

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 10-1048
	)	
GERALD A. POYNTER, II,	)	
a/k/a Brother Jerry Love, Jerry Love,	)	
d/b/a Heartland Investment Group, LLC;	)	
Sharper Solutions, LLC; Sharper Solutions	)	
Family Foundation; Sharper Solutions	)	
Foundation; Blackbelt Tax Services;	)	
Sharper Solutions Tax Services; Etree;	)	
Luckytown; AKKA; Jerry Love Ministries;	)	
and/or The Dojo,	)	
	)	
Defendant.	)	

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

In 2008 and 2009, Gerald A. Poynter, II, promoted a tax-fraud scheme, in furtherance of which he has prepared, assisted in preparing, and/or filed with the Internal Revenue Service (“IRS”) fraudulent federal income tax returns for himself and other taxpayers. The fraudulent tax returns request large income tax refunds, to which the taxpayers are not entitled, based on false claims of income earned and federal tax withheld. Poynter’s tax-fraud scheme has resulted in claims of more than \$64 million in fraudulent refunds. The United States Treasury has erroneously paid out more than \$6.4 million in response to these fraudulent claims. In order to prevent future harm to taxpayers and the government, the United States requests that this Court enjoin Poynter from furthering his tax evasion scheme.

- Therefore, Plaintiff, United States of America, for its complaint against Gerald A. Poynter, II (“Defendant” or “Poynter”), states as follows:
1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1346 and 26 U.S.C. §§ 7402(a), 7407, and 7408.
  2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General under 26 U.S.C. §§ 7402, 7407, and 7408.
  3. This suit is brought under §§ 7402, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“I.R.C.”) to enjoin Gerald A. Poynter, II, from the following activities:
    - a. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return, amended federal tax return, or other federal tax documents or forms for any other person or entity;
    - b. Organizing, promoting, marketing, or selling, or assisting in organizing, promoting, marketing, or selling, any plan or arrangement that assists or incites taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including those that promote, sell, or advocate the use of tax returns with false withholding claims based on false Forms 1099 or other withholding documents;
    - c. Engaging in conduct subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making or furnishing a statement regarding the right or ability to claim withholding based on Forms 1099 or other withholding documents prepared by or for the taxpayers or any other plan or

arrangement which he knows or has reason to know is false or fraudulent as to any material matter;

- d. Engaging in conduct subject to penalty under I.R.C. § 6701, including preparing and filing federal tax returns and other documents that understate the tax liabilities of others;
- e. Advertising, marketing, or promoting any false, misleading, or deceptive tax position in any media for the purpose of assisting or inciting taxpayers to unlawfully evade the assessment or payment of federal income taxes, including the positions that:
  - i. taxpayers can draw on the Treasury of the United States to pay their tax debt or other debt using Forms 1099, bonded promissory notes, sight drafts, or other documents;
  - ii. the issuance of a Form 1099 by a taxpayer to a creditor allows the taxpayer to claim that he or she has withholding of income taxes in the amount of the Form 1099 issued by the taxpayer; or
  - iii. taxpayers have an account, possibly a secret account, with the Treasury Department which they can use to pay their debts or which they can draw on for refunds through a process that is often called “commercial redemption.”
- f. Instructing or assisting others to hinder or disrupt the enforcement of internal revenue laws by filing frivolous returns based on “commercial redemption” or other frivolous arguments;

- g. Preparing his own federal individual income tax returns claiming income tax withholding and refunds based on amounts shown in Forms 1099 issued to or in the name of his creditors;
- h. Representing anyone other than himself before the IRS; and
- i. 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.

