

Hon. James L. Robart

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA,)	Civil No. C09-CV-731-JLR
)	
Plaintiff,)	MOTION FOR ENTRY OF
)	DEFAULT JUDGMENT AND
v.)	SUPPORTING MEMORANDUM
)	
DANIEL ANDERSEN,)	NOTE ON MOTION CALENDAR:
)	August 11, 2009
Defendant.)	

The United States moves this Court to enter default judgment against defendant Daniel Andersen under Fed. R. Civ. P. 55(b)(2) and CR 55(b). Andersen has failed to appear or otherwise defend himself in this matter, and the clerk has noted his default upon the record. (Dkt. No. 6.) Andersen sold fraudulent tax schemes through the Institute of Global Prosperity (“Global Prosperity”), and is currently serving a sentence in federal prison in connection with his sale of those schemes. For the reasons set forth below, the court should enter default judgment against Andersen and enter an order of injunction prohibiting him from engaging in further conduct subject to penalty under the Internal Revenue Code.

UNITED STATES OF AMERICA’S
MOTION FOR ENTRY OF DEFAULT JUDGMENT
AND SUPPORTING MEMORANDUM
C09-CV-731-JLR

U.S. DEPARTMENT OF JUSTICE
P.O. BOX 7238, BEN FRANKLIN STATION
WASHINGTON D.C. 20044
(202) 305-9209

1 **I. DEFAULT JUDGMENT STANDARD**

2 Where, as here, default has been entered pursuant to Fed. R. Civ. P. 55(a), the
3 defendant loses his standing before the Court, as well as his right to present evidence on
4 issues other than unliquidated damages.¹ On entry of default, “the well-pleaded
5 allegations of the complaint relating to liability are taken as true.”² Moreover, the Court
6 may take judicial notice of its own docket.³ The Court’s entry of default in this case on
7 July 21, 2009, precludes Andersen from contesting the allegations in the Complaint, (Dkt.
8 No. 1).

9 **II. JURISDICTION AND VENUE**

10 Jurisdiction is conferred on this Court by 28 U.S.C. § 1340 and 1345 and 26
11 U.S.C. §§ 7402(a) and 7408. (Compl., Dkt. No. 1 at ¶ 3.) Andersen is currently
12 imprisoned in Lompoc, California, but prior to his incarceration, founded and conducted
13 business through the Institute of Global Prosperity in Renton, Washington, a location
14 within this judicial district. (*Id.* at ¶¶ 5-6.) Venue is proper in this Court under 28 U.S.C.
15 §§ 1391. (*Id.* at ¶ 4).

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¹ 10 James Wm. Moore, *Moore’s Federal Practice*, ¶ 55.12[1], at 55.18 (3d ed. 1997).

22 ² *Fair Housing of Marin v. Combs*, 285 F.3d 899, 906 (9th Cir. 2002); *Angelo Iafrate*
23 *Const., LLC v. Potashnick Const. Inc.*, 370 F.3d 715, 721-22 (8th Cir. 2004); *Merrill*
24 *Lynch Mortg. Corp. v. Narayan*, 908 F.2d 246, 253 (7th Cir. 1990); Fed. R. Civ. P. 8
(stating that all factual allegations that are not denied are deemed true).

25 ³ *Bryant v. Carleson*, 444 F. 2d 353, 357-58 (9th Cir. 1971); *Griffin v. United States*, 109
26 F.3d 1217, 1218 n.1 (7th Cir. 1997).

1 **III. ANDERSEN’S FRAUDULENT ACTIVITIES**

2 Daniel Andersen and David Struckman founded Global Prosperity in 1996;⁴
3 Lorenzo Lamantia joined them as a “founder” in 1998. (*Id.* at ¶¶ 7-8.) Between 1996 and
4 2002, Global Prosperity earned over \$50 million dollars, none of which was reported to
5 the IRS as income. (*Id.* at ¶ 10.)

6 Global Prosperity earned this money selling audiotapes, CDs, and tickets to
7 offshore conferences where other charlatans promoted, among other things, bogus trust
8 packages to hide assets and fraudulent schemes that purported to eliminate one’s
9 obligation to pay federal income taxes. (*Id.* at ¶ 13.) Andersen participated in the sale of
10 the tax-fraud schemes sold by Global Prosperity by (a) selling Global Prosperity
11 memberships, which involved the sale of Global Prosperity products; (b) arranging
12 marketing seminars that provided Global Prosperity vendors with a forum to hawk tax-
13 fraud schemes to Global Prosperity members; and © endorsing to Global Prosperity
14 members tax-fraud schemes sold by vendors. (*Id.* at ¶ 20.)

