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

UNITED STATES OF AMERICA, Plaintiff, v. DANIEL D. WEDDINGTON; JAMES R. EARL; MID-CON PETROLEUM, INC., AURORA CAPITAL GROUP, INC, and JEFFREY L. GAUMER, Defendants.	)	Civil No. 07-1221

AMENDED COMPLAINT FOR
PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America makes the following allegations against the defendants, Daniel D. Weddington, James R. Earl, Mid-Con Petroleum, Inc. ("Mid-Con"), Aurora Capital Group, Inc. ("Aurora Capital"), and Jeffrey L. Gaumer:

1. This is a civil action brought by the United States pursuant to §§ 7402(a), 7407, and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.) ("IRC") to enjoin defendants and anyone in active concert or participation with them, from:

(a) organizing, promoting, or selling any tax shelter, plan, or other arrangement, that advises or assists customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(b) making false statements, in connection with such organization, promoting, or selling, about the allowability of any deduction or credit, the excludability of any income,

or the securing of any tax benefit by the reason of participating in any such tax shelter, plan or other arrangement;

(c) making gross valuation overstatements (within the meaning of IRC § 6700) in connection with such organization, promoting, or selling;

(d) preparing or assisting in the preparation or filing of tax returns for others that defendants know will result in the understatement of any tax liability;

(e) engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, 6701, or any other penalty provision in the Internal Revenue Code;

(f) engaging in conduct designed or intended to, or having the effect of, obstructing or delaying any Internal Revenue Service investigation or audit; and

(g) engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws.

Additionally the United States seeks to enjoin defendant Weddington from preparing or filing federal tax returns for anyone other than himself and from advising or assisting anyone with respect to any federal tax matter.

Jurisdiction

2. This civil 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 of the United States.

3. Jurisdiction is conferred upon this Court by I.R.C §§ 7402(a), 7407 and 7408, and 28 U.S.C. §§ 1340 and 1345.

4. Venue is proper in this Court under 28 U.S.C. § 1391 because defendants reside in this judicial district and a substantial part of the conduct described in this complaint occurred in this judicial district.

Defendants

5. Defendants Weddington and Earl each own 50% of the stock of Mid-Con Petroleum, Inc. ("Mid-Con"), a corporation that has its principal place of business in Heath, Ohio. Mid-Con engages in drilling oil and gas wells.

6. Since at least 2001, defendants have promoted a tax-fraud scheme that is designed to enable customers to claim false or fraudulent federal income tax deductions for purported intangible drilling costs ("IDC") associated with joint ventures entered into with Mid-Con. Under the IDC scheme, customers enter into joint venture agreements with Mid-Con to purportedly buy a working interest in oil and gas wells. Defendants contend that they are selling customers the IDC of new wells related to the joint ventures, which defendants tell participants will entitle them to a 100% tax deduction of their "investment" in the year it is made.

7. Earl and his father incorporated Mid-Con in 1979.

8. Earl resides in Heath, Ohio. Earl is primarily responsible for Mid-Con's operations. He sends out the company's prospectuses, meets with prospective IDC scheme customers to discuss the scheme, and signs many of the documents that Mid-Con issues to implement the scheme, including the demand notes, subscription agreements and the majority of the correspondence sent to IDC scheme participants. Earl also assists in

preparation of reports that Mid-Con furnishes to IDC scheme customers for their use in preparing their federal income tax returns.

9. Weddington resides in Newark, Ohio. Weddington became involved in Mid-Con in 1983 and is primarily responsible for its financial operations. Weddington has a masters degree and a PhD in accounting. He has taught accounting classes at various universities. He was the president, treasurer, and a director of Mid Con between 2001-2004. When appearing on behalf of clients before the IRS, Weddington has on several occasions claimed to be a CPA. But Weddington is recognized only as a Public Accountant in Ohio, and the IRS does not recognize Public Accounts in Ohio as CPAs. The IRS sent a letter to Weddington in June 2006 questioning his status as a CPA but Weddington never responded.

