

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
FRANK L. ZERJAV, SR., FRANK L.)	
ZERJAV, JR., ZERJAV & COMPANY,)	
L.C., ZERJAV & COMPANY, P.C., and)	
ADVISORY GROUP USA, L.C.,)	
)	
Defendants.)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against the defendants, Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C., as follows:

1. This is a civil action brought by the United States pursuant to sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“IRC”) to enjoin Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C., and anyone in active concert or participation with them from:

- A. organizing, promoting or selling any entity, plan, or arrangement that advises or assists customers to violate the internal revenue laws or unlawfully evade the assessment or collection of federal tax;
- B. making false statements, in connection with such organization, promoting, or selling about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by reason of participating in any such tax shelter, plan or other arrangement;
- C. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
- D. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision of the Internal Revenue Code;

- E. appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- F. engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws; and
- G. engaging in conduct designed or intended to, or having the effect of, obstructing or delaying any Internal Revenue Service investigation or audit.

Jurisdiction and Venue

2. 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 the provisions of IRC §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by IRC §§ 7402(a), 7407, and 7408, and 28 U.S.C. §§ 1340 and 1345.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because defendants reside within this judicial district and a substantial part of the conduct described in this complaint occurred in this judicial district.

Defendants and Basic Facts

5. Frank L. Zerjav, Sr. is a certified public accountant who has had an active Missouri certified public accountant license since 1988.

6. Zerjav, Sr. resides in Ladue, St. Louis County, Missouri, within this Court's jurisdiction.

7. Frank L. Zerjav, Jr., also known as "Tiger," works with his father Zerjav, Sr. at Zerjav & Company preparing federal income tax returns and providing tax planning advice in connection with their business, The Advisory Group.

8. Tiger Zerjav resides in Wildwood, St. Louis County, Missouri, within this Court's jurisdiction.

9. Defendants are promoting an unlawful tax scheme by giving customers false and fraudulent tax advice often involving the use of bogus corporate transactions and phony deductions.

10. Defendants prepare customers' federal income tax returns consistent with their scheme by fraudulently underreporting and/or reducing wage and self-employment income, falsely claiming business deductions for personal non-deductible expenses, and otherwise using bogus corporate transactions to improperly reduce their customers' federal tax liabilities.

11. Defendants conduct business as tax preparers through Zerjav & Company, L.C., a registered Missouri limited liability corporation, and Zerjav & Company, P.C., a registered Missouri professional corporation, both with their principal place of business at 1980 Concourse Dr., St. Louis, Missouri 63146, within this district (hereinafter referred to collectively as "Zerjav & Company").

12. Zerjav, Sr. owns 52% of Zerjav & Company, L.C., and Tiger Zerjav and Zerjav, Sr.'s wife Maryann Zerjav each own 24% of Zerjav & Company, L.C.

13. The Missouri Secretary of State lists Zerjav & Company, P.C. as an inactive company, but it continues to prepare and file federal tax returns for customers.

14. Zerjav, Sr. directs other employees of Zerjav & Company and reviews and signs the tax returns prepared by its employees. Tiger Zerjav reviews corporate and partnership returns before they are given to Zerjav, Sr. for his final review.

15. Defendants also conduct business as tax planners through Advisory Group USA, L.C., a registered Missouri limited company, with its principal place of business at 1980 Concourse Dr., St. Louis, Missouri 63146, within this district.

16. On information and belief, defendants also conduct business as tax planners using the following business names or entities: Advisory Group, Inc.; A-Z Holding Company, LC; Advisory Group West, Inc.; Agency Services, LC; AG Agent Services, Inc.; Vanguard Corporation; and Gresham Financial Corporation.

Overview of Fraudulent Schemes

17. Defendants' schemes are designed to reduce customers' reported federal tax liabilities by using numerous sham transactions, primarily involving the use of newly minted S corporations concocted to facilitate (a) employment tax evasion, (b) claiming bogus deductions for personal expenses and other non-deductible items, and (c) reducing the flow-through income reported to the S corporation owners—defendants' customers.