15 **A. GLOBAL PROSPERITY PRODUCTS**

16 Global Prosperity sold four products: Global I, Global II, Global III, and Global
17 IV. Global Prosperity customers paid a \$50 fee to become a Global member, and then
18 paid more to obtain each of Global Prosperity’s four products. (*Id.* at ¶ 16.)

19 **1. Global I**

20 “Global I” was a 12-part audio/cd series which stated, *inter alia*, that: (1) income
21 of “American Nationals” or “sovereign state citizens” is foreign earned income; (2)
22 “American Nationals” or “sovereign state citizens” are not required to file tax returns or
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24 ⁴The entity through which Andersen and his co-conspirators did business is known under
25 several names: Global Prosperity, the Global Prosperity Marketing Group, Global
26 Prosperity Group, Institute of Global Prosperity, and Global Prosperity 2001. The United
States will refer to this entity simply as “Global Prosperity.” (Dkt. No. 1, Comp. at ¶ 7.)

1 pay income taxes; (3) the 16th Amendment of the United States Constitution was not
2 properly ratified; (4) wages are not income and therefore not taxable; and (5) the income
3 tax system is voluntary. (*Id.* at ¶ 14.a.) Global customers paid \$1,250 to hear these false
4 statements. (Exh. 5, Declaration of Cynthia Zambito, at ¶ 4.)

5 The Global I course falsely assured customers that they were obligated to pay
6 income taxes because of an implied benefit that accompanied the customer’s Social
7 Security number. The Global I course told customers that they could avoid paying
8 income taxes by relinquishing their Social Security number. (*Id.* at ¶ 5.) The Global I
9 course also “taught” that the IRS only has jurisdiction within federally-administered
10 territories such as the District of Columbia, Puerto Rico, and Guam, but not within the
11 fifty states of the Union. (*Id.* at ¶ 6.) Consequently, only individuals living in federally-
12 administered territories are obligated to pay federal income taxes. (*Id.*) According to the
13 Global I course, in order to tax individuals living in the fifty states, the IRS take pains to
14 create the appearance that those individuals are engaged in excise-taxable activities. (*Id.*
15 at ¶ 7.) To carry out this alleged “fraud,” the IRS inserts codes into its internal files
16 indicating that 98 percent of taxpayers are engaged in a business activity subject to an
17 excise tax. (*Id.*)

18 2. *Global II, III, and IV*

19 “Global II” was a three-day offshore seminar retail priced at \$6,250. Global
20 Prosperity advertised the Global II seminar as an opportunity for attendees to apply the
21 wealth-building strategies discussed on the Global I audio/cd series. (Dkt. No. 1, Compl.
22 at ¶ 14.b.) Global Prosperity touted the speakers at the conferences as “experts.” These
23 so-called experts were little more than fraudfeasors who paid Global Prosperity a fee to
24 sell their tax-fraud schemes to Global Prosperity members attending the seminars. In
25 addition to the fee each vendor paid Global Prosperity for the opportunity to participate,
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1 each vendor also paid Global Prosperity as much as 10% of its gross sales from the
2 conference. (Exh. 5, Zambito Decl., at ¶ 8.)

3 “Global III” was a five-day offshore seminar retail priced at \$18,750. Global
4 Prosperity advertised the Global III event as advanced training in implementing wealth-
5 building strategies, but which featured the same fraudulent vendors and schemes
6 promoted at the Global II events. (Dkt. No. 1, Compl. at ¶ 14.c.) “Global IV” was a
7 three-day, invitation-only seminar held at Jekyll Island, Georgia, in November 2000,
8 retail priced at \$37,000. Global Prosperity hosted the seminar for its top salespeople. (*Id.*
9 at ¶ 14.d.)

10 3. *Multi-level marketing*

11 Global Prosperity sold these products through a multi-level marketing program.
12 (*Id.* at ¶ 16.) As part of the scheme, a member joined Global Prosperity by paying \$50,
13 and then became a Global I member by purchasing the Global I product. (*Id.* at ¶ 17.) A
14 Global I member who sold a requisite number of the Global I product to others (between
15 2 to 7), became a “qualified retailer” (QR). (*Id.*) A QR could retain 80% to 90% of his or
16 her sale revenues as profit, as well as a percentage of the first two sales made by any
17 Global Prosperity member the QR recruited. (*Id.* at ¶ 18.) After another threshold
18 number of sales, a QR became a “voluntary marketing assistor” (VMA) and earned even
19 greater profits by selling products related to the tax-fraud schemes. (*Id.* at ¶ 19.)

