

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Case no. 2:12-cv-1034  
)  
JOHN D. ALLEN, individually and )  
doing business as ALLEN & )  
ASSOCIATES, )  
)  
Defendant. )

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, United States of America, for its complaint against John D. Allen, individually and doing business as Allen & Associates, states as follows:

1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).
2. This suit is brought under 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin John D. Allen, individually and doing business as Allen & Associates, from the following activities:
  - (a) Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return, amended return or other federal tax documents or forms for any other person or entity;
  - (b) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or helps taxpayers to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting the misuse of Internal Revenue Service Forms including Forms 1040, 1099, W-2, and W-4, under the false claims that his customers' wages do not qualify as income under 26 U.S.C. § 3401(a) or 26 CFR 1.861-8(f)(1);
  - (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6694;
  - (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to sign returns as the preparer or failing to otherwise identify himself as the paid preparer;

- (e) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making or furnishing a statement regarding the excludability of income or securing any other tax benefit that he knows or has reason to know is false or fraudulent as to any material matter;
- (f) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing or assisting in the preparation and filing of tax returns and other documents that understate the tax liabilities of others;
- (g) Filing, providing forms for, or otherwise aiding or abetting the filing of frivolous Forms 1040, 1040X, 1099, W-2, W-4, and other IRS forms for himself or others;
- (h) Filing, preparing notices or other forms, or otherwise aiding or abetting the filing of frivolous liens against the United States and its officers, employees, and agents;
- (j) Representing anyone other than himself before the Internal Revenue Service;
- (k) Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that interferes with the proper administration and enforcement of the internal revenue laws.

3. Pursuant to 26 U.S.C. §§ 7402, 7407, and 7408, this action has been requested by the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General.

#### **Allen and the Petition to Enforce IRS Summons**

4. John D. Allen resides in Zanesville, Ohio. Allen's business card identifies him as the CEO of Allen & Associates, with an address of P.O. Box 2911, Zanesville, Ohio, 43702. Allen is currently incarcerated, following a conviction under Ohio state law for possessing a firearm while under disability, at the Hocking Correctional Facility in Nelsonville, Ohio. Venue is proper in this Court under 28 U.S.C. § 1391 because Allen resides in this judicial district.

5. Allen has sold and promoted several tax-fraud schemes and prepared tax returns for others for a fee since at least 2006.

6. As part of its investigation to determine whether Allen was liable for civil penalties under 26 U.S.C. §§6694, 6695, 6700 and 6701 in connection with his promotion of abusive tax-fraud schemes and the preparation of customers' tax returns, the Internal Revenue Service issued an administrative summons to Allen on February 13, 2009. Allen did not comply with the summons, and the United States filed a Petition to enforce the summons in this Court on September 29, 2009. *See United States v. Allen*, Case no. 2:09-cv-852-EAS-NMK.

7. Allen responded to the Petition by filing a Counterclaim and Amended Counterclaim. The Amended Counterclaim listed several purported counter-claimants, but was signed only by Allen.

8. The Court held a hearing on November 20, 2009, at which Allen did not appear. On June 10, 2010, the Court, adopting a Magistrate Judge's Report and Recommendation, entered an order enforcing the summons and dismissing the Amended Counterclaim for lack of subject matter jurisdiction.

9. Allen did not comply with the Court's order enforcing the summons. On November 10, 2010, the United States filed a motion for civil contempt, to which Allen responded on December 13, 2010. Allen did not appear at a hearing on August 1, 2011. In a motion to stay filed on August 4, 2011, Allen stated that his non-appearance at the August 1 hearing was due to his arrest on or about April 25, 2011, which culminated in his current incarceration. The Court, therefore, denied the motion for contempt until such time as Allen is able to appear at an evidentiary hearing. Allen still has not complied with the Court's order enforcing the summons as of the date of this Complaint.

### **Allen's Tax-Fraud Schemes and Tax Return Preparation**

10. Allen has promoted various tax-fraud schemes designed to defraud the United States through his preparation of federal tax returns for customers on which he falsely claims that the customers did not earn any taxable income, or that the customers had itemized deductions equaling or exceeding their reported taxable income, and to which he appends frivolous documents in order to obtain bogus tax refund checks for his customers.

