IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.
	)	
PHILIP A. KAISER,	)	
	)	
Defendant.	)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, United States of America, for its complaint against Defendant Philip A. Kaiser, states as follows:

Nature of Action

1. The United States brings this complaint pursuant to 26 U.S.C. §§ 7401, 7402 and 7408 of the Internal Revenue Code ("I.R.C.") to enjoin Philip A. Kaiser ("Kaiser") and all those in active concert or participation with him, from directly or indirectly:

a. Organizing, promoting, or selling the PIRAC, Char-FLP, Real Estate Purchase Option, and Derivium tax schemes described in this complaint, or any substantially similar plans or arrangements, or any other business or tax services that

- Use sham transactions to claim massive charitable-contribution deductions, with little or no money actually going to any legitimate charity;

- Evade income tax on business earnings by using sham transactions with sham corporations to reduce customers' reported federal income tax liabilities;

- Illegally circumvent the contribution limits for Roth IRAs; and

- Evade federal income tax on gains from stock sales by disguising sales as "loans."

b. Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws or understatement of federal tax liability;

c. Organizing, promoting, or selling (or helping others to organize, promote, or sell) the fraudulent tax schemes described in this complaint, and any other tax shelter, plan, or arrangement, that incites or assists customers to attempt to violate the internal revenue laws or evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;

d. Engaging in conduct subject to penalty under I.R.C. § 6700, including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that Kaiser knows or has reason to know is false or fraudulent as to any material matter;

e. Engaging in conduct subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of, or advising with respect to a document related to a material matter under the internal revenue laws that includes a position that Kaiser knows will, if used, result in an understatement of tax liability;

f. Engaging in conduct subject to penalty under any provision of the Internal Revenue Code, or engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

g. Providing any entity or individual with any advice related to federal taxes;

h. Aiding, assisting, and/or advising with respect to the preparation of any federal tax return or representing taxpayers before the IRS;

i. Engaging in conduct designed or intended to, or having the effect of, obstructing or delaying an IRS investigation or audit; and

j. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

Authorization

2. This action for injunctive relief is brought at the request of the Chief Counsel of the Internal Revenue Service ("IRS"), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7402 and 7408.

Jurisdiction and Venue

3. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402(a) and 7408(a).

4. Venue is proper in this Court under 28 U.S.C. § 1391 because Kaiser resides in this judicial district and a substantial portion of the events giving rise to this action took place in this judicial district.

The Defendant

5. Kaiser resides in St. Louis, Missouri, at a location within this judicial district.

6. Kaiser is a practicing attorney. He received his J.D. from Capital University in 1974, and an L.L.M. in Taxation from Boston University in 1977.

7. Kaiser was admitted to the state bar of Ohio in 1974 and to the state bar of Missouri in 1979. Kaiser was admitted to practice before the United States Tax Court in 1976.

8. Kaiser was an attorney with the Internal Revenue Service District Counsel's Office from 1974 to 1978.

9. Kaiser currently practices law through The Kaiser Law Firm, P.C., 12231 Manchester Road, 1st Floor, St. Louis, Missouri, 63131, a location within this judicial district.

10. Kaiser is a member of the American Bar Association's Committee on Civil and Criminal Tax Penalties, which is part of the ABA's Taxation Section.

11. On his firm's website, Kaiser holds himself out as practicing in areas of law pertaining to "Asset Protection Planning; Corporations; Limited Liability Company Law; Estate Planning; Income Tax; Estate Tax; International Corporations and Trusts; IRA Owned Entities; Business Succession Planning; Business Formation; Mergers and Acquisitions."

12. During a summons enforcement hearing before this Court in 2003, the Court concluded that Kaiser is "a learned member of a specialized field."

13. Kaiser at one time operated an entity called Jefferson Gage, LLC ("Jefferson Gage"). Through Jefferson Gage, Kaiser promoted investment strategies, on its website and by other means, that required legal assistance to implement. Kaiser, through his law firm, offers the legal assistance necessary to implement the investment strategies he promoted through Jefferson Gage. Fifty percent of Jefferson Gage is effectively owned by the Trusts of Kaiser's wife and son. The other fifty percent of Jefferson Gage was once controlled by an associate of Kaiser named Douglas Mueller, under an entity named New Frontier Holdings, LLC.

The PIRAC Scheme

14. Individually, through his law practice, and previously through Jefferson Gage, Kaiser promotes tax schemes involving Roth IRAs that fraudulently reduce his customers' reported federal income tax liabilities and expose his customers to penalties under the Internal Revenue Code.

15. A Roth IRA allows an individual to accrue tax-free income that may be withdrawn without paying any taxes when the taxpayer is 59 ½ years old. The Internal Revenue Code allows a taxpayer to contribute a specified annual maximum amount of after-tax dollars to a Roth IRA.

When a taxpayer makes more than this statutorily prescribed annual contribution, he or she is assessed a 6% excise penalty tax for each year of non-compliance with this statutory limit and for each year that the excess amount remains in the Roth IRA. Throughout much of the 1990s this maximum contribution amount was $2,000 per year; the maximum contribution was $4,000 in 2007 and is now $5,000 per year for individuals under 50 years of age (and $1,000 more than these amounts for individuals over 50). In addition, the I.R.C. also prescribes annual income limits above which a taxpayer may no longer contribute to a Roth IRA. *See* I.R.C. § 408A(c)(3).

16. In self-directed Roth IRAs such as those that Kaiser helps his customers establish, the customer controls how the money contributed to the IRA is invested.

17. Most Roth IRAs are not fully self-directed, as they are maintained with broker dealers, which monitor and direct a taxpayer's annual Roth IRA contribution, usually consisting of cash or certain types of securities.

18. One fraudulent investment scheme that Kaiser promotes is known as a Private IRA Corporation or "PIRAC."

19. In promoting the PIRAC scheme, Kaiser falsely tells customers that they can lower their income taxes and produce tax-free income in excess of $40,000 per year that "can be invested to grow tax-free and ultimately be withdrawn by [the customer], tax-free."

20. Kaiser promotes the PIRAC scheme primarily to wealthy individuals who own and operate profitable businesses.

21. Kaiser implements the PIRAC scheme by drafting and filing the legal documents necessary to create the various entities used in the scheme.

22. As part of the PIRAC scheme, Kaiser coordinates the establishment of a self-directed Roth IRA for the benefit of his customer. Kaiser frequently established the self-directed Roth IRA with Trust Administration Services Corporation ("TASC"), in Carlsbad, California. TASC is a subsidiary of First Regional Bank, which operates banks in California. Although TASC initially accepted Kaiser-related self-directed Roth IRAs, it subsequently requested that Kaiser clients make other arrangements for their Roth IRA account administration. TASC no longer knowingly accepts Kaiser-related self-directed Roth IRAs.

23. Once a customer's self-directed Roth IRA is established, Kaiser instructs the customer to make an initial cash contribution – typically between $2,000 and $4,000 – to the self-directed Roth IRA account.

24. As part of the scheme, Kaiser then forms a new corporation for the customer. In some instances, Kaiser lists himself as an officer of the newly-formed corporation. In almost all cases, the newly-formed corporation is nothing more than a shell entity with no assets or employees.

25. On Kaiser's instructions, the customer instructs his or her Roth IRA to subscribe for substantially all of the stock of the newly-created shell corporation. Typically, the customer's Roth IRA subscribes for 98% of the new corporation's stock. In this complaint, the United States will refer to these Roth IRA-owned shell corporations as the "Sham Corporation."

26. Kaiser instructs the customer to have a business associate or relative of the customer purchase the remaining shares, typically 2% of the Sham Corporation's shares.

27. In some cases, Parker Madison, LLC, an entity controlled by Kaiser, purchased the remaining shares of the Sham Corporation.

28. Jefferson Gage is a wholly-owned subsidiary of Parker Madison, LLC. Kaiser's wife and son effectively have a fifty percent ownership interest in Parker Madison, LLC. Kaiser does not always disclose to customers that Parker Madison, LLC is owned in part by Kaiser's wife and son. Kaiser's son also is an attorney and is an associate at the Kaiser Law Firm.

29. At Kaiser's direction the customer shifts valuable business assets or income from his or her preexisting business to the newly-created Sham Corporation. This happens in several ways.