20 Andersen was instrumental in operating the multi-level marketing structure of
21 Global Prosperity’s promotion. Andersen wrote (or caused to be written) at least 246
22 checks to Global Prosperity QRs, transferring over \$8.9 million in funds to the
23 individuals who sold Global Prosperity’s fraudulent products. (Exh. 8, Declaration of
24 Revenue Agent Terry Martin at ¶¶ 1-7.)

1 B. GLOBAL PROSPERITY VENDORS

2 Andersen and Global Prosperity organized the Global II, III, and IV conferences at
3 which vendors paid a fee and a percentage of their sales for the opportunity to hawk their
4 tax fraud products to Global Prosperity's members. These vendors made many false
5 statements about the internal revenue laws and the services their products could legally
6 deliver. (Dkt. No. 1, Compl. at ¶¶ 15, 21, 23.) Importantly, Global Prosperity reviewed
7 every vendor's product and required each vendor to obtain its approval to promote a
8 particular scheme at a Global Prosperity conference. (Exh. 5, Zambito Decl. at ¶ 9.)
9 Global Prosperity encouraged sales of vendors' products by touting these hucksters as
10 experts in their fields. (*Id.* at ¶ 10.)

11 I. "Liberty" Van Hove

12 The vendors at Global Prosperity conferences sold tax fraud products of every
13 type. For example, vendor Johnny "Liberty" Van Hove sold a series of schemes that
14 assisted taxpayers to violate the internal revenue laws. (*Id.* at ¶ 11.) Van Hove offered
15 schemes purported to allow a customer to remove himself from the taxing authority of the
16 United States by "relinquishing" his or her Social Security number. (*Id.*) Van Hove's
17 schemes were premised on the absurd notion that income taxes are paid in exchange for a
18 benefit conferred by a Social Security number and that relinquishing one's Social
19 Security number ended the customer's obligation to pay federal income taxes. (*Id.* at ¶
20 12.) A grand jury indicted Van Hove for conspiring to defraud the United States by
21 selling these schemes. *See* Press Release, United States Department of Justice, Hawaii
22 Man Arrested on Tax Fraud, Wire Fraud and Obstruction Charges (May 9, 2005),
23 *available at* <http://www.usdoj.gov/tax/txdv05251.htm>. Van Hove pled guilty, received a
24 sentence of 27 months in prison, and was ordered to pay restitution to the United States of

1 over \$420,000. *See United States v. Van Hove*, No. 1:05-CR-00141-DAE-1 (D. Haw.)
2 (order of judgment at Dkt. No. 51).

3 2. *Anderson's Ark and Associates*

4 Global Prosperity also allowed Anderson's Ark and Associates (AAA) to sell its
5 fraudulent tax products at Global Prosperity seminars. (Exh. 5, Zambito Decl. at ¶ 13.)
6 At least 484 Global Prosperity customers purchased AAA's schemes. (*Id.*) AAA offered
7 two different products: a "look forward" plan and a "look back" plan. (*Id.*) The "look
8 forward" plan involved the creation of a sham business partnership between an existing
9 business and an entity AAA controlled. The details of the plan falsely created the
10 appearance that the customer was entitled to very little of the partnership's earnings. In
11 reality, the majority of the earnings were diverted through the AAA-controlled entity to
12 another offshore entity over which the customer had control, improperly allowing the
13 customer to retain use of the funds without paying federal income taxes. (*Id.* at ¶ 14.)

14 In the "look back" plan, the customer "borrowed" money from one AAA-
15 controlled entity and "invested" that money with another AAA-controlled entity. The
16 "investment" was not repaid, and the customer claimed a fraudulent net operating loss on
17 her current year tax return and also recaptured the income taxes she paid in the previous
18 two years. (*Id.* at ¶ 15.)

19 AAA's ringleader, Keith Anderson, was charged with 87 criminal counts in 2002
20 relating to his involvement with AAA's fraudulent schemes. *See* Press Release, United
21 States Department of Justice, Ten Indicted in Offshore Tax Shelter Promoter Scheme
22 (Dec. 11, 2002), *available at* <http://www.usdoj.gov/tax/txdv02710.htm>. Anderson was
23 convicted of conspiracy to defraud the government, mail and wire fraud, money
24 laundering, and aiding and assisting the filing of false tax returns and received a 20-year
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1 prison sentence from this Court in 2005. *See United States v. Anderson*, No. 02-cr-00423,
2 (W.D. Wash.) (imposing judgment at Dkt. No. 1066).