18. On January 9, 2007, the Internal Revenue Service's Taxpayer Advocate, released her 2007 Annual Report to Congress and highlighted the issue of avoiding employment tax liabilities as a "special compliance problem" for the IRS:

[T]he IRS now includes a reference to the issue in its notice of acceptance of an S corporation. The IRS has repeatedly litigated the issue and won numerous tax court cases relative to reasonable compensation. In each case, the company president and majority shareholder received distributions that were recharacterized as wages subject to employment taxes. The economic impact of the employment tax strategy affects the tax gap and erodes the Social Security and Medicare tax base.....

The earnings of an S corporation are taxed as ordinary income to its shareholders. Unlike partnership or sole proprietor earnings, however, S corporation earnings are not subject to self-employment tax. This difference in treatment gave rise to a tax planning strategy that treats shareholder compensation payments as distributions of profit to avoid payroll taxes. Under this approach, officer/shareholders take no salary or a nominal salary and receive the remaining compensation as tax-free distributions. The corporation saves payroll taxes and the shareholder ultimately pays only income taxes on his or her share of the corporate profits and avoids paying Social Security and Medicare taxes.

19. Defendants implement their schemes by providing false information to new customers at tax coaching seminars and at other times. Defendants then prepare false federal tax returns for customers. Finally, Zerjav, Sr. represents customers during IRS audits, and often obstructs and interferes with IRS audits to prevent or delay the IRS from uncovering his fraud. Zerjav, Sr. further interferes with IRS audits by filing bogus complaints against IRS agents auditing his customers.

20. Defendants conduct the tax coaching seminars through the Advisory Group; the federal tax returns are prepared through Zerjav & Company.

Tax Advisory Coaching Program

21. At so-called tax planning seminars defendants advise customers how to improperly reduce their reported federal tax liabilities.

22. Defendants charge customers a fee of approximately \$2,500 for the tax planning seminars. Defendants call the seminars the "Tax Advisory Coaching Program."

23. During the Tax Advisory Coaching Program defendants advise customers to set up S corporations for the purpose of paying the customers' non-deductible personal expenses and then claiming those expenses as tax-deductible business expenses.

24. According to defendants' promotional materials, the Tax Advisory Coaching Program "shows owners how to structure and operate with the right entity and apply techniques, tactics and ideas that help make life less taxing. Proven strategies and methods can be implemented that reduce or even eliminate taxes."

25. Defendants give customers' "homework" as part of the Tax Advisory Coaching Program. The homework consists of instructing the customers to read the book *Inc. & Grow*

Rich!, and to determine: 1) the square footage of each room in the customer's home; and 2) the value of any artwork, collectibles, exercise equipment, tools and other personal property owned by the customer.

26. Defendants then use this information to create bogus transactions for customers involving the newly formed corporation. Defendants use the homework information to determine the amount of phony reimbursements the newly formed corporation should make to the customer. For example, one Missouri customer provided homework responses to the defendants indicating that the value of his personal assets was \$25,995 including a "precious moments" art collection (\$10,000); humidor (\$100); DVD player (\$400), VHS player (\$200), and a curio (\$800). On February 27, 2005, the Advisory Group wrote the customer a letter confirming the value of his personal assets at \$25,995. Defendants then improperly deducted these items on the customer's 2004 1120 S federal tax return using Depreciation and Amortization Form 4562.

27. Defendants falsely listed the personal items as "computer and office equipment" in the amount of \$25,995. This resulted in a \$9,949 deduction on the corporation's 2004 1120 S return, which reduced the flow-through income on the customer's personal federal income tax return. The customer also had a carryover credit of \$16,046 for 2005.

28. Defendants, through the Advisory Group, create new S corporations for customers who already own a business, or they create multiple corporations for customers who previously never owned a corporation. The Advisory Group acts as the registered agent for the new S corporations. One former customer stated that Zerjav, Sr. insisted that the Advisory Group—rather than the customer's existing attorney—form the new corporation.

29. The Advisory Group is the registered agent for over 600 Missouri companies, and AG Agent Services, Inc. is the registered agent for over 500 Missouri companies.

30. Many of the newly minted corporations are shams that have no business purpose other than claiming bogus or highly inflated deductions in order to reduce or eliminate reported income taxes.

