IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. **WMN05CV1297**
	)	
JOHN BAPTIST KOTMAIR, JR., et al.,	)	
	)	
	)	
Defendants.	)	

DEFENDANTS' MOTION FOR MODIFICATION OF THE PERMANENT INJUNCTION ORDER

Defendants Save-A-Patriot Fellowship and John Baptist Kotmair, Jr., for the reasons set forth in the attached memorandum and exhibits, move this Court to amend the permanent injunction order entered by this Court on November 29, 2006.

Respectfully submitted on this 13th day of December, 2006.

P.O. Box 91
Westminster, MD 21158
(410) 857-4441

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste. 619
Shreveport, LA 71101
(318) 424-2003

CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Defendants' Motion for Modification of the Permanent Injunction Order" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 14th day of December, 2006.

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste. 619
Shreveport, LA 71101
(318) 424-2003

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. **WMN05CV1297**
	)	
JOHN BAPTIST KOTMAIR, JR.,	)	
and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR MODIFICATION OF THE PERMANENT INJUNCTION ORDER

COME NOW, Defendants John Baptist Kotmair Jr., *pro se*, and Save-A-Patriot Fellowship, represented by its counsel, George E. Harp, and move this Court for a modification of its Permanent Injunction Order filed November 29, 2006. This motion is made pursuant to Rules 52(b) and 65(d) of the Federal Rules of Civil Procedure.

Federal Rule of Civil Procedure Rules 52(a) and 65(d).

Defendants are filing a Motion for New Trial and Motion for Stay concurrent with this memorandum. After a hearing, where the Court has make its factual findings, and there are no longer any substantially contested issues of material fact, Defendants then move to invoke the provisions of FRCP Rule 52(b), which states:

> "Rule 52(b) Amendment. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When findings of fact are made in actions tried without a jury, the **sufficiency of the evidence supporting the findings** may be later questioned whether or

not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings." [emphasis added]

Thus, this rule gives this Court the authority to amend its findings, and amend its injunction order accordingly.

Defendant also invokes the provisions of FRCP Rule 65(d) for this motion, which states in pertinent part:

> "Rule 65 (d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order **shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail**, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise." [emphasis added]

This rule provides that an order granting an injunction *shall* be specific in its terms, and describe in reasonable detail, the acts sought to be restrained. Moreover, specificity in the Court's permanent injunction is all the more necessary, as it involves a prior restraint; and that the consequences of guessing incorrectly what acts and speech is prohibited could lead to criminal contempt.

Defendants are in the untenable situation of having to guess which activities are restrained, and which are not; or what constitutes political speech, and what constitutes commercial speech. Indeed, defendants sincerely believe all their speech is protected by the guarantees of the First Amendment.

ARGUMENT

The Permanent Injunction Order lacks the specificity required by FRCP Rule 65(d)

"Basic fairness requires that persons enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). The Supreme Court has explained that "one basic principle built into Rule 65 is that those against whom an injunction is issued should receive fair and precisely drawn notice of what the injunction actually prohibits." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 444 (1974). ". . . [T]he restraint should be defined by clear and

guarded language, and a judge himself should draw the specific terms of such restraint and should not rely on drafts submitted by the parties." *Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies*, 61 S.Ct. 552 (1941). The permanent injunction order of this Court does not satisfy these requirements.

Prohibitions against violating the law are not favored

The Supreme Court has denounced broad injunctions that merely instruct the enjoined party not to violate a statute. See *NLRB v. Express Publ'g Co.*, 312 U.S. 426, 435-36. Further:

> "Injunctions, which carry possible contempt penalties for their violation must be tailored to remedy the specific harms shown rather than to 'enjoin 'all possible breaches of the law.' *Hartford-Empire Co. v. United States*, 323 U.S. 386, 410, 65 S.Ct. 373, 385, 89 L.Ed. 322 (1945); *Swift & Co. v. United States*, 196 U.S. 375, 396, 25 S.Ct. 276, 49 L.Ed. 518 (1905)." *Davis v. Romney*, 490 F.2d 1360 (App. 3rd Cir., 1974).

The permanent injunction order is not tailored to remedy specific harms shown, but in many instances is a general rewording of the statute in question.