#### **Defendant**

- 4. Gerald A. Poynter, II, resides in Kansas City, Missouri, and does business in Blue Springs, Missouri, both of which are located in this judicial district. Venue is thus proper under 28 U.S.C. §§ 1391 and 1396.
- 5. Poynter prepares tax returns and/or assists in preparing tax returns for other taxpayers in exchange for compensation.
- 6. Poynter is an unenrolled tax preparer.
- 7. In 2008 and 2009, Poynter prepared and filed, and/or assisted in preparing and filing fraudulent federal income tax returns, fraudulent amended federal income tax returns, and frivolous supporting documents with the IRS on behalf of himself and others. He is likely continuing to do so.

#### **Proper Reporting Procedures for Certain Income and Tax Withholdings**

- 8. The IRS requires that certain entities file documents called “information returns.” These documents provide the IRS information about, for example, money paid to an individual taxpayer by an entity and any federal income tax that the entity withheld. A common

information return is the Form W-2 that an employer files with the IRS to report income paid to an employee and federal income tax withheld on the employee's behalf.

9. Another information return is Form 1099-OID, which is used to report original issue discount ("OID") income and any federal income tax withheld from that income. OID income refers to the difference between the discounted price at which a debt instrument is sold at issuance, and the stated redemption price at maturity.
10. For example, if a taxpayer buys for \$950 a 10-year bond with a stated redemption price at maturity of \$1,000, the OID is \$50. The taxpayer must account for the interest that accrues during each of the ten years, toward the ultimate \$50 of total OID interest. Although the taxpayer does not actually receive the interest each year, it must be reported on the taxpayer's income tax return each year.
11. If any federal tax is withheld from the OID amount each year, the withholding is also reported on Form 1099-OID.
12. The party that issues a debt instrument that generates OID must issue a Form 1099-OID. The Form 1099-OID must be filed with the IRS and is typically sent to the taxpayer for reference.
13. If a taxpayer has OID interest income to report, he or she must record it on IRS Form Schedule B. Schedule B must be attached to the taxpayer's federal income tax return, and information from Schedule B is reported on the taxpayer's federal income tax return.
14. An entity that issues information returns like Form 1099-OID must also submit to the IRS a Form 1096, "Annual Summary and Transmittal of U.S. Information Returns." Form 1096 contains a summary of the total contents of all of the Forms 1099-OID that

the entity filed for a particular tax year.

15. An additional “information return” that must be filed with the IRS and is relevant to this Complaint is IRS Form 1099-A, “Acquisition or Abandonment of Secured Property” and IRS Form 1099-C, “Cancellation of Debt.” A taxpayer must file Form 1099-A to report income resulting from cancellation of a borrower’s indebtedness because of the acquisition of property as security for the debt.

### **Poynter’s Abusive Tax Fraud Scheme**

16. Poynter has promoted, and may be continuing to promote, an abusive tax scheme that uses fraudulent information returns Forms 1099-OID and Forms 1099-A, and individual income tax returns to generate outlandish and false claims for refunds by his customers.
17. Poynter has directly solicited, and may continue to directly solicit, customers to participate in this abusive tax scheme and prepares or assists in preparing their individual income tax returns. He holds himself out as an expert on tax preparation and promises clients large refunds.
18. Poynter has promoted, and may continue to promote, this abusive tax scheme to a network of “affiliates” or “branch managers” who, in turn, directly solicit clients to participate in the same scheme or a similar scheme.
19. The returns that Poynter has prepared, or has assisted in preparing, fabricate the amount of tax withheld on behalf of his customers. The fabricated tax withholding reported to the IRS on his customers’ behalf results in fraudulent refund claims by his customers in amounts as large as \$5.3 million.
20. In support of the fraudulent refund claim on a customer’s federal income tax return,

Poynter has prepared and filed, or assisted with preparing and filing, false Forms 1099-OID and/or Forms 1099-A.

