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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEVADA

UNITED STATES,

Plaintiff,

v.

IRWIN SCHIFF, CYNTHIA NEUN, and
LAWRENCE N. COHEN a/k/a LARRY COHEN,
individually and all doing business as
FREEDOM BOOKS,
www.livetaxfree.com,
www.paynoincome tax.com, and
www.ischiff.com.

Defendants.

CV-S-03-0281-LDG-RJJ

UNITED STATES' MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION
(EXPEDITED HEARING REQUESTED)

Pursuant to Fed. R. Civ. P. 65(a) and (b), the United States moves for a temporary
restraining order and subsequent preliminary injunction against defendants Irwin Schiff, Cynthia
Neun, and Lawrence N. Cohen, individually and all doing business as Freedom Books,

www.livetaxfree.com, www.paynoincometax.com, and www.ischiff.com. The IRS has identified nearly 5,000 frivolous “zero-income” federal income tax returns filed by some 3,100 customers of Schiff, Neun, and/or Cohen during the past three years, amounting to an estimated \$56 million in attempted tax evasion.¹ Through personal consultations and sales of tax-scam packages, the defendants also have directed hundreds of their customers to inundate the IRS, federal courts, and the Department of Justice with frivolous lawsuits and requests for IRS hearings.²

Every day that Schiff, Neun, and Cohen continue to operate—especially during the tax-filing season—leads to further irreparable injury. The defendants should be enjoined immediately from preparing any federal-income-tax returns, assisting or advising others in preparing tax returns, and inciting and assisting others to violate federal tax laws. In addition, Schiff’s next tax-scam seminar is scheduled for the Las Vegas San Remo Hotel on March 29 and 30, 2003. Schiff, Neun, and Cohen should be restrained from holding this seminar or otherwise promoting their tax schemes, thereby preventing them from recruiting more customers with their tax-evasion sales pitch.

The Government requests that the Court schedule an emergency hearing on this TRO request. Following the TRO, the Government requests that the Court enter a preliminary injunction, barring the same activity while the suit is pending.

¹ Henline Dec. ¶ 17.

² Seegars Dec. ¶ 6. *See also* Keller Dec. ¶¶ 5 and 6 and attachment to Cantrell Dec. at page TRO 070 (hereinafter TRO ____).

I. FACTS

A. Background and Summary.

Schiff—a longtime tax protestor and purveyor of tax schemes who has twice been convicted of tax crimes—has been selling tax-scam materials since the 1970s and holding tax-evasion seminars since at least the mid-1990s, after serving out his last prison sentence.³ Schiff claims that he has paid no income taxes since 1973 and has filed “zero income” tax returns—showing zero income and zero tax liability—since at least 1990.⁴ Schiff admitted in 2002 on the Fox News television show *Hannity & Colmes* that he has earned “plenty” of income during the years in which he filed zero income returns.⁵

Despite his two criminal tax convictions and his many losses in civil tax cases, Schiff falsely claims that his customers can legally file federal income tax returns listing their income as zero.⁶ Schiff claims that “[h]undreds of thousands (if not millions) of Americans no longer pay

³ See *United States v. Schiff*, 647 F.2d 163 (2d Cir.) (affirming conviction without opinion), *cert. denied*, 454 U.S. 835 (1981); *United States v. Schiff*, 801 F.2d 108 (2d Cir. 1986), *cert. denied*, 480 U.S. 945 (1987); and *Schiff v. Dorsey*, 877 F. Supp. 73 (D. Conn. 1994) (dismissing Schiff’s suit against a federal judge, probation officer, IRS employee, and Assistant U.S. Attorney for alleged violations in the probation-revocation process).

⁴ *Fox News: Hannity & Colmes*, 2001 WL 5075976 *3 (April 16, 2001) and 2002 WL 2788609 *7 (April 15, 2002), attached as TRO Attachments A and B. See also Schiff Forms 1040 for 1996 through 2001, attached as Exs. 1-6 to Henline Dec. The Government has redacted all tax identification numbers from the attached exhibits to prevent unnecessary public disclosure of sensitive information. The Government will produce unredacted exhibits upon request. See also TRO 092.

⁵ TRO Attachment B, 2002 WL 2788609 *2.

⁶ See e.g. *Schiff v. United States*, 919 F.2d 830, 834 (2d Cir. 1990) and *United States v. Schiff*, 612 F.2d 73, 75 (2d Cir. 1979).

income taxes because of the information contained in his books.”⁷ The IRS has identified 3,100 Schiff customers who have evaded or attempted to evade approximately \$56 million in tax in the past three years.⁸

Schiff makes his living giving seminars and selling his books, tapes, and other tax-scam products—ranging from \$10 for one book to \$1,060 for the “Freedom Package”—over the Internet and through Freedom Books, his store located in Las Vegas.⁹ Schiff markets his \$150-per-person seminars by falsely claiming that he will show attendees how to “legally stop paying income taxes!”¹⁰ Schiff also offers \$50 letter-writing services and “personal consults” for \$300 per hour. Schiff, who recently held seminars in Cleveland and Hollywood, has planned his next seminar for March 29-30 in Las Vegas.¹¹ Schiff also has acted as a paid tax-return preparer for at least one federal-income-tax return, and boasted on his radio program that he and his employees have prepared returns for other customers.¹²

Neun—Schiff’s longtime business partner—sells Schiff’s tax-scam materials, promotes Schiff’s packages, and charges \$100 to appear with customers at IRS audits and IRS appeals

⁷ TRO 043.

