IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

UNITED STATES OF AMERICA Plaintiff, v. ROBERT BARNWELL CLARKSON, individually and operating as THE PATRIOT NETWORK, Defendant.	)	CA No. 8:05-2734-HMH-BHH **REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

This matter is before the Court on the United States of America's (hereinafter the "government") motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. The government is seeking a permanent injunction against the defendant, pursuant to 26 U.S.C. §§ 7402(a) & 7408, for the defendant's alleged false statements concerning applicability of the tax code and for activities meant to unlawfully impede and obstruct the enforcement efforts of the Internal Revenue Service ("IRS"). A status conference concerning the motion for summary judgment was held on April 19, 2007.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A), and Local Rule 73.02(B)(2)(e), D.S.C., all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

FACTUAL BACKGROUND

The defendant is the founder, president, and leader of The Patriot Network. (Def. Mem. Supp. Summ. J. Cantrell Decl. Ex. at 148, 149, 181.) The Patriot Network is

comprised of a national organization and local independent clubs in various states. *Id*. at 163, 138-140. It describes itself as a political organization with the purpose of achieving a return to Constitutional government through a tax revolt – "a massive refusal of the productive sector of the population to support the unConstitutional taxing and spending programs of the national government." *Id*. at 131-132. The Patriot Network operates a website, where it provides information through the sale of taped lectures, books, and other resources prepared and delivered by the defendant and his associates. *Id*. at 255-269.

The government has alleged that the defendant has made false statements to members of The Patriot Network and the public concerning the inapplicability of the federal income tax to wage earners. The government further contends that the defendant advises, aids, and abets members of The Patriot Network in the evasion and obstruction of IRS enforcement efforts. The government seeks an injunction to end such alleged activities.

APPLICABLE LAW

Federal Rule of Civil Procedure 56(c) states, as to a party who has moved for summary judgment:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that: (1) there is no genuine issue as to any material fact; and (2) that he is entitled to judgment as a matter of law. As to the first of these determinations, a fact is deemed "material" if proof of its existence or non-existence would affect disposition of the

case under applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. Rather, the non-moving party must demonstrate that specific, material facts exist which give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 365 (4th Cir. 1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. Furthermore, Rule 56(e) provides in pertinent part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the

> mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e). Accordingly, when Rule 56(e) has shifted the burden of proof to the non-movant, he must produce existence of every element essential to his action that he bears the burden of adducing at a trial on the merits.

DISCUSSION

The government seeks an injunction against two types of activities of the defendant. First, the government contends that an injunction should issue pursuant to 26 U.S.C. § 7408 of the Internal Revenue Code for the defendant's alleged violations of 26 U.S.C. § 6700. In relevant part, Section 6700 makes illegal the organization of, or participation in, any entity, plan, or arrangement which makes or furnishes, or causes another person to make or furnish, a false or fraudulent statement concerning the tax benefits to be derived from the entity, plan, or arrangement. 26 U.S.C. § 6700. Section 7408 authorizes the Court to enjoin any conduct that violates Section 6700. *See* 26 U.S.C. § 7408. The government contends that the defendant, through his alter ego, The Patriot Network, has violated Section 6700 by suggesting that an individual can unilaterally make oneself ungoverned by, and unamenable to, the federal tax laws, thereby removing all tax liability. The Court will refer to these alleged acts as "avoidance activities."[1]

[1] In the defendant's tax materials and briefs submitted to the Court, he refers to these same activities as"detaxing" or "untaxing."

Second, the government seeks an injunction pursuant to 26 U.S.C. § 7402(a). Section 7402 authorizes the Court to generally enjoin activity "as may be necessary or appropriate for the enforcement of the internal revenue laws." 26 U.S.C. § 7402(a). The government contends that an injunction is prudent, under the circumstances, to prevent the defendant from participating in activity designed to frustrate and delay the IRS's enforcement of the tax laws through the transfer and concealment of an individual's personal assets. The Court will refer to such alleged acts as "interference activities."[2]

The Court will consider the plaintiff's request for an injunction concerning each type of activity, respectively.

I. AVOIDANCE ACTIVITIES (Section 7408 Injunction)

As an initial matter, the defendant has seemed to imply his consent to an injunction concerning avoidance activities. In his response and sur-reply made in opposition to summary judgment the defendant stated, respectively:

> Clarkson for three years has been telling the IRS that he would sign a consent agreement on the Untaxing portion of his activities. (Pl. Resp. Motion. Summ. J. at 6.)
>
> Since the government is not contesting Clarkson [sic] real defense but only seeks an injunction for his detaxing activities, Clarkson will just sign a consent order and this case will be over with. (Pl. Sur-reply at 2.)

