

IN THE UNITED STATES COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

Plaintiff,)

v.

MICHAEL A. STRAUSS, JOSEPH C.
BARREIRO and PATRICK B. STRAUSS)

Defendants.)

Case: 1:11-cv-00880
Assigned To : Wilkins, Robert L.
Assign. Date : 5/12/2011
Description: General Civil

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America states as follows for its complaint against Michael A. Strauss, Joseph C. Barreiro and Patrick B. Strauss (collectively referred to as "Defendants"):

1. Defendants Michael Strauss, Joseph Barreiro and Patrick Strauss market and promote to taxpayer-customers in Northern Virginia, Maryland, and Washington, D.C., three illegal tax shelters involving two supposed cemeteries located in Northern Virginia and upstate New York. Defendants use a labyrinth of entities designed to conceal the true nature of these "cemetery schemes" and falsely and/or fraudulently purport to generate millions of dollars of partnership losses and charitable deductions for their taxpayer-customers.
2. Two of Defendants' cemetery schemes concoct fictitious partnership losses through the overvaluation of supposed "licenses" to perform funerals at the purported Northern Virginia and New York cemeteries. A third illegal cemetery scheme promoted by Defendants uses limited

partnerships to facilitate phony charitable deductions supposedly for “burial site certificates” related to the upstate New York property. Through all three of these tax shelters (and additional schemes), Defendants falsely promised their taxpayer-customers millions of dollars of fictitious partnership and charitable losses, at a ratio of \$5 of tax benefits for every \$1 “invested” in the scams. Those statements were not only false or fraudulent, but also too good to be true.

3. The United States brings this complaint pursuant to Internal Revenue Code (I.R.C.) §§ 7402 and 7408 to enjoin Defendants and anyone in active concert with them from promoting the cemetery schemes, other illegal tax scams, and from engaging in any other conduct that interferes with the administration or enforcement of the tax laws.

Jurisdiction and Venue

4. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. (I.R.C.) §§ 7402(a) and 7408.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) because a substantial part of the events or omissions giving rise to these claims occurred in this judicial district. Additionally, in organizing, operating, and/or promoting the illegal schemes described herein, each Defendant had regular and systematic contacts with residents of this judicial district. Furthermore, a number of the witnesses who may be called to testify at trial reside in this judicial district, as does Defendant Patrick Strauss. Finally, Defendants used numerous District of Columbia entities in furtherance of the cemetery schemes.

Authorization

6. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the

Attorney General, pursuant to I.R.C. §§ 7401, 7402 and 7408.

Nature of Action

7. The first of the cemetery schemes that Defendants promoted involves a purported cemetery located on 40 acres near Chancellorsville National Battlefield in Spotsylvania County, Virginia, about 10 miles west of Fredericksburg. Defendants promoted and marketed that scheme to taxpayer-customers through a shell entity Defendants formed and operated called Burial Specialists LLC.
8. In promoting the Burial Specialists scheme, Defendants falsely told their taxpayer-customers that Burial Specialists LLC had purchased a valuable “license” worth over \$90 million from another company called Southern Dorchester LLC, in an arm's-length transaction. Defendants claimed the license gave Burial Specialists LLC the right to future profits from performing “funeral services” at the Chancellorsville property. Those funeral services purportedly included the right to open and close burial sites, arrange for the cremation of remains, provide burial urns, and provide memorial site markers.
9. Defendants further told taxpayer-customers that Burial Specialists had purchased the funeral services license from Southern Dorchester using a \$90 million “promissory note,” and that Burial Specialists was genuinely indebted to Southern Dorchester for \$90 million, plus interest. Defendants also told taxpayer-customers that Burial Specialists could amortize a portion of the license’s supposed \$90 million value and pass on to its taxpayer-customers millions of dollars of losses, at a ratio of \$5-to-\$1. Those statements were false and/or fraudulent.
10. In truth, the funeral services license was not a genuine asset worth \$90 million, and there

was no arm's-length sale from Southern Dorchester to Burial Specialists. Burial Specialists and Southern Dorchester were both shell entities and alter egos of Michael Strauss and Barreiro. Michael Strauss and Barreiro were partners who together formed, managed and operated all of the cemetery scheme entities, including Burial Specialists and Southern Dorchester.

11. Michael Strauss and Barreiro colluded in fabricating the \$90 million funeral services license figure, along with the accompanying fictitious \$90 million promissory note. They did so for the specific purposes of: (1) generating exorbitant, fake tax benefits that they could market to the scheme's taxpayer-customers; and (2) creating a mechanism to fraudulently siphon off the funds that taxpayer-customers were told they were investing in the transaction.

12. Defendants' statements that the purported \$90 million funeral service rights license was an asset that Burial Specialists could amortize to generate \$5-to-\$1 partnership losses for its taxpayer-customers—or *five times* the amount supposedly invested—were not only false and/or fraudulent, but also were too good to be true. *See e.g., Conway v. United States*, 326 F.3d 1268, 1279 (Fed. Cir. 2003) (Transaction that promised tax benefits of almost twice the amount of the investment was “especially suspect” and “too good to be true”); *accord Neonatology Assocs., P.A. v. Comm'r*, 299 F.3d 221, 235 (3d Cir. 2002) (participants “should have been apprehensive” when examining “the scheme, for experience shows that when something seems too good to be true that probably is the case.”).

13. Defendants also marketed a second cemetery scheme, virtually identical mechanically to Burial Specialists, through a shell entity they controlled and operated called Memorial Specialists LLC. The Memorial Specialists scheme involves a purported cemetery located in Ulster County, in the Town of Lloyd, New York, about 80 miles northwest of New York City.

14. Between 2003 and 2008, Defendants falsely told their taxpayer-customers in the D.C. metro area that Memorial Specialists LLC had purchased a funeral services “license” for the Lloyd property for \$70 million from another company called Eastern Dorchester LLC, in an arm’s-length transaction. Those statements were false and/or fraudulent.

15. Defendants also said that Memorial Specialists had purchased the license from Eastern Dorchester using a \$70 million “promissory note,” and that Memorial Specialists was genuinely indebted to Eastern Dorchester for \$70 million, plus interest. Defendants further stated that Memorial Specialists could amortize a portion of the license’s supposed \$70 million value and pass on to its taxpayer-customers millions of dollars of losses at a ratio of \$5-to-\$1. Those statements were false and/or fraudulent.

16. In truth, the supposed funeral services license was not a genuine asset worth \$70 million, and there was no arm’s-length sale from Eastern Dorchester to Memorial Specialists. Eastern Dorchester and Memorial Specialists were both shell entities and alter egos of Michael Strauss and Barreiro, and they did not operate at arm's-length. Michael Strauss and Barreiro were partners who together formed, managed and operated all of the cemetery scheme entities, including Eastern Dorchester and Memorial Specialists.

17. Furthermore, no genuine \$70 million note obligation existed, because Michael Strauss and Barreiro colluded in fabricating the \$70 million figure they used for the license and fake promissary notes. They did so for the specific purposes of: (1) generating exorbitant, phony tax benefits; and (2) siphoning off their taxpayer-customers’ money.

18. In addition, the promised tax benefits of \$5-to-\$1 were not only false, but also too good to be true.

19. Defendants promoted a third illegal tax shelter (ostensibly a series of scams) related to the same land in Lloyd, New York, that Defendants used in their Memorial Specialists tax shelter. This third scam generated phony charitable deductions through four limited partnerships collectively known as Dignified Charitable Burials.

20. In addition to phony charitable deductions, the Dignified Charitable Burials schemes also used an LLC to facilitate fictitious partnership losses similar to the losses Defendants marketed to customers of Burial Specialists and Memorial Specialists.

21. Defendants generated the phony charitable deductions and fictitious losses for Dignified Charitable Burials through the supposed sale and transfer of purported "burial site certificates" related to the Lloyd property. Defendants marketed the various Dignified Charitable Burials schemes to D.C. area taxpayer-customers from 2004 through 2008, and falsely promised those taxpayer-customers \$5-to-\$1 tax benefits.

22. In promoting the Dignified Charitable Burials scams, Defendants further told taxpayer-customers that the value of the supposed burial site certificates was over \$38 million and that Dignified Charitable Burials LLC had genuinely purchased the supposed burial site certificates from Defendants' company Eastern Dorchester for that amount in an arm's-length transaction. Defendants also told taxpayer-customers that Dignified Charitable Burials LLC was genuinely indebted to Eastern Dorchester for \$38 million, plus interest. Those statements were false and/or fraudulent.

23. Defendants promoted all three cemetery schemes to taxpayer-customers in Virginia, Maryland and the District of Columbia. Between 2003 and at least 2008, Defendants took in millions of dollars from their taxpayer-customers, and provided to those taxpayer-customers

approximately \$35 million in fake losses and phony charitable deductions. Defendants falsely and/or fraudulently told their taxpayer-customers that they could use those fictitious losses and phony deductions to offset their federal income taxes. Despite marketing the scheme for over five years, Defendants never generated a single dollar of revenue, let alone a single dollar of profit, for any of their taxpayer-customers.

24. The cemetery schemes are illegal tax shelters that violate the longstanding judicial tax doctrines of: (1) substance over form; (2) sham transaction; (3) economic substance; and (4) step transaction. *See e.g., Gregory v. Helvering*, 293 U.S. 465 (1935); *Boca Investorings P'ship v. United States*, 314 F.3d 625, 632 (D.C. Cir. 2003); *ASA Investorings Pshp. v. Comm'r*, 201 F.3d 505, 515 (D.C. Cir. 2000); *BB&T Corp. v. United States*, 523 F.3d 461, 471, 475 (4th Cir. 2008); *Coltec Industries, Inc. v. United States*, 454 F.3d 1340, 1352-58 (Fed. Cir. 2006) (recounting seventy-year history of the “economic substance doctrine,” which requires disregarding, for tax purposes, transactions that “lack economic reality”).

25. In addition, the cemetery schemes violate various technical provisions of the Internal Revenue laws, including but not limited to I.R.C. §§ 162, 163, 165, 167, 168, 170, 172, 197, 465, 469, 704 and/or 707.

26. Prior to peddling the cemetery schemes, Defendants promoted numerous other illegal tax shelters, including an earlier employee stock ownership plan (ESOP) tax scheme, and before that, multiple, Ponzi-like scams with phony tax loss components. For more than a decade, Defendants have moved from one illegal scheme to the next—concealing the true nature of their various scams with a vast array of evolving shell entities and alter egos.

27. The United States brings this action to permanently enjoin Defendants—and those

persons in active concert or participation with them, including their representatives, agents, servants, employees, and attorneys—from, directly or indirectly:

- a. Organizing, promoting, marketing, selling, or implementing the illegal cemetery schemes that are the subject of the complaint herein;
- b. Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(A), including making or furnishing, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that the Defendants know or have reason to know is false or fraudulent as to any material matter;
- c. Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(B), including making or furnishing, in connection with the organization or sale of any plan or arrangement, statements as to the value of property or services when the value stated exceeds 200% of the amount determined to be correct and is directly related to the amount of a tax deduction or credit;
- d. Organizing, promoting, selling or implementing (or helping others to organize, promote, sell or implement) any other tax shelter, plan, or arrangement, that violates the internal revenue laws or improperly incites taxpayers to evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;
- e. Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws; and
- f. Engaging in conduct subject to penalty under any provision of the Internal

Revenue Code, or that interferes with the administration and enforcement of the internal revenue laws.