10. Weddington's accounting firm, Weddington & Company, prepared federal income tax returns for the majority of Mid-Con IDC scheme participants between 2001 and 2004. In May 2006, Weddington formed a new accounting practice with Cary Loughman and Jeffrey Gaumer— Weddington, Loughman, Gaumer & Company. This firm continues to prepare tax returns for the majority of Mid-Con IDC scheme participants. Weddington reviews all participants' returns that his firm prepares before they are filed.

11. Jeffrey Gaumer resides in Newark, Ohio. Gaumer is a certified public accountant and currently a member of Weddington, Loughman, Gaumer & Company.

12. Aurora Capital Group, Inc. is located in Heath, Ohio. Aurora Capital was

incorporated by Weddington and is based in the same office as Weddington's and Gaumer's accounting firm.

Mechanics of the IDC Scheme

13. Mid-Con, through Weddington, Earl, and Gaumer, sells IDC scheme participants a working interest in joint ventures which involve gas and oil wells in Ohio.

14. Jeffrey Gaumer assists Mid-Con, Weddington, and Earl in organizing and promoting the IDC scheme by finding customers to buy into the Mid-Con joint ventures. For example, Mid-Con paid Jeffrey Gaumer a "finder's fee" on August 28, 2007 in the amount of $3,316.00, for his assistance in bringing three new IDC customers into the Mid-Con scheme. Gaumer also received a finder's fee from Mid-Con on May 4, 2007 in the amount of $4,770.00, on June 15, 2007 in the amount of $5,550.00 and on November 1, 2007 in the amount of $1,095.00.

15. Mid-Con, through Weddington and Earl, falsely tells its customers that their "investments" in each venture are attributable to the costs of drilling the new wells related to that venture and that, therefore, the "investments" are 100% deductible under the Internal Revenue Code.

16. In actuality, the customers' "investment" amounts are substantially more than the costs of actually drilling the wells. For example, the actual IDC for one venture, named 2001-3, were $152,447.85 while the total claimed investment in IDC in the 2001-3 venture equaled $1,108,000.00. Moreover, in some instances there are no actual joint venture drilling costs at all, because Mid-Con and Weddington sell duplicative interests in

the same wells.

17. Some of the wells involved in certain ventures were already drilled and in existence before Mid-Con's sale of interests in the venture. This has happened in at least five of the joint ventures. For example, Mid-Con claimed the wells involved in venture 2001-4 were drilled at the beginning of 2002, when the wells were actually drilled at the end of 1999 in connection with a different joint venture, with different investors.

18. The fact that Mid-Con joint ventures use fictitious wells is confirmed by the fact that Mid-Con receives approximately $70,000 per month in actual money from its actual wells' production, yet issues statements, fabricated by Weddington, to joint venture participants showing, in aggregate, amounts greater than $500,000 per month from well production being received and used to "pay off" the sham demand notes. Thus, Mid-Con operates two programs. One, involving joint venture participants who pay for their investment with real money and no notes, involves real wells with real oil and gas production producing real money that goes to the real investors. The other program—the fraudulent one—involves the participants who "pay" for the bulk of their "investment" in sham notes, which notes are then "paid off" by way of fictitious earnings from fictitious wells. These "investors" in fact are getting nothing from their "investments" except bogus tax deductions and fictitious production earnings.

19. Mid-Con, through Weddington, Earl, and Gaumer, has sold the same IDC of certain wells to more than one participant. For example, it appears that the wells drilled for the 2004-A venture and the 2004-3 venture are the same wells.

20. Under the IDC scheme, Mid-Con receives a small cash payment from a scheme participant and issues a demand note to the participant for the remainder of the stated amount of the purchase price. The demand note is significantly higher than the cash payment, bears no interest, and is to be paid by the participant from the income purportedly likely to come to the participant from the purported well's purported production.

