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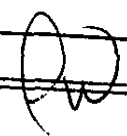
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DEC - 6 2004
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
BY  DEPUTY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES,)
12 Plaintiff,)
13 v.)
14 ANTHONY L. HARGIS)
15 INDIVIDUALLY and d/b/a)
16 ANTHONY L. HARGIS & CO.,)
17 Defendant.)
18)
19)
20)

CASE NO. SACV04-273 DOC (ANx)

~~TEMPORARY~~ ORDER
GRANTING SUMMARY
JUDGMENT AND DENYING
MOTION FOR CONTINUANCE

DOCKETED ON CM
DEC - 6 2004
BY  039

21 Before the Court is a motion by the United States for summary judgment on the grounds
22 that this Court has already granted a preliminary injunction and that no material facts are in
23 dispute. Defendant, Anthony L. Hargis, opposes the motion for summary judgment and moves
24 pursuant to Federal Rule of Civil Procedure 56(f) for a continuance of the consideration of the
25 motion for summary judgment on the grounds that Defendant has not had sufficient opportunity
26 to conduct discovery in this matter. After considering the moving, opposing, and replying
27 papers, and for the reasons set forth below, the Court GRANTS the motion for summary
28 judgment and DENIES the motion to continue the matter.

1 **I. BACKGROUND**

2 The United States brought this action under 26 U.S.C. § 7408 to enjoin Mr. Hargis from
3 engaging in activity subject to penalty under 26 U.S.C. § 6700, such as organizing or selling a
4 plan or arrangement and making a statement regarding the tax benefits of participating in the
5 plan or arrangement which Mr. Hargis knows to be false or fraudulent. Compl. ¶ 2. Mr. Hargis
6 operates a private bank as Anthony L. Hargis & Co. (“ALH & Co.”). Plaintiff’s Statement of
7 Uncontroverted Material Facts [hereinafter UF], Ex. 9, 037. Mr. Hargis promotes his private
8 banking services through the use of a website, <http://www.anthonyhargis.com>, which offers
9 customers a purportedly private banking system as an alternative to the federal reserve system
10 and also offers “legal arguments to demonstrate the unconstitutionality of the Internal Revenue
11 Code.” UF, Ex. 1.

12 Mr. Hargis offers his private banking services as a way for his customers to have “just a
13 little bit more privacy.” UF, Ex. 9, 039. When asked to identify from what his customers have
14 privacy, he responded:

15 I woke up one day about 30-35 years ago and decided that this
16 country is occupied by thieves, said we’ve got a nation out there that
17 is cannibalizing our children. If you measure the amount of the
18 cannibalization by the national debt. The national debt is a process
19 by which one generation cannibalizes the next generations. We’ve
20 got enough national debt out there to cannibalize the next 20
21 generations of Americans. A prime instrument that is used to
22 cannibalize our children is the Federal Reserve System.

23 UF, Ex. 9, 040. But Mr. Hargis acknowledges that his customers use his services to obtain
24 privacy for various reasons by stating that some of his customers “want to hide money from their
25 wives, some their creditors, some the tax collector.” *Id.* Additionally, Mr. Hargis’ website
26 promotes his private banking services as follows: “The most comprehensive and subtle means by
27 which people are enslaved is effected by central banking. As long as we continue using Federal
28 Reserve notes and Federal Reserve bank accounts, we continue to feed the bandits of mankind.”

1 UF, Ex. 2, 004. The website also states that the Federal Income Tax “enriches domestic robbers
2 at the expense of everyone else.” UF, Ex. 4, 010.

3 Mr. Hargis described the way in which his private banking system works in an interview
4 with Internal Revenue Agent Shereen Hawkins. UF, Ex. 9, 040. Customers make deposits with
5 ALH & Co. by either depositing their own funds or requesting that payments intended for them
6 be made directly to “Anthony L. Hargis” or “A.L.H.,” or Mr. Hargis’ affiliate “Leon Steinhardt”
7 or “L.R.S.” UF, ¶ 11. The customer receives a receipt for his or her deposits. UF, Ex. 9, 042.
8 The checks used to deposit funds into ALH & Co. for any particular customer do not generally
9 bear that customer’s name. Instead, the checks bear a handwritten number in the upper right-
10 hand corner, and that number identifies the customer. UF, Ex. 9, 043. Of the funds deposited by
11 customers, ALH & Co. deposits ten to twenty percent of the funds into banks participating in the
12 federal reserve system and invests the remainder in gold and other types of investments. UF, Ex.
13 9, 040. The customer can withdraw funds from ALH & Co. upon paying a fee and providing
14 one or two days notice. UF, Ex. 9, 042. Also, ALH & Co. directly pays its customers’ monthly
15 bills based on information provided to ALH & Co. by the customer. UF, Ex. 9, 044.