Defendants

A. Michael A. Strauss

28. Defendant Michael A. Strauss resides in Herndon, Virginia.

29. Strauss—a convicted felon—is the mastermind, along with Joseph Barreiro, of the illegal cemetery schemes. Together, Strauss and Barreiro created and operated a complex web of alter-egos and shell entities that they and their co-promoters used to perpetrate the cemetery schemes in Virginia, Maryland, New York, and the District of Columbia.

30. Michael Strauss personally managed, either alone or with Joseph Barreiro, the following District of Columbia entities that were used in furtherance of the cemetery schemes: Eastern Dorchester LLC; Consolidated Managers; Consolidated Holdings; and Non-Denominational Christian Services Inc. Strauss formed or participated in the formation of each entity.

31. Michael Strauss also personally managed, either alone or with Joseph Barreiro, the following additional companies that were used in furtherance of the cemetery schemes: Southern Dorchester LLC; Eastern Dorchester Inc.; Eastern Dorchester Joint Venture LLC; Dorchester Enterprises; Dorchester Investments; Chancellorsville Memorial Gardens LLC; Orbis (NY) LLC; Retirement Members; and Eleemosynary Holdings. Strauss formed or participated in the formation of each entity.

32. Strauss and Barreiro employed all of the foregoing shell companies—along with entities directly managed by Barreiro and detailed below—to fabricate millions of dollars of fictitious partnership losses and phony charitable deductions.

33. Between 2003 and 2010, Strauss used his home address in Herndon, Virginia, as the mailing address for numerous entities involved in the cemetery schemes, including Southern Dorchester LLC; Eastern Dorchester LLC; Dorchester Enterprises; Dorchester Investments; Retirement Members; Consolidated Managers; Consolidated Holdings; and Eleemosynary Holdings.

34. Strauss authored marketing materials and transactional documents that he and his co-promoters used in the operation and promotion of the cemetery schemes from 2003 through at least 2008. Those documents (most of which he styled as “private” securities offerings) contain false and/or fraudulent statements about the tax benefits available to taxpayer-customers of the cemetery schemes, as well as false and/or fraudulent statements about the substance and operation of the purported cemeteries and the possibility of profiting from them.

35. For instance, an October 2005 Private Placement Memorandum (“PPM”) authored by Strauss stated that taxpayer-customers of the Burial Specialists scam would receive tax benefits “at a 5:1 ratio to their investment in the year of investment, a ratio of \$5 for \$1.” Those statements are false and/or fraudulent.

36. Strauss has admitted that he “structured” the cemetery schemes as “tax deferrals,” which he says permitted taxpayer-customers to get \$5 of tax deductions for every \$1 invested.

37. Between 2003 and at least 2008, Strauss also falsely and/or fraudulently told taxpayer-customers that the fictitious funeral service rights “licenses” supposedly acquired in the cemetery schemes (and accompanying debt obligations) had a value of \$90 million and \$70 million, were genuine, and could serve as the basis for massive partnership losses. For example, on or about June 21, 2007, Strauss personally sent taxpayer-customers of the Memorial Specialists and

Dignified Charitable Burials schemes a 2007 PPM that he co-authored and that contained such false and/or fraudulent representations.

38. Immediately prior to devising and promoting the cemetery schemes, Strauss masterminded another illegal tax shelter that used fictitious partnership losses purportedly related to a type of ESOP. Strauss marketed and/or operated that ESOP scheme from 2001 through 2003.

39. Strauss and his co-promoters similarly promoted the ESOP scheme through shell entities or alter egos that Strauss controlled, either directly or indirectly, including District of Columbia companies Consolidated Holdings, Consolidated Managers (which Strauss owned 100%), and Pension Benefits Partners, as well as V-Twin Acquisitions ESOP. Strauss later used all of those entities or their successors, in some capacity, in the cemetery schemes.

40. Strauss falsely told taxpayer-customers of the ESOP scheme—as he falsely told the taxpayer-customers of the cemetery schemes—that they would receive 5-1 tax benefits, or “\$5 or more of tax deductions for every \$1 invested.” Strauss also used fictitious and/or wildly overvalued assets to generate the scheme’s tax benefits. Strauss has admitted that he “structured” the ESOP companies as “tax deferrals,” which he says permitted taxpayer-customers to get \$5 of tax deductions for every \$1 invested.

41. Strauss currently is being sued for fraud in the Superior Court of the District of Columbia by former taxpayer-customers of his ESOP tax shelter. *See Matijkiw v. Strauss*, Doc. No. 2008-CA-004996 (D.C. Sup.) In early 2010, prior to and following a court order in that case to maintain and produce electronic documents, Strauss ran numerous evidence-destruction software programs on his personal computer, including programs entitled “Evidence Destroyer,” “File

Shredder,” and “Stellar Wipe Professional” and destroyed documents relevant to that (and this) litigation.

42. Following his destruction of evidence, Strauss personally filed an attorney-grievance complaint against the lawyers who brought the fraud case on behalf of his former ESOP scheme taxpayer-customers.

43. Additional predecessor or subsidiary entities of Consolidated Holdings and Consolidated Managers—two of the companies Strauss used in the cemetery schemes and his ESOP tax shelter—include: Roc Shores/Century Industries; Roc Shores Investments Inc.; Mid Atlantic Insurance Brokers; U.S. Insurance Brokers Inc.; Century (Overseas) Insurance Co.; Scibal Associates Inc.; Interactive Gaming & Communication Corp; Gamblenet Technologies Inc.; Brunswick Acquisitions Inc.; New Ventures Holdings LLC; Venture Managers Inc.; Byerly Technologies; Globespan Technologies (Dublin, Ireland, entity); and Globex (Isle of Man entity).

44. Michael Strauss used one or more of these companies to falsely inflate the balance sheets of other companies he controlled in furtherance of a series of Ponzi-like schemes. Beginning in approximately 2000, Strauss also used one or more of these companies, including specifically Mid Atlantic Insurance Brokers, to generate phony tax losses through his company Consolidated Holdings.

45. Before devising and marketing the cemetery schemes, his ESOP tax shelter, and his Consolidated Holdings scam, Strauss orchestrated still other, similar multi-level, complex fraud schemes that employed a vast array of shell entities, alter egos and fictitious assets. Strauss served time in federal prison for his role in some of those scams.

46. Strauss has used various aliases, including the last names Beck and Schwartzbeck. Ted

L. Schwartzbeck is Strauss' stepson.

47. Strauss claims to have attended college and a year-and-a-half of law school.

48. Based on Strauss' role in the cemetery schemes, his role in other scams, his prior experiences, and his education, it is clear that Strauss knew or had reason to know that the cemetery schemes were illegal and that statements he made concerning the schemes' tax benefits were false and/or fraudulent.

B. Joseph C. Barreiro

49. Defendant Joseph C. Barreiro resides near Poughkeepsie, New York. In the period relevant to this complaint, Barreiro maintained an office in Fredericksburg, Virginia, on behalf of various entities involved in the cemetery schemes, including Burial Specialists LLC, Chancellorsville Memorial Garden, Southern Dorchester LLC, and Orbis (NY) Corp.

50. Barreiro and Michael Strauss are the masterminds of the illegal cemetery schemes.

51. Barreiro personally operated and managed, either alone or with Michael Strauss, the following entities that were used in furtherance of the cemetery schemes: Burial Specialists LLC; Memorial Specialists LLC; Dignified Charitable Burials LLC; Dignified Charitable Burials Limited Partnerships (#1 through #4); Eastern Dorchester Joint Venture LLC; Eastern Capital; Chancellorsville Memorial Gardens; Orbis (NY) LLC; Orbis (NY) Corp; Funeral Service Company; and Ariday NY.

52. Barreiro and Strauss used these entities—along with the companies operated and/or managed by Strauss described above and others—to fabricate millions of dollars of fictitious partnership losses and phony charitable deductions.

53. Barreiro served as the founding member and spokesperson of Burial Specialists LLC,

Memorial Specialists LLC, Dignified Charitable Burials LLC, and the various Dignified Charitable Burials Limited Partnerships (#1 through #4).

54. In April 2003, Barreiro also co-founded and began operating Ariday NY. Barreiro falsely and/or fraudulently held out Ariday NY as a legitimate charitable organization.

55. Ariday NY is not a genuine charity and has never performed charitable functions or activities. Rather, it is yet another shell entity and alter ego controlled and operated by Barreiro, that Defendants used in furtherance of the illegal cemetery schemes and for Defendants' personal inurement.

56. From 2004 through at least 2008, Barreiro distributed marketing materials and transactional documents (authored principally by Michael Strauss but edited by Barreiro) to taxpayer-customers. The materials and documents contained false and/or fraudulent statements about the tax benefits of the cemetery schemes, as well as false and/or fraudulent statements about the substance and operation of the purported cemeteries and the possibility of profiting from them.

57. Barreiro also authored correspondence and made oral statements to taxpayer-customers about the tax benefits of the cemetery schemes that were false and/or fraudulent from 2003 through at least 2008. This included telling taxpayer-customers that they would receive tax benefits of \$5 for every \$1 invested, and that the fictitious debt obligations of \$90 million, \$70 million, and \$38 million supposedly incurred in the cemetery schemes were genuine.

58. For instance, on March 26, 2007, Barreiro co-authored and sent a memorandum to twenty taxpayer-customers of Memorial Specialists and Dignified Charitable Burials who reside in Virginia, Maryland and Washington, D.C. It falsely represented that the phony \$70 million

and \$38 million notes supposedly owed by Memorial Specialists and Dignified Charitable Burials to Eastern Dorchester were genuine—but claimed that “management” had successfully “negotiated” the combined \$108 million supposedly owed on the notes down to \$23 million. It also stated that existing taxpayer-customers could obtain additional tax benefits of \$5 for every \$1 invested if they contributed more than the supposed “minimum” due on the new note.

59. Barreiro claims to have a B.S. degree from the Manhattan College of Civil Engineering.

60. Based on Barreiro’s experiences, his role in the cemetery schemes, and his education, it is clear that he knew or had reason to know that the cemetery schemes were illegal and that statements he made concerning the schemes’ tax benefits were false and/or fraudulent.

C. Patrick B. Strauss

61. Defendant Patrick B. Strauss—Michael Strauss’ son—resides in the Chevy Chase neighborhood of Washington, D.C. Patrick Strauss claims to have a B.A. degree from the Wharton School of Business, University of Pennsylvania.

62. Patrick Strauss is the primary marketer of the cemetery schemes and directly promoted them to taxpayer-customers in Northern Virginia, Maryland, and Washington, D.C.

63. From 2003 through at least 2008, Patrick Strauss distributed to taxpayer-customers marketing materials and transactional documents (principally authored by his father) that contained false and/or fraudulent statements about the purported tax benefits of the cemetery schemes, as well as false and/or fraudulent statements about the substance and operation of the cemetery schemes and the possibility of profiting from them.

64. Patrick Strauss, for example, distributed the October 2005 Burial Specialists PPM to taxpayer-customers in the D.C. Metro area in late-2005 and early-2006, which falsely and/or

fraudulently states that participants in the scheme would receive tax benefits of \$5 for every \$1 invested. He distributed similar PPMs to Memorial Specialists, Dignified Charitable Burials and Burial Specialists taxpayer-customers from 2003 through 2007.

