IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

UNITED STATES' MOTION FOR SUMMARY JUDGMENT

The United States moves for summary judgment against the defendants, John B. Kotmair. Jr., and the Save-a-Patriot Fellowship (SAPF), on the grounds that there are no genuine issues of material fact and the United States is entitled to judgment as a matter of law. The United States requests a hearing on this motion. A memorandum in support of this motion is filed herewith.

Respectfully submitted,

/s/Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 616-9926
Fax: (202) 514-6770
Thomas.m.newman@usdoj.gov

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing MOTION FOR SUMMARY JUDGMENT and supporting documents have been made upon the following by depositing a copy in the United States mail, postage prepaid, this 19th day of June, 2006.

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

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

/s/Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

United States' Memorandum of Law
in Support of Motion for Summary Judgment

INTRODUCTION

The plaintiff, the United States of America, pursuant to Fed.R.Civ.P. 56(c), respectfully moves for summary judgment in its favor and against the defendants, Save-a-Patriot Fellowship (SAPF) and John B. Kotmair, Jr. (Kotmair), and opposes their motions for summary judgment and moves for entry of an order permanently enjoining defendants, under sections 26 U.S.C. (I.R.C.) 7408 and 7402(a) of the Internal Revenue Code. The United States seeks to permanently enjoin Kotmair, doing business as Save-a-Patriot Fellowship and National Workers Rights Committee (NWRC), and SAPF, 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.

STATEMENT OF FACTS

The United States filed suit against defendants John B. Kotmair, Jr. (Kotmair), and Save-a-Patriot Fellowship (SAPF) on May 13, 2005, 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.

As set forth more fully in the declaration of Revenue Agent Joan Rowe, Kotmair claims to be a tax law expert as the founder and self-proclaimed fiduciary of Save-a-Patriot Fellowship and director of the National Workers Rights Committee.[1] Kotmair formed SAPF in 1984 after being released from prison following a conviction for willfully failing to file income tax returns for 1975 and 1976.[2]

Defendants Kotmair and SAPF market the discredited "§ 861 Argument" or "U.S.-source" tax-fraud scheme through their newsletter *Reasonable Action*, the save-a-patriot.org website, and through a salesforce, which SAPF calls independent representatives.[3] Section 861 Argument proponents, using a tortured statutory-construction argument, conclude that the foreign-source income rules from § 861 somehow sharply limit the scope of § 61, which defines income as "income from whatever source derived" —to conclude that domestic-source income of U.S. citizens is not taxable.[4]

For membership fees ranging from $99 to $697, defendants furnish their customers, whom defendants call "members," with access to SAPF staff who (1) provide documents,

---

[1] Rowe Dec. ¶ 22, 24, Exhs. 6E and 7; docket nos. 6 & 8, ¶ 6.

[2] Rowe Dec. ¶ 5; docket nos. 6 & 8, ¶ 26; *see also Kotmair v. Commissioner*, 86 T.C. 1253 (1986).

[3] Rowe Dec. ¶¶ 6-15, 15-22, 26-32, Exhs. 2-4, 6-6E, 9-14; docket nos 6 & 8, ¶¶ 8, 10. The United States does not contest that the taxfreedom101.com and taxtruth4u.com websites are not owned by defendants.

[4] *United States v. Bell,* 414 F.3d 474, 475 (3rd Cir. 2005)(explaining the fallacy of the § 861 Argument).

(including the SAPF membership handbook), assisting members in evading federal income and employment tax payment requirements, (2) provide tax advice, (3) send written protest letters to the IRS, and (4) draft court pleadings to block IRS collection efforts.[5] Moreover, defendants offer to reward customers who violate the income tax laws through an "insurance-like" scheme. These services and documents are described in defendants' handbook which is provided to customers.

To customers who have paid the membership fees, defendants sell, *inter alia*, an "Affidavit of Revocation" and "Statement of Citizenship."[6] Defendants' newsletter states that the "Affidavit of Revocation"—which allegedly revokes their customers' Social Security number and obligation to file income tax returns—is the "first step in removing yourself from the presumed jurisdiction of the IRS and state taxing authorities."[7] Defendants sell the Affidavit of Revocation for a fee of $35 with detailed filing instructions, which state that a customer executing the document "cannot file an IRS Form W-4 with an employer, or any other IRS or state income tax forms." Instead, defendants advise customers to file a "Statement of Citizenship," which they sell in connection with the "Affidavit of Revocation." Defendants advertise the "Statement of Citizenship" as a replacement for the "Form W-4" to "claim to be a

[5] Rowe Dec. ¶¶ 5, 8, 12, 16, 17-22, 52-58, Exhs. 1B (pp. 20-30), 3, 5, 6-6E, & 22-27; docket nos. 6 & 8, ¶¶ 10, 16, & 20.

[6] Rowe Dec. ¶¶ 5, 8, 18-21, 52-56, Exhs. 1A (page 11 & 16), 1B (29-30), 3, 6A (p. 20), 6B, 6C (p. 20), 6D, 22-24; docket nos 6 & 8, ¶¶ 16.

[7] Rowe Dec. ¶¶ 18-21, 55-56, Exhs. 6A (p. 20), 6B (pp. 3, 17, 19)(1990)), 6C (p. 20), 6D (pp. 13-14, 18), 22-24.

person not subject to withholding."[8] Defendants also offer to sell follow-up letters to the Secretary of Treasury, and advise customers that a lack of response from the Government is "conclusive proof" that their Social Security number has been revoked and they are no longer obligated to file tax returns.[9]

As part of the scheme, defendants offer to provide additional assistance to customers whose employers continue to withhold taxes from their wages. For additional fees, defendants will send threatening letters, and file complaints against, employers who continue to withhold taxes.[10] Kotmair has received numerous court decisions stating that individuals cannot opt-out of Social Security because "[m]andatory participation is indispensable to [its] fiscal vitality," and because "[t]he Internal Revenue Code compels [employers] to withhold taxes and social security (FICA) contributions 'at the source.'"[11] Despite unequivocal language in the decisions contrary to their position, however, defendants continue to sell and promote the alleged tax benefits of

---

[8] Rowe Dec. ¶¶ 52-57, Exhs. 22, 25; Declaration of Thomas M. Newman ¶ 44, Exh. 43C (Tr. 162,-167, 181-182); Declaration of Dr. Amzi Sherling ¶¶ 4-9.