The threat of injury cannot be conjectural

To establish standing for injunctive relief, a plaintiff must demonstrate that the threat of injury is in fact real and immediate, not merely conjectural or hypothetical. See *Gillespie v. Dimensions Health Corp.*, 369 F.Supp.2d 636 (D.Md.,2005); *Levy v. Mote*, 104 F.Supp.2d 538, (D.Md.,2000); *Shotz v. Cates*, 256 F.3d 1077, (App. 11th Cir., 2001), *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (App. 9th Cir, 1990). Much of the permanent injunction order is unsupported by the record, and thus no foundation has been shown for any real and immediate injury, as opposed to conjectural injury.

Modification is urgently needed to avert risk of contempt

The requirement for specificity is urgent in the instant case because Defendants sincerely believe that the activities they engage in and the statements they make accurately reflect upon the meaning, applicability and operation of the tax laws, and that any speech or activities in connection with such

beliefs is protected by the First Amendment's guarantee of free speech and association. Likewise, Defendants sincerely believe their activities are not violative of § 6700 and § 6701, and therefore they are at a severe disadvantage in determining the precise speech and activities enjoined, particularly when they are painted in the overbroad and vague language of the permanent injunction.[1]

The specific alterations and amendments to the permanent injunction order herein prayed for by Defendants are hereafter discussed separately.

Prohibitions related to § 6700 and § 6701

Paragraphs **1)a), 1)b), 1)c),** and **1)d** are so broadly worded that they are essentially rewordings of IRC § 6700 and 6701 or general prohibitions against violating the law (see especially ¶ 1)d), "or other penalty provision of the Internal Revenue Code").

Moreover, **¶ 1)c)** appears to enjoin activities outside the scope of § 6700 or § 6701. On its face, it enjoins the activities of "promoting, marketing, organizing, selling, or receiving payment..." The activity prohibited by IRC § 6700 is not the organizing or sale of a "plan or arrangement," but rather the furnishing of false or fraudulent statements concerning the "tax benefits" to be derived from the plan or arrangement. Thus, ¶ 1)c)'s prohibition of the enumerated activities is overbroad, and this paragraph should be struck. Failing that, a precise description of the activities prohibited, along with a finding of the harm from those activities which furnishes the basis for said prohibition, must be reasonably set forth to Defendants.

In like manner, **¶ 1)b)** merely rewords the provisions of § 6701, as noted *supra*, but with one notable addition: the prohibition of preparing a document which "includes a *position* that they know will, if used, result in an understatement of tax liability." [emphasis added] This appears to only enjoin some "position[s]" within such documents, but none have been specifically identified or reasonably

[1] See transcript of September 20, 1996 hearing on case # MJG 95-935, p. 70, Exhibit 2 of the Motion for

described, nor has any example of the offending language, drawn from the letters in evidence, been supplied by this Court. The only finding made in this respect is a reference to the "U.S.-Sources" or "Section 861" argument, but no example or reasonable description of that actual position(s) as set forth or stated in any documents in evidence has been provided, nor any enumeration of actual documents which contain the position(s) claimed to be in violation with respect to § 6701. Therefore, Defendants are left to guess as to the nature of the speech enjoined. As noted *supra*, Defendants' sincerely believe that documents they prepare or assist in preparing contain true statements about the law,[2] and therefore, unless the Court identifies and describes the offending passages, they do not have explicit notice of the speech enjoined.

Paragraph **1)a)**'s effect is also merely to enjoin Defendants to obey the law. It is clear from the statute that the penalty in § 6700 relates specifically to the making or furnishing of:

> "a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter, ..." [emphasis added]

Since it must be a statement or statements concerning a tax benefit by reason of participation in the entity or arrangement which are at issue, we note that the Court has only found, on page 2 of its memorandum, that "SAPF represents that these [various products and services offered for sale], *if used as SAPF instructs, will enable members to legally stop paying income tax* on their 'U.S.-source income.'" [emphasis added] This finding is wholly unsupported by the record, and the Court has not cited any such explicit representation from the evidence before it. The Court also finds that SAPF represents that the "Affidavit of Revocation and Rescission" makes an individual "no longer obligated to file income tax returns or to have taxes or Social Security contributions withheld from his or her

---

New Trial, for Judge Garbis' observation on the sincerity of John Kotmair, Jr., the fiduciary.

earnings." This conclusion is unsupported by the record, and Defendant can find no statements or representations to that effect.