65. From 2003 through at least 2008, Patrick Strauss also made oral statements to taxpayer-customers regarding the purported tax benefits of the cemetery schemes that were false and/or fraudulent. During that time he also made false and/or fraudulent statements about the substance and operation of the cemetery schemes and the possibility of profiting from them.

66. For instance, in October 2004, Patrick Strauss stated orally to a taxpayer-customer from McLean, Virginia, that the customer would receive tax benefits of \$5 for every \$1 he “invested” in Memorial Specialists. Those statements were false and/or fraudulent.

67. Patrick Strauss received large commissions for recruiting new taxpayer-customers into the illegal cemetery schemes—approximately 20% of the customer’s “investment.” He received similar commissions for repeat customers.

68. From 2000 through 2003—immediately prior to promoting the cemetery schemes—Patrick Strauss directly marketed the illegal ESOP tax shelter described above to taxpayer-customers in the D.C. Metro area. Patrick Strauss also served as a co-manager of one of the entities used in the ESOP scheme, Pension Benefits Partners.

69. Patrick Strauss worked as a stockbroker at Merrill Lynch and Morgan Stanley before promoting the illegal cemetery schemes and the ESOP tax shelter.

70. Strauss owns and operates Incyte Capital LLC, a District of Columbia entity and member of Consolidated Holdings, and co-owns and operates Stanford Capital, another District of Columbia entity.

71. Patrick Strauss knew prior to promoting the illegal cemetery schemes and the ESOP tax shelter that his father had served time in federal prison for orchestrating similar illegal, complex fraud schemes that employed a vast array of shell entities, alter egos and fictitious assets.

72. Based on Patrick Strauss' role in the cemetery schemes, his education and experience, and his knowledge of his father's criminal activities, it is clear that he knew or had reason to know that the cemetery schemes were illegal and that statements he made or furnished concerning the schemes' tax benefits were false and/or fraudulent

D. Additional Key Players

73. Michael Strauss and Barreiro used the same accountant, Neal A. Klipfel, to represent the vast array of entities they employed in the cemetery schemes, including companies that were supposedly acting at arm's-length.

74. Neal Klipfel resides near Buffalo, New York. In the period relevant to this complaint, Klipfel maintained an office for his accounting practice in Arlington, Virginia. Klipfel claims to have a masters degree in taxation from American University, in Washington, D.C.

75. Transactional materials authored by Michael Strauss and used in the promotion of the cemetery schemes (dated from 2003 through 2007) falsely held out Klipfel as a Certified Public Accountant (CPA).

76. From 2004 through at least 2008, at Michael Strauss' and Barreiro's request, Klipfel prepared tax returns on behalf of Burial Specialists LLC and Memorial Specialists LLC. Those returns contained false and/or fraudulent statements concerning the purported partnership losses available to taxpayer-customers of (and partners in) Burial Specialists LLC and Memorial Specialists LLC. Klipfel furnished those tax returns and Schedules K-1 to the schemes'

taxpayer-customers, who then used that information to improperly offset their taxable income on their own returns.

77. Also at Michael Strauss' and Barreiro's request, Klipfel prepared tax returns on behalf of Dignified Charitable Burials LLC and the various Dignified Charitable Burials Limited Partnerships, from 2004 through at least 2008. Those returns contained false and/or fraudulent statements concerning purported charitable deductions available to taxpayer-customers of the Dignified Charitable Burials companies. Klipfel furnished those tax returns and Schedules K-1 to taxpayer-customers of the scheme, who then used that information to improperly offset their taxable income on their returns.

78. Klipfel also prepared, at the request of Michael Strauss, tax returns on behalf of the following entities involved in the illegal cemetery schemes and the ESOP tax shelter: Eastern Dorchester LLC; Southern Dorchester LLC; Dorchester Enterprises; Consolidated Holdings (and its predecessors, including Roc Shores/Century Industries); Consolidated Managers; Pension Benefits Partners; V-Twin Acquisitions; V-Twin Acquisitions ESOP; and others.

79. Klipfel prepared the personal income tax returns for Defendants Michael Strauss (from approximately 2001 through 2007) and Patrick Strauss (from approximately 1998 through 2008), as well as for Michael Strauss' stepson, Ted Schwartzbeck (until approximately 2008). Klipfel also served as the trustee of the Patrick Strauss Charitable Remainder Unitrust.

80. Michael Strauss and Barreiro used the same attorneys to represent the numerous entities they employed in the cemetery schemes, including companies that supposedly were acting at arm's-length. One of those lawyers is William T. Lehner and the law firm Sands Anderson P.C.

81. Lehner is a licensed attorney in the Richmond, Virginia office of the law firm Sands

Anderson P.C.

82. From approximately 2003 through at least 2007, Lehner and Sands Anderson P.C. purportedly acted as “corporate counsel” for the following cemetery scheme companies operated directly by Barreiro, and indirectly by Michael Strauss: Burial Specialists LLC; Memorial Specialists LLC; Dignified Charitable Burials LLC; and Dignified Charitable Burials Limited Partnerships (#1 through #4). Lehner and his firm allegedly acted as corporate counsel for Defendant Barreiro in his capacity as the manager and a promoter of the cemetery schemes—and simultaneously as corporate counsel for the taxpayer-customers who purchased the illegal schemes from Defendants.

83. Concomitantly, from approximately 2003 through at least 2007, Lehner and Sands Anderson P.C. represented cemetery scheme entities controlled and operated directly by Defendant Michael Strauss, including Eastern Dorchester LLC and Southern Dorchester LLC.

84. Also from 2003 through at least 2007, Lehner and his firm represented the phony charity Ariday NY, which Defendants fraudulently used in furtherance of the Memorial Specialists scheme and the various Dignified Charitable Burials schemes. They also represented Strauss’ alter ego, Retirement Members, and served as the registered agent for Eastern Dorchester, Dorchester Enterprises, and other cemetery scheme entities.

85. Lehner edited promotional documents for the cemetery schemes that were mailed to taxpayer-customers in the D.C. Metro area and which were authored principally by Michael Strauss.

86. Prior to representing entities involved in the cemetery schemes, Lehner and Sands Anderson P.C. represented and/or were paid money by companies used in Strauss’ ESOP tax

shelter, including V-Twin Acquisitions Inc., V-Twin Acquisitions ESOP, and Pension Benefits Partners.

87. From 2009 through April 2011, Lehner and Sands Anderson P.C. represented Michael Strauss personally in the ESOP fraud case currently pending in the Superior Court for the District of Columbia.

88. Robert J. Flynn is another lawyer who represented numerous entities Michael Strauss and Barreiro employed in the cemetery schemes that were supposedly acting at arm's-length. Flynn, a licensed attorney with an office in Washington, D.C., met Strauss during or shortly after Strauss' incarceration in federal prison in the mid-1980s.

89. Transactional documents authored by Michael Strauss and used in promotion of the cemetery schemes (from 2003 through 2005) falsely held out Flynn as a Rhodes Scholar and as a tax expert.

90. From approximately 2003 through 2007, Flynn provided legal services to the following cemetery scheme companies managed directly by Barreiro: Burial Specialists LLC; Memorial Specialists LLC; Dignified Charitable Burials LLC; the various Dignified Charitable Burials Limited Partnerships; Eastern Capital; Funeral Service Company; and others.

91. During that same time-frame and earlier, Flynn provided legal or other services to the following companies managed directly by Michael Strauss and used in the cemetery schemes: Southern Dorchester LLC; Eastern Dorchester LLC; Eastern Dorchester Joint Venture LLC; Consolidated Holdings (and its predecessors, including Roc Shores/Century Industries); Consolidated Members; V-Twin Acquisitions ESOP; Pension Benefits Partners; Retirement Members; Globex; Globespan Technologies; Eleemosynary Holdings; and numerous others.

92. Flynn represented Michael Strauss' and Barreiro's company, Dorchester Enterprises, in a lawsuit brought by one of Strauss and Barreiro's former partners in the Circuit Court for the County of Spotsylvania, Virginia. That action also named as defendants Michael Strauss and a company owned by Strauss' stepson, Ted Schwartzbeck, and concerned ownership of the Chancellorsville Memorial Gardens property.

Defendants' Illegal Cemetery Schemes

A. Burial Specialists Scheme

i. The Purported Chancellorsville Cemetery

93. The first "funeral service rights" tax shelter (and least complicated entity structure) promoted by Defendants is the Burial Specialists scheme. It involves a purported cemetery called Chancellorsville Memorial Garden. The property is located on approximately 40 acres, off Orange Plank Road (just east of Fire and Rescue Company 7) in Spotsylvania County, near Chancellorsville National Battlefield, approximately 10 miles west of Fredericksburg, Virginia.

94. From 2004 through at least 2008, Defendants promoted and marketed the Burial Specialists scheme to taxpayer-customers through a shell entity of the same name: Burial Specialists LLC. It was operated directly by Joseph Barreiro, and indirectly by Michael Strauss. Barreiro served as the founding member, tax matters partner, and manager of the company. Barreiro also controlled the company's bank account.

95. At the same time, Defendants used another shell entity called Southern Dorchester LLC—operated directly by Michael Strauss, and indirectly by Joseph Barreiro—in furtherance of the Burial Specialists scheme. Strauss and Barreiro owned 66% of Southern Dorchester, through their company Dorchester Enterprises. Strauss controlled Southern Dorchester's bank account.

96. Defendants falsely and/or fraudulently represented to taxpayer-customers that Burial Specialists LLC was at “arm’s-length” to Southern Dorchester LLC.

97. Defendants told taxpayer-customers that the Burial Specialists scheme involved a genuine cemetery and promised taxpayer-customers that if they “invested” in the transaction, they would receive substantial profits from funeral services performed at the cemetery—primarily in connection with the burial of cremated remains in “columbaria niches” that Defendants promised to build. Defendants distinguished those services from funeral services provided by mortuaries, and explained that it would include “arranging the cremation, the opening and closing of the burial site, providing a watertight vault (columbaria niche), providing a burial urn, and providing a memorial site marker, for burial sites owned within a cemetery.”

98. Defendants told taxpayer-customers that Defendants would build an “administrative office” on the Chancellorsville property.

99. Defendants also falsely and/or fraudulently told taxpayer-customers that they would receive substantial tax benefits—in the form of partnership losses—in the first year of their “investment.”

100. Between 2003 and 2004, Defendants did just enough to create an appearance that the Chancellorsville property was a genuine cemetery. Barreiro earlier had obtained a cemetery license for the property by paying a relatively small licensing fee. Defendants cleared approximately seven acres (or less) of land on the site, paved a short circular road, and erected a sign (which has since been removed).

101. Defendants never constructed columbarium niches, never finished the site work on the

property and never built an administrative building. After Defendants began marketing the Burial Specialists scheme to taxpayer-customers in 2004, they never sold a single columbarium niche or burial plot to the public.¹

102. Defendants never generated a single dollar of profit or even revenue for any of the cemetery scheme taxpayer-customers. Instead, Defendants took in nearly \$1.5 million from taxpayer-customers of Burial Specialists, which they funneled to entities Defendants operated and controlled (principally Southern Dorchester LLC), and which they appropriated for themselves and their agents.

ii. Specific False and/or Fraudulent Statements

103. In promoting the Burial Specialists scheme, Michael Strauss authored (and Barreiro edited) marketing and transactional materials entitled “Burial Specialists, LLC, . . . Private Placement Memorandum for Accredited Members,” dated “October 2005,” and which comprised 158 pages with attachments. Strauss authored a largely identical Burial Specialists PPM in other years, including one dated “December 2004” and co-authored another with Barreiro (entitled “Cash Call”), dated “March 31, 2007.”