11. Allen does not sign the tax returns that he prepares as the paid preparer, and the returns he prepares do not identify him as the tax return preparer through either Allen's social security number or a preparer tax identification number. Allen provides the prepared return to his customers with instructions for the customer to sign and date the return, write "self-prepared" on the line for the preparer, write "N/A" for the sections for the preparer's firm name and EIN, and mail the return to the IRS.

12. Allen's schemes are based on the false premise that his customers do not receive "wages" as defined under I.R.C. § 3401(a), a frivolous claim that the Sixth Circuit Court of Appeals has stated "is tantamount to a typical tax protester argument that the income at issue is not taxable." *United States v. Hendrickson*, Case no. 07-1510, 2008 U.S. App. Lexis 27988 (6th Cir. June 11, 2008). The theories about the supposed narrow application of federal income-tax laws (including arguments that wages are not income, and that only federal workers are required to pay income taxes) have been uniformly and repeatedly rejected by the federal courts. The claim that wages are not income "has been rejected as many times as it has been asserted." *Abdo v. United States*, 234 F. Supp.2d 553, 563 (M.D. N.C. 2002), *affirmed*, 63 Fed. Appx. 163 (4th Cir. 2003). Other courts long ago rejected the claim that wages and income for federal income

tax and withholding purposes mean only wages and income of government employees. *See United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (the argument “that under 26 U.S.C. § 3401(c) the category of ‘employee’ does not include privately employed wage earners is a preposterous reading of the statute. It is obvious that within the context of both statutes the word “includes” is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others.”); *McKinley v. United States*, Case No. C-2-90-848, 1992 WL 330407, \*5 (S.D. Ohio Sept. 3, 1992) (“The plaintiffs assert that only federal officers, federal employees, elected officials or corporate officers are ‘employees’ who are considered to be taxpayers under the Internal Revenue Code. . . However, the plaintiffs’ interpretation of the law comes from a misunderstanding of the law, and has been rejected by the federal courts. . . In fact, the term ‘employee’ as used in the I.R.C. does include private wage earners.”) (internal citations omitted).

13. The IRS has identified at least three tax-fraud schemes that Allen has promoted. Allen moves from scheme to scheme when the IRS identifies the bogus nature of the tax returns that are filed as part of the arrangement. Allen charges “\$250 per year to handle all correspondence to state and federal tax authorities” and requests a 10% “donation” from any refunds received from tax returns he prepares, all payable only by a “Postal Money Order.”

***Scheme 1: Tax Returns Reporting “None” for Income and Tax***

14. The IRS’s Frivolous Return Program has identified at least 100 returns that Allen prepared with this scheme. These returns contain similar characteristics making them identifiable as being prepared by Allen. The “single” filing status box is checked, but the word “single” is crossed out and “MFR-01” is written in its place. The apparent purpose of this is to

indicate that the customer is purportedly not required to file a tax return.

15. On all lines of the tax return referring to income or tax, the word “None” is written. On the income line of the return, Allen also writes “No wages under IRC 3401(a).”

16. To each tax return that he prepares, Allen attaches bogus Forms 4852, titled “Substitute W-2, Wage and Tax Statement,” or Form 1099-R, titled “Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance, Contracts, etc.” On these Forms, Allen falsely reports that the customer has no wages or distributions, negating the correct amount reported on the legitimate Forms W-2 and/or 1099 issued by the customer’s employer or other third-party. On the income line of the Forms 4852, Allen writes “None under IRC 3401(a)” or “None under IRC 3401(a) and 3121.”

17. For example, on the 2005 tax return of customer Bonita Salyer, a Ford Motor Company employee in Sandusky, Ohio, Allen checked the filing status box for “single,” but crossed out single and wrote “MFR-01.” On the line for “Wages, salaries, tips, etc.,” Allen wrote “None” and also wrote “No ‘wages’ received under IRC 3401(a).” Allen also wrote “None” for the lines for adjusted gross income, taxable income, tax, and total tax. Allen attached a Form 4852, Substitute for Form W-2, on which Allen falsely claimed that Salyer had no wages and \$2,014.06 in federal income tax withheld. As a result, Salyer’s return falsely reported \$2,014.06 in federal tax withholdings and requested an improper refund in that amount.

***Scheme 2: Tax Returns Reporting Bogus Itemized Deductions to Offset Income***

18. Allen promotes another scheme whereby he prepares tax returns on which he correctly reports the customer’s wages as income, but then falsely reports itemized deductions on the Schedule A attached to the tax return that completely offset the customer’s taxable income,

resulting in an improper refund of all of the customer's federal tax withholdings. On the Schedule A, Allen typically falsely reports the exact amount of the customer's wages as an "Other Miscellaneous Deduction," which he fraudulently describes as "Non-taxable income."