[9] Rowe Dec. ¶¶ 18-21, Exhs. 6A (p. 20), 6B (pp. 3, 17, 19)(1990)), 6C (p. 20), 6D (pp. 13-14, 18).

[10] Rowe Dec. ¶¶ 56-62, Exhs. 22, 25-29; Declaration of Dr. Amzi Sherling ¶¶ 4-9, Exhs. 1-2; Declaration of Nicholas Taflan ¶¶ 5-10; Declaration of Thomas M. Newman ¶¶ 2-32, Exhs. 1-31. *See also Damron v. Yellow Freight Sys.*, 18 F. Supp. 2d 812 (E.D. TN 1998)(taxpayer used statements provided by SAPF); *Alaska Computer Brokers v. Morton,* 1995 WL 653260 (D. Ak., September 6, 1995)(same); *United States v. Crosson*, 1995 WL 756599 (E.D. Pa., December 20, 1995)(same).

[11] *E.g., Shepherd v. Sturm, Ruger & Co*, 1998 OCAHO LEXIS 27 at *4 (Feb. 18, 1998) (Kotmair filed at least 30 complaints in the Office of Chief Administrative Hearing Officer (OCAHO), against employers on behalf of members. In *Shepherd*, the OCAHO court, which hears employment disputes, noted that Kotmair receive copies of all decisions as the complainants representative.) *See also* Declaration of Thomas M. Newman ¶ 2-32, & 44, Exhs. 1-31 (noting 30 other cases.)

these documents.[12]

Defendants also advise members not to report or pay tax on "U.S.-source" income. Defendants sell letters, written by Kotmair, alleging that "income that is taxable is from a foreign source only" and "there is no tax liability or requirement to file an information return for citizens with source income from within the States of the Union."[13]

As part of the scheme to assist customers in evading federal income tax payment and filing requirements, defendants offer to represent customers before the IRS, and sell at least ten anticipated responses to IRS inquiries, which defendants describe as "power-of-attorney work." Defendants charge customers a fee between $38-$48 for each letter purporting to represent the customer, which includes privacy act requests to gather "exculpatory evidence."[14] The letters are virtually identical, are all signed by Kotmair, and espouse the so-called "§ 861 Argument."[15] Specifically, defendants represent in the letters that "income must be derived from one of the 'specific sources'" listed in 26 C.F.R. § 1.861(f) or there is "no filing requirement."[16]

---

[12] Rowe Dec. ¶¶ 57-62, Exhs. 25-29; Declaration of Dr. Amzi Sherling ¶¶ 4-9, Exhs. 1-2; Declaration of Nicholas Taflan ¶¶ 5-10; Declaration of Thomas M. Newman ¶¶ 2-32, & 44, Exhs. 1-31, & 43C (Tr. 162-167, 181-182); Declaration of Joseph Nagy ¶ 6; Declaration of Camille Nagy ¶ 6; docket nos. 6 & 8, ¶ 16.

[13] Rowe Dec. ¶ 16, Exh. 5; Declaration of Thomas M. Newman ¶ 44, Exh. 43D (Tr. 208).

[14] Rowe Dec. ¶¶ 5, 23, 25-36, Exhs. 1A (p. 6), 8-18; Declaration of Joseph Nagy ¶¶ 8-14; Declaration of Camille Nagy ¶¶ 7-14; Declaration of Nicholas Taflan ¶ 11; Declaration of Thomas M. Newman ¶ 44, Exh. 43A (Tr. 53); docket nos 6 & 8, ¶ 17.

[15] Rowe Dec. ¶¶ 26-27, 29-30, Exhs. 9-10, 12-13; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 132-134).

[16] Rowe Dec. ¶ 29-30, Exhs. 12-13; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 132-134); Declaration of Evan Davis ¶ 4, Exh. 1 (Tr. 16).

Defendants' protest letters include, *inter alia*, responses to (1) requests for income tax returns, (2) Notices of Deficiency, and (3) Notices of Intent to Levy. All these letters allege, on behalf of defendants' customers, that there is no income tax filing or payment requirement because the individual earned only U.S.-Source income.[17] Defendants have mailed over 800 protest letters to the IRS during the course of this investigation, despite having been notified by the IRS that Kotmair is not authorized to represent defendants' customers.[18]

Defendants also offer to assist customers in filing court pleadings in bankruptcy and federal district court. In connection with this service, defendants have filed motions and pleadings advocating the § 861 Argument.[19] Defendants state that the bankruptcy pleadings they sell require the IRS to prove that all taxes were properly assessed and is a method to delay collection.[20] Their handbook explains the alleged benefits of their representation as proving that the IRS erroneously sent notices alleging tax liabilities imposed on U.S.-source income—and courts can require the IRS to obey the law according to defendants —the § 861 Argument.[21] Defendants inform customers that they can build a case establishing the alleged error using the protest letters and court filings in order to assist the customers in excluding all U.S.-source

---

[17] Rowe Dec. ¶ 25-32, Exhs. 8-14; Declaration of Joseph Nagy ¶¶ 3-4, 6-12; Declaration of Camille Nagy ¶¶ 3-4, 6-12; Declaration of Nicholas Taflan ¶¶ 3-4; *See Narramore*, T.C. Memo. 1996-11, Tax Court Doc. No. 34184-87 (filed Oct. 19, 1987)(noting that these protest letter have been sold for at least 19 years).

