

R

1 DEBRA W. YANG
 2 United States Attorney
 3 EDWARD M. ROBBINS, JR.
 4 Assistant United States Attorney
 5 Chief, Tax Division
 6 ROBERT F. CONTE (SBN 157582)
 7 Assistant United States Attorney
 8 Federal Building Room 7211
 9 300 North Los Angeles Street
 10 Los Angeles, California 90012
 11 Telephone: (213) 894-6607
 12 Facsimile: (213) 894-0115

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8 ANNE NORRIS GRAHAM
 9 Trial Attorney, Tax Division
 10 U.S. Department of Justice
 11 Post Office Box 7238
 12 Ben Franklin Station
 13 Washington, D.C. 20044
 14 Tel. (202) 353-4384
 15 Fax (202) 514-6770

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Attorneys for United States

THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDUARDO MARMOLEJO RIVERA,

Defendant.

No. CV 03-2520-GHK(JWJx)

~~proposed~~
Default Judgment and
Permanent Injunction

NOTE: CHANGES TO ORDER

Upon motion for default judgment and permanent injunction by plaintiff, the United States of America, the Court makes the following findings of fact and conclusions of law and enters this default judgment and permanent injunction.

I. Findings of Fact

Based on the evidence submitted by the United States with its motion for default judgment and permanent injunction, the Court finds as follows:

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Default Judgment and
Permanent Injunction

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United States v. Rivera
No. CV 03-2520-GHK(JWJx)

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1 1. Eduardo Rivera prepares, promotes, and sells abusive tax schemes
2 purporting to exempt his customers from federal income taxation. He markets his
3 schemes, which he describes as “legal documentation, educational materials, and
4 workshops to educate, inspire and assist the people in their desire to opt out of the
5 voluntary tax system with the least amount of risk,” through his website
6 www.EdRivera.com. Cantrell Decl., Ex. A at 13-14 (Docket Entry No. 13).

7 2. Rivera claims on his website that private employers are not required to
8 withhold federal taxes from their employees’ wages. He urges employers to stop
9 withholding federal taxes, and warns them that doing so “creates a real liability for
10 the private employer.” *Id.* at 73-80.

11 3. On his website, Rivera states that “[i]f you do not file [U.S. Individual
12 Income Tax] returns, you have no federal income tax liability. There is no other
13 means by which [you] . . . can be subject to or liable for any income tax.” *Id.* at
14 188.

15 4. Rivera sells opinion letters consisting of frivolous arguments such as that
16 the federal income tax is voluntary, that Americans employed in the private sector
17 are exempt from federal income tax and do not need to file federal returns, and
18 that the IRS has no authority to assess or collect taxes. He charges five different
19 rates for his opinion letters: \$100 for a single letter delivered via e-mail, if paid
20 for electronically; \$150 for a single letter delivered via mail, if paid for by postal
21 money order; \$500 for four letters, including research and a motion to dismiss a
22 federal indictment; \$1,000 for four letters, with research and a motion to dismiss a
23 federal indictment, plus documents “to establish business and personal non-
24 liability;” and \$2,000 for “a complete package of [his] opinion letters, agent
25 letters, lien, levy, law suit and employer kit.” *Id.* at 13.

1 5. Rivera markets his opinion letters for use in avoiding criminal charges,
2 for submission to the IRS, and for persuading bankers to resist IRS collection
3 efforts. *Id.* He advises customers to rely on his opinion letters in deciding to
4 “opt[] out” of payroll withholding taxes. *Id.* He further explains that the
5 purpose of . . . [his] opinion letters . . . is to provide a reliance defense
6 for the recipient should there be a need to establish that the matters of
7 fact and law expressed in the opinion letter were relied on by the
8 person for whom the letter was written.

9 *Id.* at 57.

10 6. Rivera drafts letters for his customers to give to their employers
11 demanding that they stop withholding taxes. *Id.* at 82-84.

12 7. Rivera customers Gale and Judy Webb sent the IRS two of his opinion
13 letters, both dated February 26, 2003. Mendenhall Decl., Exs. A-B (Docket Entry
14 No. 14). In these letters, Rivera claims that because the Webbs failed to file tax
15 returns for 1998, 1999, or 2000, they “have no legal duty to make and file a U.S.
16 Individual Income Tax Return and pay the tax on those returns for any years in the
17 future.” *Id.*, Ex. A at 1. “I can assure you,” he writes, “that unless you are
18 employed by the government of the United States you are not liable for any federal
19 income tax” and are not required to file a tax return. *Id.*, Ex. B at 2. He
20 recommends that the Webbs “share a copy” of his opinion letters with the IRS and
21 “demand that [the IRS] either produce evidence that you are engaged in an
22 excisable activity or cease and desist from making such claims on your income.”