[2] While interference activities will be addressed in Part II, mere false statements concerning obstruction and interference efforts will actually be discussed in Part I because Section 7408 regards all manner of false statements.

The Court conducted a status conference on April 19, 2007, to determine whether the defendant was indeed amenable to settling this lawsuit concerning the alleged avoidance activities, admitting the impropriety of those false statements. At that hearing, the Court interpreted the defendant's representations to essentially concede his willingness to agree to an injunction as to those activities. The defendant did, however, express concern over whether an injunction could be drafted with sufficient specificity so as to allow him to abide by it without the possibility of inadvertently violating the injunction for want of clarity. The parties were given an opportunity to submit a proposed consent injunction concerning the avoidance activities or separate proposed injunctions for the Court's consideration. Both the government and the defendant submitted separate but unreconcilable proposed orders. The defendant's acknowledgments made in his briefs and at the hearing nearly rise to the level of admissions sufficient to impose the requested injunction regarding his alleged avoidance activities. But, because he is *pro se* and otherwise out of an abundance of caution, the Court will analyze whether summary judgment should be granted the government, pursuant to Section 7408, for the defendant's alleged avoidance activities.

To obtain an injunction under Sections 6700 and 7408, the government must prove five elements: (1) the defendant organized or sold, or participated in the organization or sale of, a plan, arrangement, or other entity; (2) he made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or

arrangement; (3) he knew or had reason to know that the statements were false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct. 26 U.S.C. §§ 6700(a), 7408(b); *see also U.S. v. Gleason*, 432 F.3d 678, 682 (6th Cir. 2005); *U.S. v. Estate Preservation Services*, 202 F.3d 1093, 1098 (9th Cir. 2000); *U.S. v. Lloyd*, 2005 WL 330728, at *4 (M.D.N.C. Dec 06, 2005). The government bears the burden of proving each element by a preponderance of the evidence. *Estate Preservation Services*, 202 F.3d at 1098. Critically, the traditional requirements for equitable relief need not be satisfied since Section 7408 expressly authorizes the issuance of an injunction. *Id*.

A. Plan, Arrangement, or Other Entity

As to the first element under Section 6700, any "plan or arrangement" having some connection to taxes can serve as a "tax shelter"[3] and will be an "abusive" tax shelter if the defendant makes the requisite false or fraudulent statements concerning the tax benefits of participation. *See* 26 U.S.C. § 6700(a)(1)(A); *see also United States v. Raymond*, 228 F.3d 804, 811-12 (7th Cir.2000) (describing the broad scope of section 6700(a)(1)(A)); *United States v. Kaun*, 827 F.2d 1144, 1147 (7th Cir.1987). Courts have held that the definition of a tax shelter under Section 6700 is "clearly broad enough to include a tax protester group," *Kaun*, 827 F.2d at 1148; *see Raymond*, 228 F.3d at 811, as the one at issue in this case. Courts have concluded that an "organization whose primary purpose [is] to incite members to evade the tax laws by engaging in a variety of activity disruptive

[3] Section 6700 is entitled "Promoting abusive tax shelters, etc."

to the IRS including the filing of fraudulent returns, [is] a plan or arrangement that operated as an abusive tax shelter as defined by Section 6700." *Id*.

Here, the plaintiff has organized and leads the Patriot Network, (Cantrell Decl. Ex. at 148, 149), whose primary and express purpose is to assist individuals in the evasion of the tax laws. The Patriot Network is comprised of a national organization and local independent clubs in various states. *Id*. at 163, 138-140. As stated, it describes itself as a political organization with the purpose of achieving a return to Constitutional government through a tax revolt – "a massive refusal of the productive sector of the population to support the unConstitutional taxing and spending programs of the national government." *Id*. at 131-132. It calls upon members to "drive up the cost of administrating the corrupt tax system, to fight the taxacrats every inch of the way" through "well-planned, active resistance, not merely non-cooperation" to achieve the "collapse" of "the hated IRS." *Id*. at 132. The Patriot Network operates the http://www.patriotnetwork.info website, through which it sells taped lectures, books, and other materials by Clarkson and others. *Id*. at 255-269.

Critically, The Patriot Network provides new members with a Beginners Packet, which purports to provide all the information and instructions needed to stop paying taxes. *Id*. at 190. For $100, new members receive videos and printed materials of The Patriot Network that claim thousands of "Patriotic Americans" have used with success. *Id*. The Patriot Network offers an introductory video and companion workbook for "untaxing,"

entitled *Tax Loopholes for Working People*. *Id*. At a seminar by the same title, the defendant instructs that wages are not income. *Id*. at 146, 196.