[18] Rowe Dec. ¶ 41-51, Exhs. 19-20; Declaration of Thomas M. Newman ¶ 44, Exh. 43B (Tr. 113-115).

[19] Declaration of Nicholas Taflan ¶ 14(l), Exh. 14; Declaration of Thomas M. Newman ¶ 44, Exhs. 43A (Tr. 53), 43C (Tr. 158); docket nos. 6 & 8 ¶ 20.

[20] Rowe Dec. ¶ 5, Exh. 1B (p. 23); Declaration of Nicholas Taflan ¶ 14(d), Exh. 5.

[21] Rowe Dec. ¶ 5, Exh. 1B (p. 21).

income from federal income tax payment and filing requirements.

Moreover, defendants require that customers use these materials, and employ their delay tactics, in order to claim the benefits of their insurance-like coverage, which rewards customers for violating the income tax laws. This promotion is designed to disrupt or hinder the enforcement of the internal revenue laws.[22]

Defendants peddle these services—all containing the § 861 Argument—despite knowing that the IRS views the arguments as frivolous and that two of SAPF's former employees, Thurston Bell and Richard Haraka, were enjoined from performing identical conduct.[23] In addition, defendants continue to falsely advise customers that Kotmair is authorized to represent individuals before the IRS and to send written protests based on the discredited § 861 Argument.[24]

The IRS has identified 864 SAPF members. It costs the U.S. Treasury an estimated $1,364,005 to prepare substitutes for returns and process frivolous correspondence mailed by defendants for these customers. This cost does not include the hours that IRS Revenue Officers will have to devote attempting to collecting from defendants' customers who refuse to pay the

---

[22] Rowe Dec. ¶¶ 5, 8, 18-21, Exhs, 1A (p. 6), 1B (p. 28), 3 (providing methods for obstructing IRS Appeals' conferences), 6A (p. 2), 6C (p. 2), 6D (p. 2); Declaration of Joseph Nagy ¶ 14; Declaration of Camille Nagy ¶ 14; *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D. Md. 1996)(noting that customers must use every delay tactic possible).

[23] Rowe Dec. ¶¶ 8, 17, 33-34, 63-64, Exhs. 3 (Kotmair discusses other tax-fraud promoters who were enjoined by federal courts, including Bell and Haraka), 6, 15-16, 31-32 (court orders enjoining Bell and Haraka), 33; Declaration of Thomas M. Newman ¶¶ 34, 44, Exhs. 33 (in his affidavit, Bell explains that he and Haraka worked for SAPF), 43C (Tr. 147); *See also United States v. Bell,* 238 F. Supp. 2d 696 (M.D. Pa. 2003).

[24] Rowe Dec. ¶¶ 41-42, 44-51; Declaration of Thomas M. Newman ¶ 44, Exh. 43D (Tr. 217-218).

amounts assessed by the IRS.[25]

LEGAL ARGUMENT

I. Summary Judgment Standard.

Summary judgment must be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The party moving for summary judgment bears the burden of persuasion on the relevant issues.[26] The non-moving party may survive a motion for summary judgment only by producing "evidence from which a [fact finder] might return a verdict in his favor."[27] These rules apply with equal force to suits for an injunction under I.R.C. §§ 6700, 6701, 7402, and 7408.[28]

In his motion, Kotmair raises no issues concerning violations of I.R.C. §§ 6700 and 6701 and only argues that the doctrine of *res judicata* precludes the relief sought by the United States because this Court decided SAPF was an entity separate from Kotmair.[29] The United States acknowledges the results of this decision by seeking to separately enjoin both Kotmair and SAPF.[30] Thus, Kotmair's argument is clearly without merit, as the United States' complaint defines "doing business as" Kotmair's actions as the "fiduciary" of SAPF and "director" of the

---

[25] Rowe Dec. ¶ 66-69, Exh. 35.

[26] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

[27] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986).

[28] *See United States v. Raymond*, 78 F. Supp.2d 856 (E.D. Wis. 1999), *aff'd*, 228 F.3d 804 (7th Cir. 2000)(grant of summary judgment under IRC § 7408 enjoining sales of defendants' "De-Taxing America Program").

[29] *Save-A-Patriot Fellowship*, 962 F. Supp. 695.

[30] Docket no. 1, ¶¶ 4 & C. Kotmair simply misreads the United States' complaint in a manner that suits him.

National Workers Rights Committee. Since the United States is not alleging SAPF is an alter ego of Kotmair, and seeks to enjoin his conduct separately, his argument is without merit.

SAPF's motion contends that some of the false statements listed in the United States' complaint were taken from websites owned by their representatives. The United States does not dispute this fact. Thus, there are no genuine issues of material fact remaining for trial concerning the issues of (1) whether defendants engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 by promoting an abusive tax scheme; and (2) whether an injunction is necessary to prevent the recurrence of such conduct.

II. A Permanent Injunction Should Issue under IRC § 7408 Before Defendants Engage in Further Conduct Subject to Penalty under §§ 6700 and 6701.

IRC §§ 6700, 6701, and 7408 all were enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 320-321, 96 Stat. 324, 611-612, 615-616. Section 6700 was intended to prevent "[t]he widespread marketing and use of tax shelters," which "undermines public confidence in the fairness of the tax system and in the effectiveness of the existing enforcement provisions." S. Rep. No. 97-494, vol. 1 at 266 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1014. Section 6701 was intended to "help protect taxpayers from advisors who seek to profit by leading innocent taxpayers into fraudulent conduct" and to provide for "more effective enforcement of the tax laws by discouraging those who would aid others in the fraudulent underpayment of their tax." S. Rep. No. 97-494, vol. 1 at 275, *reprinted in* 1982 U.S.C.C.A.N. at 1022. Congress included IRC § 7408 as part of this framework because it believed that allowing the IRS to seek injunctive relief against promoters was the most effective way to attack abusive tax shelter schemes and prevent further harm, because the IRS would not be "required to await the filing and examinations of tax returns

by investors." S. Rep. No. 97-494, vol. 1 at 268, *reprinted in* 1982 U.S.C.C.A.N. at 1016.