19. Allen prepared the 2007 tax return of customer Dallas Steen of Lancaster, Ohio, an employee of Waste Management. Steen became Allen's customer on the advice of a friend; the friend was referred to Allen when the friend's previous tax return preparers, Edward and Joseph Flickinger, were enjoined on March 1, 2006 and June 30 2006, respectively, from promoting their tax-fraud scheme and from preparing tax returns. *See United States v. Joseph Flickinger, et al.*, Case no. 1:05-cv-2868 (N.D. Ohio). *See also* U.S. Department of Justice press release, *available at* [http://www.justice.gov/opa/pr/2006/July/06\\_tax\\_415.html](http://www.justice.gov/opa/pr/2006/July/06_tax_415.html). In 2007, Steen had wages of \$64,222.71, which Allen reported on the return. Allen falsely reported on the return that Steen had \$66,491.52 in itemized deductions. On the Form Schedule A attached to the return, Allen reported a deduction for state taxes in the amount of \$2,268.81, as reflected on the Form W-2, but then improperly claimed as an "Other Miscellaneous Deduction" Steen's wages of \$64,222.71, which Allen falsely classified as "non-taxable income." Essentially, Allen properly reported Steen's wages as income, but then offset that income by fraudulently claiming Steen's wages as a bogus "non-taxable income" deduction on the Schedule A. The result is that Steen's 2007 return claimed a bogus refund of \$7,091.35, the full amount of federal income tax that had been withheld. The paid preparer line on the return was marked "N/A." Allen provided Steen with written instructions to sign and date the return and mail a copy to the "IRS Center" in Kansas City, Missouri.

20. Similarly, Allen prepared a 2006 return for customer Adam Shields on which

Allen reported Shields' wages of \$84,296.14, but then falsely reported \$89,793.57 in itemized deductions - including Shields' wages of \$84,296.14 which Allen falsely claimed as a miscellaneous deduction called "Non-taxable income" - and requested an improper refund of \$15,703.58. Allen, in the note attached to Shields' return directing him to sign and date the return and send it to the "IRS Center" in Kansas City, Missouri," stated that "[t]hese returns work according to Cracking the Code filers. Worth a try!" Cracking the Code refers to a self-published book written by Peter Hendrickson, a convicted felon whose frivolous tax-defier arguments have been rejected by the Sixth Circuit and other courts. *See United States v. Hendrickson*, Case no. 07-1510, 2008 U.S. App. Lexis 27988 (6th Cir. June 11, 2008); *Montero v. C.I.R.*, 354 F .App'x. 173, 174-176 (5th Cir. Nov. 19, 2009); *United States v. Gray*, Case no. 1:07-cv-42, 2007 WL 851873 (W.D. Mich. March 19, 2007); *Nelson v. United States*, Case no. 3:08cv508/MCR/EMT, 2009 WL 5851082, \*8 (N.D. Fla. Dec. 7, 2009).

***Scheme 3: Frivolous Amended Tax Returns Claiming That Wages Are Non-Taxable***

21. Allen's third scheme incorporates aspects of the previous two schemes. Allen prepares a cover letter for his customers stating that they are making a "Claim for Refund . . . pursuant to IRS Publication 556, Page 13" and enclosing a Form 1040X amended tax return. The letter claims that the customer's "income from my labor is non-taxable income under fundamental law," that the customer is a "'nontaxpayer' according to *Economy Plumbing and Heating v. United States*, 470 F.2d 585, 589-590 (U.S. Court of Claims, 1972)," that the customer's Form W-2 and Form 1099R "fail to indicate that [their] income was non-taxable," and that the "IRS fraudulently converted my non-taxable income to taxable income and kept the money (my property from my labor) through erroneously withheld federal income taxes." The

letter is signed “All Rights Reserved” by the customer as a “private American.”

22. Allen prepares the Form 1040X amended tax return that the customer then sends to the IRS. The Form 1040X falsely reports the reason for amendment as the “wage income reported was not from any of the sources listed in 26 C.F.R. 1.861-8(f)(1) and is therefore non-taxable income” and “is also exempt under fundamental law (my labor is my property and cannot be taxed).” Allen then falsely reports that the customer had no taxable income and requests an improper refund of all federal taxes withheld from the customer’s wages.

