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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
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UNITED STATES OF AMERICA,)
)
Plaintiff,) Civil No.
v.)
)
THELL G. PRUEITT, *individually and d/b/a*)
GRANDVIEW PRAYER AND HEALING)
RETREAT CENTER; FRESH START)
FUNDING GROUP; FRESH START)
FUNDING GROUP TAXPAYER)
EDUCATION ASSOCIATION; and THELL)
G. PRUEITT & FRIENDS,)
)
Defendant.)

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COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, brings suit against Defendant Thell G. Prueitt, individually and doing business as Grandview Prayer and Healing Retreat Center, Fresh Start Funding Group, Taxpayer Education Association, and Thell G. Prueitt & Friends, to obtain a permanent injunction pursuant to I.R.C. §§ 7402, 7407, and 7408 to prohibit the defendant from:

(1) acting as a federal income tax return preparer, (2) assisting in the preparation or filing of federal tax returns or forms, (3) organizing or selling any plan or arrangement and in connection therewith making false statements about the tax benefits of participating in the plan or arrangement, (4) engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, 6701, or any other penalty provision in the I.R.C., and (5) engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws.

Nature of Action

1. This action for injunctive relief is brought at the request of a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and by I.R.C. §§ 7402(a), 7407 and 7408.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because Prueitt is a resident of and conducts his businesses in Kingsland, Texas.

Defendant

4. Prueitt's last known address is in Kingsland, Texas, within this judicial district.

5. Prueitt does business from his residence using the following business names: Grandview Prayer and Healing Retreat Center; Fresh Start Funding Group; Fresh Start Funding Group Taxpayer Education Association; and Thell G. Prueitt & Friends.

The Basic Scheme

6. Since 1997, Prueitt has been involved in the promotion and marketing of various tax-fraud schemes. Prueitt first worked with Renaissance The Tax People, Inc. ("Renaissance") as a sales representative selling purportedly legitimate home-based-business packages that included various tax-evasion methods. As a Renaissance representative, Prueitt conducted seminars, retreats, and consultations with prospective customers during which he provided false tax advice regarding purported home-based businesses and other Renaissance schemes by which potential customers could purportedly reduce their federal income tax liabilities. The company was later

enjoined by the State of Kansas, *State of Kansas v. Michael C. Cooper*, et al., case number 00-C-1394 (District Court of Shawnee County, Kansas); several of the company's principals were convicted of various offenses related to the Renaissance scheme.

7. Prueitt then organized and conducted business through various entities, including Grandview Prayer and Healing Retreat Center, Fresh Start Funding Group, Fresh Start Funding Group Taxpayer Education Association, and Thell G. Prueitt & Friends, in order to further market and promote tax-fraud schemes to customers based on a business model similar to the fraudulent Renaissance scheme. Both individually and through his businesses, Prueitt falsely advised customers that they could legally claim various inapplicable deductions as home-based business deductions on their federal income tax returns.

8. Beginning in or before 1999, Prueitt began promoting an ATM and payphone tax-fraud scheme in which customers were to lease equipment from ATM Management, Alpha Telcom Inc., and other companies, purportedly for their businesses, and to claim large improper income tax credits and deductions for the leases.

9. Prueitt prepared the federal income tax returns of several of his ATM/payphone customers and on those returns he reported improper deductions and credits. He assisted other customers in preparing their federal income tax returns with similar improper deductions and credits. Prueitt also prepared federal income tax returns for customers on which he reported bogus deductions for purported home-based business expenses. Prueitt advised his customers for whom he did not prepare returns to claim various improper deductions and credits.

10. Prueitt prepares federal income tax returns for customers and fails to sign the returns as preparer (although required by law to do so). He does this because he knows that the IRS is

likely to audit returns that he prepares, and he wants to keep the IRS from detecting the fraudulent returns he prepares.

Home-Based Business Scheme

11. Prueitt has no formal training in income taxation. He has work experience in the insurance and financial planning industries.

12. Prueitt became involved in the marketing and promotion of tax schemes in approximately 1997 when he joined Renaissance, which was based in Kansas, as an independent marketing associate.

13. As a marketing associate, Prueitt promoted and sold Renaissance home-based business packages, which purported to offer tax support to customers in the form of tax return preparation, advice and so-called audit protection, as well as so-called strategies to maximize tax savings by operating a home-based business. Instead, the Renaissance packages helped customers use illegal methods to decrease their reported federal income tax liabilities, including claiming improper home-based business deductions. Often, Renaissance marketing associates/customers did not operate a business, but merely purported to do so to claim tax deductions. Few sales of Renaissance products were actually made, but Renaissance marketing associates/customers often filed federal income tax returns attempting to convert non-deductible personal expenses—such as home depreciation & maintenance expenses, automobile mileage expenses, home utility bills, groceries, and even children's allowances—into deductible business expenses. Renaissance marketing materials and marketing associates, including Prueitt, falsely represented to customers that they could convert personal expenses into business expenses for which deductions could be claimed.