A. Defendants Engage in Conduct Subject to Penalty Under I.R.C. § 6700.

Section 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under §§ 6700 if the Court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Under § 6700, any plan or arrangement "having some connection to taxes can serve as a 'tax shelter' and will be an 'abusive' tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits of participation."[31] To establish a violation of § 6700 warranting an injunction under § 7408, the United States must show that:

> (1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.[32]

The Government must prove each element by a preponderance of the evidence, a standard that is easily met here.[33] This Court has the authority to grant the requested injunction if the Government establishes that defendants engaged in conduct subject to penalty under § 6700 and injunctive relief is appropriate to prevent the recurrence of such conduct. The record submitted with this motion makes that showing.

(1) Kotmair and SAPF Participated in the Organization of an Entity, Plan, or

---

[31] *Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

[32] *United States v. Estate Preservation Services*, 202 F.3d 1093, 1098 (9th Cir. 2000)(*citing* §§ 6700(a), 7408(b)).

[33] *Estate Preservation Services*, 202 F.3d at 1097.

Arrangement.

By its terms, § 6700 is not limited to any particular type of tax shelter, and courts have included all sorts of abusive tax reduction schemes within its broad sweep.[34] As discussed above, defendants' schemes involve selling a tax-fraud scheme that falsely claims customers can voluntarily withdraw from paying Social Security taxes, and are not subject to tax payment, withholding, or filing requirements on U.S.-source income. Because defendants are selling tax-fraud services and products, they participated in the organization of an entity, plan or other arrangement, within the meaning of 26 U.S.C. § 6700(a)(1)(A).[35]

(2) SAPF and Kotmair Repeatedly Make False Statements Regarding the Internal Revenue Code.

Practically every statement made by defendants regarding the tax benefits associated with their program is false or fraudulent. The gravamen of defendants' scheme is that ordinary citizens are not subject to income tax payment or filing requirements for U.S.-source income—the § 861 Argument. Defendants define "taxpayers" as only those who earn foreign source income. Along those same lines, defendants inform their customers that they are not required to report or pay taxes on domestic income. Moreover, defendants' customers rely on these statements in failing to file and pay taxes. These are shopworn tax protest arguments that

---

[34] *See, e.g., Raymond*, 228 F.3d 804, 811-15 (step-by-step instructions for removing the purchaser from the tax system); *Abdo v. United States*, 234 F. Supp. 2d 553, 562 (M.D.N.C. 2002) ("wages are not income" program), *aff'd without published op.*, 63 Fed. Appx. 163 (4th Cir. 2003), *cert. denied*, 540 U.S. 1120 (2004); *United States v. Savoie*, 594 F. Supp. 678, 680 (W.D. La. 1984); Declaration of Thomas M. Newman ¶¶ 35-40, Exhs. 34-39 (enjoining promotions of the so-called § 861 Argument for violations of § 6700). Despite SAPF's contention, Section 6700 applies to tax protesters selling these scams.

[35] *See, e.g., United States v. Mid-South Music Corp*, 624 F.Supp. 673, 676 (M.D.Tenn. 1985) (discussing "abusive tax shelter" for § 6700 purposes).

have been repeatedly rejected by courts as false.[36]

Defendants also misrepresent the tax benefits of their "Affidavit of Revocation" and "Statement of Citizenship" schemes. Defendants falsely state that participants can file these documents in order to proclaim that they are U.S. citizens not subject to withholding, and can revoke their Social Security numbers in order to evade employment tax payment requirements. Moreover, defendants falsely instruct customer that they "cannot" file income tax returns after using these documents. There are numerous court cases in which individuals have attempted to revoke their Social Security number in order to discontinue paying taxes.[37] None of them has been successful. Claims that individuals can file "Statements of Citizenship" in order to evade income tax withholding have also been unanimously rejected.[38]

Defendants' statements regarding the benefits of SAPF membership in eliminating tax

---

[36] *See, e.g., Bell,* 414 F.3d 474, 475 (3rd Cir. 2005), aff'g 238 F. Supp. 2d 696 (M.D. Pa. 2003); *United States v. Gerads*, 999 F.2d 1255 (8th Cir. 1993) (rejecting appellants' contention that they are not U.S. citizens, but rather state citizens and not subject to taxation); *Lonsdale v. United States*, 919 F.2d 1440 (10th Cir. 1990) (rejecting a host of tax protester arguments); *In re Becraft*, 885 F.2d 547 (9th Cir. 1985); *Betz v. United States*, 40 Fed. Cl. 286 (Fed. Cl. 1998); *Sherwood v. Commissioner*, T.C. Memo. 2005-268 (involving an SAPF); *Tolotti v. Commissioner*, T.C. Memo. 2002-86 (same); *Narramore*, T.C. Memo. 1996-11 (same); *Kotmair v. Commissioner*, 86 T.C. 1253, 1262 (1986)(Kotmair's arguments characterized as "meritless, frivolous, wrongheaded, and even stupid.")

[37] *United States v. Ferguson, 793 F.2d 828 (7th Cir. 1986); United States v. Sasscer, 2000* WL 1479154 (D. Md. 2000); *Narramore*, T.C. Memo. 1996-11; (SAPF attached an "Affidavit of Revocation" to his motion.); *United States v. Lee*, 455 U.S. 252, 257 (1982); *United States v. Luman*, 2005 WL 1027075 (N.D. Ga. April 7, 2005)(promoter enjoined from selling methods to evade income tax withholding); Rev. Rul. 2005-17.