21. Mid-Con IDC scheme participants are not personally liable on the demand notes. Weddington and Earl tell participants that Mid-Con will not collect on any unpaid balance after the well ceases operation. There is no provision for remedy in case of default on the notes, and Mid-Con has failed to pursue collection against participants who defaulted. Stated simply, the demand notes are shams, designed to inflate participants' stated purchase price to enable them to claim large income-tax deductions for sham ITC costs.

22. There is no decision-making, involvement, or material participation by scheme participants in the various ventures. Mid-Con makes all the decisions regarding the drilling of each well (if any), receives management fees, pumping fees, and computer fees on a monthly basis from each venture, and decides where the wells (if any) are to be drilled.

23. In the initial year of the participants' purported investment, Mid-Con directs participants to attach a Schedule C to their IRS Form 1040 and to report on it the purported cost of the participant's IDC investment. Either Mid-Con or Weddington's

accounting firm prepare the participants' Schedules C that reflect a claimed loss resulting from a deduction for the purported IDC in an amount equal to the cash payment and demand note, although participants have not yet made (and are unlikely ever to make) any payments beyond the cash payment. This claimed deduction for costs not yet incurred results in a significant reduction in the participants' reported income-tax liabilities, which more than offsets the amount of the participants' initial cash payments paid to Mid-Con to participate in the scheme.

24. The participants usually make their cash payments to Mid-Con for buying into the scheme in the form of checks, which Mid-Con does not deposit until after the participants file their federal tax returns and reap the tax savings from the scheme. Accordingly, the participants' cash payments are usually paid in the year following the investment year.

25. The participants' cash payments are thus funded from the tax savings.

26. Mid-Con, through Weddington and Earl, falsely assure scheme participants that the wells have the potential to generate sufficient income to offset the amount on the demand notes within five years. This would purportedly enable participants to begin receiving monthly cash distributions from the production of the wells for five to fifteen years thereafter.

27. In actuality, annual income from the wells (if any) is generally in amounts sufficient to enable participants to pay off the demand notes in approximately 12-15 years, rather than the 5 years Weddington and Earl claim. Weddington has stated that the

economic performance for each well is generally ten years. This leaves minimal chance that participants will receive enough income to pay off their demand notes, let alone receive cash distributions after the notes are paid off.

28. In addition, most participants have less than a 1% ownership interest in each well. Accordingly, production income in any given year, if ever received, would be minimal.

29. To date, no participant to whom Mid-Con issued an inflated demand note in connection with the IDC scheme has received a profit. Even so, many of these participants continue "investing" in new ventures in subsequent years, significantly increasing their claimed liabilities on demand notes to absurd levels that they clearly will never pay. For example, one participant has purportedly "invested" over $230,000 in at least six ventures since 2001 and has made no profit from any of the ventures. Another participant has "invested" over $250,000 in at least three ventures since 2003 without receiving any profit. Investors continue to "invest" in new ventures because the notes are non-recourse and the only point of the scheme is the tax savings attributable to the inflated IDC amounts.

30. Mid-Con provides documents to potential participants that show that their "investment" is only beneficial through the tax benefits, and not based on profitability. Mid-Con's prospectus promises immediate tax savings at approximately double the amount of initial cash contributions. The prospectus states that "the program is geared to give the participant a 200% return on investment from tax savings alone, regardless of the

actual performance of the wells."

31. Weddington performs a financial analysis for prospective scheme participants to show them how beneficial an "investment" in the scheme will be in obtaining tax benefits. The amount participants choose to invest each year appears to be based solely on the amount of tax deductions they desire to obtain.

32. Mid-Con falsely represents to scheme participants that they are entitled to a 100% deduction of their investment costs under IRC § 263(c), even though participants are not eligible for this deduction.

33. For a deduction of investment costs to be valid, the transaction must have economic substance, and the taxpayer's motive for entering a transaction must be for an economic profit that is independent of the tax savings. A transaction lacks economic substance if it has no practicable economic effects other than the creation of income tax losses.

34. The Mid-Con IDC scheme lacks economic substance because the only profit it generates for participants is from income-tax savings.

35. Mid-Con, through Weddington and Earl, falsely advises participants that they can claim an income-tax loss from their purported investment in an amount equal to the cash payment and demand note. Mid-Con fails to explain to participants that such a deduction is allowed only if the funds involved are "at risk," or actually paid.

36. The funds that participants purportedly provide in the Mid-Con scheme are not "at risk," as the participants are not personally liable on the demand notes and the source

of each participant's minimal cash payment is the tax benefit generated from the prior year's improper deduction.

37. Mid-Con, through Weddington and Earl, falsely represents to participants that their IDC deduction is proper under IRC § 263(c). Mid-Con claims that the participant's total "investment" amount is deductible as IDC because this is the amount the participant is willing to pay to be a part of a venture and because Mid-Con is selling the estimated "intangibles" associated with that venture.

38. IRC § 263(c) allows a deduction only for actual IDC, and the IDC must be deducted in the year the IDC are paid by the participants. Mid-Con and Weddington's accounting firm prepare participants' Schedules C claiming a deduction for inflated IDC instead of actual IDC. Further, for most investors, the deduction is taken during the year in which the joint venture was purportedly entered into by the participant, not when the actual payment is made.

Ongoing Activities

39. After the IRS started investigating defendants' promotion of the IDC scheme in 2004, defendants continued to sell the IDC scheme but have modified how items are presented, to deceive the IRS and make the items appear more legitimate and in compliance with the Internal Revenue Code. These modifications are wholly cosmetic, as the IDC scheme continues to use sham demand notes which result in inflated IDC deductions.

40. In 2004, after IRS agents questioned Mid-Con's failure to treat the purported

joint ventures as partnerships, Mid-Con began preparing and filing partnership federal income tax returns for the joint ventures, and reporting each scheme participant's IDC deduction on related Schedules K-1. Weddington's attorney, Michael Yemc told IRS agents that if the IRS wanted the "investments" to be shown on partnership returns, he would give them partnership returns. Using the Schedules K-1, Mid-Con continued to report losses based on a deduction claimed for the IDC in an amount equal to the cash payments and sham demand notes. There are no records or books for the purported joint ventures. As noted above, some or all of them are complete shams, with fictitious earnings from fictitious wells.

41. Since Mid-Con IDC scheme participants have been under investigation, and IRS agents have noted the sham nature of the demand notes, Mid-Con has occasionally issued an IRS Form 1099-C (used to report income from cancellation of debt) to some participants. The unpaid balance of the participant's demand note is then reported as "Other Income" on the participant's tax return. This income is usually offset by a current year deduction based on the participant's sham "investment" in a subsequent Mid-Con IDC-scheme joint venture. Accordingly, the participant's resulting tax liability, if any, is minimal. The 1099-C forms are thus merely part of an effort on the defendants' part to cover up the sham nature of their scheme and to obstruct and forestall the IRS investigation of the scheme.

42. For example, one well involved in joint venture 2001-4 was shut down by the EPA in June 2003. But Forms 1099-C for the 2001-4 participants were not filed with the

IRS until October 2004, after the IRS began investigating Mid-Con IDC participants. Moreover, on information and belief the Forms 1099-C were not actually sent to the participants. One participant in the 2001-4 venture has stated that he did not know what the 1099-C Form was or what it represented and that the "other income" amount was on his tax return when he met with Weddington to sign the return. If Mid-Con IDC scheme participants were actually liable for the amount of the demand notes from venture 2001-4, Mid-Con would have made participants aware of the 1099-C Forms or at least explained to participants that their liability under the demand note had been canceled. The filing of the 1099-C Forms was merely an attempt by defendants to make it appear that the Mid-Con IDC scheme participants were really liable for the amount of the demand notes when in fact they were not.

43. Defendants have taken other actions to obstruct and thwart the IRS investigation of their scheme. The IRS has concluded at least one income tax examination of a scheme participant during which it determined that the participant's funds were not "at risk" because he was not personally liable on the demand note. After the IRS made this determination, the participant then purportedly paid the balance of the note in an attempt to make it appear as though he was "at risk." No other participants have paid back the balance of their notes.

44. After the IRS began examining scheme participants' tax returns, Mid-Con changed the wording of the participant demand notes to add "it is understood that any remaining balance not paid by production will become my sole responsibility." Before

the IRS examinations began, the demand notes stated only that the balance of the note would be paid from production until paid in full. Mid-Con changed the wording on the demand notes only to appear to be in compliance with the Internal Revenue Code, not in any genuine attempt to ensure that the notes are in fact paid off.

45. A common tactic promoters use with abusive tax schemes with sham transactions is to have the promoters (or persons closely affiliated with the promoters) prepare scheme participants' tax returns and represent participants who are being audited by the IRS. This enables the promoters to control the IRS's access to the participants and can help the promoters keep participants from learning the truth about the sham nature of the scheme transactions. It also enables the promoters to monitor the IRS investigation and take steps to interfere to thwart it. Weddington or his accounting partner Cary Loughman initially represented all IDC scheme participants whose tax returns the IRS is examining. This has had the effect of hampering the IRS investigation and prevents customers from receiving sound independent advice regarding the sham nature of the scheme transactions.

46. For example, Mid-Con sent a letter dated June 23, 2004, signed by Earl, to one scheme participant guaranteeing the participant that he would be responsible for paying only for the original cash contribution if the well did not produce enough income to pay off the demand note. The scheme participant provided a copy of this letter to an IRS agent who was examining the participant's 2003 federal income tax return. The scheme participant was not represented at the time he gave the copy of the letter to the agent.

The scheme participant subsequently obtained representation from Weddington's partner Cary Loughman, who produced to the IRS a copy of an altered version of the letter, bearing the same June 23, 2004, date, signed by Earl, and with much of the same content. But the altered version was typed in a different typeface, and added a reference to a 1099-C being issued to the participant if production was not enough to pay off the demand note. This altered letter was apparently prepared later and backdated in an attempt to deceive the IRS into concluding that scheme participants were "at risk" for the demand note amounts.

47. Weddington and Earl have taken further affirmative steps to obstruct the IRS investigation and interfere with IRS audits by coaching scheme participants to respond falsely to questions asked by IRS investigators.

48. Loughman initially would not allow IRS agents to interview the IDC scheme participants under examination. Instead Loughman himself answered revenue agents questions. Loughman relented and allowed IRS agents to question scheme participants after the IRS determined that the answers Loughman was providing to the IRS were based on his understanding and knowledge of how he thought Mid-Con operated, not the participants' knowledge and understanding of how the scheme worked.

49. Loughman has also failed to produce a number of requested documents to the IRS, stating that he had to speak with Weddington before making the disclosures.

50. In a further deceitful attempt to make the IDC scheme appear legitimate, Weddington has sold participants sham "Irrevocable Letters of Credit." Weddington set

up a shell corporation called "Aurora Capital Group, Inc.," and had it bill Mid-Con joint venture customers for purported "Irrevocable Letters of Credit" to back up their notes in their "investment program" with Mid-Con. The requests for the renewal fees are purportedly sent to Mid-Con scheme customers from Aurora Capital, which Weddington falsely tells customers is an "unrelated third party." Weddington told at least one customer that if the customer did not pay the requested renewal fee to Aurora Capital, the customer might no longer be in compliance with statutory regulations.

51. In fact, Aurora Capital is neither "unrelated" nor a "third party." Weddington incorporated Aurora Capital, and it is based in the same office as his accounting firm—Weddington, Loughman, Gaumer & Company. Through the letter-of-credit-renewal scam-on-a-scam, Weddington has used the IRS's investigation of the joint-venture scheme to scare Mid-Con's joint-venture customers into sending additional money to Weddington, while falsely promising that doing so will protect the customers from IRS action.

Harm to Public

52. The United States is harmed by defendants' scheme because defendants' participants are claiming tax deductions to which they are not entitled. The IRS estimates that the promotion has caused revenue losses of $6.9 million over a four year period from 2001 to 2004, assuming that the entire promotion is a sham. Even if some participants are able to substantiate deductions for the IDCs actually incurred, the revenue lost over a four-year period is still estimated at $5.7 million. The actual harm to the Treasury is

likely many times larger, as it appears that the fraudulent scheme was going on for many years before 2001.

53. This estimated loss does not include the administrative costs to the government of detecting and correcting the incorrect tax returns resulting from defendants' scheme.

54. Additional tax revenue losses have occurred for later years, which the IRS has not yet quantified. Much of the revenue loss from bogus tax deductions for which defendants are responsible will never be collected, resulting in a permanent loss to the Treasury.

55. The number of participants in defendants' scheme was growing up until the filing of this lawsuit. There are likely now more than 200 participants. Likewise, the total amounts of the purported investments in the joint ventures were increasing substantially, causing greater harm to the government. Most of defendants' customers are from central Ohio, but some are located in at least 14 other states across the country.

56. The Internal Revenue Service is harmed because it must dedicate scarce resources to detecting and examining inaccurate returns filed by defendants' participants and to attempting to assess and collect unpaid taxes.

57. In addition to the harm caused by their advice, statements and services, defendants' activities undermine public confidence in the fairness of the federal tax system and incite non-compliance with the internal revenue laws.

Count I

Injunction under IRC § 7408

58. Plaintiff incorporates by reference the allegations in paragraphs 1-57**,** above.

59. I.R.C. § 7408(a) 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.

60. I.R.C. § 6700 imposes a civil penalty on 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 (a) knowingly makes a false or fraudulent statement as to the allowability of a deduction or credit, because of an interest held in the entity or because of his participation in the plan, or (b) makes a gross valuation overstatement as to any material matter.

61. A gross valuation overstatement is any statement as to the value of property or services if the value stated exceeds 200 percent of the amount determined to be the correct valuation, and the value of such property or services is directly related to the amount of any deduction or credit for federal income tax purposes.

62. Defendants have organized and promoted, or assisted in organizing and promoting a tax shelter or plan or arrangement that is devoid of economic substance and has the sole purpose of generating a federal income tax deduction for participants. In promoting and selling this tax shelter, Mid-Con, through Weddington and Earl, have made gross valuation overstatements and materially false or fraudulent statements to

participants regarding the allowability of income-tax deductions for their purported investments under I.R.C. § 263(c).

63. For a deduction related to an investment to be valid, the transaction must have economic substance and the taxpayer's motive for entering into the transaction must be for an economic profit that is independent of the tax savings. A transaction lacks economic substance if it has no practicable economic effect other than the creation of income tax losses.

64. Mid-Con, through Weddington and Earl (and possibly Gaumer), falsely advised participants that they were entitled to IDC deductions, knowing that the participants would receive no economic profit from the Mid-Con venture, and that the participants were entering these transactions solely for the promised tax savings.

65. Mid-Con, through Weddington and Earl falsely advised participants to claim a loss resulting from the deduction for the investment in an amount equal to the cash payment and demand note. Mid-Con, Weddington, and Earl knew or had reason to know that participants were not entitled to claim such losses because the participants were not "at risk" as to the demand notes, and indeed many of the demand notes were to be paid through fictitious book entries of payments coming from fictitious wells. I.R.C. § 465(a).

66. A taxpayer is considered "at risk" for the amount of money contributed by the taxpayer to the activity and for amounts borrowed with respect to such activity.

67. Because there is no personal liability on the demand note, and the source of

the participant's cash payment is the tax refund generated from the prior year's deduction, the participants bear little to no risk of loss from these transactions.