The Patriot Network further counsels prospective members that there is no law requiring persons to file income tax returns. *Id*. at 192, 198-202. The Patriot Network claims that income taxes need not be paid because they are voluntary, *id*. at 192, and boasts that its members have not paid income taxes for 30 years, *id*. at 192-193.

The Court concludes, that no genuine issue of fact remains as to whether The Patriot Network qualifies as a "plan," "arrangement," or "other entity" as broadly contemplated by Section 6700. The Patriot Network is clearly an "organization whose primary purpose [is] to incite members to evade the tax laws by engaging in a variety of activity disruptive to the IRS including the filing of fraudulent returns . . . ."[4] *Raymond*, 228 F.3d at 811. As discussed, The Patriot Network has as its express purpose the disruption of IRS efforts and the education of others that taxes are unconstitutional. Moreover, it is undisputed that the defendant directly participates in the arrangement as he is both the self-proclaimed founder and leader of The Patriot Network. (*Id*. at 148, 149.)

B. False or Fraudulent Statements Concerning the Tax Benefits to Be Derived

[4] Although both the government and the defendant argue over whether or not The Patriot Network is a commercial enterprise for purposes of any First Amendment defense the defendant might have to the imposition of an injunction, no such inquiry is necessary here. Neither the statute itself nor any decisional law, known to the Court, requires that the participants in such a plan or arrangement profit financially from their participation. The statute simply makes it unlawful for a person to "organize[]" or "assist[] in the organization of" any plan or arrangement. 26 U.S.C. § 6700; *Raymond*, 228 F.3d at 811.

In order to prove a violation of Section 6700, the government must also show that the defendant made false or fraudulent statements concerning the tax benefits of participating in The Patriot Network. 26 U.S.C. § 6700(a)(2)(A); *Kaun*, 827 F.2d at 1147.

It is simply beyond dispute that the defendant makes false statements concerning tax benefits to be derived from participation in The Patriot Network. His materials are simply riddled with them. The following are illustrative but by no means exhaustive:

- "[W]e [The Patriot Network] have researched the subject thoroughly and have discovered that there is no law requiring you to file [income tax returns]. . . . So here is the solution: Tell the truth wherever you go, but don't file or pay income taxes." (Cantrell Decl. Ex. at 192.)

- "No law commands you to file [a tax return]. In fact, our present income tax is in direct contradiction to the Constitution." *Id*.

- "Income taxes are voluntary." *Id*.

- "[L]egally we do NOT owe the income tax on our wages and salaries and have no duty to pay it." *Id*. at 199.

- "Therefore, the true law means the working people legally do not owe the hated income tax, but the rich do, even though they have evaded most of it." *Id*.

- "It [the government] collects 'income' taxes un-Constitutionally, and by law is only permitted to use these funds for un-Constitional purposes. *Id*. at 9.

Importantly, the defendant represents, repeatedly, that it is participation in The Patriot Network and the concomitant access to its leaders, materials, and resources which will educate and enable individuals to avoid tax liability and the IRS. (*See, e.g.*,Tr. at 164 ("*Individual Member Plan Benefits:* . . . The Patriot Network . . . has the "How-To" materials for you to use with any problem that the tax bureaucrats might toss at you. These packets and tapes . . . will be made available to you on a priority basis at special discounts."), 165-66, 190 ("*Beginners Packet*: ALL THE INFORMATION AND INSTRUCTIONS YOU NEED

TO STOP PAYING TAXES YOU DON'T OWE!"); *see generally* Tr. at 4-33 (*The Patriot Network:* UNTAXING PACKET).

Notwithstanding the defendant's bold assertions concerning the non-existence of laws compelling compliance with the tax code and the filing of returns, such laws unquestionably exist and no level of participation in The Patriot Network can change that reality:

> When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, **shall make a return or statement according to the forms and regulations prescribed by the Secretary**. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

26 U.S.C.A. § 6011(a).

> a) General rule.--**Returns with respect to income taxes** under subtitle A **shall be made by the following**:
>
> > (1)(A) **Every individual having for the taxable year gross income which equals or exceeds the exemption amount**, except that a return shall not be required of an individual
>
> . . .

26 U.S.C.A. § 6012(a)(1)(A).

> In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), **returns made on the basis of the calendar year shall be filed on or before the 15th day of April** following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

26 U.S.C.A. § 6072(a).

The defendant's belief and representations that individuals are not subject to the income tax laws nor required to file returns are "tired arguments" and "objectively frivolous." *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 70-72 (7th Cir.1986) (stating that the assertions that the federal income tax is not a tax on all income, that wages are not income, and that a tax on wages is unconstitutional are "tired arguments" that are "objectively frivolous"); *see, e.g., United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir.1993) (stating that the argument that an individual is a sovereign citizen of a state who is not subject to the jurisdiction of the United States and not subject to federal taxing authority is "shop worn" and frivolous); *Kile v. Commissioner of Internal Revenue*, 739 F.2d 265, 267-68 (7th Cir.1984) (noting the "universal and longstanding rejection" of the argument that wages are not subject to income tax and that the federal income tax is unconstitutional). The defendant's clear pronouncements in direct contradiction to federal statutes and decisional law are, therefore, false. As to this point, no issue of fact remains. The defendant has made no real effort to argue to the contrary.

The defendant also makes false statements concerning certain interference activities, including an individual's ability to evade IRS collection through the use of trusts, the transfer of assets to evade creditors, and the use of cash and "recycled" checks. (Cantrell Decl. Ex. at 235.) The plaintiff instructs others to file bankruptcy and offers to "walk" members through the process. *Id*. at 118-19, 124, 257. The defendant, however, does not mention the limited dischargeability of federal income tax liabilities and tax liabilities arising from unfiled tax returns. 11 U.S.C. § 523 states that bankruptcy does not discharge an individual from any debt for taxes owed under circumstances where the debtor has failed to file a return or otherwise where the individual has attempted to willfully

evade or defeat such tax. 11 U.S.C. § 523. Accordingly, the defendant has also made false statements concerning certain types of interference activities. This evidence is unrefuted by the defendant.

C. Knowledge of Falsity

The government must also demonstrate that the plaintiff "knew or had reason to know" that the statements he made were false or fraudulent. Although the Fourth Circuit has never addressed the issue, other courts have concluded that the "knew or had reason to know" standard includes "'what a reasonable person in the [defendant's] . . . subjective position would have discovered.'" *Estate Pres. Servs.*, 202 F.3d at 1103 (quoting *Sanders v. United States*, 509 F.2d 162, 166 (5th Cir.1975)).

In considering a person's subjective position, courts apply the following factors: (1) the extent of the defendant's reliance upon knowledgeable professionals; (2) the defendant's level of sophistication and education; and (3) the defendant's familiarity with tax matters. *See United States v. Kaun*, 827 F.2d 1144, 1149 (7th Cir.1987).

There is no indication that the defendant relied upon any knowledgeable professional in arriving at his conclusions concerning the tax laws. In fact, he boasts that he and The Patriot Network "researched the subject thoroughly and have discovered that there is no law requiring you to file." (Tr. at 192.) There is no evidence that his representations are somehow simply the product of poor advice given him by professionals who are otherwise trustworthy and knowledgeable concerning matters of tax.

Instead, the defendant holds himself out as an expert on legal matters, generally, and the tax laws, specifically. The defendant expressly represents that he "specializes in Tax Procedure Law, (i.e. Tax Audits, Collections and Hearings.) FOIA Lawsuits &

Litigation, Privacy and all forms of Constitutional Rights including Freedom issues and Financial Privacy." (Tr. at 127.) It is undisputed that, although the defendant does have a law degree, he has been disbarred in the State of South Carolina.

In many respects, the defendant's materials suggest very little sophistication insofar as they are nearly absurd in their claims. But otherwise, it is clear that the defendant has dedicated much of his life to educating himself in matters of tax and the law.

The Court ultimately concludes that very little sophistication or education would be necessary to know or have reason to know that the defendant's statements concerning the applicability of tax laws and the requirement to file returns were false. As stated, courts have found that such beliefs are "objectively frivolous." *See Coleman*, 791 F.2d 68, 70-72 (7th Cir.1986) (stating that the assertions that the federal income tax is not a tax on all income, that wages are not income, and that a tax on wages is unconstitutional are "tired arguments" that are "objectively frivolous"). There has been a "universal and longstanding rejection" of the defendant's argument that wages are not subject to the income tax and that the federal income tax is unconstitutional. *Kile*, 739 F.2d at 267-68. Said differently, the Court finds that the falsity of the defendant's statements is common knowledge and certainly an inescapable fact that even a modicum of diligence would reveal to one claiming to be expert in matters of tax and law.

The reasonable person, therefore, in the defendant's subjective position – law degree and self-proclaimed tax expert – would have all the reason and ability to know that representations concerning the applicability of the tax laws as described above would be false.

D. Materiality of False Statements

A matter is considered material "if it would have a substantial impact on the decision making process of a reasonably prudent investor.'" *United States v. Buttorff*, 761 F.2d. 1056, 1062 (5th Cir. 1985). Also, "if a particular statement has substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as 'material' within the meaning of Section 6700." *U.S. v. Estate Preservation Services*, 38 F. Supp. 2d 846, 855 (E.D. Cal.1998) (citing *Buttorff*). Importantly and contrary to the defendant's arguments, in proving materiality, the government need not demonstrate that any specific customer relied on the misrepresentations. *See Estate Pres. Servs*., 202 F.3d at 1099 ("Whether . . . customers used that misinformation to violate the law is irrelevant. Congress intentionally omitted taxpayer reliance as an element of the offense.").

Here, as described above, all of the defendant's false statements pertain to the applicability of the tax laws. The representation that an individual is not subject to the tax laws or need not file a tax return would certainly have a "substantial impact" on that individual's "decision-making process" -- whether or not to abide by such laws and file a return. Those representations would also inure to the individual an equally "substantial tax benefit" insofar as the individual would go from paying an income tax to paying no tax at all. There is no genuine issue of fact. The false statements are material.

E. Whether an Injunction is Necessary to Prevent Recurrence.

Having determined that the defendant has engaged in conduct subject to penalty under section 6700, the Court must now determine whether "injunctive relief is appropriate to prevent recurrence of such conduct." 26 U.S.C. § 7408(b)(2). This element has been

found to be satisfied where there is a reasonable likelihood of continued fraudulent conduct. *See Kaun*, 827 F.2d at 1150. Factors that a court may consider in determining the likelihood of future violations and, thus, the need for an injunction, include: (1) the gravity of the harm caused by the offense; (2) the extent of the defendant's participation; (3) the defendant's degree of scienter; (4) the isolated or recurrent nature of the infraction; (5) the defendant's recognition (or non-recognition) of his own culpability; and (6) the likelihood that defendant's occupation would place him in a position where future violations could be anticipated. *See Kaun*, 827 F.2d at 1144-45; *Buttorff*, 761 F.2d at 1062; *SEC v. Holschuh*, 694 F.2d 130, 144 (7th Cir.1982).

The Court is substantially persuaded, by the following factors, that the defendant is likely to violate Section 6700 in the future unless an injunction is imposed. First, the defendant's participation in The Patriot Network and publication of false statements is great and prolific, respectively. As stated, it is undisputed that the defendant is the founder, president, and leader of The Patriot Network. (Cantrell Decl. Ex. at 148, 149, 181.) As reflected in the voluminous material submitted in this case by the government, the false statements, at issue in this case, are the defendant's personal beliefs and they are published by The Patriot Network at his direction and through his committed efforts. The defendant emphasizes that The Patriot Network is a political movement waging an ideological "war for freedom," *id*. at 13, 132, his devotion to which would seem unabated but for the requested injunction. The defendant has not submitted evidence or argument to the contrary.

Second, the defendant's violation of Section 6700 has been recurrent. The defendant claims to have been "untaxing" individuals based on the same principles, which

the Court has found to be false, for at least 30 years. (Tr. at 209.) In the very least, the false statements identified above are published at the defendant's website and, therefore, constitute a continuing violation of Section 6700 for at least as long as they have been available there. *See, e.g., id.* at 192 (dated August 8, 2006). In the absence of an injunction, there is no evidence to suggest that such false statements would not continue to be available at The Patriot Network website. In fact, the defendant states that "true Patriots are not dismayed by small defeats here and there." *Id*. at 132. The defendant's clear intention is to continue publishing his opinions concerning the tax laws.

Third, the defendant has refused to admit the falsity of the statements at issue and, therefore, his own culpability. Although the defendant considered consenting to an injunction concerning his avoidance activities, in his proposed order, he changed all reference to "false or fraudulent statements," as included in the government's proposed order, to statements "unpopular with" the IRS or "tax collectors." Nowhere in his briefs or at the hearing did he ever expressly admit that his statements concerning avoidance activities were false or fraudulent. Thus, in the absence of an injunction, it seems unlikely that the defendant would circumscribe the publication of such statements.

The Court concludes that genuine issues of fact exist as to the gravity of the harm caused by the defendant's statements. The government argues that the false statements pose great potential harm to the government and individual taxpayers. The government, however, has not produced any specific evidence to that end, either concerning past or prospective harm. This one factor, however, is not dispositive.

The factors discussed above in combination with the defendant's longstanding commitment to the proliferation of these false statements, eliminate any genuine issue as to whether future violations are likely to occur; they are.

For all these reasons, the government is entitled to summary judgment on its request for injunction pursuant to Section 7408, as no issue of fact exists as to any element of that claim.

II. Interference Activities (Section 7402(a) Injunction)

Next the government contends that summary judgment should be granted in regards to its request for an injunction pursuant to 26 U.S.C. § 7402(a) for the defendant's interference activities, as previously defined. Section 7402 of the Internal Revenue Code gives district courts the general authority to issue injunctions as necessary or appropriate to aid in the enforcement of the internal revenue laws. *See* 26 U.S.C. § 7402(a).

The government claims that, for the injunction to issue, it need not establish that it has no adequate remedy at law. Contrary to the government's argument, it appears that unlike Section7408, "the decision to issue an injunction under Section 7402(a) is governed by the traditional factors shaping the district court's use of the equitable remedy.'" *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir.1984); *see also U.S. v. Anderson*, 2004 WL 2601058, at *2 (M.D. Fla. September 23, 2004) (stating specifically that although equitable considerations are not a part of the Section 7408 analysis, they are in regards to Section 7402(a)); *U.S. v. Hollar*, 885 F. Supp. 822, 824-25 (M.D.N.C. 1995). The cornerstone of those equitable considerations are the presence of irreparable injury and the inadequacy of legal remedies to cure the alleged harm. *Hollar*, 885 F. Supp. 822, 824-25. Genuine issues of fact exist as to both considerations.

The Court would note as an initial matter that there exists no genuine issue as to whether or not the defendant engages in and encourages interference and obstructionist activities; he clearly does. By way of example, when the IRS attempts to collect taxes owed, the defendant instructs members to call him and offers various products for sale to avoid payment. (*See generally* Cantrell Decl. Ex. at 203-232.) The defendant next instructs members to begin an "earnest writing" campaign to respond to collection letters sent by the IRS (two tapes provided for $10 each). *Id*. at 212-213. Finally, the defendant suggests that members invoke the Fifth Amendment (details provided in $25 tape), stop the lien (details provided in a $30 video), file a quiet title action, file bankruptcy (details provided in a three-book set for $20), file an action against the IRS, deed real property to spouses or children, and foreclose on themselves. *Id*. at 213, 204-205, 255-257.

The undisputed evidence also shows that the defendant recommends filing civil lawsuits against IRS employees attempting collection. *Id*. at 208. He advocates that these steps be taken slowly and in succession and instructs followers to make deliberate procedural mistakes, because the "principal weapon against the bureaucracy is non-cooperation and dilatory tactics." *Id*. at 213, 216, 219-222, 218-229, 230-232, 233.

The defendant also offers Audit Procedure I and II, a video for $30 in which he instructs his viewers to throw away automated collection letters and close out bank accounts at the outset of IRS collection efforts. *Id*. at 120, 122. He instructs that, if the IRS proceeds with collection, the individual should file bankruptcy "on the IRS" to discharge tax debt after the IRS has spent "millions" conducting a protracted audit. *Id*. at 118-119, 124. The defendant refers viewers to other materials he sells on bankruptcy (the three-book set mentioned above for $20) and offers to "walk" members through

bankruptcy. *Id*. at 118-119, 124, 257. He also directs customers to other videos for sale on judgment proofing (three videos for $30 each), on how to handle the IRS (video for $20), and to his No Checks materials. *Id*. at 105, 108, 121-122, 256.

In regards to the "No Checks" philosophy, Patriot Network members are required to avoid keeping bank accounts "whenever possible." *Id*. at 166. In the defendant's No Checks video, sold for $30, the defendant instructs that IRS collection and summons efforts can be thwarted by closing all bank accounts and dealing in cash or money orders. *Id*. at 66, 69, 72, 76, 63-102.

Additionally, the defendant instructs members that property placed in trusts is protected "from greedy lawyers, spiteful ex-spouses and government fraud" and offers his personal advice in creating a "properly constructed trust" that he claims will protect homes and other property from tax collectors. *Id*. at 235. He claims that trusts keep "financial information from credit cards (sic) companies, illegal tax collectors, and others wanting a piece of your action." *Id*.

The defendant further endorses and offers to connect members with "an associate who has a (sic) employee leasing company" so that members can avoid tax withholdings, payroll taxes, and wage levies. *Id*. at 128. The associate offers to hire members and then lease them back to their employers so that members become independent contractors of Cthe defendant's associate. *Id*. at 128, 207. His associate then will forward members their gross pay "minus a small fee." *Id*. at 128.

The defendant has made virtually no argument to the contrary and has not produced any evidence that would create a genuine issue of fact as to whether he actually encourages and engages in the above described conduct.