[38] *Alaska Computer Brokers, 1995* WL *653260* (D. Ak. Sept. *6, 1995*)(SAPF customer's "Statement of Citizenship" is "frivolous"); *Damron*, 18 F. Supp. 2d 812 (E.D. TN 1998)(taxpayer "adopted this misguided philosophy and misinterpretation of the law from a tax protest organization known as the Save-A-Patriot Fellowship" in addressing the Affidavit of Revocation); *Benz v. Department of Defense,* 1997 WL 837789 (Sept. 4, 1997).

payment and filing requirements are clearly false. As one court made clear, "[a]s a United States citizen, plaintiff is required to pay federal income tax. Section 1(c) of the I.R.C. provides that a tax shall be 'imposed on the taxable income of every individual.'"[39] The I.R.C. applies to "citizens or residents of the United States."[40]

Defendants' statements that federal income taxes do not apply to their customers, who are American citizens, are not supported by law. As courts have stated, "All individuals, natural or unnatural, must pay federal income tax on their wages."[41] An individual cannot evade this requirement by claiming to have "revoked" their Social Security number of by claiming that income earned in the United States is excluded from taxation.

Also, contrary to the defendants' statements, it is clear that filing tax returns and paying federal income taxes is not voluntary, but mandatory.[42] Individuals cannot revoke an obligation to file an income tax return—as advocated by defendants. The requirement to file an income tax return is plainly set forth in IRC §6011(a), 6012(a), *et seq.*, and 6072(a). *See also* Treas. Reg. §1.6011-1(a). The requirement to pay tax is contained in I.R.C. §6151. Any taxpayer who has received more than the statutory amount of gross income is obligated to file a return and pay the

---

[39] *Betz v. United States*, 40 Fed. Cl. 286, 296 (Fed. Cl. 1998).

[40] *Id.*

[41] *Lovell v. United States*, 755 F.2d 517, 519 (7th Cir. 1984); *Coleman v. Commissioner*, 791 F.2d 68 (7th Cir. 1986); *see also* IRC § 7701(a)(30); *United States v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987); *In re Becraft*, 885 F.2d at 548 n.2.

[42] *Schiff v. United States*, 919 F.2d 830, 834 (2nd Cir. 1990); *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988).

appropriate tax.[43] The defendants' position that the federal income taxes apply only to foreign source income is a discredited, false concept.

In simple terms, defendants' programs are a rehash of anti-tax arguments about what constitutes income. For federal income tax purposes, "gross income" means all income from whatever source derived and includes compensation for services. *See* IRC § 61. Any income, from whatever source, is presumed to be income under § 61, unless the taxpayer can prove that it is specifically exempt or excluded.[44] If a taxpayer is not able to sustain the burden that his income is excluded, then that amount must be included as income. All compensation for personal services, no matter what the form of payment, must be included in gross taxable income.

(3) Defendants Knew or Had Reason to Know of the Falsity of the Statements.

The Government must also establish that defendants knew or had reason to know of the falsity of the statements made.[45] Courts consider three factors in determining whether the Government has established the requisite "knew or had reason to know" standard: (1) the extent of the defendant's reliance on knowledgeable professionals; (2) the defendant's level of

---

[43] *See Raymond*, 228 F.3d at 812 (paying taxes is not a voluntary activity); *Gerads*, 999 F.2d 1255 (the claim that payment of federal income tax is voluntary clearly lacks substance); *Lonsdale*, 919 F.2d at 1448 (this position is "completely lacking in legal merit and patently frivolous'); *United States v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986); *Drefke*, 707 F.2d at 981.

[44] *Reese v. United States*, 24 F.3d 228, 230 (Fed. Cir. 1994).

[45] *See* 26 U.S.C. § 6700(2)(A).

sophistication and education; and (3) the defendant's familiarity with tax matters.[46] The "knew or had reason to know" standard includes "'what a reasonable person in the [defendant's] . . . subjective position would have *discovered.*'"[47] In connection with this standard, defendants have reason to know statements are false or fraudulent if similar schemes have been consistently rejected by courts.[48]

Defendants' conduct clearly meets the "know or had reason to know" standard within the meaning of I.R.C. § 6700. To begin with, defendants' services and publications are all tax-related, and Kotmair hold himself as an "expert" in publications, by holding seminars, and instructing employers on tax-related matters. Moreover, defendants do not allege they relied on any tax professionals. Defendants are clearly sophisticated enough to locate relevant court decisions. In fact, defendants' materials routinely criticize court decisions, correspondence from the IRS, and any other document opposing their position.

Moreover, defendants have *more* than a "reason to know" their statements regarding the tax reporting and payment requirements of U.S.-source income is false for at least three reasons. First, both Kotmair and his son were convicted for willfully failing to file tax returns. It is noteworthy that income received by both Kotmair and his son was from U.S.-sources.[49] Thus, defendants know that their customers have an obligation to report and pay taxes on U.S.-source income.

---

[46] *Estate Preservation Services* at 1103.

[47] *Id.* at 1102.

[48] *United States v. Fisher,* 2004 WL 489822 (N.D. TX, Jan. 26, 2004).

[49] *Kotmair*, 86 T.C. 1253 (the income at issue was derived from a sole-proprietorship and real property located in the U.S.)

Further, even a cursory review of cases involving defendants' customers reveals that the IRS, Tax Court, bankruptcy courts, and federal courts have uniformly rejected defendants' positions regarding the revocation of Social Security numbers, the use of the "Statement of Citizenship," and the § 861 Argument. Defendants also know that two of their former employees was enjoined for nearly identical conduct. Most significantly, Kotmair, as the director of the NWRC, was served with—yet blatantly ignores—at least forty decisions explicitly rejecting his position as frivolous.[50] For these reasons, defendants knew, or should have known, their statements were false.

(4) Defendants' False Statements Pertained to a Material Matter.

