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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

REINHOLD V. SOMMERSTEDT;
DANIEL J. YOUNG; STEPHEN R.
NESTOR; and LYNN A. LAKERS,

Defendants.

2:06-CV-00273-BES-GWF

ORDER

Before the Court is a Petition for Judgment on the Pleadings (#155) filed by Defendant Reinhold V. Sommerstedt ("Sommerstedt") on December 29, 2008. On January 20, 2009 Sommerstedt filed an Affidavit for Evidence in Support of Motion for Judgment on the Pleadings (#168). The United States filed its Opposition (#169) on January 23, 2009. Sommerstedt then filed a Motion for Enlargement of Time for Reply (#171), as well as an Unopposed Motion to Extend Time to File Defendant's Reply and Sur-Response (#174), requesting additional time to file his reply.¹ Sommerstedt filed his Reply (#176) on

¹ Sommerstedt indicates that counsel for Plaintiff consented to his request for two extensions of time, and the Court notes that Plaintiff did not respond to either request. Accordingly, the Court grants both the Motion for Enlargement of Time for Reply (#171) and the Unopposed Motion to Extend Time to File Defendant's Reply and Sur-Response (#174).

1 March 17, 2009.²

2 The Court has also considered Plaintiff's Motion for Summary Judgment (#156) and
3 supporting Memorandum of Law in Support of Plaintiff's Motion (#157), both filed on
4 December 30, 2008. Sommerstedt filed a Response (#167) on January 20, 2009 and
5 Plaintiff filed its Reply (#170) on February 2, 2009. Sommerstedt then filed a Notice to the
6 Court Regarding Plaintiff's Reply (#172) on February 10, 2009 and a Motion for Leave to
7 File Defendant's Sur-Response to Plaintiff's Reply (#173) on February 20, 2009. Before
8 the Motion for Leave was ruled on, Sommerstedt file a Sur-Response (#175), along with
9 a List of Disputed Facts and Genuine Issues Re: Judgment on the Pleadings Filed in
10 Conjunction With Sur-Response (#177). On March 27, 2009, Plaintiff filed an Opposition
11 to Sommerstedt's Motion for Leave to File Sur-Response to Plaintiff's Reply Brief (#178).
12 On the same date, Sommerstedt filed a Motion to Strike Plaintiff's Pleadings and
13 Attachments (#179).

14 I. BACKGROUND

15 This case arises out of the Government's efforts to restrain and enjoin Defendant
16 Sommerstedt and three other individuals from organizing and selling tax plans and
17 arrangements that assist customers in the evasion of their federal tax obligations. The
18 Government alleges that Defendants promoted the use of sham domestic and foreign
19 trusts to shuttle their customers' income to an offshore bank as part of an effort to conceal
20 the income from the Internal Revenue Service ("IRS"). (Compl. (#1), ¶ 9). Plaintiff seeks
21 a permanent injunction against Defendants to prevent recurrence of this conduct.

22 At this stage in the litigation, all three of Sommerstedt's co-defendants have

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24 ² Over three months after filing his Reply, Sommerstedt filed a Notice of Intent to File
25 Supplemental Brief for Motion for Judgment on the Pleadings (#184), which has been docketed
26 as a Motion to Extend Time to File Supplemental Brief. LR 7-2 does not authorize the filing of
supplemental pleadings "[u]nless otherwise ordered by the court" and the Court is not
persuaded that an additional brief is warranted to assist with disposition of this case.
Accordingly, Sommerstedt's request is denied.

1 consented to the entry of permanent injunctions. Sommerstedt filed a Motion to Dismiss
2 (#34) on June 15, 2006 on the basis that the Government lacked standing and because
3 the controversy presented is moot. The motion was denied by the Court in an Order (#45)
4 dated February 27, 2007. Sommerstedt filed a second Motion to Dismiss (#47) on March
5 12, 2007, seeking dismissal for lack of subject matter jurisdiction, failure to state a claim,
6 and because the United States has allegedly failed to comply with the Paperwork
7 Reduction Act, 44 U.S.C. § 3501 et seq. This motion was also denied in an Order (#55)
8 dated November 9, 2007.