3 3. *Dennis Poseley and Innovative Financial Consultants (IFC)*

4 Dennis Poseley and IFC sold their fraudulent trust packages to at least 515 Global
5 Prosperity customers. (Exh. 5, Zambito Decl. at ¶ 16.) IFC even created a special
6 version of its promotion for Global Prosperity customers that it called the “Global
7 Special.” (*Id.* at ¶ 17.) Poseley and IFC sold several fraudulent arrangements. One
8 scheme involved IFC selling “pure trust organizations.” The customer usually placed an
9 on-going business and his personal assets into an LLC that had the pure trust
10 organizations as members. The customer then appointed himself as the manager of the
11 pure trust organizations and paid himself a salary for his “work” administering the trusts
12 and the assets in the trusts. In this way, the customer retained control over his earnings,
13 assets, and possessions, but did not pay income taxes. (*Id.* at ¶ 19.) IFC also sold a Ponzi
14 scheme in which IFC falsely told wealthy customers they could earn high rates of return
15 tax free by investing in financial instruments sold in St. Vincent and the Grenadines. (*Id.*
16 at ¶ 20.)

17 A jury convicted Poseley of conspiracy to defraud the government and tax evasion
18 on September 8, 2005. *See* Press Release, United States Department of Justice, Five
19 Defendants Convicted of Tax Crimes in Connection with Promotion of Abusive Trust
20 Scheme (Sept. 8, 2005), *available at* <http://www.usdoj.gov/tax/txdv05465.htm>. Poseley
21 is currently serving an 84-month prison sentence for his crimes. *See United States v.*
22 *Poseley*, No. 2:03-cr-00344 (D. Ariz.) (imposing an 84-month sentence on July 11, 2006
23 at Dkt. No. 926). The federal district court in Arizona recently enjoined Poseley from
24 promoting the fraudulent trust schemes he marketed through Global Prosperity. *United*

1 *States v. Poseley*, No. CV-06-2335, WL 4811174, at *1-*2 (D. Ariz. Nov. 5, 2008)
2 (describing and enjoining Poseley's fraudulent schemes).

3 C. *CRIMINAL INVESTIGATION AND INDICTMENT*

4 In March 2001, the IRS executed search warrants on the Global Prosperity
5 directors' residence, including Andersen's. The IRS seized a Global Prosperity customer
6 list identifying over 44,000 participants during the search. (Dkt. No. 1, Compl. at ¶ 9.)

7 On May 11, 2004, Andersen, Lamantia, Struckman, and two others were indicted
8 for knowingly, intentionally, and unlawfully conspiring to defraud the United States and
9 defeat the lawful government functions of the IRS. *See United States v. Andersen*, CR04-
10 0229RMT (W.D. Wash.) (indictment is docket entry 8). A superseding indictment was
11 returned July 20, 2005. (Dkt. No. 1, Compl. at ¶ 11.) A copy of the superseding
12 indictment is attached as Exhibit 1. *See United States v. Andersen*, CR04-0229RMT
13 (W.D. Wash.) (docket entry 131).

14 On July 15, 2004, Andersen pled guilty to conspiring to defraud the United States
15 in violation of 18 U.S.C. § 371. *United States v. Andersen*, CR04-0229RMT (W.D.
16 Wash.) (docket entry 55). Andersen admitted, as part of the plea, that he had conspired to
17 conceal the business affairs and income of Global Prosperity by using purported trusts
18 and a series of related nominee bank accounts. (Dkt. No. 1, Compl. at ¶¶ 12, 34.b.)
19 Andersen also admitted that he concealed both his own income and Global Prosperity's
20 income, by failing to report payments he received from Global Prosperity on IRS Forms
21 W-2, 1099, Schedule K-1, or any other form including Andersen's personal income tax
22 returns for 1996 through 2002. A copy of Andersen's plea agreement is attached as
23 Exhibit 2. (*Id.* at ¶12.) Finally, Andersen admitted that he and his co-conspirators
24 maintained the anonymity of Global Prosperity and themselves by periodically changing
25 the name of the Global Prosperity organization, using mail drops to conceal its location,

1 and conducting financial transactions in cash to escape notice from the IRS. (*Id.* at ¶
2 34.c.)

3 *D. KNOWLEDGE OF FALSITY AND FORMATION OF STRATIA*

4 In July 1997, the Michigan Attorney General issued a cease-and-desist order
5 requiring Global Prosperity to discontinue the multi-level marketing of fraudulent tax
6 schemes in that state. (*Id.* at ¶ 24.) In 1998, the Attorneys General of Massachusetts,
7 Missouri, North Dakota, Oregon, and South Dakota issued similar cease-and-desist
8 orders. (*Id.*) Global Prosperity continued doing business following the cease-and-desist
9 orders under a modified name and restricted its promotion to offshore locations. (*Id.*) As
10 a Global Prosperity director, Andersen was aware of the cease-and-desist orders
11 preventing Global Prosperity from doing business in those states. (*Id.* at ¶ 25.) Copies of
12 the cease-and-desist orders from Michigan, Oregon, Massachusetts, North Dakota, and
13 Missouri are attached as Exhibits 6-A through 6-E. (*See* Exh. 6, Declaration of Barbara
14 Cantrell at ¶¶ 2-6.)