⁸ Henline Dec. ¶ 17.

⁹ TRO 046 and TRO 019. The Freedom Package includes all of Schiff’s books, all of Schiff’s audio series (3 through 7), and miscellaneous packets, including The Lien and Levy Packet, W-4 Packet, and the Due Process Tool Kit.

¹⁰ TRO 016.

¹¹ TRO 093 and TRO 016.

¹² Certified copy of Abdullah tax return, attached as Ex.7 to Henline Dec., and WLAV Transcript at 74-75, attached as Ex. 2 to Gritis Dec.

hearings as a “witness.”¹³ Neun also has acted as a paid tax-return preparer, including preparing Schiff’s 1998 through 2001 frivolous “zero income” federal income tax returns.¹⁴

Cohen sells Schiff’s materials and promotes Schiff’s packages and seminars as a salesmen and/or employee of Freedom Books.¹⁵ Cohen also prepares—as a paid return-preparer—frivolous “zero-income” tax returns based on Schiff’s tax-scheme materials.¹⁶

Schiff’s scheme has three elements: (1) advising, inciting, and assisting others to file frivolous “zero income” tax returns, pay no income taxes, and stop all taxes from being withheld from wages and other income sources; and (2) preparing fraudulent and frivolous tax returns and related documents for customers; and (3) advising, inciting, and assisting others to obstruct the enforcement of the internal revenue laws by sending frivolous correspondence to the IRS and by filing frivolous federal lawsuits, Tax Court petitions, and requests for IRS hearings.

¹³ See *e.g.*, TRO 066, TRO 087-88, and TRO 093.

¹⁴ Exs. 3-6 to Henline Dec.

¹⁵ See *generally* selected pages of undercover transcripts for 5/9/02 and for 5/10/02, attached as Exs. 1 and 2 to Holland Dec.

¹⁶ *Id.*

B. Schiff's "zero income" tax-return scheme.

1. Recruiting customers.

Through his television and radio advertisements and appearances, books, seminars, and website materials, Schiff introduces potential customers to his "zero income" tax-return scheme.¹⁷ Schiff begins his sales pitch by falsely stating that income earned by individuals is not subject to federal income taxes.¹⁸ For individuals, Schiff spuriously claims that there is "no law" that requires Americans to pay income taxes or file income-tax returns.¹⁹ Instead, Schiff falsely asserts, the Constitution limits Congress's taxing power exclusively to taxes on "corporate profit."²⁰ This argument—that "wages are not income"—"has been rejected so frequently that the very raising of it justifies the imposition of sanctions."²¹ Based on the false assertion that personal income is tax-free, Schiff falsely advises his customers that "[f]or income tax purposes, you can legally report 'zero' income and pay no income taxes regardless of how much you might have earned."²²

Schiff bolsters his false conclusion by misconstruing and misquoting non-statutory

¹⁷ WLAV Transcript at 39 ("[the IRS is] upset because I'm doing a lot of national advertising. You'll hear me on the Michael Reagan Show, on the Michael Savage Show, on the Jim Bohannon show, on Joe E. Reynolds Show, there will be more and more national advertising.")

¹⁸ TRO 060.

¹⁹ TRO 002.

²⁰ TRO 060.

²¹ *Connor v. Commissioner*, 770 F.2d 17, 20 (2d Cir. 1985).

²² TRO 003.

descriptions of the federal tax laws that describe the tax system as “based on voluntary self-assessment.”²³ Schiff falsely contends—based on these casual descriptions of the federal tax system—that paying income taxes is voluntary.

Schiff has tested his theories repeatedly in court, losing at every turn. The Second Circuit described Schiff as “an extremist who reserve[s] the right to interpret the decisions of the Supreme Court as he read[s] them from his layman’s point of view regardless of and oblivious to the interpretations of the judiciary.”²⁴ After affirming a fraud penalty and imposing the maximum \$25,000 fine on Schiff for repeatedly offering the same specious arguments against federal income taxes, the Tax Court stated:

Petitioner has had so many bites at the apple with respect to these frivolous claims that there is nothing left but the core. That petitioner knew these assertions were groundless and sure to be rejected again in this Court is beyond all equivocation at this point.”²⁵

Schiff fails to tell his potential customers about his unbroken string of legal defeats, or about the people (at least five) who have been convicted of tax crimes after following Schiff’s theories.²⁶

Schiff’s promotional materials are replete with other material falsehoods about the federal tax system and the tax laws that are designed to allay potential customers’ misgivings about the legality of Schiff’s scheme. For example, Schiff and Neun have stated:

²³ TRO 005-14.

²⁴ *Schiff v. United States*, 919 F.2d at 834, *quoting United States v. Schiff*, 612 F.2d at 75.

²⁵ *Schiff v. Commissioner*, 63 T.C.M. (CCH) 2572, 1992 WL 66915 (U.S. Tax Ct.).