21. The Forms 1099-OID that Poynter generated, and may continue to generate, falsely state that his customer issued a debt instrument that generated OID or that his customer purchased a debt instrument that generated OID.
22. The Forms 1099-OID falsely state that federal income taxes were withheld for the full amount of income purportedly paid or received by his customer, or nearly the full amount of income purportedly paid or received by his customer.
23. The frivolous IRS Forms 1099-OID generated by Poynter purport to show that his customer has lent money to a creditor of the customer, usually a credit card company or a mortgage company. The amount of the false OID income reported appears to be in an amount needed to satisfy a debt (usually a mortgage, car loan, or credit card debt) owed by the customer to the creditor, or nearly the total amount of debt owed by the customer to the creditor. The Forms 1099-OID submitted also report tax withholding for the full amount of the phony OID income, or nearly the full amount of the phony OID income.
24. The Forms 1099-A generated by Poynter falsely state that his customer acquired an interest in property to secure an amount lent by the customer to a purported debtor, or learned that property securing an amount lent by the customer to a purported debtor was abandoned.
25. The frivolous Forms 1099-A generated by Poynter purport to show that his customer has lent money to a creditor of the customer, usually a credit card company or mortgage company. The Forms 1099-A purport to show that the customer has acquired secured

property in the amount of the balance of the supposedly outstanding loan from the customer to the creditor, or in an amount close to the balance of the supposedly outstanding loan.

26. The false OID income and false withholding from the fraudulent Forms 1099-OID are then reported on the customer's federal income tax return, Form 1040, or amended federal income tax return, Form 1040X. The result is an inflated tax liability for the customer, but with a correspondingly inflated false refund claim, often exceeding \$200,000. One of the returns Poynter prepared for a customer, or assisted in preparing, included a fraudulent refund claim in the amount of \$5.3 million for tax year 2007.
27. Consequently, Poynter's customers fail to file correct federal income tax returns and falsely claim tax refunds to which they are not entitled.
28. The central purpose of Poynter's abusive tax scheme is to state fraudulent claims for income tax refunds to steal from the United States Treasury.
29. This scheme is lucrative for Poynter. In exchange for Poynter's fraudulent "services," his customers typically paid a fee of fifteen percent of any refund they obtained. For a \$200,000 refund, Poynter's fee would be about \$30,000.

#### **Fraudulent Returns**

30. The IRS has identified at least 165 returns that Poynter prepared and filed, or assisted in preparing and filing, in 2008 and 2009 that request refunds based on Poynter's tax-fraud scheme. It is yet unknown how many fraudulent income tax returns he aided and abetted, and may be continuing to aid and abet, through his network of "affiliates" or "branch managers."



31. The 165 returns that Poynter prepared and filed, or assisted in preparing and filing, were filed on behalf of taxpayers in at least twenty-five different states. The returns generally follow the model described above.
32. For example:
  - a. In 2008 Poynter prepared, or assisted in preparing, fraudulent tax information documents and a 2007 Form 1040 federal income tax return for John and Marinella Perdido, who reside in Temecula, California.
    - i. The Perdidos' 2007 federal income tax return falsely claims that they earned interest income in 2007 in the amount of \$1,324,333.
    - ii. That purported interest income, combined with the Perdidos' other income and deductions, result in a grossly inflated taxable income of \$1,373,447.
    - iii. The return also falsely claims that \$1,328,617 of federal income tax was withheld on their behalf.
    - iv. The Perdidos' supposed taxes reported on their 2007 return was \$572,601, far less than the purported federal income tax withheld on their behalf.
    - v. As a result, the Perdidos requested a refund in the amount of \$875,705
    - vi. The IRS erroneously issued a refund to the Perdidos in the amount of \$875,705, a refund to which they were not entitled. The IRS has recovered only \$83,128 of the erroneous refund.
    - vii. After receipt of the fraudulent refund, a wire transfer of \$118,000 was sent from John Perdido to the bank account of Gerald A. Poynter, DBA Jerry Love Ministries.