23 *Id.* at 11. He advises the Webbs to

24 aggressively pursue a program of asset protection. Among the
25 various programs for asset protection are transferring title to your
26 business interests and other property (and even the possession, if you
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1 so choose) into trust, or a corporation or other legal entity, keeping
2 your assets off-shore, and the like. An additional benefit is that if the
3 government can't prove that you have a substantial amount of
4 income, or if you lack reachable assets, the likelihood that they will
5 pursue you is greatly diminished.

6 *Id.* at 12.

7 8. Rivera posts sample opinion letters on his website. In one, which he
8 recommends a customer send to the IRS, Rivera states that his
9 critique of [an IRS notice of intent to levy] will assist the IRS
10 employee that sent this to you in making an early determination that
11 you do not have any liability of any kind. . . . If this matter does
12 progress, it will be necessary for the [IRS] employee to identify, with
13 specificity and particularity, the exact nature and identification of the
14 government to which this Department of the Treasury and Internal
15 Revenue Service pertains.

16 Cantrell Decl., Ex. A at 57 (Docket Entry No. 13). He concludes that "I.R.C.
17 Section 6331 does not apply to those in the private sector and even if it did the
18 only way a federal income tax liability can be created is for a person to make a
19 U.S. Individual Income Tax Return that creates one." *Id.* at 60. "All federal
20 income taxes . . . have . . . to be voluntary to be legal." *Id.*

21 9. For \$3,500 a year, Rivera represents customers before the IRS. *Id.* at 14.
22 He advertises that his representation consists of a "power of attorney so that [he]
23 can respond to all IRS notices and establish in your record that you have no
24 liability." *Id.* He also sends the IRS Freedom of Information Act (FOIA)
25 requests, demanding copies of "what the IRS has put on your file." *Id.*

1 10. Touting the effectiveness of his representation service on his website,
2 Rivera quotes a customer as declaring “victory . . . I haven’t heard anything from
3 the IRS since you sent your letter to them. Thanks!” *Id.* at 11.

4 11. Rivera begins his representation by sending the IRS an IRS Form 2848,
5 Power of Attorney and Declaration of Representative, stating that the purpose of
6 his representation is to “DETERMINE NON-LIABILITY FOR ALL FEDERAL
7 TAXATION.” Gornik Decl., Ex. A (Docket Entry No. 14); Spencer Decl., Ex. B
8 (Docket Entry No. 14); Ciarrocchi Decl., Ex. B (Docket Entry No. 14); Rosa
9 Decl., Ex. A (Docket Entry No. 14).

10 12. Rivera sent Revenue Officer Arlie Alexander a “demand for
11 [Alexander’s] personal written authority” to collect taxes from Rivera’s customer
12 Scherer Farms, Inc. Alexander Decl., Ex. C (Docket Entry No. 14). He claimed
13 that Scherer Farms, Inc. “is a nonfiler . . . [and] has ceased to volunteer to be
14 involved in federal income taxes.” *Id.*, Ex. A at 5.

15 13. For his customer Sherri Tenpenny, Rivera complained to the IRS that
16 [Revenue Officer Thomas] Spencer, apparently completely unaware
17 that Ms. Tenpenny was not an individual who receives federal
18 income, took it upon himself to alter or change the official Individual
19 Master File to indicate that she had a federal income tax liability.
20 [Tenpenny] owes no taxes.

21 Spencer Decl., Ex. C at 7, 10 (Docket Entry No. 14).

22 14. On behalf of customer Sikma Plumbing Company, Inc., Rivera wrote
23 several letters to Revenue Officer David Ciarrocchi, “demand[ing] . . .
24 [Ciarrocchi’s] personal written authority to . . . [p]erform any claimed official
25 duty.” Ciarrocchi Decl. ¶¶ 2-4, 7-9, Ex. A at 3 (Docket Entry No. 14). Rivera
26 asserted that Sikma Plumbing was not liable for federal income tax and that he had
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1 “steadfastly sought to establish [Sikma Plumbing’s] status as a nonfiler with the
2 Internal Revenue Service.” *Id.*, Ex. E at 17. He claimed that Sikma Plumbing
3 “has revoked all prior income tax returns . . . and . . . will never again make
4 himself [sic] liable for any state or federal income tax by making a return.” *Id.* at
5 15. His customers do not “elect to pay [the federal income tax] and there is no
6 power or authority in the democracy or republic that can force them to pay.” *Id.*,
7 Ex. F at 26.

8 15. For his customers Robert P. and Nancy A. Louthen, Rivera sent the IRS
9 several letters claiming that they were entitled to a federal tax refund and
10 challenging IRS attempts to collect taxes from them. Rosa Decl., Exs. A-F
11 (Docket Entry No. 14). In these letters, Rivera argued that there is “no public law
12 that imposes an income tax or any other tax on or measured by income, wages or
13 earnings.” *Id.*, Ex. A at 5.