14. In 2001, a Kansas state court enjoined Renaissance and its principals from promoting the tax scheme, which the court found amounted to a pyramid scheme in which customers received money almost exclusively for enrolling other people in the scheme. *State of Kansas v. Michael C. Cooper, et al.*, case number 00-C-1394 (District Court of Shawnee County, Kansas). The court also found that Renaissance customers had been misled by false and exaggerated guarantees of instant benefits and by false assurances of professional acceptance of the Renaissance tax packages.

15. In 2004, a criminal information was brought against Renaissance and its president, vice-president, and other persons, alleging that they had engaged in mail fraud, wire fraud, assisting in the preparation of false tax returns, and money laundering related to the Renaissance scheme. Several of the Renaissance officers have been convicted of the offenses and the remainder are awaiting trial. *United States v. Michael Cooper, et al.*, No. 2:04-cr-20105-CM-JPO (D. Kan.)

16. After Renaissance was enjoined in Kansas, Prueitt began promoting and selling Sandy Botkin's similar home-based business tax materials. Botkin, who was also formerly affiliated with Renaissance, had established the HBO Tax Academy ("HBO Tax") to promote sham home-based business schemes like those marketed by Renaissance. Botkin is a Certified Public Accountant and an attorney.

17. Prueitt promoted and advertised Botkin's HBO Tax video and audio tapes, which purport to show customers how to transform non-deductible personal expenses into deductible business expenses.

18. In 1997 or 1998, Prueitt started doing business using the name Fresh Start Funding

Group ("FSFG"). FSFG is a sole proprietorship Prueitt operates from his home. Prueitt/FSFG held seminars and weekend retreats for prospective customers. At the seminars, Prueitt promoted a system he called "The Tax Man Cometh," in which he advocated various methods by which customers could purportedly reduce their tax liabilities by using several home-based business programs. Prueitt advised customers to purchase books and cassettes including Ron Mueller and Scott Turner's *It's How Much You Keep That Counts, Not How Much You Make!*, Sandy Botkin's *Tax Strategies for Business Professionals* and *101 Government Mandated Tax Breaks for Your Home Based Business*, which advise on how customers can convert personal expenses into purportedly deductible business expenses. Prueitt claims that he also used the seminars to promote his various other financial services including estate planning, asset protection, mortgage financing and refinancing, debt-management clinics, and insurance products.

19. Mueller and Turner's book falsely advises customers that they will receive an additional \$200 to \$500 each month by modifying their IRS Forms W-4 to decrease the amount of taxes withheld from their wages. The decreased withholding is purportedly based on the decreased tax liabilities customers are advised to claim by reporting the home-based business deductions described in the book. The book does not account for any increased earning purchasers might earn from their purported operation of a business, and falsely states that customers can "audit-proof" their tax returns primarily by keeping careful documentation of expenses.

20. Prueitt recruited customers primarily by word of mouth, but some customers were referred to him from various other customers or businesses. To advertise the tax and financial

planning seminars, Prueitt also sent mailings to customers. Prueitt used the FSFG website, www.freshstartfunding.com, to promote the sale of Botkin's video and audio products, the Mueller and Turner book, and other "audit-protection" services. On his website Prueitt advertised that the products are needed due to the complexity of the Internal Revenue Code, and what he claims is a lack of experience of CPAs regarding the tax treatment of home-based businesses.

21. In an article posted on his website related to the Tax Man Cometh scheme, Prueitt advised customers that they should hire their children for their businesses in lieu of paying allowances, in order to reduce the customers' tax liabilities. Prueitt's website did not inform customers that the IRS closely scrutinizes many such arrangements and that customers cannot deduct payments to their children as wages unless the customers actually pay the children wages for services actually rendered in a business.

22. Through at least 2004, Prueitt promoted and sold products Botkin created through HBO Tax and another organization, the Tax Reduction Institute. Prueitt sold an eight-cassette package entitled "Tax Strategies for Business Professionals," which purports to provide an overview of legal tax deductions geared towards small businesses or home-based business operators. Prueitt also sold a six-cassette series entitled "101 Government Mandated Tax Breaks for your Home Based Business," which purports to educate small business owners on valid tax laws. These materials falsely advise customers they may use improper and misleading methods to reduce their federal income tax liabilities, including the use of unlawful home-based business deductions.

