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8
9 IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)
)
12 Plaintiff,)
)
13 v.)
)
14 TIMOTHY H. VU, f/k/a)
TIMOTHY H. CONN, a/k/a)
15 TIMOTHY CONN VU)
)
16 Defendant.)
_____)

Case No.

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

17 Plaintiff, United States of America, for its complaint against Defendant Timothy H. Vu
18 f/k/a Timothy H. Conn a/k/a Timothy Conn Vu, states as follows:

19 **NATURE OF ACTION**

20 1. Timothy Conn Vu (“Conn Vu”) implemented, executed and promoted abusive tax
21 avoidance schemes that helped taxpayers illegally avoid large income tax liabilities. Conn Vu is
22 an “Enrolled Agent with over 15 years of experience in tax and various industries.” The tax
23 avoidance schemes in which Conn Vu played a central role include the Intermediary Transaction
 (“IT”) tax shelter and the State Tax Credit (“STC”) tax shelter. The IT shelter uses companies

1 called “intermediaries” that hold bogus debt to illegally offset corporate income taxes on the
2 gains received from the sale of corporate assets. The STC shelter uses bogus debt to illegally
3 offset the gains received from the sale of transferrable state tax credits. The bogus debt that is
4 used in these transactions is obtained via other tax schemes, including the Distressed Asset Debt
5 (“DAD”) and Distressed Asset Trust (“DAT”) tax shelters, which Conn Vu also facilitated and
6 implemented, including serving as trustee of the trusts used in the DAT shelter to warehouse the
7 supposed distressed debt until it was needed to illegally offset the tax liabilities of the shelter
8 participants in the IT and STC tax schemes. In most instances, Vu was the sole officer, director
9 and/or manager of the companies used to perpetrate these abusive tax avoidance schemes. As
10 such, Vu caused and directed these companies that he controlled to purchase stock of closely-
11 held businesses of U.S. taxpayers, and then used bogus foreign losses from DAD and DAT tax
12 shelters to offset the gains from the purchase of the stock and sale of the businesses’ assets so
13 that the shareholders and the selling corporation were able to avoid corporate income tax. Vu
14 has signed many of the corporate income tax returns that claimed the bogus bad debt deductions
15 to illegally offset otherwise taxable income to the scheme participants. Vu’s participation in
16 these illegal tax schemes has generated over \$515 million in bogus tax deductions that have led
17 to federal income tax deficiencies of at least \$129 million. Meanwhile, Vu has reaped the
18 benefits of these fraudulent schemes and enjoyed \$3 million in compensation for his role in these
19 abusive transactions.

20 2. The United States brings this complaint pursuant to 26 U.S.C. (the Internal
21 Revenue Code (“I.R.C.”)) §§ 7402, 7407 and 7408 to enjoin Conn Vu, and all those in active
22 concert or participation with him, from directly or indirectly:

- 23 a) Organizing, promoting, implementing, facilitating, advising, or selling (directly or indirectly) the Intermediary Transaction tax shelter schemes described in this

1 complaint, the State Tax Credit tax schemes described in this complaint, the DAD
2 or DAT tax schemes described in this complaint, any substantially similar plans
or arrangements, or any other business or tax services that:

- 3 i. use, involve or relate to distressed debt, distressed receivables or other
4 distressed assets;
- 5 ii. attempt to shift losses from a foreign tax-indifferent party to or for the
6 benefit of a U.S. taxpayer;
- 7 iii. attempt to shift purported losses among entities claiming to be trusts,
8 corporations or entities taxed as partnerships for the benefit of U.S.
9 taxpayers who did not incur the losses;
- 10 iv. attempt to purchase the stock or sell the assets of closely-held U.S.
11 corporations to obtain a corporate tax benefit;
- 12 v. use or involve intermediary entities that facilitate in any way the
13 purchase and/or sale of corporate stock or the purchase and/or sale of
14 corporate assets; and/or
- 15 vi. uses or involves the sale or acquisition of state tax credits and is
16 designed to reduce or eliminate tax liabilities
- 17 b) Acting as a federal tax return preparer or requesting, assisting in, or directing the
18 preparation or filing of federal tax returns or amended returns (or other related tax
19 forms or documents) for any person or entity other than preparing his own
20 personal tax return;
- 21 c) Appearing as a representative on behalf of any person or entity before the IRS;
- 22 d) Owning, managing, controlling, working for, profiting from, or volunteering for a
23 tax-return-preparation business;
- e) Seeking permission or authorization (or helping or soliciting others to seek
permission or authorization) to file tax returns with an IRS Preparer Tax
Identification Number ("PTIN") and/or IRS Electronic Filing Identification
Number ("EFIN"), or any other IRS service or program by which one prepares or
files tax returns;
- f) Using, maintaining, renewing, obtaining, transferring, selling, or assigning any
PTIN(s) and/or EFIN(s)

JURISDICTION AND VENUE

1
2 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and by 26
3 U.S.C. §§ 7402(a).

4 4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial
5 portion of the events giving rise to this action took place in this judicial district and because
6 Conn Vu resides in this judicial district as of the time this action is filed.

AUTHORIZATION

7
8 5. This action for injunctive relief is brought at the request of the Chief Counsel of
9 the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the
10 direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402,
11 7407 and 7408.

DEFENDANT CONN VU

12
13 6. Timothy Conn Vu (“Conn Vu”) resides in San Francisco, California. He is an
14 Enrolled Agent and tax practitioner. Conn Vu holds a dual degree in accounting and psychology
15 from San Diego State University where he graduated in 1998.

16 7. Conn Vu worked at various banking institutions and credit unions from 1998 to
17 2003, including as a financial services officer at Golden Gate Bank in San Francisco. Conn Vu
18 left Golden Gate Bank in March 2003 to work for Fred Forster. While working for Forster,
19 Conn Vu managed various companies acquired by Fortrend International, LLC, a company co-
20 owned by Fred Forster which he and other co-promoters used to facilitate tax avoidance
21 transactions. Conn Vu began working with Forster on or about March 31, 2003.

22 8. While working with Forster and Fortrend, Conn Vu’s duties were to, among other
23 things: serve as a director, officer or manager of various corporate entities used to facilitate tax
avoidance transactions, prepare monthly reports, maintain corporate/LLC minute books, file state

1 annual reports, coordinate tax return preparation, and sign tax returns for various companies
2 acquired by Fortrend. In addition, Conn Vu had signatory authority over bank accounts of the
3 entities and signed loan documents for loans provided to other corporate entities. These
4 corporate entities were used by Fortrend in various tax avoidance transactions designed to help
5 Fortrend's customers avoid their tax liabilities.

6 9. In June 2006, Conn Vu was hired by John P. "Sean" McNabola (discussed in
7 more detail below), a friend and business associate of Forster, to serve as an officer, director
8 and/or manager of the five Promoter Corporations (defined in paragraphs 15-20 below) involved
9 in the Intermediary Transactions and State Tax Credit Transactions that are the subject of this
10 complaint. Conn Vu performed many of the same services for McNabola as he did for Forster.
11 Namely, he served as an officer, director and/or manager of the Promoter Corporations and
12 signed many of the operative documents for the tax shelter transactions described below. He
13 also had signatory authority over the bank accounts for the Promoter Corporations and signed all
14 of their income tax returns. Conn Vu remained the sole officer, director and/or manager of the
15 Promoter Corporations until he resigned in July 2012 purportedly because he was no longer
16 being paid by McNabola.

17 10. Currently, Conn Vu is the founding member of T&D Tax Service based in San
18 Francisco, California. According to the website, "T&D Tax Service is a full service Tax
19 Preparation, Bookkeeping and Tax Planning company." Conn Vu's website claims that he
20 specializes "in the accounting and tax needs of small to medium-sized businesses and
21 individuals." According to the website, "Timothy is an Enrolled Agent with over 15 years of
22 experience in tax and various industries. He is well experienced in representing high profile
23 clients for audits in front of the Internal Revenue Service. He also has been involved with

1 mergers and acquisitions, banking/finance, tax planning, domestic partners (California) and
2 retirement planning.” (See <http://www.tanddtaxservice.com> (accessed on April 17, 2015)).

3 **CO-PROMOTERS INVOLVED IN UNLAWFUL TAX SCHEMES**

4 11. Harold Levine (“Levine”) is an attorney licensed to practice law in the State of
5 New York. He is an experienced tax lawyer who has served as head of the tax practice groups at
6 both the New York City offices of Herrick, Feinstein LLP (“Herrick Feinstein”) and Moritt Hock
7 & Hamroff LLP. Levine has promoted, implemented and/or participated in numerous unlawful
8 tax schemes. Levine, through his law firm Herrick Feinstein, formed and/or used five entities of
9 which Conn Vu was the sole officer, director and/or manager to facilitate the abusive tax
10 avoidance schemes described below.

11 12. John P. “Sean” McNabola (“McNabola”) is a chartered accountant who resides in
12 Dublin, Ireland. Each of the five Promoter Corporations (of which Conn Vu was the director,
13 officer and/or manager) was formed on behalf of McNabola. The Promoter Corporations were
14 owned by a series of entities controlled by McNabola, including Green Isle Property Holdings
15 Limited, Green Isle Trust, and Earlsfort Trust, the ultimate owner. Earlsfort Trust was
16 established in Dublin, Ireland, for the benefit of McNabola’s wife and children.

17 13. Fred Forster (“Forster”), co-founder of the now-defunct promoter firm Fortrend
18 International LLC, provided financing to the Promoter Corporations controlled by McNabola in
19 connection with certain of the intermediary transaction tax schemes described herein. Conn Vu
20 first worked for Forster from 2003 to 2006, and then later for McNabola from 2006 to 2012.

21 14. Graham Taylor (“Taylor”) is a former tax attorney in San Francisco who provided
22 advice to McNabola regarding the DAD and DAT tax shelters that were used to offset taxable
23 income from the abusive tax shelter transactions described in this complaint, as well as some of
the intermediary transactions. While Taylor was indicted in November 2005 for unrelated tax

1 fraud, and pled guilty in November 2008 to tax evasion, he continued to practice law and provide
2 advice to McNabola through at least 2008. Taylor was suspended from the practice of law in
3 2009, and resigned from the California Bar in 2011.

4 **CORPORATE ENTITIES USED TO PERPETRATE UNLAWFUL TAX SCHEMES**

5 15. Conn Vu was an officer, director and/or manager of five entities used to promote,
6 implement and execute illegal tax shelters: First Active Capital Inc.; ILP Capital, Inc.; Anglo
7 Capital Inc.; BOI Capital Inc. and AIB Capital Inc. (collectively, the “Promoter Entities” or
8 “Promoter Corporations”). The Promoter Entities reported bad debt losses on their tax returns
9 from DAD and DAT transactions they engaged in, and then used these purported losses to offset
10 the gains and income generated from asset sales made by the target companies they acquired, as
11 well as from state tax credit transactions and other transactions. Vu signed all of the corporate
12 income tax returns that were filed with the IRS reporting the alleged bad debt deductions. When
13 the corporate income tax returns of the Promoter Entities were audited by the IRS, Vu was
14 involved in defending the Promoter Entities in connection with the IRS audit, and in responding
15 to the IRS’s requests for information about the Promoter Entities and the transactions in which
16 they engaged. Moreover, in connection with his position while working with Fred Forster, Vu
17 received numerous copies of the IRS’s examination reports disallowing bogus losses that had
18 been claimed on the income tax returns for the corporations that he managed and/or served as
19 officer or director such that he knew or should have known that the IRS considered the
20 transactions in which the Promoter Entities engaged abusive and unlawful.

21 **A. First Active Capital Inc.**

22 16. First Active Capital Inc. (“First Active”) was incorporated on August 19, 2005, in
23 the State of Delaware. McNabola was the initial director and officer of First Active. On August
10, 2006, Conn Vu was elected president, secretary, and treasurer of First Active, and on

1 February 27, 2008, became its director until he resigned in 2012. As the sole officer of First
2 Active during this period, Conn Vu signed all of the operative documents on behalf of the
3 company. First Active had no legitimate business purpose and was used by Conn Vu and his co-
4 promoters to facilitate the tax avoidance schemes described below. First Active participated in at
5 least five intermediary transactions, and via Agate LLC (“Agate”), a company in which First
6 Active is the sole member, participated in numerous state tax credit transactions between 2005
7 and 2010, as well as one other tax avoidance scheme using bogus losses to offset taxable gains.

8 **B. ILP Capital, Inc.**

9 17. ILP Capital, Inc. (“ILP Capital”) was incorporated on July 25, 2006, in the State
10 of Delaware. McNabola was the initial director and officer of ILP Capital. Beginning August 2,
11 2006, Conn Vu served as president, secretary and treasurer of ILP Capital and, as such, signed
12 many of the operative documents on behalf of the company until he resigned in 2012. Beginning
13 August 30, 2006, McNabola served as vice president of ILP Capital. ILP Capital had no
14 legitimate business purpose and was used by Conn Vu and his co-promoters to facilitate the tax
15 avoidance schemes described below. ILP Capital participated in one intermediary transaction.

16 **C. Anglo Capital Inc.**

17 18. Anglo Capital Inc. (“Anglo Capital”) was incorporated on February 14, 2006, in
18 the State of Delaware. McNabola served as the first president, secretary, treasurer and director
19 of Anglo Capital. Beginning in or around August 2006, Conn Vu served as the president,
20 secretary, and treasurer of Anglo Capital, and became its director in 2008 until he resigned in
21 2012. As such, Conn Vu signed many of the operative documents on behalf of the company
22 during this time. Anglo had no legitimate business purpose and was used by Conn Vu and his
23 co-promoters to facilitate the tax avoidance schemes described below. Between 2006 and 2008,
Anglo Capital participated in at least seven intermediary transactions, at least one state tax credit

1 transaction, and at least one other tax avoidance transaction involving the sheltering of income
2 from a partnership investment.