14 16. Rivera claims on his website that violations of the internal revenue laws
15 are not crimes, and that he can prove “the non-existence of tax crimes.” Cantrell
16 Decl., Ex. A at 143. He also claims that people cannot be convicted of tax crimes
17 because federal district courts do not have any judicial power over people living in
18 the fifty states. *Id.* at 308.

19 17. Rivera has recently announced in a newsletter that he will modify his
20 program by selling his opinions in book form, rather than in letter form, and by
21 claiming that federal taxes are “consensual,” rather than “voluntary.” 2d Cantrell
22 Decl., Ex. A at 5-7 (Docket Entry No. 17). He acknowledges, however, that
23 “[t]here is . . . little difference between consensual and voluntary.” *Id.* at 6.

24 18. Rivera is seeking to expand his operation by recruiting attorneys to join
25 him in his “profitable and exciting business.” Cantrell Decl., Ex. A at 334-35
26 (Docket Entry No. 13). Attorneys associated with him write letters and hold
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1 meetings, seminars, and workshops for employers, tax professionals, and the
2 general public to “reveal the truth” that Americans are not liable for federal taxes.
3 *Id.* at 335. Rivera supplies attorneys with a “legal package . . . complete with
4 everything that you need to begin this exciting and profitable business,” including
5 IRS forms and “responses needed for various letters and notices that the IRS is
6 likely to send to you.” *Id.* He even provides an assistant “who will come into
7 your office and set up your files and computer with everything you need to get
8 started.” *Id.*

9 19. In his website and letters, Rivera makes ^{at least the following} ~~numerous~~ false and fraudulent
10 statements concerning the internal revenue laws and the effectiveness of his tax
11 schemes; ~~including the following~~

- 12 (a) only federal employees are subject to federal income tax;
13 (b) private-sector employers are not required to withhold federal taxes
14 from their employees’ wages;
15 (c) federal taxes are voluntary or consensual;
16 (d) filing federal tax returns is voluntary;
17 (e) the IRS does not have the authority to assess or collect taxes;
18 (f) federal income tax can be avoided by not filing federal income tax
19 returns;
20 (g) federal tax liability can be avoided by relying on Rivera’s opinions;
21 (h) Rivera’s letters will cause the IRS to cease assessment or collection
22 activities;
23 (i) Rivera’s letters will have any effect upon IRS liens and levies;
24 (j) Rivera can establish in IRS records that his customers have no federal
25 tax liability;
26 (k) violation of the internal revenue laws is not a crime; and

1 (l) people cannot be convicted of a tax crime because no federal district
2 court has jurisdiction over them.

3 20. Customers who follow Rivera's advice do not file federal tax returns or
4 pay federal taxes. Rivera directs his customers to resist IRS examination and
5 collection efforts with copies of his opinion letters, and writes the IRS on behalf of
6 his customers. While his letters are frivolous on their face, the IRS must still
7 expend time and resources processing them. Mendenhall Decl. (Docket Entry No.
8 14); Alexander Decl. (Docket Entry No. 14); Spencer Decl. (Docket Entry No.
9 14); Ciarrocchi Decl. (Docket Entry No. 14); Rosa Decl. (Docket Entry No. 14).

10 21. Rivera is causing and will continue to cause substantial revenue losses
11 to the United States. The IRS has identified six customers on whose behalf Rivera
12 is attempting to block IRS examination and collection procedures; those six
13 customers have unpaid assessments or audit deficiencies totaling \$9,580,771.71 in
14 tax, interest, and penalties. Yung Decl. ¶¶ 8-9. The IRS will have to devote
15 substantial time and resources simply to identify Rivera's customers, and may be
16 unable to detect and recover all the revenue loss attributable to Rivera.

17 22. The harm caused by Rivera is ongoing and immediate. Through his
18 website, Rivera is currently promoting and selling his abusive tax schemes. He
19 has drafted opinion letters as recently as February 26, 2003. Mendenhall Decl.,
20 Exs. A-B (Docket Entry No. 14). His recruitment of other attorneys to join his
21 "profitable and exciting business," Cantrell Decl., Ex. A at 334-35 (Docket Entry
22 No. 13), demonstrates that absent an injunction, Rivera will seek to expand his
23 operation. Similarly, his recent announcement of slight changes to his promotion
24 show that he intends to continue his abusive tax schemes indefinitely. 2d Cantrell
25 Decl., Ex. A at 5, 7 (Docket Entry No. 17). Until Rivera is enjoined, the United
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1 States will continue to lose revenue, as he enlists more taxpayers with his active
2 promotion.

