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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **JOSEPH O. SALADINO, individually and dba FREEDOM & PRIVACY COMMITTEE,** **Defendant.**	**CV 04-02100 FMC (JWJx)** **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;** **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Plaintiff's Motion for Summary Judgment (docket #49). This matter is also before the Court on Defendant's cross-Motion for Summary Judgment (docket #54). The Court has reviewed the moving and opposition papers. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for January 24, 2005, is removed from the Court's calendar.

As explained below, the Court grants the Government's Motion for Summary Judgment, and denies Defendant's Motion for Summary Judgment.

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I. Introduction

On October 18, 2004, the Court found that Defendant's actions in promoting his tax programs violated 26 U.S.C. § 6700 and § 6701. Accordingly, pursuant to the Government's Motion, the Court entered a Preliminary Injunction, prohibiting Defendants from continuing to engage in the marketing of his tax programs.

The evidence submitted in connection with the preliminary injunction remains undisputed, and the Government moves for summary judgment. Specifically, the Government seeks the imposition of a permanent injunction on essentially the same terms as the preliminary injunction. The Government also requests the Court retain jurisdiction over this matter to ensure Defendant's compliance with its Orders. The Government asks that the Court order the Defendant to produce his customer list to the United States.[1] Finally, the Government requests post-judgment discovery, to monitor compliance with the Court's Orders.

Upon review of all the evidence submitted by the parties, including the evidence submitted in connection with the preliminary injunction, the Court finds no triable issue of fact as to the Government's claims. Accordingly, the Government is entitled to summary judgment. The Court has filed concurrently with this Order a permanent injunction.

II. Defendant's Arguments

Defendant raises a number of arguments in opposition to the Motion for Summary Judgment.

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[1] The Government candidly acknowledges that it may already possess this information by virtue of a search warrant executed by the IRS in March 2004. Nevertheless, the Government notes that the files seized by agents executing the search warrant "are currently unavailable to IRS civil audit personnel." Motion at 7 n.18.

A. Jurisdiction

Defendant argues the Court lacks subject-matter jurisdiction. Jurisdiction over the present action, as noted by the Government in the Complaint, is conferred upon the Court by several statutes. *See* 28 U.S.C. § 1340 (conferring jurisdiction upon the district courts for actions involving Acts of Congress relating to internal revenue); 28 U.S.C. § 1345 (conferring jurisdiction on the district courts for actions brought by the United States); 26 U.S.C. § 7402 (conferring jurisdiction on the district courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws"); 26 U.S.C. § 7408 (actions to enjoin promoters of abusive tax shelters "shall be brought" in the district court for the district in which the promoter resides).

Defendant also argues that the "Court has no . . . jurisdiction . . . to make any determination regarding the validity of the claim of right issues Defendant has before the IRS Appeals Office during the pendency of said appeal." Opposition at 12, citing 26 C.F.R. §§ 601.103, 601.106. By Defendant's reasoning, because he is involved in cases before the IRS Appeals Office that implicate this very issue, the Court is without jurisdiction to decide the issue. The Court rejects this argument. By virtue of the jurisdiction statutes cited above, this Court has jurisdiction over the issue of the validity of Defendant's "claim of right" tax program to the extent that it is necessary to adjudicate the Government's claim against him. Such adjudication will not result in the determination of the amount of taxes owed by any taxpayer, which is the issue pending before the IRS Appeals Office. While these separate cases may implicate the same legal question, they do not involve the same issue such that jurisdiction in one forum precludes jurisdiction in another.

Defendant's jurisdictional challenges are without merit.