9 Sommerstedt now seeks a judgment on the pleadings on the basis that he does not
10 engage in the activity alleged by Plaintiff and because this action has been filed beyond
11 the statute of limitations period. The Government moves for summary judgment, seeking
12 a permanent injunction against Sommerstedt. Plaintiff submits that it has presented
13 sufficient evidence to prove that Sommerstedt's sham trust scheme violates 26 U.S.C. §
14 6700, and thus warrant entry of an injunction pursuant to 26 U.S.C. § 7402 and 26 U.S.C.
15 § 7408. Plaintiff's motion is supported primarily by the Declaration of Internal Revenue
16 Agent William Everett (#40), the Declaration of Stephen Nestor (#161), and the Third,
17 Fourth and Fifth Declarations of Robert D. Metcalfe (#158, #159, and #160).

18 II. ANALYSIS

19 A. Sommerstedt's Motion for Leave to File a Sur-Response (#173)

20 As a preliminary matter, the Court notes that Sommerstedt has filed a Motion for
21 Leave to File Defendant's Sur-Response to Plaintiff's Reply (#173) on the ground that
22 Plaintiff's reply brief contains incorrect statements, new evidence that had not previously
23 been disclosed, and redacted portions of newly disclosed discovery. (Motion (#173), p. 2).
24 However, before Sommerstedt's motion was ruled on, he filed a Notice to the Court
25 Regarding Plaintiff's Reply (#172), a Sur-Response (#175), and a List of Disputed Facts
26 and Genuine Issues Re: Judgment on the Pleadings Filed in Conjunction With Sur-

1 Response (#177). Plaintiff opposes Sommerstedt's Motion for Leave to File Sur-Response
2 and objects to Sommerstedt's supplemental filings.

3 The Court finds that Sommerstedt's supplemental pleadings were improperly filed.
4 The federal and local rules of procedure provide for a motion, response and reply. See LR
5 7-2. The remedy for dealing with material first appearing in a reply is that the court will not
6 consider any issues or evidence wrongfully raised in this fashion. See Gadda v. State Bar
7 of Cal., 511 F.3d 933, 937 n.2 (9th Cir. 2007) ("It is well established that issues cannot be
8 raised for the first time in a reply brief."). Accordingly, the Court will not consider
9 Sommerstedt's supplemental filings and denies his Motion for Leave for File a Sur-
10 Response (#173).

11 **B. Sommerstedt's Motion to Strike (#179)**

12 After all briefs were filed related to the parties' dispositive motions, Sommerstedt
13 filed a Motion to Strike (#179), requesting that the Court strike Plaintiff's documents or
14 portions of documents #156-#161 "for misrepresentation and fraud on the court."
15 Additionally, Sommerstedt requests that the Court deny Plaintiff's Motion for Summary
16 Judgment, reconsider the Court's Order of Denial of Defendant's Motion to Dismiss (#45),
17 and grant Sommerstedt's Motion to Reopen Discovery (#139) (Motion (#179), pp. 5-6, 12).
18 However, Sommerstedt has not provided any sound reason for striking Plaintiff's
19 documents. In fact, the arguments raised in the Motion to Strike appear to be redundant
20 and duplicative of arguments Sommerstedt raised in his Response (#167) to Plaintiff's
21 Motion for Summary Judgment. Accordingly, the Court will not strike any of Plaintiff's
22 documents and finds that Sommerstedt's requests are not properly raised in a motion to
23 strike and will be considered in the context of his response brief.

24 **C. Sommerstedt's Petition Will be Considered as Motion for Summary Judgment**

25 Sommerstedt filed a Petition for Judgment on the Pleadings (#155), pursuant to
26 Federal Rules of Civil Procedure 12(c). In support of his petition, Sommerstedt relies upon

1 the Solemn Declaration of Reinhold V. Sommerstedt, which was submitted as Exhibit A to
2 his Motion to Dismiss (#34). Additionally, Sommerstedt submitted Evidence in Support of
3 Motion for Judgment on the Pleadings (#168). When a defendant provides extrinsic
4 evidence with a motion for judgment on the pleadings, the court generally must convert that
5 motion into one for summary judgment. See Olsen v. Idaho State Bd. of Medicine, 363
6 F.3d 916, 922 (9th Cir. 2004) (citing to Rule 12(c) for the proposition that when matters
7 outside the pleadings are presented, the motion shall be treated as one for summary
8 judgment in the context of a motion to dismiss); see also Mayer v. Wedgewood
9 Neighborhood Coalition, 707 F.2d 1020, 1021 (9th Cir. 1983). When the court converts a
10 motion for judgment on the pleadings into a motion for summary judgment, "all parties shall
11 be given reasonable opportunity to present all material made pertinent to such a motion
12 by Rule 56." Id., 707 F.2d at 1021.