The Government must also establish that the statements made pertained to a "material" matter.[51] If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of section 6700.[52]

There is substantial evidence that defendants' statements pertain to a material matter. First, defendants' protest letters indicate that hundreds of defendants' customers gave Kotmair authority to represent them before the IRS regarding a "material" matter—i.e. their personal income tax liability—despite the fact that he cannot represent them. Moreover, defendants

---

[50]In addition defendants falsely advertise they can prepare bankruptcy pleadings and represent customers before the IRS. Defendants know these representation are false. *In re Weatherley*, 1993 WL 268546 (E.D. Pa., July 15, 1993)(enjoining SAPF from preparing bankruptcy petitions in any court in the United States).

[51] It should be noted that SAPF acknowledges in its motion that its services relate to a material matter.

[52]*See Buttorff*, 761 F.2d at 1062.

substantially impact customers' personal liabilities by directing them not to file tax returns, providing documents purporting to revoke their customers' Social Security numbers, and fraudulently discontinue withholding taxes by employers. In doing so, defendants' customers understate their income tax liabilities, and fail to withhold income and employment taxes. In addition, the Government submitted statements from three of defendants' customers who admitted that they failed to file returns and under-reported income based on defendants' materials. Thus, defendants' false statements relate to a material matter.

(5) An Injunction is Necessary to Prevent Recurrence.

The court must also determine whether "injunctive relief is appropriate to prevent recurrence of such conduct."[53] This element is satisfied where there is a reasonable likelihood of continued fraudulent conduct.[54] These factors include: (1) whether mechanisms are in place for continuing the business or scheme; (2) whether the defendant had a high degree of knowledge and level of intent; (3) whether the actionable conduct was an isolated occurrence; (4) whether the defendant insists on the legality of his actions; and (5) whether the defendant has provided assurances that he will change his behavior in the future.[55]

These factors are all met and demonstrate the need for an injunction. Defendants offer for sale a menu of protest letters, operate a complex billing system, oversee staff devoted to tax-related "case work," and promote their scheme through the internet, publications and word of mouth—all indicia of a mechanism in place for continuing the scheme. Moreover, defendants

---

[53]26 U.S.C. § 7408(b)(2).

[54]*See Kaun*, 827 F.2d at 1149-50.

[55]*Id.*

have a high degree of scienter because they contort the reading of statutes to willfully misread the law in a manner that suits them, and they encourage other to violate the tax laws. Defendants also demonstrate careless indifference for their customers by selling these scams and charging significant sums to represent customers before the IRS and in bankruptcy court, when they know they are prohibited from doing so.

In addition, it is clear that defendants' conduct is not isolated. The scam is nationwide, involving hundreds of customers identified over the period of this investigation, in addition to the reported cases noting the scheme. Moreover, defendants' blind insistence on the legality of their actions—despite the overwhelming contrary authority, indicates the need for an injunction. In fact, Kotmair admitted in his deposition there was no need to stop or even rethink defendants' conduct despite the filing of this lawsuit, the fact that the IRS has deemed these arguments to be frivolous, and the numerous adverse judicial decisions. Thus, defendants' conduct in promoting this abusive tax program warrants an injunction under IRC § 7408.

B. Defendants Engage in Conduct Subject to I.R.C. § 6701 penalty.

To establish a violation of I.R.C. § 6701 warranting an injunction under I.R.C. § 7408, the United States must show that defendants prepared or assisted in preparing (1) "any portion of a return, affidavit, claim, or other document," that (2) [they] "know[] (or ha[ve] reason to believe) will be used in connection with any material matter" under the tax laws and that (3) [they] know[] will "result in an understatement of the liability for tax."[56]

---

[56]26 U.S.C. § 6701. SAPF's misinterprets Section 6701 to require that the United States prove that defendants have actual knowledge the documents will be used. The legislative history confirms that defendants need only have actual knowledge the document will be used *in connection with a material matter*. Section 6701 clearly states the knowledge requirement as "reason to believe" that the documents will be used. The United States is not required to

In the instant case, defendants advise customers to file "Affidavits of Revocation"—purporting to remove the individual from the jurisdiction of the IRS and relieve them from income and employment tax filing and payment requirements— and a "Statements of Citizenship"—which defendants state is used in place of a Form W-4 to declare the individual is not subject to income or employment tax withholding. Defendants know their customers use these documents because they note that their customers used the "revocation" in the protest letters defendants mail to the IRS. Those customers purporting to have revoked their Social Security number have failed to file income tax returns— all directed by defendants. Moreover, Kotmair represented at least forty customers in disputes with employers that refused to accept these documents.

In addition, defendants know that these documents, if used, would result in the understatement of their customers' tax liabilities, withholding obligations, and filing requirements because their customers fail to file returns and request that employers stop withholding taxes. Defendants know that both the courts and the IRS reject their positions; they simply refuse to accept the rejections.[57] As such, defendants' conduct violates of § 6701, and provides further grounds for an injunction under IRC § 7408.

C. A Permanent Injunction Should be Issued Based on I.R.C. § 7402.

This Court is authorized by IRC § 7402 to issue an injunction "as may be necessary or

---

prove, but has proven, that defendants have actual knowledge their customers used the documents. Moreover, contrary to SAPF assertion, it is these "affidavits" and "statements" which violate Section 6701, not their frivolous protest letters.

[57] Defendants are aware that their customers have faced IRS audits and criminal liabilities after using these documents. In fact, defendants use that knowledge to their financial advantage by insisting that customers purchase more of their "IRS Response Letters."

appropriate for the enforcement of the internal revenue laws." That statute manifests "a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,"[58] and "has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute."[59] The legislative history accompanying § 7408 explicitly states that "the court will continue to have full authority under [§ 7402] and will continue to possess the great latitude inherent in equity jurisdiction to fashion appropriate relief." S. Rep. No. 97-494, *supra* at 269.