23. For example, Allen prepared a Form 1040X for tax year 2010 for customer Sandra Vonderembse of Oregon, Ohio. Allen reported Vonderembse’s wages of \$114,314.45. However, Allen then falsely reported that Vonderembse had no taxable income, and requested an improper refund of \$11,821.97. The paid preparer on Vonderembse’s Form 1040X was listed as “N/A.” Allen drafted a cover letter, dated March 7, 2011, which Vonderembse signed and submitted to the IRS with the frivolous tax return.

24. Allen also prepared a Form 1040X for tax year 2010 for customer Jerry Rable of Elida, Ohio. Allen reported Rable’s wages of \$59,757.26. However, Allen then falsely reported that Rable had itemized deductions in the amount of \$59,757.26, and thus no taxable income, and requested an improper refund of \$10,762.23. The paid preparer on the Rable’s Form 1040X was listed as “N/A.” Allen drafted a cover letter, dated March 25, 2011, which Rable signed and submitted to the IRS with the frivolous tax return.

25. Jerry Rable and Sandra Vonderembse were listed as purported counter-claimants in Allen’s frivolous Amended Counterclaim filed with the Court in the summons enforcement proceeding.

*Allen's Frivolous Correspondence, Bogus Liens, and Preparation of Fraudulent Forms W-4*

26. Allen also drafted correspondence to the IRS and the Department of Treasury on behalf of his customers. Allen does not sign the letters, but directs his customers to date and sign the letters, make two copies, mail the original certified to the Commissioner of the IRS, and keep one copy and mail the other copy to the IRS office in Kansas City, Missouri. The signature block of the letter contained the phrase "All Rights Reserved, Without Prejudice, Without the UNITED STATES."

27. For example, Allen wrote one letter, addressed to the Commissioner of the IRS, on behalf of customer Adam Shields of Lorain, Ohio, in response to an IRS Notice of Intent to Levy that the IRS sent to Shields for tax years 2001 through 2004. The letter states that its intent is "to inform you of illegal acts on the part of your agency," and repeats the frivolous claim that "I have never received 'wages' under IRC 3401(a)." The letter demands "the IRS to stop harassing me" and requests a "True Bill signed in blue ink by an authorized official of the IRS." Finally, the letter frivolously states that if the IRS does "not correct the problems within 10 days from receipt of this letter, I shall be forced to commence criminal proceedings, removal from office proceedings and all other remedial processes available." The letter was signed by Shields.

28. Allen wrote a similar letter, addressed to the Secretary of the Treasury, on behalf of customers Dallas and Linda Steen of Lancaster, Ohio, in response to an IRS Letter 3176, sent to the Steens and dated May 13, 2008, which notifies a taxpayer that their tax return has been identified as reporting a frivolous position under 26 U.S.C. § 6702.

29. Allen wrote a letter, addressed to the Commissioner of the IRS, on behalf of customer Michael Hacker of Sandusky, Ohio, claiming that Hacker "never received 'wages'

under IRC 3401(a)” and questioning the penalty provision of 26 U.S.C. § 6702. The letter was signed by Hackler.

30. Allen also attempted to file frivolous liens against the United States on behalf of his customers. For example, as a result of Allen’s frivolous tax return preparation for customer Linda Steen, the IRS sent a notice of levy to Steen, and levied on Steen’s wages from her employer, Waste Management. In response to a letter from Waste Management to Steen, Allen sent a letter dated March 3, 2009 to Waste Management in which he claimed to be “counsel of choice” for Steen, and claimed that “Linda L. Steen is exempt from Federal income tax under Fundamental Law, which is the Law of God and reorganized under the Common Law.”

31. Allen then prepared a bogus “Notice of Lien for the IRS” for its “failure to return” Steen’s “March 1, 2009 through March 21, 2009 pay garnishment.” Allen, by letter sent to Steen on May 22, 2009, directed Steen to have the purported lien notarized and to mail a copy of the lien, a cover letter, a Certificate Order Form, and a check or money order for \$26.50 to the District of Columbia Recorder of Deeds. By letter dated July 22, 2009, which Allen drafted but Steen signed, Steen delivered these documents to the Recorder of Deeds. The purported lien named IRS Commissioner Douglas Shulman and Secretary of the Treasury Timothy Geitner as “Lienees.” Also included was a bogus UCC Financing Statement naming Commissioner Shulman and Secretary Geitner as debtors and Linda Steen as a secured party.