104. Patrick Strauss and Barreiro distributed the October 2005, Burial Specialists PPM to taxpayer-customers in Northern Virginia, Maryland and the District of Columbia in late-2005 and early-2006. They also distributed to D.C. Metro area taxpayer-customers the December 2004, Burial Specialists PPM, in late-2004 and early-2005, and (along with Sands Anderson) the March 31, 2007, Cash Call, in spring-2007.

¹ Michael Strauss says that before he got involved with the cemetery schemes, there had been a small number of “pre-need” sales of burial plots to the public at the Chancellorsville site, but that those sales were not disclosed to him until after he and Barreiro acquired the property.

105. Defendants falsely and/or fraudulently told taxpayer-customers—in the “Offering Highlights” section of the Oct. 2005 Burial Specialists PPM—that:

- a. Burial Specialists had purchased from Southern Dorchester a funeral service rights “license” to perform hundreds of thousands of burials for cremated remains at the Chancellorsville Memorial Garden;
- b. The value of the funeral service rights license was over \$90 million;
- c. Burial Specialists financed the purported \$90 million purchase with a genuine “note obligation” to Southern Dorchester for that amount plus interest;
- d. The company would amortize “its major asset (burial rights license)” over 15 years pursuant to I.R.C. Section 197, “thereby providing its old and new members with substantial tax benefits in their first year of investment;”
- e. If taxpayer-customers invested in the scheme, they would receive immediate tax benefits, including “ordinary loss-passthroughs [sic] at a 5:1 ratio to their investment in the year of investment, a ratio of \$5 for \$1;”
- f. The program is a “tax-deferral plan;”
- g. The company has “substantial economic substance;”
- h. The company’s revenues were “projected at \$360,000,000 over 50 years.”

106. In truth, Burial Specialists never purchased a funeral service rights “license” from Southern Dorchester, and there was no arm’s-length sale from Southern Dorchester to Burial Specialists.

107. At the time of the supposed license purchase, Burial Specialists and Southern Dorchester were shell entities and alter egos of Michael Strauss and Joseph Barreiro that did not

operate at arm's-length. Strauss and Barreiro were partners. Together they formed, managed and operated all of the cemetery scheme entities, including Burial Specialists and Southern Dorchester.

108. Numerous transactional documents signed by Strauss and Barreiro also demonstrate that they and the entities they operated and controlled did not deal with each other at arm's-length. For instance, the contract that supposedly memorialized Burial Specialists' purchase of funeral service rights for \$90 million (dated "as of February 1, 2004"), and which was purportedly with Southern Dorchester's predecessor, Chancellorsville Memorial Gardens LLC ("CMG LLC"), was entered into by both Barreiro and Michael Strauss. Barreiro had been Vice President of CMG, LLC. Yet Barreiro finalized the deal not on behalf of CMG LLC, but instead as "manager" of Burial Specialists. Strauss, in turn, entered into the agreement as "manager" of CMG LLC.

109. Likewise, the true value of the funeral service rights "license" was not \$90 million and no genuine note obligation existed. Neither Strauss nor Barreiro had a *bona fide* basis for valuing the supposed burial service rights at \$90 million. Rather, they colluded in fabricating that figure, along with the accompanying fictitious \$90 million note obligation. They did so for the specific purposes of:

- a. Generating exorbitant, fake tax benefits that they could market to the scheme's taxpayer-customers; and
- b. Creating a mechanism to fraudulently siphon off the funds that taxpayer-customers were told they were investing in the transaction.

110. The fictitious \$90 million sales figure Defendants assigned to the burial service rights

license was the centerpiece of the tax component of the Burial Specialists scheme. Defendants explained the importance of the supposed license and its relationship to the purported tax benefits in their October 2005, Burial Specialists PPM. On page three of that document, entitled “Offering Highlights,” they called the burial service rights license the company’s “major asset,” which they planned to amortize over 15 years pursuant to I.R.C. Section 197, “thereby providing its old and new members with substantial tax benefits in their first year of investment.”

111. Defendants knew or had reason to know the \$90 million sales figure they attributed to the supposed “license” (and used for the fake note obligation) was bogus for the very reason that the extraordinarily large sum allowed Strauss and Barreiro to concoct the enormous fictitious tax benefits that they needed to market the scheme to taxpayer-customers. The greater the supposed value of the “license,” the greater the resulting fictitious tax benefits, and the larger the “note” needed to purchase that phony asset.

112. A second crucial purpose of the \$90 million sales figure—in conjunction with the fake note obligation that Defendants claimed was owed to Southern Dorchester—was to provide a mechanism for Defendants to fraudulently and steadily siphon off the money that their taxpayer-customers contributed to Burial Specialists.

113. Defendants took the money taxpayer-customers contributed to Burial Specialists, funneled it to Southern Dorchester, and told taxpayer-customers that Burial Specialists was just paying off its genuine debt to Southern Dorchester. Defendants further told taxpayer-customers that Burial Specialists had to continue making debt payments on the fictitious \$90 million promissory note, or face the loss of its “major asset” (the supposed burial service rights license) and/or end up in bankruptcy. Those statements were false and/or fraudulent.

114. In truth, Defendants used most of the payments to Southern Dorchester for their own personal benefit and for their agents' personal benefit. Once again, the larger the fake promissory note, the more money Defendants could take from their taxpayer-customers.

115. Defendants also knew or had reason to know the \$90 million sales figure and the note obligation were bogus because:

- a. Defendants were on both sides of the transaction and prearranged it;
- b. Defendants took steps to make it falsely appear that the transaction was conducted at arm's-length;
- c. Defendants failed to obtain an appraisal of the supposed burial service rights license—the company's purported "major asset"—prior to engaging in the transaction;
- d. Defendants earlier had effectively paid less than \$200,000 for the entire 40 acres that they used for the supposed cemetery—which included at the time of that acquisition ownership of any and all purported intangible rights related to the land, including (even if real) any "funeral service rights;"
- e. Defendants failed to otherwise act in a commercially reasonable manner. Rather, they acted in a commercially unreasonable manner—with one partner, Barreiro, supposedly agreeing to wildly overpay the other partner, Strauss, for a contrived asset that (even if real) the pair already jointly owned and controlled—for the precise purpose of concocting enormous fake tax benefits and creating a mechanism to appropriate their taxpayer-customers' funds.

116. Numerous Burial Specialists taxpayer-customers began to suspect fraud in 2006 or

2007. Once those suspicions arose, Defendants agreed to dramatically “reduce” the amount that Burial Specialists supposedly owed to Southern Dorchester on the \$90 million note. They did so in the hope of extracting additional, but smaller, amounts of cash from then-existing taxpayer-customers.

117. Defendants’ indifferent treatment of the face amount of the note and the dramatic, seemingly benevolent, retroactive “reduction” of the amount supposedly owed with respect to the company’s “major asset”—further establishes that Defendants knew the \$90 million note was a fiction all along.

118. Based on the foregoing aspects of the scheme, Defendants knew or had reason to know the Burial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits.

119. Defendants also knew or had reason to know the Burial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits, because such benefits are patently too good to be true.

120. Moreover, the Burial Specialists scheme is an illegal tax shelter that violates the longstanding judicial tax doctrines of: (1) substance over form; (2) sham transaction; (3) economic substance; and (4) step transaction. It also violates various technical provisions of the Internal Revenue laws, including but not limited to I.R.C. §§ 162, 163, 165, 167, 168, 172, 197, 465, 469, 704 and/or 707.

121. Defendants further knew or had reason to know the Burial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits, due to their education and experience.

122. At the same time, Defendants knew or had reason to know the transaction had no realistic prospect of generating any profit—let alone the possibility of producing returns of

\$360,000,000—due to:

- a. The fictitious \$90 million debt obligation in place that required total payments (including interest) of \$120 million to Defendants' company Southern Dorchester;
- b. Commitments (stated on page 20 of the October 2005 PPM) to pay in addition to the fictitious \$120 million debt, a further \$60 million in costs supposedly to build columbaria niches;
- c. The large commissions paid to Patrick Strauss (approximately 20% of total funds raised), and significant fees paid to Barreiro, Michael Strauss, Lehner, Flynn, Klipfel and others;
- d. Substantial additional costs and outlays (many inflated or simply contrived);
- e. Defendants' failure to sell, let alone market, any columbarium niches or burial plots to the public;
- f. Strong competition from existing, well established, fully operational, neighboring cemeteries.

iii. Further Burial Specialists Promotional Efforts

123. Patrick Strauss served as the primary marketer of the Burial Specialists scheme, and was aided by his father and Barreiro.

124. Between 2003 and 2007, Patrick Strauss met individually with taxpayer-customers and potential customers of the Burial Specialists scheme in the D.C. Metro area. For instance, Patrick Strauss met with and spoke to a taxpayer-customer from Chevy Chase, Washington, D.C., in late 2004. During that meeting, Strauss promoted the Burial Specialists scheme, discussed its purported tax benefits and the supposed possibility for profit. Strauss also showed

the taxpayer-customer the Burial Specialists 2004 PPM, after which the taxpayer-customer agreed to enter into the transaction.

125. Patrick Strauss, with assistance from his father and Barreiro, recruited approximately thirteen separate taxpayer-customers into the Burial Specialists scheme from 2004 through 2007. Those Burial Specialists customers “invested” nearly \$1,500,000 in the scam. Most of the taxpayer-customers were repeat customers, who participated in multiple years.

126. Patrick Strauss received commissions of approximately 20% of each taxpayer-customer’s “investment.” He received similar commissions for repeat customers.

127. One couple from the District of Columbia—who Patrick Strauss initially recruited in 2004—ultimately claimed on their tax returns fictitious partnership losses from Burial Specialists of \$251,850 in 2004; \$382,238 in 2005 and \$13,080 in 2006.

128. Patrick Strauss organized numerous meetings of Burial Specialists taxpayer-customers during the period 2004 through 2007.

129. One such meeting occurred in Northern Virginia on or about June 26, 2006. Patrick Strauss arranged that meeting to try to convince existing Burial Specialists taxpayer-customers to contribute still further funds to the scheme.

- a. During the meeting Patrick Strauss and Barreiro reiterated false and/or fraudulent statements concerning the scheme’s purported tax benefits and its possibility for profit to numerous D.C. Metro area taxpayer-customers.
- b. Patrick Strauss and Barreiro also falsely and/or fraudulently told attendees that if they contributed more money to the scheme, they would be considered “at risk,” could retain the purported tax benefits they had already received, and would

receive additional tax benefits in the amount of \$5 for each \$1 “invested.”

Conversely, they threatened, if taxpayer-customers failed to contribute more money, they would no longer be “at risk” and their prior purported tax benefits would be “recaptured” by the Internal Revenue Service. Those statements were false and/or fraudulent.

130. Michael Strauss and Barreiro continue to operate and control numerous entities and assets involved in the Burial Specialists scheme.

131. For example, between 2004 and at least 2010, Michael Strauss used his home address in Herndon, Virginia, as a mailing address for entities involved in the Burial Specialists scheme, including Southern Dorchester LLC and its majority owner, Dorchester Enterprises. He wrote checks on behalf of Southern Dorchester through at least 2009. In 2010 and 2011, Strauss signed tax documents on behalf of various entities involved in the cemetery schemes, including Dorchester Enterprises, Pension Benefit Partners and Consolidated Holdings.