Here, injunctive relief under § 7402 is appropriate to prevent defendants from continuing to interfere with tax enforcement. Defendants' false tax advice and abusive programs interfere with the enforcement of the internal revenue laws by delaying examination and collection and by discouraging customers from complying with the tax laws.[60] Their activities undermine public confidence in the fairness of the federal tax system and incite violations of the internal revenue laws. Defendants' promotion causes the Government irreparable harm and the Government's remedies at law are inadequate.[61]

---

[58] *See United States v. First Nat'l City Bank*, 568 F.2d 853 (2nd Cir. 1977).

[59] *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). *See United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) ("federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes"), *aff'd*, 827 F.2d 1144 (7th Cir. 1987).

[60] A cursory reading of defendants' protest letters demonstrate that they are not designed to advance the IRS examination, but rather are meant solely to throw obstacles in the way of the IRS examiner.

[61] Other remedies available to the Government involve actions against each individual taxpayer who purchases or follows the defendant's programs. Due to the number of these individuals, this would be extremely burdensome. Also, because many of these persons do not file tax returns (as advised by the defendants), even identifying these persons might be

Persons who follow defendants' advice have improper amounts of taxes withheld from their wages, file improper, inaccurate tax returns or do not file tax returns at all, and in either case do not pay their proper federal income taxes. Defendants' activities accomplish what they are designed to do—interfere with the enforcement of the internal revenue laws. Injunctive relief under § 7402 is therefore necessary and appropriate to prevent defendants from continuing to disrupt the federal tax system.

The Government requests that the Court, under the broad authority of IRC § 7402(a), order defendants to furnish the Government with the identities of those persons who have purchased their abusive tax programs, and to notify those customers of the Court's ruling in this matter. The Government also requests that the Court order the defendants to remove false and fraudulent tax promotional materials from their websites, and post a copy of the Court's injunction order on those websites. These actions are necessary to publicize the false and fraudulent nature of the defendants' program. A permanent injunction would constitute a public service.

III. The First Amendment Does Not Preclude an Injunction Against the Defendants' Illegal Activities.

An injunction banning defendants from promoting their abusive tax programs would not infringe on their right to free speech. The Supreme Court has made clear that banning a course of conduct does not violate the First Amendment "merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."[62]

---

impossible.

[62] *Ohralik v. Ohio St. Bar Ass'n*, 436 U.S. 447, 456 (1978) (citation omitted).

As pertinent here, the Supreme Court has emphasized that the First Amendment "does not shield fraud."[63] With regard to instructing as to tax crimes, the Ninth Circuit has held that speech that goes beyond "advocat[ing] tax noncompliance as an abstract idea" and assists tax evasion is not protected by the First Amendment.[64]

Appellate courts have recently addressed First Amendment challenges to injunctions in the contexts of abusive tax program cases, including two in the Ninth Circuit—*United States v. Estate Preservation Services*[65] and *United States v. Schiff*.[66] As the court held in *Schiff*, the Government can regulate or ban entirely commercial speech that is false, misleading, deceptive, or related to unlawful activity.[67] Commercial speech has been described both as "expression related solely to the economic interests of the speaker and its audience,"[68] and as "speech proposing a commercial transaction."[69]

Defendants' promotion constitutes commercial speech. Defendants are selling products and services to customers, and as part of this marketing spiel are giving false statements regarding the tax benefits associated with their products. This type of speech may be enjoined.

In *Estate Preservation*, the court approved an injunction similar to the one sought here.

---

[63] *Madigan v. Telemarketing Assocs.*, 123 S.Ct. 1829, 1836 (2003).

[64] *United States v. Freeman*, 761 F.2d 549, 551-52 (9th Cir. 1985).

[65] 202 F.3d 1093 (2000), *aff'g* 38 F. Supp.2d 846 (E.D. Cal. 1998).

[66] 379 F.3d 621 (2004), *aff'g* 269 F. Supp.2d 1269 (D. Nev. 2003).

[67] 379 F.3d at 626.

[68] *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 561 (1980).

[69] *Id.* at 562.

There, the promoters had produced a manual that contained false statements regarding the tax benefits of a trust. The First Amendment challenge to the injunction of the scheme was rejected because, *inter alia*, the injunction "proscribes only fraudulent conduct."[70] The Court of Appeals concluded that a tax promoter's statements regarding the tax benefits of his scheme "'constitute commercial speech,'" and if such statements violate 26 U.S.C. § 6700 they are "'not protected by the First Amendment.'"[71] Because the manual contained speech that was unprotected by the First Amendment, the court enjoined both advertising the manual and selling it.[72]

Like the defendants in the above cases, defendants market a line of tax evasion products and services. Statements they make regarding the alleged tax benefits associated with their products and services are intended to help increase sales of those products and services. Marketing and selling tax-evasion instructions and programs may be enjoined consistent with the First Amendment as both fraudulent conduct and false commercial speech.[73]

In addition to their commercial products, defendants' websites also feature their views on the federal tax system and their protestations concerning the Government and the IRS generally. That is, some of the material on the websites *may* be considered noncommercial speech. This situation was addressed by the Third Circuit last summer in *United State v. Bell*.[74] In *Bell* the court held that the commercial portions of the promoter's speech could be enjoined because it

---

[70] 202 F.3d at 1106.

[71] *Id.* (quoting *Buttorff*, 761 F.2d at 1066).

[72] *Estate Preservation*, 202 F.3d. at 1096 n.3 (enjoining "promoting, marketing, or selling" the manual).

[73] *Id.* at 1106.

[74] 414 F.3d 474 (3rd Cir. 2005).

was false and that the noncommercial portions could be enjoined because it aided and abetted violations of the tax laws. The court found that Bell was not merely advocating tax violations, but instead was aiding and assisting others in their violation.[75] In the present case, defendants are not just making abstract statements advocating reform of or noncompliance with the tax laws, they are expressly offering how-to-do-it assistance and advice that is meant for their audience to use to circumvent the law.

Numerous courts have applied the illegal-conduct and commercial-speech doctrines to Congress's regulation of tax-evasion products and have determined that speech incorporated into those products is *not* protected by the First Amendment and can properly be penalized under I.R.C. § 6700 and enjoined under IRC § 7408.[76] Indeed, not a single court has refused on First Amendment grounds to enjoin speech that violates §§ 6700 or 6701.