15 In March 2002, after execution of the search warrants on their houses, and after the
16 issuance of cease-and-desist orders from six states' Attorneys General, Andersen and
17 Lamantia established Stratia Corporation ("Stratia"), a Nevada LLC, as a successor
18 organization to Global Prosperity. (*Id.* at ¶ 26.) Dan Andersen was Stratia's chief
19 executive officer and the individual primarily responsible for keeping Stratia's records.
20 (*Id.* at ¶ 27.) Andersen helped devise Stratia's promotional materials. (*Id.*)

21 Stratia's primary product was a compact disc audio course containing false
22 commercial speech advertising fraudulent tax-avoidance schemes. (*Id.*) The Stratia
23 compact disc course promotes the fraudulent tax-avoidance schemes Bruce Hawkins
24 created. (*Id.* at ¶ 28.) On August 11, 2006, this Court enjoined Hawkins from selling the
25 same fraudulent tax schemes that Stratia promoted in its audio compact disc course.

1 *United States v. Hawkins*, 06-CV-05142 (W.D. Wash.) (docket entry 14). A copy of the
2 United States' complaint against Hawkins and this Court's order of injunction are
3 attached as Exhibits 3 and 4, respectively. *Id.*

4 *E. HARM TO THE GOVERNMENT*

5 Andersen's schemes harm the government by fraudulently reducing customers'
6 reported tax liabilities. Based on the Global Prosperity customer list, an estimated 44,000
7 taxpayers have purchased at least one of Global Prosperity's products or tax-fraud
8 schemes. (Dkt. No. 1, Compl. at ¶ 30.) The Internal Revenue Service is harmed because
9 it must dedicate a portion of its scarce resources to detecting and examining the
10 inaccurate returns filed by Global Prosperity customers as a result of Andersen's tax-
11 fraud schemes. (*Id.* at ¶ 31.) The IRS may never recover some of the revenue loss caused
12 by Defendant's activities. (*Id.* at ¶ 33.)

13 **IV. LEGAL ARGUMENT**

14 This Court has authority to grant injunctive relief under I.R.C. §§ 7402 and 7408
15 to enjoin Andersen from promoting fraudulent tax schemes and from engaging in conduct
16 that substantially interferes with the administration and enforcement of the internal
17 revenue laws.

18 *A. Standards for Granting an Injunction under 26 U.S.C. § 7408.*

19 Under 26 U.S.C. § 7408, a tax-scheme promoter may be enjoined if a court finds
20 "(1) that the person has engaged in any conduct subject to penalty under section 6700
21 (relating to penalties for promoting abusive tax shelters) . . . [and] (2) that injunctive relief
22 is appropriate to prevent recurrence of such conduct." Here, the undisputed facts
23 establish that: (1) Andersen engaged in conduct that subjects him to penalty under 26
24 U.S.C. § 6700; and (2) an injunction is necessary and appropriate to prevent recurrence of
25 such conduct.

1 Because 26 U.S.C. § 7408 expressly authorizes the injunction, Andersen may be
2 permanently enjoined without considering the traditional equitable prerequisites.⁵

3 Under § 7408, the government must prove five elements to enjoin Andersen:

4 (1) Andersen organized or sold, or participated in the organization or sale of, an
5 entity, plan, or arrangement;

6 (2) In connection therewith Andersen made or caused to be made false or
7 fraudulent statements concerning the tax benefits to be derived from the entity,
8 plan, or arrangement;

9 (3) Andersen knew or had reason to know that the statements were false or
10 fraudulent;

11 (4) Andersen's false or fraudulent statements pertained to a material matter; and

12 (5) An injunction is appropriate to prevent recurrence of this conduct.⁶

13 The government must prove each element by a preponderance of the evidence.⁷

14 The uncontested facts in this action establish each of these five elements. Thus, Andersen
15 should be permanently enjoined from promoting the schemes described above and any
16 other tax-fraud scheme.