The only other finding made by the Court regarding "false" statements is found on pp. 12–13: "To encourage individuals to join its 'Fellowship,' and make use of its products and services, SAPF represented, inter alia: that taxable income is limited to 'income that has been "earned" while living and working in certain "foreign" countries or in the U.S. possession and territories;' that there is no requirement for most Americans to file tax returns or have taxes withheld from their wages; and that one can "quit" the Social Security program."[3] The phrase "*inter alia*" leaves Defendants guessing as to which other statements are considered "false." The Court references the Member Handbook as evidence for this finding, but the handbook is not used to "encourage individuals to join" the Fellowship; it is only given to members *after* they join. Further, "encouraging" individuals to join the Fellowship does not equate to "furnish[ing] a statement with respect to the ...excludibility of any income ... by reason of holding an interest in the entity or participating in the plan or arrangement," and therefore, with regard to the actual statements held by this Court to be false or fraudulent with respect to § 6700, Defendants are left with no guidance whatsoever.

Lawful conduct cannot be prohibited

Paragraph **1)e)** is a broad-based injunction against representing or assisting anyone before the IRS, or preparing or assisting or in the preparation of correspondence. This decree appears to enjoin Defendants from essentially lawful conduct. "Injunctions must be narrowly tailored and should prohibit only unlawful conduct." *CPC Intern., Inc. v. Skippy Inc.,* 214 F.3d 456, 462 (App. 4th Cir., 2000). This

---

[2] This affirmation is noted by the Court in its memorandum, p. 3.

[3] Whether or not SAPF actually represents that someone can "quit" the Social Security program, that program is authorized by Title 42. Speech with respect to participation in the Social Security program cannot therefore be the subject of Title 26, the Internal Revenue Code, or the internal revenue laws, and thus no injunction under either § 7408 or § 7402 can issue regarding such matters.

is especially true in the present case, where the only authority for injunction rests on §§ 7408 and 7402 of the internal revenue code, and conduct to be prohibited must necessarily violate some portion of the Internal Revenue Code itself.

As Defendants pointed out in earlier motions,[4] Plaintiff's complaint never included any allegation related to Defendant Kotmair's representation of others before the IRS, nor indeed any allegation related to SAPF members' representation of others, and that complaint was never amended pursuant to Rule 15(a). Therefore, any findings related to Kotmair's representative status[5] are outside the scope of the pleadings made before this Court, and no ground exists for an injunctive decree. Even more importantly, however, the only allegation raised (albeit improperly) before this Court was that Kotmair made false statements about whether he could represent people or not.[6] Whether true or not, Plaintiff has no standing thereon for injunctive relief, because a) such statements are beyond the scope of injunctions under §§ 7408 and 7402, b) it is not alleged nor shown that Kotmair's statements regarding his representative status have caused any irreparable harm, and c) this Court has made no finding of harm to Plaintiff in this regard. The only parties with potential standing to sue for damages would be SAPF members who considered themselves defrauded by those statements. As for other SAPF members representing others before the IRS, no such claim was made in the pleadings of this case, nor any harm shown. Courts should not enjoin conduct which is conjectural or hypothetical, *supra*.

With regard to correspondence, the Court finds, on page 3, that various "formletters" are sent to the IRS, but outside of its broad reference to the "U.S.-Sources" or "Section 861" argument, it does not describe with particularity the exact "arguments" or "positions," drawn from the letters on record, which are against the law to hold or write, nor does the Court make any finding that it is against the law to

[4] Docket 54, p. 27.
[5] No other "representative" is in evidence in this case.
[6] This was raised in the Docket 39, p. 4.

present arguments—including "U.S.-Sources"—in letters. The Court notes that Kotmair does not deny letters are sent, and that he affirms "[t]he documents in question contain true statements from the law."[7] In spite of its acknowledgement of Kotmair's sincere belief, this Court fails to describe exactly which statements are false or illegal to make.

Finally, the right of petition for redress—and especially the right to reply to correspondence initiated by the IRS[8]—is a fundamental right, so it is inconceivable that the authority granted under IRC § 7402 to "render such judgments ... as may be necessary or appropriate for the enforcement of the internal revenue laws" extends to the denial of the right to correspond with the IRS, or to assist anyone in corresponding to the IRS, and it is submitted that this broad injunctive decree should be struck from the permanent injunction order. Failing that, a precise enumeration of the exact correspondence (i.e., which "formletters"), including a reasonable description of any portions therein which the Court finds is illegal to write in a letter, must be reasonably set forth to Defendants. Rule 65(c) commands that the basis for the prohibition, i.e., a finding of the exact nature of the irreparable harm such identified portions cause Plaintiff, must also be set forth to Defendants.