3 **D. BOI Capital Inc.**

4 19. BOI Capital Inc. (“BOI Capital”) was incorporated on August 2, 2007, in the
5 State of Delaware. Conn Vu served as the president of BOI Capital. McNabola served as the
6 director of BOI Capital until 2008, when Conn Vu became the director until he resigned in 2012.
7 As the president and/or director of BOI Capital, Conn Vu signed many of the operative
8 documents on behalf of the company during this time. BOI Capital had no legitimate business
9 purpose and was used by Conn Vu and his co-promoters to facilitate the tax avoidance schemes
10 described below. BOI Capital participated in state tax credit transactions.

11 **E. AIB Capital Inc.**

12 20. AIB Capital Inc. (“AIB Capital”) was incorporated on August 2, 2007, in the
13 State of Delaware. Conn Vu served as president of AIB Capital. McNabola served as the
14 director of AIB Capital until 2008, when Conn Vu became the director until he resigned in 2012.
15 As the president and/or director of AIB Capital, Conn Vu signed many of the operative
16 documents on behalf of the company during this time. AIB Capital had no legitimate business
17 purpose and was used by Conn Vu and his co-promoters to facilitate the tax avoidance schemes
18 described below. AIB Capital participated in state tax credit transactions after First Active ran
19 out of bad debt losses to offset income from Agate.

20 **INTERMEDIARY TRANSACTION TAX SCHEME**

21 21. An intermediary transaction tax shelter is designed so that corporations and their
22 shareholders can avoid paying their corporate income taxes on the gains received from the sale
23 of corporate assets. Typically this scheme is promoted to individuals who own closely-held
corporations and seek to sell their corporation’s low basis, high-value assets. Ordinarily, a

1 company's shareholders wishing to dispose of either the entire company or the majority of its
2 assets will face two levels of taxation: first at the corporate level arising from the sale of the
3 company's assets, and second at the individual shareholder level when the company distributes
4 the proceeds of the asset sale to the shareholders in a liquidating distribution. While a
5 shareholder would thus prefer to sell his/her stock rather than have the company first sell its
6 assets (to avoid the corporate level tax), the competing interest of the asset buyer – to obtain a
7 tax basis in the purchased assets equal to the price paid for them – means that the selling
8 shareholder must often settle for an asset purchase transaction.

9 22. The intermediary transaction purports to eliminate the so-called “double taxation”
10 by enabling the selling shareholders to obtain most of the tax benefits of the stock sale (including
11 avoiding the corporate level tax) while the buyers obtain the tax benefits of an asset purchase.
12 To accomplish this goal, an “intermediary” corporation (here, the Promoter Entities), which is
13 usually controlled by the tax shelter promoters, acts as the middleman for the seller of the
14 corporate stock and the buyer of the corporate assets.

15 23. The order of the steps in an intermediary transaction may vary depending on the
16 precise scenario, but there generally are two types of transactions in which an intermediary
17 transaction is promoted to the owners of a closely-held corporation (the “target corporation”) as a
18 way to avoid corporate level taxes: (1) a buyer desires to purchase only the assets of a target
19 corporation, and the corporation sells these assets *before* the Promoter Entity purchases all of the
20 shares of stock of the target corporation; or (2) a target corporation's assets consist primarily of
21 marketable securities or some other property and these assets are sold by the Promoter Entity
22 *after* it purchases all of the shares of stock of the target corporation.
23

1 **A. Intermediary Transaction: Asset Sale Before Stock Sale**

2 24. The intermediary transaction is promoted as a way to purportedly eliminate
3 corporate level taxes. With the intermediary transaction, the corporation's owners purportedly
4 avoid the corporate level taxes because, instead of liquidating the company, they sell the
5 company's stock to the intermediary who then offsets the corporate gains with distressed debt.
6 This results in little or no corporate level taxes being paid on the sale of the corporate assets.

7 Step 1:

8 25. The target corporation sells all of its hard assets to a third-party buyer in exchange
9 for cash. After the asset sale by a target corporation to the buyer, the target corporation typically
10 is left only with the cash proceeds from the sale.

11 26. The sale of the low-basis, high-value assets generates large capital gains for the
12 target corporation on which corporate income taxes are owed.

13 Step 2:

14 27. The Promoter Entity purchases all of the shares of stock of the target corporation
15 less than twelve months after the asset sale, purportedly for investment purposes. The Promoter
16 Entity typically pays cash to the shareholders of the target corporation in exchange for their
17 stock, which the Promoter Entity funds with short-term acquisition or bridge "loans" that it
18 procures from co-promoters of the scheme. The amount paid for the stock typically is less than
19 the cash holdings of the target corporation. The purchase price typically is negotiated as a
20 percentage of the tax savings. The difference between the stock purchase price and the asset sale
21 price is "the spread," which the promoters keep as their profit for structuring the transaction.

1 28. At the time of the stock purchase, the Promoter Entity falsely promises that it will
2 be responsible for the target corporation's income taxes and capital gains taxes after the
3 acquisition of the target corporation.

4 Step 3:

5 29. Once it owns the target corporation, the Promoter Entity reports the target
6 corporation's income or capital gains on its corporate income tax return. However, to eliminate
7 the corporate tax liability, the Promoter Entity implements a loss-creating tax scheme that
8 generates bogus losses through the use of high-basis, low-fair-market-value assets ("inflated
9 basis assets"), such as the DAD and/or DAT abusive tax scheme, which is another type of tax
10 shelter that uses bad debt (such as Brazilian uncashed checks) as a bogus write-off for each
11 Promoter Entity in an amount that offsets all or nearly all of the gains incurred from the purchase
12 of the target corporation.

13 30. Because the Promoter Entity has purportedly offset all gain from the sale of the
14 target corporation's assets with the inflated basis assets, the target corporation allegedly owes no
15 income taxes.

16 31. Now that the Promoter Entity owns the target corporation, the cash that the target
17 corporation received from the hard asset sale (in Step 1 above) is promptly used to repay the
18 "loan" secured by the Promoter Entity to fund the cash purchase of the target corporation's stock.
19 Many times the repayment of the "loan" occurs the same day the loan is made.

20 32. The Promoter Entity then causes the remaining cash in the target corporation (the
21 spread) to be paid to itself, its principals and/or its co-promoters and other participants in the
22 intermediary transaction. In essence, the promoters receive the difference between the stock
23 purchase price and the asset sale price.

1 33. The Promoter Entity, which now owns the target corporation, files a tax return
2 that reports no taxable income or virtually no taxable income, due to the purported bad debt
3 deduction that the Promoter Entity causes each corporation to claim. Thus, by design and as a
4 function of the intermediary transaction and DAD/DAT schemes, the target corporations sell
5 low-basis, high-value assets, obtain substantial gains on these asset sales, and then these
6 corporations illegally pay no (or very little) income tax on these gains.

7 34. Moreover, the Promoter Entity drains the target corporations of virtually all cash
8 or other assets at the conclusion of the intermediary transaction. This leaves the corporation
9 insolvent by the time the IRS discovers the tax avoidance scheme. Thus, the IRS typically is not
10 able to collect the taxes owed.

11 **B. Intermediary Transaction: Asset Sale After Stock Sale**

12 35. In a second intermediary transaction scenario, the target corporation's assets are
13 sold by the Promoter Entity *after* the purchase of all of the shares of the target corporation's
14 stock. In this second scenario, many times the target corporation's assets consist primarily of
15 appreciated marketable securities or other low basis high-value property. In either case, selling
16 the securities or other assets would create a large capital gain.

17 Step 1:

18 36. The Promoter Entity purchases all of the shares of stock of the target corporation,
19 purportedly for investment purposes. The Promoter Entity typically pays shareholders of the
20 target corporation in cash in exchange for their stock, which the Promoter Entity funds with
21 short-term acquisition or bridge "loans" that it procures from co-promoters of the scheme. The
22 amount paid for the stock typically is less than the expected asset sale price. The purchase price
23 typically is negotiated as a percentage of the tax savings. The difference between the stock

1 purchase price and the asset sale price is “the spread,” which the promoters keep as their profit
2 for structuring the transaction.

3 37. The Promoter Entity falsely promises that it will be responsible for the target
4 corporation’s income taxes and capital gains taxes after the acquisition of the target corporation’s
5 stock. At the time of the stock purchase, the target corporation typically is holding appreciated
6 marketable securities or other low basis high-value property.

7 Step 2:

8 38. The Promoter Entity immediately causes the target corporation to sell its
9 appreciated marketable securities or other low basis high-value property. The sale of the
10 securities, which are low-basis, high-value assets, generates large capital gains for the target
11 corporation on which it owes corporate income taxes. At this point, the target corporation
12 typically is left only with the cash proceeds from the sale of the securities.

13 39. The cash that the target corporation received from the sale of the marketable
14 securities or other low basis high-value property is then used to repay the “loan” secured by the
15 Promoter Entity to fund the cash purchase of the target corporation’s stock.

16 40. The Promoter Entity then causes the remaining cash (the spread) to be paid to
17 itself, its principals and/or its co-promoters and other participants in the intermediary transaction.
18 In essence, the promoters receive the difference between the value of the assets and the amount
19 paid to purchase the stock of the target company.

20 Step 3:

21 41. Once it owns the target corporation, the Promoter Entity reports the target
22 corporation’s income and/or capital gains on its corporate income tax return. However, to
23 eliminate the corporate tax liability, the Promoter Entity implements a loss-creating tax scheme

1 that generates bogus losses through the use of high-basis, low-fair-market-value assets (“inflated
2 basis assets”), such as the DAD and/or DAT abusive tax scheme in an amount that offsets all or
3 nearly all of the gains incurred from the sale of the target corporation’s assets.

4 42. Because the Promoter Entity has purportedly offset all gain from the sale of the
5 target corporation’s assets with the inflated basis assets, the target corporation allegedly owes no
6 income taxes.

7 43. The Promoter Entity, which now owns the target corporation, files a tax return
8 that reports no taxable income or virtually no taxable income, due to the purported bad debt
9 deduction that the Promoter Entity causes each corporation to claim. Thus, by design and as a
10 function of the intermediary transaction and DAD/DAT schemes, the target corporations sell
11 low-basis, high-value assets, obtain substantial gains on these asset sales, and then these
12 corporations illegally pay no (or very little) income tax on these gains.

13 44. Moreover, at the conclusion of the intermediary transaction, the Promoter Entity
14 drains the target corporations of virtually all cash or other assets. This leaves the corporation
15 insolvent by the time the IRS discovers the abusive tax avoidance scheme. Thus, the IRS is not
16 typically able to collect the taxes owed.

17 45. From 2005 until approximately 2010, Conn Vu and his co-promoters promoted
18 their intermediary transaction tax scheme as a plan that contemplated and involved the sale of
19 each target corporation’s assets. Indeed, as part of the intermediary transaction tax scheme,
20 Conn Vu and/or his co-promoters negotiated with their customers to execute a stock sale with the
21 full knowledge that the target corporation intended to sell its assets. The asset sale and the stock
22 sale are related steps that are part of a larger plan, which is the intermediary transaction tax
23 scheme as it is designed to avoid the payment of federal corporation income taxes.

1 **The Intermediary Transaction Tax Scheme Is A Listed Transaction**

2 46. In January 2001, the IRS issued Notice 2001-16, which states that intermediary
3 transactions like the ones Conn Vu and his co-promoters promote are “listed transactions.” This
4 means that intermediary transactions are the “same or substantially similar to one of the types of
5 transactions that the IRS has determined to be a tax avoidance transaction.” *See* Treas.
6 Reg.1.6011-4. Notice 2001-16 describes intermediary transaction tax shelters and advises
7 taxpayers and their representatives of certain responsibilities that may arise from participating in
8 these transactions.

9 47. As described in Notice 2001-16, intermediary transactions typically involve four
10 parties: (1) a corporation owned by shareholders and owning assets (the “Target Corporation”);
11 (2) a seller (the “Seller”) who desires to sell his or her stock in the Target Corporation; (3) an
12 intermediary corporation, or promoter entity; and (4) a buyer (the “Buyer”) who wants to
13 purchase the assets of the corporation. In the transaction, the Seller sells the stock of the Target
14 Corporation to the promoter entity, and the Target Corporation sells its assets to the Buyer. After
15 the stock purchase, the Target Corporation will avoid paying any tax on the gain from the asset
16 sale. In one variation of the tax shelter, the Target Corporation is included as a member of the
17 promoter entity’s affiliated group. The promoter entity files a consolidated return and reports
18 losses that offset the capital gain taxes that result from the Target Corporation’s sale of its assets
19 to the Buyer.

20 48. Notice 2001-16 states that the IRS may challenge the tax results of an
21 intermediary transaction, and may assert penalties on individuals who promote or participate in
22 these transactions.

23 49. In 2008, the IRS issued Notice 2008-111, clarifying Notice 2001-16. Notice
2008-111, which is effective as of January 19, 2001, provides, in part, that a transaction must

1 include the following four components to be treated as an intermediary transaction tax shelter
2 described in Notice 2001-16:

3 A. First, the Target Corporation, directly or indirectly, owns assets the sale of which
4 would result in a taxable gain (the “Built-In Gain Asset”). As of the date of the sale of its stock
5 to the promoter entity, the Target Corporation does not have sufficient tax benefits to eliminate
6 or offset the taxable gain.

7 B. Second, at least 80 percent of the Target Corporation’s stock is disposed of by the
8 Seller in one or multiple transactions within a 12-month period.

9 C. Third, within 12 months before or after the disposal of 80 percent of the Target
10 Corporation’s stock, at least 65 percent of the Target Corporation’s Built-In Gain Assets are
11 disposed of to one or more Buyers in one or more transactions in which a gain is recognized.

12 D. Fourth, at least half of the tax resulting from the sale of the Target Corporation’s
13 Built-In Gain Assets is offset, avoided or not paid.

