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CENTRAL DIST. CALIF.
LOS ANGELES
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOSEPH O. SALADINO, individually and dba FREEDOM & PRIVACY COMMITTEE, and JASON A. WHITNEY, individually and dba BB&C OF AMERICA, Defendants.	CV04-2100 ABC JWJx Case No. COMPLAINT FOR PERMANENT INJUNCTION AND FOR OTHER RELIEF

Plaintiff, the United States of America, states as follows.

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and §§ 7402(a) and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("I.R.C.").

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Nature of Action

3. The United States is bringing this complaint to enjoin the defendants, individually and doing business as or through any other entity, and any other person in active concert or participation with them, from directly or indirectly:

(a) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(b) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans or arrangements;

(c) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;

(d) Engaging in conduct subject to penalty under I.R.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter;

(e) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability; and

(f) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service.

Authorization

4. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to I.R.C. §§ 7402 and 7408.

Defendants

5. Joseph O. Saladino resides at 416 Alamosa Avenue, Palmdale, California 93551.

6. Jason A. Whitney resides at 19528 Ventura Boulevard #211, Tarzana, California 91356.

Defendants' Activities

7. Defendants conduct business through Freedom & Privacy Committee ("FPC"), an entity registered as a nonprofit corporation with the State of Washington, and which serves as Saladino's corporation sole. FPC's headquarters is at 416 Alamosa Avenue, Palmdale, California.

8. Saladino is the founder of FPC and the main promoter of the abusive tax programs described below.

9. Whitney is associated with FPC as a sales representative and is a promoter of the abusive tax programs described below.

10. Saladino and his network of promoters, including Whitney and Janis Greehey, Thomas Chapin, Charlene Chapin, Richard Blackstock, Nancy Lloyd and Frank Perkinson, conspire to circumvent the federal tax laws by marketing and selling their abusive tax program.

11. Defendants' abusive tax promotion involves a multi-level marketing organization that promotes several abusive tax evasion packages, including a "corporation sole" package and a "1040X/claim of right" package. Both of these packages are identified in the IRS's annual consumer alert of tax scams that taxpayers are urged to avoid. (*See* www.irs.gov/newsroom/article/o,,id=120803,00.html.)

12. Defendants market the abusive FPC tax program nationwide through internet websites, including the FPC website www.freedomcommittee.com, conference calls, and seminars.

13. Whitney promotes the FPC tax program, in the name of BB&C of America, at www.freedomcommittee.com/5577/5577, which is his personalized web page link to FPC's website.

14. Membership in the FPC organization costs $200, with a $100 annual renewal fee. FPC advertises that membership "can eliminate your personal income taxes" and permits participants to "operate a business tax free and still enjoy limited liabilities."

15. Participants or purchasers are encouraged to become FPC subpromoters. Subpromoters market the scheme and receive commissions for successful sales. Subpromoters also receive their own internet web page, which is linked directly to the FPC main website.

16. There are over 700 participants in the FPC promotion. The participants are located in nearly every state, as well as Canada, the United Kingdom and the Virgin Islands.

The Corporation Sole Package

17. Defendants market an FPC arrangement known as a "corporation sole" as a means to evade the reporting and payment of federal income taxes, as well as

a means to conceal assets and thereby evade estate and inheritance taxes and IRS collection efforts.

18. Defendants market the corporation sole package for $2,295.

19. After receiving a customer's application and payment, defendants instruct participants how to form a corporation sole, including how to conceal assets and taxable income by transferring assets and income to their corporations sole.

20. Defendants presently incorporate or form the corporations sole in the State of Utah.

21. Defendants falsely advise participants that they can treat their corporations sole as a "church" with no tax return filing requirement, and yet can control and use the assets and income of the corporation sole for their own personal benefit.

22. Defendants falsely advise participants that corporations sole that are used for the participants' personal benefit are tax exempt, do not need to file tax returns of any kind, and do not need to keep records. Defendants falsely state that a corporation sole's church status cannot be challenged by the Government.

23. Defendants falsely state that participants can make donations to their corporations sole and then deduct the donations on the participants' federal income tax returns, in the event returns are filed.

24. Defendants falsely advise that a participant who becomes the "minister" or "overseer" of the corporation sole and takes a vow of poverty, can assign his income to the corporation sole and thereby transform taxable individual income into nontaxable income of the corporation sole.