31. Defendants' fraudulent tax planning advice and return preparation methods also include having customers:

- Pay shareholders artificially low wages to minimize employment taxes, while making up the difference as distributions and payment of personal expenses;
- Pay minor children up to \$4,800 per year for work the children purportedly perform for a separate Schedule C "staffing company;"
- Transfer business equipment to a sham trust in the names of customers' children and making corporate lease payments for the same equipment to the trust in order to pay for college tuition; and
- Deduct such non-deductible personal expenses as cable television, snacks, soda, and golf fees on the corporate return.

Defendants' Fraudulent Return Preparation

A. Bogus transactions involving sham corporations

32. After defendants create the customer's new corporation, the new corporation enters into an agreement to have Zerjav & Company provide tax services.

33. Defendants subsequently prepare federal income tax returns for the customer and his old and new corporations that report bogus transactions and claim bogus deductions. In some instances, the tax returns claim deductions for payments that the customer's pre-existing operating corporation makes to the new corporation for purported "facilities staffing and support." In reality, the new corporation is a sham; it never provides such services and the funds

find their way into the customer's pocket. The payments are thus disguised distributions to the customer that should be reported as taxable compensation or dividends to the customer.

34. For example, in 2005 Zerjav, Sr. helped a married couple from Missouri use his scheme. The husband was a real estate agent who earned his living as an independent contractor for the firm his family owned. His wife was employed by the same real estate firm as an administrative assistant, performing general office services, some of which were for her husband.

35. Zerjav, Sr. created two new companies for the couple, telling the husband that when he earned a real estate commission it should be deposited in the first new corporation's bank account—instead of the husband's personal bank account. Zerjav, Sr. also told the husband that the first new corporation should hire and pay a second new corporation as a “service company.” The customer's wife owned this second new corporation.

36. Zerjav, Sr. had the wife purport to work for the second corporation. He set the wife's salary for her services to the second new corporation at \$2,500 per month. But the wife was performing the same work that she had always done for the real estate firm for \$10,115 per year. Nothing about the couple's business circumstances changed except that, following Zerjav, Sr.'s advice, the husband began paying his wife's sham company a bogus \$2,500 monthly service fee.

37. Instead of reporting all his 2005 income from his real estate work, the husband reported income from the first new corporation, reduced by phony business deductions for payments that corporation made to the wife and the second corporation.

38. The IRS determined that the two new corporations were shams, set up solely to reduce the couple's reported federal income taxes.

39. The scheme resulted in the couple reporting dramatically reduced 2005 tax liability, as shown in the following chart:

Year	2004	2005	Total Change
Reported Gross Receipts	\$128,654	\$101,577	(\$27,077)
Reported Total Federal Tax	\$21,264	\$1,761	(\$19,503) Total Percentage Decrease 91.72%

40. The defendants prepared at least 15 federal tax returns that improperly used sham corporations in a similar manner to fraudulently reduce customers' reported federal tax liabilities.

41. Defendants also reduce their customers' reported flow-through income and federal taxes by improperly deducting as phony business expenses on S Corporation tax returns such personal non-deductible expenses as childrens' day camp (\$909), cable TV bill (2005 return: \$940), fitness center dues (\$532), home landscaping (\$600), home cleaning (\$4,948), baby-sitting (\$5,422), household repairs (\$1,376), student-loan payments (\$9,058), personal use of airplane (\$12,258), daycare expenses (\$12,272), and law-school tuition (\$5,250).

42. Defendants also reduce their customers' reported flow-through income and federal taxes by improperly deducting on S corporation tax returns as bogus business expenses such personal non-deductible items as a personal computer (\$3,222); and a pool table (\$4,800) and on one return defendants claimed residential furniture, mirrors, artwork, a shuffleboard table, an exercise treadmill, and a television for a total of \$44,402. In addition, defendants prepared a 2005 federal tax return for a customer's S corporation that fraudulently deducted \$25,000 for the customer's personal purchase of a sport utility vehicle. The corporation had not bought the

vehicle and did not own it. The customer, a former National Hockey League player, had bought it and owned it personally. Under federal tax law he was not permitted to deduct the cost of the vehicle, so defendants fraudulently treated the vehicle as being owned by the S corporation and had the corporation deduct it.