3 23. Rivera is a licensed attorney. Cantrell Decl., Ex. A at 5 (Docket Entry
4 No. 13).

5 24. Rivera has stated in his newsletter that he has "decided to let the Office
6 of the U.S. Attorney attempt to take a default in its suit." 2d Cantrell Decl., Ex. A
7 at 4 (Docket Entry No. 17).

8 25. Rivera, having failed to answer or otherwise respond the United States'
9 complaint, is in default. Default was entered against him on May 9, 2003.

10 26. Rivera is neither an infant nor an incompetent, and he is not in the
11 military. Cantrell Decl., Ex. A at 6.

12 27. The United States served Rivera with notice of its motion for default
13 judgment and permanent injunction. Graham Decl. ¶ 5 (Docket Entry No. 15).

14 II. Conclusions of Law

15 1. Where a party fails to plead or otherwise defend against a complaint, ~~and~~ 12
16 after entry of default, default judgment may be entered against ~~such~~ him. Fed. R.
17 Civ. P. 55.

18 2. Because Rivera has failed to plead or otherwise defend against the
19 United States' complaint, default judgment may be entered against him.

20 3. In this district, motions for default judgment must set forth (1) when and
21 against which party the default was entered; (2) the identification of the pleading
22 to which default was entered; (3) whether the defaulting party is an infant or
23 incompetent person, and if so, whether that person is adequately represented; (4)
24 that the Soldiers' and Sailors' Civil Relief Act of 1940 does not apply; and (5) that
25 notice of the application has been served on the defaulting party, if required.

26 4. The United States' motion for default judgment met these requirements.

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1 5. In considering whether to enter default judgment, this Court considers
2 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
3 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
4 stake in the action, (5) the possibility of a dispute concerning material facts,
5 (6) whether the default was due to excusable neglect, and (7) the strong policy
6 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

7 6. The United States will be prejudiced if default judgment is not entered.
8 Rivera is causing substantial harm to the United States by advising people not to
9 pay their federal income taxes, not to withhold taxes from their employees' wages,
10 and not to file federal tax returns, and by representing people before the IRS,
11 where he obstructs IRS examination and collection procedures. To deny the
12 United States' motion for default judgment would leave the United States without
13 a remedy.

14 7. The United States' claims against Rivera are meritorious and are
15 sufficiently set forth in the United States' complaint. The evidence submitted with
16 the United States' motion establishes that Rivera is subject to injunction under
17 both I.R.C. §§ 7408 and 7402(a).

18 8. In order to obtain a permanent injunction under I.R.C. § 7408, the United
19 States must show that (1) Rivera engaged in conduct subject to penalty under
20 §§ 6700 or 6701; and (2) injunctive relief is appropriate to prevent the recurrence
21 of such conduct.

22 9. To establish a violation of § 6700 warranting an injunction under § 7408,
23 the United States must show that: (1) Rivera organized or sold, or participated in
24 the organization or sale of, an entity, plan, or arrangement; (2) Rivera made or
25 caused to be made, false or fraudulent statements concerning the tax benefits to be
26 derived from the entity, plan, or arrangement; (3) Rivera knew or had reason to
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1 know that the statements were false or fraudulent; (4) the false or fraudulent
2 statements pertained to a material matter; and (5) an injunction is necessary to
3 prevent recurrence of this conduct. *See United States v. Estate Pres. Servs.*, 202
4 F.3d 1093, 1098 (9th Cir. 2000).

5 10. Rivera organized and sold a tax plan or arrangement that he describes
6 on his website as "legal documentation, educational materials, and workshops to
7 educate, inspire and assist the people in their desire to opt out of the voluntary tax
8 system with the least amount of risk." Cantrell Decl., Ex. A at 13-14 (Docket
9 Entry No. 13). Using the Internet to market his promotion, Rivera sets prices
10 starting at \$100 for a single opinion letter and going up to \$3,500 a year for
11 representation before the IRS. Cantrell Decl., Ex. A at 13-14 (Docket Entry No.
12 13).

13 11. Rivera made or caused to be made false and fraudulent statements
14 concerning the tax benefits to be derived from his tax plan or arrangement. He
15 advertises that his opinion letters and representation services will assist customers
16 in "opt[ing] out of the voluntary tax system with the least amount of risk." *Id.* at
17 13. He claims that he will "establish in [his customers' IRS] record[s] that [they]
18 have no liability," and that by relying on his letters, his customers can avoid
19 paying federal income taxes and can avoid IRS examination and collection efforts.
20 *Id.* at 14. In his website and letters, Rivera makes ^{at least the following} ~~numerous~~ false and fraudulent
21 statements concerning the internal revenue laws and the effectiveness of his tax
22 schemes; ~~including the following:~~