132. As of April 2011, Strauss claimed to still own and operate Dorchester Enterprises, Southern Dorchester LLC and the Chancellorsville Memorial Gardens property, and was litigating ownership of the latter two entities in the Circuit Court for the County of Spotsylvania, Virginia.

133. In March 2010, Barreiro asked one of the Burial Specialists scheme taxpayer-customers to become the new registered agent for the company. Barreiro signed tax documents on behalf of Burial Specialists in the summer of 2010. In approximately February 2011, Barreiro also stated that Defendants were planning a renewed effort to market the purported Chancellorsville Memorial Gardens cemetery to yet more taxpayer-customers.

134. Defendants maintain the propriety of the illegal Burial Specialists scheme even today.

B. Memorial Specialists Scheme

i. The Purported Lloyd Cemetery

135. The second “funeral service rights” tax shelter (and most complicated entity structure) promoted by Defendants is the Memorial Specialists scheme. From 2003 through at least 2008, Defendants promoted the Memorial Specialists scam through a shell entity of the same name: Memorial Specialists LLC. It was operated directly by Joseph Barreiro, and indirectly by Michael Strauss.

136. At the same time, Defendants used another shell entity and alter ego called Eastern Dorchester LLC—operated directly by Michael Strauss, and indirectly by Joseph Barreiro—in furtherance of the Memorial Specialists scheme.

137. Defendants falsely and/or fraudulently represented to taxpayer-customers that Memorial Specialists LLC was at “arm’s-length” to Eastern Dorchester LLC.

138. At the center of the Memorial Specialists scheme is a purported cemetery once called “Ariday Cemetery,” located on approximately 53 acres off Kisor Road, in Ulster County, New York, about 80 miles northwest of New York City, near the Town of Lloyd. The property is next to a large landfill.

139. Defendants told Memorial Specialists taxpayer-customers that the Lloyd property was a genuine cemetery, and promised taxpayer-customers that if they participated, they would receive substantial profits from “funeral services” performed at the site. Defendants distinguished those services from services provided by mortuaries, and explained that it would include “the opening and closing of the burial site, providing a watertight vault, and providing a memorial site marker,

for burial sites owned within a cemetery.”

140. Defendants also falsely and/or fraudulently told taxpayer-customers that they would receive substantial tax benefits—in the form of partnership losses—in the first year of their “investment.”

141. Between 2003 and 2005, Defendants did just enough to create an appearance that the Lloyd property was a genuine cemetery. Defendants cleared and leveled some of the land, erected a sign, and constructed a 2900 square foot colonial-style building—which looks like a personal residence or small office building—that Defendants told taxpayer-customers was the cemetery’s administration office. Defendants promised to finish the site work and construct hundreds-of-thousands of columbarium niches.

142. Defendants never performed a single burial at the Lloyd property, never constructed marketable columbarium niches (but supposedly created a small number of plastic prototypes), never finished work on the Lloyd property, and never generated a single dollar of profit for any of the cemetery scheme taxpayer-customers.

143. Instead, Defendants took over \$5 million from taxpayer-customers of the Memorial Specialists scheme, which Defendants funneled to entities they operated and controlled, such as Eastern Dorchester and Ariday NY, and which they appropriated for themselves and their agents.

144. As of late-2010, Barreiro was using the supposed office building at the Lloyd property as a personal residence and someone had removed the cemetery sign.

ii. Labyrinthian Entity Structure And Acquisition of Lloyd Property

145. Beginning in approximately 2004, Defendants falsely and/or fraudulently told taxpayer-customers that Memorial Specialists had genuinely purchased a “funeral service rights license”

from Eastern Dorchester for \$70 million, and that Memorial Specialists was genuinely indebted to Eastern Dorchester for \$70 million plus interest. Those representations, in addition to being false and/or fraudulent, also omit the scheme's complex entity structure and history.

146. Prior to the creation of Eastern Dorchester, Defendants employed a labyrinthian structure that concealed the true nature of Defendants' relationships to various entities.

147. Barreiro and Michael Strauss together formed Memorial Specialists in 2003, with Barreiro supposedly contributing \$125,000 and Consolidated Holdings—a company managed and co-owned by Strauss—supposedly doing the same.

- a. Michael Strauss' lawyer, William T. Lehner, supervised the filing of the formation documents for Memorial Specialists.
- b. Barreiro and Consolidated Holdings were the two initial "founding members" of Memorial Specialists.
- c. Barreiro served as Memorial Specialists' manager, tax matters partner, and spokesperson.
- d. Consolidated Holdings—which Michael Strauss manages, operates and co-owns—acted as the company's "Second Member-manager."
- e. Michael Strauss and Barreiro both exercised control over Memorial Specialists' bank accounts, and both signed checks on behalf of the company.

148. Following the formation of Memorial Specialists but before the appearance of Eastern Dorchester in the scheme, Defendants claimed that, in October 2003, Memorial Specialists purchased for \$70 million the funeral service rights license from a company called Orbis (NY) LLC. Orbis (NY) LLC is yet another entity co-owned, managed and controlled by both Barreiro

and Strauss.

- a. The purported \$70 million purchase price was secured principally by a promissory “note” from Michael Strauss’ and Barreiro’s company, Memorial Specialists, to Strauss’ and Barreiro’s company, Orbis (NY) LLC.
- b. That means, according to Strauss’ and Barreiro’s account, a company Strauss and Barreiro co-managed, owned and controlled—Memorial Specialists—supposedly bought an “asset” that (even if real) they already owned, from another entity that they co-managed, owned and controlled—Orbis (NY) LLC—and that together Strauss and Barreiro purportedly “agreed” to pay each other \$70 million.

149. Michael Strauss and Barreiro also claim that their company Orbis (NY) LLC had previously acquired the Lloyd property from “Orbis (NY) Corp” for \$1.8 million, secured principally by another promissory “note.” Once again, Barreiro facilitated that alleged purchase, while simultaneously serving as Vice President of the supposed seller, Orbis (NY) Corp, as well as co-owner and manager (with Strauss) of the supposed buyer, Orbis (NY) LLC.

- a. Orbis (NY) Corp had two employees, one of whom was Barreiro, and one asset, the Lloyd property.
- b. Approximately one year before the purported transfer between Orbis (NY) Corp and Orbis (NY) LLC, Barreiro—acting as Vice President of Orbis (NY) Corp—purchased the entire 53 acre Lloyd property from the Town of Lloyd for a total sale price of \$150,000.

150. Orbis (NY) LLC later supposedly merged with another entity Michael Strauss and Barreiro both co-owned, managed and controlled—Eastern Dorchester Joint Venture LLC.

Eastern Dorchester Joint Venture LLC was owned 50% by Michael Strauss' and Barreiro's company, Dorchester Enterprises, and 50% by Strauss and Barreiro's company, Eastern Capital.

151. Michael Strauss and Barreiro had earlier formed Eastern Capital with the assistance of Steve Galvin, an accountant from Northern Virginia. Galvin, who initially partnered with Strauss and Barreiro in the cemetery schemes, also helped Strauss and Barreiro set up a related company called Funeral Services Company LLC.

- a. Michael Strauss claims that his company Consolidated Holdings transferred \$250,000 to Funeral Services Company in February 2003 to support the acquisition of the Lloyd property.
- b. Michael Strauss would later explain that Funeral Services Company was, in effect, the predecessor to Defendants' company, Memorial Specialists.

152. In September 2003, the Criminal Investigation Division of the I.R.S. executed a search warrant at Galvin's (and his partner, Kevin Moses') accounting offices in Northern Virginia. The warrant alleged probable cause for violation of various criminal tax laws, including I.R.C. § 7201 (Attempt to Evade or Defeat Tax), I.R.C. § 7206(2) (Aiding and Abetting in the Preparation of False Returns), and I.R.C. § 7212 (Attempts to Interfere with Administration of Internal Revenue Laws).

153. The search warrant sought documents related to numerous companies involved in the cemetery schemes, including Michael Strauss' and Barreiro's companies Eastern Dorchester JV LLC, Eastern Capital, Consolidated Holdings, Chancellorsville Memorial Gardens, and Funeral Services Company.

154. William Lehner then met with Michael Strauss, Galvin, Moses and Robert Flynn at the

offices of Sands Anderson P.C. in Richmond, Virginia. Shortly thereafter, Galvin and Moses exited the cemetery schemes.

155. Following Galvin and Moses' departure, Michael Strauss and Barreiro assumed complete control over Funeral Services Company—and continued to manage and operate the other cemetery scheme companies.

156. In November 2003, Michael Strauss and Barreiro—on behalf Eastern Dorchester Joint Venture LLC—supposedly “donated” ownership of the Lloyd property to a company called Ariday Hispanic Women's Program of California (“Ariday CA”).

- a. Ariday CA is a small 501(c)(3) charity run almost exclusively by Yadira Taylor. Barreiro had no actual role with Ariday CA, but later claimed to sit on the company's Board of Directors.
- b. Pursuant to another supposed 2003 agreement, Ariday CA allegedly agreed to form another 501(c)(3) charity—Ariday of New York (“Ariday NY”).
- c. Barreiro—not Ariday CA—founded Ariday NY, with the assistance of Michael Strauss' lawyer, William Lehner.
- d. Following Ariday NY's formation, Barreiro managed and operated the company, sat on and controlled its Board of Directors, and had check signing authority.
- e. The entirety of Ariday NY's funding came from funds that Defendants took in from their taxpayer-customers of the cemetery schemes.
- f. Ariday CA supposedly transferred the Lloyd property to Ariday NY sometime in 2003. Barreiro and Michael Strauss participated in the preparation of the contract that purportedly effectuated that transfer. That contract, which is backdated

March 2003, was notarized in November 2003.

- g. Defendants used Ariday NY in the Memorial Specialists scheme and falsely held it out as a non-profit because they believed that under New York State law, only non-profit entities could own cemeteries in the state. Furthermore, they thought that as a religious non-profit, Ariday NY would be exempt from nearly all of the states' administrative and financial reporting requirements.
- h. Ariday NY is not a genuine charity and has never performed any charitable activities or functions.
- i. From 2004 through at least 2008, Barreiro, Michael Strauss and Patrick Strauss falsely and/or fraudulently told cemetery scheme taxpayer-customers that Ariday NY was a genuine charitable organization.

157. Michael Strauss' company Eastern Dorchester LLC eventually took over the alleged rights and interests of Eastern Capital and Eastern Dorchester Joint Venture LLC (and, along with Memorial Specialists, whatever interests Funeral Services Company still possessed).

- a. Michael Strauss formed Eastern Dorchester LLC (which was a District of Columbia entity during much of the period relevant to this action), in 2003. At that time, Strauss owned Eastern Dorchester LLC through his and Barreiro's company Dorchester Enterprises, and through Strauss' company Consolidated Holdings (another D.C. entity).
- b. Michael Strauss claims that in 2004, "V-Twin Acquisitions Inc." acquired 65% of Eastern Dorchester LLC, and that V-Twin Acquisitions Inc. was owned by "V-Twin Acquisitions ESOP."