Paragraph **1)f)** enjoins "preparing or assisting in the preparation of court filings related to the assessment or collection of income taxes on behalf of any other person." Injunctive relief must be based on the pleadings, the evidence, and the findings. In this instance, the grounds for this relief are wholly lacking: (a) there is no evidence in the record of any court filings "related to the assessment or collection of income taxes on behalf of any other person, " (b) the Court's finding regarding court filings is wholly unsupported, (c) the only filings in the record are at least eight years old and do not support the Court's finding or order, (d) the injunction is not *specific* as to the nature of the court filings enjoined, and (d)

---

[7] Page 3 of the memorandum.

[8] The Court appears to imply that notices are primarily sent from the IRS in response to correspondence initiated by SAPF members, but the record does not support this.

since no statute in the internal revenue code prohibits preparing court filings or assisting others to prepare court filings, this order is plainly outside the scope of *both* IRC § 7402 and § 7408.

The Court fiound that "SAPF offers to prepare and file customized pleadings to its members advancing the U.S.-Sources argument, again, in exchange for the payment of additional fees," and cites as evidence a quote from the Member Handbook which states only that paralegal work is "more cost intensive" than power-of-attorney work. This statement does not support the finding that SAPF paralegals file pleadings which advance the "U.S.-Sources" argument, nor does anything else in the record.

The only "court filings"[9] introduced into the record are lawsuits filed before OCAHO,[10] and nothing in that record shows that said filings ever advanced the "U.S.-Sources" argument. Even so, Defendant Kotmair's declaration[11] clearly sets forth states neither he nor SAPF "have assisted anyone in over eight years in any such filings; nor do we have any intention to do so in the future." This sworn statement remains undisputed by Plaintiff. Courts do not enjoin completed acts, see *Wesley-Jessen, Inc v. Armento*, 519 F.Supp. 1352 (D.C.Ga., 1981), p. 1362, and conduct that has been discontinued before or after suit is brought to restrain such conduct is insufficient basis for injunctive relief, see *Mediacom Communications Corp. v. Sinclair Broadcast Group, Inc.*, 2006 WL 3081725 (S.D.Iowa.C.Div.,2006).

It is clear that the record, other than containing a broad description of types of lawsuits found in the Member Handbook, is devoid of any court filings or arguments employed by Defendants within them. Since no *prima facie* case has even been presented, there is no foundation for the Court to make any finding regarding court filings, nor any finding regarding the specific harm done by such filings.

---

[9] With the exception of a bankruptcy petition filed by Nicholas Taflan, Docket 48. This court has stated in its memorandum that an injunction under § 7408 and § 7402 of the IRC is unlikely to reach such petitions, but even that question is moot, as the Fiduciary of SAPF is on record stating that such petitions aren't done by SAPF.

[10] See Docket 44.

The only conclusion supported by the record is that Plaintiff is not entitled to injunctive relief, and this prohibition should be struck.

Finally, the use of the courts is a fundamental right, so it is inconceivable that the authority granted to the Court by § 7402 to "render such judgments ... as may be necessary or appropriate for the enforcement of the internal revenue laws" extends to the denial of the use of the courts, or a denial of assisting another person in the use of the courts, even if such use is somehow related to the assessment and collection of taxes. Again, this prohibitory decree should be struck from the permanent injunction order.

Likewise, ¶ **1)i)** broadly enjoins against "instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages." This decree also appears to enjoin Defendants from essentially lawful conduct. "Injunctions must be narrowly tailored and should prohibit only unlawful conduct." *CPC Intern., Inc. v. Skippy Inc.*, 214 F.3d 456, 462 (App. 4th Cir., 2000).

On its face, this prohibition appears to be based on the assumption that it violates the law to stop such withholding. However, such assumption ignores the fact that there are provisions in the Internal Revenue Code to do just that. See, for example, IRC §§ 3402(n) and 3402(p), as well as Subtitle A, Chapter 3 of the Code (IRC §§ 1441–1446), which limits withholding only to non-resident aliens. Thus, this paragraph goes beyond the scope of an injunction, by prohibiting acts which do not violate any law. If it is not struck, then the precise unlawful activities as demonstrated by the record should be described in detail to Defendants, so that they might be explicitly notified of the activity enjoined.