14 50. The Internal Revenue Code and the Treasury Regulations require that taxpayers
15 who participate in listed transactions disclose their participation by filing disclosure statements
16 with their federal income tax returns. *See* I.R.C. § 6111.

17 51. A material advisor as to a listed transaction also is required to file a report with
18 the IRS identifying and describing the listed transaction and the potential tax benefits expected to
19 result from the transaction. A material advisor must furnish the IRS with this information as to
20 each occurrence of each listed transaction that s/he promotes. If a material advisor fails to
21 provide the IRS with this information, s/he is subject to penalties. *See* I.R.C. §§ 6111, 6707(a).

22
23

1 52. In addition, a material advisor as to a listed transaction also is required to
2 maintain a list of all customers who participate in a listed transaction that must be furnished to
3 the IRS upon request. *See* I.R.C. §§ 6112, 6708.

4 **Defendant Conn Vu's Participation In and Execution of Intermediary Transactions**

5 53. Starting as early as 2005, Conn Vu participated in, implemented, and/or facilitated
6 at least 13 intermediary transaction tax schemes that enabled corporations to illegally avoid
7 paying corporate income taxes on the gains received from the sale of corporate assets, while
8 generating a profit consisting of a portion of the sheltered gains a portion of which Conn Vu
9 received as compensation. Conn Vu promoted, implemented, and/or participated in each of these
10 schemes through use of three of the Promoter Entities: First Active, Anglo Capital and ILP
11 Capital.

12 54. The intermediary transactions that Conn Vu promoted, implemented and/or
13 facilitated generally include the three steps detailed above in paragraphs 24-45.

14 55. In each of the Intermediary Transactions that Conn Vu promoted, implemented
15 and/or facilitated, Conn Vu, as the officer, director and/or manager of the Promoter Entities,
16 exercises control over their operations and has signatory authority over their bank accounts.
17 Anything the Promoter Entities did, they did through Conn Vu as their officer, director and/or
18 manager.

19 56. Indeed, Conn Vu recognized his central role in the scheme in an email to Sean
20 McNabola in July 2008, admitting that "Since my name is on these companies as President,
21 [Secretary], Treasurer, *I have all of the exposure with these companies. When these companies*
22 *are under audit, they will come to me first.*" (emphasis added).

1 year 2006 from a lease termination fee and from the payoff of a mortgage that had been assigned
2 to TORC in 2004.

3 64. In 2006, the sole shareholder of TORC decided to sell his shares of stock and
4 “cash out” of the corporation. The intermediary transaction was sold to TORC as a way to avoid
5 corporate income tax on the sale of TORC’s assets.

6 65. Anglo Capital agreed to acquire all of the shares of stock of TORC for
7 \$4,090,000. The corporation had, as of November 1, 2006, a bank account containing
8 \$4,450,709. TORC held no assets other than cash at the time of the stock sale.

9 66. To implement the intermediary transaction between TORC and Anglo Capital,
10 Conn Vu first executed a Stock Purchase Agreement dated “as of” October 26, 2006, purchasing
11 all of the shares of TORC’s stock.

12 **THIS STOCK PURCHASE AGREEMENT**, dated as of October 26, 2006, between
13 [REDACTED], an individual (“Seller”), and **ANGLO CAPITAL, INC.**, a
Delaware corporation (the “Purchaser”),

14 **IN WITNESS WHEREOF**, the Seller and the Purchaser have executed this Agreement
15 as of the date first written above.

16 **PURCHASER:**

17 **ANGLO CAPITAL, INC.**

18 By: Tim Conn
Its: President

19 67. The Stock Purchase Agreement that Conn Vu signed for the TORC transaction
20 contained several false statements that Conn Vu knew or had reason to know were false or
21 fraudulent. First, Conn Vu falsely represented that Anglo Capital would pay taxes on the gains
22 from the transaction. Conn Vu knew or should have known that this statement was false because
23 he and his co-promoters intended to offset any gains with a bogus bad debt deduction.

1 68. Conn Vu also falsely represented that Anglo Capital was acquiring TORC's
2 shares "for investment." Instead, as Conn Vu knew or should have known, Anglo Capital did
3 not intend to, and did not in fact, continue any business activities with respect to TORC and did
4 not "invest" in the TORC shares. Rather, Anglo Capital purchased TORC's shares for the
5 purpose of (a) retaining a portion of the profits from TORC's sale, and (b) offsetting the taxable
6 gains from the transaction using bad debt.

7 69. On November 10, 2006, TORC purportedly merged into Anglo Capital under 26
8 U.S.C. § 368(a)(1)(F). Anglo Capital's corporate income tax return for the year 2006 reflected
9 taxable income from TORC in the amount of \$4,395,608.

10 70. However, the TORC taxable income was then fully offset by Anglo Capital's
11 bogus distressed debt from a DAT tax scheme using Bazillion debt so that no tax was paid on the
12 taxable gain from the TORC transaction. The real estate investment activities of TORC were not
13 continued following its merger with Anglo Capital.

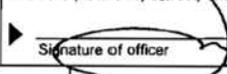
14 71. Anglo Capital's (and its associates') profit for promoting this intermediary
15 transaction to TORC was \$360,709, which was the difference between the cash in TORC
16 (\$4,450,709) and the amount paid for TORC's stock by Anglo Capital (\$4,090,000). \$90,177
17 was paid to Joe Forster as a "finder's fee" and the remaining \$270,532 remained in Herrick
18 Feinstein's escrow account, which was under the control of Levine.

19 72. The TORC intermediary transaction could not have been completed but for Conn
20 Vu's approval of and signature on the operative documents for the transaction, including the
21 Stock Purchase Agreement.

22 73. Anglo Capital's tax return claiming the bad debt deduction that fully offset all
23 taxes owed was filed with the IRS on September 20, 2007.

1 74. Conn Vu, as president of Anglo Capital, signed the Form 1120 U.S. Corporation
2 Income Tax Return under penalties of perjury, declaring that he had examined the contents of the
3 tax return and the accompanying schedules and that the information was accurate to the best of
4 his knowledge.

5

Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
	Signature of officer	Date	Title
		9-13-2007	President

6

7 75. However, Conn Vu knew or should have known that there was no basis to claim a
8 bad debt deduction on Anglo Capital's year 2006 corporate income tax return, which he signed
9 on September 13, 2007. Indeed, Conn Vu knew as early as 2005 that the IRS was disallowing
10 inflated losses similar to these bad debt deductions, and that the IRS considered intermediary
11 transactions like the one involving TORC to be abusive tax avoidance schemes.

12 76. Conn Vu also was involved in defending Anglo Capital in connection with the
13 IRS's later audit of the TORC transaction because he was the sole officer and director of Anglo.
14 The IRS disallowed Anglo's bad debt deduction in its entirety. However, no tax was ever paid
15 by Anglo Capital because the company was left insolvent (by design) after the intermediary
16 transaction. Additionally, no tax ever was paid by Conn Vu on behalf of Anglo Capital as an
17 officer of the corporation.

18 **B. The H.F.A. Transaction**

19 77. In April 2006, Conn Vu promoted, implemented and facilitated an IT transaction
20 using the promoter company Anglo Capital, of which he was a director and officer.

21 78. H.F.A. was a personal holding company formed for investment purposes on
22 January 18, 1907. It had 15 individual and trust shareholders as of 2006. The company held
23 appreciated marketable securities worth approximately \$32 million.

1 79. The shareholders of H.F.A. wanted to “cash out” and agreed to sell their shares of
2 stock to TCAC II for \$27,350,000, subject to certain adjustments if the portfolio increased or
3 decreased in value prior to the closing. TCAC II was owned by TCAC.

4 80. The intermediary transaction was promoted to H.F.A. by Sean McNabola and
5 Harold Levine, Conn Vu’s co-promoters, as a way to accomplish the sale and avoid paying taxes
6 on the associated gains. To implement it, TCAC assigned its shares in TCAC II to Anglo
7 Capital, the Promoter Entity of which Conn Vu was the officer and/or director. Anglo Capital
8 then completed the stock sale transaction and immediately caused H.F.A. to sell its marketable
9 securities.

10 81. To complete the acquisition of H.F.A. by Anglo Capital through the use of the IT
11 structure, “financing” for the stock purchase was provided by Prime Asset Business Trust
12 (“PABT”), which was a company managed by Conn Vu. Other associates of the promoters also
13 provided financing, including M.R. through the entity RWS, S.W. through the entity T.W.G.,
14 and R.S. through the entity F.S.F. Conn Vu, as manager of PABT, is listed as the signatory on
15 the Credit Agreement providing a portion of the “loan” to complete the transaction.

16 82. Upon the sale of all of the shares of H.F.A., the marketable securities were
17 immediately sold and the proceeds from the sale were used to repay the acquisition “loans” to the
18 above parties, including Conn Vu and PABT. The remaining proceeds constituted the profit
19 generated by Anglo Capital (and its co-promoters) for promoting the transaction.

20 83. On April 24, 2006, the same day as the closing of the stock purchase, H.F.A.
21 purportedly merged into Anglo Capital under 26 U.S.C. § 368(a)(1)(F). At this point, Anglo
22 Capital had long-term capital gains of \$27,013,807 and \$2,247,263 from the sales of H.F.A.’s
23 marketable securities. However, the capital gains were then fully offset by Anglo Capital’s

1 purported bad debt so that no tax was paid on the capital gains from the transaction. The bad
2 debt used to offset the gain was obtained by Anglo through the use of a DAT shelter and
3 included bounced checks from two Brazilian retailers. The investment activities of H.F.A. were
4 not continued following its merger with Anglo Capital.

5 84. The H.F.A. IT transaction could not have been completed but for Conn Vu's
6 approval of the operative documents for the transaction, including the Stock Purchase Agreement
7 and the PABT loan documents that provided the financing for the transaction.

8 85. The Stock Purchase Agreement for the H.F.A. transaction contained several
9 statements that Conn Vu knew or had reason to know were false or fraudulent. First, the
10 agreement falsely represented that taxes would be paid on the gains from the transaction.
11 However, Conn Vu knew or should have known that this statement was false because he and his
12 co-promoters intended to offset any gains with a bogus bad debt deduction.

13 86. Similarly false was the representation in the Stock Purchase Agreement that
14 Anglo Capital was acquiring H.F.A.'s shares "for investment." Conn Vu knew or should have
15 known that Anglo Capital did not intend to, and did not in fact, continue any business activities
16 with respect to H.F.A. and did not "invest" in the H.F.A. shares. Rather, Anglo Capital
17 purchased H.F.A.'s shares for the purpose of (a) retaining a portion of the profits from H.F.A.'s
18 sale, and (b) offsetting the taxable gains from the transaction using bad debt.

19 87. Conn Vu, as president of Anglo Capital, signed the Form 1120 U.S. Corporation
20 Income Tax Return under penalties of perjury, declaring that he had examined the contents of the
21 return and the accompanying schedules and that the information was accurate to the best of his
22 knowledge.

23

1 88. Conn Vu knew or should have known that there was no basis to claim a bad debt
2 deduction on Anglo's year 2006 corporate income tax return, which he signed on September 13,
3 2007. Indeed, Conn Vu knew as early as 2005 that the IRS was disallowing deductions based on
4 bogus losses, and that the IRS considered intermediary transactions like the one involving H.F.A.
5 to be abusive tax avoidance schemes.

6 89. Conn Vu also was involved in defending Anglo Capital in connection with the
7 IRS's later audit of the H.F.A. transaction because he was the sole officer and director of Anglo.
8 The IRS disallowed Anglo's bad debt deduction in its entirety. However, no tax was ever paid
9 by Anglo Capital because the company was left insolvent (by design) after the intermediary
10 transaction. Additionally, no tax ever was paid by Conn Vu on behalf of Anglo Capital as an
11 officer of the corporation.

12 **C. The VMH Transaction**

13 90. In December 2008, Conn Vu promoted, implemented and facilitated an unlawful
14 intermediary transaction tax scheme through Anglo Capital that targeted VMH E.C. ("VMH").

15 91. VMH was a New York State corporation formed on May 27, 2005 for the
16 purposes of real estate development. In 2005, a real estate developer was the sole shareholder of
17 VMH.

18 92. Prior to Anglo Capital's acquisition of VMH in December 2008, VMH's assets
19 consisted of approximately \$1,540,984 in cash and a 40% partnership interest in V.E.M., LLC, a
20 limited liability company engaged in selling residential condominium units to third-parties in
21 Manhattan.

22 93. On December 11, 2008, the sole shareholder of VMH formed two British Virgin
23 Islands entities: QQQ and C.H. Limited. On December 17, 2008, 100% of the stock of VMH was

1 transferred from the sole shareholder to QQQ. On December 19, 2008, 100% of the stock of
2 QQQ was transferred to C.H. Limited.

3 Anglo Capital's Purchase of QQQ

4 94. The planning of the VMH transaction began, at least, by September 23, 2008,
5 when one of Conn Vu's associates, F.G., sent an email to McNabola pitching an opportunity to
6 execute an IT transaction. The email explained the "transactions will be structured for the
7 purchase of 51% of the companies with an option to purchase the remaining 49% after closing."
8 F.G. also explained that the "combined funds needed for the transaction will be around \$10-11
9 million." On September 24, 2008, McNabola responded to F.G.'s email by asking "Please let me
10 know the level of gain to be covered." F.G. replied "\$9-10 M," and asked McNabola what entity
11 should be used in the transaction. McNabola answered: "Anglo Capital."

12 95. Anglo Capital then purchased 100% of the stock of QQQ in two purportedly
13 separate stock purchase transactions in order to acquire VMH. According to co-promoter Harold
14 Levine, the purpose for the two transactions was to avoid making the transactions "substantially
15 similar" to the transactions listed in IRS Notice 2008-111. In other words, the purpose of the two
16 transactions was so that Conn Vu and his co-promoters could avoid the disclosure requirement
17 for such intermediary transactions and, thus, hopefully avoid IRS detection of this unlawful
18 transaction.