23. The tapes Prueitt promoted and sold include statements that purchasers can claim

deductions and have the government subsidize expenses for their childrens' summer camp, braces, and their cars and vacations based on their operation of home-based businesses. In addition, the tapes falsely advise customers they can claim numerous deductions for expenses they would already spend when not operating a home-based business, and that customers can hire their spouses or children and "work them to the bone," but pay them only a minimum wage, without explaining that to be deductible, such wages must be consistent with the type and amount of work actually performed. Also, the internal revenue laws require that deductions be only for ordinary and necessary expenses, rather than wholly personal expenses such as summer camp or braces.

24. In 2002 and 2003, Prueitt began working with Tom Buck, a Certified Public Accountant from Iowa, who creates materials promoting home-based business tax strategies. Buck was a presenter in one of Prueitt's workshops in August 2003. Prueitt sold copies of the recorded workshop through FSFG.

25. Prueitt/FSFG gives customers false tax advice and makes false statements regarding home-based business deductions. Among the false statements, Prueitt claims that customers can convert partnership income into Schedule C income, that customers can convert personal expenses such as medical expenses, all auto expenses, and childrens' allowances into deductible business expenses. Prueitt falsely tells customers that if they earn less than \$100,000 or \$200,000 in income, they should not owe more than \$1,000 or \$2,000, respectively, in federal taxes.

26. An IRS Form Schedule C, however, may be used only for income earned from a sole proprietorship, not a partnership, and personal expenses unrelated to the operation of one's

business are not deductible as business expenses.

27. Throughout 2003, Prueitt marketed various tax strategies that he falsely told prospective customers would make them audit-proof. He sold so-called audit protection through Tax Resources, Inc. for \$295 per year and through HBO for \$39.95 per month. In fact, no tax strategy makes a customer immune from IRS audit, particularly one that helps customers unlawfully claim business deductions for personal expenses.

28. Prueitt also operates an organization known as the FSFG Taxpayer Education Association ("TEA"), for which he charges customers a yearly membership fee of \$50 per couple or \$25 for each individual.

29. Through TEA, Prueitt advises customers on strategies that he falsely tells them can reduce taxes by 50-100%, and reclaim purportedly overpaid taxes for previous years. Prueitt falsely advertises that if TEA customers earn \$100,000 or less, "there should be little or no dollars sent to Uncle Sam in the form of income tax..."

Pay Phone / ATM Scheme

30. From 1999 to 2002, Prueitt used FSFG to promote a scheme in which customers leased Automatic Teller Machines (ATMs) or "Smart Phones" and falsely claimed a deduction or credit based on Prueitt's false claims about the tax benefits of the scheme. Prueitt falsely told customers that, following their lease of the phones or ATMs purportedly for business use, the customers would receive regular payments and would be entitled to a large disability tax credit and yearly depreciation deductions.

31. Prueitt worked as an agent and sales representative for American Telecommunications Co., Inc. (ATC), Phoenix Telcom, LLC (Phoenix), Alpha Telcom, Inc.

(Alpha Telcom), and ETS Payphones marketing and selling purported investments in pay telephone programs. Under the schemes, customers purchased pay phones that were purportedly modified to make them usable by disabled people. The companies were to install the phones at pre-determined locations and provide service and repair. Prueitt sold the modified phones at prices well above their market value and falsely told customers that the telephones would generate guaranteed income and enable them to claim an income tax credit and deduction.

32. Prueitt also worked as a sales representative for ATM Marketing, Inc., JED Technologies, Inc., and National Equipment Providers, LLC, which offered similar ATM leasing schemes and for which Prueitt promised customers guaranteed returns on their ATM “investment” and told customers they would be eligible for an income tax credit and deduction.

33. Prueitt sold the modified payphones for between \$5,000 and \$7,000 for each unit, which greatly exceeded the \$750 to \$1,000 wholesale purchase prices of the phones and greatly exceeded the phones’ fair market value. Prueitt also sold the ATMs for between \$10,000 and \$20,000 each, which was well above their fair market value. Prueitt told customers that in addition to the “dividends” they would receive, they were entitled to the ADA credit for up to \$5,000 per ATM or phone, under I.R.C. § 44.

34. Upon Prueitt’s sale of the phones, the equipment provider chose the location for the placement of the phones, and the vast majority of customers paid for the provider to assume full responsibility for collecting coins from the phones, cleaning and maintaining the phones, accounting for the profits from the phones, paying the expenses of the phones, including paying the telephone service provider, and issuing a check for the net proceeds to the “owner” of the phones.