25. Defendants falsely state that a corporation sole can be engaged in any occupation, business or profession, and that all earnings therefrom are tax exempt, and that no return need be filed.

26. Defendants also falsely advise that if the participant's residence or real estate is titled in the name of the corporation sole, then the individual can use and maintain it as a tax-exempt parsonage, and that the corporation sole can provide the participant housing or a housing allowance that is tax exempt.

27. Defendants tout participating in the defendants' corporation sole program as a mechanism that enables participants to drop out of the federal tax system entirely.

28. FPC promotional literature gives the following description of the program's benefits:

> Corporation sole can be responsible to provide for all your needs (i.e., shelter, food, transportation, clothing, medical, etc.). This occurs by first conveying all that you own and all future earning to corporation sole. You make a record vow of poverty. This lets the world know that you are now a pauper and own nothing. If you work outside corporation sole, you do so on behalf of the corporation sole. None of these earnings are taxable because they are paid directly to the corporation sole. These payments are made without deductions, diminishments or taxes of any kind.

29. Defendants' statements about the tax benefits associated with the corporations sole are false and fraudulent.

30. The effect of defendants' corporation sole promotion is that the participant lives in the same residence and operates the same business activity, as he did prior to joining the program. All living expenses of the participant and his family are paid from compensation earned from the business activity, the same as it was prior to the creation of the corporation sole. The participant receives the full benefit of, and has full control over, all corporation sole funds. The only

substantive change in the participants' regular business and lifestyle activities is the alleged benefit of no taxation.

31. The corporations sole that defendants market are not operated for any church purpose, are devoid of economic substance and are shams for federal tax purposes. The program constitutes an improper assignment of income and a fraudulent transfer of assets.

The 1040X/Claim of Right Package

32. Defendants' 1040X/Claim of Right promotion involves filing frivolous income tax returns or claims for refund purportedly relying on I.R.C. § 1341.

33. The cost of the 1040X/Claim of Right package to participants is $1,095 for the first year and $250 for additional years, plus 25% of each refund above the first $1,000 received.

34. Defendants falsely assert that taxpayers have an alleged common-law and constitutional right (under the Fourteenth Amendment to the United States Constitution) to exclude from taxation all compensation for personal services or labor rendered.

35. Defendants falsely state that I.R.C. § 1341 codifies this so-called common-law or constitutional right and entitles participants to take a deduction in the amount of compensation earned, which in most cases eliminates a participant's tax liability. The defendants state that this can be done by claiming an itemized deduction to offset wages reported on W-2 forms, or by taking a Schedule C deduction to offset any net income from self-employment.

36. The FPC website states that persons who "are looking for tax relief and wish to get back all the taxes you paid in over the last three years," should consider the FPC 1040X/Claim of Right package.

37. Defendants falsely state that participants in the FPC 1040X/Claim of Right scheme are able to recover all of their withheld income and social security taxes, and also to eliminate any self-employment tax.

38. FPC promotional materials state that FPC "will assist clients correct their 1040 (1040X) returns for new and existing members in such a way that they may receive back all federal withholding taxes and social security/medicare overpayments." That is, if customers enroll in the claim or right program, the defendants assist them in filing false or fraudulent tax returns.

39. FPC promotional material falsely states that "the IRS is accepting the claim of right [program] and no litigation has been necessary."

40. In order to join the 1040X/claim of right program, participants are required to give Saladino power of attorney to represent them before the Internal Revenue Service for the tax years in which they take part in the program.

Harm to the Public

41. Defendants' customers have been harmed by defendants' abusive promotions and by defendants' preparing false and fraudulent tax returns, because the customers have paid defendants significant sums to establish worthless legal entities and/or to prepare tax returns that understate their income tax liabilities.

42. The United States is harmed because defendants' customers are not paying their fair share of taxes to the United States Treasury. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from defendants' abusive schemes may be impossible, resulting in a permanent loss to the United States Treasury.

43. The public is harmed because the IRS is forced to devote some of its limited resources to identifying and attempting to recover revenue lost as a result of defendants' schemes, thereby reducing the level of service that the IRS can give to honest taxpayers.

44. In addition to the harm caused by defendants' advice and services, defendants' activities undermine public confidence in the fairness of the federal tax system and incite non-compliance with the internal revenue laws.