- b. In 2009, Poynter prepared, or assisted in preparing, fraudulent tax information documents and fraudulent federal income tax returns for tax years 2005, 2006, and 2007 for Dewey M. Bracken, Jr., who resides in Blountville, Tennessee.
- i. Bracken's 2005 federal income tax return falsely claims that he earned interest income in the amount of \$1,619,202.
  - ii. Attached to the return are thirteen fraudulent Forms 1099-OID and thirteen fraudulent Forms 1099-A that purport to demonstrate the interest income that Bracken allegedly earned during tax year 2005.
  - iii. That purported interest income, combined with Bracken's other income and deductions, result in a grossly inflated taxable income of \$1,673,072.
  - iv. The return also falsely claims that \$1,538,174 of federal income tax was withheld on his behalf.
  - v. Bracken's supposed taxes reported on his 2005 return was \$572,601, far less than the purported federal income tax withheld on his behalf.
  - vi. As a result, Bracken requested a refund of \$965,438 for tax year 2005, a refund to which he was not entitled.
  - vii. Bracken's tax returns for tax years 2006 and 2007 generally follow the same pattern.
  - viii. As a result of Poynter's tax-fraud scheme, the total dollar amount of the refunds claimed by Bracken in April 2009 for tax years 2005, 2006, and 2007 was more than \$1.5 million.
- c. In addition to preparing returns for his customers, Poynter also prepared returns

for himself and his wife, Jaclyn Poynter. In August 2008, he prepared a fraudulent amended income tax return, and supporting documents including fraudulent Forms 1099-OID, for tax year 2005. The return requested a refund of \$165,672. As a result of the fraudulent claims, the IRS erroneously issued a refund to Gerald and Jaclyn Poynter in the amount of \$193,067.83, of which only \$70,000 has been recovered.

### **Context for Poynter's Abusive Tax Fraud Scheme**

33. Poynter's scheme is part of a growing, nationwide trend to file frivolous tax returns and Forms 1099-OID with the IRS and courts in an attempt to escape federal tax obligations and steal from the U.S. Treasury.
34. Poynter's scheme, and related schemes, may be identified as falling under the category of "commercial redemption." Proponents of commercial redemption claim that the United States government is in possession of money rightfully owned by the taxpayer. Poynter has promoted his scheme using this theory.
35. Poynter has told, and may continue to tell customers he can "recover" their money from the United States, for a fee. He then generated, and may continue to generate, fraudulent Forms 1099-OID and/or Forms 1099-A to support the fraudulent income tax returns claiming refunds of federal tax payments that were never made.
36. Other courts have enjoined tax return preparers for promoting the same and similar tax-fraud schemes, and for preparing the same type of bogus tax returns and supporting documentation under theories related to commercial redemption. *See, e.g., United States v. Knupp*, No. 1:09-CV-2724, 2010 WL 2245551, at \*2-3 (N.D. Ga. May 14, 2010)

(describing the commercial redemption theory as “frivolous[]” and the preparer’s use of false Forms 1099-OID as “fraudulent”); *United States v. Marty*, No. CIV S-09-0600 FCD EFB PS, 2010 WL 323518 (E.D. Cal. Jan. 14, 2010); *United States v. Miller*, No. 3:09-cv-01030, 2009 WL 4060274, at \*2 (M.D. Tenn. Nov. 23, 2009); *see also United States v. Kahn*, No. 5:03CV-436-OC-10GRJ, 2004 WL 1089116, at \*1 (M.D. Fla. Mar. 30, 2004) (holding defendants in contempt of injunction that arose from defendants’ promotion of tax schemes involving “outlandish mechanisms” such as using counterfeit bonds and checks to draw on fictitious treasury accounts supposedly in their customers’ names).