- 23 (a) only federal employees are subject to federal income tax;
24 (b) private-sector employers are not required to withhold federal taxes
25 from their employees' wages;
26 (c) federal taxes are voluntary or consensual;

- 1 (d) filing federal tax returns is voluntary;
- 2 (e) the IRS does not have the authority to assess or collect taxes;
- 3 (f) federal income tax can be avoided by not filing federal income tax
- 4 returns;
- 5 (g) federal tax liability can be avoided by relying on Rivera's opinions; ^{as stated therein r/on his} ~~of his~~ ^{letters}
- 6 (h) Rivera's letters will cause the IRS to cease assessment or collection
- 7 activities;
- 8 (i) Rivera's letters will have any effect upon IRS liens and levies;
- 9 (j) Rivera can establish in IRS records that his customers have no federal
- 10 tax liability;
- 11 (k) violation of the internal revenue laws is not a crime; and
- 12 (l) people cannot be convicted of a tax crime because no federal district
- 13 court has jurisdiction over them.

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14 12. Rivera has every reason to know that his statements regarding the

15 benefits to be derived from participation in his tax scheme are ~~bogus~~ ^{false}. As he

16 frequently reminds his customers and the recipients of his letters, he is a licensed

17 attorney and has been practicing law for thirty years. Cantrell Decl., Ex. A at 4-8

18 (Docket Entry No. 13); Alexander Decl., Ex. C at 17 (Docket Entry No. 14);

19 Ciarrocchi Decl., Ex. A at 3, E at 15 (Docket Entry No. 14); Mendenall Decl., Ex.

20 B at 11-12 (Docket Entry No. 14). As such, he knows that his frivolous letters

21 will not affect his customer's tax liability or prevent IRS assessment and

22 collection. Even cursory research would reveal that his "opinions" — that private-

23 sector employees are exempt from federal taxation, that the IRS has no authority to

24 assess and collect taxes, and that paying taxes is voluntary — are without merit

25 and have been universally rejected by the courts. *See United States v. Raymond*,

26 228 F.3d 804, 812 (7th Cir. 2000) (characterizing "representations that payment of

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1 income tax is a voluntary activity” as “clearly false”); *United States v. Latham*,
2 754 F.2d 747, 750 (7th Cir.1985) (finding that the contention that “under 26
3 U.S.C. § 3401(c) the category of ‘employee’ does not include privately employed
4 wage earners is a preposterous reading of the statute.”); *Biermann v.*
5 *Commissioner*, 769 F.2d 707 (11th Cir. 1985) (rejecting tax protestor’s arguments
6 that wages are not income, that he is not subject to withholding taxes, and that he
7 is not liable for tax as “patently frivolous” and “warrant[ing] no further
8 discussion.”); *Peth v. Breitzmann*, 611 F. Supp. 50, 53 (E.D. Wis. 1985) (finding
9 that plaintiff’s arguments that, as a private-sector employee, his wages are not
10 subject to federal taxes and withholding are “wrong”); *In re Weatherly*, 169 B.R.
11 555, 560 (Bankr. E.D. Pa. 1994) (“easily” rejecting debtor’s argument that only
12 federal employees are subject to federal income tax).

13 13. Rivera’s false and fraudulent statements strike at the very heart of the
14 internal revenue laws: the obligation to pay tax and file returns, the employer’s
15 obligation to withhold and pay over payroll taxes to the IRS, and the IRS’s
16 authority to assess and collect taxes.

17 14. Accordingly, River is in violation of I.R.C. § 6700.

18 15. I.R.C. § 6701 is violated when a person prepares or assists in the
19 preparation of “any portion of a return, affidavit, claim, or other document,” that
20 he “knows (or has reason to believe) will be used in connection with any material
21 matter” under the internal revenue laws and that he knows will “result in an
22 understatement of the liability for tax.” I.R.C. § 6701.

23 16. Rivera is violating I.R.C. § 6701 with his opinion letters and his letters
24 to the IRS on behalf of his customers. He prepares these letters for his customers
25 to rely on in “opting” out of federal taxes, and to use as a “reliance defense”
26 against the IRS. Cantrell Decl., Ex. A at 13, 57 (Docket Entry No. 13). Thus, he
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1 knows that his letters will be used in connection with a material matter under the
2 I.R.C. — the determination of civil and criminal liability relating to federal income
3 tax — and he knows that his letters will result in an understatement of liability for
4 tax — he claims that his customers have none. Alexander Decl., Ex. A at 5
5 (Docket Entry No. 14); Spencer Decl., Ex. C at 10 (Docket Entry No. 14);
6 Ciarrocchi Decl., Ex. E at 17 (Docket Entry No. 14).