13 Although the fact that Sommerstedt submitted documentary evidence with his
14 motion for judgment on the pleadings would normally require the Court to provide the
15 parties with additional time to respond before considering the material, in this case notice
16 to the parties has essentially been provided. In fact, in its Opposition (#169), Plaintiff asks
17 the Court to convert Sommerstedt's motion for judgment on the pleadings into a motion for
18 summary judgment. Moreover, in its opposition to Sommerstedt's motion, Plaintiff
19 incorporates by reference its Motion for Summary Judgment (#157) and all related
20 documentary evidence contained in exhibits. See Olsen, 363 F.3d at 922 (affirming
21 decision to treat motion to dismiss as motion for summary judgment where appellant
22 included the extraneous material in her opposition to the appellees' motions to dismiss).
23 Accordingly, the Court finds that Plaintiff had sufficient notice of the decision to treat
24 Sommerstedt's petition as a motion for summary judgment.

25 **D. Standard for Summary Judgment**

26 Summary judgment "shall be rendered forthwith if the pleadings, depositions,
answers to interrogatories, and admissions on file, together with the affidavits, if any, show

1 that there is no genuine issue as to any material fact and that the moving party is entitled
2 to judgment as a matter of law.” FED. R. CIV. P. 56(c). The burden of demonstrating the
3 absence of a genuine issue of material fact lies with the moving party, and for this purpose,
4 the material lodged by the moving party must be viewed in the light most favorable to the
5 nonmoving party. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Martinez v. City
6 of Los Angeles, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that
7 affects the outcome of the litigation and requires a trial to resolve the differing versions of
8 the truth. Lynn v. Sheet Metal Workers Int’l Ass’n, 804 F.2d 1472, 1483 (9th Cir. 1986);
9 S.E.C. v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982).

10 If the moving party presents evidence that would call for judgment as a matter of law
11 at trial if left uncontroverted, then the respondent must show by specific facts the existence
12 of a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).
13 “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party
14 for a jury to return a verdict for that party. If the evidence is merely colorable, or is not
15 significantly probative, summary judgment may be granted.” Id. at 249-50 (citations
16 omitted). “A mere scintilla of evidence will not do, for a jury is permitted to draw only those
17 inferences of which the evidence is reasonably susceptible; it may not resort to
18 speculation.” British Airways Board v. Boeing Co., 585 F.2d 946, 952 (9th Cir. 1978); see
19 also Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 596 (1993) (“[I]n the
20 event the trial court concludes that the scintilla of evidence presented supporting a position
21 is insufficient to allow a reasonable juror to conclude that the position more likely than not
22 is true, the court remains free . . . to grant summary judgment.”). Moreover, “[i]f the factual
23 context makes the non-moving party’s claim of a disputed fact implausible, then that party
24 must come forward with more persuasive evidence than otherwise would be necessary to
25 show there is a genuine issue for trial.” Blue Ridge Insurance Co. v. Stanewich, 142 F.3d
26 1145, 1149 (9th Cir. 1998) (citing Cal. Architectural Bldg. Products, Inc. v. Franciscan
Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are

1 unsupported by factual data cannot defeat a motion for summary judgment. Taylor v. List,
2 880 F.2d 1040, 1045 (9th Cir. 1989).

3 When the parties file cross-motions for summary judgment, as in this case, the court
4 must consider each party's motion separately and determine whether that party is entitled
5 to a judgment under Rule 56. Western Land Exchange Project v. U.S. Bureau of Land
6 Mgmt., 315 F. Supp.2d 1068, 1075 (D. Nev. 2004). In making these determinations, the
7 court must evaluate the evidence offered in support of each cross-motion. Id. (citing Fair
8 Housing Council of Riverside County, Inc. v. Riverside Two, 249 F.3d 1132, 1136-37 (9th
9 Cir. 2001)). Cross-motions for summary judgment do not necessarily mean that there are
10 no disputed issues of material fact and it does not warrant the granting of summary
11 judgment unless one of the moving parties is entitled to judgment as a matter of law on the
12 undisputed genuine facts. Id. (citing Fair Housing Council of Riverside County, Inc. v.
13 Riverside Two, 249 F.3d 1132, 1136-37 (9th Cir. 2001)).