Injunctive relief cannot enlarge upon the pleadings, the evidence, and the findings of the court

Paragraph **1)g)** enjoins "obstructing or advising or assisting anyone to obstruct IRS examinations, collections or other IRS proceedings." This decree fails to inform Defendants of the

[11] Docket 54, Exhibit 1, ¶ 61.

specific activities which constitute the enjoined offenses, does not come under the scope of injunctions authorized by IRC §7408, and again appears no more than a broad injunction to obey the internal revenue code, discussed *supra*.

Of even greater consequence, however, is the fact that no evidence has been introduced that Defendants have ever prevented or hindered any IRS agent, officer, or other employee from performing his administrative or enforcement duties, whether with regard to examinations, collections, or any other proceeding before the IRS. This Court's memorandum, page 3, mentions "formletters" sent by SAPF, and these are the only evidence in the record of any actual interaction between IRS and SAPF members. Yet the Court has made no finding—nor does the record permit any finding—that such letters prevent or hinder anyone in the IRS from performing their official duties or administering the internal revenue code. On page 18, the Court finds that "Defendants are ... interfering with the administration of [tax] laws," but does not support this statement from the record. Moreover, this conclusion is actually contradicted by the record: Agent Metcalfe admitted in his deposition that letters sent by Defendants don't actually impede the IRS.[12]

To establish standing for injunctive relief, a plaintiff must demonstrate that the threat of injury is in fact real and immediate, not merely conjectural or hypothetical, see *supra*. Since the injunctive decree of ¶ 1)g) is unsupported by any record that such conduct has occurred, and plaintiff has made no showing, nor has the Court made any finding of any actual (as opposed to hypothetical) threat of hindrance, it should be struck from the permanent injunction order.

Likewise, the injunctive decree of **¶ 1)m),** prohibiting "engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws," is unrelated to any conduct in evidence before this court and appears to enjoin conjectural, unnamed acts

[12] See Exhibit 1, Motion for New Trial, p. 76.

not yet even contemplated. As it is purely speculative, it should be struck from the permanent injunction order.

The injunctive decree of ¶ **1)l),** prohibiting "organizing or selling any document purporting to enable the customer to discontinue payment of federal tax," is unrelated to anything in the complaint or to any conduct in evidence before this Court. In short, it enjoins a hypothetical act.[13]

Not only is there no document in the record which purports to enable a member to "discontinue payment of federal tax," but Plaintiff also never made such a claim in its pleadings. Further, the Court has made no finding that such documents exist. As this injunctive decree is beyond the scope of the pleadings and the evidence, it should be struck from the permanent injunction order.

Paragraph **1)h)** prohibits SAPF from "advising anyone that they are not required to file federal tax returns or pay federal taxes." Grounds for granting this injunctive prohibition are wholly lacking: (a) the record contains no evidence that SAPF has ever so advised any particular person or persons, and in fact demonstrates the opposite; (b) the Court has made no finding that any person or persons have been specifically advised that they are not required to file returns or pay taxes, and (c) since no statute in the internal revenue code prohibits giving advice regarding the operation of the internal revenue laws, this order is plainly outside the scope of *both* IRC § 7402 and § 7408.

There is no evidence[14] in the record to support a finding that Defendants have advised any particular person to take any action whatsoever. In fact, the evidence substantially contradicts this allegation. Page 9 of the Member Handbook submitted into evidence states specifically, "However,

---

[13] See Kotmair's Declaration, Exhibit 1, ¶ 6.

[14] The only evidence offered to support the allegation that SAPF advises anyone not to file a return was one statement, taken out of context, from a 1992 "Affidavit of Revocation and Rescission Instructions." See Docket 43, Declaration of Jane Rowe, ¶ 55 and Exhibit 22. That statement, "you cannot file [various forms] ... the filing of [any form] with anybody will invalidate the *affidavit*," although perhaps unartful, is clearly, in context, a statement concerning the likely effect of filing such returns upon the previous action of making an affidavit.

neither our staff nor our Independent Representatives can tell you whether or not you are required to file a return or pay a tax. YOU are the only person who can make this determination."[15] Agent Metcalfe, in his deposition, admitted that SAPF's Member Handbook actually shows that members are presumed to have already determined for themselves whether or not they have any requirement to file returns or are liable to pay any tax.[16] Likewise, Kotmair testified that Defendants do not "advise anyone what they or anyone else can or cannot do, we merely cite what the written law says."[17] The record also contains the deposition of a former member: Mr. Bergland stated that other than providing information that agreed with how he *already* felt, Save-A-Patriot played no role in his decision not to file.[18] Likewise, there is no finding within the Court's memorandum that such advice has been actually and concretely given to anyone. Courts must limit the conduct enjoined to that which is found to have been pursued or persuasively related to proven unlawful conduct. See *In re Plumberex Specialty Products, Inc.*, 2004 WL 1541619 (Bankr.C.D.Cal.,2004).