43. Defendants falsely advise customers that they can claim business deductions for their personal expenses. For example, defendants falsely told one customer, a real estate broker, that she could deduct her entire personal monthly cable television bill, because she needed to watch real-estate-related cable programs.

44. At least 113 of the IRS-audited federal tax returns that defendants prepared included improper deductions of non-deductible personal expenses or assets.

Using Corporations to Improperly Depreciate Personal Assets

45. Defendants falsely tell customers that they can depreciate personal assets on their corporation's tax return.

46. In furtherance of their scheme, defendants prepare federal tax returns that improperly claim depreciation deductions for their customers' personal assets. Defendants prepared federal tax returns that improperly depreciated the following personal items on corporate returns: a golf cart, a television, a couch, chairs, a stereo, cabinets, and paintings.

B. Bogus transactions involving legitimate corporations

Schemes Involving Corporate Compensation

47. Defendants also help their customers engage in numerous fraudulent schemes to create bogus corporate deductions and avoid paying employment taxes using customers' pre-existing (non-sham) corporations. These schemes improperly reduce reported taxes by evading

employment tax, and also reduce customers' income tax, because the customer receives less reported taxable income from the corporation.

48. Defendants instruct customers to have their corporations reduce reported wages paid to the customers to no more than \$12,000 to \$36,000 per year, to reduce reported federal employment taxes. Zerjav, Sr. instructed his firm's employees to advise customers not to pay reported wages exceeding \$36,000. But the reduction in reported wages is a sham. The customers' corporations still pay their owners as much as they did in the past, but pay it in disguised forms so as to evade employment or income taxes or both.

49. Tiger told a former employee that defendants' tax advisory and preparation policy is that wages should be no more than 30% of profits, but offered no rationale for this policy.

50. For example, defendants prepared a 2004 federal income tax return for a dentist, falsely reporting \$12,000 in salary from his dental business and \$145,684 in shareholder distributions—from a dental business that had 2004 gross receipts of \$972,895. After IRS audit this customer's federal taxes increased by \$16,972 in 2004.

51. Defendants fraudulently reduced wealthy customers' reported income so dramatically that defendants claimed the Earned Income Tax Credit for many of their customers. The Earned Income Tax Credit is a refundable federal income tax credit intended for low-income working individuals and families.

52. For example, in 2005 defendants claimed a \$1,545 Earned Income Tax Credit for a customer that owned her own hair salon, which had total income of \$85,330. This customer paid defendants nearly \$3,000 in fees in 2005. Defendants reduced this customer's income by improperly deducting personal expenses of \$27,438 on the customer's corporate return.

53. On August 21, 2007, one of defendants' former employees informed the IRS that defendants prepared returns for customers showing wages that were far too low and that this would "never happen in a reputable firm."

54. The IRS has thus far determined that at least 43 federal tax returns that defendants prepared reported unreasonably low wages to the shareholder. The IRS investigation is ongoing, so the number of returns with this type of fraud will likely turn out to be larger.

55. Defendants also falsely tell customers they can reduce reported wage income by having the customers' operating corporations pay the customers' personal expenses, such as medical bills. Defendants prepare returns for the customers improperly treating these personal expenses as deductible expenses on the corporations' tax returns and as non-taxable benefits or reimbursements to the shareholder on the customers' individual tax returns. In fact these corporate payments of customers's personal expenses are disguised wages, on which the corporations owe federal employment tax and the customers owe federal income tax.

56. For example, defendants fraudulently prepared a 2005 1120 S return for a Missouri real estate broker's S corporation that fraudulently deducted \$2,562 in health insurance premiums paid by the customer's spouse at her unrelated job as a medical assistant. The spouse's health insurance premiums were also itemized as medical expenses on the couple's Form 1040, Schedule A. Therefore, defendants twice deducted the payment of the spouse's health insurance premiums. This was done to generate bogus corporate deductions, which flow through and reduce the customer's federal income tax.

57. The IRS has determined that at least 22 of the audited federal tax returns that defendants prepared, included improper application of fringe benefits in violation of IRC § 1372.