16 The IRS has identified 257 customers of ALH & Co., including Mr. Hargis and his
17 affiliate Mr. Steinhardt, based on the identification numbers placed on the checks. The
18 government has specifically named twenty-seven customers of ALH & Co. who have
19 outstanding federal tax debts, have failed to file federal tax returns, or are currently under audit.
20 UF ¶¶ 19-129. The IRS’s investigation reveals that ALH customers have incurred federal tax
21 debts ranging from \$1,291 to \$430,388, for a total tax debt of \$2,041,697. UF ¶ 130.

22 The government filed this action on March 9, 2004, seeking an injunction against Mr.
23 Hargis pursuant to 26 U.S.C. § 7408 for alleged violation of 26 U.S.C. § 6700. On July 23,
24 2004, Mr. Shawn R. Perez was substituted as counsel in the place of Mr. Hargis who had
25 previously been representing himself. On August 9, 2004, this Court granted a preliminary
26 injunction against Mr. Hargis, specifically finding that Mr. Hargis promoted and sold
27 participation in ALH & Co.; that ALH & Co. constitutes a plan or arrangement under 26 U.S.C.
28 § 6700; that Mr. Hargis has not made a direct statement concerning the tax benefits of

1 participation in ALH & Co., but that Mr. Hargis directly promotes privacy as an advantage of
2 ALH & Co. and implicitly links privacy to privacy from the United States government and the
3 Internal Revenue Service, as well as the non-payment of taxes, in a number of ways; that the
4 promotion of the ability to conceal funds from the United States government and the Internal
5 Revenue Service in order to facilitate non-payment of taxes constitutes promotion of a tax
6 benefit under 26 U.S.C. § 6700; that Hargis knew or had reason to know that concealment of
7 funds from the United States government and the Internal Revenue Service does not provide a
8 legitimate tax benefit to his customers; that statements concerning the concealment of funds
9 were material; and that a preliminary injunction was necessary to prevent further recurrence of
10 the conduct described. On September 10, 2004, counsel for the United States met with counsel
11 for Mr. Hargis to discuss the instant motion for summary judgment. On November 3, 2004, the
12 United States filed the instant motion for summary judgment.

13 **II. SUMMARY JUDGMENT STANDARD**

14 Summary judgment is proper if “the pleadings, depositions, answers to interrogatories,
15 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as
16 to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed.
17 R. Civ. P. 56(c).

18 The Court must view the facts and draw inferences in the manner most favorable to the
19 non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 994 (1962).
20 However, the existence of some alleged factual dispute between the parties will not defeat an
21 otherwise properly supported motion for summary judgment; to defeat the motion, the non-
22 moving party must affirmatively set forth facts showing there is a genuine issue for trial.
23 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S. Ct. 2505, 2510 (1986). The
24 moving party bears the initial burden of demonstrating the absence of a genuine issue of material
25 fact for trial. *Id.* at 256, 106 S. Ct. at 2514. When the non-moving party bears the burden of
26 proving the claim or defense, the moving party can meet its burden by pointing out the absence
27 of evidence of a genuine issue of material fact from the non-moving party. *Musick v. Burke*, 913
28 F.2d 1390, 1394 (9th Cir. 1990). The moving party need not disprove the other party’s case.

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-25, 106 S. Ct. 2548, 2553-54 (1986).