19 96. The first stock purchase occurred on December 19, 2008, two days after QQQ
20 obtained a 100% interest in VMH. In this purchase, Anglo Capital purchased 51% of the stock of
21 QQQ from C.H. Limited for \$4,375,000. QQQ's sole asset at the time of Anglo Capital's
22 acquisition was its 100% interest in VMH.

23

1 97. Conn Vu, as President of Anglo Capital, executed the QQQ 51% stock purchase
2 agreement on behalf of Anglo Capital.

3 98. The next day, on December 20, 2008, VMH sold its 40% interest in V.E.M., LLC,
4 to V7M, LLC, for \$8,225,800, leaving VMH with only cash.

5 99. The second stock purchase occurred on December 22, 2008, when Anglo Capital
6 and C.H. Limited entered into an agreement where Anglo Capital purchased QQQ's remaining
7 49% of stock from C.H. Limited for \$4,215,000 (\$3,115,000 in cash and a promissory note of
8 \$1,100,000).

9 100. Conn Vu, as President of Anglo Capital, executed the QQQ 49% stock purchase
10 agreement on behalf of Anglo Capital.

11 101. The only asset QQQ owned at the time of the acquisition was 100% of the stock
12 of VMH Equities, which in turn held \$9,766,784 in cash. With the purchase of 100% of QQQ's
13 stock, Anglo Capital held a sole interest in VMH and its cash.

14 102. Anglo Capital falsely promised, according to the first and second QQQ stock
15 purchase agreements that Conn Vu signed, to "prepare and file on a timely basis all federal, state,
16 and local income tax returns" of QQQ for the periods commencing on and after January 1, 2008,
17 and "pay all federal, state and local taxes of QQQ and its subsidiaries that are due." However,
18 Conn Vu and Anglo Capital intended to avoid any such liability by merging VMH and QQQ
19 Corp. into Anglo Capital.

20 103. On December 22, 2008, immediately after Anglo Capital's acquisition of QQQ
21 Corporation, Anglo Capital filed a Certificate of Domestication and Certificate of Incorporation
22 of QQQ with the State of Delaware. On December 24, 2008, Anglo Capital filed a certificate of
23 merger with Delaware, effectively merging VMH with QQQ. Also on December 24, 2008,

1 Anglo Capital filed a certificate of merger of QQQ with Anglo Capital, with Anglo Capital as the
2 surviving entity.

3 104. The cash from VMH Equities totaling \$9,766,784 was deposited into Herrick
4 Feinstein's escrow account, which was under the control of Harold Levine. These funds were
5 then used to pay for the second stock purchase on December 22, 2008, in the amount of
6 \$3,115,000, and for the promissory note payment of \$1,100,000 on December 30, 2008.

7 105. The proceeds in excess of the funds used for the stock purchase was "the spread"
8 and constituted the profit earned by Anglo Capital (and its associates, including KLE LLC and
9 MRF) for participating in the transaction.

10 *Purpose Behind the VMH IT Transaction*

11 106. The sole purpose for the VMH transaction was to avoid VMH's 2008 tax liability.
12 No legitimate business purpose existed for the transaction. Anglo Capital sought to acquire QQQ
13 in order to obtain a 100% interest in VMH and offset the taxable gain resulting from VMH's
14 ownership interested in VEM, with Anglo Capital's bogus debt from its DAT transactions,
15 reducing VMH's tax liability.

16 107. Emails from participants in the VMH transaction and from the accountants hired
17 to prepare Anglo Capital's 2008 tax return demonstrate the fraudulent purpose behind the VMH
18 transaction. On October 2, 2009, a CPA with R.K. & Co. sent an email to his superior outlining
19 the VMH transaction chronology. The CPA asks his superior to review the chronology of the
20 VMH transaction and assist him in understanding the transaction because, as the CPA rightly
21 suggests, the transaction "seems like a tax dodge."

22 108. On November 25, 2009, a tax supervisor at R.K. & Co., sent an email to one of
23 Conn Vu's co-promoters titled "VMH, 2008 DRAFT Return." The email states "We have

1 computed a loss on the [VMH] sale of the partnership interest in [V.E.M.] to [V7M] based on
2 our understanding of VMH's tax basis (i.e. outside basis) in the partnership, but it is not enough
3 to offset the large amount of gain from the K-1." The tax supervisor then asks "Was there an
4 understanding that another party was to report the gain?" The same day, Conn Vu's co-promoter
5 responded to the email stating "No other party is supposed to report the gain. As you know,
6 VMH was merged into QQQ which was merged into Anglo Capital, Inc. There should be losses
7 in Anglo to offset the gain from VMH Equities."

8 109. R.K. & Co. did not report the VMH transaction as concocted by Conn Vu and his
9 co-promoters. On December 7, 2009, a R.K. & Co. CPA sent an email to McNabola titled "2008
10 VMH Return," and copied Conn Vu on the email, explaining that Anglo Capital's "losses" could
11 not be used to offset gains from the VMH sale.

12 110. Instead, Conn Vu and those involved in the scheme found an alternative method
13 to avoid paying VMH's 2008 tax liability. Conn Vu sent an email to McNabola on December 11,
14 2009, stating "so our problem is that I think we are going to have to file them [Anglo Capital's
15 and VMH's tax returns] the way they are and have it go to [IRS] collections."

16 111. Subsequently, on October 6, 2010, a tax manager at R&C LLP, a CPA firm that
17 replaced R.K. & Co., sent an email to Conn Vu about VMH's 2008 tax return asking, "What's
18 your thought on 2008? File or await assessment? If any income was earned, and tax is due, it
19 would be better to file. If not, we can await assessment, and respond accordingly." Conn Vu
20 responded "Let's wait. See if they send me something else."

21 112. Conn Vu signed Anglo's 2008 tax return as the president of Anglo Capital, and
22 filed it with the IRS. The tax return reported an income tax liability of \$3,581,667. But Conn Vu
23 had no intention of paying this tax liability. In a statement under oath, Conn Vu admitted that the

1 tax return showed a tax liability and that he had “no money on file to pay it.” As his email above
2 states, he simply “had it go to collections.” To date, nothing has been paid toward Anglo’s
3 delinquent tax liability because the corporation was left insolvent by design.

4 **E. Other Intermediary Transactions**

5 113. Conn Vu also promoted, implemented and facilitated intermediary transactions, as
6 well and at least one other tax shelter transaction using the promoter company First Active.
7 Conn Vu began serving as the President, Secretary and Treasurer of First Active on August 10,
8 2006, and on February 27, 2008, became its Director until he resigned in 2012.

9 114. The intermediary transactions in which the Promoter Entity First Active
10 participated involve the following target corporations: VMG on or about December 7, 2005;
11 NOF on or about December 7, 2005; 254 W. 54th Street, on or about December 13, 2005; PAF,
12 on or about January 27, 2006; and UNO E.L. on or about February 9, 2006. In addition, Conn
13 Vu also promoted, implemented and/or facilitated a transaction involving 63 Wall on or about
14 January 1, 2007, which generated taxable corporate income that was also fully offset by
15 purported Chinese bad debt from a DAT transaction, thus avoiding a substantial amount of
16 corporate income taxes.

17 115. As an officer and/or director of First Active, Conn Vu signed the tax returns each
18 tax year from 2005 through 2010 claiming the bad debt deductions from the purported Chinese
19 debt obtained via a DAD shelter that fully offset the taxable income of First Active. For
20 example, an accountant with NDH Group prepared First Active’s 2005 corporate income tax
21 return but refused to sign the return because he was uncomfortable with the Chinese bad debts
22 reflected on the return. Instead, Conn Vu marked the 2005 return as “self-prepared” and signed
23 it as President of First Active.

1 116. Conn Vu signed the returns each year thereafter as President and CEO of First
2 Active Capital even though he knew or should have known that the IRS was disallowing the bad
3 debt deductions and considered the intermediary transactions an abusive tax avoidance scheme.

4 **THE STATE TAX CREDIT TRANSACTIONS**

5 117. State low income housing tax credits (“LIH tax credits”) and state historic tax
6 credits (“historic tax credits”) are state tax credits earned by real estate project developers who
7 are building or rehabilitating qualified property.

8 *Low Income Housing Tax Credits*

9 118. The purpose of the LIH tax credit is to provide the private market with an
10 incentive to invest in affordable rental housing. Each year, state agencies – typically state
11 housing finance agencies – award the credits to developers of qualified projects.

12 119. LIH tax credits are earned annually over a 10-year period by the property owner.
13 However, the developer typically needs some of the money immediately to pay for development
14 costs of the property, and thus typically sells the rights to the credits in exchange for up-front
15 cash to develop the property.

16 120. Many developers sell their allocated LIH credits to investors to raise equity for
17 their projects. This reduces the debt that the developer would otherwise have to incur on
18 developing the project. Because the debt is lower, a tax credit property typically can, in turn,
19 offer lower, more affordable rents.

20 121. In exchange for purchasing the tax credits, investors generally receive a dollar-
21 for-dollar credit against their state income tax liability.

22 122. For example, \$10,000 in annual LIH tax credits would generate a total of
23 \$100,000 in state tax credits over 10 years. Thus, to raise up-front cash, a property developer

1 might sell the right to those state tax credits to an investor for approximately 85% of the face
2 value of the credits.

3 *Historic Tax Credits*

4 123. Historic tax credits are designed to encourage real estate developers to preserve,
5 reuse and rehabilitate existing historic buildings rather than build anew. Historic tax credits also
6 are typically awarded by state housing finance agencies to developers of qualified projects.

7 124. Certified historic structures are eligible for a credit equal to 25 percent of the cost
8 of rehabilitation. Historic tax credits are earned upon completion of the rehabilitation project.

9 125. Rehabilitation project developers, however, typically want equity immediately to
10 help pay for rehabilitation costs of the property, and thus typically sell the rights to the future
11 credits in exchange for up-front cash to cover some of the rehabilitation costs.

12 126. Typically, the property developer will sell the tax credits to a tax credit investor,
13 in exchange for cash. The tax credit investor generally pays anywhere from 50 cents to 90 cents
14 on the dollar for the tax credits, depending upon the variables of the project. The developer will
15 then have up-front cash for rehabilitation, and the credits (which are typically not useful for the
16 developer) can be used by the investor in the year the project is completed.

17 127. Between 2005 and 2011, Conn Vu unlawfully promoted, implemented and/or
18 participated in three types of abusive tax shelter transactions involving LIH tax credits and
19 historic tax credits through the Promoter Entities of which he was an officer, director and/or
20 manager. These schemes are abusive transactions, and were designed to enable real estate
21 project owners to avoid taxes arising from the sale of these state tax credits to third-party
22 purchasers, thus enhancing the value of their tax credits to the real estate developer by avoiding
23 income tax on the gains from the sale.

1 128. Conn Vu implemented the scheme using corporate entities for which he was an
2 officer and/or director, including First Active, AIB Capital, Anglo Capital, and BOI Capital. In
3 total, Conn Vu and the Promoter Entities participated in approximately 75 abusive state tax
4 credit transactions, which garnered Conn Vu and his co-promoters fees of approximately
5 \$8,339,856.

6 129. For each of these state tax credit transactions, Conn Vu signed most, if not all, of
7 the operative documents for the transaction as the officer, director and/or manager of the
8 Promoter Entity.

9 **A. The Loss Partner Scheme**

10 130. In one type of scheme that Conn Vu promoted, implemented and/or participated
11 in in violation of I.R.C. §§ 6700 and 6701, the Promoter Entity Agate and then AIB Capital
12 served as the “loss partner” for real estate projects utilizing state LIH tax credits or historic tax
13 credits (the “loss partner scheme” or “loss partner transaction”) to fund property development.

14 131. As the “loss partner,” the Promoter Entity uses purported Chinese and Brazilian
15 bad debt obtained via DAD or DAT shelter transactions to avoid taxes arising from the sale of
16 these state tax credits. The object is to avoid income taxes upon the sale of the credits to third-
17 party purchasers, thus enhancing the value of the credits to the real estate developer by avoiding
18 the payment of income taxes on the gains from the sale.

19 132. The real estate projects are generally owned through a tier of partnerships or
20 LLC’s and the state tax credits are sold in order to raise money for the development of the
21 project. Here, many of the real estate projects were in Missouri.

22 133. Typically, in this scheme, prior to the real estate project’s sale of LIH tax credits
23 or historic tax credits, the promoters develop a structure whereby the Promoter Entity becomes a
99.99% member of a specially-created LLC in exchange for a capital contribution of \$1,000.00.

1 This entity was typically referred to as a “state member” entity. An entity controlled by the real
2 estate project developer then typically would contribute \$100 to the state member entity in
3 exchange for the remaining .01% interest in the state member entity. While typically the state
4 member entity holds a relatively small interest in the real estate project owner, 100% of the state
5 tax credits are allocated from the project owner to the state member entity. The state member’s
6 purposes included receiving, allocating, and distributing tax credits, and selling or transferring
7 tax credits.

8 134. After the establishment of the state member entity, the tax credits are allocated
9 from the real estate project owner to the state member entity. The tax credits are then sold by the
10 state member entity to a third party. The income from the sale of these credits is then allocated
11 to the Promoter Entity via its 99.99% interest in the state member entity.

12 135. Conn Vu signs most of the operative documents for the state tax credit
13 transactions, including the Operating Agreements, Letter Agreements and Purchase Option
14 Agreements.

15 136. Next, the Promoter Entity reports the income from the sale of the state tax credits
16 on its income tax return, but then uses losses such as Chinese bad debt from either DAD or DAT
17 shelters to completely offset the income and avoid paying taxes. This increases the value of the
18 tax credits for the real estate project owner, as virtually all the income derived from the sale of
19 those tax credits was sheltered.