²⁶ *United States v. Burdett*, 962 F.2d 228 (2d Cir. 1992); *United States v. Payne*, 978 F.2d 1177 (10th Cir. 1992); *United States v. Crosson*, 1995 WL 7565999 (E.D. Pa.); *United States v. Dentice*, 202 F.3d 279, 1999 WL 1038003 (9th Cir. 1999); *United States v. Middleton*, 246 F.3d 825 (6th Cir. 2001).

- “Irwin invented the reliance defense. The best reliance defense you can get is the attachment to your zero return”;
- “No one is going to prison or even being criminally charged”;
- Schiff’s customers get his knowledge “largely for nothing, since they pay for it with money that otherwise would have gone to pay income taxes”;
- “. . . IRS agents have as much authority to audit you, as you have to audit them”; and
- “IRS agents are not authorized to file liens, let alone seize property in payment of income taxes.”²⁷

Schiff also posts purported successes on his website www.paynoincometax.com,

including:

- A doctor claiming to have received a \$70,000 refund for two years after using Schiff’s zero-income program;
- An attorney named Jerry Jewett who allegedly used Schiff’s materials to stop the IRS from collecting from his clients; and
- A self-described tax-return preparer who “saved” one customer \$30,000 by using Schiff’s materials and has 20 customers for whom he files Schiff-type “zero income” returns.²⁸

Schiff—personally and through Neun and Freedom Books employees such as Cohen—uses these testimonials and false statements to entice others to buy his materials and file false “zero income” tax returns.

²⁷ TRO 066, 072, 093 and 002.

²⁸ TRO 021-25.

2. *Advising customers to file “zero income” tax returns with Schiff’s two-page attachment.*

The first prong of Schiff’s “zero income” tax scheme is advising, inciting, and assisting others to file fraudulent “zero income” tax returns. Schiff’s promotional materials also include a fill-in-the-blank tax-evasion form (Schiff’s two-page attachment to the “zero income” returns). Schiff’s written and audiotape materials—for which he charges up to \$1,060—and his \$300-per-hour personal advice instruct customers on how to use his two-page form, along with a “zero income” tax return, to claim a zero tax liability. Schiff fraudulently claims that including this two-page attachment allows his customers to file a “totally accurate and truthful” return listing income and tax due as zero.²⁹

Neun and Freedom Books employees such as Cohen sell Schiff’s products—which contain material, false tax statements—in person and through their websites.³⁰ The Freedom Books store—which has a sign stating “Why pay income taxes when no law says you have to?”—houses the employees who assist Schiff in promoting his tax scams.³¹ Schiff has confirmed that Freedom Books employees have promoted and participated in Schiff’s schemes, as demonstrated by Schiff’s description of what the IRS seized in executing a February 11, 2003 search warrant at the Freedom Books store:

²⁹ TRO 040-41. *See also* certified copies of tax returns, attached as Exs. 1-14 to Henline Dec.

³⁰ *See, e.g.*, TRO 093, which lists Freedom Books’ services, including a letter-writing service to respond to IRS correspondence and a “witness service,” which sends a Freedom Books employee or associate to IRS hearings and meetings to advocate for Schiff’s customer.

³¹ WLAV Transcript at 6; *see generally*, 5/9/02 and 5/10/02 undercover transcripts, attached as Exs. 1 and 2 to Holland Dec.

- “two files containing all of the documents that we use when we help people to file various legal documents”;
- transcripts of IRS collection due process (“CDP”) hearings;
- “the cassettes” [presumably the Schiff audiotape Series 3-7 and other tape packages].³²

Many of Schiff’s customers put his “zero income” tax return scheme into effect. Schiff’s 3100 identified customers have filed nearly 5,000 “zero income” federal income tax returns with Schiff’s two-page attachment in the last three years alone.³³ Schiff claims that filing a “zero income” return can lead to a tax refund if the return shows zero tax due and the customer has paid taxes during the year—either voluntarily or through mandatory wage withholding.³⁴ As demonstrated by Schiff’s website testimonials and by the Henline declaration, the IRS catches many but not all of these false refund claims for withheld income taxes. Thus, the Government has erroneously refunded taxes to Schiff customers.³⁵

3. *Helping customers to file false W-4 Forms with employers to stop withholding taxes from wages.*

The second prong of Schiff’s “zero income” tax-scam is filing false IRS W-4 Forms. In his advertisements Schiff promises customers they can get an “immediate pay raise” by stopping their employers from withholding taxes from their wages.³⁶ Schiff counsels his customers to file W-4

³² TRO 050.

³³ Henline Dec. ¶ 14.

³⁴ TRO 041-42.

³⁵ Henline Dec. ¶ 20.

³⁶ TRO 002.