35. Prueitt also marketed modified automatic teller machines in a similar fashion, advising customers to participate in ATM leasing programs. Prueitt told customers that by participating in the program, they would receive a 14% return on their "investment" and an additional amount for each ATM transaction. The payments were purportedly based on the revenues from each customer's phone and subsidized by the telephone equipment providers.

36. Prueitt marketed both the pay phone scheme and the ATM scheme at the FSFG seminars he held at his home and in various other locations.

37. Prueitt falsely told customers that their purchase of the pay phones qualified for an Americans with Disabilities Act credit because the phones had adjustable height enclosures, a volume control button, and extra-long handsets, which made the phones more accessible to disabled users. The ATMs were similarly slightly modified in a manner to make them usable for individuals with certain disabilities.

38. Relying on Prueitt's advice, customers made claims for the ADA credit on their federal income tax returns for up to \$2,500 per phone, and up to \$5,000 per ATM.

39. Prueitt intentionally promoted the phones and ATMs to customers he knew did not have legitimate businesses for which they could claim the ADA credit. These customers did not qualify for the depreciation deduction or disability credit in part because they were not operating a business separate from the ATM or pay phone equipment. Prueitt, however, had advised purchasers that their investment in the equipment alone constituted a business activity, so customers leasing the ATMs and phones claimed entitlement to the credits on their federal income tax returns. In addition, the modifications to the phones did not involve necessary expenditures made in order to comply with the ADA.

40. Prueitt also falsely told his customers that they were entitled to claim a depreciation deduction pursuant to I.R.C. §§ 167 and/or 179 for the ATMs and phones. In 2001, one of Prueitt's customers brought a petition in the United States Tax Court challenging the IRS's denial of his claimed depreciation deduction. The Tax Court found that the leased equipment was not eligible for the deduction because the purchaser did not enjoy the benefits and burdens of ownership of the equipment, and had essentially leased the phones because there was no risk of loss due to the generous buyback policy. Under the buyback policy offered by Alpha Telcom, for example, purchasers were able to resell the pay phone equipment to Alpha Telcom for only slightly below their purchase price, so the purchasers never actually acquired a depreciable interest in the phones. *See Arevalo v. Commissioner*, 124 T.C. 244, *aff'd* 469 F.3d 436 (5th Cir. 2006), *cert. denied* 127 S. Ct. 1339 (2007).

41. Prueitt further promoted the purportedly modified payphones by falsely claiming that customers' "investment" earnings would not be taxable if they used funds from their IRA accounts to lease the phones. Prueitt convinced several customers to remove money from their IRA accounts to participate in the payphone/ATM schemes.

42. Prueitt falsely told customers that leasing the pay phones was an investment on which customers could expect to receive a 12.6 to 14.0% annual return. Instead, the equipment providers used the proceeds from customers' initial purchases to acquire additional phone equipment, as well as to pay "profits" to earlier customers.

43. Based on Prueitt's statements, customers improperly claimed entitlement to the disability credit and depreciation deductions on their federal income tax returns, thus understating their federal income liabilities. In addition, Prueitt advised customers on how to

complete their tax returns in order to claim the credit and deduction.

44. In 2001, the Securities and Exchange Commission brought a successful civil enforcement action against Alpha Telecom, one of the payphone equipment providers, in which the court assessed large penalties against the company and many of its sales representatives, including Prueitt, for the unlawful sale of unregistered securities. *SEC v. Alpha Telecom, Inc.*, 187 F. Supp. 2d 1250 (D. Or. 2002), *aff'd* 350 F.3d 1084, 1087 (9th Cir. 2003). The court ordered Prueitt to disgorge \$158,453.75 of his profits based on the unlawful investment and tax avoidance scheme. *In re Alpha Telecom Inc., et al.*, No. 01-1283 (D. Or. Mar. 31, 2005) (judgment of disgorgement).

45. In September 2003, the Texas State Securities Board enjoined Prueitt from selling ATMs because the board found that such sales constituted the sales of unregistered securities. The Board also found that the ATM Program Prueitt promoted was an unlawful pyramid scheme.

Tax Return Preparation

46. Doing business as FSFG since 1997 or 1998, Prueitt has offered tax return preparation services in exchange for either monetary compensation or "contributions" to Grandview Prayer and Healing Retreat Center, another of his businesses. In addition, Prueitt has referred customers for tax return preparation to Tom Buck, the Iowa CPA who markets home-based business tax strategies. Many of Prueitt's customers are small business owners for whom Prueitt and/or Buck prepare returns implementing the improper tax strategies they promote.