37. Other courts have condemned this or similar tax-fraud schemes. *Ray v. Williams*, No. CV-04-863-HU, 2005 WL 697041, at \*5-6 (D. Or. Mar. 24, 2005) (discussing the fraudulent claims of “redemptionists” when assessing the constitutionality of a prison denying a prisoner access to a book containing the theory and explaining how to exploit it); *Monroe v. Beard*, No. 05-04937, 2007 WL 2359833, at \*2 (E.D. Pa. Aug. 16, 2007) (characterizing redemption as an “anti-government scheme that utilizes commercial law to harass and terrorize its targets”).
38. On October 28, 2008, the IRS issued a nationwide “problem alert” warning taxpayers about the very tax-fraud scheme that Poynter has promoted and is promoting. IRS, “Problem Alerts,” *available at* <http://www.irs.gov/newsroom/article/0,,id=98129,00.html>. (“The IRS cautions taxpayers to avoid getting caught up in a new tax fraud disguised as a debt payment option for credit cards or mortgage debt. The fraud is also marketed as a way to reduce taxes or pay outstanding tax liabilities.”)

### **Additional Illegal Activity**

39. In an attempt to provide an air of legitimacy to his tax fraud scheme, Poynter filed or directed to be filed, or may be filing or directing the filing of, false Forms 1096. These false Forms 1096 summarize and transmit the fraudulent Forms 1099-OID and Forms 1099-A that Poynter's customers use in support of their requests for illegal refunds.
40. Poynter prepared and filed some customers' federal income tax returns, or amended federal income tax returns, without their knowledge or signature.
41. Poynter does not have a Electronic Filer Identification Number ("EFIN") registered in his name. He and/or his affiliates have used and may be continuing to use an EFIN registered to Coleman & Associates, d/b/a Quicker Refund Express, to electronically file fraudulent tax returns and supporting documents. The "responsible official" for the EFIN is Maurice Coleman of Monroe, Louisiana.
42. Poynter has not and does not sign the tax returns that he prepares and/or files on behalf of his customers.

### **Public Harm Caused by Poynter's Abusive Tax Fraud Scheme**

43. The harm caused by Poynter's abusive tax scheme is widespread. The United States Treasury, Poynter's customers, and the taxpaying public are all adversely affected.
44. The United States Treasury has been defrauded through tax refunds wrongfully issued and rightful tax liabilities uncollected. Many of the 165 fraudulently requested refunds identified to date that Poynter prepared or assisted in preparing exceed \$200,000. At least fifteen fraudulent refund requests exceed \$1 million. The total amount of refunds requested on the 165 fraudulent returns is approximately \$64 million.

45. While the IRS is able to detect most fraudulent refund claims and stop related refunds from being issued, Poynter's tax scheme has resulted in the issuance of at least \$6.4 million in erroneous refunds to his customers.
46. In fact, the IRS has been forced to implement new procedures to filter and investigate the fraudulent tax returns that Poynter prepared, or assisted in preparing. The administrative costs expended so far are nearly \$34,000, exclusive of any future costs associated with the collection of tax assessments and responses to any future correspondence and filings.
47. Poynter's tax fraud scheme is part of a growing, nationwide trend among unscrupulous tax preparers to assist customers in filing frivolous tax returns and Forms 1099 with the IRS in an attempt to escape their federal tax obligations and steal from the U.S. Treasury under the baseless "commercial redemption" theory.
48. In reliance on Poynter'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 tax revenue owed by his customers.
49. Poynter's customers have also incurred direct financial harm because they remain liable for any lawful tax unpaid, may be liable for interest and substantial penalties, and could be subject to criminal prosecution.
50. Furthermore, the scheme causes harm to the creditors that have entered into business relationships with these taxpayers. If creditors receive fraudulent Forms 1099-OID from the taxpayers, they must spend time and resources to determine their falsity and risk receiving audit or penalty notices from the IRS.

**Injunction Under 26 U.S.C. § 7407**

51. Under I.R.C. § 7407, if the court finds that injunctive relief is appropriate to prevent the recurrence of the following conduct, the court may enjoin a tax return preparer from:
- a. engaging in conduct subject to penalty under I.R.C. § 6694;
  - b. engaging in conduct subject to penalty under I.R.C. § 6695;
  - c. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.
52. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a federal income tax return preparer in any capacity.