Forms falsely claiming that they are exempt from taxation.³⁷ Schiff offers this illegal advice in his \$45 “W-4 Packet,” which Schiff says is “designed to stop employers from taking taxes out of your pay for a variety of reasons. . . .”³⁸ This W-4 Packet, with a tape narrated by Schiff and full of repeated plugs for his other audiotape series and books,³⁹ contains the following false tax statements and advice:

- Wage earners can truthfully claim an “exempt” status on their W-4s because, relying on Schiff’s [specious] “wages are not income” argument, wage earners can claim that they had no tax liability in prior years;
- “[T]he government duped you into paying income taxes in the past and you had a right to a refund by every concept of equity. . . .”;
- When filling out the Form W-4, customers can successfully avoid committing perjury if they indicate on the back of the form that it is not being filed “voluntarily”; and
- If an employer refuses to accept the “exempt” W-4 form, then the customer should file a form with eight, nine, or as many withholding allowances as necessary to eliminate tax withholding.⁴⁰

On a recent Schiff-sponsored radio show, Schiff amplified this last point by suggesting that his customers could “get under the radar” by filing W-4s claiming ten withholding allowances, because the IRS had caught on to the “exempt” forms.⁴¹

As the above-cited testimonials demonstrate, some employers have erroneously accepted

³⁷ See TRO 031-32 and W-4 Transcript at 2, attached as Ex. 1 to Hickey Dec.

³⁸ TRO 048 and W-4 Transcript at 2.

³⁹ See e.g., W-4 Transcript at 40-43.

⁴⁰ W-4 Transcript at 5-7, 14, and 22-23.

⁴¹ WLAV Transcript at 87-88.

these false W-4 Forms as valid and ceased withholding taxes from Schiff's customers' wages. But instead of "saving" customers from paying thousands of dollars, Schiff has only increased these customers' tax debt and exposed the customers to possible civil and criminal sanctions.

C. Schiff, Neun, and Freedom Books employees prepare fraudulent and frivolous tax returns and related documents for customers.

Schiff, Neun, and Cohen have identified themselves and signed as paid return preparers on frivolous "zero income" federal income tax returns that Schiff customers have filed with the IRS.⁴² In his February 13, 2003 radio show, Schiff admitted that he and his Freedom Books employees prepare "zero income returns" for others: "I fill out tax returns for people, and the tax returns that I show people, we fill them out sometimes, we charge a lot less money than H&R Block and you don't pay any taxes."⁴³ Schiff also admitted to preparing the amended tax returns that were the basis for a customer's "filing false tax returns" conviction in *United States v. Dentice*.⁴⁴

Federal income tax returns prepared by Schiff, Neun, and Cohen falsely list zero income earned and zero tax due, based on Schiff's fraudulent and frivolous arguments, including: (1) that there is no law requiring Americans to pay income taxes; (2) that the Constitution bars taxing personal income; and (3) that paying income taxes is voluntary.⁴⁵

In addition to preparing and filing frivolous income tax returns for customers, Neun failed to sign at least two returns she prepared and failed to furnish her tax identification number on other

⁴² Exs. 5 through 14 to Henline Dec.

⁴³ WLAV Transcript at 74-75.

⁴⁴ TRO 092 and *Dentice*, 202 F.3d 279, 1999 WL 1038003.

⁴⁵ See certified copies of tax returns, Exs. 5 through 14 to Henline Dec., and TRO 001-003.

returns she prepared. Schiff's 1998 and 1999 federal income tax returns contain what appears to be Neun's handwriting, but the returns fail to identify her as the return preparer.⁴⁶ Neun failed to furnish her tax identification number on Schiff's 2000 and 2001 and Phillip T. Parrinelli's 1993 and 1994 federal income tax returns, although she signed the returns and identified herself as a paid return preparer.⁴⁷

Cohen prepared a frivolous federal income tax return for a customer that was filed with the IRS. Cohen also prepared a zero-income return for an undercover IRS special agent posing as a customer and charged her \$50. But Cohen refused to sign the return or put his tax identification number in the "return preparer" portion of the return, and also did not attach Schiff's two-page frivolous explanation.⁴⁸ Cohen explained to the undercover agent that not attaching Schiff's two-page explanation would make it more difficult for the IRS to detect Schiff's and Cohen's customers.⁴⁹

D. Schiff, Neun, and their Freedom Books employees have clogged the courts and consumed scarce IRS resources.

Since Schiff-type "zero income" returns are frivolous, Schiff customers trying to implement Schiff's fraudulent scheme obviously encounter resistance from the IRS and from employers asked to stop tax withholding. The IRS assesses I.R.C. § 6702 frivolous-return penalties against Schiff's customers and audits them to determine their correct tax liabilities. In the process the IRS sends

⁴⁶ Exs. 3 and 4 to Henline Dec.

⁴⁷ Exs. 5, 6, 12, and 13 to Henline Dec.

⁴⁸ Exs. 14 to Henline Dec and Irely Dec. ¶¶ 4-8 and Exs. 1-3.

⁴⁹ 5/09/02 undercover transcript at 37-39, attached as Ex. 1 to Holland Dec.

Schiff's customers a variety of letters, notices, and other documents.⁵⁰ Schiff has further bilked his customers by selling canned responses to these IRS letters and notices. Schiff sells these in his audiotope series, tape and document "packets," the \$50-per-letter service, and his \$300-per-hour personal-consultation services.⁵¹

Most of Schiff's packages include form letters that Schiff's customers are advised to send to the IRS. For example, the "Lien and Levy Packet" purportedly includes "documents that should allow you to stop IRS agents from seizing (i.e. 'stealing') your property, and letters and documents that should allow you to stop 3rd parties from turning over your property [to] the IRS in response to their benign notices of levy."⁵² The Henline declaration describes how IRS efforts to respond to these frivolous letters and other correspondence waste the scarce resources of the IRS's frivolous-return program in Ogden, Utah.⁵³ But Schiff's promotions have most severely affected the Las Vegas IRS Office, and in particular the IRS Appeals Office.