47. Prueitt prepares federal income tax returns for customers improperly reducing their reported tax liabilities by claiming deductions and credits to which customers are not entitled. In addition, Prueitt routinely fabricates or inflates deductions rather than relying on source

documents or other corroborating materials. The tax returns Prueitt prepares understate customers' liabilities and subject the customers to penalties for their non-compliance with applicable internal revenue laws.

48. Prueitt routinely prepares federal income tax returns for customers that include deductions for fictitious business expenses purportedly incurred by fictitious home businesses.

49. Prueitt also prepares tax returns containing false claims for ADA credits and deductions for customers to whom he sold ATMs or pay phones. On several returns, Prueitt included claims for credits of up to the \$5,000 maximum allowable credit for the customers' purchases of the pay phones or ATMs, then included a depreciation deduction for the equipment as well. Prueitt prepared a return stating that one customer's business was "pay telephone purchase/lease business" based solely on the customer's "leasing" of the phone. The customer did not actually operate any business.

50. After the IRS conducted examinations of several tax returns prepared by Prueitt claiming the ADA credit and deduction, the IRS found that Prueitt had understated the customers' tax liabilities. The IRS disallowed the disability credits and deductions Prueitt had included on customers' returns, and assessed additional tax and penalties against Prueitt's customers.

51. Prueitt has also prepared customers' tax returns including fabricated Schedule C expenses. When the IRS questioned some of Prueitt's customers, they stated that they did not give Prueitt any receipts for the Schedule C expenses he reported, nor did they tell Prueitt they were entitled to such deductions. Finally, customers confirmed that they did not operate the businesses for which Prueitt had claimed deductions.

52. Prueitt also prepared customers' tax returns failing to include income from the early withdrawal of retirement savings. Prueitt was the designated representative for some customers' Individual Retirement Accounts, and after convincing them to use their savings to invest in the pay phone plan, or other investments, he then prepared returns failing to properly include income from the early withdrawal from the IRAs.

53. When questioned by the IRS, many of Prueitt's customers, particularly those to whom he sold the modified pay phones or ATMs, stated that Prueitt prepared their returns claiming Schedule C (business) deductions though they did not have a business. According to his customers, Prueitt also fabricated many of the business deductions, and included amounts which they had not spent either for business or personal use.

54. In 2000, while Prueitt was working with Renaissance, the IRS conducted audits of some customers for whom Prueitt prepared tax returns. Renaissance officials, presumably concerned with the increased IRS attention, asked Prueitt to stop preparing returns individually and as FSFG. Instead, Prueitt continued to prepare returns for customers without identifying himself as the preparer.

55. Prueitt continued to prepare tax returns failing to identify himself as the tax return preparer in subsequent years. In 2003, several of Prueitt's customers appeared for IRS audits along with Tom Buck appearing as a Power of Attorney. During their audit interviews, Prueitt's customers confirmed that Prueitt had prepared their tax returns, though he did not sign the returns as the preparer. Customers stated that though Prueitt had not charged a preparation fee, he had requested that they contribute to FSFG or to the Grandview Prayer and Healing Center, and customers did contribute to his organization. Upon information and belief, Tom Buck has also

asked Prueitt to stop preparing returns.

56. After the IRS determined that Prueitt was preparing returns with inaccuracies and improper deductions, and failing to sign as the preparer, the IRS sent Prueitt a letter requesting his full customer list or copies of prepared returns. Despite repeated requests, Prueitt has failed to produce a full customer list or copies of federal income tax returns he has prepared for customers, as required by I.R.C. § 6107.

57. The IRS is not able to determine the total amount of returns Prueitt has prepared because he has not identified himself as the preparer on many returns he has prepared. FSFG's income statements for 2003 and 2004 show that FSFG has received income for "tax help."

58. As recently as 2006, Prueitt has refused to turn over the requested records, and has received income related to his preparation of tax returns.

Prueitt's Pattern of Conduct

59. Since 1997 or 1998, Prueitt has continued to participate in fraudulent and unlawful schemes after such schemes or conduct have been found to be unlawful.

60. In 2001 or 2002, after Renaissance was enjoined because of its unlawful promotion of a pyramid scheme and criminal charges were brought against the company, Prueitt continued to market a similar sham home-business plan to his own customers in Texas.

61. In addition, after the IRS selected Renaissance customers for whom Prueitt prepared returns for audit, and determined that such customers were not entitled to the home-business deductions Prueitt had claimed, Prueitt continued to prepare false returns using the Renaissance methods. Prueitt then modified his practice and began deliberately failing to sign tax returns containing improper deductions and claims, so as to avoid detection by the IRS.

62. On June 1, 2006 Prueitt's insurance license was revoked for his failure to notify the Texas Department of Insurance of an administrative action taken against him by another state regulator.