17 *1. Andersen Participated in the Sale of an Entity, Plan, or Arrangement.*

18 Andersen founded and administered the Global Prosperity tax fraud architecture.
19 This structure included a multi-level marketing program that brought Global Prosperity's
20 own products to market and seminars at which vendors paid to hawk their wares to
21 Global Prosperity customers. The Global Prosperity audio course and the seminars were

22 ⁵ See *United States v. Estate Preservation Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000)
23 (“The traditional requirements for equitable relief need not be satisfied since Section
24 7408 expressly authorizes the issuance of an injunction”); *United States v. Hempfling*,
25 431 F. Supp. 2d 1069, 1075-76 (E.D. Cal. 2006) (same); *United States v. Cohen*, 222
26 F.R.D. 652, 653 (W.D. Wash. 2004) (holding that for a permanent injunction the United
27 States need meet only the criteria of I.R.C. § 7408, and not the equitable factors).

28 ⁶ 26 U.S.C. §§ 6700(a), 7408(b).

⁷*Estate Preservation Servs.*, 202 F.3d at 1097.

1 linked because the false concepts presented in the audio course reinforced the fraudulent
2 statements vendors made at seminars. Global Prosperity controlled what products and
3 schemes vendors sold at its conferences by reviewing and approving every scheme
4 offered at a Global Prosperity seminar. The audio course, offshore seminars, and the
5 opportunity to purchase others' pre-vetted tax fraud products is a plan or arrangement
6 within the meaning of 26 U.S.C. § 6700(a)(1)(A).⁸ Andersen further participated in the
7 sale of Global Prosperity's products by writing the checks that distributed Global
8 Prosperity's earnings to the organization's salespeople.

9 2. *Andersen Furnished and Caused to be Furnished False Statements*
10 *Regarding the Internal Revenue Code.*

11 The statements presented on the Global I audio course and vendors' statements at
12 Global Prosperity seminars are facially false. Anyone who earns income within the
13 United States is required to pay federal income taxes, even if they live in one of the fifty
14 states of the union.⁹ The Sixteenth Amendment to the Constitution was properly ratified,
15 and arguments to the contrary are consistently rejected as frivolous.¹⁰ Wages earned
16 within the United States are not "foreign source income" and are subject to taxation.¹¹ A
17 taxpayer cannot avoid federal income taxes by "revoking" or "rescinding" his or her

18 ⁸ See, e.g. *United States v. Mid-South Music Corp.*, 624 F.Supp. 673, 676 (M.D. Tenn.
19 1985) (discussing the phrase "abusive tax shelter" for § 6700 purposes); see also *United*
20 *States v. Hirmer*, Case No. 3:08-cv-136, slip op. at 12-13, (N.D. Fla. May 16, 2008)
(imposing preliminary injunction in case involving a nearly identical arrangement) .

21 ⁹26 U.S.C. § 61 (2006).

22 ¹⁰See *United States v. Benson*, 941 F.2d 598, 607 (7th Cir. 1991) (dismissing as frivolous
23 Benson's arguments about the invalidity of the Sixteenth Amendment in a review of
24 Benson's conviction for willful failure to file federal income tax returns, and reversing
the conviction on unrelated grounds).

25 ¹¹See *United States v. Bell*, 414 F.3d 474, 475-76 & n.1(3d Cir. 2005) (describing the
26 details of the U.S. sources argument and referring to this position as "universally
discredited").

1 Social Security number.¹² The arguments Global Prosperity advanced in its promotional
2 materials amount to nonsense covered in a thin veneer of legalese.

3 3. *Andersen Knew or Had Reason to Know of the Falsity of the Statements.*

4 In the sentencing memorandum that Andersen submitted to this Court in
5 connection with his criminal conviction, he represented to the Court that he may not have
6 known the schemes he was promoting were illegal at first, but eventually he knew they
7 were illegal, and continued to promote them anyway because of how lucrative his
8 involvement in Global Prosperity had become. On page 6 of that memorandum,
9 Andersen concedes:

10 Dan Andersen is guilty of the crime to which he pled guilty — conspiracy
11 to defraud the Internal Revenue Service — not because he devised a fraud
12 scheme or assisted in doing so, because he did not; Dan is guilty because he
13 continued to manage the business of [Global Prosperity] promoting these
14 schemes and “become a product of the product” as Struckman urged even
15 after he knew these schemes were recipes for tax evasion and he did not
16 withdraw until after his, Lamantia’s and Struckman’s homes and [Global
17 Prosperity’s] offices were raided on February 28, 2001. [sic]

18 (Exh. 7, Daniel Andersen’s Sentencing Memorandum at 6.) Thus, Andersen has already
19 admitted to this Court that he continued to participate in the Global Prosperity scheme
20 long after he knew that Global Prosperity’s products were fraudulent.