Schiff's materials, including Schiff's "Backyard Role Play" seminar, teach his customers to request IRS collection due process (CDP) hearings. Congress intended that CDP hearings under I.R.C. § 6330 would protect taxpayers' due process rights and allow the IRS and the courts to evaluate alternatives to forced IRS collection.⁵⁴ But Schiff's customers, acting on the defendants'

⁵⁰ Henline Dec. ¶¶ 21 and 22.

⁵¹ See e.g., TRO 048-56.

⁵² TRO 048

⁵³ Henline Dec. ¶¶ 20-21.

⁵⁴ *Rennie v. Internal Revenue Service*, 216 F. Supp.2d 1078, 1079 (E.D. Cal. 2002).

advice, instead use them solely to assert Schiff's frivolous arguments about the tax laws.⁵⁵ As a result the six IRS appeals and settlement officers in the Las Vegas IRS office have spent an estimated 75 percent of their work time in the past two years responding to frivolous arguments raised by Schiff customers—who are often accompanied by Neun at CDP conferences.⁵⁶

Schiff causes additional waste of government and judicial resources by inciting and assisting his customers to file frivolous Tax Court petitions. Schiff sells and touts his "Tax Court Tool Kit" as a source of information, including letters, affidavits, and exhibits for customers to use to file Tax Court petitions and litigate against the IRS.⁵⁷ Schiff's customers have all roundly met defeat, with the Tax Court imposing sanctions against many Schiff customers—such as the \$1,000 and \$2,000 sanctions imposed in *Copeland v. Commissioner* and *Koenig v. Commissioner*.⁵⁸

The *Koenig* opinion offers a glimpse at typical arguments that Schiff customers raise in CDP hearings. Koenig falsely claimed that the IRS had no authority to issue notices and other documents and that Koenig did not owe the underlying tax liability. The Tax Court dismissed both arguments as "without merit."⁵⁹ During the past two years, Schiff's customers' assertions of Schiff's frivolous arguments have consumed an estimated 3,400 hours spent by the six IRS

⁵⁵ TRO 072-75.

⁵⁶ Keller Dec. ¶ 5 and TRO 070.

⁵⁷ TRO 073-74.

⁵⁸ T.C. Memo 2003-46, (Filed February 25, 2003) and T.C. Memo 2003-40, (Filed February 24, 2003), attached as TRO Attachments C and D.

⁵⁹ *Koenig*, T.C. Memo 2003-40 at 11 and 15, n.4.

Associate Area Counsel attorneys in Las Vegas who handle Tax Court litigation.⁶⁰

Schiff also assists his customers in filing frivolous legal papers in U.S. district courts, including filing frivolous lawsuits challenging the validity of customers' CDP hearings. The Department of Justice has identified 82 frivolous suits brought by people using Schiff's legal pleadings in 12 Western states, most of which were filed in this Court.⁶¹ Justice Department attorneys working on these cases have spent more than 1000 hours responding to the frivolous theories advanced by Schiff's customers.

This Court recently began imposing sanctions and fees on litigants who use Schiff's theories and form pleadings. In *Haas v. United States*, this Court imposed attorney's fees and a sanction on the taxpayer, noting that:

"Plaintiff's complaint and other filings are almost verbatim copies of those filed by other similarly situated individuals. . . . The Court is dubious that strangers randomly inserted [a footnote referring to Atilla-the-Hun] in their individual complaints. Plaintiff evidently acquired this generic complaint and filings from someone, most likely paying for such worthless papers. Unfortunately for Plaintiff, such bogus information not only will cost him the \$500 frivolous penalty but will also cost him monetary sanctions from this Court."⁶²

In the second case, *Cybulski v. United States*, this Court imposed a \$2,000 Rule 11 sanction on the taxpayer for using Schiff's pleadings. The court stated that:

Over the last 4 months, the Court has seen 9 cases similar to that of Plaintiff Cybulski's. The cases are not only similar in issue to be decided, but the submitted complaints are

⁶⁰ Feinberg Dec. ¶ 5.

⁶¹ Seegars Dec. ¶ 6.