2 When the moving party meets its burden, the “adverse party may not rest upon the mere
3 allegations or denials of the adverse party’s pleading, but the adverse party’s response, by
4 affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is
5 a genuine issue for trial. If the adverse party does not so respond, summary judgment, if
6 appropriate, shall be entered against the adverse party.” Fed. R. Civ. P. 56(e). “The mere
7 existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the
8 jury could reasonably find for [the opposing party].” *Anderson*, 477 U.S. at 252, 106 S. Ct. at
9 2512.

10 Rule 56(e)’s requirement that the nonmoving party set forth specific facts showing that
11 there is a genuine issue for trial is qualified by Rule 56(f)’s provision that “summary judgment
12 be refused where the nonmoving party has not had the opportunity to discover information that is
13 essential to his opposition.” *Anderson*, 477 U.S. at 250 n.5, 106 S. Ct. at 2511 n.5. Rule 56(f)
14 states:

15 Should it appear from the affidavits of a party opposing the motion
16 that the party cannot for reasons stated present by affidavit facts
17 essential to justify the party’s opposition, the court may refuse the
18 application for judgment or may order a continuance to permit
19 affidavits to be obtained or depositions to be taken or discovery to be
20 had or may make such other order as is just.

21 Fed. R. Civ. P. 56(e). In order to obtain a continuance under 56(f), the party seeking additional
22 discovery must “proffer sufficient facts to show that the evidence sought exists . . . and that it
23 would prevent summary judgment.” *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912, 921 (9th
24 Cir. 1996). Further, the Court may deny further discovery if the movant has failed diligently to
25 pursue discovery in the past. *Id.*

26 III. ANALYSIS

27 In order to obtain a permanent injunction against Mr. Hargis under 26 U.S.C. § 7408, the
28 government must show that Mr. Hargis engaged in conduct that violates 26 U.S.C. § 6700 and

1 that injunctive relief is appropriate to prevent recurrence of such conduct. In order to establish a
2 violation of 26 U.S.C. § 6700, the government must show that Mr. Hargis (1) organized or sold
3 or participated in the organization or sale of an entity, plan, or arrangement; (2) made or caused
4 to be made false or fraudulent statements concerning “the allowability of any deduction or credit,
5 the excludability of any income, or the securing of any other tax benefit” to be derived from
6 participating in the entity, plan, or arrangement; (3) knew or had reason to know that the
7 statements made were false or fraudulent as to any material matter. 26 U.S.C. § 6700.

8 In support of its motion for summary judgment, the United States has submitted the same
9 exhibits submitted in support of its motion for a preliminary injunction. *Compare* UF, Exs. 1-26
10 *with* Decl. of Shereen Hawkins, Exs. 1-26. Under Rule 65, “any evidence received upon an
11 application for a preliminary injunction which would be admissible upon the trial on the merits
12 becomes part of the record on the trial and need not be repeated upon the trial.” Fed. R. Civ. P.
13 65(a)(2). Although courts generally hold an evidentiary hearing before converting a preliminary
14 injunction into a permanent injunction, “such a hearing is not necessary where no triable issues
15 of fact are involved.” *United States v. McGee*, 714 F.2d 607, 613 (6th Cir. 1983). On the basis
16 of those exhibits submitted in support of the motion for a preliminary injunction as well as the
17 instant motion, this Court granted a preliminary injunction in favor of the United States. In
18 granting the preliminary injunction, the Court specifically found that on the basis of the evidence
19 presented by the United States it was more likely than not that Mr. Hargis had violated 26 U.S.C.
20 § 6700 and that preliminary injunction was proper.

21 On the motion for summary judgment, the evidence submitted by the government meets
22 the government’s initial burden of demonstrating the absence of a genuine dispute of material
23 fact. With respect to the first element of a violation of § 6700, Mr. Hargis admits that he is
24 operating a private bank, ALH & Co., and has promoted and sold participation in that private
25 bank to investors and shareholders. *See* UF, Ex. 9, 037-038. With respect to the second element
26 of a violation of § 6700, the government has demonstrated that although Mr. Hargis has not
27 made any direct statement concerning the tax benefits of participating in ALH & Co., Mr. Hargis
28 has touted privacy as the main benefit of participating in ALH & Co. and he implicitly links that

1 privacy as privacy from the United States government and the Internal Revenue Service. *See*
2 UF, Ex. 9, 040. Mr. Hargis has acknowledged that some of his customers use his services to
3 conceal money from tax authorities:

4 We're not, we do not apply these assets to the destruction of this
5 country. That what I'd like to think. That is the reason that I started
6 this company. That's the reason that I would like all my customers
7 to patronize the company for, but they all have their different
8 reasons. Some want to hide money from their wives, some the
9 creditors, some the tax collector.