Paragraph **1)j)** is in large part so broadly worded that it is essentially a general prohibition against giving any type of "aid or assistance" to anyone "to violate the internal revenue laws." As noted *supra*, the Supreme Court has denounced injunctions that merely instruct the enjoined party not to violate a statute. Since injunctions must be tailored to remedy the specific harms shown, and must be based upon actual past conduct rather than conjectural or hypothetical future acts, it is incumbent upon this Court to so fashion this injunctive decree that it conforms to the record and its exact findings. Other

[15] Member Handbook, Docket 43, Exhibit 1A, p. 9.
[16] See Exhibit 1, Motion for New Trial, 77:10–80:9.
[17] Docket 54, Exhibit 1, ¶ 40.
[18] Docket 45, Exhibit 1, pp. 1–3.

than the specific mention of the "Member Assistance Program, the Victory Express, and the Patriot Defense Fund,"[19] Defendants have no fair and precisely drawn notice of the actual activities prohibited.

Moreover, courts are not to fashion injunctions which in effect are broader than the pleadings' prayer for relief. Plaintiff's prayer for relief asked this Court to enjoin Defendants from "providing incentives, financial or otherwise, ..." In its decree, this Court broadened the prayer by substituting the words "aid or assistance" for "incentives," without supplying any finding or reason therefore, as FRCP 65(e) requires. Further, on pages 3 and 4 of its memorandum, the Court merely places Plaintiff's claim regarding the alleged "financial incentive" of the "insurance-like program" side-by-side with descriptions of the Member Assistance Program from Defendants' Member Handbook, and doesn't make any explicit finding as to what harm MAP (or the unmentioned Patriot Defense Fellowship) has caused Plaintiff, and precisely how that harm has occurred. Therefore, a narrow description of the activities prohibited in ¶ 1)j), the reasons for enjoining them, and the precise finding of the harm which furnishes the basis for each prohibition must be reasonably set forth.

Prohibitions regarding "commercial speech" or "speech likely to aid or abet" are vague and overbroad

Paragraph **1)k)** broadly prohibits "selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to aid or abet others in violating the internal revenue code." Paragraph **4)** broadly mandates that Defendants "remove from their website ... all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to aid or abet others in violating the internal revenue laws."

[19] As has been noted repeatedly throughout this case, SAPF does not have any "fund," this is a misnomer.

This broad prohibition and accompanying mandate fail to inform Defendants of the exact speech enjoined, or the publications in which that speech is contained, or the exact portions of those publications which must, in the Court's opinion, be excised. Since no "tax-fraud scheme" has ever been described in detail, or how such "scheme" works ever explicitly laid out to Defendants, Defendants also cannot apprehend what, in this Court's opinion, comprises "tax-fraud scheme promotional materials."

Further, Plaintiff's prayer for relief asked this Court to enjoin Defendants from speech "likely to incite others imminently to violate the internal revenue laws." Rather than narrow this broad prayer for relief to its actual findings in the case, and crafting its order accordingly, this Court *broadened* that prayer by substituting the words "aid or abet others in violating the internal revenue code."

The phrase "false commercial speech regarding the internal revenue laws" is incomprehensible to Defendants.[20] Since commercial speech is *advertising*, that is, speech which *directly* pertains to a product or service for sale, Defendants cannot apprehend how any speech pertaining to "the internal revenue laws"—a product or service not offered by SAPF—will be considered "commercial speech." Therefore, subject to Rule 65(e)'s requirements, this injunctive decree must be particularized with the actual speech enjoined, i.e., those specific phrases and statements considered by this Court to be "false advertising" *related to the sale of the internal revenue code.*

To add to the confusion of Defendants, this Court broadly finds, on page 19 of its memorandum, that "much of the speech [on SAPF's website and in its other publications] relates to the sale of SAPF products and services, it is commercial speech and it is well established that commercial speech, if fraudulent, can be enjoined." Since the Court has not cited particular speech from the record which is both fraudulent and commercial, Defendants are left guessing what speech could lead to a contempt citation. Accordingly, these injunctive decrees should be particularized with the actual speech enjoined,

[20] See Kotmair's Declaration, ¶ 7.

i.e., those specific phrases and statements considered by this Court to be both fraudulent and commercial. Further, since the only persons with standing for injunctive relief against such speech would be persons harmed by the deceptive advertising, this Court should also state its concise reason for these decrees, that is, the unspeculative, concrete harm this speech causes Plaintiff, so as to form a basis for this grant of injunctive relief.