⁶² *Haas v. United States*, No. CV-S-01-0905-KJD (RJJ) November 27, 2002 order at 3, fn. 1, attached to Seegars Dec.

virtually identical—even down to footnotes.⁶³

Schiff is aware that his perverse tax advice is in some cases causing his customers financial ruin. Particularly instructive is an e-mail—publicly posted on Schiff’s yahoo.com bulletin board—written by an anguished customer named Laura, and responded to by Schiff on March 4, 2002. The customer, who was facing the Government’s summary-judgment motion in her lawsuit raising a frivolous challenge to her CDP hearing outcome, began by stating:

I seem to have no recourse that will help us in this situation as I am completely unprepared for what has to be done. The tapes, Series 33 [sic], 4, 5, 6, & 7, videos, Tax Court, CD’s, floppy disks, books, etc. Every thing that Irwin has I think I have, and none of it prepared us for this. There is no way on this earth that I will be able to respond to this MOTION FOR SUMMARY JUDGMENT. . . .I feel as if I have been lead [sic] down the Primrose path and was able to over come the thorns as they came along. . . .[A]ll that time spent reading, listening; and watching, expense invested in the material and all for what? To lose [sic] our home, go to prison? . . .The sad part is that if we had filed the “Conventional” way, we would have owed no taxes at all.⁶⁴

Schiff responded to her concerns by stating:

No one is going to prison or is even being charged criminally. . . .We can prepare the answer to the Motion for Summary Judgment at Freedom Books, if you send us the documents involved in the CDP Hearing and your Motion filed with the Court. . . .I am only one man. I am doing everything that I am telling you to do. You need to be studying my material and finding a better confidence level. If you did that, you would not be so afraid!⁶⁵

If Laura accepted Schiff’s offer to draft (presumably for a fee) legal pleadings, she likely was not only bilked out of more money, but also set herself up for the same result that Schiff’s customers obtained in *Koenig*, *Copeland*, *Haas*, and *Cybulski*—losing her case and having penalties and

⁶³ *Cybulski v. United States*, CV-S-02-0536-RLH (PAL), January 27, 2003 order at 2, attached to Seegars Dec.

⁶⁴ TRO 074-75.

⁶⁵ TRO 072-74.

sanctions imposed.

Schiff, Neun, and Freedom Books employees such as Cohen are fleecing their customers, setting them up for civil and criminal penalties, wasting the time of IRS and Justice Department employees, and clogging the courts with frivolous lawsuits. As demonstrated below, the defendants should be restrained immediately, before they can promote another seminar or incite or assist another customer to evade reporting and paying taxes.

II. ARGUMENT

Where a party seeks a TRO and—as the Government is requesting here—the Court holds a hearing after giving notice to the defendant, the TRO motion is generally treated as a preliminary injunction motion.⁶⁶ If the Court instead grants the Government’s TRO motion without holding a hearing—perhaps because one or more of the defendants cannot be timely served—then the Court must find that the nature of harm to the Government merits imposing an *ex parte* TRO for the shorter of 20 days (10 days plus a 10-day extension) or the earliest possible hearing date.⁶⁷

Due to the urgent need to halt irreparable harm, “a preliminary injunction is customarily granted on . . . procedures that are less formal and on evidence that is less complete than a trial on the merits. A party thus is not required to prove his case in full” at the preliminary injunction

⁶⁶ *Walker v. O’Bannon*, 487 F. Supp. 1151, 1153 Fn. 6 (W.D. Pa. 1980), *citing Dilworth v. Riner*, 343 F.2d 226 (5th Cir. 1965) and *Wright & Miller*, Federal Practice & Procedure: Civil § 2951.

⁶⁷ *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 422 (4th Cir. 1999). Congress contemplated that courts might impose TROs when it passed the abusive-tax-scheme injunction section, I.R.C. § 7408. *See* S. Rept, PL 94-455, 10/4/76, p. 359. Further, because the Government is not requesting an *ex parte* TRO, this memorandum will evaluate both the TRO and preliminary injunction relief by using solely the preliminary injunction standards. But because TRO motions are evaluated under the traditional equitable factors test, the discussion of I.R.C. § 7402 demonstrates that the requested TRO should be granted under that test as well.

stage.⁶⁸

Because I.R.C. §§ 7407 and 7408 set forth the criteria for injunctive relief, the Government need only meet the statutes' criteria for a court to issue a preliminary injunction.⁶⁹ In a decision granting an FTC-requested TRO and subsequent preliminary injunction, this Court noted that, since harm to the public interest is presumed in a statutory-injunction case, the Government need show only: “(1) a likelihood of success on the merits and (2) that the equities weigh in favor of granting the temporary relief.”⁷⁰

Although § 7402 is a statutory-injunction section, one court has required a showing of the traditional equitable factors.⁷¹ We nevertheless contend that these factors need not be considered because I.R.C. § 7402 specifically authorizes injunctions that are “necessary or appropriate” to enforce the internal revenue laws. In any event, the Government can easily satisfy the equitable-factors test here. The Ninth Circuit’s equitable-factors test blends the four factors considered by other Circuits into two: “the likelihood of the movant’s success on the merits and the relative

⁶⁸ *University of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). See *Asseo v. Pan Am. Grain Co.*, 805 F.2d 23, 26 (1st Cir. 1986) (“Affidavits and other hearsay materials are often received in preliminary injunction proceedings.”)

⁶⁹ See *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000) (“The traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction.”)

⁷⁰ *F.T.C. v. Int’l Charity Consultants*, 1994 WL 263887 *2 (D. Nev. 1994), citing *F.T.C. v. Worldwide Factors, Ltd.*, [1989-2 TRADE CASES ¶ 68,707], 882 F.2d 344, 346 (9th Cir. 1989).