**Count I: Injunction Under 26 U.S.C. § 7407 for  
Violation of 26 U.S.C. § 6694(a)**

53. The United States incorporates by reference the allegations contained in paragraphs 1 through 52.
54. Section 6694(a), I.R.C., penalizes a tax return preparer who prepares any return or claim for refund to which any part of an understatement of liability is due to an unreasonable position, and the tax preparer knew or should have known of the unreasonable position.
55. Poynter has continually and repeatedly prepared and filed federal income tax returns and claims for refund that understate his customers' tax liabilities.
56. The understatement of his customers' tax liabilities is the a result of the unreasonable position that it is permissible to file fraudulent federal income tax returns and other forms

in support of such federal income tax returns and claims for refund.

57. Poynter knew, or should have known, that filing fraudulent tax returns and supporting documents was unreasonable.
58. Therefore, Poynter has engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).
59. Injunctive relief under 26 U.S.C. § 7407 is appropriate to prevent this misconduct because, absent an injunction, Poynter is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.
60. Poynter 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. § 7407 for  
Violation of 26 U.S.C. § 6694(b)**

61. The United States incorporates by reference the allegations contained in paragraphs 1 through 62.
62. Section 6694(b), I.R.C., penalizes a tax return preparer who prepares a return or claim for refund with respect to which any part of an understatement of liability is due to
  - a. a willful attempt to understate the liability for tax on the return or claim or
  - b. a reckless or intentional disregard of rules or regulations.
63. Poynter has continually and repeatedly prepared and filed federal income tax returns or claims for refund that understate his customers' tax liabilities. These understatements are due to Poynter's willful attempt to understate his customers' tax liabilities and/or Poynter's reckless and/or intentional disregard of internal revenue laws and regulations.



64. Injunctive relief under 26 U.S.C. § 7407 is appropriate to prevent this misconduct because, absent an injunction, Poynter is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.
65. Poynter 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 III: Injunction Under 26 U.S.C. § 7407 for  
Violation of 26 U.S.C. § 6695**

66. The United States incorporates by reference the allegations contained in paragraphs 1 through 65.
67. Section 6695, I.R.C., penalizes a tax return preparer who fails to comply with certain requirements for persons who prepare taxes for other persons, which requirements include:
- a. Furnishing a completed copy of the taxpayer's tax return or claim to the taxpayer no later than the time that the return or claim is offered for the taxpayer's signature;
  - b. Signing all returns or claims for refund as required by law or regulation; and
  - c. Placing the tax return preparer's identifying number, or that of his employer, on all returns or claims for refund prepared by the preparer.
68. Poynter prepares federal income tax returns for taxpayers other than himself, but he has continually and repeatedly failed to abide by the statutory requirements for doing so.
69. Injunctive relief under 26 U.S.C. § 7407 is appropriate to prevent this misconduct

because, absent an injunction, Poynter is likely to continue to engage in misconduct of the type described in this complaint.

70. Poynter 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 IV: Injunction Under 26 U.S.C. § 7407(b)(1)(D)**

71. The United States incorporates by reference the allegations contained in paragraphs 1 through 70.
72. Section 7407(b)(1)(D), I.R.C., permits an injunction when the court finds that a tax preparer has engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the internal revenue laws.
73. Poynter has continually and repeatedly engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.
74. Injunctive relief under 26 U.S.C. § 7407 is appropriate to prevent this misconduct because, absent an injunction, Poynter is likely to continue to engage in misconduct of the type described in this complaint.
75. Poynter 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.