Injunctive relief cannot be granted on the basis of hearsay or conjecture. Since no books,[21] videotapes, or audiotapes are in evidence, any prohibition or mandate regarding them must be struck. Only certain newsletters, website pages, and a Member Handbook are in evidence. Any finding of the actual "fraudulent" and "commercial" speech, therefore, must be drawn from only those things in evidence.

This Court also finds, on page 19, that "Defendants' representations about the tax laws and the efficacy of their products is clearly fraudulent," but makes no finding of the exact "representations" considered fraudulent, nor is any particular representation made by SAPF regarding its "products" identified. A finding that statements made by Defendants are "fraudulent" also necessarily entails evidence of Defendants' motives, beliefs, and intent, which is absent. Therefore, in addition to particularizing the speech it finds fraudulent and therefore subject to injunction, this Court should provide a reasonable basis for its finding that such speech is fraudulent on the part of Defendants, and that such speech causes actual, not conjectural or speculative, harm to Plaintiff.

List of members is outside the scope of injunctive relief

Paragraph 3) of the order mandates that Defendants provide the government with a list of all SAPF members and all those who have purchased any of its products or services. First, it must be noted that Defendants have already stated that they have no records of those who have purchased SAPF

[21] A "manual," the Member Handbook, is in evidence.

materials. Therefore, it is impossible for them to provide any such list. As for the list of members, Defendants maintain that the SAPF membership list is protected under the First Amendment free speech and association guarantees. The Supreme Court recognized this in *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960):

> "This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.' *N.A.A.C.P. v. State of Alabama*, 357 U.S. at page 462, 78 S.Ct. at page 1171."

Further, compelled disclosure of SAPF members is not a proper function of an injunction, the purpose of which is to prevent future violations of the law, not to punish for past offenses. "The well established rule is that an injunction will not issue for the purpose of punishing past offenses, but will only issue in those cases where the court is convinced that such relief is necessary to prevent future violations of the law." *Thomas v. Orangeburg Theaters, Inc.*, 241 F.Supp. 317, 320 (1965). A lawful order prohibiting such conduct is the only relief necessary "to prevent future violations of the law." Since the provision of a list of SAPF's members has not been shown by any evidence in the record to be "necessary to prevent future violations" of § 6700 or § 6701 or "interference" with IRS administration, this paragraph is beyond the scope of injunctive relief, and given the harm which will result to SAPF members, noted *supra*, it should be struck.

CONCLUSION

Defendants are entitled for the terms of the permanent injunction order to be set forth with the specificity required by Rule 65(d), accompanied by the reasons required by that same Rule, as set forth by Defendants in this memorandum and in particular, that ¶¶ 1)-b, i, j, and k, and ¶ 4 be altered to reflect the actual record and findings of this Court in a manner which gives explicit notice to Defendants.

Defendants are entitled that the following paragraphs be struck altogether from the permanent injunction order, for the reasons set forth hereinabove: ¶¶ 1)-a, c, d, e, f, g, h, l, and m, and ¶ 3).

Finally, "[t]he specificity provisions of Rule 65(d) are no mere technical requirements. The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). Accordingly, this Court should examine each and every prohibition and define with precision and completeness, that which is allowed, and that which is not allowed.

WHEREFORE, for the reasons stated herein, Defendants prays this Court amend its permanent injunction order against the Defendants, in accordance with the issues raised herein.

Respectfully submitted on this 13th day of December, 2006.

P.O. Box 91
Westminster, MD 21158
(410) 857-4441

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste. 619
Shreveport, LA 71101
(318) 424-2003

CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing "Memorandum in Support of Defendants' Motion for Modification of the Permanent Injunction Order" was sent to counsel for the plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 14th day of December, 2006.