Count I

Injunction under I.R.C. § 7408 for violations of I.R.C. § 6700

45. The United States incorporates by reference the allegations contained in paragraphs 1 through 44.

46. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6700 or § 6701 from engaging in further such conduct.

47. I.R.C. § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

48. I.R.C. § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and that the person knows would result in an understatement of tax liability.

49. Defendants, and each of them, have organized or assisted in the organization of, or have participated directly or indirectly in selling, the FPC corporation sole and 1040X/Claim of Right programs.

50. In organizing and selling the FPC corporation sole and 1040X/Claim of Right schemes, defendants, and each of them, have made statements regarding the

tax benefits associated with participation in the scheme that they know are false or fraudulent as to material matters within the meaning of I.R.C. § 6700.

51. Defendants, and each of them, aid or assist in, or advise with respect to, the preparation of tax returns or other documents, knowing (or having reason to believe) that such documents would be used in connection with a material matter arising under the internal revenue laws.

52. Defendants know that the documents, if so used, will result in understating the participants' tax liability.

53. Defendants have persisted in promoting these fraudulent tax schemes, and have aided or assisted in preparing tax returns or other documents based on those schemes, after being advised that their conduct was subject to penalty under I.R.C. §§ 6700 and 6701, and subject to injunction under I.R.C. § 7408.

54. Unless enjoined by this Court, the defendants are likely to continue to engage in this conduct. Injunctive relief is appropriate under I.R.C. § 7408.

Count II

Injunction under I.R.C. § 7402

55. The United States incorporates by reference the allegations contained in paragraphs 1 through 54.

56. I.R.C. § 7402 authorizes courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

57. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

58. If defendants are not enjoined, they likely will continue to engage in conduct that interferes with the enforcement of the internal revenue laws. The United States is entitled to injunctive relief under I.R.C. § 7402(a) to prevent such conduct.

Relief Sought

WHEREFORE, the United States prays for the following relief:

A. That the Court find that each of the defendants has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent the defendants, and any business or entity through which they operate, and anyone acting in concert with them, from engaging in further such conduct;

B. That the Court find that each of the defendants has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against the defendants, and any business or entity through which they operate, and anyone acting in concert with them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under I.R.C. § 7402(a);

C. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting the defendants, individually and doing business as Freedom & Privacy Committee and through their websites, including www.freedomcommittee.com, or as any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, including their distributors, from directly or indirectly:

(1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(2) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans or arrangements;

(3) Encouraging, instructing, advising or assisting others to violate the tax laws, including to evade the payment of taxes;

(4) Engaging in conduct subject to penalty under I.R.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, preparing or assisting others in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;

(6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service.

D. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants to produce to the United States any records in their possession or control, or to which they have access, identifying the persons who have purchased their abusive tax plans, arrangements or programs (purchased directly from them or from their associates, representatives, distributors or related entities);

E. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants to contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased their abusive tax shelters, plans, arrangements or programs, including the corporation sole program and the 1040X/claim of right program, or any other tax shelter, plan or program in which defendants have been involved either individually or through any dba, or business entity, and inform those individuals of the Court's findings concerning the falsity

of the defendants' prior representations and attach a copy of the permanent injunction against the defendants and their associates and related entities, and to file with the Court, within 30 days of the date the permanent injunction is entered, a certification that they have done so;

F. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants and their representative, agents, servants, employees, attorneys, and those persons in active concert or participation with them, including their distributors, to remove from their websites, including www.freedomcommittee.com, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of those websites a complete copy of the Court's permanent injunction, and to maintain the websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

G. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

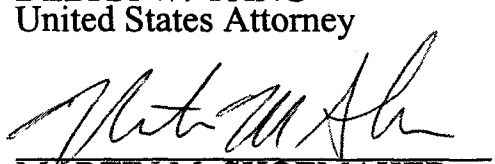
H. That the Court, pursuant to I.R.C. § 7402, enter an injunction prohibiting Saladino from representing before the Internal Revenue Service any persons to whom he has given or sold, directly or indirectly, these or other abusive tax packages, and to enjoin him from encouraging or abetting noncompliance with the Internal Revenue Service during the examination of those persons' tax returns;

I. That the Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders

necessary and appropriate to the public interest; and

J. For such other and further relief as the Court may deem proper and just.

DEBRA W. YANG
United States Attorney



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