Defendants' Fraudulent "Adjusting" Journal Entries

58. To help implement their fraudulent scheme, defendants advise their customers to use Quickbooks software to maintain their business's general ledger.

59. One customer copied his corporation's Quickbooks entries to a CD, which he gave to defendants to use in preparing his and his corporation's 2004 federal income tax returns.

60. When the customer gave the CD to defendants, the amounts the corporation had paid for personal meals and travel expenses were coded in Quickbooks as "Personal Meals" and "Personal Travel & Entertainment."

61. On the customer's federal income tax return, defendants reclassified these personal expenses and deducted them as business "Meals & Entertainment" and as business "Travel." The customer says that he "correctly coded these personal expenses as such in Quickbooks, and that defendants never asked him any questions about these expenses and did not inform him that they made the changes."

62. When an IRS revenue agent auditing this customer and his corporation properly classified the adjusting journal entries as personal expenses, the customer's tax increased by \$6,338, because the revenue agent denied the corporation's deductions for the personal expenses.

Fraudulently Classifying Distributions as Loans

63. Defendants also fraudulently classify shareholder distributions as "loans to shareholder," since a loan is not treated as taxable income to the recipient. This is done to reduce the reported salary the corporation pays and thus reduce the corporation's federal employment tax and the customer/shareholder's reported individual federal income tax.

64. Distributions from an S corporation to a shareholder up to the amount of the shareholder's basis in the corporation are nontaxable. However, distributions from an S corporation in excess of the shareholder's basis are taxable. The shareholder's basis in the company increases to the extent the S corporation earns income, or if the shareholder contributes additional capital to the S corporation.

65. Tiger Zerjav instructed a Zerjav & Co. employee to make bogus "adjusting" journal entries on a customer's S corporation's books, entitled "loans to shareholder," as a way to disguise a shareholder distribution from the S corporation to the customer as a "loan." The former employee indicated that this occurred on a regular basis and was Tiger Zerjav's fraudulent method to evade reporting the distribution as income on customers' federal income tax returns.

66. In addition, Tiger Zerjav told this employee that if the customer's S corporation had income in a subsequent year he was to change the corporate book entry "loans to the shareholder" and now refer to them as distributions. This was done because the distributions would not be taxable in the second year, because the increased corporate income increased the shareholder's basis. This shows the true sham nature of defendants use of bogus entries for "loans to shareholder." The loans clearly have no substance, as defendants freely reclassify them as distributions if that is helpful for tax purposes.

67. For example, in 2005 one of defendants' corporate customers reported on its federal income tax return prepared by defendants that it had made non-taxable distributions of \$40,000 to its shareholders. The IRS revenue agent auditing the corporation's return found that five purported loans totaling \$738,431 were fabricated, and properly reclassified the bogus loans as

shareholder distributions. The revenue agent determined that there were no documents substantiating the loans, and there had been no payments made on the loans. The loans were all to the shareholders and related companies.

68. Defendants prepared the corporate customer's return and changed the distributions to loans.

69. The proper reclassification of the sham loans as distributions resulted in \$478,745 in taxable distributions to the shareholders. The shareholders had additional tax of \$68,390 and \$14,624, respectively, because the distributions exceeded their basis in the S corporation. After IRS audit, the shareholders/customers, who were not represented by defendants, agreed to the reclassified distributions. Both shareholders agreed to penalties imposed by the Internal Revenue Code.

Creating Sham Home and Vehicle Leases

70. Another scheme that defendants promote involves advising and helping customers to "lease" their house and/or vehicle(s) to either an existing legitimate corporation or new sham corporation.

71. Even though these are typically bogus leases, any lease payments are taxable income to the lessor, i.e., defendants' customer. However, defendants prepared false returns by not reporting the lease income on the customer's Form 1040.

72. According to a Zerjav & Company former employee, Zerjav, Sr. said that such lease payments are non-taxable reimbursements to the customer. That position is frivolous. This former employee acknowledged that Zerjav & Company was "dropping the ball" on this issue, by not reporting the rental and lease income on the customers' Form 1040.