30. In some instances, Kaiser assists the customer in arranging the customer's business affairs so that the Sham Corporation purportedly provides "services" to the customer's pre-existing business. This allows the pre-existing business to claim tax deductions for payments to the Sham Corporation for the supposed "services." The example of Daniel Walkenhorst, a former Kaiser client, discussed in paragraph 49c below demonstrates that after Walkenhorst purchased the PIRAC scheme, his preexisting business remained unchanged and receives substantially the same services as before he purchased the PIRAC scheme. The only difference is that, after the PIRAC scheme is set up by Kaiser, the preexisting business receives those services in a way that funnels money from the existing business into the Sham Corporation by way of sham payments for purported "services."

31. In other instances, Kaiser assists customers to separate one income stream from their existing business and place that income stream into the Sham Corporation. The Sham Corporation typically is a shell entity and does not acquire the assets, employees, or capital to sustain that income stream without the assistance of the preexisting business. Moreover, the Sham Corporation does not pay the preexisting business the fair market value of the income stream acquired.

32. Thus, the Sham Corporation receives revenue from the preexisting business's sales or activities in a way that creates the appearance that the Sham Corporation carried out the sale or

activity to earn the revenue, when it actually did not. The example of former Kaiser clients, the Burchards, discussed below at paragraph 49b, demonstrates how Kaiser assists customers to reorganize their existing businesses in such a way so that money is fraudulently diverted into their Sham Corporations to evade the reporting and payment of federal income taxes.

33. Although the precise mechanism is different in each case, Kaiser assists his customers in using sham transactions to shift funds from their preexisting businesses to their Sham Corporations for the sole purpose of evading federal income tax liability and illegally inflating their tax-free retirement savings beyond the limits allowed by federal law.

34. The customer has total control over the amount of funds shifted from the existing business into the Sham Corporation because Kaiser's PIRAC scheme allows the customer to be on both sides of the transactions. In the PIRAC scheme, the customer runs both the existing business and controls the Sham Corporation, and thus the customer and Kaiser control the amount of the payment, for sham services.

35. At the customer's discretion, the Sham Corporation pays dividends to its shareholders. The customer's Roth IRA receives dividends from the Sham Corporation in accordance with the percentage of the Sham Corporation that the customer's Roth IRA owns. Typically, the Roth IRA receives 98% of the dividends because it owns 98% of the Sham Corporation's stock.

36. The Sham Corporation also pays dividends to the minority shareholder or shareholders. When Parker Madison is the minority shareholder, the minority-share dividend directly benefits the Trusts of Kaiser's wife and son, thus indirectly compensating Kaiser for his role in setting up the fraudulent arrangement.

Tax Characteristics of the PIRAC Scheme

37. Kaiser's PIRAC scheme is designed to exploit the tax characteristics of Roth IRAs and use sham transactions to evade the limits that Congress has placed on Roth IRAs.

38. As described above, a taxpayer's annual contribution to a Roth IRA may not exceed a maximum, statutorily-prescribed amount, without being subject to a 6% Excise Tax.

39. Additionally, an individual's income may limit how much that individual can invest in a Roth IRA without paying Excise Tax. If a taxpayer earns income above a certain statutorily-defined threshold, the taxpayer cannot make any contributions to a Roth IRA without paying Excise Tax on the "excess contribution." Within a certain income range, the taxpayer is only eligible to contribute a portion of the maximum contribution described in paragraph 15 without paying Excise Tax.

40. Profits that the Roth IRA account earns by investing an excess contribution are not subject to the excise tax, even though the original contribution is subject to the excise tax.

41. Due to their high incomes, Kaiser's customers generally must pay an excise tax on the original excess contribution they make into their Roth IRA.

42. Kaiser's PIRAC scheme illegally benefits customers, however, because any money the Roth IRA earns in the form of dividends from the Sham Corporation is paid into the Roth IRA tax-free and is not subject to the excise tax. Further, those dividends will be paid tax free to the customer if withdrawals are made after turning age 59 ½ (or the withdrawal is made under other limited statutorily-defined circumstances).

43. Because Kaiser's customers already are operating profitable businesses when Kaiser sets up their Sham Corporations, the customer does not bear any risk by directing his or her Roth

IRA to invest in the Sham Corporation. Indeed, the typical Sham Corporation set up by Kaiser is nothing more than a shell entity with no employees or assets.

44. Even though Kaiser's customers are not bearing any risk when setting up a Sham Corporation, they are able to reap a tremendous reward by using sham transactions to transfer income from their existing business to their Roth IRAs in excess of the statutory limits on contributions to a Roth IRA. Kaiser's customers will improperly benefit from these excess contributions in the future when they receive tax-free income from their Roth IRAs.

45. In sum, Kaiser's PIRAC scheme allows his customers, who are typically wealthy, to use a sham business entity and sham transactions to evade the congressionally-imposed Roth IRA contribution limits and evade the full payment of federal taxes on taxable income.

46. Abusive Roth IRA arrangements like those Kaiser promotes are identified on the IRS Web site as one of the 2010 "Dirty Dozen" tax scams.

Specific Examples of the PIRAC Scheme

47. In 2003, Kaiser appeared before this Court to resist enforcement of a summons that the IRS issued as part of its investigation of the tax schemes Kaiser promotes. In sworn testimony Kaiser gave before this Court in 2003, he claimed, "So when [the PIRAC] plan is presented to a client, the first question we ask of them is, one, do you have a business that you would like to start because we cannot do this for an existing business. Many people think you can but you cannot. There has to be a valid business purpose for starting a, quote, PIRAC."

48. Later during that testimony, Kaiser further asserted that the customer must have a valid economic basis for starting the Sham Corporation. During his testimony, Kaiser insisted that an existing business cannot be used as part of the PIRAC scheme.

49. As the following examples demonstrate, in direct contravention of his sworn testimony, Kaiser not only drafts the documents necessary to carry out the PIRAC scheme, but he knowingly assists and advises his customers to use sham transactions to shift funds from their existing businesses into their Sham Corporations. For example:

a. Kaiser customer Michael Alstott of St. Petersburg, Florida, is a former professional football player. During his career, Alstott entered into a series of personal service contracts with third parties for appearances and performances at various venues. Under the terms of these contracts, Alstott could not assign his obligation to perform to another party because the performance depended upon the fame, training, and skill that Alstott alone possessed. In December 2001, Kaiser assisted Alstott in establishing a Sham Corporation, called Grid Iron Endorsements, Inc. ("Grid Iron"), and establishing a self-directed Roth IRA with First Regional Bank for Alstott's benefit. The initial Roth IRA contribution was $2,000. Under Kaiser's direction, Alstott directed his Roth IRA to subscribe to 98% of Grid Iron's stock for $2,000; an unrelated individual subscribed to the remaining 2% of the shares.

Pursuant to Kaiser's instructions, Alstott assigned a portion of his income from his personal service contracts to the Sham Corporation, which in turn used these funds to pay tax-free dividends to the Roth IRA. He did not report the assigned portion of the income on his own federal income tax return. The initial Roth IRA contribution of $2,000 grew to nearly $400,000 as a result of these tax-free dividends directed to Alstott's Roth IRA. Kaiser falsely told Alstott that this arrangement was a legal way to reduce his federal income tax liability and increase his retirement savings. At Kaiser's direction, Alstott was able to maintain control over how Grid Iron used the money Alstott assigned to it, allowing complete discretion over how much money Grid Iron paid into his Roth IRA. This arrangement resulted in a substantial tax deficiency once the IRS detected the improper transactions and treated the assignment of income as an excess contribution to Alstott's Roth IRA. As a result, Alstott was assessed $173,044 in additional income taxes, and $112,265 in excise tax.

b. Kaiser customers Stephen and Ronda Burchard, own and operate an executive search firm called Burchard & Associates in Clayton, Missouri. In the spring of 2001, the Burchards attended a seminar hosted by Douglas Mueller, a Kaiser business associate, and his firm, formerly known as Mueller, Prost, Purk, & Willbrand (MPP&W) (now Mueller Prost), discussing the PIRAC plan. Mueller's firm recommended that the Burchards retain Kaiser to provide advice and prepare documents related to the PIRAC. In March 2001, Mr. Burchard engaged Kaiser to provide services to be rendered in connection with the PIRAC plan, including completing Roth IRA forms and registering with an IRA Custodian, drafting and filing Articles of Incorporation for a Corporation, and providing a comprehensive "Summary of Operational Issues" for the Corporation.