21 Further, in 2004—long after 2001—Andersen and Lamantia established Stratia,
22 which promoted on its own audio course fraudulent trust packages sold by Bruce
23 Hawkins. (Dkt. No. 1, Compl. at ¶ 28.)

24 4. *Andersen’s False Statements Pertained to a Material Matter.*

25 If a particular statement has a substantial impact on the decision-making process or
26 produces a substantial tax benefit to a taxpayer, the matter is properly regarded as

27 ¹²*United States v. Kaun*, 633 F. Supp. 406, 414 (E.D. Wis. 1986) (enjoining a tax protest
28 organization that had encouraged its members, among other things, to rescind their Social
Security numbers to avoid paying federal income taxes).

1 “material” within the meaning of section 6700.¹³ Here, statements were material because
2 customers might rely on the false statements Global Prosperity and its vendors made in
3 deciding to not file federal income tax returns and pay federal income taxes. As a result,
4 Global Prosperity’s false statements and the false statements of the vendors Global
5 Prosperity touted as experts are “material” within the meaning of section 6700.

6 *5. An Injunction is Necessary to Prevent Recurrence.*

7 The court must also determine whether “injunctive relief is appropriate to prevent
8 recurrence of such conduct.”¹⁴ This element is satisfied where there is a reasonable
9 likelihood of continued fraudulent conduct.¹⁵ Other factors are: (1) whether mechanisms
10 are in place for continuing the business or scheme; (2) whether the defendant had a high
11 degree of knowledge and level of intent; (3) whether the actionable conduct was an
12 isolated occurrence; (4) whether the defendant insists on the legality of his actions; and
13 (5) whether the defendant has provided assurances that he will change his behavior in the
14 future.¹⁶

15 An injunction is necessary to prevent Andersen from selling fraudulent tax
16 products when he leaves prison. Andersen continued to promote Global Prosperity after
17 he knew it sold fraudulent tax products, (Exh. 7 at 6), and began a second organization
18 that promoted fraudulent asset protection schemes. (Dkt. No. 1, Compl. at ¶¶ 26-29.)
19 Andersen continued to operate Global Prosperity in the face of cease and desist orders
20 from six state attorneys general. (*Id.* at ¶¶ 24-25.) Andersen was instrumental in
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22 ¹³ *See Buttorff*, 761 F.2d at 1062.

23 ¹⁴ 26 U.S.C. § 7408(b)(2).

24 ¹⁵ *See Kaun*, 827 F.2d at 1149-50.

25 ¹⁶ *Id.*

1 controlling the activities and finances of Global Prosperity: He wrote over \$9,200,000 in
2 checks on behalf of Global Prosperity prior to 2002 and had primary responsibility for
3 tracking sales of Global Prosperity's products. (*Id.* at ¶ 34.a.) Andersen admitted in his
4 plea agreement in his criminal case that he and his co-conspirators maintained the
5 anonymity of Global Prosperity and themselves by periodically changing the name of the
6 Global Prosperity organization, using mail drops to conceal its location, and conducting
7 financial transactions in cash to escape notice from the IRS. (*Id.* at ¶¶ 34.c.)

8 Without an injunction, Andersen will be free to return to promoting fraudulent
9 following his prison sentence. Income tax returns Andersen filed show that marketing
10 fraudulent tax-avoidance schemes through Global Prosperity is the most lucrative
11 occupation Andersen has ever had. (*Id.* at ¶¶ 34.e.) In light of Andersen's previous
12 involvement with Global Prosperity, this Court saw fit to impose special conditions on
13 Andersen when he is released from prison, including among other things, that he maintain
14 only one checking account, obtain a probation officer's approval before obtaining credit,
15 forbidding self-employment or employment by friends or relatives, and forbidding him
16 from working for cash. (*Id.* at ¶¶ 34.g.)

17 For the foregoing reasons, the Court should enjoin Andersen pursuant to 26 U.S.C.
18 § 7408 for violating 26 U.S.C. § 6700.