10 *Id.* Mr. Hargis stated that he does not believe that failing to file a tax return or pay taxes is
11 unlawful or unethical and he indicated that he would not assist law enforcement authorities in
12 enforcing federal tax laws. *Id.* at Ex. 9, 044.¹ Mr. Hargis' website,
13 <http://www.anthonyhargis.com>, which is used to promote his private banking service,

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15 ¹ The government's Exhibit 9 is a transcript of a taped interview with Mr. Hargis
16 that occurred on March 5, 2003. During that interview, Mr. Hargis indicated that if any
17 of his customers were engaged in criminal activity or wrongdoing he would assist law
18 enforcement authorities in stopping the criminal activity, but he expressly excluded
19 failing to file tax returns:

19 Mr. Hargis: . . . If you can demonstrate to me that any
20 of my customers are engaged in criminal
21 activity or conducting any scam, I will
22 cooperate with you 110%. I will do
23 everything, I want to put these people
24 down. . . .

23 Mr. Hargis: If they were engaged in criminal activity
24 or anything that's unethical . . .

24 Shereen Hawkins: And that doesn't include not filing tax
25 returns?

25 Mr. Hargis: Right, I regard income tax as a
26 declaration of war against the American
27 people. But you'll hear about that.

28 UF, Ex. 9, 044.

1 prominently argues that the federal income tax is unconstitutional. UF, Ex. 3, 006. The same
2 website describes ALH & Co.'s private banking services as such: "The most comprehensive and
3 subtle means by which people are enslaved is effected by central banking. As long as we
4 continue using Federal Reserve notes and Federal Reserve bank accounts, we continue to feed
5 the bandits of mankind." UF, Ex. 2, 004. Mr. Hargis' website also states that the Federal
6 Income Tax "enriches domestic robbers at the expense of everyone else." UF, Ex. 4, 010. These
7 facts, taken together, are sufficient to establish that Mr. Hargis has represented to his customers
8 that they could secure a tax benefit by reason of their participation in ALH & Co. *See Nat'l*
9 *Commodity & Barter Assoc. / Nat'l Commodity Exch. v. United States*, 843 F. Supp. 655, 664-65
10 (D. Colo. 1993), *aff'd*, 42 F.3d 1406 (10th Cir. 1994), *cert. denied*, 516 U.S. 807, 116 S. Ct. 52
11 (1995). Finally, with respect to the third element of a violation of § 6700, the government has
12 established that Mr. Hargis knew that his private banking system could not afford investors or
13 customers privacy or protection from the I.R.S.: "Generally, I regard it as impossible to cheat at
14 [taxes]." UF, Ex. 9, 041. Thus, the United States has met its initial burden of demonstrating that
15 no genuine dispute of material fact exists for trial.

16 Mr. Hargis has not affirmatively set forth any facts that demonstrate that a genuine
17 dispute of fact exists. But Mr. Hargis has attempted to show that the Court should deny
18 summary judgment at this time and permit Mr. Hargis to conduct discovery prior to ruling on the
19 government's motion for summary judgment. Thus, the issue before the Court is whether Mr.
20 Hargis is unable to present by affidavit facts essential to justify his opposition, and whether Mr.
21 Hargis has proffered sufficient facts to show that Mr. Hargis seeks existing evidence that would
22 prevent summary judgment. Additionally, Mr. Hargis' prior diligence in attempting to obtain the
23 evidence sought is relevant to the Court's analysis.

24 **A. Evidence Sought Would Not Prevent Summary Judgment**

25 Mr. Hargis seeks "the deposition testimony of District Counsel Attorney Kevin Coy,
26 District Counsel Attorney Nicholas Richards, Internal Revenue Service Group Manager Dianne
27 Kisselberg and Revenue Agent Shereen Hawkins." Def. Opp. Brief, 8-9. These are all
28 government representatives who were present at the interview with Mr. Hargis on March 5,

1 2003. UF, Ex. 9, 034.