7 17. An injunction under I.R.C. § 7408 is necessary to prevent a recurrence
8 of Rivera's violation of both I.R.C. §§ 6700 and 6701 because he is actively
9 promoting his abusive tax schemes. Absent an injunction, he will only continue
10 his "exciting and profitable business" of luring customers into evading federal
11 income tax. Cantrell Decl., Ex. A at 335 (Docket Entry No. 13). Knowing full
12 well that his claims are ^{false and his arguments are frivolous} mendacious and have been repeatedly rejected by courts, K
13 Rivera is unlikely to discontinue his abusive tax scheme unless he is ordered to do
14 so. He is seeking to expand his promotion by recruiting other attorneys to join
15 him. Even while anticipating that default judgment will be entered against him,
16 Rivera stated in his newsletter that he will continue his promotion with only
17 cosmetic changes: he will sell his opinion letters in book format and change his K
18 claim that taxes are "voluntary" to taxes are "consensual." 2d Cantrell Decl., Ex.
19 A at 5-7 (Docket Entry No. 17).

20 18. Accordingly, the Court finds that Rivera should be permanently
21 enjoined under I.R.C. § 7408 from violating I.R.C. §§ 6700 and 6701.

22 19. In order to obtain a permanent injunction under I.R.C. § 7402(a), the
23 United States must show that an injunction is necessary or appropriate for the
24 enforcement of the internal revenue laws. I.R.C. § 7402(a) grants federal district
25 courts broad authority to issue injunctions and other orders enforcing the internal
26 revenue laws, even where the United States has other remedies available. Because
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1 § 7402(a) explicitly provides that the injunction remedy is “in addition to and not
2 exclusive of” other remedies for enforcing the internal revenue laws, the United
3 States need not establish that it has no adequate remedy at law for an injunction
4 under § 7402(a).

5 20. The United States has shown that Rivera is impeding the IRS’s
6 assessment and collection efforts by advising his customers not to file federal tax
7 returns and not to pay federal taxes. Further, the IRS must expend valuable time
8 and resources in processing Rivera’s frivolous letters. Accordingly, the Court
9 ^{concludes} ~~finds~~ that a permanent injunction under I.R.C. § 7402(a) is necessary and
10 appropriate for the enforcement of the internal revenue laws.

11 21. In addition, a permanent injunction is appropriate under the Ninth
12 Circuit’s permanent injunction standard: there is a likelihood of substantial and
13 immediate irreparable injury if an injunction is not issued, and there are no
14 adequate remedies at law.

15 22. Rivera is causing the United States substantial and immediate
16 irreparable injury. He has stymied the collection of more than \$ 9 million from the
17 six identified customers alone. Yung Decl., ¶¶ 8-9 (Docket Entry No. 14). As he
18 shows no sign of ending his scheme, and indeed is seeking to expand it by
19 recruiting other attorneys to join him, the United States will continue to lose
20 money as long as Rivera is in operation. Given the IRS’s limited resources,
21 identifying and recouping the lost revenue may be impossible.

22 23. The United States has no adequate remedy at law to address the
23 substantial and immediate irreparable harm Rivera is causing. Apart from an
24 injunction, the United States has no means, civilly, of stopping Rivera.

25 24. Accordingly, the Court ^{concludes} ~~finds~~ that Rivera should be permanently
26 enjoined from interfering with the enforcement of the internal revenue laws.

1 25. The United States is not seeking monetary damages here, but is only
2 requesting an injunction against future violations.

3 26. Even if Rivera had answered the complaint, it is unlikely that the
4 material facts would be in dispute. His own words, found on his website and in
5 his letters, provide the bulk of the evidence against him.

6 27. That Rivera is an attorney and was properly served makes it improbable
7 that his default was caused by excusable neglect. Further, he has distributed
8 several newsletters discussing this lawsuit, thus demonstrating beyond any doubt
9 that he is fully cognizant of the complaint and has deliberately chosen not to
10 answer. Cantrell Decl., Exs. B-E (Docket Entry No. 13); 2d Cantrell Decl., Ex. A
11 (Docket Entry No. 17). Recently, he acknowledged in his newsletter that he
12 received the United States motion for default judgment and permanent injunction
13 and had decided to allow the United States to "take a default" against him. 2d
14 Cantrell Decl., Ex. A at 4-5.