B. Contents of Website

Defendant suggests that he should not be held responsible for the contents of the website, <<www.freedomcommittee.com>>. Defendant states in his opposition:

> While Defendant, as a programmer, did create the majority of the FPC website, there is no evidence in the record confirming that Defendant was solely responsible for the content of said web pages, that he was cognizant of all the contents of the website[,] or that he had sole control of said web pages. . . . Defendant is a professional web designer/programmer. Programmers routinely create significant websites without contributing at all to the content of said developed/created websites. Plaintiff has no idea how FPC is organized and who is responsible for what activities in the day to day operation of the organization and cannot certify from firsthand knowledge which pages were allegedly created by Defendant and which were created by others in the FPC organization.

Opposition at 13 and n.18. Defendant's representations are unconvincing in light of his earlier sworn affidavit, in which he claimed to be the "sole overseer" of the entity that maintains the website and in which he acknowledged that he uploaded the entire contents of the website:

> 2. Affiant can speak authoritatively for Freedom & Privacy Committee (FPC) since Affiant is the sole overseer of Freedom and Privacy Committee, a corporation sole.
>
> . . . .
>
> 4. Affiant is the webmaster and creater of the FPC Website located at http://www.freedomcommittee.com.
>
> 5. The content of the FPC Website was written by

members in the FPC organization and Affiant jointly.

6. Although Affiant may not have written all the content, Affiant is responsible for having uploaded the content to the FPC Website.

Saladino Affidavit, October 8, 2004 (docket #32).

A party may not contradict earlier testimony in order to create a triable issue of fact. In his October 2004 affidavit, Defendant acknowledged his responsibility for the website in question. He described himself as the "sole overseer" of the entity that maintains the website. He acknowledged he uploaded the entire contents of the website. He may not now disclaim that responsibility.

C. First Amendment Rights

Defendant argues that requiring a church to meet the requirements set forth in 26 U.S.C. § 501(c)(3)[2] violates the Free Exercise Clause of the First Amendment. Defendant appears to be arguing that by denying tax-exempt

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[2] Section 501(c)(3) exempts from taxation charitable and religious entities, so long as certain conditions are met. That section provides that the following entities shall be exempt from taxation:

> (3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. § 501(c)(3).

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status to the "churches" advocated by his "corporation sole" tax program, the Government is impinging on the right of the taxpayer claiming corporation sole status to freely exercise his or her religion. Defendant has cited no authority to support this proposition, and the Court, in its own research, has found none. To the contrary, courts have upheld Free Exercise Clause challenges to provisions of § 501(c)(3). *See, e.g., Bob Jones University v. United States*, 461 U.S. 574, 103 S. Ct. 2017 (1983) (upholding against Free Exercise Clause challenge the revocation of tax-exempt status justified on public policy grounds where religious university prohibited inter-racial dating); *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000) (holding that it is permissible to condition tax-exempt status on church's agreement to limit its political activity).

Defendant's free exercise challenge is therefore without merit.

III. The Government's Requests for Relief

The Court is concurrently filing a permanent injunction.

The Court will retain jurisdiction to ensure compliance with the Court's Order. This is particularly appropriate in light of Defendant's apparent failure to comply with the Court's Order requiring him to post a copy of the Preliminary Injunction on his website.

The Court grants the Government's request that it be permitted to engage in post-judgment discovery to ensure compliance with the Court's order.

The Government requests that the Court order Defendant to provide copies of its customer list. Although the Court denies this request, the Court notes that Defendant's customer list is an appropriate subject for post-judgment discovery.

IV. Conclusion

The Court grants Plaintiff's Motion for Summary Judgment (docket #49) and denies Defendant's cross-Motion for Summary Judgment (docket #54).

The clerk shall file the previously lodged proposed Permanent Injunction Order.

The Court retains jurisdiction of this action for the purpose of implementing and enforcing the judgment. The Government may engage in post-judgment discovery as necessary to ensure Defendant's compliance with the Permanent Injunction.

Defendant is cautioned that failure to comply with the Court's Permanent Injunction may result in the imposition of civil contempt penalties sufficient to coerce his compliance.

The Government shall lodge a proposed judgment within ten days of the entry of this Order.

Dated: January 20, 2005

FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT