in the litigation, which impressions and opinions were to be accorded an "almost absolute" protection from discovery

preparation, and the decision to select specific exhibits for trial are part of plaintiff's counsel's mental process. Subsequently, their disclosure is absolutely barred.[26]

V. THE IDENTITY OF PERSON PARTICIPATING IN THE DECISION MAKING PROCESS TO PROSECUTE THIS SUIT ARE NOT RELEVANT

SAPF also seeks to compel the identity of individuals who participated in the "decision making process to prosecute this lawsuit." This information is protected by both the deliberative process privilege and the attorney-client privilege and is clearly irrelevant,[27] and the motion to compel should be denied.

The deliberative process privilege protects from disclosure intra-government documents or information which, even if relevant, "reflect advisory opinions, recommendations, and deliberations comprising part of the process by which governmental decisions and policies are formulated."[28] As the Seventh Circuit explained in *United States v. Farley*, "[s]ince frank

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under Rule 26(b)(3). This is analogous as SAPF seeks to compel plaintiff's attorney to distill the thousands of pages in its possession, and identify the United States' trial strategy in the process. *See also In re Allen*, 106 F.3d 582 (4th Cir. 1997)(finding that the selection and compilation of documents for trial falls within opinion work-product).

[26] *Duplan Corp.*, 509 F.2d 730, 733.

[27] *See* Federal Rule of Civil Procedure 26 (b)(1)(permitting discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.").

[28] *Dowd v. Calabrese*, 101 F.R.D. 427, 430 (D.D.C. 1984). *See also Dept. of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8-9 (2001); *Moye, O'Brien, O'Rourke, Hogan & Pickert v. National R.R. Passenger Corp.*, 376 F.3d 1270, 1277-79 (11th Cir. 2004); *Rodgers v. Hyatt*, 91 F.R.D. 399, 405-06 (D. Colo. 1980)("All of these communications constitute part of the 'mental processes' of the agency, and none are 'postdecisional explanations' of policy as contemplated by the Supreme Court in *NLRB v. Sears, Roebuck & Co.*"); *Simons-Eastern Co. v. United States*, 55 F.R.D. 88, 89 (N.D. Ga. 1972)(ordering "disclosure . . . of all computations and facts revealed objectively in the file but not of any conclusions or opinions reached by various agents of the Internal Revenue Service.").

discussion of legal and policy matters is essential to the decision making process of a governmental agency, communications made prior to and as a part of an agency determination are protected from disclosure."[29]

The privilege for intra-agency materials that express the opinions of the author, and necessarily do not constitute the policy of the agency, recognizes that it would be impossible to give advice, exchange ideas, and offer predecisional opinions if all such writings were to be subjected to public scrutiny, and that in order to have a frank and open discussion of ideas concerning legal or policy matters, which improves the decision making process, it is necessary to keep confidential predecisional opinions and recommendations.[30] The purpose of the privilege is "to foster freedom of expression among governmental employees so as to promote creative debate and consideration of alternatives."[31] As the Supreme Court explained in *NLRB v. Sears, Roebuck & Co.*,

> The point, plainly made [by Congress in dealing with deliberative process privilege and the FOIA], is that the "frank discussion of legal or policy matters" in writing might be inhibited if the discussion were made public; and that the "decisions" and "policies formulated" would be the poorer as a result.[32]

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[29] 11 F.3d 1385, 1389 (7th Cir. 1993).

[30] *Dowd*, 101 F.R.D. at 430.

[31] *Id.*

[32] 421 U.S. 132, 150 (1975).

A government employee's "[e]valuations of facts and recommendations to superiors regarding possible consequences and governmental actions are precisely the types of expressions which the privilege is intended to protect."[33]

Moreover, a tax suit is a *de novo* proceeding, not a review of an existing administrative record.[34] The thoughts of the Revenue Agents, IRS management, or IRS Counsel about the case, or their predecisional opinions and recommendations, have no bearing on the resolution of this litigation.[35] Consequently, the identities of these individuals are not relevant.

Moreover, prior to filing this motion to compel, defendants deposed both Revenue Agents Rowe and Metcalfe, and so had an opportunity to ask any relevant questions regarding the investigation process. Any need SAPF had for information regarding the identity of any other individuals should have been satisfied by these depositions.

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[33] *Dowd*, 101 F.R.D. at 432.