15 28. While Rivera's failure to answer the complaint or respond to the United
16 States' motion for default judgment and permanent injunction precludes a decision
17 on the merits, ^{after entertaining arguments from both sides} the United States has produced sufficient evidence with its motion

18 to show that a permanent injunction is warranted. ^{It would be unjust to permit}
^{defendant to prevent default judgment by his unilateral decision to not participate}
^{in this proceeding.}

19 29. Accordingly, the Court ^{finds} that default judgment and permanent
20 injunction ^{are} appropriate. ^{concludes}

21 **Findings For**
III. Permanent Injunction K

22 The Court finds that injunction against Rivera should be permanent because
23 he is actively engaged in promoting his abusive tax schemes. He is currently
24 soliciting customers through his website. He has shown, through his recent
25 announcement that he will continue his promotion after default judgment with
26 only minor modifications (selling his opinions in book rather than letter form and
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1 using the term "consensual" in place of "voluntary"),^{and} that he has no intention of
 2 halting his promotion. Indeed, he is seeking to expand it by recruiting other
 3 attorneys to join him.

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4 Rivera's actions are causing the United States irreparable harm. Customers
 5 who follow Rivera's advice do not file federal income tax returns or pay their
 6 federal income taxes. He directs his customers to resist IRS examination and
 7 collection efforts with copies of his opinion letters, and writes the IRS on behalf of
 8 his customers. While his letters are frivolous on their face, the IRS must still
 9 expend time and resources processing them. By directing his customers to rely on
 10 these letters in resisting the IRS, Rivera impedes IRS examination and collection
 11 efforts.

12 Rivera is causing and will continue to cause substantial revenue losses to
 13 the United States. The IRS has identified six customers on whose behalf Rivera is
 14 attempting to block IRS examination and collection procedures; those six
 15 customers have unpaid assessments or audit deficiencies totaling \$9,580,771.71 in
 16 tax, interest, and penalties. The IRS will have to devote substantial time and
 17 resources simply to identify his customers, and may be unable to detect and
 18 recover all the revenue loss attributable to him.

19 Until Rivera is permanently enjoined, the United States will continue to lose
 20 revenue, as he enlists more taxpayers. The United States has no adequate remedy
 21 at law to prevent Rivera from causing further harm. Thus, a permanent injunction
 22 is necessary to stop Rivera.

23 **IV. Order and Permanent Injunction**

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24 Based on the foregoing findings of fact and conclusions of law and for good
 25 cause shown, the Court ORDERS that Rivera and his agents, servants, employees,

1 attorneys, and those persons in active concert or participation with him who
2 receive actual notice of this Order are permanently enjoined from:

3 a. Engaging in activity subject to penalty under I.R.C. § 6700, including
4 organizing, promoting, marketing, or selling his tax-related opinion letters ^{whether in book form or otherwise,} and his
5 tax-related representation services, and any other abusive tax shelter, plan, or
6 arrangement which advises or encourages people to attempt to violate the internal
7 revenue laws or unlawfully evade the assessment or collection of their federal tax
8 liabilities;

9 b. Engaging in activity subject to penalty under I.R.C. § 6701, including
10 preparing and/or assisting in the preparation of a document related to a matter
11 material to the internal revenue laws that includes a position that he knows will
12 result in an understatement of tax liability;

13 c. Promoting any plan or arrangement, including but not limited to his
14 opinion letters (whether in letter, book, or any other form), his representation of
15 customers before the IRS, his recruitment of other attorneys to join his
16 promotions, or his seminars or workshops, that advocates or represents:

- 17 (1) that only federal employees are subject to federal income tax;
- 18 (2) that private-sector employers are not required to withhold federal
19 taxes from their employees' wages;
- 20 (3) that federal taxes are voluntary or consensual;
- 21 (4) that filing federal tax returns is voluntary;
- 22 (5) that the IRS does not have the authority to assess or collect taxes;
- 23 (6) that federal income tax can be avoided by not filing federal income
24 tax returns;
- 25 (7) that federal tax liability can be avoided by relying on Rivera's
26 opinions; ^{as stated in the website &/ or his opinion letters} K

27 ^{identified in R 1 of}
The Findings of Fact, above

- (8) that Rivera's letters will cause the IRS to cease assessment or collection activities;
- (9) that Rivera's letters will have any effect upon IRS liens and levies;
- (10) that Rivera can establish in IRS records that his customers have no federal tax liability;
- (11) that violation of the internal revenue laws is not a crime; or
- (12) that people cannot be convicted of a tax crime because no federal district court has jurisdiction over them; and

d. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701;

K e. Further, the Court ^{within 30 days hereof} ORDERS that Rivera mail a copy of this Default Judgment and Permanent Injunction to all persons who have ⁽ⁱ⁾ purchased any of his plans or arrangements, including but not limited to his opinion letters (whether in letter, book, or any other form) ^{(ii) retained him to represent them} ~~his representation of customers~~ before the IRS, ^{(iii) been recruited} ~~his recruitment of other attorneys~~ to join his promotions, or ^{(iv) attended} ~~his seminars or~~ workshops, that advocate or represent:

- (1) that only federal employees are subject to federal income tax;
- (2) that private-sector employers are not required to withhold federal taxes from their employees' wages;
- (3) that federal taxes are voluntary or consensual;
- (4) that filing federal tax returns is voluntary;
- (5) that the IRS does not have the authority to assess or collect taxes;
- (6) that federal income tax can be avoided by not filing federal income tax returns;
- (7) that federal tax liability can be avoided by relying on Rivera's ^{as stated in the website attached in IP1 of the Finding of Fact, above,} ~~opinions;~~ ^{9/02 his opinion letters}

- 1 (8) that Rivera's letters will cause the IRS to cease examination or
 2 collection activities;
- 3 (9) that Rivera's letters will have any effect upon IRS liens and levies;
- 4 (10) that Rivera can establish in IRS records that his customers have no
 5 federal tax liability;
- 6 (11) that violation of the internal revenue laws is not a crime; or
- 7 (12) that people cannot be convicted of a tax crime because no federal
 8 district court has jurisdiction over them.

9 *K* f. Further, the Court ^{by service on Assistant U.S. attorney Robert Conte within 30 days hereof} ORDERS Rivera to produce to the United States *K* any
 10 records under his possession, custody, or control, identifying by name, Social
 11 Security Number, address, and telephone number all individuals who have
 12 purchased any of his plans or arrangements, including but not limited to his
 13 opinion letters (whether in letter, book, or any other form), his representation of
 14 customers before the IRS, his recruitment of other attorneys to join his
 15 promotions, or his seminars or workshops, that advocate or represent:

- 16 (1) that only federal employees are subject to federal income tax;
- 17 (2) that private-sector employers are not required to withhold federal
 18 taxes from their employees' wages;
- 19 (3) that federal taxes are voluntary or consensual;
- 20 (4) that filing federal tax returns is voluntary;
- 21 (5) that the IRS does not have the authority to assess or collect taxes;
- 22 (6) that federal income tax can be avoided by not filing federal income
 23 tax returns;
- 24 (7) that federal tax liability can be avoided by relying on Rivera's
 25 opinions, *as set forth in the website identified in TPI of the*
 26 *findings of fact, above, &/or his opinion letters;* *K*

- 1 (8) that Rivera's letters will cause the IRS to cease examination or
2 collection activities;
- 3 (9) that Rivera's letters will have any effect upon IRS liens and levies;
- 4 (10) that Rivera can establish in IRS records that his customers have no
5 federal tax liability;
- 6 (11) that violation of the internal revenue laws is not a crime; or
- 7 (12) that people cannot be convicted of a tax crime because no federal
8 district court has jurisdiction over them.

9 g. Further, the Court ORDERS that within ten days of this order Rivera,
10 and his representatives, agents, servants, employees, attorneys, and those persons
11 in active concert or participation with him, remove from his websites, including
12 www.EdRivera.com, all abusive tax scheme promotional materials, false
13 commercial speech, and materials designed to incite others imminently to violate
14 the law, and to display for one year on the www.EdRivera.com "Home" page (*i.e.*,
15 the first page seen when accessing the website at the listed address), prominently
16 featured at the top so that it is easily visible and readable without further action, a
17 complete copy of the Court's permanent injunction. Specifically, Rivera is
18 ORDERED to remove from his website all materials promoting his plans or
19 arrangements, including but not limited to his opinion letters (whether in letter,
20 book, or any other form), his representation of customers before the IRS, his
21 recruitment of other attorneys to join his promotions, or his seminars or
22 workshops, that advocate or represent:

- 23 (1) that only federal employees are subject to federal income tax;
- 24 (2) that private-sector employers are not required to withhold federal
25 taxes from their employees' wages;
- 26 (3) that federal taxes are voluntary or consensual;
- 27

- 1 (4) that filing federal tax returns is voluntary;
- 2 (5) that the IRS does not have the authority to assess or collect taxes;
- 3 (6) that federal income tax can be avoided by not filing federal income
- 4 tax returns;
- 5 (7) that people can avoid federal tax liability by relying on Rivera's
- 6 opinions; *Sher. K*
- 7 (8) that Rivera's letters will cause the IRS to cease examination or
- 8 collection activities;
- 9 (9) that Rivera's letters will have any effect upon IRS liens and levies;
- 10 (10) that Rivera can establish in IRS records that his customers have no
- 11 federal tax liability;
- 12 (11) that violation of the internal revenue laws is not a crime; or
- 13 (12) that people cannot be convicted of a tax crime because no federal
- 14 district court has jurisdiction over them.

15 The Court will retain jurisdiction over this matter to ensure compliance with
16 this order.

17 IT IS SO ORDERED.

18
19 Dated: 7/18/03

[Signature]

20 GEORGE H. KING
United States District Judge

21
22 Presented by:
Robert F. Conte 7/2/03
23 Robert F. Conte
Assistant United States Attorney