Count I: Injunction under I.R.C. § 7408

63. The United States incorporates by reference the allegations in paragraphs 1 through 62.

64. I.R.C. § 7408 authorizes a district court to enjoin any person from further engaging in conduct subject to penalty under either I.R.C. § 6700 or § 6701, if injunctive relief is appropriate to prevent recurrence of that conduct.

65. I.R.C. § 6700 provides that a penalty will be imposed against any person who organizes or assists in the organization of a partnership or other investment plan or arrangement, or participates in the sale of an interest in an entity or plan, and (a) knowingly makes a false or fraudulent statement as to the allowability of a deduction or credit, the excludability of any income, the securing of another tax benefit, because of an interest held in the entity or because of his participation in the plan, or (b) makes a gross valuation overstatement as to any material matter.

66. A gross valuation overstatement is "any statement as to the value of any property or services if ... the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and the value of such property or services is directly related to the amount of any deduction or credit allowable under [I.R.C. §§ 1-1400L] to any participant." I.R.C. § 6700(b)(1).

67. Prueitt, in promoting and selling the home-based business scheme and the ATM and pay phone schemes, made materially false or fraudulent statements to customers regarding the

allowability of deductions for business expenses, credits under I.R.C. § 44 and depreciation deductions under I.R.C. §§ 167 and/or 179. He knew or had reason to know that these statements were false or fraudulent.

68. Prueitt made materially false statements to customers both in the materials he sold on his website, and in promoting the sale of the books, tape recordings, and other material regarding the allowability of home office deductions. Prueitt falsely advised customers that they were entitled to various deductions without explaining the limitations and regulations regarding the deductions.

69. Prueitt failed to advise customers that all business deductions must be for ordinary and necessary expenditures, that children's allowances could not automatically be converted to wages, and that wages must be commensurate with services performed. Prueitt falsely advised customers that they could include reasonable portions of rooms not used exclusively for business when calculating their home office deduction.

70. In fact, an individual home-based business owner is only allowed to take deductions for expenses incurred in operating the business if certain criteria are met. A business deduction for the use of a home office under I.R.C. § 280A(c) is only valid if the individual uses a portion of the home exclusively and on a regular basis for the operation of a home business. In addition, the business part of the home must be an individual's principal place of business or a place where the individual meets or deals with clients, patients, or customers in the normal course of business. The exception for the storage uses of certain portions of rooms only applies to space used on a regular basis as a storage unit for inventory or product samples, not for reference materials or equipment, as Prueitt claimed. *See* I.R.C. § 280A(c)(2).

71. Prueitt also falsely stated that an individual has not taken advantage of all applicable tax benefits if they pay more than \$1,000 in taxes for an income of up to \$100,000 or more than \$2,000 for an income of less than \$200,000. Prueitt's statements are materially false in that taxpayers earning incomes of \$100,000 and \$200,000 are routinely liable for income taxes much greater than \$1,000 and \$2,000, respectively.

72. Prueitt made such false statements regarding customers' tax liabilities knowing or having reason to believe that such statements were false, and made them in order to promote the sale of tax-scheme materials. Prueitt knew his statements to be false because Renaissance had been enjoined from making essentially the same statements regarding home-based business deductions.

73. Prueitt falsely told customers that they were eligible for an ADA credit and depreciation deduction for their purchase of the pay phones and ATMs. A taxpayer may claim a credit under I.R.C. § 44 for eligible access expenditures, or money spent for necessary modifications or equipment upgrades in order to comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213 (2005). The credit is available, however, only if the equipment is used in an eligible small business as defined by I.R.C. §44(b), and if the business has an obligation to become compliant with the ADA regulations. The credit is limited to the reasonable and necessary cost of the modifications.

74. Prueitt greatly overstated the value of the ADA credit, falsely telling customers that the entire price of the pay phones and ATMs qualified as an eligible access expenditure, rather than the cost of any necessary modifications to the equipment. Prueitt also sold the pay phones and ATMs for purported amounts greatly exceeding the actual value of the modified phones, and

customers improperly used the overstated purchase price to determine the value of their claimed credits. In some instances, Prueitt sold payphones for more than 500% of their actual value.

75. Prueitt makse such gross valuation overstatements knowing that customers would use the overstated purchase price when claiming credits under I.R.C. § 44, and that such claims would result in understatements of the customers' tax liabilities on their federal income tax returns. Prueitt also sold the phones to individuals he knew not to be engaged in any business activity for which ADA compliance is mandated.