The fact that he clearly engages in and promotes interference activities, however, is not enough. The government has made only a cursory argument that it will suffer irreparable harm and no argument as to whether other remedies at law exist to cure the infractions of the defendant about which it complains. In fact, in the single paragraph the government devotes to the alleged harm created by the defendant's actions there is not a citation to any evidence whatsoever. As discussed, a showing of irreparable harm and absence of legal remedies is necessary for an injunction to lie pursuant to Section 7402. *See Ernst & Whinney*, 735 F.2d at1301 ("The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies."); *Hollar*, 885 F. Supp. at 824-25 (holding that Injunctive pursuant to Section 7402 requires a showing of "irreparable injury and the inadequacy of legal remedies"). Although Section 7408 did not require any specific evidentiary showing as to the *effect* of the defendant's actions on the government or others, it seems apparent to the Court that Section 7402 does. Accordingly, genuine issues of fact exist as to whether the government would suffer irreparable injury and whether other remedies at law exist.

Obviously the Court's decision does not preclude the government from later making the necessary proffer of evidence but it has not met its burden to eliminate all genuine issues of fact regarding a Section 7402 injunction, on this motion.

III. The Defendant's Response and First Amendment Defense

The defendant has not addressed any of the elements of a Section 7408 or 7402 injunction. In fact, the defendant has not submitted any evidence whatsoever, other than two unidentified pages, which are otherwise totally irrelevant to the Court's analysis. The defendant, therefore, has wholly failed to meet his burden to produce admissible evidence,

which creates genuine issues of fact, in response to the government's showing. *See* Fed. R. Civ. P. 56.

The defendant's only real rejoinder to the requested injunctions is that an injunction would be an impermissible prior restraint on his First Amendment right of free speech. It is true that "[g]overnmental action constitutes a prior restraint when it is directed to suppressing speech because of its content before the speech is communicated." *In re G. & A. Books, Inc.*, 770 F.2d 288, 296 (2d Cir.1985); *see also Bernard v. Gulf Oil Co.*, 619 F.2d 459, 468 (5th Cir.1980). However, it is well settled that the First Amendment does not protect false commercial speech. *See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 563 (1980) (the First Amendment, while offering protection to truthful commercial speech, does not protect false or misleading commercial speech); *Gerz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) ("[u]ntruthful speech, commercial or otherwise, has never been protected for its own sake"); *U.S. v. Hunter*, 459 F.2d 205, 211-12 (4th Cir. 1972). Moreover, numerous courts have upheld injunctions pursuant to Sections 7408 and 7402 when false commercial speech was involved. *See, e.g.*, *United States v. Bell,* 414 F. 3d 474, 479-80 (3d Cir. 2005); *Estate Preservation,* 202 F.3d at 1106; *Buttorff*, 761 F.2d at 1066; *Kaun*, 827 F.2d at 1150-52; *United States v. White*, 769 F.2d 511, 516-517 (8th Cir.1985).

The Court has already concluded that the defendant engages in false speech in direct contravention of Section 6700. The defendant, however, disputes that his activities constitute *commercial* speech because he claims that he has made no profit from his activities and because he requests only "donations" from members of The Patriot Network.

Generally, "commercial speech" is defined as "expression related solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Elec. Corp.*, 447 U.S. at 561. The Fourth Circuit has emphasized that speech is commercial in nature if it "propose[s] a commercial transaction." *Adventure Communications, Inc. v. Kentucky Registry of Election Finance*, 191 F.3d 429, 440 (4th Cir. 1999); *see also CPC Intern., Inc. v. Skippy Inc.,* 214 F.3d 456 (4th Cir. 2000) (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976)). But speech "rendered in the form of an advertisement does not necessarily render such speech commercial in nature." *Adventure Communications*, 191 F.3d at 440. Nor does a cursory reference to a particular product necessarily convert otherwise noncommercial speech into commercial speech. *Id*. at 441. Moreover, the speaker's subjective profit motive is not determinative. *Id*. Instead, the "commercial or noncommercial character of the speech is determined by the nature of the speech taken as a whole." *Id*. (internal quotations omitted).

The government has submitted evidence which demonstrates that the defendant's activities are commercial speech; no genuine issue of fact remains. For starters, the defendant's argument that membership in The Patriot Network is only "donations" based is not supported by his own materials. The first enumerated paragraph of "The Patriot Network Membership Agreement" states that the member agrees "to *keep dues current or lose all privileges, rights and securities* provided by the Association after 30 days in arrears." (Cantrell Decl. Ex. at 166.) Not only does the agreement specifically require members to pay dues but it expressly makes the rights and benefits of membership contingent thereon. The defendant has not recited any evidence to the contrary other than to simply claim that it is, in truth, a voluntary donation. But even, if the district court found

that a genuine issue existed as to whether membership was contingent upon a mandatory dues payment or a voluntary donation, the nature of the speech at issue in this case is still overwhelmingly commercial in quality.