68. Further, if borrowed funds for an activity are from any person who has an interest in such activity, the funds are not considered "at risk" under I.R.C. § 465(a). Participants' demand notes are issued by Mid-Con. Although the paperwork indicates Mid-Con's role is limited as a creditor, Mid-Con is in fact the promoter of the scheme, and the substance of the transaction shows that Mid-Con is receiving substantial amounts from the alleged ventures. Accordingly, participants' funds are not "at risk" and the losses claimed with respect to the IDC deduction are disallowed.

69. After becoming aware of the IRS investigation, Aurora Capital, through Weddington, falsely told at least one customer that if the customer bought an irrevocable letter of credit from Aurora Capital to back up the customer's demand note from Mid-Con and paid a requested renewal fee, the demand note would be in compliance with the IRS "at risk rule," because, according to Weddington, Aurora Capital is an "unrelated third party."

70. As stated above, Aurora Capital is neither "unrelated" nor a "third party" but is merely a sham entity created by Weddington. Nor does Aurora Capital have assets sufficient to give economic substance to the purported letters of credit it provided. Accordingly, a purported "irrevocable letter of credit" from Aurora Capital in relation to the customer's demand note from Mid-Con does not meet the "at risk" requirements under I.R.C. § 465(a).

71. Mid-Con, through Weddington and Earl, falsely told participants that they could deduct 100% of their Mid-Con investment under I.R.C. § 263(c) when Mid-Con knew or had reason to know that participants did not qualify for the deduction.

72. I.R.C. § 263(c) permits a taxpayer to elect to deduct IDC relating to oil and gas wells. However, a deduction is allowed under I.R.C. § 263(c) only for actual IDC. Weddington and Earl failed to inform participants that Mid-Con was in fact selling estimated IDC instead of actual IDC. Moreover, Mid-Con's purported estimates were not made in good faith. Mid-Con also failed to inform participants that Mid-Con was, at times, selling IDCs that were in fact fictitious.

73. In addition, under I.R.C. § 263(c), IDC costs are to be expensed in the year incurred. However, Mid-Con falsely told participants they could take the IDC deductions in the year before the actual payment of the funds. Mid-Con attempted to cover this up by having participants submit checks payable to Mid-Con in the earlier year, but with Mid-Con not negotiating those checks until the following year after participants had claimed the improper tax benefits on their income tax returns. This deceptive conduct shows that Weddington and Earl knew they were making false statements to scheme participants about when the deductions could be claimed.

74. Based on false statements by Mid-Con, Weddington, Earl, and Aurora Capital, participants claimed improper deductions on their federal income tax returns, therefore understating their federal income liabilities.

75. Mid-Con, Weddington, Earl, and Aurora Capital, knew or had reason to know that they were making false or fraudulent statements (within the meaning of I.R.C. § 6700) in connection with promoting the IDC tax shelter and that such false or fraudulent statements were material.

76. In addition to misrepresentations about participants' eligibility for the tax deductions, Mid-Con, through Weddington and Earl, also made gross valuation overstatements in promoting the Mid-Con scheme.

77. Mid-Con greatly overstated the value of the intangible drilling costs. Mid-Con sold the IDCs for amounts greatly exceeding the actual amounts spent on IDC and participants improperly used the overstated costs to determine the value of their claimed deductions. Mid-Con sold the IDC in amounts more than 200% of the actual IDC incurred by Mid-Con. Indeed, in some if not all instances Mid-Con has sold IDCs that did not even exist, inasmuch as the IDCs were entirely fictitious.

78. Mid-Con, Weddington, and Earl, made these gross valuation overstatements knowing that participants would rely on the valuation overstatements when claiming tax deductions and that those claims would result in understatements of the participants' tax liabilities on their federal income tax returns.

79. I.R.C. § 6701 imposes a civil penalty on any person who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, 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 would result in an understatement of the liability for tax of another person.