14 The fact that Plaintiff appears *pro se* in this case cannot be overlooked. See Rand
15 v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc) (explaining that "we tolerate
16 informalities from civil *pro se* litigants"). Because Sommerstedt appears in this case *pro*
17 *se*, the Court must consider as evidence in his opposition to summary judgment all
18 contentions that would be admissible in evidence, are based on personal knowledge, and
19 are contained in pleadings and/or motions whose contents the drafter stated under penalty
20 of perjury are true and correct. See Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004).
21 However, the Ninth Circuit has indicated that, with the exception of *prisoner pro se* litigants,
22 "pro se litigants in the ordinary civil case should not be treated more favorably than parties
23 with attorneys of record." Jacobsen v. Filler, 790 F.2d 1362, 1362-67 (9th Cir. 1986) ("[A]
24 court is not required to advise a non-prisoner *pro se* litigant of the requirements of
25 Fed.R.Civ.P. 56 before entering summary judgment"). The Court will therefore apply the
26 general summary judgment standard to both motions.

E. Plaintiff's Motion for Summary Judgment

1 Plaintiff seeks injunctive relief under Internal Revenue Code ("IRC") sections 7408
2 and 7402(a). Section 7408 authorizes an action to enjoin promoters of abusive tax
3 shelters "from further engaging in conduct subject to penalty under section 6700." 26
4 U.S.C. § 7408(a). Section 7408 requires a finding that the person has engaged in the
5 conduct subject to penalty under § 6700, and that "injunctive relief is appropriate to prevent
6 the recurrence of such conduct." IRC § 7408(b)(2). Section 7402 allows a court to "render
7 such judgments and decrees as may be necessary or appropriate for the enforcement of
8 the internal revenue law." 26 U.S.C. § 7402(a). The Government bears the burden of
9 proving each element necessary for the issuance of an injunction by a preponderance of
10 the evidence. See United States v. Schiff, 269 F. Supp.2d 1262, 1266 (D.Nev. 2003)
11 (citing United States v. Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000)).

12 To obtain an injunction under section 7408 for conduct violating section 6700, the
13 Government must show that: (1) defendant organized or sold, or participated in the
14 organization or sale of, an entity, plan or arrangement; (2) defendant made or caused to
15 be made, false or fraudulent statements concerning the tax benefits to be derived from the
16 entity, plan or arrangement; (3) defendant knew or had reason to know that the statements
17 were false or fraudulent; (4) the false or fraudulent statements pertained to a material
18 matter; and (5) an injunction is necessary to prevent recurrence of this conduct. Estate
19 Preservation Servs., 202 F.3d at 1098. Here, the Government has proven these elements
20 as to Sommerstedt.

21 The evidence contained in the record shows that Sommerstedt engaged in conduct
22 subject to penalty under § 6700. Sommerstedt participated in the sale of a plan or
23 arrangement within the meaning of IRC § 6700(a) by organizing and selling a system of
24 domestic and foreign trusts that enabled customers to understate their federal income tax
25 liabilities. See, e.g., United States v. Raymond, 228 F.3d 804, 811 (7th Cir. 2000) ("De-
26 Taxing America Program," which encouraged purchasers to take steps to avoid federal
income taxation, was tax shelter within the meaning of IRC § 6700(a)). Sommerstedt has

1 not presented any evidence to refute the Government's indication that Sommerstedt's trust
2 scheme was organized and operated solely for the purpose of improperly reducing his
3 customers' federal tax liabilities. It is also undisputed that Sommerstedt made or caused
4 to be made materially false and fraudulent statements concerning the tax benefits to be
5 derived from his trust scheme. Considering the overwhelming authority establishing that
6 schemes similar to Sommerstedt's are sanctionable and subject to prosecution, the
7 Government has shown that Sommerstedt knew or had reason to know that his
8 representations to his customers regarding the tax benefits of his trust scheme were false
9 and misleading. See Estate Preservation Servs., 202 F.3d at 1102-03 (discussing the
10 requisite scienter under § 6700 and affirming an injunction against promoters of abusive
11 shelters). Finally, the evidence establishes that Sommerstedt's false or fraudulent
12 representations regarding tax benefits should be considered material within the meaning
13 of section 6700.