[34] *See, e.g., R. E. Dietz Corp. v. United States*, 939 F.2d 1, 4 (2d Cir. 1991)("The factual and legal analysis employed by the Commissioner is of no consequence to the district court"). *McLeod v. United States*, 2000 WL 1902257, *2 (D. Nev. 2000)("any information relating to ... personnel records of IRS officials is not relevant and is not reasonably calculated to lead to the discovery of relevant evidence. Moreover, internal memos and notes concerning the IRS' deliberative process and interpretations of law, as they relate to [this] case, are privileged.")

[35] *Detroit Screwmatic Co. v. United States*, 49 F.R.D. 77, 78-79 (S.D.N.Y. 1970)("The subjective analysis of the agent and technical advisor based upon the information derived from those records and their respective opinions as to the proper method to be applied in determining whether taxes are due form no part of the plaintiff's case."); *Mayes v. U.S.*, 1986 WL 10093, No. 84-5157-CV-SW-O, at *2 (W.D. Mo. 1986)("The legal and factual analysis undertaken by the IRS is of no concern to the court; instead, the issues are subject to *de novo* review. . . .The court will not be reviewing the analysis followed by the IRS employee or the reasons why the IRS made the assessment.").

VI. THE UNITED STATES FULLY RESPONDED TO SAPF'S DISCOVERY REQUESTS

In addition, SAPF asserts that the United States withheld documents and failed to adequately respond to certain discovery requests. These claims are equally without merit. SAPF requests "withheld" documents responsive to interrogatories 4, 5 and document requests 1, and 2. Since there are no responsive documents, SAPF's motion should be denied.

Moreover, despite objecting, the United States responded to interrogatory 10, and therefore SAPF's motion to compel a response should be denied. In its motion to compel, SAPF argues that the United States must "identify what it is claiming is fraudulent speech or writing."[36] This statement is inconsistent with a plain reading of the interrogatory and, in fact, alters the request. The interrogatory does not request that any statements be identified, only that the documents be listed. Since the United States fully responded, SAPF's motion to compel should be denied.

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[36]The interrogatory requests which documents are relied on to determine fraud, apparently within the meaning of I.R.C. § 6700. The United States objected because the question is vague as violations of I.R.C. § 6700 occur if *false or fraudulent* statements are made relating to a material matter.

VII. CONCLUSION

For the foregoing reasons, the Court should enter an order denying defendant's motion to compel discovery.

Respectfully submitted,

ROD J. ROSENSTEIN
United States Attorney

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' RESPONSE TO DEFENDANT SAPF'S MOTION TO COMPEL has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 8th day of May, 2006.

John Baptist Kotmair, Jr.
P.O. Box 91
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George Harp, Esq.
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DISTRICT OF MARYLAND

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

DECLARATION OF THOMAS M. NEWMAN IN SUPPORT OF THE UNITED STATES' OPPOSITION TO SAPF'S MOTION TO COMPEL

1. This declaration and attached exhibits are submitted under 28 U.S.C. § 1746 in connection with the United States' Response to Defendant SAPF's Motion to Compel Discovery Responses. I am a trial attorney with the Department of Justice's Tax Division in Washington, D.C. to whom this case is assigned.

2. On February 17, 2006, I received the discovery requests at issue in this case. The parties noted this in the Status Report filed with the Court on February 17, 2006.

3. In subsequent discussions with SAPF's counsel, Mr. Harp, I agreed to provide responses within two weeks and stated that the United States was not waiving any objections. Mr. Harp agreed to this schedule but did not send any confirming letter. Consequently, I mailed a letter referencing this agreement on March 2, 2006, which is attached as Exhibit 1.

4. As part of the discussions the parties agreed that the United States would not send responsive documents which were previously sent to the defendants. Attached as Exhibit 2 is a

copy of a letter sent on February 21, 2006, memorializing this agreement.

5. I discussed with defendants sending only supplemental disclosures, as the United States had previously mailed more than 8,000 pages of documents as part of its initial disclosures. A copy of the November 14, 2005 letter confirming these disclosures is attached as Exhibit 3.

6. With respect to the supplemental disclosures:

(A) on January 23, 2006, I mailed defendants copies of frivolous correspondence they sent to IRS after November 14, 2005. A copy of the letter sent with these disclosures is attached as Exhibit 4.

(B) on March 10, 2006, I supplemented the United States' disclosures by sending the defendants additional documents received after January 23, 2006. A copy of the letter mailed with these disclosures is attached as Exhibit 5.

(C) on May 3, 2006, I supplemented the United States' disclosures by sending the *defendants additional documents, including frivolous letters sent by Mr. Kotmair to the IRS,* which were received after March 10, 2006. A copy of the letter mailed with these disclosures is attached as Exhibit 6.