The injunction the Government seeks in this case is tailored after the injunction orders entered by the courts in *Estate Preservation Services*, *Schiff* and *Bell*. It only would proscribe illegitimate conduct.

---

[75] *Id.*

[76] *See, e.g., Bell*; *Schiff*; *Estate Preservation*; *Raymond*, 228 F.3d at 807, 815; *United States v. Kaun*, 827 F.2d 1144, 1152 (7th Cir. 1987); *Smith*, 657 F. Supp. at 648-49, 658, *aff'd per curiam*, 814 F.2d 1086 (5th Cir. 1987); *Buttorff*, 761 F.2d at 1057 n.1, 1065 n.11, 1066; *White*, 769 F.2d at 512, 516-517 (8th Cir. 1985).

CONCLUSION

Defendants' activities have caused, and are causing, substantial harm—to their clients, to the Government, and to taxpayers who pay their proper tax liabilities. The Court should permanently enjoin defendants to prevent further harm.

ROD J. ROSENSTEIN
United States Attorney

/s/ Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-9926

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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

UNITED STATES' INDEX OF EXHIBITS

1. Declaration of IRS Revenue Agent Joan Rowe with attached exhibits 1-35, including:

a. Defendants' Membership Handbook (Exhibits 1A-1B);

b. A copy of defendants' promotional materials (Exhibit 2);

c. Copies of the taxfreedom101.com and taxtruth4u.com, and save-a-patriot.org websites (Exhibits 3, 3A, and 4, respectively);

d. Written advice provided by defendants to a member (Exhibit 5);

e. Copies of defendants' Reasonable Action Newsletter (Exhibits 6-6E);

f. Copy of a full page advertise from U.S.A. Today (Exhibit 7);

g. Defendants' outline of "Anticipated Correspondence" of protest letters written to the IRS on behalf of members (Exhibit 8);

h. Protest letters written to the IRS on behalf of customers disputing their liability to file income tax returns or pay taxes (Exhibit 9-14);

I. A copy of letter from the IRS informing defendants' customers that the arguments raised by defendants are frivolous (Exhibit 15);

j. A copy of a letter from defendants responding to the letter stating their

arguments are frivolous (Exhibit 16);

k. Copies of letters requesting updated power-of-attorney forms from defendants' customers and soliciting to do work on their behalf (Exhibits 17-18);

l. A copy of a page from Kotmair's book *Piercing the Illusion* (Exhibit 19);

m. A copy of a letter from the IRS District Counsel informing Kotmair he is not authorized to practice before the IRS (Exhibit 20);

n. A copy of the letter sent to defendants' customers informing them Kotmair is not authorized to represent them (Exhibit 21);

o. A copy of a bill, "Statement of Citizenship," and "Affidavit of Revocation" provided by defendants (Exhibit 22);

p. Copies of letters from defendants offering write letter to, or sue, their customers employers (Exhibits 23-24);

q. Copies of protest letters from defendants in which their customers have purported to revoke their Social Security number (Exhibit 26-28);

r. A copy of the written decision *Jarvis v. AK Steel* (Exhibit 29);

s. A copy of an article reporting the conviction of one of defendants' customers (Exhibit 30);

t. A copy of two court orders enjoining defendants' former employees Thurston Bell and Richard Haraka (Exhibits 31-32);

u. A copy of the publication the Truth About Frivolous Tax Arguments (Exhibit 33);

v. A copy of defendants materials requesting that members reimburse another

member's tax liabilities (Exhibit 34); and

w. A copy of a spreadsheet estimating the costs to the Treasury (Exhibit 35).

2. Declaration of Thomas M. Newman with the following exhibits:

a. Copies of Orders and Decisions from the Office of Chief Administrative Hearing Officer (Exhibits 1-31);

b. Copies of District Court Orders enjoining individuals for promoting the § 861 Argument (Exhibits 32-39);

c. A copy of the Fourth Circuit decision affirming the conviction of Edward Kotmair for willful failure to file income tax returns (Exhibit 40);

d. Copies of press releases announcing the conviction or guilty pleas for defendants' customers (Exhibit 41-42); and

e. A copy of defendant Kotmair's deposition transcript (Exhibit 43).

3. Declaration of Evan J. Davis attaching the deposition transcript for Raymond Berglund (Exhibit 1).

4. Declaration from Dr. Amzi R. Sherling with a copy of a "Statement of Citizenship" and "Affidavit of Revocation," (Exhibit 1), and the case *Boyd v. Sherling* (Exhibit 2).

5. Declaration of Joseph Nagy.

6. Declaration of Camille Nagy.

7. Declaration of Nicholas Taflan with the following attached exhibits:

a. A copy of a bankruptcy petition (Exhibit 1);

b. A copy of a motion to extend time (Exhibit 2);

c. A copy of a motion for contempt (Exhibit 3);

d. A copy of a motion for sanctions (Exhibit 4);

e. A copy of an objection to an IRS proof of claim (Exhibit 5);

f. A copy of complaint in an adversary proceeding (Exhibit 6);

g. A copy of two opposition motions (Exhibits 7-8);

h. A of a motion to reconsider (Exhibit 9);

I. A copy of a motion to amend (Exhibit 10);

j. A copy of a notice of appeal (Exhibit 11);

k. A copy of a motion to reconsider (Exhibit 12);

l. A motion to stay pending appeal (Exhibit 13);

m. An appellee designation (Exhibit 14);

n. A motion to recuse (Exhibit 15); and

o. A motion to reconsider (Exhibit 16).

Respectfully submitted,

/s/Thomas M. Newman
THOMAS M. NEWMAN
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Tel.: (202) 616-9926
Fax: (202) 514-6770
Thomas.m.newman@usdoj.gov