**Injunction Under 26 U.S.C. § 7408**

76. Section 7408(a), I.R.C., authorizes a district court to enjoin any person from engaging in conduct subject to penalty under I.R.C. §§ 6701 and 6700, if injunctive relief is appropriate to prevent recurrence of that conduct.
77. Section 6700, I.R.C., creates a penalty for a person who engages in certain specified conduct that promotes an abusive tax shelter.
78. Section 6701, I.R.C., creates a penalty for a person who aids and abets the understatement of a taxpayer's tax liability.

**Count V: Injunction Under 26 U.S.C. § 7408 for  
Violation of 26 U.S.C. § 6700(a)(2)(A)**

79. The United States incorporates by references the allegations contained in paragraphs 1 through 78.
80. Under I.R.C. § 6700(a)(2)(A), a penalty may be imposed upon any person who, in connection with organizing, promoting, or selling a plan or arrangement, or assisting in organizing, promoting or selling a plan or arrangement makes or furnishes, or causes another person to make or furnish a statement as to, among other things:
- a. the allowability of a deduction or credit, or
  - b. the securing of any other tax benefit by reason of holding an interest in the participating in the plan or arrangement
- which statement the person knows or has reason to know, is false or fraudulent as to any material matter.
81. Poynter organized, promoted, and sold, or assisted in organizing, promoting, and selling, a plan or arrangement to defraud the internal revenue system of the United States.

82. In doing so, he made or furnished, or caused to be made or furnished, false or fraudulent statements with respect to a taxpayer's ability to claim false withholdings and other tax benefits.
83. Poynter knew or had reason to know that his statements were false or fraudulent, because they were predicated on the submission of false or fraudulent documents to the IRS.
84. As a result, Poynter engaged in conduct subject to penalty under 26 U.S.C. § 6700(a)(2)(A) and he should be enjoined from engaging in such conduct in the future under 26 U.S.C. § 7408.

**Count VI: Injunction Under 26 U.S.C. § 7408 for  
Violation of 26 U.S.C. § 6701**

85. The United States incorporates by references the allegations contained in paragraphs 1 through 84.
86. Section 6701, I.R.C., creates a penalty for any person who:
- a. aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, claim or other document;
  - b. 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
  - c. who knows that such portion would result in an understatement of the liability for tax of another person.
87. Poynter prepared and/or aided, and/or assisted in, and/or advised in the preparation and filing of fraudulent federal income tax returns and supporting documents.
88. Poynter knew or had reason to believe that the fraudulent federal income tax returns and supporting documents he prepared and/or aided, and/or assisted in, and/or advised in

creating would be used in connection with his other taxpayers' federal income tax returns, material matters under the internal revenue laws.

89. Poynter knew that the fraudulent federal income tax returns and supporting documents would drastically understate other taxpayers' federal income tax liabilities.
90. As a result, Poynter has engaged in conduct subject to penalty under 26 U.S.C. § 6701.
91. Injunctive relief is appropriate to prevent recurrence of Poynter's penalty conduct.

**Count VII: Injunction Under 26 U.S.C. § 7402(a)**

92. The United States incorporates by reference the allegations contained in paragraphs 1 through 91.
93. Section 7402(a), I.R.C., authorizes a court to 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.
94. Poynter substantially interferes with the enforcement of the internal revenue laws by promoting his abusive tax scheme under one or more theories of "commercial redemption" and filing, or assisting in the filing of, frivolous federal tax returns and other documents on behalf of other taxpayers. His activities are part of the nationwide effort among unscrupulous tax preparers to steal from the United States Treasury with similar schemes.
95. As a result of Poynter's misconduct, his customers fail to file proper tax returns and have received erroneous refunds of millions of dollars. His customers may be liable for substantial penalties, including penalties for 20 percent of the excessive refund claim pursuant to 26 U.S.C. § 6676, as a result of their fraudulent refund claims.