In April 2001, Kaiser advised and assisted the Burchards in establishing a new corporation called B&A Search Group, Inc. ("B&A") as well as a self-directed Roth IRA for Stephen Burchard. Under Kaiser's direction, the Burchards made an initial contribution of $2,000 to Mr. Burchard's self-directed Roth IRA, and Mr. Burchard directed his Roth IRA to subscribe to 98% of B&A's stock. Parker Madison purchased the remaining 2% interest in B&A. Mr. Burchard was not aware that Parker Madison was controlled by Kaiser.

Kaiser instructed the Burchards to separate the revenue stream from the "retained executive search" aspect of their established search firm, Burchard & Associates, and move that revenue stream so that the money flowed to the new Sham Corporation, B&A. Kaiser recommended that the Burchards obtain separate stationery and business cards for B&A, even though Kaiser knew that all of B&A's assets, expenses, and payroll would simply be assignments from Burchard & Associates. Between July 2004 and August 2006, the Burchards' Sham Corporation paid $223,501 in dividends from B&A to Stephen Burchard's Roth IRA. The minority interest shareholder, Parker Madison received dividends of $4,561 during that time because of its 2% ownership interest in B&A. Kaiser falsely told the Burchards that this arrangement was a legal way to reduce their federal income tax liability and increase Stephen's retirement savings.

In February 2004, the Burchards received a nine page memorandum from Kaiser regarding IRS Notice 2004-8. In it, Kaiser falsely assured the Burchards that Stephen's Sham Corporation was not considered a "listed transaction." Even so, the Burchards sought a second opinion and, after consulting with an independent (and honest) accountant and attorney, they amended their tax returns that were still open and dissolved the Sham Corporation owned by Stephen Burchard's Roth IRA. The Burchards agreed to pay tax, interest and penalties of $74,123 following an IRS examination.

In November 2006, the Burchards filed a lawsuit claiming a breach of fiduciary duty and legal malpractice against Kaiser, the Kaiser Law Firm, Douglas Mueller, and MPP&W, arising from their promotion and sale of the PIRAC scheme. *See Burchard v. Kaiser, et al.*, Case No. 06CC-04544, Circuit Court for St. Louis County. A three-day trial is set to begin in the Circuit Court on Monday, May 3, 2010.

c. Kaiser customer Daniel Walkenhorst is a practicing attorney in St. Louis, Missouri who specializes in workers compensation injury cases. In 2002, Mr. Walkenhorst opened a law practice, Daniel J. Walkenhorst, P.C. ("PC"), as a sole practitioner. After Walkenhorst was introduced to Kaiser, Kaiser falsely informed Walkenhorst that the PIRAC Plan was a legal means to increase his retirement savings. Walkenhorst paid Kaiser to participate in the PIRAC scheme, and Kaiser drafted the documents to create Walkenhorst's Sham Corporation, which was named Business Development Resources, Inc. ("BDR").

Kaiser also established a Roth IRA account for Walkenhorst's benefit. Kaiser directed Walkenhorst's Roth IRA to subscribe to 98% of BDR's stock. The minority interest in BDR was held by Walkenhorst's secretary. Kaiser drafted an agreement between the PC and BDR whereby BDR would purportedly provide advertising and marketing services to the PC. BDR did not, however, have any employees or tangible assets and did not provide any marketing services to the PC. Instead, BDR purportedly contracted with Walkenhorst's secretary (doing business through her own corporation) to promote the PC by placing advertisements in local labor papers.

Thus, Kaiser knowingly directed and assisted Walkenhorst to create a Sham Corporation (BDR) to provide advertising and marketing services which were already conducted by Walkenhorst's secretary within Walkenhorst's existing business, and then allocate revenue to the Sham Corporation for the sole purpose of evading the excess Roth IRA contribution limits. BDR had no other source of revenue besides those stemming from payments made by PC for purported advertising and marketing services. Kaiser determined the amount of "dividends" paid from BDR to the Roth IRA account, and the dividend payments to Walkenhorst's Roth IRA -- $465,280 -- represented over half of BDR's gross revenue. Kaiser falsely assured Walkenhorst that this arrangement was a legal way to reduce his income tax liability and increase his savings for retirement.

After Walkenhorst told Kaiser that he had been contacted by the IRS in an ongoing investigation, Kaiser instructed Walkenhorst to dissolve his Sham Corporation. BDR was dissolved in 2007. Walkenhorst and the BDR Corporation are currently under IRS examination.

d. Kaiser customer Dr. Thomas Hill is a successful radiologist who provides radiology services under a contract with a hospital in Illinois. For nearly a decade, Dr. Hill provided these services through a corporation named Maryville Radiology Group, Ltd. Dr. Hill's radiology group operated without significant modification for nearly ten years.

In 2001, Dr. Hill engaged Kaiser to set up a PIRAC. Kaiser falsely told Dr. Hill that a PIRAC was a legal means to reduce his federal income tax liability and increase his savings for retirement. Kaiser assisted Dr. Hill in establishing a self-directed Roth IRA and, on June 25, 2001, Kaiser filed documents with the Illinois Secretary of State that legally changed the name of Maryville Radiology Group, Ltd. to Thomas Hill Radiology, Ltd. One day later, on June 26, 2001, a new company, Maryville Radiology Group, Ltd., was registered with the Illinois Secretary of State under the same name as had been used by the previous business. Dr. Hill's self-directed Roth IRA subscribed to 98% of this new Sham Corporation, Maryville Radiology Group, Ltd. The remaining 2% was subscribed by Parker Madison.

Effective December 31, 2001, Dr. Hill terminated the ten-year contract between the hospital and the original Maryville Radiology Group, Ltd. Dr. Hill told the hospital's CEO that he wished to cancel the contract because the Radiology group's corporate structure was changing. A new written contract was not developed until July 1, 2007, however. In the interim, the parties operated under a "handshake" agreement based on an understanding that the terms of the agreement with the newly-formed Sham Corporation with the same name, Maryville Radiology Group, Ltd., would be the same as those under the terminated contract with the former Maryville Radiology Group, Ltd.

In its first full year of existence, the Sham Corporation's reported gross income exceeded $2.7 million. Even so, there is no indication that the original Maryville Radiology Group, Ltd. was compensated for the cancellation of the existing contract and transfer of the inherent value of the going concern to the Sham Corporation, where the value of the existing business and going concern was approximately $3.4 million. Dr. Hill still maintained complete control of Maryville Radiology Group, Ltd., and the operations did not vary under the Sham Corporation ownership.

Kaiser did not advise Dr. Hill that the PIRAC scheme was a listed transaction, nor did Kaiser inform Dr. Hill of the Treasury Regulation 1.6011-4 disclosure requirements for listed transactions. In May 2008, Dr. Hill terminated Kaiser's Power of Attorney and ceased his relationship with Kaiser as legal counsel. Dr. Hill also subsequently dissolved his Sham Corporation. The IRS assessed Dr. Hill approximately $3 million in tax and statutory additions for his PIRAC-related conduct. Dr. Hill appealed, and his case is currently pending in IRS appeals.

50. These examples demonstrate that, in direct contravention of his testimony before this Court in 2003, Kaiser knowingly helps customers use sham transactions to shift valuable business assets or income into Sham Corporations in order to help customers evade federal income taxes.

51. Many of Kaiser's other wealthy customers participated in his PIRAC scheme. Kaiser estimated in his 2003 testimony before this Court that he had arranged 30 to 40 PIRACs for his customers between 1998 and 2003.

The PIRAC Scheme is a Listed Transaction

52. If taxpayers were permitted to structure transactions as Kaiser orchestrates through the PIRAC scheme, the Roth IRA contribution limits Congress has enacted would be meaningless. Taxpayers simply could avoid those contribution limits by using sham transactions to shift a portion of their income into a Sham Corporation, which could then pay tax-free dividends to their Roth IRA. As Kaiser is aware, federal law does not allow taxpayers to structure transactions in this manner, as is described more fully below.

53. On December 31, 2003, the IRS released Notice 2004-8. IRS Notice 2004-8 describes a series of transactions between a taxpayer, the taxpayer's business, the taxpayer's Roth IRA, and a Sham Corporation substantially similar to the series of transactions Kaiser employs in his PIRAC scheme.