20 137. The Promoter Entity would then exit the specially-created partnership structure,
21 never intending to retain its interest in the real estate project for investment purposes. In
22 exchange for its participation in the transaction, the Promoter Entity would receive a fee, which
23

1 was calculated as a percentage of the amount of gain to be sheltered. Usually the Promoter
2 Entity would obtain approximately 8 to 9% of the gains sheltered.

3 138. Typically, the profits resulting from the loss partner transactions were distributed
4 to Agate (and later to AIB) through Herrick Feinstein's escrow account. Levine would forward
5 the entire amount from the Herrick Feinstein escrow account to Agate at a bank account in
6 California, which was under the control of Conn Vu.

7 139. Between 2005 and 2011, the Promoter Entities participated in approximately 44
8 loss partner transactions resulting in profits of about \$6.5 million.

9 140. The loss partner schemes were initially run using Agate, which was formed on
10 March 15, 2000. The Millennium Recovery Fund, an entity controlled by McNabola, was listed
11 as the sole member of Agate on Agate's tax returns between 2003 and 2005. On August 19,
12 2005, the Millennium Recovery Fund sold its interest in Agate to First Active for \$10. From that
13 point forward, all of Agate's income and losses were reported on First Active's returns. Agate
14 was transferred to First Active because the Millennium Recovery Fund had run out of bad debt
15 losses to offset taxable income, and First Active still had such losses that it planned to claim on
16 its return.

17 141. After being sold to First Active, Agate participated in approximately 42 loss
18 partner transactions, all during the time that Conn Vu was an officer, director and/or manager of
19 First Active and Agate, and Conn Vu signed many of the operative documents for the
20 transactions.

21 142. Each of Agate's 42 loss partner transactions were structured similarly to the "411
22 State Member Transaction," described immediately below.
23

1 **The 411 State Member Transaction**

2 143. The 411 State Member transaction involved the sale of Missouri historic tax
3 credits earned in connection with the rehabilitation of several properties located in St. Louis,
4 Missouri (the “St. Louis properties”).

5 144. The entities involved in this loss partner transaction include:

6 A. 411 Landlord, LLC (the “411 Landlord” or the “Project Entity”). 411 Landlord
7 owned the St. Louis properties.

8 B. The real estate project manager (the “Project Manager”), which managed the
9 rehabilitation of the St. Louis properties.

10 C. 411 State Member, LLC (“411 State Member”). 411 State Member was an entity
11 formed for purposes of the loss partner investment. The Project Manager contributed capital of
12 \$100 for a .01% interest in 411 State Member. Agate, the investment member, contributed
13 \$1,000 for a 99.99% interest in 411 State Member.

14 D. Agate. Agate functioned as the “loss partner.” Conn Vu was the officer, director
15 and/or manager of Agate in connection with the 411 State Member transaction (as well as the
16 other 41 loss partner transactions using Agate as the “loss partner”).

17 145. Several documents set forth the structure of the 411 State Member transaction,
18 including (but not limited to) the Operating Agreement of 411 State Member (the “411 Operating
19 Agreement”), the letter agreement concerning the sale of Missouri historic preservation tax
20 credits and other matters (the “Side Letter Agreement”), and the Purchase Option Agreement
21 concerning 411 State Member (the “Purchase Option Agreement”), all of which were signed by
22 Conn Vu on behalf of Agate as its director, officer and/or manager.
23

1 146. The 411 Operating Agreement. In December 2008, the Project Manager and
2 Agate entered into the 411 Operating Agreement, which provided, among other things, for 411
3 State Member to receive, allocate, and distribute net proceeds from the sale of the Missouri tax
4 credits. Specifically, among other things, the 411 Operating Agreement confirms that, pursuant
5 to the applicable Project Entity Agreement, 100% of the Missouri historic tax credits were
6 allocated to 411 State Member, with the proceeds from the sale of the Missouri tax credits (to a
7 third party) allocated to its members. Thus, 99.99% of the gain from the sale of the Missouri tax
8 credits was allocated to Agate. Conn Vu signed the Operating Agreement as manager of Agate.

9 147. The Side Letter Agreement. On or about the same day the 411 Operating
10 Agreement was entered into, 411 State Member and Agate also entered into a Side Letter
11 Agreement. The Side Letter Agreement specified the fees and transaction costs to be paid by
12 411 State Member from the proceeds of the Missouri tax credit sales. Pursuant to the Side Letter
13 Agreement, upon admission of Agate into 411 State Member, 411 State Member agreed to pay
14 \$5,000 in attorney's fees to Herrick Feinstein with the following paid to Agate:

15 A. 8.75% of the gain from the sale, to be paid within 10 days of receipt of the
16 Missouri tax credit sales proceeds;

17 B. 8.75% of any other taxable income of 411 State Member that is allocated to
18 Agate, to be paid within the earlier of several specified time periods. Conn Vu signed the Side
19 Letter Agreement on behalf of Agate as its Manager.

20 148. The Purchase Option Agreement. Finally, also on or around the same date that
21 the 411 Operating Agreement and Side Letter Agreement were entered, 411 State Member and
22 Agate entered into the Purchase Option Agreement. Pursuant to this agreement, Agate granted
23 an option to the Project Manager to purchase Agate's member interest in 411 State Member for

1 fair market value plus the amount of any fees due to Agate. The term of the option began on
2 January 1, 2011 – approximately two years following execution of the Purchase Option
3 Agreement – and expired in June, 2013. Conn Vu signed the Purchase Option Agreement as
4 manager of Agate.

5 149. The 411 State Member transaction was expected to generate approximately \$2.3
6 million of reportable income for Agate from the sale of the Missouri tax credits, which were sold
7 by 411 State Member to a third party in 2009.

8 150. First Active, as Agate's owner, reported the income that Agate earned as a
9 member of the specially-created state member entity, as reported on the Federal Schedule K-1
10 forms that it received. It then completely offset that income using the purported Chinese bad
11 debt.

12 151. The 411 State Member transaction could not have been completed but for Conn
13 Vu's approval of and signature on the operative documents for the transaction, including the
14 Operating Agreement, Side Letter Agreement and Purchase Option Agreement.

15 152. First Active's year 2009 income tax return claiming the bad debt deduction (via a
16 net operating loss carry-forward) that fully offset all taxes owed was late-filed with the IRS on
17 November 18, 2011.

18 153. Conn Vu, as president of First Active, signed the Form 1120 U.S. Corporation
19 Income Tax Return under penalties of perjury, declaring that he had examined the contents of the
20 tax return and the accompanying schedules and that the information was accurate to the best of
21 his knowledge.

22 154. However, Conn Vu knew or should have known that there was no basis to claim a
23 net operating loss deduction based on a bogus bad debt deduction from prior years on First

1 Active's year 2009 corporate income tax return, which he signed on July 1, 2011. Indeed, Conn
2 Vu knew as early as 2005 that the IRS was disallowing bogus losses of this type.

3 155. Conn Vu also was involved in defending First Active in connection with the
4 IRS's later audit of the 411 State Member transaction because he was the sole officer and
5 director of First Active. The IRS disallowed First Active's bad debt deduction (and the net
6 operating loss carry-forward based on the bad debt deduction) in its entirety. However, no tax
7 was ever paid by First Active (or by Conn Vu as an officer of First Active) because the company
8 was left insolvent (by design).

9 *The Substitution of AIB Capital for Agate as the "Loss Partner" in State Credit*
10 *Transactions Because First Active Exhausted the Bad Debt it Received via a DAD Shelter*

11 156. In late 2009, Conn Vu and his co-promoters began substituting and using AIB
12 Capital instead of Agate as the "loss partner" in the loss partner transactions. AIB Capital
13 became the new "loss partner" because First Active exhausted the losses it received via the DAD
14 shelter in which it participated. In addition, the State of New York opened an income tax
15 examination of First Active, Agate's parent, in June, 2009 and McNabola was concerned that the
16 IRS would soon follow suit.

17 157. The loss partner transactions involving AIB Capital as the loss partner were
18 structured similarly to the Agate loss partner transactions. AIB Capital participated in
19 approximately 10 loss partner transactions, eight of which originated with Agate.

20 158. The money flow for the AIB Capital loss partner transactions worked similarly to
21 the Agate loss partner transactions. AIB Capital's fee for serving as a loss partner would be paid
22 to Herrick Feinstein's escrow account, and Levine would then forward the entire amount to a
23 bank account in California, under Conn Vu's control.

1 159. Between 2010 and 2011, AIB Capital generated profits of more than \$1.1 million
2 for Conn Vu and his co-promoters for promoting the loss partner scheme.

3 *Loss Partner Scheme: False Statements*

4 160. The transactional documents signed by Conn Vu in connection with the 411 State
5 Member transaction and other loss partner schemes utilizing Agate and AIB Capital included a
6 number of material statements with respect to securing a tax benefit that Conn Vu knew or had
7 reason to know were false.

8 161. For example, typically, the operating agreements for the loss partner schemes
9 included a representation and warranty that the promoter entity – Agate or AIB Capital – was
10 acquiring its interest in the state member “for its own account and for investment only and not
11 for the purpose of, or with a view to, the resale or distribution of all or any part thereof, nor with
12 a view to selling or otherwise distributing said interests or any part thereof at any particular time
13 or under any predetermined circumstances.” In fact, as Conn Vu knew or should have known, at
14 the time Agate and AIB Capital entered into these operating agreements, it was known that the
15 membership interests acquired by them would be sold back – for a nominal amount – to the real
16 estate developer or its affiliated entities after the tax credit recapture period expired. Neither
17 Agate nor AIB Capital ever intended to hold the interests as an investment.

18 162. In addition, both Agate and AIB Capital represented and warranted that they had
19 “total assets in excess of \$5,000,000” and that their investment constituted “less than 10%” of
20 their net worth. In fact, these Promoter Entities were thinly capitalized, and any cash they
21 received was distributed to the promoters or their associates. The majority of assets reflected on
22 their balance sheets were investments in the state member entities, which they later sold back for
23 nominal amounts.

1 **B. The Corporate Acquisition Scheme**

2 163. The second type of tax credit scheme that Conn Vu promoted, implemented
3 and/or participated in in violation of I.R.C. §§ 6700 and 6701 involved corporations that owned
4 LIH tax credits and that were acquired by Missouri real estate developers or their companies (the
5 “Missouri Real Estate Developers”).

6 164. In this second type of tax credit scheme, BOI Capital (“BOI”), which served as
7 the Promoter Entity in these transactions, acquired the corporations holding the LIH tax credits
8 through a series of stock purchase and merger transactions (the “corporate acquisition scheme”).

9 165. In the first step of this corporate acquisition scheme, BOI acquires the stock of the
10 corporations in exchange for promissory notes. These acquired corporations are partners in
11 lower tiered partnership entities that own LIH tax credits. Based on collateral pledges and
12 limited partnership agreements between the acquired corporation and the lower tier entity, BOI
13 was allocated 100% of the state tax credits.

14 166. Next, BOI claimed on its tax returns that the newly acquired corporations were
15 merged into BOI pursuant to IRC § 368(a)(1)(C).

16 167. After the purported mergers, BOI sold the LIH state tax credits to third parties.
17 To accomplish this, BOI entered into a remarketing agreement with an entity owned by the
18 Missouri Real Estate Developers, under which the entity provided remarketing services relating
19 to the LIH tax credits and acted as BOI’s agent to identify purchasers of the tax credits.

20 168. BOI reported the gain from the sale of the LIH tax credits on its 2008 income tax
21 return. BOI used purported bad debt losses to offset the gains from the sale of the LIH tax
22 credits. Even though BOI sold state tax credits during the taxable years 2009 and 2010, it
23 reported no sales of state tax credits on either year’s return.

1 169. The proceeds from the sale of the LIH tax credits were transferred to an escrow
2 account with a law firm, for distribution under the direction of the original shareholders. A
3 portion of the proceeds from the sale of the LIH tax credits was used to repay the promissory
4 note to the original shareholders. A portion of the sale proceeds was distributed to the
5 remarketing agents (the Missouri Real Estate Developers) and to the law firm holding the escrow
6 account for accounting and legal services. A portion of the sale proceeds was also transferred to
7 a bank to repay loans for the underlying real estate project.

8 170. The net remaining proceeds of \$1,835,344, which equaled approximately six
9 percent of the proceeds from the sale of the LIH tax credits, were transferred to the Herrick
10 Feinstein escrow account under the control of Harold Levine. Levine then distributed the fees to
11 the co-promoters of the transaction.

12 171. Between 2008 and 2010, the Promoter Entities participated in approximately 30
13 corporate acquisition schemes while Conn Vu was the director, officer and/or manager of the
14 Promoter Entities.

15 172. One example of a corporate acquisition scheme is the SCS II Fund transaction,
16 which involved the sale of Missouri LIH tax credits generated from the rehabilitation of low-
17 income housing projects in Missouri (the "Missouri projects").

18 173. The entities involved in this scheme included:

19 A. B.V.A. LP ("BVA"). BVA owned, operated and/or developed the Missouri
20 projects that received LIH tax credits.

21 B. S.C.S. II, LLC ("SCS"). SCS held a 0.01 percent limited partner interest in BVA.

22 C. LIHTC Partners, LLC ("LIHTC Partners"). LIHTC Partners owned a 99.94
23 percent interest in SCS.

1 D. SCS II Fund. SCS II Fund was formed in January 2008.

2 E. BOI. BOI served as the Promoter Entity, of which Conn Vu was the officer,
3 director and/or manager.

4 F. The Missouri Real Estate Developers. The Missouri Real Estate Developers
5 served as the real estate investors. On or around December 31, 2007, the Missouri Real Estate
6 Developers owned 100% interest in LIHTC Partners. Beginning in January 2008, they both also
7 served as directors and officers of SCS II Fund.

8 174. The SCS II Fund transaction primarily involved four steps.