32. Allen also prepared bogus Forms W-4 for his customers. For example, Allen prepared a bogus Form W-4 for tax year 2008 for customer Adam Shields which Allen instructed Shields to sign and date, make a copy, and give the original to his employer, Ford Motor Company. On the Personal Allowances Worksheet on Shields’ Form W-4, and on the line for

total number of allowances, Allen entered “N/A” rather than the number of allowances. Allen wrote “Exempt” to improperly claim a total exemption from federal tax withholdings on the Form W-4, even though Shields did not meet the two exemption requirements: that he had no tax liability in the previous year and that he expected to have no tax liability in the present year.

***Allen’s Unauthorized Practice of Law***

33. Allen has also engaged in the unauthorized practice of law. By order entered December 7, 2005, the Supreme Court of Ohio found that Allen had engaged in the unauthorized practice of law, enjoined him from the unauthorized practice of law in Ohio, and assessed a civil penalty of \$40,000 against Allen. The Supreme Court of Ohio found Allen in contempt on July 20, 2010. *See Ohio State Bar Ass’n v. John Allen*, Sup. Ct. Case no. 2004-2150 (Ohio).

34. As part of his tax-fraud scheme, Allen has attempted to represent customers before the IRS, claiming to be an attorney or counsel. As noted above, Allen has sent correspondence to customer Linda Steen’s employer claiming to be her “counsel.” Additionally, Allen submitted a Form 9423, Collection Appeal Request, on January 29, 2010 on behalf of Andrew and Janet Starkey, which Allen signed as the authorized representative in his purported capacity as “Private Attorney General.” In a letter enclosed with the Form 9423, Allen claimed that a “private attorney general is a private party in the United States who brings a lawsuit that is considered to be in the public interest, i.e. benefiting [sic] the general public and not just the plaintiff.”

35. In a letter sent to customers following the filing of the summons enforcement action in 2009, Allen identified himself as “a *juris doctor* in law.” Allen claimed that the IRS was “attempting to force me to stop helping everyone with their tax problems” and “also fishing

for all my records (they will have to kill me to get them).” Allen offered his customers receiving the letter “to join my Counterclaim” against the United States for a contribution “of \$20 to \$300 maximum.” As evidenced by the Amended Counterclaim filed in the summons enforcement case, several of his customers attempted to join in his court filings.

### **Harm Caused by Allen’s Misconduct and Tax-Fraud Schemes**

36. The IRS has identified over 100 tax returns that Allen prepared that fraudulently claim that his customers have no income and claim unwarranted refunds. Because Allen does not sign the tax returns that he prepares or otherwise identify himself as the preparer in order to evade detection, and Allen refuses to comply with the IRS summons enforced by this Court, it is difficult to determine exactly how many tax returns Allen has prepared.

37. The schemes employed by Allen are part of a trend among tax defiers nationwide to file frivolous tax returns and other forms with the IRS and courts in an attempt to escape their federal tax obligations and steal from the U.S. Treasury.

38. In reliance on Allen’s services, his customers have failed to file proper federal income tax returns, which has either deprived his customers of proper tax refunds to which they may have been entitled or deprived the United States of additional tax revenue owed by the customers. Additionally, as part of Allen’s promotion, his customers have paid hundreds of dollars in fees to Allen and, in exchange, Allen prepared bogus returns which he directed his customers to file with the IRS, which the customers must now correct.

39. While the IRS is able to detect and stop most fraudulent refund claims, the IRS is not able to stop all such claims before a refund is erroneously issued. The IRS estimates that

Allen's tax-fraud schemes and related tax return preparation resulted in over \$1.1 million in lost revenue to the United States.

40. In addition to the lost revenue due to the issuance of erroneous refunds, the Government has also incurred the expense of conducting the investigation of Allen's fraudulent return preparation and responding to and processing the frivolous documents that Allen prepared and directed his customers to submit to the IRS.

**Count I: Injunction Under 26 U.S.C. § 7407**

41. The United States incorporates by reference the allegations contained in paragraphs 1 through 40.

42. Under 26 U.S.C. § 7407, the United States may seek an injunction against any tax return preparer who has engaged in any "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," or who has "engaged in any conduct subject to penalty under section 6694 or 6695."