73. Zerjav, Sr. did not advise customers that they needed to report the lease payments as income on their Form 1040.

74. For example, defendants created an Equipment Rental Agreement for one customer, under which the customer's new sham company was to pay him \$491 per month for rental of the customer's home. Defendants, however, did not include these payments on the customer's personal income tax return. On IRS audit, the customer was unable to explain or substantiate any business reason for his company to be leasing his home.

75. At least 124 federal income tax returns that defendants prepared fraudulently used these bogus home and vehicle lease schemes to understate reported income and tax liability.

Sham Wage Payments to Minor Children

76. Zerjav, Sr. advised and helped customers to create a sham sole proprietorship "staffing company" to purportedly employ the customers' minor children. Zerjav, Sr. dictated to customers the amounts the staffing company purportedly paid to the children, not based on the amount or value of any work they did, but based on Zerjav Sr.'s determination of how much tax reduction was needed.

77. The corporate payments to the "staffing company" employing the children is another method defendants use to fabricate bogus deductions for defendants' customer's legitimate business.

78. In implementing this scheme, defendants have prepared federal tax returns for customers that deduct payments of as much as the amount of the annual standard personal deduction for work purportedly performed by the customers' minor children. According to a former employee, defendants pay children up to the standard-deduction amount so that all the

income will be offset by the child's standard deduction.

79. Under this scheme the customer's pre-existing legitimate business or a new sham staffing company claims a deduction for wages "paid," which, for a Schedule C business, reduces the customer's profit and thus reduces his income tax, self-employment tax, and adjusted gross income. If the sham wages are purportedly paid and then deducted by the customer's S corporation, then the sham wages reduce the flow-through income from the S Corporation to the customer that is subject to federal income tax and reported on the parent's Form 1040.

80. To be deductible, wages must be: 1) actually paid or incurred, 2) reasonable in amount in relation to the type of work performed, and 3) made in compensation for actual legitimate work for an actual legitimate business. Defendants scheme causes their customers (or their customers' corporations) to improperly deduct payments to children as a business expense, because the children perform little, if any, actual work.

81. For example, in April 2005 defendants advised a Missouri couple to create a Schedule C business to employ the couple's seven- and ten-year-old children and pay each child \$7,800. The customer's 2005 Schedule C business reported \$13,000 in income, which was a payment from the customer's existing legitimate S corporation, which fraudulently reduced the S corporation's income. This income, however, was completely offset by a deduction of \$15,600 for the wages purportedly paid to the children. On the form 1040, the customer reported a loss of \$3,088 from the Schedule C business. On audit the customer admitted that no money was actually paid to the children. The IRS determined that the Schedule C business was a sham.

82. Zerjav, Sr. advised one California customer that he could pay for his children's education through his legitimate corporation, which could deduct the payments on the corporate

return. Zerjav, Sr. informed the customer that it was all “a matter of interpretation” and the “worst that could happen” is that the IRS would disallow the deduction. On this customer’s 2004 corporate federal income tax return defendants claimed that the corporation paid \$11,955 to the customer’s daughter for office cleaning. After audit the IRS disallowed the purported wage payment to the daughter and the customer agreed that this should be reclassified as a distribution to the shareholder.

83. Zerjav, Sr. promotes and helps customers implement and deduct these bogus wage “payments” to children as a way to fund the children’s education. In reality, it is a fraudulent way to evade federal employment and income taxes.

84. The IRS has thus far discovered at least ten federal tax returns that defendants prepared that included these bogus payments to children.

Obstructing IRS Investigations and Audits

85. Zerjav, Sr. has represented many of his customers during IRS audits, which requires the IRS to work closely with Zerjav, Sr.

86. This representation permits Zerjav, Sr. to control the IRS’s access to his customers and helps Zerjav, Sr. keep his customers from learning the full truth about the fraudulent nature of defendants’ tax advice and return preparation services. It also enables Zerjav, Sr. to monitor the IRS investigation and take steps to obstruct it, which he has done.

87. Many of defendants’ customers who have been audited have retained new representatives during the audits, but Zerjav, Sr. is still the representative for at least 30 customers with returns under audit. His improper conduct in representing customers in these audits has obstructed the IRS investigation and prevented customers from receiving sound

independent advice regarding the fraudulent nature of defendants' schemes.