54. The transactions described in Notice 2004-8 and substantially similar transactions are "listed transactions" for the purposes of Treasury Regulations §§ 1.6011-4(b)(2), 301.6111-2(b)(2), and 301.6112-1(b)(2).

55. Notice 2004-8 states, "The following transactions are identified as 'listed transactions' . . . : arrangements in which an individual, related persons described in [26 U.S.C.] § 267(b) or 707(b), or a business controlled by such individual or related persons, engage in one or more transactions with a corporation, including contributions of property to such corporation, substantially all the shares of which are owned by one or more Roth IRAs maintained for the benefit of the individual, related persons described in § 267(b)(1), or both."

56. Notice 2004-8 explains that the transactions described in the Notice are those that have the effect of shifting value from the taxpayer's existing business into a Sham Corporation for less than fair market value.

57. Notice 2004-8 states that in appropriate cases the IRS will treat money shifted from a customer's existing business into a Sham Corporation as a payment from the existing business to the customer, followed by a contribution from the customer to his or her Roth IRA, followed by a contribution from the Roth IRA to the Sham Corporation.

58. The series of transactions involved in Kaiser's PIRAC scheme are substantially similar to the transactions described in Notice 2004-8, and, as such, the PIRAC scheme is a listed transaction.

59. Kaiser is aware of Notice 2004-8. In 2004, Kaiser sent form letters to his customers falsely informing them that Notice 2004-8 did not apply to the series of transactions involved in Kaiser's PIRAC scheme.

60. Kaiser continues to attempt to defend the validity of his PIRAC schemes in several cases before the Internal Revenue Service.

61. In addition, Kaiser continued to promote the PIRAC scheme to customers even after the IRS published Notice 2004-8 on December 31, 2003.

Real Estate Purchase Option Scheme

62. In addition to the PIRAC scheme, Kaiser promotes another abusive tax scheme involving Roth IRAs that acquire options to purchase real estate.

63. In this scheme, Kaiser helps customers interested in developing real estate to create self-directed Roth IRAs, that, as with his other schemes, are designed to fraudulently understate the

customers' income tax liability and increase their tax-free retirement savings beyond the limits allowed by federal law.

64. Here, the customer identifies property he or she would like to develop and resell for a profit. Then, at Kaiser's instruction, the customer directs his or her Roth IRA to purchase the real estate from an unrelated third party. The Roth IRA enters into a contract to purchase real estate from the unrelated party and makes an earnest money deposit (typically the entire balance of the newly-formed Roth IRA), which is generally as low as $500 to $1,000.

65. At the time the contract is executed, the Roth IRA typically does not have sufficient funds to consummate the real estate purchase. In addition, the Roth IRA could not secure acquisition financing to purchase the property outright without a loan guarantee by the Roth IRA owner or another party.

66. In a sham transaction devoid of economic substance, the Roth IRA assigns the real estate contract to a newly-formed limited liability company (typically created by Kaiser) in exchange for a promissory note worth thousands of times more than the amount paid by the Roth IRA to buy the purchase option. The promissory note specifies a nominal due date but states that repayment must be made at the same time that the LLC distributes its profits to its members. It is understood that the principal amount of the promissory note can be adjusted downward by mutual agreement.

67. The Kaiser-created LLC purchases the subject real estate. The LLC capitalizes the amount of the promissory note as part of the basis of the real estate. The LLC then makes payments toward the promissory note due to the Roth IRA. If the real estate venture ultimately is not as profitable as anticipated, or if the parties wish to retain operating capital within the LLC, the principal amount of the promissory note may be adjusted downward or the note may be cancelled.

68. This transaction allows the customer's Roth IRA to receive a share of the LLC profits, tax-free, paid directly to the Roth IRA. In other words, this scheme allows Kaiser's customers to make excess contributions to their Roth IRAs by the simple expedient of having a Roth IRA purchase and then assign or resell an option to purchase real estate in a transaction lacking any economic substance.

Specific Examples of the Real Estate Purchase Option Scheme

69. An example of this scheme is as follows:

a. In 2001, Didion & Sons Foundry ("Foundry"), a once-successful foundry in St. Peters, Missouri, created a separate venture for Kaiser customers Susan Orf (née Didion) and her husband, Dean Orf. The Orfs and a key employee were installed as officers and directors of the new venture, called Didion-Orf Recycling, Inc. ("Recycling"). In September 2001, a Master Agreement was entered into by Susan Orf, as President and individually for Recycling, and Daniel Didion, Executive Vice President of Foundry, in which Foundry and Recycling clearly stated their intent to operate as separate entities.

In June, 2002, Kaiser established self-directed Roth IRAs for the benefit of Susan and Dean Orf. Later that month, Susan and Dean Orf's Roth IRAs contracted to purchase 6 of Recycling's 15 acres of real estate for $20,000 per acre. The contract set the closing date for March 1, 2003, and the Roth IRAs paid Recycling $1,000 as a deposit on the contract. An employee and Director of Recycling, Mark Drahl, signed the contract as the seller of the property.

On February 12, 2003, Kaiser sent a *Conditional Assignment of Sales Agreement* dated February 10, 2003, and an *Amendment to Sales Agreement* to the trustee for Susan and Dean Orf's Roth IRA changing the terms of the agreement. The revised terms of the contract increased the amount of land purchased from 6 to 10.25 acres and the price of the land from $20,000 to $29,244 per acre. These amendments also allowed the Roth IRAs to assign the sales contract to another buyer without Recycling's consent. On February 14, 2003, the Roth IRAs assigned the right to purchase Recycling's property to a volunteer fire department under the sales contract with Recycling. The fire department paid a total of $1,016,226 for Recycling's property: it paid $299,751 to Recycling (10.25 acres at $29,244 per acre) and $716,475 to the Orfs' Roth IRAs as an "assignment fee" ($358,237.50 to each Roth IRA). Thus, through sham transactions, the Orfs turned a combined $1,000 contribution to their Roth IRAs into a $716,475 return and, in the process, converted their corporation's assets into their own personal retirement funds that could accrue

> income tax-free and eventually be withdrawn tax free. Recycling received nothing of value for the sale of its property. The Orfs sold property to their self-directed Roth IRAs from a company they controlled. Kaiser was aware of and was involved in the transfer of Recycling's assets to the Orfs' Roth IRAs. Income taxes on the gain associated with the $716,475 payment to the Orfs' Roth IRAs were not paid, and Excise Tax on excessive Roth IRA contributions was also evaded.

70. In a slightly more complicated approach developed by Kaiser, a limited liability company (LLC) is created. A customer forms a self-directed Roth IRA and makes a nominal cash contribution, usually $500.

71. The Roth IRA enters into a contract to purchase real estate from an unrelated party and makes an earnest deposit, generally the initial Roth IRA contribution. The Roth IRA typically does not, however, have sufficient funds to consummate the real estate purchase, nor is it likely that the Roth IRA could secure acquisition financing without a loan guarantee of the Roth IRA owner or another party.

72. The Roth IRA then assigns the real estate contract to the newly-formed limited liability company in exchange for a promissory note. The promissory note specifies a nominal due date, but the promissory note also states that repayment must be made at the same time the LLC distributes its profits to its members. The principal amount of the promissory note can be adjusted by mutual agreement.

73. The Roth IRA owner typically holds a less than 50% (normally 49.9%) "Class B" membership interest in the LLC. A purportedly unrelated party owns the "Class A," majority interest. Only the Class A member makes a capital contribution in exchange for his or her interests in the LLC.

74. The LLC operating agreement specifies that the LLC income is to be allocated to the Class A member until the promissory note is paid off. Once the note is paid off, the LLC income is allocated to members in proportion to their interests in the LLC.

75. The LLC purchases the subject real estate, typically from an unrelated party using the purchase agreement negotiated by the Roth IRA.