⁷¹ *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984) (“the decision to issue an injunction under § 7402(a) is governed by the traditional factors shaping the . . . use of the equitable remedy.”)

balance of potential hardships to the plaintiff, defendant, and public.”⁷²

The evidence submitted with this motion establishes that the Court should enjoin Schiff, Neun, and Cohen, and anyone (including other Freedom Books employees) working in association with them, under §§ 7402, 7407, and 7408 from: (1) promoting their abusive tax scheme or other similar schemes; (2) preparing *any* federal tax returns for others; and (3) interfering with the administration or enforcement of internal revenue laws.

A. Injunctive relief is warranted under I.R.C. § 7408 because Schiff, Neun, and Cohen have promoted abusive tax schemes and prepared frivolous tax returns and other documents, violating I.R.C. §§ 6700 and 6701.

Section 7408 authorizes a court to enjoin persons who have engaged in any conduct subject to penalty under §§ 6700 or 6701 if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Under § 6700, any plan or arrangement “having some connection to taxes can serve as a ‘tax shelter’ and will be an ‘abusive’ tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits of participation.”⁷³ To establish a violation of § 6700 warranting an injunction under § 7408, the United States must show that:

(1) the defendants organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement; (2) they made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement; (3) they knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.⁷⁴

Section 6701 is violated when a person prepares or assists in the preparation of “any portion of a

⁷² *State of Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1388-89 (9th Cir. 1988).

⁷³ *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

⁷⁴ *Estate Pres. Servs.*, 202 F.3d at 1098 (citing I.R.C. §§ 6700(a), 7408(b)).

return, affidavit, claim, or other document,” that he “knows (or has reason to believe) will be used in connection with any material matter” under the tax laws and that he knows will “result in an understatement of the liability for tax.”⁷⁵ There is overwhelming evidence submitted in support of the Government’s motion establishing that Schiff, Neun, and Cohen have been violating §§ 6700 and 6701, and will continue to do so unless enjoined.

Schiff’s, Neun’s, and Cohen’s tax-scheme promotional activities violate § 6700. As demonstrated above, all three have organized and sold the “zero income” plan and other Schiff tax-scheme materials. All three have repeatedly made or caused to be made false and fraudulent statements concerning the tax benefits—leading a purportedly “tax free” life—of participating in Schiff’s scheme. The arguments are frivolous on their face. Schiff’s public history of tax-evasion recidivism demonstrates that he and those around him knew or had reason to know that their statements about the tax laws are false and fraudulent. The statements pertain to material matters because they are likely to influence potential customers to falsely claim that they have no federal income tax liability. Schiff’s long history of flouting the law demonstrates that an injunction is necessary to prevent the recurrence of this misconduct while this lawsuit continues.

Schiff, Neun, and Cohen are violating § 6701 by preparing false and fraudulent tax returns and other tax-related documents for their customers. These returns and documents falsely report that their customers have no taxable income and no tax liability. Schiff, Neun, and Cohen knew, and in fact intended, that these documents would be used in connection with material tax matters, and knew they would result in gross understatements of tax liability.

It is evident that Schiff, Neun, and Cohen will not halt their illegal activities absent an

⁷⁵ I.R.C. § 6701.

injunction.

B. Schiff, Neun, and Cohen should be enjoined under I.R.C. § 7407 from preparing any federal-income-tax returns, failing to provide their identifying numbers, and failing to sign returns that they have prepared.

Section 7407 authorizes a court to enjoin a person from acting as an income-tax-return preparer if that person has continually or repeatedly: (1) engaged in conduct subject to penalty under § 6694, which prohibits the preparation or submission of a return containing an unrealistic position, or § 6695, which mandates that a return preparer sign returns and include his identifying number; (2) misrepresented his eligibility to practice before the IRS, or otherwise misrepresented his experience or education as a return preparer; or (3) engaged in any other fraudulent or deceptive conduct substantially interfering with the proper administration of the tax laws. In addition, the court must find that a narrower injunction prohibiting only specific misconduct would be insufficient to prevent further interference.⁷⁶

As discussed above, Schiff, Neun, and Cohen have repeatedly and continually violated § 6694 by preparing tax returns falsely claiming that their customers earned no income and have no federal tax liability.⁷⁷ Schiff, Neun, and Cohen knew or should have known that the “zero income” returns were frivolous because: (1) Schiff was convicted twice of tax crimes based on the same or similar frivolous positions; (2) at least five people have been convicted of tax crimes for using Schiff’s materials, including one person for whom Schiff prepared the false tax returns; (3) Schiff and Schiff’s customers have suffered an unbroken string of defeats in Tax Court and federal court; and (4) the arguments are absurd on their face.

⁷⁶ I.R.C. § 7407.

⁷⁷ See I.R.C. § 6694.