- c. V-Twin Acquisitions ESOP, in turn, supposedly is owned by a small number of “employees” of V-Twin Acquisitions, including the following: (1) Michael Strauss’ stepson, Ted Schwartzbeck; (2) Michael Strauss’ wife, Janet Strauss; (3-4) Joseph Barreiro and his wife; (5-6) Neal Klipfel and his wife; and (7) Robert Flynn.
- d. Michael Strauss claims the acquisition of Eastern Dorchester by V-Twin reduced Dorchester Enterprises’ ownership percentage down to 29%, and reduced Consolidated Holdings’ ownership down to 6%.
- e. Michael Strauss currently operates and manages Eastern Dorchester LLC and has done so since its inception. He also exercises control over its multiple bank accounts and signs checks on behalf of the company.
- f. Between 2004 and at least 2010, Michael Strauss used his home address in Herndon, Virginia, as the mailing address for Eastern Dorchester. At times he also used the address of an apartment located in Sterling, Virginia, which Strauss claims is owned by his stepson, Ted Schwartzbeck.

158. Defendants claim that in 2004, Ariday CA transferred ownership of its supposed subsidiary Ariday NY to a purported Washington, D.C., charity called Non-Denominational Christian Services Inc (NDCS).

159. Michael Strauss formed NDCS in 2004, along with Barreiro, Robert Flynn and Strauss’ stepson, Ted Schwartzbeck. NDCS had three officers: Michael Strauss, Barreiro and Schwartzbeck. Strauss controls and operates NDCS and serves as its “President.” NDCS is not a genuine charity and has never performed charitable functions or activities.

iii. Specific False or Fraudulent Statements

160. In promotion of the Memorial Specialists scheme, Michael Strauss authored marketing and transactional materials entitled “Memorial Specialists, LLC, . . . Private Placement Memorandum for Accredited Members,” dated “March 2004,” which included a “Cash Call,” and comprised approximately 117 pages with attachments. The following year Strauss prepared a similar PPM for Memorial Specialists (incorrectly dated “March 2004” on page 4, but containing multiple attachments dated “2005”), which comprised 152 pages with attachments. In March 2007, Strauss authored (and Sands Anderson P.C. and Barreiro later distributed to taxpayer-customers in the D.C. Metro area) a “Combined Cash Call” for both Memorial Specialists LLC and Dignified Charitable Burials LLC.

161. Defendants falsely and/or fraudulently told taxpayer-customers—in the “Offering Highlights” and the “Cash Call” sections of the March 2004 Memorial Specialists PPM—that:

- a. Memorial Specialists had purchased from Eastern Dorchester a funeral service rights “license” to perform hundreds of thousands of burials for cremated remains at the Lloyd property;
- b. The value of the funeral service rights license was over \$70 million;
- c. Memorial Specialists financed the purported \$70 million purchase with a genuine “promissory note” to Eastern Dorchester for that amount plus interest;
- d. The company began amortizing “its major asset (burial rights license) in 2003 over 15 years pursuant to I.R.C. Section 197, thereby providing its members with substantial cash tax benefits in their first year of investment;”
- e. If taxpayer-customers invested in the scheme, they would receive immediate tax

benefits, including “ordinary loss-passthroughs at a 5:1 ratio to their investment in the year of investment, . . . a ratio of \$5 for \$1;”

f. The company has “substantial economic substance;”

g. The company’s revenues were projected at \$214,389,000 over 50 years.

162. In truth, Memorial Specialists never purchased a funeral service rights “license” from Eastern Dorchester, and there was no arm’s-length sale from Eastern Dorchester to Memorial Specialists.

163. At the time of the supposed license purchase, Memorial Specialists and Eastern Dorchester were shell entities and alter egos of Michael Strauss and Joseph Barreiro that did not operate at arm’s-length. Strauss and Barreiro were partners. Together they formed, managed and operated all of the cemetery scheme entities, including Memorial Specialists and Eastern Dorchester.

164. Likewise, the true value of the funeral service rights “license” was not \$70 million and no genuine note obligation existed. Neither Strauss nor Barreiro had a *bona fide* basis for valuing the supposed burial service rights at \$70 million. Rather, they colluded in fabricating that figure, along with the accompanying fictitious \$70 million note obligation. They did so for the specific purposes of:

a. Generating exorbitant, fake tax benefits that they could market to the scheme’s taxpayer-customers; and

b. Creating a mechanism to fraudulently siphon off the funds that taxpayer-customers were falsely told were being invested in a genuine business.

165. Defendants explained the importance of the fictitious \$70 million license and its

relationship to the purported tax benefits in their March 2004, Memorial Specialists PPM. On page three of that document, entitled “Offering Highlights,” they called the burial service rights license the company’s “major asset,” which they began amortizing in 2003 over 15 years pursuant to I.R.C. Section 197, “thereby providing its members with substantial cash tax benefits in their first year of investment.”

166. Defendants knew or had reason to know the \$70 million sales figure they attributed to the supposed “license”—and concomitantly used for the fake note obligation to Eastern Dorchester—was false for the very reason that the extraordinarily large sum allowed Michael Strauss and Barreiro to concoct the enormous fictitious tax benefits that they needed to market the scheme to taxpayer-customers.

167. A second crucial purpose of the \$70 million sales figure, in conjunction with the fake note obligation, was to provide a mechanism for Defendants to fraudulently and steadily siphon off the money that their taxpayer-customers contributed to Memorial Specialists by claiming Memorial Specialists was just paying off its genuine debt to Eastern Dorchester.

168. Defendants further told taxpayer-customers that Memorial Specialists had to continue making such debt payments in the future or face the loss of its “major asset” (the burial service rights license) and/or end up in bankruptcy.

169. Defendants also knew or had reason to know the \$70 million sales figure and the note obligation were fictitious because:

- a. Defendants were on both sides of the transaction and prearranged it;
- b. Defendants took steps to make it falsely appear that the transaction was conducted at arm’s-length;

- c. Defendants failed to obtain an appraisal of the supposed burial service rights license—the company’s supposed “major asset”—prior to engaging in the transaction;
- d. A year earlier, Defendants paid only \$150,000 for the entire 53 acre Lloyd property—which included at the time of that acquisition ownership of any and all purported intangible rights related to the land, including (even if real) any “funeral service rights;”
- e. Defendants failed to otherwise act in a commercially reasonable manner. Rather, they acted in a commercially unreasonable manner—with one partner, Barreiro, supposedly agreeing to wildly overpay the other partner, Strauss, for a contrived asset that (even if real) the pair already jointly owned and controlled—for the precise purpose of concocting enormous fake tax benefits and creating a mechanism to appropriate their taxpayer-customers’ funds.

170. Numerous Memorial Specialists taxpayer-customers began to suspect fraud in 2006 or 2007. Once that occurred, Defendants agreed to dramatically “reduce” the amount that Memorial Specialists supposedly owed to Eastern Dorchester on the \$70 million note. They did so in the hope of extracting additional, but smaller, amounts of cash from then-existing taxpayer-customers.

171. Defendants’ indifferent treatment of the face amount of the note and the substantial, seemingly benevolent, retroactive “reduction” of the amount owed to Eastern Dorchester with respect to the Memorial Specialist’s “major asset”—further establish that Defendants knew the \$70 million note was a fiction all along.

172. Based on the foregoing aspects of the scheme, Defendants knew or had reason to know the Memorial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits.

173. Defendants also knew or had reason to know the Memorial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits, because such benefits are patently too good to be true.

174. The Memorial Specialists scheme is an illegal tax shelter that violates the longstanding judicial tax doctrines of: (1) substance over form; (2) sham transaction; (3) economic substance; and (4) step transaction. It also violates various technical provisions of the Internal Revenue laws, including but not limited to I.R.C. §§ 162, 163, 165, 167, 168, 170, 172, 197, 465, 469, 704 and/or 707.

175. Defendants further knew or had reason to know the Memorial Specialists scheme could not provide its taxpayer-customers with 5-1 tax benefits, due to their education and experience.

176. At the same time, Defendants knew or had reason to know the transaction had no realistic prospect of generating any profit—let alone the possibility of producing returns of \$214,389,000—due to:

- a. The fictitious \$70 million debt obligation in place that required total payments (including interest) of \$112 million to Defendants' company Eastern Dorchester;
- b. The large commissions paid to Patrick Strauss (approximately 20% of total funds raised), and significant fees paid to Barreiro, Michael Strauss, Lehner, Flynn, Klipfel and others;
- c. Projected annual administrative costs of at least \$257,267, and substantial additional costs and outlays;

- d. Defendants' failure over a six year period to sell a single columbarium niche or burial plot to the public;
- e. The Lloyd property's remote location;
- f. The Lloyd property's location next to a landfill;
- g. Strong competition from existing, well established, fully operational, neighboring cemeteries.

iv. Further Memorial Specialists Promotional Efforts

177. Patrick Strauss served as the primary marketer of the Memorial Specialists scheme, and was aided by his father and Barreiro.

178. Between 2003 and 2007, Patrick Strauss met individually with taxpayer-customers and potential customers of the Memorial Specialists scheme in the D.C. Metro area.

179. For instance, in October 2004, Patrick Strauss met with and spoke to a taxpayer-customer from McLean, Virginia. During that meeting, Patrick Strauss promoted the Memorial Specialists scheme, discussed its purported \$5 of tax benefits for every \$1 "invested," and the supposed possibility for profit, after which the taxpayer-customer agreed to enter into the transaction.

180. Patrick Strauss, with assistance from his father and Barreiro, recruited approximately twelve separate taxpayer-customers into the Memorial Specialists scheme from 2003 through 2007. Those Memorial Specialists taxpayer-customers "invested" nearly \$5 million in the scam. Most of the taxpayer-customers were repeat customers, who participated in multiple years.

181. Patrick Strauss received commissions of approximately 20% of each taxpayer-customer's "investment." He received similar commissions for repeat customers.

182. One couple from Reston, Virginia—who Patrick Strauss initially recruited in 2004—ultimately claimed on their tax returns fictitious partnership losses from Memorial Specialists of \$1,003,230 in 2004 and \$1,078,453 in 2005.

183. Patrick Strauss organized numerous meetings of Memorial Specialists taxpayer-customers during the period 2003 through 2007.

184. One such meetings occurred at and near the Lloyd property, in October 2004. To persuade current and prospective taxpayer-customers to travel to New York, Patrick Strauss chartered a private plane that departed out of Manassas, Virginia. Patrick Strauss accompanied taxpayer-customers on that flight and then he, along with Michael Strauss, Barreiro, Neal Klipfel and Robert Flynn, met with the taxpayer-customers at a resort in Mohonk, New York.

185. During that New York trip, Michael Strauss, Barreiro and Patrick Strauss made false and/or fraudulent statements to taxpayer-customers. For instance, they falsely and/or fraudulently told assembled prospective customers of the Memorial Specialists scheme that they would receive tax benefits of \$5 for every \$1 invested. They also stated that the burial service rights related to the Lloyd property had a value of over \$70 million, and that the fictitious \$70 million note supposedly between Memorial Specialists and Eastern Dorchester was genuine debt.

186. Defendants also falsely and/or fraudulently told cemetery scheme taxpayer-customers that thousands upon thousands of burials would be performed at the Lloyd property each year, that the columbarium niches to be used in cremation burials would be constructed soon, that the remaining work on the Lloyd cemetery would be finished shortly, and that operation of the cemetery would generate nearly \$90 million of profits for the scheme's taxpayer-customers.

187. Another meeting took place in Northern Virginia on June 26, 2006—on the same day

Patrick Strauss and Barreiro also met with Burial Specialists taxpayer-customers. Patrick Strauss arranged that meeting to try to convince existing taxpayer-customers to contribute still further funds to the scheme.