43. If a return preparer's misconduct is continual or repeated and the court finds that a narrower injunction (*i.e.* prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of federal tax laws, the court may enjoin the person from further acting as a return preparer.

44. Allen has continually and repeatedly prepared false and frivolous federal income tax returns that understate his customers' tax liabilities, as part of Allen's willful attempt to understate his customers' tax liabilities and his reckless or intentional disregard of internal revenue laws and regulations.

45. As a result, Allen has continually and repeatedly engaged in fraudulent or

deceptive conduct which substantially interferes with the proper administration of the internal revenue laws.

46. Allen has continually and repeatedly prepared federal tax returns that understate his customers' tax liabilities as a result of unreasonable and frivolous claims and has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694.

47. Allen has engaged in conduct subject to penalty under 26 U.S.C. §§ 6695(b) and 6695 (c) by not signing or otherwise identifying himself as the preparer of the tax returns that he prepares for his customers, in violation of 26 U.S.C. § 6109(a)(4).

48. Allen's continual and repeated violations of 26 U.S.C. §§ 6694 and 6695 are subject to an injunction under 26 U.S.C. § 7407.

49. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Allen is likely to prepare more false and fraudulent federal income tax returns and engage in other misconduct as described in this complaint.

50. Additionally, Allen has continually and repeatedly prepared returns that include fraudulent refund claims. While Allen's schemes have changed to evade detection, the intended result of each scheme has remained fraudulently obtaining an improper refund for his customers.

51. Allen should be permanently enjoined under 26 U.S.C. § 7407 from acting as a federal tax return preparer because a more limited injunction would be insufficient to stop him from interfering with the proper administration of the tax laws.

#### **Count II: Injunction Under 26 U.S.C. § 7408**

52. The United States incorporates by reference the allegations contained in paragraphs 1 through 51.

53. Under 26 U.S.C. § 7408, a district court may enjoin any person from, *inter alia*, engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

54. Section 6700 imposes a penalty on any person who organizes or participates in the sale of a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement which that person knows or has reason to know is false or fraudulent as to any material matter.

55. Allen organized or assisted with the organization of a plan or arrangement and in doing so made or caused another person to make false and fraudulent statements with respect to the tax benefits of participating in the plan or arrangement which Allen knew or had reason to know were false.

56. In particular, Allen organized or participated in the sale of a plan or arrangement to his customers which included Allen preparing tax returns and sending correspondence (and other frivolous documents) to the Internal Revenue Service and the Department of Treasury on behalf of the purchasers of the plan or arrangement. The frivolous claims on the returns that Allen prepared as part of the plan or arrangement varied based on the scheme he was utilizing, but all of the returns fraudulently requested tax refunds from the United States, despite the fact that Allen knew or had reason to know that any such refunds were predicated on the frivolous theory that the customer's wages were not income.

57. As a result, Allen engaged in conduct subject to penalty under 26 U.S.C. § 6700.

58. Section 6701 imposes a penalty on any person who aids or assists in, procures, or

advises with respect to, the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

59. Allen prepared and/or aided or assisted in the preparation and filing of federal income tax returns and other documents that he knew would result in the understatement of his customers' tax liabilities.

60. As a result, Allen engaged in conduct subject to penalty under 26 U.S.C. § 6701.

61. Allen has not acknowledged the impropriety of his actions and continues to promote his schemes and prepare false and fraudulent tax returns and frivolous documents.

62. Injunctive relief is appropriate to prevent recurrence of Allen's misconduct.

### **Count III: Injunction Under 26 U.S.C. § 7402**

63. The United States incorporates by reference the allegations contained in paragraphs 1 through 62.

64. Under 26 U.S.C. § 7402(a), a court may issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

65. Allen substantially interferes with the enforcement of the internal revenue laws by promoting his tax-fraud schemes and preparing fraudulent and frivolous federal tax returns and other documents on behalf of his customers.

66. As a result of Allen's misconduct and his fraudulent tax return preparation, his customers fail to file proper tax returns, and, consequently, may be penalized under 26 U.S.C. §

6676 for up to 20 percent of the excessive and fraudulent refund claim. The IRS estimates that the tax loss to the United States resulting from Allen's tax-fraud schemes and tax return preparation exceeds \$1.1 million, which does not include the financial costs associated with IRS employees investigating Allen's conduct, halting the issuance of erroneous refunds, and recovering erroneous refunds that have already been issued.