14 Sommerstedt's opposition to Plaintiff's motion for summary judgment amounts to
15 nothing more than a modified version of his previous motions to dismiss. He has not
16 directly addressed the voluminous evidence cited in Plaintiff's motion for summary
17 judgment and chooses to rely solely upon the denials and defenses in his Answer,
18 unsupported by any evidence that "set[s] forth specific facts showing that there is a
19 genuine issue for trial." Fed.R.Civ.P. 56(e). Sommerstedt's pro se status does not change
20 the Court's analysis. Although the Ninth Circuit construes pleadings liberally in their favor,
21 pro se litigants are bound by the rules of procedure. King v. Atiyeh, 814 F.2d 565, 567 (9th
22 Cir. 1987); see also Jacobsen v. Filler, 790 F.2d 1362, 1364-65 (9th Cir. 1986) (pro se
23 litigants should not be treated more favorably than parties represented by attorneys).
24 Summary judgment is not appropriate where genuine issues of material fact remain to be
25 tried. Occidental Engineering Co. v. INS, 753 F.2d 766, 770 (9th Cir. 1985). However, in
26 this case, Sommerstedt's evidence fails to raise such an issue.

1 Because Sommerstedt does not succeed in raising a material issue of fact as to the
2 nature of his anti-tax activities, his knowledge of the falsity of his trust plan scheme, or the
3 materiality of he statements he made, the Court finds that Sommerstedt engaged in
4 conduct subject to a section 6700 penalty. Accordingly, injunctive relief is available under
5 section 7408(a) if “appropriate to prevent the recurrence of such conduct.” Factors that a
6 court may consider in determining the likelihood of future § 6700 violations and, thus, the
7 need for an injunction include: (1) the gravity of harm caused by the offense; (2) the extent
8 of defendant’s participation; (3) the defendant’s degree of scienter; (4) the isolated or
9 recurrent nature of infraction; (5) defendant’s recognition or non-recognition of his/her
10 culpability; and (6) the likelihood that defendant’s occupation would place him/her in a
11 position where future violations could be anticipated. *Id.* at 1105 (citations omitted).³ To
12 address these factors, the Government notes that Sommerstedt was the central figure
13 behind the creation and promotion of the trust scheme. Sommerstedt’s involvement with
14 the scheme was not an isolated act of misconduct and involved more than 180 customers
15 and resulted in significant losses of federal tax revenue. Although Sommerstedt makes
16 much of the fact that he has voluntarily abstained from engaging in the trust scheme for
17 more than six years, he has never acknowledged the wrongfulness of his actions.
18 Moreover, Sommerstedt fails to directly address the factors for an injunction under section
19 7408 or oppose the Government’s stated grounds for such an injunction. In any event, the
20 Court is not persuaded by Sommerstedt’s self-serving statement that an injunction is
21 unnecessary because he will voluntarily refrain from future fraudulent conduct.

22 The Court also finds that, employing the traditional equitable factors⁴, an injunction

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24 ³ Because IRC § 7408 specifically authorizes district courts to issue injunctions, the
25 Government is not required to satisfy the traditional requirements for equitable relief. *Estate*
Preservation Servs., 202 F.3d at 1098.

26 ⁴ Some uncertainty exists regarding the standard for issuance of injunctive relief
under IRC § 7402(a) and the Ninth Circuit has not yet examined this issue. However, lower
courts within the circuit have concluded that for an injunction to issue under § 7402, the United

1 under IRC § 7402 is appropriate. The United States will suffer irreparable harm in the
2 absence of an injunction. Further, Sommerstedt will not sustain any irreparable harm by
3 being required to obey the law. Third, Plaintiff has prevailed in its claims, and finally, the
4 public interest in prohibiting Sommerstedt from selling improper tax avoidance schemes
5 is great. Accordingly, the Court finds that an injunction under § 7402 is necessary and
6 appropriate for the enforcement of the internal revenue laws.

7 As part of its injunctive relief under IRC § 7402, the Government requests that
8 Sommerstedt be required to: (1) notify those individuals and entities that have purchased
9 his trust plans of the permanent injunction; and (2) furnish the Government with the
10 identities and contact information of those individuals or entities that have purchased
11 Sommerstedt's tax schemes. Based on the evidence provided by the Government, the
12 Court concludes that "knowing the identities of Defendant[s] customers will assist the IRS
13 in identifying frivolous returns and determining whether any erroneous refunds have been
14 issued." See, e.g., United States v. Hill, 2005 WL 3536118, at *7 (D.Ariz. 2005).
15 Accordingly, the Court will order Sommerstedt to disclose to Plaintiff the identities of any
16 individuals who have purchased Sommerstedt's tax schemes, and to notify those
17 customers of this Court's ruling in this case.