9 175. First, in January 2008, LIHTC Partners transferred its interest in SCS to SCS II
10 Fund, pursuant to 26 U.S.C. § 351. Under section 351, a transferor (such as LIHTC Partners)
11 can transfer property (such as its interest in SCS) to a corporation in exchange for stock in that
12 corporation. Thus, immediately upon the transfer of its interest in SCS to SCS II Fund, LIHTC
13 Partners obtained stock sufficient to give it a controlling interest in SCS II Fund.

14 176. Second, on or around February 13, 2008, BOI purchased the stock of SCS II Fund
15 from LIHTC Partners in exchange for a promissory note in the amount of \$1,085,000. Effective
16 February 13, 2008, the Missouri Real Estate Developers resigned as directors and officers of
17 SCS II Fund.

18 177. The stock purchase agreement states that all notices should be sent to Conn Vu as
19 President of BOI, with a copy to Harold Levine of Herrick Feinstein.

20 178. The stock purchase agreement represented, falsely, that BOI was acquiring the
21 stock of SCS II Fund “for investment.” The stock purchase agreement also falsely represented
22 that no person was entitled to any fee or commission in connection with the transaction
23 contemplated in the stock purchase agreement.

1 179. The stock purchase agreement also provided, falsely, that BOI agreed to cause
2 SCS II Fund “to prepare and file on a timely basis all federal, state and local tax returns of SCS
3 II Fund for periods commencing on and after the Closing Date, and to pay all federal, state and
4 local taxes of SCS II Fund that are due.” Conn Vu signed the stock purchase agreement as the
5 sole officer of BOI.

6 180. In the third step of the transaction, as set forth in BOI’s tax return for tax year
7 2008, SCS II Fund was merged into BOI purportedly pursuant to IRC § 368(a)(1)(C). As a
8 result of the merger, the LIH tax credits held by SCS II Fund, which were to be allocated to SCS
9 II Fund, were allocated to BOI.

10 181. Fourth, in 2008, BOI sold the LIH tax credits held by SCS II Fund to third parties.
11 The Missouri Real Estate Developers arranged these sales. BOI reported \$218,584 in income on
12 its tax return for tax year 2008 from the sale of the SCS LIH tax credits, and used purported bad
13 debt losses to offset all of this income. Conn Vu signed the tax return as the sole officer of BOI.

14 182. However, Conn Vu knew or should have known that there was no basis to claim a
15 bad debt deduction on BOI’s year 2008 corporate income tax return. Indeed, Conn Vu knew or
16 should have known as early as 2005 that the IRS was disallowing deductions based on bogus
17 losses.

18 183. BOI also received in 2009 approximately \$44,000 in income from SCI II’s LIH
19 tax credits sold in 2008. However, BOI did not report on its tax return for tax year 2009 any of
20 the income it received from the sale of LIH tax credits.

21 184. The proceeds received by BOI for the sale of the SCS II’s LIH tax credits were
22 allocated among the parties involved in the transaction. Approximately \$12,036.59 was
23 allocated to BOI, and approximately \$66,642.91 was allocated to LIHTC Partners.

1 **C. The Refundable Credit Scheme**

2 185. Conn Vu also promoted, implemented and/or participated in a third type of state
3 credit transaction in violation of I.R.C. §§ 6700 and 6701, which involved refundable state tax
4 credits (the “refundable credit scheme”). Anglo Capital served as the Promoter Entity. Conn Vu
5 was the director, officer and/or manager of Anglo Capital during the promotion of this scheme.

6 186. The refundable credit scheme involved State of Iowa refundable historic tax
7 credits held by K.C., LLC (“KC”). The Missouri Real Estate Developers were the real estate
8 investors in KC. The Missouri Real Estate Developers formed SCS Iowa and transferred
9 ownership interest in the project to SCS Iowa, resulting in SCS Iowa holding a 99.99% interest
10 in KC.

11 187. In the first step of the refundable credit scheme, SCS Iowa filed a corporate tax
12 return with the State of Iowa for fiscal year ending October 31, 2007, in which it requested a
13 refund of the refundable historic tax credits in the amount of approximately \$2,380,608.
14 Pursuant to KC’s second amended operating agreement, SCS Iowa was required to use \$1.8
15 million of the refund to make a capital contribution to KC, to repay a bank loan. Pursuant to the
16 Escrow Agreement, the tax refund was sent directly to the bank, and SCS Iowa received the cash
17 remaining after repayment of the bank loan, approximately \$580,608. This cash was combined
18 with \$1,000 in capital and was later transferred into Herrick Feinstein’s escrow account for the
19 benefit of Anglo Capital.

20 188. In the second step of the refundable credit scheme, Anglo Capital acquired the
21 stock of SCS Iowa for \$25,000. Conn Vu signed the stock purchase agreement as the sole
22 officer of Anglo Capital. Two days later, SCS Iowa was merged into Anglo Capital. The
23 purpose of these two transactions was to allow Anglo Capital to absorb the income generated

1 from the refundable historic tax credit refund. The business activities of SCS Iowa were not
2 continued after its merger with Anglo Capital.

3 189. In the third step of the refundable credit scheme, Anglo Capital reported SCS
4 Iowa's income on its tax return for tax year 2007. However, Anglo Capital incorrectly reported
5 only \$581,608 as income attributable to SCS Iowa's receipt of the refund for its refundable
6 historic tax credits. Anglo Capital did not report the remaining \$1.8 million that was refunded to
7 SCS Iowa and used to repay the bank loan. Anglo Capital then offset all of SCS Iowa's reported
8 income using purported bad debt losses. Conn Vu signed Anglo's 2007 income tax return as an
9 officer of Anglo Capital.

10 190. However, Conn Vu knew or should have known that there was no basis to claim a
11 bad debt deduction on Anglo Capital's year 2007 corporate income tax return. Indeed, Conn Vu
12 knew as early as 2005 that the IRS was disallowing bogus losses of this type.

13 191. Schedule 2.09 of the stock purchase agreement between Anglo Capital and SCS
14 Iowa, which was signed by Conn Vu, states that SCS Iowa has not made any estimated tax
15 payments, that SCS Iowa will receive a tax refund of \$2,380,608, and that the refund "*shall*
16 *create a tax liability for the tax year beginning November 1, 2007.*" However, as set forth in
17 paragraph 187, Anglo Capital did not report on its return the entire refund received by SCS Iowa.

18 192. Approximately \$345,000 of the approximately \$581,608 cash received by Anglo
19 Capital was returned to the Missouri Real Estate Developers. The remaining net profit –
20 approximately \$211,608 – was left in Herrick Feinstein's escrow accounts and commingled with
21 other funds held for Anglo Capital and its promoters.

THE DAD AND DAT TRANSACTIONS

1
2 193. The five Promoter Entities discussed above reported bad debt losses on their tax
3 returns from DAD and DAT transactions they engaged in, and then used these purported losses
4 to offset the gains and income generated from asset sales made by the target companies they
5 acquired in IT transactions, as well as from state tax credit transactions and other transactions.

6 194. Both the DAD and the DAT schemes claim to allow U.S. taxpayers to use
7 millions of dollars of foreign losses, obtained from foreign entities that pay no U.S. tax, to offset
8 their unrelated U.S. income, even though the U.S. taxpayers incur no actual losses in connection
9 with the debt involved in the schemes. The Promoter Entities engaged in 1 DAD transaction and
10 4 DAT transactions.

A. The DAD Transaction

11
12 195. The Distressed Asset Debt abusive tax scheme uses low-value, high-basis,
13 distressed debt obtained from companies in foreign countries (typically retailers or their
14 collection agencies) with substantial “built-in losses.” The DAD scheme purports to shift those
15 supposed built-in losses from the foreign owners of the distressed debt to U.S. taxpayers who do
16 not otherwise incur an economic loss in connection with the transaction, with the goal of the U.S.
17 taxpayers improperly deducting those losses and reducing their taxable income in violation of
18 U.S. law.

19 196. A DAD transaction typically involves the use of a limited liability company,
20 taxed as a partnership, to shift losses among partners entering and exiting the partnership. A
21 foreign party initially owns a distressed asset with a substantial built-in loss (such as aged unpaid
22 checks). The foreign party purportedly contributes the high-basis, low-value asset to the
23

1 partnership, which makes no election under I.R.C. § 754 and thus purportedly keeps the high
2 basis in the asset.

3 197. The partnership typically then contributes the asset to another partnership (the
4 “lower tier” partnership). Then the foreign party transfers within a short period of time its
5 interest in the upper-tier partnership to a U.S. taxpayer, who may be acting through a pass-
6 through entity.

7 198. The U.S. taxpayer contributes other property or money to the upper-tier
8 partnership in order to create basis in the taxpayer’s partnership interest. The lower-tier
9 partnership sells (or exchanges) the high-basis, low-value asset to another entity related to the
10 promoter, resulting in a significant tax loss that is allocated to the U.S. taxpayer/partner.

11 199. The U.S. taxpayer then claims the significant tax loss that has passed through the
12 partnership to offset other U.S. income or gain. The effect is that the U.S. taxpayer is benefiting
13 from the built-in economic losses in the foreign party’s distressed asset when the U.S. taxpayer
14 did not incur the economic costs of that asset.

15 200. In October 2004, Congress enacted the American Jobs Creation Act of 2004
16 (“AJCA”), which effectively shut down the entire class of DAD tax shelters by amending I.R.C.
17 §§ 704, 734 and 743.

18 201. In violation of the AJCA, First Active Capital acquired bad Chinese loans with a
19 supposed basis of \$57,683,980 via a DAD transaction through a partnership with H.I., LLC in
20 August 2005. First Active then used this distressed debt to offset the gains in connection with
21 the IT and STC transactions in which it participated in 2005, 2006, 2008, 2009 and 2010.
22 McNabola, with the assistance of Graham Taylor and P.G. structured and/or assisted with setting
23 up the DAD transaction on behalf of First Active.

1 202. In each of the years in which First Active participated in a IT and/or STC
2 transaction that resulted in gains on which it would have had to pay corporate tax, Conn Vu, as
3 an officer, director and/or manager of First Active used the debt that First Active obtained via the
4 DAD transaction to offset the gains First Active incurred from the IT and STC transactions.

5 203. Conn Vu knew or should have known that this low-value, high-basis, distressed
6 debt was obtained from foreign parties, that First Active did not incur an economic loss in
7 connection with the debt and that First Active was not engaged in a debt collection business.
8 Conn Vu also knew as early as 2005 that the IRS was disallowing inflated losses similar to these
9 bad debt deductions, and that the IRS considered DAD transactions like the one involving First
10 Active to be abusive tax avoidance schemes.

11 **B. The DAT Transaction**

12 204. After the passage of the AJCA, the Distressed Asset Trust scheme was created in
13 a transparent attempt to circumvent the new law outlawing DAD. The DAT scheme is markedly
14 similar to DAD. The only real structural difference between the two shelters is that in the DAT
15 scheme the distressed debt is ultimately contributed to a series of *trusts*, rather than to entities
16 claiming partnership status.

17 205. In the DAT tax shelter, a foreign tax-indifferent party (typically a foreign retailer
18 or collection agency), directly or indirectly, contributes one or more distressed assets with a
19 purported high basis and low fair market value to a trust or series of trusts and sub-trusts
20 controlled by the tax shelter promoter. The U.S. taxpayer then acquires an interest in the trust
21 (and/or series of trusts and/or sub-trusts). The built-in losses from the foreign tax-indifferent
22 party are then shifted to the U.S. taxpayer that has not incurred the economic loss.

23

1 206. In February 2008, the IRS formerly announced that the DAT shelter is a tax
2 avoidance transaction and specifically designated the DAT, and substantially similar
3 transactions, as listed transactions for purposes of I.R.C. § 6111 in Notice 2008-34, 2008-12
4 I.R.B. 645. Notice 2008-34, effective February 27, 2008, described the DAT transaction as one
5 in which:

6 a tax indifferent party, directly or indirectly, contributes one or more distressed
7 assets (for example, a creditor's interest in debt) with a high basis and low fair
8 market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer
9 acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the
10 purpose of shifting a built-in loss from the tax indifferent party to the U.S.
11 taxpayer that has not incurred the economic loss.

12 207. Promoter Entity ILP acquired bad Brazilian debt in the form of uncashed checks
13 with a supposed basis of \$184,703,988 via a DAT transaction involving SADA Business Trust in
14 October 2006. Conn Vu was the trustee for SADA Business Trust. According to Graham
15 Taylor, attorney John Rogers, then a partner at Seyfarth Shaw in Chicago, devised the structure
16 of the DAT transaction.

17 208. Promoter Entity Anglo Capital acquired bad Brazilian debt in the form of
18 uncashed checks with a supposed basis of \$112,240,209 via a DAT transaction involving NOKA
19 Business Trust in December 2006. Conn Vu was the trustee of NOKA Business Trust.
20 According to Graham Taylor, attorney John Rogers devised the structure of the DAT transaction.

21 209. Promoter Entity BOI Capital acquired bad Brazilian debt in the form of uncashed
22 checks with a supposed basis of \$20,000,009 via a DAT transaction involving Korky Business
23 Trust in December 2007. Conn Vu was the trustee of Korky Business Trust. According to
Graham Taylor, attorney John Rogers devised the structure of the DAT transaction.

1 210. Upon information and belief, Promoter Entity AIB Capital obtained at least
2 \$11,775,911 of bad debt via a DAT transaction involving UNICOM Business Trust in 2008,
3 despite the fact that the DAT was at this point a listed transaction. Conn Vu registered UNICOM
4 Business Trust with the State of Nevada on August 29, 2008 and was listed as the trustee for the
5 trust.

6 211. As trustee of the trusts used in connection with the DAT transactions, Conn Vu
7 maintained control over the repository of debt that was to be used to offset the gains from the IT
8 and STC transactions in which ILP, Anglo, BOI and AIB engaged. As an officer, director and/or
9 manager of ILP, Anglo, BOI and AIB, Conn Vu knew how much taxable gain each promoter
10 entity needed to shelter so that it ultimately had to pay no corporate income tax.