76. The LLC makes payments toward the promissory note due to the Roth IRA. If the real estate venture is not as profitable as anticipated, or if the partners wish to retain operating capital in the LLC, the principal amount of the promissory note will be adjusted downward or even cancelled. 77. If the transaction goes as planned, the income allocated to Class A members of the LLC is unaffected, but the Class B member (*i.e.*, the Roth IRA owner) receives a tax-free share of the LLC's profits paid directly to his or her Roth IRA. For example:

a. Kaiser assisted his customer Mark Rubin, a real estate investor from University City, Missouri, in creating a sham Roth IRA transaction. On October 3, 2003, Gaslight Square Place LLC, was organized as a Missouri Limited Liability Company. Kaiser was its registered agent. Rubin owned a 49.9% membership interest ("Class B" member), while a business associate of Rubin owned the remaining 50.1% membership interest ("Class A" member). The Class A member put in a $100 initial capital contribution. Meanwhile, Kaiser helped Rubin create a self-directed Roth IRA, funded with a $500 cash contribution. In October 2003, Rubin identified property that Gaslight Square Place LLC wished to develop. Rubin directed his Roth IRA to contract to purchase that real estate at a sales price of $88,000. The contract called for a $500 earnest deposit upon execution of the contract and an additional earnest deposit to be paid on October 31, 2003. The $500 earnest money deposit was paid on November 5, 2003.

   On November 3, 2003, two days before the deposit had been paid, Rubin directed his Roth IRA to assign the purchase option to Gaslight Square Place LLC in exchange for a $100,000 promissory note. Kaiser drafted the promissory note and set the amount of the note at $100,000 on Rubin's projection that this would be his share of the profits from the development project (minus an allowance for unforseen expenses). The property was developed and sold in 2005. The project proved less profitable than anticipated, prompting Kaiser to draft documents which directed Rubin's Roth IRA to accept only $43,652 in full satisfaction of the $100,000 promissory note. In March 2006, $50,000 was paid towards the note due, representing principal and interest.

Rubin relied on the expertise and representations of Kaiser in making this arrangement, and Kaiser falsely assured Rubin that federal law allows taxpayers to structure transactions in this way. That Rubin permitted his Roth IRA to receive less than $100,000 in satisfaction of the promissory note demonstrates that the promissory note was not a genuine debt, but merely a sham transaction that Kaiser developed to permit Rubin to make an excess contribution to his Roth IRA. As a consequence of this arrangement, the IRS assessed $9,047 in tax, interest, and penalties.

b. Kaiser customer Rominder Pujji, of Rancho Santa Fe, California, entered into a sale contract dated October 28, 2003. Pujji's Roth IRA agreed to purchase a parcel in St. Louis County for $900,000. The contract indicated receipt of $10,000 in earnest money and specified a closing date of November 15, 2003. The seller's broker was identified as Makkar Realty LLC, an entity owned by Narinder Makkar and his family. Mr. Makkar is a business associate of Pujji.

On October 7, 2003, prior to Pujji's entering into the sales contract, Kaiser organized and formed Bonhomme Investment Group LLC ("Bonhomme") as a Missouri Limited Liability Company. According to Bonhomme's operating agreement, Makkar owned 50.1% "Class A" interest and Pujji owned the "Class B" interest. On November 12, 2003, Pujji's Roth IRA assigned its rights under the real estate contract to Bonhomme in exchange for a promissory note for $100,000. One week later, Bonhomme purchased the real estate from the unrelated party. Pursuant to a Purchase Agreement dated March 1, 2004, Makkar purchased Pujji's interest in Bonhomme for $10. The Purchase Agreement was conditioned in part upon Makkar's payment of the principal amount due on the $100,000 promissory note that Bonhomme had assigned to Pujji's Roth IRA. On March 15, 2004, $100,000 was transferred to Pujji's Roth IRA in repayment of the promissory note in full.

The IRS detected the scheme and ignored the promissory note and the two classes of ownership interest because the arrangement had no economic substance. The IRS disallowed the increase to the basis of the partnership property for the amount of the promissory note, and then allocated the corrected partnership income based on the percentage of ownership as outlined in the operating agreement. Payments towards the promissory note held by Pujji's Roth IRA were treated as a partnership distribution followed by a deemed contribution to Pujji's Roth IRA, all subject to I.R.C. § 4973 excise tax of $22,080.

78. In the examples highlighted above, Kaiser customers' Roth IRAs received large amounts of money in exchange for an option to purchase real estate that was of little or no real

value. The sham transactions enabled Kaiser's customers to evade the statutory limitations on contributions to a Roth IRA.

79. The debt associated with the Roth IRA "real estate assignments" is not bona fide debt; rather, the note merely represents the equity interest (of the Roth IRA owner) in the partnership. The promissory note has no fixed repayment date and must only be paid when profits are distributed, and the amount is renegotiated at will. In this way, Kaiser helps his customers use sham transactions to funnel excess contributions into their Roth IRAs while falsely telling them that these transactions are a valid means of reducing taxable income and increasing their tax-free retirement savings.

Charitable Family Limited Partnership (Char-FLP)

80. Kaiser also participated in providing legal and other assistance in a so-called Charitable Family Limited Partnership ("Char-FLP"), which is another fraudulent tax-evasion arrangement that has been promoted in tandem with the accounting firm MPP&W linked to Kaiser's business associate Douglas Mueller. With this product, a customer creates a Char-FLP and contributes capital to the partnership. One percent of the partnership is assigned to the customer's managing general partner of the Char-FLP, usually the customer and/or the customer's spouse. Through a specially designed shareholder's agreement, by-laws, and articles of incorporation, the customer (and his or her spouse) is assured of being elected as director(s) of the managing general partnership; the customer's children are designated successor directors.

81. The remaining 99% of the Char-FLP is assigned to a limited partnership - 98.9% controlled by the customer, with the other 0.1% assigned to a family trust (or to family members). The taxpayer then donates his 98.9% interest in the Char-FLP to a charity and claims a charitable tax deduction on his or her tax return. Inflated appraisals are used to value the donated partnership

interest so as to claim a large charitable contribution deduction. The portion of the deduction that the individual cannot use in the current year is carried forward to be used in the next five years.

82. Notwithstanding the "donation" to a charity, the family's management company continues to receive management fees based upon the value of the Partnership's assets. According to Kaiser's promotional materials, the management fees range between 4% and 9%.

83. The managing general partnership invests the Char-FLP's assets.

84. At the end of the tenth year of the Char-FLP plan, the charity may elect to withdraw from the Partnership. The value of the Char-FLP's limited partnership interest is based on a "predetermined" formula in the Char-FLP's Agreement of Limited Partnership.

85. Upon withdrawal, the charity's 98.9% interest in the limited partnership is allocated to the trust, which becomes holder of a 99% interest in a limited partnership. The trust for the children and successive generations, which had originally only owned a 0.1% interest, now holds a 99% limited partnership interest in the Char-FLP. The customer retains his or her control as managing general partner and continues to receive a management fee. For example:

> a. Kaiser customers Dr. Lee Row and Dr. Gregory Pucel, Chesterfield, Missouri, dentists, agreed to "appoint" the Pentegra Dental Group, Inc., as the sole and exclusive manager and administrator of all day-to-day business functions of the dental practice. According to the agreement, Pentegra would handle the administrative, personnel, and business aspects of the dental practice, in exchange for a management service fee amounting to 15% of the dentists' Collected Gross Revenue.
>
> On November 23, 1998, Somerset Limited Partnership (SLP) adopted its limited partnership agreement, assigning a 1% interest to Somerset Management Group, Inc. (SMG) as the general partner (owned by Row and his spouse and children), a 98.9% interest to Row, and the remaining 0.1% interest to Row's family members. The balance sheet for SLP on December 14, 1998 consisted of an imputed valuation for Goodwill and Other Intangibles of $826,580, as well as $10,067 in cash and $78,935 in dental equipment, for total assets of $915,582. Row then purportedly donated his 98.9% interest in SLP to the Westminster Christian Academy in St. Louis County.

The remaining 1.1% was distributed to SMG and Row's children, as noted above.

Row claimed a $565,000 deduction (for the value of the SLP partnership interest) as a charitable donation on his 1998 tax return, based on MPP&W's sham appraisal of the fair market value of SLP as of December 14, 1998. MPP&W's calculations resulted in a valuation $551,997 in excess of the IRS's valuation of $13,203.