67. Allen also interferes with the enforcement of the internal revenue laws by drafting frivolous correspondence on behalf of his customers, which he sends or directs his customers to send to the Internal Revenue Service, the Department of Treasury, and the customer's employer. Allen also prepares bogus liens which he directs his customers to file against the Commissioner of the Internal Revenue Service and the Secretary of the Treasury. Allen does so under the guise of being an attorney, when in fact he has been enjoined by the State of Ohio from engaging in the unauthorized practice of law.

68. Allen's conduct results in irreparable harm to the United States and to the public for which there is no adequate remedy at law.

69. Allen's conduct interferes with the proper administration of the Internal Revenue Code because it results in frivolous filings with the IRS that hinder the IRS's ability to determine the correct tax liabilities of Allen's customers.

70. Unless enjoined, Allen will continue to promote and administer his tax-fraud schemes, prepare fraudulent tax returns for customers, and engage in other conduct interfering with the enforcement of the internal revenue laws.

71. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent the recurrence of this misconduct.

WHEREFORE, Plaintiff, the United States of America, prays for the following relief:

A. That the Court find that John D. Allen has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695 and other deceptive conduct and that injunctive relief is appropriate under 26 U.S.C. §§ 7402 and 7407 to bar John D. Allen from acting as a federal tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695;

B. That the Court find that John D. Allen has engaged in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701 and that injunctive relief is appropriate under 26 U.S.C. §§ 7402 and 7408 to bar John D. Allen from engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701;

C. That the Court find that John D. Allen has engaged in conduct that substantially interferes with the enforcement and administration of the internal revenue laws, and that injunctive relief against John D. Allen is appropriate to prevent the recurrence of that misconduct pursuant to 26 U.S.C. § 7402(a);

D. That the Court, under 26 U.S.C. §§ 7402 and 7407, enter a permanent injunction permanently barring John D. Allen from acting as a federal tax return preparer and from preparing or filing federal tax returns or forms for others, from representing others before the IRS, and from advising or assisting anyone concerning federal tax matters;

E. That the Court, under 26 U.S.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting John D. Allen and his representatives, agents, servants, employees,

attorneys, independent contractors, and anyone in active concert or participation with him, from directly or indirectly:

- (1) Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return, amended return or other federal tax documents or forms for any other person or entity;
- (2) Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that advises or helps taxpayers to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the misuse of Internal Revenue Service Forms including Forms 1040, 1099, W-2, and W-4, under the false claims that his customers' wages do not qualify as income under 26 U.S.C. § 3401(a) or 26 CFR 1.861-8(f)(1);
- (3) Engaging in conduct subject to penalty under 26 U.S.C. § 6694;
- (4) Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to sign federal tax returns as the preparer or failing to otherwise identify himself as the paid preparer;
- (5) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making or furnishing a statement regarding the excludability of income or securing any other tax benefit that he knows or has reason to know is false or fraudulent as to any material matter;
- (6) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including preparing and filing or assisting in the preparation and filing of tax returns and other documents that understate the tax liabilities of others;
- (7) Filing, providing forms for, or otherwise aiding or abetting the filing of frivolous Forms 1040, 1040X, 1099, W-2, W-4, and other IRS forms for himself or others;
- (8) Filing, preparing notices or other forms, or otherwise aiding or abetting the filing of frivolous liens against the United States and its officers, employees, and agents;
- (9) Representing anyone other than himself before the Internal Revenue Service;
- (10) Engaging in any other conduct that is subject to penalty under the Internal Revenue Code or that interferes with the proper administration and enforcement of the internal revenue laws;

F. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring John D. Allen to contact by mail and email all persons for whom he has prepared federal tax returns since 2006, and all persons who have purchased any products, services or advice associated with the false or fraudulent tax scheme described in this complaint, to inform them of the permanent injunction entered against him, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court;

G. That this Court, under 26 U.S.C. § 7402, order John D. Allen to provide to the United States a list of all persons for whom he has prepared federal tax returns since 2006 and a list of all persons who have purchased any products, services or advice from him since 2006;

H. That this Court allow the government full post-judgment discovery to monitor John D. Allen's compliance with the injunction; and

I. That this Court grant the United States such additional relief as the Court deems just and appropriate.

Dated: November 8, 2012

Respectfully submitted,

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