- a. During the meeting, Patrick Strauss and Barreiro falsely and/or fraudulently told attendees that if they contributed more money to the scheme that they would be considered “at risk,” could retain the purported tax benefits they had already received, and would receive additional tax benefits in the amount of \$5 for each \$1 “invested.”
- b. Strauss and Barreiro also threatened taxpayer-customers that if they failed to contribute more money to the scheme, they would no longer be “at risk” and their prior purported tax benefits would be “recaptured” by the Internal Revenue Service.

188. On August 5, 2008, Michael and Patrick Strauss attempted to solicit still more funds from existing taxpayer-customers of Memorial Specialists and Dignified Charitable Burials. Michael Strauss reiterated that he represented Eastern Dorchester and falsely and/or fraudulently stated that:

- a. He was an “arm’s length” creditor of Memorial Specialists and Dignified Charitable Burials;
- b. That the notes supposedly owed by Memorial Specialists and Dignified Charitable Burials to Eastern Dorchester were genuine; and
- c. That Memorial Specialists and Dignified Charitable Burials taxpayer-customers needed to make further payments on the supposed note to Eastern Dorchester to

avoid “recapture” by the I.R.S. of the tax benefits that taxpayer-customers had previously taken.

189. In the summer of 2008, Michael and Patrick Strauss marketed a virtually identical version of the Memorial Specialists scheme to new prospective taxpayer-customers (including the owners of a hedge fund in New York) through a new entity called Eleemosynary Holdings LLC. Eleemosynary Holdings LLC is yet another shell entity formed, owned, controlled, and operated by Michael Strauss.

190. Just like the Memorial Specialists scheme, Defendants told prospective taxpayer-customers of Eleemosynary Holdings that the company had genuinely purchased from Eastern Dorchester a funeral service rights license related to the Lloyd property, and that the company could amortize the asset—which they then claimed was worth \$54 million—to generate massive partnership losses. Those statements were false and/or fraudulent.

191. Michael Strauss and Barreiro still operate and control numerous entities and supposed assets involved in the Memorial Specialists scheme.

192. For example, between 2004 and at least 2010, Michael Strauss used his home address in Herndon, Virginia, as a mailing address for entities involved in the Memorial Specialists scheme, including Eastern Dorchester LLC, Dorchester Enterprises and Eleemosynary Holdings. Strauss currently operates and co-owns Dorchester Enterprises, and claims to be its President. He also currently operates and co-owns Eastern Dorchester LLC, and controls its checking account. In October 2010, Strauss signed tax documents on behalf of Dorchester Enterprises, Eastern Dorchester LLC, and Eastern Dorchester JV LLC.

193. Additionally, Barreiro signed tax documents on behalf of Memorial Specialists and

Dignified Charitable Burials in the summer of 2010. As of late-2010, Barreiro was using the building located on the Lloyd property (allegedly used as an administration office for Memorial Specialists, Dignified Charitable Burials, and Ariday NY) as a personal residence.

194. Defendants maintain the propriety of the illegal Memorial Specialists scheme even today.

C. Dignified Charitable Burials Schemes

195. The third tax shelter promoted by Defendants is an interrelated series of scams known collectively as Dignified Charitable Burials. From 2004 through at least 2008, Defendants promoted these schemes through a shell entity of the same name, “Dignified Charitable Burials LLC”, and through four limited partnerships, creatively named “Dignified Charitable Burials LP #1,” “Dignified Charitable Burials LP #2,” and so on.

196. All of the Dignified Charitable Burials companies were operated directly by Joseph Barreiro, and indirectly by Michael Strauss.

197. Defendants also used Eastern Dorchester LLC—the same shell company that they used in promotion of Memorial Specialists—in furtherance of the schemes. Eastern Dorchester was also a general partner in, and thus co-owner of, all of the Dignified Charitable Burials entities. Defendants falsely and/or fraudulently represented to taxpayer-customers that Dignified Charitable Burials LLC and the four limited partnerships were at “arm’s-length” to Eastern Dorchester.

198. Defendants likewise used in the Dignified Charitable Burials scam the identical Lloyd, New York, property they used in the Memorial Specialists shelter. Defendants also made the same representations to Dignified Charitable Burials taxpayer-customers that they made to

Memorial Specialist taxpayer-customers regarding the purported cemetery's facilities and operations.

199. Unlike Memorial Specialists, the Dignified Charitable Burials scheme supposedly involved the purchase of 285,000 "burial site certificates," rather than "funeral service rights." Defendants claimed the burial site certificates reflected title to a 1'x 1' square foot area, and that each certificate supposedly gave its owner the right to have his or her cremated remains buried at the Lloyd property.

200. Defendants falsely told taxpayer-customers that the value of the supposed 285,000 burial site certificates at the Lloyd property was over \$38 million. Defendants also claimed that Dignified Charitable Burials had purchased those burial site certificates for \$38 million from Eastern Dorchester, and was genuinely indebted to Eastern Dorchester for that amount, plus interest. Those statements were false and/or fraudulent.

201. Prior to the purported \$38 million purchase of burial site certificates, Defendants further claimed (in, for example, the "May 2004" PPM for Dignified Charitable Burials LLC) that: (1) Eastern Dorchester had acquired the Lloyd property from Orbis (NY) LLC; (2) Eastern Dorchester then donated the Lloyd land to Ariday NY; (3) Ariday NY then sold the burial site certificates back to Eastern Dorchester; (4) after which Eastern Dorchester transferred the burial certificates to Dignified Charitable Burials LLC, for supposed further donation to the Dignified Charitable Burials limited partnerships, and subsequent donation to genuine charities.

- a. This means that, according to Strauss and Barreiro's account, a Strauss-Barreiro owned and managed company (Eastern Dorchester) supposedly bought the Lloyd land from a Strauss-Barreiro-owned and managed company (Orbis (NY) LLC),

which then “donated” it to a Barreiro-controlled company (Ariday NY, that was owned by a Strauss-Barreiro company, NDCS), which in turn transferred supposed burial certificates related to the same land back to a Strauss-Barreiro-owned and managed company (Eastern Dorchester), which then sold those certificates to another Barreiro-managed/ Strauss co-owned company, (Dignified Charitable Burials LLC), which then planned to donate those certificates to yet another Barreiro-managed/Strauss co-owned company (one of the four Dignified Charitable Burials Limited Partnerships).

202. Like Memorial Specialists, Dignified Charitable Burials LLC amortized its supposed major asset—the \$38 million burial certificates—over 15 years and then passed those phony partnership losses through to its taxpayer-customers (individual partners). Defendants told Dignified Charitable Burials LLC taxpayer-customers that they could deduct \$5 for every \$1 they “invested” in the scheme. Those statements were false and/or fraudulent.

203. Dignified Charitable Burials LLC later supposedly “donated” 6000 burial site certificates to each of the four Dignified Charitable Burial Limited Partnership, #1 through #4. The alleged reasons for the transfers were to make the certificates available for further donation to real, third-party charities so as to provide for low-cost burials to the poor, and—more importantly—to generate charitable tax deductions for taxpayer-customers of the limited partnership. Defendants expressly stated in promotional documents that their marketing efforts would target “investors wishing to avail themselves of the tax benefits from the LP’s charitable contributions.”

204. Unlike Memorial Specialists, taxpayer-customers of the four Dignified Charitable

Burials limited partnerships were told that they would receive \$5 in *charitable deductions* (rather than partnership losses) for every \$1 they “invested” in the scheme. The \$5 to \$1 ratio was later reduced to \$4.65 to \$1.

205. The taxpayer-customers of the limited partnerships were also told that they were entitled to charitable deductions because the partnerships had genuine “basis” in the certificates (at a 5-1 ratio equal to tax deductions supposedly available), and that the partnerships were going to make further charitable donations of the certificates to third-party charities. Those statements were false and/or fraudulent.

ii. Specific False Statements

206. In promotion of the Dignified Charitable Burials LLC scheme, Michael Strauss authored marketing and transactional materials entitled “Dignified Charitable Burials, LLC,” dated “May 2004,” and which comprised 95 pages with attachments. Strauss authored a largely identical PPM for the Dignified Charitable Burials LLC the following year, dated “May 2005.” He and Barreiro co-authored another one in March 2007, entitled “Combined Cash Call” for both Memorial Specialists LLC and Dignified Charitable Burials LLC.

207. Patrick Strauss and Barreiro distributed the May 2004, Dignified Charitable Burials LLC, PPM to taxpayer-customers in Northern Virginia, Maryland and the District of Columbia in the late-spring through the summer of 2004. They also distributed to D.C. Metro area taxpayer-customers the May 2005, PPM, throughout 2005, and (along with Sands Anderson) the March 2007 “Combined Cash Call,” in spring-2007.

208. Defendants falsely and/or fraudulently told taxpayer-customers—in the “Offering Highlights” and the “Cash Call” sections of the March 2004 Dignified Charitable Burials LLC,

PPM—that:

- a. Dignified Charitable Burials LLC had purchased from Eastern Dorchester “burial site certificates,” entitling the holder of the certificates to bury cremated remains at the Lloyd property;
- b. The value of the 285,000 burial site certificates was over \$38 million;
- c. Dignified Charitable Burials LLC financed the purported \$38 million purchase with a genuine “promissory note” to Eastern Dorchester for that amount plus interest;
- d. The company would amortize “its 285,000 gravesite asset at its cost of \$38,400,000 over 15 years”
- e. Each taxpayer-customer who invested in the scheme would receive immediate tax benefits, including “an ordinary loss pass-through” at “a ratio of 5:1, in each year of the first 3 years.”

209. In addition, Michael Strauss authored promotional materials for the Dignified Charitable Burials Limited Partnership schemes, entitled, “Dignified Charitable Burials, LP,” dated “October 2004,” and which comprised 121 pages with attachments. Strauss authored a largely identical Dignified Charitable Burials LP, PPM dated “October 2006.”

210. Patrick Strauss and Barreiro distributed the October 2004 Dignified Charitable Burials LP, PPM to taxpayer-customers in Northern Virginia, Maryland and the District of Columbia in late-2004 through early 2005. They also distributed to D.C. Metro area taxpayer-customers the October 2006, PPM, in late-2006 and early-2007.

211. Defendants falsely and/or fraudulently told taxpayer-customers—in the “Offering

Highlights” and the “Cash Call” sections of the October 2004 Dignified Charitable Burials LP, PPM—that:

- a. Dignified Charitable Burials LLC had purchased from Eastern Dorchester 285,000 “burial site certificates,” entitling the holders of the certificates to bury cremated remains at the Lloyd property;
- b. Dignified Charitable Burials LLC donated 6000 gravesites (evidenced by 6000 burial site certificates) to Dignified Charitable Burials LP #1;
- c. Dignified Charitable Burials LLC and Eastern Dorchester had a basis of \$5.5 million in the gravesites / burial site certificates, based on “(i) the burial sites cost of \$975,000, (ii) 6,000 columbaria niche improvements (\$3,000,000), . . . and (v) \$1,450,000 of record keeping services;”
- d. Each taxpayer-customer who invested in the scheme would receive charitable deductions at “a ratio of \$5 for \$1.”

212. In truth, Dignified Charitable Burials LLC never purchased burial site certificates from Eastern Dorchester, and there was no arm’s-length sale from Eastern Dorchester to Dignified Charitable Burials LLC.