Despite the purported donation to Westminster Christian Academy of 98.9% ownership in SLP, Row maintained control over all of the partnership assets and Row expected and received significant personal benefits. Accordingly, the charitable contribution has been disallowed under I.R.C. § 170. As of October 29, 2007, Westminster Christian Academy has received only two dividend payments of $989, each, for a total of $1,978 in dividends and distributions after nine years and 98.9% ownership in SLP; an absurdly small amount in relation to the charitable contribution falsely valued at over $565,000 by MPP&W under the Char-FLP plan promoted in tandem with Kaiser. Row was initially assessed an additional $717,619 in taxes, interest, and penalties as a result of this arrangement.

b. MPP&W also provided questionable valuation and appraisal techniques for Dr. Pucel, under the Char-FLP plan promoted by Kaiser. On November 24, 1998, before the Agreement the dentists entered into with Pentegra, Pucel established Synergy Investors Limited Partnership (SILP), assigning a 1% general partnership interest to Synergy Management Group LLP (SMGP), a 98.9% partnership interest to himself, and a 0.1% partnership interest in the Synergy Family Trust (SFT).

Pucel then made a purported charitable contribution of his 98.9% partnership interest in SILP to Chaminade College Preparatory School and claimed a $231,400 charitable deduction for the value of the SILP partnership interest donation on his tax return. By contrast, the IRS determined that the accounting firm had inflated the value of the 98.9% partnership interest by $220,178.

The sham valuation provided by MPP&W for SILP resulted in a valuation $220,178 in excess of the IRS valuation on $11,200. As of November 7, 2007, Chaminade College Preparatory School has not received any dividends or distributions after nine years of ownership in SILP and a charitable donation valued at $231,400 by MPP&W. Despite the purported gift to Chaminade College Preparatory School of 98.9% ownership in the SILP, Pucel maintained control over all of the partnership assets and he expected and received significant personal benefits. Accordingly, the sham charitable contribution has been disallowed under I.R.C. § 170. Pucel was initially assessed an additional $630,638 in taxes, interest, and penalties as a result of this arrangement.

86. As a result of Kaiser's role in promoting the Char-FLP product in tandem with MPP&W accountants and appraisers, over three-quarters of a million dollars in bogus charitable contributions were claimed by the two dentists. Using an effective tax rate of 25%, nearly $200,000 in harm to the Treasury was realized. Despite the purported gifts to charity, the customers retained control over all of the partnership assets, and the total receipts by both schools from the claimed charitable contributions amounted to only $1,978.

Other Deceptive Conduct

Unsigned IDR Responses

87. During the course of its audits of Kaiser's customers, the IRS issued a number of Information Document Requests ("IDRs") to various customers. The requests were issued by the IRS in an attempt to obtain additional information and documents from the customers about the Roth IRA schemes Kaiser had sold to them.

88. In an attempt to conceal his role in promoting and implementing the above-described schemes and his representation of his customers during IRS audits, Kaiser routinely submitted IDR responses to the IRS on behalf of the customers that were unsigned and on plain white paper, instead of on Kaiser's letterhead. Kaiser initially refused to sign IDR responses and, on several occasions, instructed customers who were under examination and other accountants to sign the IDR responses prepared by Kaiser.

Failure To Inform Customers of a Conflict of Interest

89. Section 10.29(a) of Treasury Department Circular 230, 31 C.F.R. Part 10, states that "[a] practitioner shall not represent a client before the Internal Revenue Service if such

representation involves a conflict of interest" unless "each affected client gives informed consent, confirmed in writing."

90. In contravention of Circular 230, Kaiser has represented at least one client before the IRS in an effort to defend the client in the same abusive tax shelter arrangement that Kaiser sold. The IRS has notified Kaiser of the conflict of interest and directed him to explain to the client the conflict caused by Kaiser involvement in the organization, management, promotion and sale of the abusive transaction. Kaiser's representation of this customer was affected by Kaiser's personal interest in defending the fraudulent transactions that he is accused of promoting.

91. Kaiser personally is being enriched by his failure to clearly inform his clients of his conflict of interest because, once his clients are under examination, Kaiser provides misleading information to the detriment of the taxpayers who unknowingly are funding Mr. Kaiser's defense by paying Kaiser to defend the abusive schemes he promoted to the taxpayers.

The Derivium 90% Stock Loan Tax-Fraud Scheme

92. In addition to his own tax schemes, Kaiser acted as a subpromoter selling a tax-fraud scheme created by Derivium Capital LLC. Kaiser sold this scheme to his customers through Parker Madison LLC.

93. Derivium, its then-President and CEO, Charles Cathcart, and Cathcart's associates devised this fraudulent tax scheme that combined aspects of an ordinary tax scam with aspects of a Ponzi scheme.

94. Kaiser advised his customers to participate in Cathcart's scheme and Kaiser received a fee as a "Qualified Advisor" for referring customers to Cathcart and Derivium. The fee was 2 to

2.5% of the amount the customer "borrowed" from Derivium. Kaiser referred millions of dollars in business to Derivium over the course of more than two years.

95. The Derivium tax-fraud product that Kaiser promoted to his customers was called a "90% Stock Loan." The product purported to allow owners of appreciated stock to pledge their stock to Derivium as supposed "collateral" for a "loan" in the amount of 90% of the stock's value. Upon the maturity of the "loan," the borrower had the option to: (1) surrender the stock in full satisfaction of the "loan" with no personal liability; (2) renew and refinance the loan at the appreciated value (if the stock value increased); or (3) pay the loan balance with interest and recover the stock. For borrowers electing the third option, Derivium was required to return the same number of shares of the same stock pledged as security for the loan.

96. The 90% Stock Loan scheme purported to allow customers to: (a) obtain the benefit of cash in an amount equal to 90% of the value of their stock; (b) defer paying capital gains on the transaction; and (c) protect against the risk that the stock would depreciate while at the same time preserving their ability to take advantage of any possible appreciation in the stock value. Kaiser falsely told customers that their stock would be "hedged" pursuant to Cathcart's proprietary hedging formula. To encourage customers to participate in Derivium's program, Kaiser falsely claimed in correspondence sent to customers that "Capital Gains Taxes Are Voluntary. Do you own a highly appreciated asset but do not want to sell it because of the tax bite? Capital gains taxes can be avoided."

97. The 90% stock loan program was really nothing more that a disguised sale of the customers' stocks, with the customers getting 90% of the sale and the promoters and subpromoters pocketing the other 10%. In every case, the borrower's stock was immediately sold by Derivium

to fund the purported "loan." Ninety percent of the proceeds from the sale of the stock funded the "loan" to the customer, and Cathcart and Derivium and the subpromotors kept the remaining 10%. Customers were never told that their stock was being sold by Derivium, and were falsely assured by Kaiser and Cathcart that their stock would be "hedged" pursuant to Cathcart's proprietary hedging formula.

98. Enough of Cathcart's customers attempted to re-acquire their appreciated collateral that Cathcart was forced to try and perpetuate the scheme by bringing in additional participants (some of whom were referred by Kaiser) and using their money to fund re-acquisition of the now more expensive collateral. The Ponzi scheme was doomed from its inception, and Derivium ultimately failed to perform on its obligations to borrowers which resulted in a RICO judgment against Cathcart, Derivium, and other scheme promoters totaling $270 million.

99. Promotional materials that Kaiser published with regard to the Derivium scheme stated that Kaiser had researched the tax consequences involved. The promotional materials that Kaiser wrote for the Derivium scheme falsely stated that Parker Madison performed "due diligence on the tax issues related to the Program to assure our clients that the tax ramifications of the Program are as we represent them to be. Specifically, Parker Madison has determined that under current law the transaction will be treated as a loan for federal income tax purposes." In fact, a modicum of due diligence would have revealed that the scheme could not possibly work as it was described.

100. In June 2001, Kaiser agreed to be listed as an unnamed reference in Derivium's marketing materials, because Derivium "has given us additional avenues of planning for our clients which in turn has produced additional business for our firm." In an attempt to conceal his

involvement in selling the scheme, Kaiser requested that Derivium "NOT use my name [or] my company name" in the promotional materials.

101. In reality, the "90% Stock Loan" program was not a "loan" at all and was nothing more than a fraudulent scheme devised to evade capital gains tax. The United States District Court for the Northern District of California recently held that "the 90% stock loan transactions at issue constitute sales of securities for purposes of tax code treatment, as opposed to bona fide loans." *United States v. Charles Cathcart, et al.*, No. 07-4762, 2009 WL 3103652, at *1 (N.D. Cal. Sep. 22, 2009).