76. A taxpayer can claim a depreciation deduction under I.R.C. §§ 167 or 179 only if a taxpayer has an investment in, and actual ownership of, property used in a trade or business or held for the production of income. If a taxpayer does not have the benefits and burdens of ownership, the taxpayer is not entitled to the deduction.

77. Prueitt falsely told customers they were eligible for a depreciation deduction upon the purchase of a modified pay phone, but they were not eligible for such deductions because the equipment providers retained the benefits and burdens of ownership, and the majority of customers had only legal title to the phones. Moreover, many of Prueitt's customers were not engaged in any business for which they received income, and instead only used the pay phones to claim inapplicable tax credits and/or deductions.

78. In *Arevalo v. Commissioner*, the Tax Court specifically found that one of Prueitt's customers was not eligible for either the ADA credit or a depreciation deduction based on his participation in the pay phone scheme. 124 T.C. 244 (2005), *aff'd* 469 F.3d 436 (5th Cir. 2006), *cert. denied* 127 S. Ct. 1339 (2007).

79. Prueitt also told customers that they were eligible to claim both the tax credit and the

depreciation in the same tax year based on the purchase of the payphone or ATM. In fact, a customer validly claiming either the deduction or credit is not eligible to claim both in the same tax year, and must choose between the tax benefits.

80. In addition to misrepresentations about customers' eligibility for the tax credits, Prueitt also made gross valuation overstatements in promoting the pay phone and ATM scheme, in violation of I.R.C. § 6700(b).

81. Section 6701, I.R.C. imposes a penalty on any person who prepares, presents, or assists in preparing or presenting a return, affidavit, or other document that the person knows or has reason to believe will be used in connection with any material matter arising under the internal revenue laws, and that the person knows would, if used, result in an understatement of another person's tax liability.

82. Prueitt knowingly prepared federal income tax returns for customers, intending for them to be filed with the IRS, including deductions and credits for which customers were not eligible. Prueitt's preparation of false returns resulted in understatements of his customers' tax liabilities.

83. Prueitt has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and he is subject to an injunction under I.R.C. § 7408.

84. Internal Revenue Code sections 7402 and 7408 authorize a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws. Prueitt, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. An injunction under I.R.C. § 7408 is warranted to prevent the defendant from engaging in conduct subject to penalty under the Internal

Revenue Code.

Count II: Injunction under I.R.C. § 7407

85. The United States incorporates by reference the allegations in paragraphs 1 through 84.

86. Internal Revenue Code section 7407 authorizes a court to enjoin a person from acting as an income tax return preparer if the court finds that the return preparer has continually or repeatedly:

- a. engaged in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares or submits a return that contains an unrealistic position, or I.R.C. § 6695, which penalizes a return preparer who fails to sign returns, include their identifying number, keep a list of clients, or turn over the client list to the IRS upon request;
- b. misrepresented his eligibility to practice before the IRS, or otherwise misrepresented his experience or education as a return preparer;
- c. guaranteed the payment of any tax refund or allowance of any credit; or
- d. engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the Internal Revenue laws;

and the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct and that a narrower injunction (*i.e.*, one prohibiting only specific conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws.

87. Prueitt prepared tax returns for customers containing claims for which there was no realistic possibility of being sustained on the merits, and he knew or should have known that such positions were unlikely to be successful.

88. In addition, Prueitt engaged in other fraudulent or deceptive conduct by knowingly

falsifying tax returns he prepared for customers. Prueitt often included fabricated claims for expenses and amounts of which the customers had no knowledge and gave him no information. Prueitt's fabrications caused understatements of customers' tax liabilities.

89. Prueitt also prepared federal tax returns for customers on which he did not sign as the return preparer and provide his identifying number, as required by I.R.C. §§ 6109 and 6695(b and c).

90. Prueitt has failed to turn over a list of his customers, or the returns he has prepared, despite a formal request from the IRS for the documents and records. Prueitt has violated I.R.C. §§ 6107(b) and 6695(b, c, and d).

91. Prueitt has continually and repeatedly engaged in violations of I.R.C. §§ 6694 and 6695, and otherwise interfered with the administration of the internal revenue laws. An injunction barring him from acting as a tax return preparer is necessary to prevent the recurrence of Prueitt's violations, and to prevent further interference with the administration of the internal revenue laws.

**Count III:
Injunction under I.R.C. 7402(a) for Unlawful Interference
with Enforcement of the Internal Revenue Laws**

92. The United States incorporates by reference the allegations in paragraphs 1 through 91.

93. Section 7402, I.R.C. authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

94. Prueitt, acting individually and as his affiliated entities, through the actions described above, has engaged in conduct that substantially interferes with the administration and

enforcement of the internal revenue laws. Prueitt has promoted and sold various schemes through which he advises customers in various methods by which to understate their tax liabilities. He has profited from these schemes both from the sale of books, multimedia materials, and from membership fees to participate in his schemes.