213. At the time of the supposed burial site certificates purchase, Dignified Charitable Burials LLC and Eastern Dorchester were shell entities and alter egos of Michael Strauss and Joseph Barreiro that did not operate at arm’s-length. Strauss and Barreiro were partners. Together they formed, managed and operated all of the cemetery scheme entities, including Dignified Charitable Burials LLC, the four Dignified Charitable Burials LPs, and Eastern Dorchester.

214. Likewise, the true value of the burial site certificates was not \$38 million and no genuine note obligation existed. Neither Strauss nor Barreiro had a *bona fide* basis for valuing the supposed burial site certificates at \$38 million. Rather, they colluded in fabricating that figure, along with the accompanying fictitious \$38 million note obligation.

215. In addition, Defendants had virtually no basis in the phony burial site certificates supposedly donated to the Dignified Charitable Burials LPs. Contrary to their October 2004 representations, for example, Defendants never expended \$3 million on columbaria niche improvements, nor \$1.45 million on record keeping services. Those alleged expenditures—which they claimed provided “basis” to Dignified Charitable Burials LP #1—were fabrications.

216. The Dignified Charitable Burials schemes are illegal tax shelters that violate the longstanding judicial tax doctrines of: (1) substance over form; (2) sham transaction; (3) economic substance; and (4) step transaction. They also violate various technical provisions of the Internal Revenue laws, including but not limited to I.R.C. §§ 162, 163, 165, 167, 168, 170, 172, 197, 465, 469, 704 and/or 707.

217. Defendants knew or had reason to know their statements about the Dignified Charitable Burials LLC and the limited partnerships were false and/or fraudulent—and that the schemes could not provide their taxpayer-customers with 5-1 tax benefits—for the same reasons they knew or had reason to know their statements about the Memorial Specialists and Burial Specialists schemes were false and/or fraudulent.

iii. Further Dignified Charitable Burials Promotional Efforts

218. Patrick Strauss served as the primary marketer of the Dignified Charitable Burials

schemes and, once again, was aided by his father and Barreiro.

219. Between 2004 and 2007, Patrick Strauss met individually with taxpayer-customers and potential customers of the Dignified Charitable Burials schemes in the D.C. Metro area.

220. For instance, in August 2005, in Manassas, Virginia, Patrick Strauss met with and spoke to a taxpayer-customer from Maryland, during which time he promoted the Dignified Charitable Burials LLC scheme, discussed its purported tax benefits and its supposed possibility for profit. That taxpayer-customer agreed to enter into the transaction in November 2005.

221. Patrick Strauss, with assistance from his father and Barreiro, recruited more than a dozen separate taxpayer-customers into the Dignified Charitable Burials schemes from 2004 through 2008. Those Dignified Charitable Burials taxpayer-customers “invested” over \$1 million in the scam. Many of the taxpayer-customers were repeat customers, who participated in multiple years.

222. Patrick Strauss received commissions of approximately 20% of each taxpayer-customer’s “investment.” He received similar commissions for repeat customers.

223. One couple from Herndon, Virginia—who Patrick Strauss initially recruited in 2004—ultimately claimed on their tax returns fictitious partnership losses from Dignified Charitable Burials LLC of \$1,050,247 in 2004, \$703,335 in 2005, and \$111,967 in 2006.

224. Patrick Strauss organized numerous meetings of Dignified Charitable Burials taxpayer-customers during the period 2003 through 2007.

225. One such meeting occurred at the Lloyd property, in October 2004. During that New York trip (which is described above in connection with Memorial Specialists), Michael Strauss, Barreiro and Patrick Strauss made false and/or fraudulent statements to taxpayer-customers of the

Dignified Charitable Burials scheme—including telling them that they would receive tax benefits of \$5 for every \$1 invested.

226. Another meeting took place in Northern Virginia on June 26, 2006—on the same day Patrick Strauss and Barreiro met with Burial Specialists and Memorial Specialists taxpayer-customers. Patrick Strauss arranged that meeting to try to convince existing taxpayer-customers of Dignified Charitable Burials to contribute still further funds to the scheme.

227. During the June 26, 2006 meeting, Patrick Strauss and Barreiro told attendees that if they contributed more money to the scheme they would be considered “at risk,” could retain the purported tax benefits they had already received, and would receive additional tax benefits in the amount of \$5 for each \$1 “invested.” They also threatened taxpayer-customers that if they failed to contribute more money to the schemes, they would no longer be “at risk” and their prior purported tax benefits would be “recaptured” by the I.R.S. Those statements were false and/or fraudulent.

228. Michael Strauss and Barreiro still operate and control entities and supposed assets involved in the Dignified Charitable Burials schemes, including Eastern Dorchester and the purported Lloyd cemetery, which Barreiro was still using in late-2010.

229. Defendants maintain the propriety of the illegal Dignified Charitable Burials schemes even today.

Count I: Injunction Under I.R.C. § 7408 for Violations of I.R.C. § 6700(a)(2)(A)

230. The United States incorporates by reference the allegations contained in paragraphs 1 through 229.

231. I.R.C. § 7408 authorizes this Court to enjoin persons who have engaged in conduct

subject to penalty under I.R.C. § 6700 from engaging in further such conduct if the Court finds that injunctive relief is appropriate to prevent recurrence of the conduct.

232. Section 6700(a)(2)(A) imposes a penalty on any person who organizes or assists with the organization of a plan or arrangement, or who participates (directly or indirectly) in the sale of a plan or arrangement, and in so doing—makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by participating in the plan or arrangement, which that person knows or has reason to know is false and/or fraudulent as to any material matter.

233. The cemetery schemes are all plans or arrangements under I.R.C. § 6700.

234. Defendants organize or participate in the sale of the cemetery schemes, and in so doing make statements with respect to the securing of tax benefits by participation in the plan or arrangement, which (for the reasons described above) Defendants know or have reason to know are false and/or fraudulent as to material matters.

235. Injunctive relief is appropriate to prevent recurrence of the cemetery schemes and any other conduct subject to the I.R.C. § 6700(a)(2)(A) penalty.

Count II: Injunction Under I.R.C. § 7408 for Violations of I.R.C. § 6700(a)(2)(B)

236. The United States incorporates by reference the allegations contained in paragraphs 1 through 235.

237. I.R.C. § 7408 authorizes this Court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6700 from engaging in further such conduct if the Court finds that injunctive relief is appropriate to prevent recurrence of the conduct.

238. Section 6700(a)(2)(B) imposes a penalty on any person who organizes or assists with the

organization of a plan or arrangement, or who participates (directly or indirectly) in the sale of a plan or arrangement, and in so doing, makes or furnishes or causes another person to make or furnish (in connection with such organization or sale)—a gross valuation overstatement as to any material matter.

239. Gross valuation overstatements include statements as to the value of property or services when the value stated exceeds 200% of the amount determined to be correct and it is directly related to the amount of a deduction or credit.

240. The cemetery schemes are all plans or arrangements under I.R.C. § 6700.

241. As described above, Defendants organize or participate in the sale of the cemetery schemes, and in so doing make or furnish gross valuation overstatements as to material matters regarding: (1) purported cemetery scheme assets; (2) supposed debt obligations; and (3) phony tax benefits.

242. Injunctive relief is appropriate to prevent recurrence of the cemetery schemes and any other conduct subject to the I.R.C. § 6700(a)(2)(B) penalty.

Count III: Injunction Under I.R.C. § 7402

243. The United States incorporates by reference the allegations contained in paragraphs 1 through 242.

244. I.R.C. § 7402(a) authorizes a court to issue injunctions 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.

245. As described above, Defendants interfere with the enforcement of the internal revenue laws by promoting and implementing their tax fraud schemes, and by promoting and

implementing business or tax services that facilitate noncompliance with federal tax laws.

246. Defendants have a long history of promoting numerous, illegal tax shelters, including the cemetery schemes detailed at length herein, an earlier ESOP tax shelter described above, and, before that, multiple, Ponzi-like scams with tax fraud components.

247. Defendants have evaded the law for more than a decade by moving from one scam to the next, modifying or abandoning their schemes to stay a step or two ahead of law enforcement, and by using a vast number of shell entities and alter egos, which Defendants likewise create or discard as needed, so as to conceal Defendants' roles and the true nature of their illegal schemes.

248. Defendants' conduct results in irreparable harm to the United States and the public for which the United States has no adequate remedy at law.

249. Unless enjoined by this Court, Defendants are likely to continue to engage in such conduct.

250. The United States is entitled to injunctive relief under I.R.C. § 7402(a).

WHEREFORE, plaintiff, the United States of America, prays for the following relief:

A. That the Court find that Defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700(a)(2)(A) and 6700(a)(2)(B), and that injunctive relief is appropriate under I.R.C. § 7408 to prevent them and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from such further conduct;

B. That the Court find that Defendants have engaged in conduct that interferes with the administration and enforcement of the internal revenue laws, and that injunctive relief against them and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them is appropriate to prevent the recurrence of that conduct under

the Court's equity powers and I.R.C. § 7402(a);

C. That pursuant to I.R.C. §§ 7402(a) and 7408, Defendants, and their representatives, agents, servants, employees, attorneys, and those acting in concert with them, are permanently enjoined and restrained from, directly or indirectly, by use of any means or instrumentalities:

(1) Organizing, promoting, marketing, selling, or implementing the cemetery schemes that are the subject of the complaint herein;

(2) Organizing, promoting, marketing, selling, or implementing any program, plan or arrangement similar to the cemetery schemes that are the subject of this complaint;

(3) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(A), including making or furnishing—in connection with the organization, promotion, marketing, sale, or implementation of a shelter, plan, or arrangement—any statement about the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

(4) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(B), including making or furnishing—in connection with the organization, promotion, marketing, sale, or implementation of a shelter, plan, or arrangement—a gross valuation overstatement;

(5) Organizing, promoting, marketing, selling, or implementing (or helping others to organize, promote, market, sell, or implement) any other tax shelter, plan, or arrangement, that violates the internal revenue laws or improperly incites taxpayer-customers to evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;

(6) Organizing, promoting, marketing, or selling business or tax services that facilitate or promote noncompliance with federal tax laws;

(7) Engaging in conduct subject to penalty under any provision of the Internal

Revenue Code, or that interferes with the administration and enforcement of the internal revenue laws.

E. That this Court, pursuant to I.R.C. §§ 7402 and 7408, order Defendants to provide a copy of the injunction to all past and present taxpayer-customers of the cemetery schemes within 15 days of entry of the permanent injunction, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of this Order for each person to whom Defendants provided a copy of this Order in compliance with this paragraph.

F. That this Court, pursuant to I.R.C. §§ 7402 and 7408, order Defendants to provide a copy of the injunction to all past and present principals, officers, managers, representatives, agents, servants, employees, and attorneys of the entities used in furtherance of the cemetery schemes within 15 days of entry of the permanent injunction, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of this Order for each person to whom Defendants provided a copy of this Order in compliance with this paragraph.

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

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

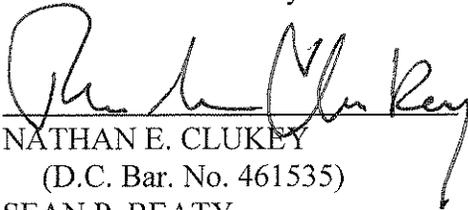
I. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated: May 12, 2011.

Respectfully submitted,

RONALD C. MACHEN, Jr.
United States Attorney

By:


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