102. Derivium, its then-President and CEO, Charles Cathcart, and a number of Cathcart's associates have been enjoined in connection with their promotion of the 90% stock loan program. *See United States v. Cathcart*, Case No. 07-4762-PJH (N.D. Cal.). In entering a permanent injunction against Cathcart, the Court found that his customers' stocks were sold immediately, with 90% of the sale proceeds going to make the purported "loans" to the customers, and the other 10% being retained by Cathcart and his associates. Customers were falsely told the loans were made by independent third-party lenders, but in fact the Court found that the supposed loans were made through sham companies that Cathcart created and controlled. The sham companies never functioned as genuine lenders, never held or maintained any assets or reserves, and were located throughout the world in such far-flung places as the Isle of Man, Ireland, and Hong Kong.

103. The court record also showed that Cathcart, through the 90% Loan Program, sold more than $1.25 billion worth of customers' stock in some 3,100 transactions, leaving more than $100 million for himself and his associates and subpromoters after payment of 90% of the sale proceeds to customers as purported loans. Thus, representations to customers that they were receiving loans

were false statements about the scheme's tax benefits. The stipulated record established that Cathcart's claims about tax benefits were featured prominently in marketing materials to induce customers to engage in the scheme. Cathcart acknowledged in the injunction suit that he knew or had reason to know these claims were false.

104. Additionally, the record in the Cathcart/Derivium injunction suit showed that Cathcart also falsely told customers that Derivium would "hedge" their transactions to insure the return of their stock at the end of the transactions should they want to pay off their "loans" and get the stock back. But instead of hedging the transactions, which would have required the purchase of expensive call options correlated with his customers' securities, Cathcart simply funneled at least $45 million of the stock sale proceeds to companies that he owned and controlled with his son Scott Cathcart and another scheme promoter.

Continual and Repeated Nature of Kaiser's Fraudulent Conduct

105. The scope of Kaiser's misconduct is wide-ranging. The IRS conservatively estimates that Kaiser has established at least 170 self-directed IRA arrangements for his customers.

106. Moreover, it does not appear that Kaiser has meaningfully curtailed his improper conduct, even with increased IRS scrutiny of his activities in the past few years. Kaiser was aware of the IRS's investigation of his fraudulent activities during the 2007 filing season. Yet, Kaiser continues to falsely insist that his various tax-fraud schemes are a legal way to reduce taxable income and increase his customers' tax-free retirement savings. Indeed, Kaiser continues to defend his Roth IRA schemes before the IRS and to his customers, all to the detriment of his customer-taxpayers and the public fisc.

Harm to the United States

107. The tax-fraud schemes promoted by Kaiser harm the Government by fraudulently reducing his clients' reported tax liabilities.

108. Kaiser's customers shift earnings by way of sham transactions from one corporation to another corporation.

109. In the PIRAC scheme, the customer does not pay personal federal income taxes on the earnings shifted to the Sham Corporation. Instead of receiving the Sham Corporation's earnings as dividends or salary and paying income taxes on those dividends or salary, those earnings are shifted to the Sham Corporation. The vast majority of those shifted earnings are then paid as tax-free dividends to a Roth IRA, where the money sits until the customer withdraws it and earnings on it tax-free. Thus, the customer improperly avoids paying personal federal income taxes on the earnings shifted to the Sham Corporation before contributing that money to the Roth IRA.

110. Based on the PIRAC scheme customers whose tax returns the IRS has examined, the IRS estimates that each PIRAC scheme that Kaiser sold has cost the United States approximately $45,000 in forgone tax revenue.

111. Although the precise number of customers to whom Kaiser sold the PIRAC schemes is unknown, the United States is aware of at least 170 self-directed Roth IRAs Kaiser has established for his customers. Some of these customers participated in other Roth IRA-related schemes.

112. The United States was able to obtain detailed account information for 75 customers for whom Kaiser established self-directed Roth IRAs. For 56 of these customers, combined initial contributions of $145,422 led to untaxed gains to those customers' Roth IRAs of a combined $9,979,921. Another 19 of Kaiser's customers were able to turn an unknown amount of initial

contributions into purportedly tax-free gains to their Roth IRAs totaling $35,556,014. Kaiser's customers improperly failed to pay federal income taxes on all of this money.

113. Many of Kaiser's customers have large incomes. If many of those customers were to fund a Roth IRA with after-tax dollars, their contributions would be subject to a 6% excise tax. But because customers use Kaiser's scheme to fraudulently divert earnings from an existing business into a Sham Corporation and then into a Roth IRA, the United States did not receive the 6% excise tax imposed on the customer's excess contributions.

114. In addition, customers who participated in Kaiser's PIRAC scheme are potentially subject to hundreds of thousands or millions of dollars in penalties under 26 U.S.C. § 6707A for engaging in the PIRAC scheme but neglecting to report their participation in the scheme to the Secretary of the Treasury.

115. Under 26 U.S.C. § 6707A, any taxpayer "who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall" be subject to penalty.

116. A "reportable transaction" is a transaction that the Treasury Department has identified in the regulations promulgated under section 6011 as having the potential for tax avoidance or evasion, and for which the Treasury Department requires information to be included on a statement or return. *See* 26 U.S.C. § 6707A(c)(1).

117. Under Treasury Regulation 1.6011-4(a), and 1.6011-4(b)(2), taxpayers must report their participation in any transaction identified as a listed transaction in an IRS Notice, such as Notice 2004-8. A "listed transaction" is a "reportable transaction" if it is the same, or substantially

similar to, a transaction identified as a tax avoidance transaction by the Secretary of the Treasury for the purposes of 26 U.S.C. § 6011. *See* 26 U.S.C. § 6707A(c)(2).

118. Prior to a September 15, 2008 e-mail to his customers, Kaiser did not advise them that, by participating in his PIRAC scheme, they would be required to report their participation in the transaction, and their failure to do so would be subject to penalty under section 6707A.

119. Customers who participated in the PIRAC scheme after December 31, 2003 and did not report their participation are potentially subject to the penalty provisions of 26 U.S.C. § 6707A.

120. The penalties under section 6707A are severe. Customers that fail to make the proper disclosure of a listed transaction are subject to a $100,000 penalty if they are a natural person and a $200,000 penalty for all others. This penalty is not subject to judicial review in any forum and cannot be rescinded by the Commissioner of Internal Revenue.

121. As noted above, the IRS may treat value shifted from a taxpayer's existing business to a Sham Corporation as a contribution by the taxpayer to his Roth IRA. Consequently, under 26 U.S.C. § 4973, a customer who is ineligible to contribute funds to a Roth IRA based on his or her income is potentially subject to the 6% excise tax on the value the customer shifted into his Sham Corporation. If the customer was required to pay this excise tax but did not, the unpaid portion of the excise tax is subject to further penalties under I.R.C. § 6651 for Failure to File, Failure to Pay, and I.R.C. § 6662, Accuracy.

Count I: Injunction Under I.R.C. § 7408 For Engaging in Conduct Subject to Penalty Under I.R.C. §§ 6700 and 6701

122. The United States incorporates by reference the allegations contained in paragraphs 1 through 121.

123. I.R.C. § 7408(a) authorizes a district court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of the conduct.

124. I.R.C. § 6700 imposes a civil penalty on any person who organizes or participates in the organization or sale of any plan or arrangement and who makes or furnishes or causes another to make or furnish a statement with respect to the allowance of a tax deduction or credit or other tax benefit that the person knows or has reason to know is false or fraudulent.

125. I.R.C. § 6701 imposes a civil penalty on any person who aids or assists in, procures, or advises with respect to the preparation or presentation of any portion of a federal tax return, refund claim, or other document, knowing or having reason to believe that such document will be used in connection with any material matter under the tax laws and knowing that such portion, if used, would result in an understatement of another person's tax liability.

126. The PIRAC scheme Kaiser sells to customers is a plan or arrangement within the meaning of section 6700.

127. Kaiser has violated I.R.C. §§ 6700 and 6701 by promoting plans and arrangements and by assisting others to establish plans or arrangements that he knew or had reason to believe would understate his clients' true tax liabilities and that contained deductions, exemptions, and credits that he knew were false or fraudulent.