96. Poynter has solicited the participation of other federal income tax preparers to expand his abusive scheme. These affiliated tax preparers have used Poynter's fraudulent techniques to aid their customers in filing improper tax returns claiming wrongful, unearned refunds amounting to millions of dollars.
97. Poynter's conduct results in irreparable harm to the United States and to the public for which there is no adequate remedy at law.
98. Poynter's conduct interferes with the proper administration of the Internal Revenue Code because it has resulted, and will likely continue to result, in hundreds of frivolous filings with the IRS that hinder the IRS's ability to determine the correct tax liabilities of Poynter's customers and other taxpayers.
99. Unless enjoined by this Court, Poynter will likely continue to promote and administer his abusive tax scheme.
100. Injunctive relief under I.R.C. § 7402(a) is appropriate 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 Poynter has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694, 6995, 6700, and 6701, and that injunctive relief is appropriate under 26 U.S.C. §§ 7402, 7407, and 7408 to bar Poynter from acting as a tax return preparer and from engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, 6700, and 6701;
- B. That the Court find that Poynter has engaged in conduct that substantially interferes with the enforcement and administration of the internal revenue laws,

and that injunctive relief against him is appropriate to prevent the recurrence of that misconduct pursuant to 26 U.S.C. §§ 7407 and 7402(a);

- C. That the Court, under 26 U.S.C. §§ 7402 and 7407, enter a permanent injunction permanently barring Poynter from acting as 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 anyone concerning federal tax matters;
- D. That the Court, under 26 U.S.C. §§ 7402 and 7407, enter a permanent injunction prohibiting Poynter 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 the preparation or filing of, any federal income tax return or amended return or other related documents or forms for any other person or entity;
  - 2. Engaging in activity subject to penalty under 26 U.S.C. §§ 6694 or 6695;
  - 3. Engaging in any other activity subject to penalty under the Internal Revenue Code; and
  - 4. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
- E. That this Court, under 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Poynter and his representatives, agents, servants, employees, and anyone in active concert or participation with him, from directly or indirectly by means of false, deceptive, or misleading commercial speech:

1. Organizing or selling tax shelters, plans or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of such taxpayers' correct federal tax;
  2. Engaging in any other activity subject to penalty under 26 U.S.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludability of income or securing of any other tax benefit by participating in the plan that he knows or has reason to know is false or fraudulent as to any material matter;
  3. Engaging in any activity subject to penalty under 26 U.S.C. § 6701; and
  4. Directly or indirectly organizing, promoting, marketing, or selling any plan or arrangement that assists or incites taxpayers to attempt to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including promoting, selling, or advocating the use of false Forms 1099.
- F. That this Court, under 26 U.S.C. § 7402, enter a permanent injunction prohibiting Poynter from preparing his own federal income tax returns claiming false income tax withholding and refunds based on amounts shown in false Forms 1099;
- G. That this Court, under 26 U.S.C. § 7402, enter a permanent injunction prohibiting Poynter from filing, providing forms for, or otherwise aiding and abetting the filing of frivolous Forms 1040 or Forms 1099 for himself or others, including the notarizing or signing of certificates of service or similar documents in connection with the frivolous tax returns;



- H. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring Poynter to contact by mail (and also by e-mail, if an address is known) all persons who have purchased any products, services, or advice associated with the false or abusive tax scheme described in this complaint, inform those persons of the Court's findings concerning the falsity of Poynter's prior representations, and attach a copy of the permanent injunction against Poynter;
- I. That this Court, under 26 U.S.C. § 7402, enter an injunction requiring Poynter and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, to remove all content regarding the tax scheme described herein from his websites and replace that content with a copy of the Court's injunction for a period of three years.
- J. That this Court, under 26 U.S.C. § 7402, order Poynter to provide to the United States a list of all persons who have purchased any products, services, or advice from him in the past three years;
- K. That this Court retain jurisdiction to allow the United States full post-judgment discovery to monitor Poynter's compliance with the injunction; and

L. That this Court grant the United States such other and further relief as the Court deems just and appropriate.

Date: October 25, 2010

Respectfully submitted,

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