11 212. Conn Vu knew or should have known that this low-value, high-basis, distressed
12 debt was obtained from foreign parties and that ILP, Anglo, BOI and AIB did not incur
13 economic losses in connection with the debt and that ILP, Anglo, BOI and AIB were not
14 engaged in a debt collection business. Conn Vu knew as early as 2005 that the IRS was
15 disallowing inflated losses similar to these bad debt deductions, and that the IRS considered
16 transactions like the ones involving ILP, Anglo, BOI and AIB to be abusive tax avoidance
17 schemes.

18 213. Conn Vu also knew that there was no substantiation for the losses he was
19 claiming on the corporate income tax returns that he signed for the five Promoter Entities.
20 McNabola admitted as much to Vu in a September 8, 2009 email where a CPA was seeking
21 substantiation for the debt; McNabola stated “Can we just get [the CPA] to file these returns? I
22 am not going to get anything [substantiation] from Chicago.” Conn Vu also knew that at least
23

1 two CPAs refused to sign the tax returns for the Promoter Entities because the substantiation for
2 the debt was lacking.

3 **THE TAX SCHEMES THAT CONN VU PROMOTED ARE UNLAWFUL**

4 214. The tax schemes described in this complaint constitute illegal tax arrangements
5 under at least four separate judicial doctrines: (1) the substance-over-form doctrine; (2) the
6 doctrine of economic substance; (3) the sham transaction doctrine; and (4) the step-transaction
7 doctrine. In addition, the tax schemes described in the complaint violate a number of provisions
8 of the Internal Revenue Code, including but not limited to I.R.C. §§ 269, 482, 165 and 166.

9 ***Substance-Over-Form***

10 215. The doctrine of substance-over-form requires a court to determine the “true
11 nature” of the transaction to ensure that tax consequences are based upon a transaction’s actual
12 substance and not mere labels. To this end, transactions and their attendant tax consequences
13 may be re-characterized to reflect the true nature of the transaction.

14 216. Under the substance-over-form doctrine, the intermediary companies that Conn
15 Vu used in his promotion of the intermediary transaction scheme are disregarded conduit entities.
16 The transactions are re-characterized and income taxes are paid on the gains from the asset sale.

17 ***No Economic Substance***

18 217. The structures used in the intermediary transaction and state tax credit
19 transaction schemes are disregarded under the economic substance doctrine. The doctrine of
20 economic substance involves a two-prong test that a taxpayer must meet. First, the taxpayer
21 must meet an objective test and show that the transaction has profit potential. Second, the
22 taxpayer must meet a subjective test that shows that a taxpayer has a non-tax motive for the
23 transaction.

1 purpose for which such acquisition was made is evasion or avoidance of Federal income tax,”
2 then any tax benefits stemming from such an acquisition are disallowed. I.R.C. § 269(a).

3 225. The Promoter Entities, which are controlled by Conn Vu, acquire target
4 corporations solely for the purpose of effecting the intermediary transaction scheme and evading
5 the payment of corporate income taxes. At the time that the Promoter Entities acquire the target
6 corporations, these companies no longer have (or will imminently no longer have) any assets or
7 other means by which to conduct business.

8 226. There is no non-tax reason for the Promoter Entities to purchase any of the target
9 corporations.

10 227. Therefore, the intermediary transactions violate I.R.C. § 269.

11 **I.R.C. § 482**

12 228. Section 482 of the Code provides that when there are two or more businesses
13 “owned or controlled directly or indirectly by the same interests,” the IRS may allocate income
14 as necessary “to prevent the evasion of taxes or clearly to reflect the income” of the business,
15 when, among other reasons, transactions are not arm’s length transactions. I.R.C. § 482; Treas.
16 Reg. § 1.482-1(b)(1).

17 229. The intermediary transaction is not an arm’s length transaction for a number of
18 reasons. Conn Vu and his co-promoters control the intermediary companies that purchase the
19 target corporations. Conn Vu and his co-promoters determine the total cash reserves each target
20 corporation will retain post-acquisition, and Conn Vu and his co-promoters control all aspects of
21 how these cash reserves are spent. After they acquire the target corporations, Conn Vu and his
22 co-promoters use the cash reserves to pay off the bridge loans that they made to themselves.
23 Conn Vu and his co-promoters also draft non-arm’s length agreements that state that each newly-

1 acquired target corporation will pay the scheme participant's fees for services that the scheme
2 participants purportedly will render. By design, these fees deplete each target corporation's
3 funds and help render the companies insolvent and not able to pay their corporate taxes. The
4 intermediary transaction violates I.R.C. § 482.

5 **I.R.C. § 165**

6 230. Section 165 of the Code provides that a taxpayer may claim a deduction for any
7 loss that the taxpayer sustains during that tax year, provided that the loss is not "compensated by
8 insurance or otherwise." I.R.C. § 165. The loss that may be claimed must be a bona fide loss,
9 which means that the loss must "be evidenced by closed and completed transactions, fixed by
10 identifiable events," and except in a few specific circumstances, "actually sustained during the
11 taxable year. Substance and not mere form shall govern in determining a deductible loss."
12 Treas. Reg. § 165-1(b).

13 231. As part of the intermediary transaction and state tax credit transaction schemes
14 that Conn Vu promotes, he causes the target corporations to claim a deduction for the losses they
15 incur from the purported bad debt that each target corporation acquires as part of that
16 corporation's purported entry into the debt-collection business. These claimed losses are not
17 bona fide losses within the meaning of I.R.C. § 165.

18 232. In violation of I.R.C. § 165, Conn Vu, nevertheless, signs and files each target
19 corporation's tax return improperly deducting these losses.

20 **I.R.C. § 166**

21 233. Section 166 of the Code provides that a taxpayer may claim as a deduction "any
22 debt which becomes worthless within the taxable year." The debt that may be claimed must be a
23 bona fide debt, which means that "arises from a debtor-creditor relationship based upon a valid

1 and enforceable obligation to pay a fixed or determinable sum of money.” Treas. Reg. § 166-1
2 (c).

3 234. As part of the intermediary transaction and state tax credit transaction schemes
4 that Conn Vu promotes, he and his co-promoters cause the target corporations to claim a
5 deduction for the purported bad debt that each target corporation acquires as part of that
6 corporation’s purported entry into the debt-collection business. However, there never was any
7 formal determination that the claimed debt was wholly or partially worthless and, even if there
8 had been, the debt is not bona fide debt within the meaning of I.R.C. § 166. Indeed, Conn Vu
9 knows that some of the CPAs who had been engaged to prepare and file the target corporation’s
10 tax returns, refused to sign them because the bad debt could not be substantiated.

11 235. In violation of I.R.C. § 166, Conn Vu, nevertheless, signs and files each target
12 corporation’s tax return improperly deducting these debts.

13 **CONTINUAL AND REPEATED NATURE OF CONN VU’S FRAUDULENT CONDUCT**

14 236. Conn Vu’s involvement with tax avoidance transactions dates back to at least
15 2003 when he began working with Fred Forster, co-owner of Fortrend International. Fortrend
16 was a firm used by Forster and others to promote tax avoidance transactions.

17 237. At Fortrend, Conn Vu provided services necessary for the implementation and
18 execution of tax avoidance transactions, including services for corporations acquired by Fortrend
19 in prior intermediary transactions. Conn Vu was named president and director of the
20 corporations or manager of the LLCs necessary to implement the intermediary transactions, and
21 he was given signatory authority over bank accounts for the various entities. As president and
22 manager of Forster’s and Fortrend’s entities, Conn Vu’s duties included: making bank deposits
23 and paying bills for the various entities; maintaining the corporate and LLC minute books;

1 preparing and providing monthly reports; filing annual reports in the states where the entities
2 were formed; arranging for tax return preparation and signing tax returns and other documents;
3 and signing loan documents for temporary funds inserted into some of the ITs.

4 238. While working at Fortrend, Conn Vu was involved with responding to the IRS's
5 audits of intermediary transactions in which Fortrend was engaged. Conn Vu responded to
6 requests for information from the IRS and received the IRS's examination reports issued in
7 connection with the examinations of these intermediary transactions. Indeed, Conn Vu received
8 the IRS's examination reports and closing agreements disallowing the tax shelter losses that had
9 been claimed for most of Fortrend's intermediary transactions as early as 2005. Conn Vu served
10 as officer for approximately 50 corporations that were examined by the IRS while working for
11 Forster and Fortrend from 2003 to 2006.

12 239. Despite knowing that the intermediary transaction was subject to IRS Notices
13 2008-111 and 2001-16, and that the IRS was disallowing the losses associated with the
14 transaction, Conn Vu nevertheless went to work for Sean McNabola after leaving Fortrend in
15 June 2006. Conn Vu provided the same services for McNabola as he did for Forster and
16 Fortrend. Namely, Conn Vu implemented and executed the intermediary transactions promoted
17 by McNabola, Levine and their co-promoters by serving as an officer, director and/or manager of
18 the corporate entities used to facilitate the unlawful tax shelters.

19 240. For McNabola and Levine, Conn Vu served as an officer of the corporations used
20 in facilitating ITs, kept accounting records, and prepared reports for the various entities. He had
21 signatory authority over bank accounts of the entities, signed loan documents for temporary
22 funds inserted into the IT tax shelters, maintained the corporate/LLC minute books, filed state
23

1 annual reports, coordinated tax return preparation, signed tax returns and other documents as
2 necessary, and assisted with the IRS audits.

3 241. In addition, Conn Vu also served as trustee for some of the trust entities involved
4 in the abusive DAT transactions and formed several of the trust entities in the State of Nevada.
5 For the period 2005 through 2010 Conn received payments in excess of \$3 million for his
6 services.

7 242. The scope of Conn Vu's penalty conduct is longstanding. The IRS conservatively
8 estimates that since 2003, Conn Vu has promoted, implemented and/or facilitated over 100 tax
9 shelters on behalf of the companies for which he worked. Indeed, Conn Vu's abusive conduct
10 continued unabated despite the IRS's investigation of the Promoter Entities and the companies
11 that they acquired, as well as hundreds of IRS audits of intermediary transactions and state credit
12 transactions.

13 243. Moreover, Conn Vu was aware that the IRS considered these transactions
14 abusive tax shelters and was disallowing losses associated with them as early as 2005. Yet,
15 Conn Vu continued to promote, implement and facilitate these unlawful transactions until 2012.

16 244. Indeed, Conn Vu admits that he knew that he was exposed to potential liability for
17 his involvement in these illegal tax schemes, stating in a July 2008 email to Sean McNabola that
18 "Since my name is on these companies as President, [Secretary], Treasurer, *I have all of the*
19 *exposure with these companies. When these companies are under audit, they will come to me*
20 *first.*" (emphasis added).

21 245. Given his continued and repeated affiliation with various tax shelter promoter
22 firms and his involvement with a number of abusive arrangements, Conn Vu is likely to continue
23 engaging in improper conduct unless he is permanently enjoined.

1 **COUNT I: Injunction Under I.R.C. § 7408 for Engaging in Conduct**
2 **Subject to Penalty Under I.R.C. § 6700(a)(2)(A)**

3 246. The United States incorporates by reference the allegations contained in
4 paragraphs 1 through 245.

5 247. Section 7408(a) of the I.R.C. authorizes a district court to enjoin any person or
6 entity from engaging in conduct subject to penalty under either I.R.C. § 6700 if injunctive relief
7 is appropriate to prevent recurrence of such conduct.

8 248. Section 6700 of the I.R.C. imposes a civil penalty on any person who (1) either
9 organizes or assists in the organization of a plan or arrangement or participates in the sale of any
10 interest in a plan or arrangement; and (2) makes or furnishes, or causes another to make or
11 furnish, in connection with such organization or sale, a statement with respect to the securing of
12 a tax benefit by reason of holding an interest in an entity or participating in the plan or
13 arrangement that the person knows or has reason to know is false or fraudulent as to any material
14 matter.

15 249. Conn Vu violated I.R.C. § 6700 by organizing, promoting and participating in
16 plans or arrangements (*e.g.*, the intermediary transactions), and by making or furnishing, or
17 causing others to make or furnish, false or fraudulent statements with respect to those schemes'
18 purported tax benefits, which were material and which Conn Vu knew or had reason to know
19 were false or fraudulent.

20 **A. Conn Vu's tax schemes are plans or arrangements**

21 250. Any plan or arrangement "having some connection to taxes" falls under I.R.C. §
22 6700.

23 251. The intermediary, state tax credit, DAD or DAT and other tax avoidance
transactions described above were all executed to avoid the payment of taxes on gains or income

1 generated by the target entity. Accordingly, these tax schemes are plans or arrangements within
2 the meaning of I.R.C. § 6700.

3 **B. Conn Vu organized and/or assisted in the organization of intermediary**
4 **transaction tax schemes, DAT transactions and state tax credit transaction**
5 **tax schemes**

6 252. Conn Vu organized, or assisted in the organization of, the intermediary
7 transaction, state tax credit transaction, and other tax avoidance schemes.

8 253. Conn Vu's organization of the schemes included, *inter alia*, (a) serving as an
9 officer, director and/or manager of at least five corporations used to acquire other corporations
10 and limited liability companies in connection with intermediary transactions, state tax credit
11 transactions, and other transactions designed to shelter taxable income, as well as abusive DAD
12 or DAT tax shelter deductions; (b) forming trusts and serving as trustee of trusts used to transfer
13 bad debts from DAT transactions; (c) serving as trustee for Prime Asset Business Trust that was
14 used to make loans in connection with intermediary transactions; (d) signing at least one
15 document related to a transfer of Brazilian uncashed checks from a trust in connection with a
16 2006 DAT transaction; and (e) the signing of 20 corporate income tax returns as an officer from
17 2005 through 2010 for five Promoter Entities reflecting benefits from 13 intermediary
18 transactions and five DAD or DAT tax shelter transactions and avoiding federal income tax on
19 the income from numerous state credit transactions.