95. Prueitt, both individually and acting through his various entities, has prepared false and fraudulent tax returns for customers, consistent with the unlawful schemes he promotes, and has understated customers' tax liabilities. When the IRS became aware of Prueitt's preparation of fraudulent returns, Prueitt modified his technique and prepared returns without signing or otherwise identifying himself as the return preparer. Prueitt did so to avoid further audits of his customers by the IRS. Prueitt continues to refuse to provide required documents and records to the IRS.

96. Prueitt's conduct results in irreparable harm to the United States. Prueitt's conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

97. If Prueitt is not enjoined, he is likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws. As Prueitt has shown by his past behavior, he has a pattern of promoting and benefitting from unlawful tax avoidance schemes, and absent an injunction will continue to promote similar unlawful schemes. Only when his false ways were discovered by authorities has Prueitt abandoned the particular scheme, only to continue promoting similar schemes elsewhere.

98. The United States will suffer irreparable injury if Prueitt is not enjoined. These injuries substantially outweigh the harm to Prueitt of requiring him to obey the federal tax laws

and barring Prueitt from acting as a tax-return preparer.

99. An injunction that stops Prueitt's illegal activity is in the public interest, and prevents recurrence of Prueitt's unlawful activity.

100. An injunction under § 7402(a) is necessary and appropriate, and the United States is entitled to injunctive relief under I.R.C. § 7402(a).

WHEREFORE, the Plaintiff, United States of America, respectfully requests the following relief:

- A. That the Court, pursuant to I.R.C. §§ 7408, 7407 and 7402(a), enter a permanent injunction prohibiting Prueitt, individually, and doing business as or through any entity, and anyone acting in concert with him, from directly or indirectly:
1. Organizing, promoting or selling any tax shelter, plan or arrangement that advises taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
 2. Engaging in activity subject to penalty under I.R.C. § 6700, including selling, organizing or assisting in the organization of a partnership, other entity, any investment plan or arrangement, or other plan or arrangement about which the defendant has made 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 defendant knows or has reason to know is false or fraudulent as to a material matter, or making a gross valuation overstatement;

3. Engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a document related to a material matter under the internal revenue laws that includes a position they know will result in an understatement of tax liability;
4. Engaging in activity subject to penalty under I.R.C. § 6694, including preparing federal tax returns that willfully or recklessly understate federal income tax liability;
5. Engaging in activity subject to penalty under I.R.C. § 6695, including failing to make available for inspection by the IRS a list of customers or a completed copy of any tax return or claim;
6. Engaging in any activity subject to penalty under any provision of the Internal Revenue Code;
7. Making false representations that:
 - a. an individual or entity is entitled to a home-based business deduction when they are not actually engaged in a business or are not otherwise eligible for such deduction;
 - b. an individual or entity is eligible to claim an ADA credit or depreciation deduction for the purchase of a modified ATM or pay phone when the purchaser does not operate a business or otherwise has no obligation under the ADA to make such modifications; or
 - c. the value of a modified ATM or pay phone is more than 200% of its actual value, for the purpose of selling such item, knowing that the claimed value

of the item is directly related to the amount of any allowable deduction or credit;

8. Selling or organizing the establishment of any corporation, trust, limited liability company, or arrangement of business for the purpose of promoting non-compliance with the federal tax laws;
 9. Preparing or filing, or assisting in the preparation or filing of federal tax returns for any other person or entity;
 10. Engaging in any other activity subject to penalty under I.R.C. §§ 6700, 6701, 6694 or 6695; and
 11. Engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.
- B. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction requiring defendant Prueitt, within 15 days of the Court's injunction order, to provide to the United States the names, addresses, e-mail addresses, telephone numbers, and social security numbers or tax identification numbers of all persons for whom he has prepared, advised, or aided in the preparation of federal income tax returns;
- C. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction requiring the defendant to contact, by means of a letter to be approved by the United States, all persons for whom they prepared, advised, or aided in the preparation of federal income tax returns, and inform them of the Court's findings, attaching a copy of any injunction against defendant, and to file with the Court, within 15 days of the date of the injunction order, a certification that they have done so;

- D. That this Court order that the United States may engage in post-judgment discovery to ensure compliance with the permanent injunction;
- E. That this Court shall retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and all additional decrees and orders necessary and appropriate to the public interest; and
- F. That this Court grant the United States such other and further relief, including its costs, as is just and equitable.

Respectfully submitted,

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