2 The first stated goal of the discovery sought is to demonstrate that the exhibits submitted
3 by the government do not contain any statement by Mr. Hargis that was known to him to be false
4 or fraudulent with respect to the “excludability of income.” But the discovery Mr. Hargis seeks
5 is not germane to achieving this goal. The determination of whether the government’s exhibits
6 prove that Mr. Hargis is violating § 6700 is a legal conclusion, which is properly made by the
7 Court, not by witnesses.

8 Mr. Hargis also hopes that deposing the witnesses named above will show that the
9 government “will be unable to identify any other extrinsic third party statements, documents, or
10 other memorabilia they considered which would have allowed them to conclude that Anthony L.
11 Hargis’ [sic] lied in his statements in plaintiff’s Exhibit 9 at pages 038, 039 and 040.” Def. Opp.
12 Brief at 9. Although it is not immediately clear to the Court which particular statements Mr.
13 Hargis is referring to, Mr. Hargis would not be able to defeat the motion for summary judgment
14 simply by indicating a lack of further evidence favorable to the government beyond what the
15 government has already submitted. The government has met its initial burden and need not
16 produce any further evidence until Mr. Hargis affirmatively puts forth evidence demonstrating
17 the existence of a genuine dispute of material fact.

18 Mr. Hargis also seeks additional time to complete discovery in order to show that “the 23
19 separately named individuals and cancelled checks, Exhibits 10-26, . . . do not reveal any
20 specific identifier proving that these were deposits into these individuals’ accounts maintained
21 by ALH,” Def. Opp. Brief, 10, and that the government’s claim that the named individuals failed
22 to file federal tax returns and owe federal taxes is unsubstantiated and lacking the requisite
23 notices. *Id.* Here, Mr. Hargis has failed to demonstrate how deposing Internal Revenue Service
24 Agents and District Counsel Attorneys is necessary to prove that the deposits at issue were not
25 deposits into the accounts of the named individuals or that the individuals named have not
26 actually failed to file tax returns or pay taxes. Mr. Hargis has apparently made no effort to
27 depose a single ALH & Co. customer of those named by the government as failing to file tax
28 returns and incurring federal tax debts. Further, Mr. Hargis himself has not offered any

1 affirmative proof with respect to the checks addressed to "ALH" despite the fact that he owns
2 and operates ALH & Co. In other words, because Mr. Hargis has failed to provide the Court
3 with the evidence relating to ALH & Co. customers to which Mr. Hargis personally has access,
4 he cannot now escape summary judgment by arguing that he has not been able to obtain
5 evidence from government witnesses.

6 **B. Lack of Diligence**

7 Although the reasons cited above are sufficient to defeat Mr. Hargis' motion for a
8 continuance under Rule 56(f), the Court also notes the lack of diligence Mr. Hargis has exercised
9 in preparing to oppose the government's motion for summary judgment. Mr. Hargis and his
10 counsel knew that the government intended to file this motion as of the conference of the parties
11 on September 10, 2004. Although the Local Rules require that the conference occur only twenty
12 days prior to the filing of the motion, the government waited almost two months to file the
13 instant motion. *See* L.R. 7-3. Further, Mr. Hargis did not notify the Court that he had not yet
14 accomplished the discovery sought until well over two months after learning of the
15 government's intention to move for summary judgment. Between September 10, when Mr.
16 Hargis learned of the government's intention to move for summary judgment, and November 23,
17 when Mr. Hargis filed his request for a continuance, Mr. Hargis apparently made no effort to
18 conduct formal or informal discovery and made no effort to obtain this Court's assistance with
19 respect to obtaining the discovery desired. This lack of diligence further indicates that Mr.
20 Hargis is not entitled to the continuance sought. *See Nidds*, 113 F.3d at 921.

21 **IV. DISPOSITION**

22 For the foregoing reasons, the government's motion for summary judgment is GRANTED
23 and Mr. Hargis' motion for a continuance is DENIED.

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1 IT IS SO ORDERED.

2 DATED: December 6, 2004

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David O. Carter

DAVID O. CARTER
United States District Judge

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