7. In responding to SAPF's discovery request, I reviewed the 8,093 pages mailed on November 14, 2005, and the supplemental disclosures mailed on January 23, 2006. After reviewing these documents, and the administrative file, I found no additional documents responsive to SAPF's discovery requests that were not previously supplied. Thus, I did not provide any documents with the United States' response.

8. With respect to potential trial witnesses, on February 14, 2006, defendants deposed the

IRS Revenue Agent assigned to this case, Joan Rowe. During the deposition, defendants asked, and Revenue Agent Rowe provided, the identity of all other individuals participating in the investigation. In addition, on March 16, 2006, defendants deposed Revenue Agent Gary Metcalfe.

9. In subsequent discussions with Mr. Harp between February 28 and March 10, 2006 regarding the discovery request, I stated that the United States had not withheld any responsive documents. Moreover, I stated to Mr. Harp that I objected to the document requests because the United States had not yet identified which of the roughly 9,000 pages of documents would be used at trial. I further stated that the United States has an obligation to redact the names, addresses, Social Security number, and tax liabilities which defendants include in the frivolous correspondence mailed to the IRS. Since no trial date was set at this time, we discussed that preparing exhibits would be both premature and impractical due to the volume of frivolous letters sent by defendants.

10. On March 2, 2006, I confirmed these conversations with Mr. Harp and mailed him a letter reiterating that I had not yet identified which documents would be used at trial and stated they would be disclosed as the information becomes available.

11. During these discussions, and in an attempt resolve this informally, I offered to:

(A) prepare a stipulation of facts, including the parties' agreed exhibits, in advance of trial in order to provide defendants with adequate notice of which specific exhibits would be introduced, and to eliminate the need for witnesses required only to authenticate exhibits; and

(B) disclose the documents the United States intended to use at trial, and prior to

the date required by the Court's rules, as soon as the specific documents were identified.

12. During all subsequent discussions I had with Mr. Harp, he was in agreement that the United States could supply all trial exhibits as they are identified.

13. On March 22, 2006, the parties participated in a conference call with the Court. During the conference, the Court asked the parties if any remaining discovery disputes existed. Both Mr. Kotmair and Mr. Harp stated to the Court there were not.

14. At no time before March 30 did Mr. Harp state he was dissatisfied with the United States' responses or its informal proposal to prepare a stipulation of facts. On that date, Mr. Harp called my office at 5:00 p.m. and stated he intended to file a motion to compel discovery. During the call, I requested that Mr. Harp identify which of the United States' responses he believed were inadequate, but he refused. In addition, Mr. Harp stated that he intended to file the motion compel even though it would be "moot" because the United States would be required to disclose all trial exhibits before the motion would be decided. Exhibit 7.

16. Since Mr. Harp could not, during our March 30 conversation, identify which responses he believed were inadequate, I requested that he call me on March 31, 2006. Mr. Harp agreed to call at 12:00 noon. Mr. Harp failed to call at the agreed time, and instead called at 4:00 while he was at the airport waiting to board an airline flight. During this discussion— thirty-two days after the United States had supplied responses —Mr. Harp again failed to identify which of the United States' responses he considered to be inadequate. Mr. Harp only reiterated that he intended to file the motion to compel on April 3, 2006.

17. On March 31, 2006, I stated to Mr. Harp that I would be unavailable from April 3-13, and I requested that Mr. Harp call my office on April 3 if he still intended to file the motion on

that date so that a response could be prepared. No call was received in my office from Mr. Harp on April 3, 2006.

18. On April 3, 2006, thirty-five days after the United States' responses, Mr. Harp served a notice of motion to compel discovery.

19. On April 4, 2006, I received a copy of the motion to compel discovery. After reviewing the motion to compel I called Mr. Harp to discuss an extension to serve a response, and also requested that he correct two misstatements in the motion that were inconsistent with our prior discussions. The first misstatement was that the United States' responses were untimely. The second, was that the United States has "withheld" documents responsive to the request and claimed a privilege objection.

20. On April 6, 2006, Mr. Harp agreed that the United States' responses were timely, and that the United States had not waived any objections. I memorialized this discussion by letter dated April 7, 2006, which is attached as Exhibit 7. I further requested that Mr. Harp correct this misstatement with the Court so that the United States would not be required to address this argument.

21. On April 17, 2006, I called Mr. Harp to discuss his argument that the United States waived all objections because its responses were untimely. Mr. Harp agreed to withdraw this assertion and notify the Court on that date. I memorialized this agreement by letter dated April 17, 2006, which is attached as Exhibit 8.

22. On April 18, 2006, Mr. Harp called my office and stated that he considered the United States' responses timely and no objections waived after a review of his telephone records confirming our discussion between February 17-28, 2006.

23. On May 2, 2006, I memorialized the April 18, 2006, discussion and again requested that Mr. Harp supply a letter withdrawing his contention that the United States' responses were untimely. A copy of this letter is attached as Exhibit 9.

24. As of the date of this declaration, SAPF's attorney has not: (1) provided any statement to the United States or the Court correcting the assertion that plaintiff's responses were untimely, (2) provided any written response to the issues stated in the letters mailed by the United States, and (3) responded to the United States's requests to resolve this dispute informally.

I declare under penalty of perjury the foregoing is true and correct. Executes this 8th day of May, 2006.

/s/ Thomas M. Newman
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DJ5-35-10644
CMN 2004106494

March 2, 2006

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Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

This letter is in response to your written discovery received on February 17, 2006, and the proposed deposition of retired Revenue Agent Gary Metcalf. Many of the discovery requests related to witnesses and documents that will be used at trial. As I already discussed with Mr. Harp, in a conversation regarding the granting of additional time to complete the responses and related to the deposition of Mr. Metcalf, this information is not being supplied because it is not available. However, I will provide this information as it becomes available, and as required under Local Rule 106.2(h).

As I have already confirmed with Mr. Harp, Mr. Metcalf has agreed to appear for the deposition at the United States Attorney's Office, located at 36 S. Charles Street, 4th floor, Baltimore, Maryland, 21201, at 10:00 a.m. on March 16, 2006.

If you have any questions regarding this case, please call me.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

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February 21, 2006

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Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

This letter is in response to your requests for a copy of the status report filed in the above-referenced case and the information you requested on February 17, 2006. Enclosed is a copy of the signed status report filed with the Court on February 17, 2006. With respect to the information you requested, this letter shall memorialize our agreement of February 17, 2006, that I will not be sending you duplicate copies of responsive documents.

If you have any questions regarding this case, please call Thomas Newman at (202) 616-9926.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Exhibit 2

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

Facsimile No. (202) 514-6770
Trial Attorney: Anne Norris Graham
Attorney's Direct Line: (202) 353-4384
Attorney's e-mail address: Anne.N.Graham@usdoj.gov

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

EJO'C:SGH:ANGraham
5-35-10644
CMN 2004106494

November 14, 2005

VIA FIRST CLASS MAIL

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

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Kotmair:

Enclosed please find Bate-stamp pages 1 through 8093 of documents responsive to your discovery requests.

In addition, please note that Federal Rule of Civil Procedure 26(a)(1) requires you to make certain disclosures at the beginning of discovery. The United States has not received your disclosures; please send them forthwith. For your convenience, a copy of Rule 26 is enclosed.

Sincerely yours,

ANNE NORRIS GRAHAM
Trial Attorney
Civil Trial Section, Central Region

Enclosures

cc (without encls.; encls. to follow): George Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

January 23, 2006

VIA FIRST CLASS MAIL

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

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Kotmair:

Enclosed please the United States's supplemental disclosure pursuant to Rule 26(e)(2). These documents have not been Bate-stamped and will be provided again after they have been marked with Bate-stamps.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Enclosures: as stated.

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

Exhibit 4

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

DJ5-35-10644
CMN 2004106494

March 10, 2006

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158
Fax: (410) 857-5249

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

Enclosed please the United States's supplemental disclosure pursuant to Rule 26(e)(2). These documents are also supplemental responses to SAPF's document request No. 3. The information is as follows:

(1) A copy of the March 23, 2001 full-page ad in U.S.A. Today;

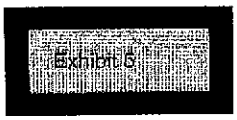
(2) A letter from SAPF announcing the implementation of the monthly billing statement with the member's bill, dated November 15, 1996;

(3) A letter titled "Will the Save-A-Patriot Fellowship Exist in October '95";

(4) A letter titled "Very Important-Please Read" containing a Power-of-Attorney form prepared by SAPF;

(5) An "Instruction Sheet for Execution of Power-ofAttorney Forms to be Used for the SSA" prepared by SAPF. The letter includes a Affidavit of Revocation and Rescission, and Statement of Citizenship Forms, both with instructions;

(6) A copy of a $95 bill sent to an SAPF member for the Affidavit of Revocation and Rescission form; and



(7) A letter from SAPF to an individual member describing the "Case Management System" and "Outline of Anticipated Correspondence" to the IRS.

If you have any questions regarding this case, please call me.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

May 3, 2006

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158
Fax: (410) 857-5249

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

Enclosed are the United States' supplemental disclosure pursuant to Rule 26(e)(2). These items include letter mailed by Mr. Kotmair to the IRS, and received during March 2006.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Enclosures: as stated.

Exhibit 6

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

DJ5-35-10644
CMN 2004106494

April 7, 2006

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

This letter concerns the motion to compel you filed on April 3, 2006. First, I am confirming our conversation on April 6, 2006, in which you agreed to a thirty-day extension to respond to the motion to compel, or until May 20, 2006.

Second, I am also reiterating my comments regarding your argument that the discovery responses are untimely and any objections are deemed waived. On February 17, 2006, I stated that I had not received the discovery request until that day when you faxed them to my office. During the court-ordered conference on that date all of the parties agreed I would supply responses within two weeks and I stated that I did not consider the objections waived. Both you and Mr. Kotmair agreed. Moreover, during subsequent discussions you offered further extensions to supply you with responses, which I declined and restated that responses would be sent within two weeks of my receiving the request and that no objections were waived. Notwithstanding this agreement, in your motion to compel you assert that my responses are untimely and all objections were deemed waived. I am providing you this opportunity to correct these assertions with the Court.

Lastly, I am memorializing our conversations regarding the motion to compel you filed on April 3, 2006. First, I am noting that you and Mr. Kotmair have been supplied more than 8,000 paged of documents through initial disclosures, and it is my understanding no documents have been withheld. The disputed discovery requests that I specify which of these documents will be used at trial. While I objected to the discovery request as no pre-trial order was issued, I offered several times to include any exhibits in a joint stipulation of facts. Moreover, in several letters I stated that although I objected, I would provide this information as soon as I began preparing the case for trial. You stated you agreed with this approach.

During the thirty days following my sending, and your receiving my responses, you never

EXHIBIT

stated that you were dissatisfied with the responses or that you intended to file a motion to compel. In fact, during the March 22, 2006 conference call with Judge Nickerson, both you and Mr. Kotmair stated no more discovery was necessary and the case was ready to be set for trial.

However, on March 30, 2006, at 5:00, thirty-two days after I mailed you discovery responses, you called my office and stated you intended to file a motion to compel. You further stated that the motion would be moot because the disputed items relate to exhibits I must disclose when the pre-trial order was issued but that Mr. Kotmair insisted you file the motion. During the call, I requested that you provide me the basis for your motion to compel ands state which responses you considered inadequate and you failed to do. Subsequently, you requested that we discuss the motion at 12:00 p.m. on March 31, 2006, and I again requested that you supply the basis for the motion for this meeting. On March 31, 2006, you called my office while waiting to board a flight at the airport and failed to provide which responses you considered inadequate or the basis for your motion to compel. I further requested during this call that you call me on April 3, 2006, to discuss the motion but no call was received by my office.

In sum, I requested that we discuss the basis of your motion on March 30, 31, and April 3, but never received any supporting information until served by the Court filed copy thirty-five after you received my responses.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Enclosure

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

DJ5-35-10644
CMN 2004106494

April 17, 2006

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

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

This letter is in reference to the motion to compel filed with the Court on April 3, 2006. Local Rule 104.8.b requires the parties to meet and confer regarding a motion to compel "before or immediately after a motion to compel is filed." I attempted to do so on March 31, 2006, but you did not call at the time you specified.

Moreover, Local Rule 104.7 requires that you provide the issues requiring resolution by the Court. However, on March 30, 2006, you stated that your motion to compel would be "moot" because the disputed items are required to be disclosed following the Court issuing a pre-trial order; and you further stated the Court would not decide your motion before the pre-trial order. We are, however, required to resolve this informally before involving the Court. L.R. 104.7. I am requesting that you provide a written proposal to resolve this matter as required.

Lastly, I am noting that L.R. 104.8 requires that you serve any motions to compel within thirty-days of receipt and subsection (b) allows the parties to grant one another extensions for filing any document. However, here no extension was either requested or granted.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Exhibit 8

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Central Region

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

May 2, 2006

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

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Mr. Harp:

I am sending this letter to confirm the April 18, 2006 discussion we had regarding the motion to compel discovery you filed on April 3, 2006. During that conversation you agreed that all of the United States' responses were timely, and stated that you would send a letter confirming this agreement. As of this date I have not received this letter nor have you corrected this misstatement with the Court.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Exhibit 9