Neun and Cohen have violated § 6695 by failing to furnish their identifying numbers—their social security numbers—on some of the tax returns that they prepare.⁷⁸ Neun also violates § 6695 by failing to sign some returns that she has prepared. Finally, Schiff’s abusive tax scheme—put into practice by Schiff, Neun, and Freedom Books employees such as Cohen—substantially interferes with the administration of the tax laws.⁷⁹ As shown above, Schiff, Neun, and Cohen will continue their abusive return-preparation activities unless they are enjoined. A narrower injunction—barring only “zero income” returns—will be ineffective. It could not be clearer that Schiff, Neun, and Cohen should not be in the return-preparation business. The IRS should not have to find and review every document prepared or filed by these tax scammers who have wreaked so much havoc.⁸⁰

C. Equitable considerations weigh in favor of enjoining Schiff, Neun, and Cohen under I.R.C. § 7402.

Manifesting “a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,”⁸¹ 26 U.S.C. § 7402 “has been used to enjoin interference with tax enforcement even when such interference does not violate any

⁷⁸ See I.R.C. § 6695.

⁷⁹ See I.R.C. § 7407(b)(1)(D).

⁸⁰ See *United States v. Savoie*, 594 F.Supp. 678, 685 (D.C. La., 1984), (“And in light of Savoie’s unyielding opposition to the current tax structure, we hardly need to explain that an injunction against conduct listed in subsection (b)(1) would be insufficient to safeguard tax administration from Savoie’s interference.”)

⁸¹ *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). See *United States v. First Nat’l City Bank*, 568 F.2d 853 (2d Cir. 1977).

particular tax statute.”⁸² Here, injunctive relief under § 7402 is appropriate to prevent Schiff’s, Neun’s, and Cohen’s interference with tax enforcement. Should the Court find they apply in a Section 7402 injunction case, the equitable criteria for an injunction are present: the likelihood of the movant’s success on the merits and the relative balance of potential hardships to the plaintiff, defendant, and public.⁸³

The Government’s TRO exhibits and declarations present irrefutable evidence—often in the defendants’ own words—that Schiff, Neun, and Cohen repeatedly have impeded the administration of the internal revenue laws. Therefore, the United States has a strong likelihood of prevailing on the merits. The United States has suffered and will continue to suffer irreparable injury if Schiff, Neun, and Cohen are not enjoined. The IRS estimates that Schiff’s customers have tried to evade over \$56 million in taxes in the past three years alone. Since the defendants will not end their scheme unless forced to do so, the United States Treasury, funded by United States taxpayers, will continue to lose money as long as Schiff, Neun, and Cohen are operating. Given the audacity and breadth of their scam, involving an estimated 5,000 *identified* tax returns, and given the IRS’s limited resources, identifying and recovering all lost revenue may be impossible. Schiff’s customers are monopolizing scarce IRS resources, effectively denying other taxpayers the right to timely resolution of appeals hearings and provision of other services.

In addition to the harm caused by their advice and services, Schiff’s scheme undermines

⁸² *Ernst & Whinney*, 735 F.2d at 1300. See *United States v. Kaun*, 633 F. Supp. 406, 409 (E.D. Wis. 1986) (“federal courts have routinely relied on [§ 7402(a)] . . . to preclude individuals . . . from disseminating their rather perverse notions about compliance with the Internal Revenue laws or from promoting certain tax avoidance schemes”), *aff’d*, 827 F.2d 1144 (7th Cir. 1987).

⁸³ *Venetie*, 856 F.2d at 1388-89.

public confidence in the federal tax system and incites non-compliance with the internal revenue laws. If Schiff, Neun, and Cohen are not enjoined now, they will cause even greater damage to the United States. They cannot claim harm from the court order, since the order will end their current lawbreaking activity and therefore limit future civil and criminal sanctions.⁸⁴ Defendants' First Amendment rights are preserved, since the proposed order parallels orders issued in other cases that bar the same categories of conduct—false commercial speech, incitement to imminent lawless action, and assisting others to violate the law.⁸⁵ Finally, the public interest is clearly served by shutting down Schiff's illegal tax-evasion scheme.⁸⁶ Indeed, it is difficult to imagine a more compelling case for an injunction that is—in the words of § 7402—"necessary or appropriate for the enforcement of the internal revenue laws."

III. CONCLUSION

Schiff, Neun, and Cohen's next seminar is scheduled in Las Vegas on March 29 and 30. It is now the middle of the 2002 tax-filing season. Each of these facts points to the need for immediate action. Schiff, Neun, and Cohen should be temporarily restrained and thereafter

⁸⁴ See *Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (finding that injunctions requiring people to follow the law do not cause hardship).

⁸⁵ See e.g. *Kaun*, 633 F. Supp. 406, and *United States v. Buttorff*, 572 F.2d 619, 624 (8th Cir. 1978) (upholding conviction for aiding and abetting filing false tax forms where speeches and explanations "go beyond mere advocacy" and incited people to violate federal tax laws).

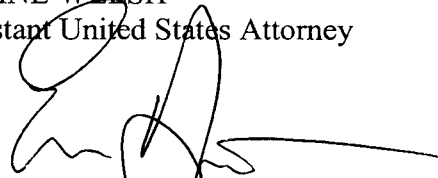
⁸⁶ *United States v. Lee*, 455 U.S. 252, 253 (1982) (noting that "the broad public interest in maintaining a sound tax system is of . . . a high order.").

preliminarily enjoined from causing more damage to current and future customers, the courts, and the vast majority of American taxpayers who file honest tax returns and pay what they lawfully owe.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Evan J. Davis', is written over a horizontal line.

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