18 **F. Sommerstedt's Motion for Summary Judgment**

19 Sommerstedt seeks judgment in his favor on the basis that "as a matter of law, the
20 plaintiff, [the] United States of America, cannot prove it's [sic] case." (#155, p. 2).
21 Sommerstedt also argues that the statute of limitations for obtaining an injunction has
22 passed because the conduct to be enjoined ended over six years ago. However, as
23 explained herein, the United States has met the statutory requirements for obtaining an

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25 States must meet the traditional equitable standard for an injunction. See, e.g., United States
26 v. Harkins, 355 F. Supp.2d 1175, 1181 (D.Or. 2004); United States v. Stephenson, 313 F.
Supp.2d 1054 (W.D. Wash. 2004). Those factors are: (1) the likelihood of continuing
irreparable injury to the United States; (2) the harm to the defendant; (3) success on the merits
of the case; and (4) the public interest. Harkins, 355 F. Supp.2d at 1181.

1 injunction under IRC sections 7408 and 7402 to prevent Sommerstedt from engaging in
2 conduct subject to penalty under IRC § 6700. Moreover, Sommerstedt does not cite to,
3 and the Court is unaware of, any statute that requires the United States to commence its
4 action under section 7408 or 7402 within a particular time period following the improper
5 conduct.

6 Nothing contained in Sommerstedt's briefs related to his motion for judgment on the
7 pleadings changes the Court's conclusion that the United States is entitled to summary
8 judgment on its claims.

9 **III. CONCLUSION**

10 Based on the foregoing, IT IS HEREBY ORDERED as follows:


- 11 1. Sommerstedt's Motion for Leave to File Defendant's Sur-Response to Plaintiff's
12 Reply (#173) is DENIED.
- 13 2. Sommerstedt's Motion for Enlargement of Time for Reply (#171) is GRANTED.
- 14 3. Sommerstedt's Unopposed Motion to Extend Time to File Defendant's Reply and
15 Surreponse (#174) is GRANTED.
- 16 4. Sommerstedt's Motion to Strike (#179) is DENIED.
- 17 5. Sommerstedt's Petition for Judgment on the Pleadings (#155) is DENIED.
- 18 6. Sommerstedt's Motion to Extend Time to File Supplemental Brief (#184) is DENIED.
- 19 7. Plaintiff's Motion for Summary Judgment (#156) is GRANTED.
- 20 8. A permanent injunction is entered against Sommerstedt under IRC §§ 7408 and
21 7402 to prevent Sommerstedt from promoting his abusive tax scheme and
22 interfering with the enforcement of the internal revenue laws. Accordingly,
23 Sommerstedt and his agents, servants, employees, attorneys, and all persons in
24 active concert or participation with him are barred from:
 - 25 a. Organizing or selling or otherwise promoting the foreign trust conduit scheme
26 described in the complaint, or any substantially similar scheme;

- 1 b. Engaging in any other conduct subject to penalty under IRC § 6700,
2 including organizing or selling any plan or arrangement and making in
3 connection therewith a statement regarding the allowance of a tax deduction,
4 the excludability of income, or the securing of any other tax benefit that
5 Sommerstedt knows or has reason to know is false or fraudulent as to any
6 material matter;
- 7 c. Engaging in any other activity subject to penalty under any other penalty
8 provision in the Internal Revenue Code; and
- 9 d. Engaging in any other conduct interfering with the administration and
10 enforcement of the internal revenue laws.

11 9. Pursuant to IRC § 7402, Sommerstedt is required to contact by mail all individuals
12 and entities who have purchased his trust plans, arrangement or programs and
13 include a copy of the permanent injunction and, within 30 days of the date of entry
14 of this order, file with the Court a certification confirming that he has done so.

15 10. Pursuant to IRC § 7402, within 30 days of either (1) the entry of a judgment of
16 conviction or acquittal in any criminal action in which Sommerstedt is a defendant
17 or (2) the date on which Sommerstedt is informed that he is no longer the subject
18 of a criminal investigation or prosecution, Sommerstedt is required to serve upon
19 Plaintiff's counsel a complete list of customers (including names, addresses, phone
20 numbers, email addresses, and social security numbers) who have purchased any
21 trust or other type of entity from Sommerstedt.

22 The Clerk of the Court is directed to enter judgment in accordance with this Order.
23 Dated this 22nd day of June, 2009.

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26 UNITED STATES DISTRICT JUDGE