88. Examples of Zerjav Sr.'s interference and obstruction include:

- A. Improperly delaying the scheduling of initial meetings;
- B. Tape recording interviews without the required 10-day advance notification to IRS;
- C. Refusing to provide retained copies of tax returns prepared by him or his firm;
- D. Refusing to provide retained copies of customers' general ledgers and adjusting journal entries;
- E. Refusing to provide documents to IRS agents;
- F. Directing customers to prepare backdated documents to substantiate items on their returns;
- G. Appearing late or failing to attend meetings he schedules with IRS agents;
- H. Failing to provide IRS agents with requested information; and
- I. Lodging complaints, on behalf of customers, to revenue agents' managers falsely claiming that IRS agents are violating the law.

89. Zerjav, Sr. further harms the United States by instructing his customers to misrepresent information to the IRS to keep it from uncovering his fraud. He instructed one customer not to advise the IRS about a company the customer owned, because Zerjav, Sr. claimed that the IRS could not connect the customer to the company.

90. In addition, Zerjav, Sr. obstructed the IRS's audit of that customer by personally removing documents from customer files that the customer had provided for Zerjav to produce to the IRS revenue agent.

91. Zerjav, Sr. has repeatedly obstructed IRS audits, which violates IRS Circular 230's rules regarding practice before the Internal Revenue Service.

Harm to the public

92. Defendants' preparation of false and fraudulent tax returns, to the extent that the IRS has not detected them, has resulted in customers receiving substantial federal income tax refunds

to which they are not legally entitled, and in customers not reporting and paying federal taxes they owe.

93. The Zerjav & Co. office staff refers to Tiger Zerjav as “the magician,” because the numbers on tax returns prepared by the staff are magically different after Tiger Zerjav reviews and edits the return. In one case, a Zerjav & Co. customer had a profit of \$400,000 when a former staff member, who is a CPA, prepared the federal income tax return, but only a \$160,000 profit after Tiger Zerjav reviewed and edited the tax return by writing down inventory.

94. Defendants harm the United States because their customers are not reporting and paying their correct tax liabilities. Thus far, the IRS has completed audits of at least 138 Form 1040 individual tax returns and seven C corporation returns that defendants prepared, and the total harm to the government discovered thus far exceeds \$1.5 million. The IRS investigation is ongoing.

95. Based on audits already completed, the IRS has determined that 80% of returns prepared by defendants include fraudulent deductions. The fraud costs the government an average of \$9,985 per return.

96. Defendants have prepared over 3,700 individual Form 1040 federal tax returns for customers in at least 30 states since 2004. Assuming an average harm per return of \$9,985 on 80% of those 3,700 returns, defendants’ scheme has likely cost the Treasury more than \$29.5 million, not counting the costs of detecting and correcting all the fraud.

97. The IRS has already spent 19,456 hours auditing individual and corporate returns defendants prepared in order to detect and correct the fraud.

98. In addition to the harm caused by their preparation of tax returns that understate their

customers' tax liabilities, defendants' activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

99. Zerjav, Sr. has failed to comply with IRS Circular 230 conflict-of-interest provisions by not fully disclosing to his customers the nature of the conflict caused by the IRS's investigation of him.

100. Defendants further harm the United States because the IRS must devote its limited resources to identifying their customers, ascertaining their customers' correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. Given the IRS's limited resources, identifying and recovering all revenues lost from their preparation of false and fraudulent returns may be impossible.

101. During an interview on a St. Louis radio station on April 28, 2005, Zerjav, Sr. falsely "guaranteed" that by following his program an individual earning \$100,000 could "save \$18,000 per a year."

102. Despite notification of the IRS investigation, Zerjav, Sr. continues to prepare fraudulent federal income tax returns and will continue to prepare fraudulent tax returns if not enjoined.

Count I
Injunction under I.R.C. § 7407

103. The United States incorporates by reference the allegations in paragraphs 1 through 102.

104. IRC § 7407 authorizes a district court to enjoin a tax preparer from:

- A. engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position that is not adequately disclosed or that is frivolous);
- B. misrepresenting his experience or education as a tax return preparer; or
- C. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

105. Defendants have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns that understate their customers' liabilities based on unrealistic and frivolous positions.