128. While organizing and selling the PIRAC scheme, Kaiser falsely tells customers that they may make contributions to a Roth IRA through a corporation substantially owned by the customer's Roth IRA, knowing that the corporation will receive income and/or property at less than fair market value from the customer's existing business.

129. Kaiser falsely tells customers that they may participate in the PIRAC scheme by shifting value from their existing businesses into their Sham Corporations at less than fair market value.

130. Kaiser knows or has reason to know that the PIRAC scheme is substantially similar to the listed transactions described in Notice 2004-8. Notice 2004-8 states that the IRS will treat transactions described in Notice 2004-8 as a payment from the existing business to the taxpayer, a contribution by the taxpayer to the Roth IRA, and a payment by the Roth IRA to the Sham Corporation.

131. Kaiser does not tell customers that value shifted from their existing business into the Sham Corporation at less than fair market value may be subject to the excess contribution excise tax at 26 U.S.C. § 4973.

132. After the IRS issued Notice 2004-8, Kaiser falsely told customers that the transactions that comprise the PIRAC scheme are not described in Notice 2004-8.

133. Kaiser is an experienced tax professional and knows or has reason to know that the PIRAC scheme involves transactions that use sham transactions to elevate substance over form and work a fraud on the government.

134. In addition, Kaiser prepares numerous documents to help customers implement his PIRAC scheme. Kaiser prepares articles of incorporation for the Sham Corporations, by-laws for

those corporations, and stock subscription agreements between the Roth IRA and the Sham Corporation. He also helps customers to establish their self-directed Roth IRAs with an IRA custodian.

135. Kaiser knows that these documents will be used by his customers to participate in a listed transaction under 2004-8. He also knows that customers will use these documents to violate the income contribution limits that apply to Roth IRAs.

136. Kaiser has demonstrated his intention to continue to engage in such conduct and in other conduct subject to penalty under the Internal Revenue Code. He has repeatedly promoted plans and arrangements and assisted others to establish plans or arrangements in a manner that may be penalized under I.R.C. §§ 6700 and 6701.

137. An injunction against Kaiser is necessary and appropriate to prevent the recurrence of his conduct subjecting him to penalty under I.R.C. §§ 6700 and 6701 and for engaging in any other conduct subject to penalty under the Internal Revenue Code.

138. If not enjoined, Kaiser will continue to organize and sell tax-fraud schemes, including the PIRAC scheme and other self-directed Roth IRA schemes designed to evade taxes.

Count II: Injunction Under I.R.C. § 7408 for Violations of I.R.C. §§ 6707(a), and 6111(a)

139. The United States incorporates by reference the allegations contained in paragraphs 1 through 138.

140. I.R.C. § 7408(a) authorizes a district court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6707(a) or 6707A from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of the conduct.

141. Kaiser knows that the PIRAC scheme is substantially similar to the listed transactions described in Notice 2004-8. Notice 2004-8 states that the IRS will treat transactions described in Notice 2004-8 as a payment from the existing business to the taxpayer, a contribution by the taxpayer to the Roth IRA, and a payment by the Roth IRA to the Sham Corporation.

142. Kaiser has demonstrated his intention to continue to engage in such conduct and in other conduct subject to penalty under the Internal Revenue Code. He has repeatedly promoted plans and arrangements and assisted others to establish plans or arrangements that are listed transactions and require reporting under I.R.C. §§ 6707(a) and 6707A.

143. An injunction against Kaiser is necessary and appropriate to prevent the recurrence of their conduct subjecting them to penalty under I.R.C. §§ 6707(a) and 6707A and for engaging in any other conduct subject to penalty under the Internal Revenue Code.

144. If not enjoined, Kaiser will continue to organize and sell tax-fraud schemes, including the PIRAC scheme and other self-directed Roth IRA schemes designed to evade taxes.

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

145. The United States incorporates by reference the allegations contained in paragraphs 1 through 144.

146. I.R.C. §7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

147. Kaiser's activities substantially interfere with the enforcement of the internal revenue laws by promoting tax-fraud schemes that result in customers not paying their true federal income tax liabilities and evading statutory limits on contributions to Roth IRAs.

148. Kaiser's conduct also potentially subjects his customers to large penalties under I.R.C. § 6707A.

149. An injunction prohibiting Kaiser from organizing, promoting, or selling (or helping others to organize, promote, or sell) tax-fraud schemes, including the schemes described in this complaint, is needed to stop the illegal avoidance of tax liability and to prohibit him from otherwise interfering with the proper administration and enforcement of the internal revenue laws.

150. Unless enjoined by this Court, Kaiser is likely to continue to engage in illegal conduct. 151. If Kaiser is not enjoined, the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of resources to enforce the internal revenue laws, and because the losses caused by Kaiser's actions will continue to increase.

152. While the United States will suffer substantial, irreparable injury if Kaiser is not enjoined, Kasier will not be greatly harmed by being compelled to obey the law.

153. The public interest would be advanced by enjoining Kaiser because an injunction will stop his illegal conduct and the harm that conduct is causing the United States Treasury and the public.

154. An injunction under I.R.C. § 7402 is necessary and appropriate, and the United States is entitled to injunction relief under I.R.C. § 7402. The injunction should bar Kaiser, and anyone acting in concert with him, from organizing, promoting, or selling (or helping others to organize, promote, or sell) the fraudulent tax schemes described in this complaint, and any other tax shelter, plan, or arrangement, that incites or assists customers to attempt to violate the internal revenue laws or evade the assessment or collection of their federal tax liabilities or claim improper tax refunds, and from otherwise engaging in conduct that interferes with the proper administration of the internal revenue laws.

Relief Sought

WHEREFORE, plaintiff, the United States of America, respectfully prays the following:

A. That this Court find Kaiser engaged in conduct subject to penalty under I.R.C. § 6700 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct.

B. That this Court find Kaiser engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct.

C. That this Court find Kaiser engaged in conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent recurrence of that conduct under 26 U.S.C. § 7402(a).

D. That this Court find that Kaiser engaged in conduct subject to penalty under 26 U.S.C. § 6707.

E. That this Court, pursuant to 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Kaiser, individually and through any other name or entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, from directly or indirectly:

i. Organizing, promoting, or selling the PIRAC, Char-FLP, Real Estate Purchase Option, and Derivium tax schemes described in this complaint, or any substantially similar plans or arrangements, or any other business or tax services that

- Use sham transactions to claim massive charitable-contribution deductions, with little or no money actually going to any legitimate charity;
- Evade income tax on business earnings by using sham transactions with sham corporations to reduce customers' reported federal income tax liabilities;
- Illegally circumvent the contribution limits for Roth IRAs; and
- Evade federal income tax on gains from stock sales by disguising sales as "loans."

ii. Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws or understatement of federal tax liability;

iii. Organizing, promoting, or selling (or helping others to organize, promote, or sell) the fraudulent tax schemes described in this complaint, and any other tax shelter, plan, or arrangement, that incites or assists customers to attempt to violate the internal revenue laws or evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;

iv. Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that the defendant knows or has reason to know is false or fraudulent as to any material matter;

v. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing or assisting in the preparation of, or advising with respect to a document related to a material matter under the internal revenue laws that includes a position that the defendant knows will, if used, result in an understatement of tax liability;

vi. Engaging in conduct subject to penalty under any provision of the Internal Revenue Code, or engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

vii. Providing any entity or individual with any advice related to federal taxes;

viii. Aiding, assisting, and/or advising with respect to the preparation of any federal tax return or representing taxpayers before the IRS;

ix. Engaging in conduct designed or intended to, or having the effect of, obstructing or delaying an IRS investigation or audit; and

x. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Kaiser to produce to counsel for the United States a list identifying (by name, address, e-mail address, phone number, and Social Security or other tax identification number) all of the customers who, for any of the tax years 2003 to the present, have used the tax planning services of Kaiser or his business as it is known under any of its names, including The Kaiser Law Firm, Jefferson Gage LLC and Parker Madison LLC;

F. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Kaiser at his own expense to contact by mail (or by e-mail, if a mailing address is unknown) all of his customers related to any of his tax planning services and inform those individuals of the Court's findings concerning the falsity of his prior representations and attach a copy of the permanent injunction, and to file with the Court, within 20 days of the date on which the permanent injunction is entered, a certification signed under penalty of perjury that he has done so;

G. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction;

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

I. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated this 12th day of April, 2010.

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