20 **C. Conn Vu participated in the sale of an interest in the intermediary**
21 **transaction tax schemes, state tax credit transaction tax schemes, and other**
22 **tax-avoidance schemes**

23 254. Conn Vu participated in the sale of an interest in the transactions central to the
intermediary transaction, state tax credit transaction, and other tax-avoidance schemes.

1 255. Conn Vu's participation included, *inter alia*, (a) the signing of stock purchase
2 agreements to acquire a target entity in at least five intermediary transactions that were
3 completed after August 2006; (b) the signing of loan documents for the temporary funds inserted
4 into the intermediary transactions tax shelters in four of the intermediary transactions that were
5 completed prior to August 2006; (c) the signing of a stock purchase agreement to acquire a target
6 corporation involved in a refundable state tax credit transaction and the stock purchase
7 agreements necessary to acquire 30 other target corporations involved in the BOI state tax credit
8 transactions that were not described in Notices 2001-16 and 2008-111, but which lacked business
9 purpose and economic substance; and (d) the signing of operating agreements and side
10 agreements to serve as loss partner in approximately 44 of the Agate and AIB state tax credit
11 transactions that were not described in Notices 2001-16 and 2008-111, but which lacked business
12 purpose and economic substance.

13 **D. Conn Vu made or furnished, or caused others to make or furnish, false or**
14 **fraudulent statements with respect to the securing of tax benefits:**

15 256. As an officer, director and/or manager of the Promoter Entities in each of the
16 intermediary transactions and state tax credit transactions identified in this complaint, Conn Vu
17 made false statements with respect to tax benefits and caused the parties to make false statements
18 in the stock purchase agreements and operating agreements with respect to tax benefits.

19 257. These false statements included, *inter alia*, that (a) the parties to the agreements
20 need not make any filing with, or notification to, any government entity regarding the
21 performance of the stock purchase agreement; (b) the promoter entity was acquiring the shares
22 for investment purposes; (c) no person would be entitled to a fee or commission in connection
23 with the transaction; and (d) the promoter entity would cause the target corporation to pay all of
its federal, state and local taxes that were due.

1 **E. Conn Vu knew or had reason to know that the statements were false or**
2 **fraudulent**

3 258. Conn Vu knew or had reason to know that the statements he made in connection
4 with his intermediary transaction and state tax credit transaction tax schemes were false or
5 fraudulent, for numerous reasons.

6 259. First, Conn Vu knew or had reason to know that statements he made in
7 connection with his tax schemes were false or fraudulent based on his position with the Promoter
8 Entities and experience with intermediary transactions.

9 260. Conn Vu is an enrolled agent and experienced tax return preparer and was an
10 officer of five of the entities used to promote the tax schemes. Moreover, Conn Vu received IRS
11 reports in connection with the examinations of the intermediary transactions. For example, as
12 stated above, as early as 2005, Conn Vu received an examination report disallowing the bogus
13 losses and explaining the government's position regarding the intermediary transaction. Conn Vu
14 also was well aware that the intermediary transactions constituted reportable transactions. On
15 March 23, 2009, Conn Vu sent an email to the preparer of Anglo's delinquent returns for the
16 2007 and 2008 tax years, stating "...Attach the disclosure statement with it. *We know it is a*
17 *reportable transaction.*" (emphasis added).

18 261. In an email between Conn Vu and co-promoter Sean McNabola dated September
19 10, 2008, Conn Vu is trying to determine the amount of the losses from the DAD and DAT
20 transactions. McNabola replies, "The only ones that matter are FAC which I believe has about
21 \$50M coming forward. Anglo has about \$40M. I sent you the trust details last week. These are
22 the *only entities with gains to cover...*" (emphasis added).

23 262. In a related email between Conn Vu and McNabola dated July 7, 2009,
McNabola asks, "Have we confirmed the losses carried forward to 2009 in FAC?" Conn Vu

1 replies, "I have to finish with the FAC 2008 return first before I can tell you the losses for 2009.
2 I think Agate should take about 10 million for 2008."

3 263. Additionally, despite his representations to the contrary in the Stock Purchase
4 Agreements that he signed as an officer, director and/or manager of the Promoter Entities, Conn
5 Vu knew that taxes would never be paid on gains associated with the intermediary transaction.
6 In an email dated September 8, 2009, Conn Vu states, "...If we send the return in with taxes
7 owed and not paid, they will send a letter of tax owed and eventually it will be sent to the
8 collections department. We have done this before." McNabola then tells Conn, "I think we send
9 in the FAC return with taxes outstanding. They will put it under audit anyway..."

10 264. Conn Vu's knowledge of the false statements he made is further evidenced in
11 another email chain between Conn Vu and an employee of accounting firm R&C dated October
12 6, 2010 regarding tax notices for a corporate tax return for VMH that was not filed. The
13 employee asked Conn if they should, "File or await assessment? If any income was earned and
14 tax is due, it would be better to file. If not, we can await assessment, and respond accordingly."
15 Conn Vu replied back, "Let's wait. See if they send me something else." The VMH return was
16 actually filed on January 11, 2010 under the wrong EIN number and signed by Conn. It showed a
17 tax liability of \$3.2 million. No tax payment was ever made.

18 265. Additionally, in an email chain between another employee of the accounting firm
19 R&C and Conn Vu dated June 13, 2011, the employee tells Conn Vu that First Active Capital
20 will need to file a Texas extension and that taxes will be due. Conn Vu tells the employee
21 "[p]lease file with no payments being made."

22 266. In sworn testimony to the IRS in July 2012, Conn Vu was asked if it was a known
23 fact that debt write-offs were intended to be used to cover up any federal tax liabilities. Conn Vu

1 replied, “I believe so.” Conn Vu also indicated that he did not think that any of the entities ever
2 paid any tax liabilities, even the ones that were filed showing tax liabilities that were due.

3 **F. Conn Vu’s false statements were material**

4 267. If a particular statement has a substantial impact on the decision-making process
5 or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as “material”
6 within the meaning of I.R.C. § 6700.

7 268. The intermediary transaction, state tax credit transaction, and other tax avoidance
8 schemes produced substantial tax benefits for the Promoter Entities and the target company’s
9 selling shareholders, as well as significant benefits for Conn Vu personally.

10 269. The false statements in the transactional documents that Conn Vu signed were
11 material because they substantially impacted the decision-making process and produced a
12 substantial tax benefit to the target corporations and the Promoter Entities. The tax shelters were
13 executed through transactional documents – including but not limited to the stock purchase
14 agreements, the 1031 agreements, and the operating agreements – that contained false statements
15 regarding important elements of the transaction including the purpose of the transactions, the
16 fees paid as part of the transactions and the Promoter Entities’ intent to comply with their tax
17 obligations.

18 **COUNT II: Injunction Under § 7408 for Engaging in Conduct Subject to**
19 **Penalty Under I.R.C. § 6701**

20 270. The United States incorporates by reference the allegations contained in
21 paragraphs 1 through 245.

22 271. Section 6701(a) of the I.R.C. penalizes any person who (1) aids or assists in,
23 procures, or advises with respect to any portion of a tax return or presentation of a federal tax
return, refund claim, or other document (2) knows (or had reason to believe) that such portion of

1 a return will be used in connection with any material matter arising under the internal revenue
2 laws and (3) knows that if it is so used it will result in an understatement of another person's tax
3 liability.

4 272. Conn Vu assisted with respect to the preparation of tax returns for the Promoter
5 Entities involved in the intermediary, state tax credit, and other tax avoidance transactions. He
6 provided tax information to those preparing the tax returns and signed most of the Promoter
7 Entity income tax returns as an officer of the company. For example, Conn Vu signed the 2005
8 First Active Capital income tax return as "self-prepared" because the original preparer refused to
9 sign it because unsubstantiated bad debt deductions were being used to offset all tax liability.

10 273. Conn Vu knew or had reason to believe that the tax returns he assisted in
11 preparing would be used in connection with a material matter because the tax returns report the
12 tax liabilities of the Promoter Entities and those entities that the promoter entities had acquired.
13 The tax returns Conn Vu assisted in preparing, and then signed as an officer, reported losses fully
14 offsetting gains from various investments.

15 274. Conn Vu knew the result of the Promoter Entity acquisitions and the filing of
16 returns reflecting the acquisitions and reporting of bogus bad debt would result in an
17 understatement of liability of such entities. Indeed, in an email dated September 8, 2009, Conn
18 Vu states, "...If we send the return in with taxes owed and not paid, they will send a letter of tax
19 owed and eventually it will be sent to the collections department. We have done this before."

20 275. An injunction against Conn Vu is necessary and appropriate to prevent the
21 recurrence of his conduct, subjecting him to penalty under I.R.C. § 6701, and for engaging in any
22 other conduct subject to penalty under the Internal Revenue Code.
23

COUNT III: Injunction Under I.R.C. § 7402 for Unlawful Interference with the Enforcement of the Internal Revenue Laws

1
2 276. The United States incorporates by reference the allegations contained in
3 paragraphs 1 through 245.

4 277. I.R.C. § 7402(a) authorizes a district court to issue orders of injunction as
5 necessary and appropriate for the enforcement of the internal revenue laws. The remedies
6 provided under I.R.C. § 7402(a) are in addition to and not exclusive of any and all other
7 remedies the United States may have to enforce the internal revenue laws.

8 278. Conn Vu engaged in numerous activities that interfered with the enforcement of
9 the internal revenue laws.

10 279. Conn Vu interfered with the enforcement of the internal revenue laws by
11 arranging and participating in intermediary transactions that thwarted the Government's efforts
12 to collect taxes due from corporations selling built-in gain assets. Because the Promoter Entities
13 acquiring the target corporations were ultimately rendered insolvent, there was nothing for the
14 Government to collect once the bad debt deductions claimed by the Promoter Entities were
15 disallowed. Conn Vu continued to participate in intermediary transactions even after having
16 been made expressly aware of the IRS's position regarding intermediary transactions in the
17 course of IRS examinations of certain target entities or intermediary entities.

18 280. Conn Vu also interfered with the enforcement of the internal revenue laws by
19 participating in state tax credit transactions that thwarted the Government's efforts to collect
20 taxes due from corporations selling state-issued tax credits. Because the Promoter Entities
21 reporting the income from the sale of state tax credits were ultimately rendered insolvent, there
22 was nothing for the Government to collect once the bad debt deductions claimed by the Promoter
23 Entities were disallowed.

1 C. That this Court find that Conn Vu engaged in conduct substantially interfering
2 with the administration and enforcement of the internal revenue laws and that injunctive relief
3 under 26 U.S.C. § 7402 is appropriate to prevent recurrence of that conduct;

4 D. That this Court, pursuant to 26 U.S.C. §§ 7402 and 7408, enter a permanent
5 injunction prohibiting Conn Vu (individually and through any other name or entity) and those
6 persons acting in concert with him, from directly or indirectly:

7 i. Organizing, promoting, implementing, advising, or selling (directly or
8 indirectly) the IT tax schemes described in this complaint, the State Tax
9 Credit tax schemes described in this complaint, any substantially similar
10 plans or arrangements, or any other business or tax services that:

11 a. use, involve or relate to distressed debt, distressed
12 receivables or other distressed assets;

13 b. attempt to shift losses from a foreign tax-indifferent
14 party to or for the benefit of a U.S. taxpayer;

15 c. attempt to shift purported losses among entities
16 claiming to be trusts, corporations or entities taxed as
17 partnerships for the benefit of U.S. taxpayers who did
18 not incur the losses;

19 d. attempt to purchase the stock or sell the assets of
20 closely-held U.S. corporations to obtain a corporate
21 tax benefit; and/or

22 e. use or involve intermediary entities that facilitate in
23 any way the purchase and/or sale of corporate stock
or the purchase and/or sale of corporate assets;

f. use or involves the sale or acquisition of state tax
credits and is designed to reduce or eliminate tax
liabilities

ii. Acting as a federal tax return preparer or requesting, assisting in, or
directing the preparation or filing of federal tax returns or amended returns (or other related

1 tax forms or documents) for any person or entity other than preparing his own personal tax
2 return;

3 iii. Appearing as a representative on behalf of any person or entity before the
4 IRS;

5 iv. Owning, managing, controlling, working for, profiting from, or
6 volunteering for a tax-return-preparation business;

7 v. Seeking permission or authorization (or helping or soliciting others to seek
8 permission or authorization) to file tax returns with an IRS Preparer Tax Identification
9 Number (“PTIN”) and/or IRS Electronic Filing Identification Number (“EFIN”), or any
10 other IRS service or program by which one prepares or files tax returns;

11 vi. Using, maintaining, renewing, obtaining, transferring, selling, or assigning
12 any PTIN(s) and/or EFIN(s);

13 E. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Conn Vu
14 to produce to counsel for the United States a list identifying (by name, address, e-mail address,
15 phone number, and Social Security or other tax identification number) all of the customers,
16 entities and/or companies who, for any of the tax years 2006 to the present, have used the
17 services of Conn Vu or his business as it is known under any of its names;

18 F. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Conn Vu
19 at his own expense to contact by mail all of his customers related to any of his tax planning
20 services and inform those individuals of the Court’s findings concerning the falsity of his prior
21 representations and attach a copy of the permanent injunction, and to file with the Court, within
22 20 days of the date on which the permanent injunction is entered, a certification signed under
23 penalty of perjury that he has done so;

1 G. That the Court allow the United States full post-judgment discovery to monitor
2 and ensure compliance with the permanent injunction;

3 H. That this Court retain jurisdiction over this action for purposes of implementing
4 and enforcing the final judgment and any additional orders necessary and appropriate to the
5 public interest; and

6 I. That this Court grant the United States such other and further relief, including
7 costs, as this Court deems appropriate.

8 Dated: April 22, 2015

9
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