106. Defendants' continual and repeated violations of I.R.C. § 6694 fall within I.R.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under I.R.C. § 7407.

107. If defendants are not permanently enjoined from preparing tax returns, they are likely to continue to file false and fraudulent tax returns.

108. Defendants' repeated and continual conduct subject to injunction under I.R.C. § 7407 demonstrates that a narrow injunction prohibiting only specific misconduct would be insufficient to prevent defendants interference with the proper administration of the internal revenue laws. Thus, defendants should be permanently barred from acting as return preparers.

Count II
Injunction under I.R.C. § 7408

109. The United States incorporates by reference the allegations in paragraphs 1 through 108.

110. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

111. I.R.C. § 6700 penalizes any person who organizes, promotes or sells a plan or arrangement and makes, in connection with organizing or selling the plan or arrangement, a statement regarding the excludibility of income or securing of any other tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

112. I.R.C. § 6701 penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

113. Defendants know or have reason to know that they made false or fraudulent statements within the meaning of I.R.C. § 6700 to customers in connection with their Tax Advisory Coaching Program and otherwise. Defendants help their customers set up sham corporations and falsely advise their customers that they can receive tax benefits by using these sham corporations.

114. Defendants prepare federal tax returns for customers that they know will understate their correct tax liabilities. Defendants' conduct is thus subject to a penalty under I.R.C. § 6701.

115. If the Court does not enjoin defendants, they are likely to continue to engage in conduct subject to penalty under I.R.C. §§ 6700 and 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III
Injunction under I.R.C. § 7402(a) for unlawful
interference with the enforcement of the internal revenue laws

116. The United States incorporates by reference the allegations of paragraphs 1 through 115.

117. I.R.C. § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

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

119. Unless enjoined, defendants are likely to continue to engage in such improper conduct. If the Court does not enjoin defendants from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury.

120. Enjoining defendants is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm it causes the United States Treasury.

121. If defendants are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws. Defendants continue to prepare false tax returns and provide false tax planning advice.

122. An injunction under IRC § 7402 is necessary and appropriate, and the United States is entitled to injunctive relief under IRC § 7402. The injunction should bar the defendants and anyone acting in concert with them from representing individuals before the IRS, and from otherwise obstructing IRS investigations related to the defendants' schemes.

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

A. That the Court find that Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C. have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and have continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C. have engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C. have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C. and anyone acting in concert with them from:

1. organizing, promoting or selling any entity, plan, or arrangement that advises or assists customers to violate the internal revenue laws or unlawfully evade the assessment or collection of federal tax;
2. making false statements, in connection with such organization, promoting, or selling about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by reason of participating in any such tax shelter, plan or other arrangement;
3. preparing or filing (or helping to prepare or file) federal tax returns,

4. amended returns, or other related documents and forms for others;
5. engaging in any other activity subject to penalty under IRC §§ 6694, 6695, 6700, 6701, or any other penalty provision of the Internal Revenue Code;
6. appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
7. engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws; and
8. engaging in conduct designed or intended to, or having the effect of, obstructing or delaying any Internal Revenue Service investigation or audit.

E. That the Court, pursuant to IRC § 7402, enter an injunction requiring defendants within fifteen days to contact by United States Mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return to inform them of the Court's findings concerning the falsity of defendants' prior representations and enclose a copy of the permanent injunction against them;

F. That the Court, pursuant to IRC § 7402, enter an injunction requiring defendants to produce to counsel for the United States within fifteen days a list that identifies by name, social security number or other tax identification number, address, e-mail address, and telephone number and tax period(s) all persons and entities for whom they prepared federal tax returns or claims for a refund since January 1, 2004;

G. That the Court retain jurisdiction over Frank L. Zerjav, Sr., Frank L. Zerjav, Jr., Zerjav & Company, L.C., Zerjav & Company, P.C., and Advisory Group USA, L.C. and over this action to enforce any permanent injunction entered against defendants;

H. That the United States be entitled to conduct discovery to monitor defendants' compliance with the terms of any permanent injunction entered against them; and

I. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED: February 11, 2008

s/Michael J. Roessner
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