19 *B. Standards for Granting A Promoter Injunction under 26 U.S.C. § 7402*

20 Internal Revenue Code § 7402(a) grants federal district courts broad authority to
21 issue orders of injunction and to render such judgments as may be necessary or
22 appropriate for the enforcement of the internal revenue laws. An injunction under § 7402
23 can be issued "in addition to and not exclusive of any and all other remedies of the United
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1 States in such courts or otherwise to enforce such laws.”¹⁷ It manifests the
2 “Congressional intention to provide the district courts with a full arsenal of powers to
3 compel compliance with the internal revenue laws.”¹⁸ While the United States asserts that
4 it must demonstrate only that the conditions set forth in § 7402(a) exist, even if the Court
5 considers the traditional equitable factors the United States is entitled to the relief it seeks
6 under 26 U.S.C. § 7402(a).¹⁹

7 Without an injunction, Andersen is free to continue to promote the very schemes
8 that landed him in prison, which constitutes a significant risk of irreparable harm to the
9 United States. The schemes Andersen promoted through Global Prosperity reached at
10 least 44,000 customers. (Dkt. No. 1, Compl. at ¶ 30.) The damage and potential harm
11 caused by Andersen’s unlawful conduct greatly outweighs any injury she may suffer from
12 the entry of a permanent injunction: the United States may never recover all of the tax
13 revenue of which it was deprived by Andersen’s last scheme—let alone his next scheme.
14 The burden on Andersen will be slight; he will simply be ordered to obey the law. The
15 public interest lies in enjoining Andersen to ensure that Andersen does not further profit
16 privately by depriving the public of the funds to which it is entitled.

17 For these reasons, the Court should enjoin Andersen under 26 U.S.C. § 7402.
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21 ¹⁷ 26 U.S.C. § 7402.

22 ¹⁸ *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957).

23 ¹⁹ Under the traditional equitable factors, in order to obtain a permanent injunction a
24 plaintiff must demonstrate that: (1) it has suffered irreparable injury; (2) it has no
25 adequate remedy at law; (3) “considering the balance of hardships between the plaintiff
26 and defendant, a remedy in equity is warranted”; and (4) that the public interest would
not be disserved by a permanent injunction. *See, eBay, Inc. v. MercExchange, LLC*, 547
U.S. 388, 391 (2006).

1 Conclusion

2 Pursuant to Rule 55(b), and based on the facts deemed admitted in this case by
3 Andersen’s failure to answer or otherwise defend, and those made known to the Court by
4 affidavit or otherwise, the United States moves that this Court enter a permanent
5 injunction under 26 U.S.C. §§ 7402 and 7408 prohibiting Andersen and his
6 representatives, agents, servants, employees, and anyone in active concert or participation
7 with him, from directly or indirectly by means of false, deceptive, or misleading
8 commercial speech:

9 (1) Organizing, promoting, marketing, or selling (or assisting
10 therein) any tax shelter, plan, or arrangement, including but not
11 limited to those discussed above, or any other tax shelter, plan or
12 arrangement that incites or assists customers to attempt to violate the
13 internal revenue laws or unlawfully evade the assessment or
14 collection of their federal tax liabilities or unlawfully claim improper
15 tax refunds;

16 (2) engaging in activity subject to penalty under 26 U.S.C. § 6700,
17 including making, in connection with the organization or sale of any plan or
18 arrangement, any statement about the securing of any tax benefit that the
19 defendant knows or has reason to know is false as to any material matter;

20 (3) engaging in conduct subject to penalty under any provision of the
21 Internal Revenue Code, or engaging in any other conduct that substantially
22 interferes with the proper administration and enforcement of the internal
23 revenue laws.

1 The United States further requests that this Court allow the government full post-
2 judgment discovery to monitor Andersen's compliance with the injunction.

3 DATED this 11th day of August, 2009.

4 Respectfully submitted,

5 JEFFREY C. SULLIVAN
6 United States Attorney

7 *s/Robert E. Fay*
8 _____
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EXHIBIT LIST

1. Superseding indictment dated July 20, 2005, *United States v. Andersen*, Case No. CR04-229RMT (W.D. Wash.);
2. Andersen's plea agreement dated July 15, 2004, *United States v. Andersen*, Case No. CR04-229RMT (W.D. Wash.);
3. Complaint for permanent injunction against Bruce Hawkins dated March 17, 2006, *United States v. Hawkins*, Case No. C06-5142RBL (W.D. Wash.);
4. Final judgment of permanent injunction against Bruce Hawkins dated August 9, 2006, *United States v. Hawkins*, Case No. C06-5142RBL (W.D. Wash.);
5. Declaration of Cynthia Zambito;
6. Declaration of Barbara Cantrell;
- 6A. Cease and Desist Order from Michigan's attorney general;
- 6B. Cease and Desist Order from Oregon's department of justice;
- 6C. Cease and Desist Order from Massachusetts's secretary of the commonwealth;
- 6D. Cease and Desist Order from North Dakota's securities commissioner;
- 6E. Cease and Desist Order from Missouri's secretary of state;
7. Andersen's sentencing memorandum dated July 14, 2008, *United States v. Andersen*, Case No. CR04-229RMT (W.D. Wash.);
8. Declaration of Revenue Agent Terry Martin.