/s/ George Harp
GEORGE HARP Bar number 22429
Attorney for Save-A-Patriot Fellowship
610 Marshall St., Ste. 619
Shreveport, LA 71101
(318) 424-2003

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. **WMN05CV1297**
	)	
JOHN BAPTIST KOTMAIR, JR., et al.,	)	
	)	
	)	
Defendants.	)	

DECLARATION OF JOHN B. KOTMAIR, JR.
IN SUPPORT OF DEFENDANTS' MOTON FOR MODIFICATION OF THE PERMANENT INJUNCTION ORDER

1. I am above legal age, a citizen of Maryland, and a Defendant in the above captioned action.

2. I have received the Permanent Injunction Order dated November 29, 2006, charging that John Baptist Kotmair and Save-A-Patriot Fellowship, of which I am the Fiduciary, have engaged in conduct subject to penalty under IRC §§ 6700 and 6701.

3. The Order also states: "This Court has further found that Defendants have engaged in conduct that interfered with the enforcement of the internal revenue laws, and, absent an order restraining their activity, Defendants will continue said interference and conduct in violation of the Internal Revenue Code."

4. It remains my sincere belief that neither I nor Save-A-Patriot Fellowship have engaged in conduct subject to penalty under IRC §§ 6700 and 6701, nor in conduct that interfered with the enforcement of the internal revenue laws.

5. I have no objective standard by which to judge whether any given activity or speech, either already made in the past, or which might be made in the future, is or will be deemed in violation of

Exhibit 1

§ 6700, § 6701, or some other internal revenue law. Therefore, without any clear direction or specificity as to the precise prohibitions, I am at risk of a contempt citation from this Court.

6. Neither I nor SAPF have, to my knowledge, ever "organized" or sold any document "purporting to enable the customer to discontinue payment of federal tax." I do not have any knowledge of any document which can enable a person to "discontinue payment of federal tax."

7. I do not understand, in any sense, the meaning of the phrase "false commercial speech regarding the internal revenue laws." This phrase is used in ¶¶ 1)k) and 4) of the Permanent Injunction Order.

8. I have read ¶ 4) and ¶ 1)k) of the order, and have no objective standard by which to determine what constitutes "false commercial speech regarding the internal revenue laws" nor "speech likely to aid or abet others in violating the internal revenue laws." Therefore, I am left to guess at what material I am ordered to remove, or what material I am prohibited from distributing, and to risk criminal contempt for guessing incorrectly

9. I have read ¶¶ 1)a) through 1)m) of the Order, and cannot determine with any certainty what specific acts, speech, or exact portions of the website, letters, books, audiotapes, videotapes, or indeed anything published or written by me or SAPF, is prohibited by them.

10. Since I am unable to determine with any certainty what specific acts, speech, and portions of any communication materials are prohibited by the Order, or mandated to be removed by the Order, I do not know what acts, speech, or specific literature or audio/visual materials sold or distributed would place me in danger of contempt. I cannot know how to comply with the Order.

11. Since the court did not explain in its memorandum how any letter or other document sent or prepared by me on behalf of any SAPF member resulted in an understatement of a liability, I have

no objective standard by which to judge whether any future letters or documents would be deemed by this Court to have resulted in an understatement.

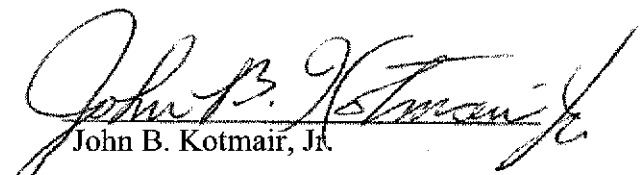
12. I cannot understand the language of ¶ 1)c) of the order, and have no way of determining what specific activities are prohibited. Since the court removed the phrase that refers to the making of false statements, the entire paragraph, which otherwise appears have originated from § 6700, is now rendered indecipherable. In that I cannot understand its meaning, I cannot know how to comply with the Order.

11. Since the Order does not designate with specificity or particularity past conduct that is violative of §6700 or § 6701, or any other internal revenue law, I cannot determine from the Order what I can and cannot do regarding not only any past activity, but also with regard to any future activity.

12. I need the Order altered so that the specific, additional detail required by FRCP 65(d) gives me fair notice of what specific conduct or speech is prohibited, and can have reasonable assurance that I understand how to comply with the Order.

Under 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Dated this 13th day of December, 2006.



John B. Kotmair, Jr.