Namely, The Patriot Network materials and website are replete with advertisements for the purchase of tax related materials and resources, including conferences, personal advice and consultation, videos, books, information packets, letters, and legal forms. *See, e.g., id*. at 96, 105, 108, 118-19, 121-122, 124, 164-65, 212-13, 204-05, 255-57. These are not cursory or isolated commercial references; they go to the essence of The Patriot Network's purpose and mission. *See Adventure Communications*, 191 F.3d at 441. The Patriot Network repeatedly "proposes" such commercial transactions between itself and its members. One of the primary purposes of The Patriot Network is dissemination of its alleged expert tax information concerning the applicability of the tax laws - information the Court has already deemed false. That information, however, is available almost exclusively through a sale of that information by The Patriot Network or through membership in it, which is contingent, as previously discussed, upon a dues payment. The materials on the website simply do not imply that the relevant tax materials at issue in this case are available any other way than through purchase. *See, e.g. id.* at 164-66. Whether any such materials have actually been purchased or paid for is irrelevant. Therefore, "taken as a whole," the speech at issue in this case is substantially commercial in nature. *See id.* The mere presence of political speech in The Patriot Network materials does not destroy the commercial quality of it. *Id*.

As detailed *infra*, the Court has narrowly tailored an injunction that circumscribes only the false and misleading statements of the defendant, as discussed herein.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, the Court recommends that the plaintiff's motion for summary judgment be GRANTED in part and DENIED in part. Specifically, the Court recommends that the plaintiff's request for an injunction pursuant to 26 U.S.C. § 7408 be GRANTED, as RECOMMENDED specifically below, and DENIED as to the plaintiff's request for an injunction pursuant to 26 U.S.C. § 7402(a).

It is specifically RECOMMENDED that the defendant, Robert Clarkson, individually and operating through The Patriot Network, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this injunction be permanently enjoined from directly or indirectly:

(A) Promoting, marketing, organizing, or selling (or assisting therein) any plan or arrangement that contains a statement regarding federal taxes that he knows or has reason to know is false or fraudulent as to any material matter, including, but not limited to,

(i) making the false or fraudulent statements that people need not pay federal income taxes, withhold federal income taxes from their wages, or file federal income tax returns (a) because no law requires it, (b) because the IRS is an illegal organization, (c) because the IRS has no power to tax, (d) if they send letters to various governmental entities, or (e) if they file inaccurate withholding statements with employers; and

(ii) making the false or fraudulent statements that people can legally evade payment of their taxes and IRS collection efforts by (a) transferring property

to others, (b) placing property in a trust, (c) closing bank accounts and dealing in cash or money orders, or (d) working for an employee leasing company or similar organization that will not withhold federal income or employment taxes;

(B) Selling or offering for sale any book, pamphlet, video recording, audio recording, or other material that contains a statement regarding federal taxes that he knows or has reason to know is false or fraudulent as to any material matter, including those statements listed above;

(C) Preparing letters, memoranda, and other writings for others for a fee (whether the payment is per document, for membership in a program, or for other services) that contain a statement regarding federal taxes that he knows or has reason to know is false or fraudulent as to any material matter, including those statements listed above.

It is FURTHER RECOMMENDED that the defendant be ORDERED to contact by mail all persons who have bought from him or The Patriot Network any materials concerning federal taxes, shall send them a copy of the injunction ORDER, and shall certify to the Court within twenty days of entry of this Order that he has complied with this provision.

It is FURTHER RECOMMENDED that the defendant be ORDERED to remove from websites registered to, controlled by, or operated by him or The Patriot Network, including http://www.patriotnetwork.info, all statements regarding federal taxes promoting the participation in the Patriot Network or any other entity, plan, or arrangement that he knows

or has reason to know is false or fraudulent as to any material matter, including, but not limited to, the statements listed above.

It is FURTHER RECOMMENDED that the defendant be ORDERED to display prominently on the first page of the http://www.patriotnetwork.info website a complete copy of the injunction ORDER and shall maintain the http://www.patriotnetwork.info website for one year with a complete copy of the injunction ORDER so displayed throughout that time.

It is FURTHER RECOMMENDED that the plaintiff may conduct post-judgment discovery to monitor Robert Clarkson's compliance with this permanent injunction.

It is FURTHER RECOMMENDED that defendant pay the plaintiff its costs upon submission and approval of a bill of costs.

IT IS FURTHER RECOMMENDED that this Court shall retain jurisdiction over this action for purposes of implementing and enforcing this Order and any additional orders necessary and appropriate to the public interest.

IT IS SO RECOMMENDED.

s/Bruce H. Hendricks
United States Magistrate Judge

May 14, 2007
Greenville, South Carolina