80. Mid-Con, through Weddington and Earl, prepared income tax returns and Schedules C for participants that improperly understated their federal income tax liabilities. Aurora Capital, through Weddington, prepared sham letters of credit for participants to back up participants' sham demand notes related to the Mid-Con IDC program. By preparing these documents, Mid-Con, Weddington, Earl, and Aurora Capital have engaged in preparing or presenting a portion of a tax return or other document, knowing that such portion will be used in connection with a material matter arising under the internal revenue laws, and knowing that such portion (if so used) would result in understating the tax liability of another person. Their conduct, therefore, is subject to penalty under I.R.C. § 6701.

81. Mid-Con, Weddington, Earl, and Aurora Capital have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and are subject to an injunction under I.R.C. § 7408.

Count II

Injunction under IRC § 7407

82. Plaintiff incorporates by reference the allegations in paragraphs 1-81**,** above.

83. I.R.C. § 7407 authorizes a district court to enjoin a tax-return preparer from: engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position) or

engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

84. Additionally, if the court finds that a preparer had 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.

85. Weddington, acting individually and through his accounting firm, has continually and repeatedly prepared or assisted or directed others to prepare numerous federal-income-tax returns for Mid-Con participants that claim false IDC deductions.

86. Weddington knew or should have known that these returns contained claims for which there was no realistic possibility of being sustained on the merits, and he knew or should have known that such positions would not be successful.

87. In addition, Weddington knew or should have known that the return-preparation positions were based on a sham investment scheme that lacked a profit motive or potential.

88. Preparing federal-income-tax returns containing unrealistic and frivolous positions subjects Weddington to penalty under I.R.C. § 6694.

89. Weddington, acting individually and through his accounting firm, has continually and repeatedly engaged in violations of I.R.C. § 6694.

90. Weddington also continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, including making wholly cosmetic modifications to the IDC scheme to make the scheme appear in compliance with the Internal Revenue Code, and creating fictitious reports of fictitious earnings from fictitious wells. Examples of such misconduct include 1) creating sham partnerships, 2) coaching customers to make false statements to the IRS during IRS audits, 3) providing altered documents to the IRS to deceive it, and 4) creating a sham corporation in order to issue sham letters of credit to participants, and charging the customers substantial amounts for the worthless letters of credit.

91. Because of Weddington's repeated and continual egregious conduct subject to injunction under I.R.C. § 7407, Weddington should be enjoined not merely from engaging in specified misconduct, but should be barred altogether from acting as a federal tax preparer.

Count III

Injunction under IRC §7402

92. Plaintiff incorporates by reference the allegations in paragraphs 1- 85, above.

93. I.R.C. §7402 authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

94. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the enforcement of the internal revenue laws.

95. If defendants are not enjoined, the United States will suffer irreparable harm because the losses caused by defendants' actions will continue to increase.

96. While the United States will suffer irreparable injury if defendants are not enjoined, defendants will not be harmed by being compelled to obey the law.

97. The public interest would be advanced by enjoining defendants because an injunction will stop their illegal conduct and the harm that conduct is causing the United States Treasury and the public.

98. If defendants are not enjoined, they are likely to continue to interfere with the enforcement of the internal revenue laws. Weddington has a history of trying to make the ventures appear legitimate by changing his mode of operation once questioned by the IRS. Since the initiation of the IRS investigation in 2004, Defendants have continued to sell their tax-fraud scheme but have modified how items are presented, altered documents to make the scheme appear legitimate, coached customers to make misleading statements to the IRS, and created a sham corporation to issue sham letters of credit to participants in order to deceive the IRS and obstruct the IRS investigation.

99. An injunction under §7402 is necessary and appropriate, and the United States is entitled to injunction relief under I.R.C. §7402. The injunction should bar the defendants and anyone acting in concert with them—including the firm of Weddington, Loughman, Gaumer & Company—from representing scheme participants before the IRS or in the courts, and from otherwise obstructing IRS investigations related to the defendants' scheme.

Relief Sought

WHEREFORE, the plaintiff, the United States of America, respectfully prays as follows:

A. That the Court find that Mid-Con, Weddington, Earl, and Aurora Capital have engaged in conduct subject to penalty under IRC § § 6700 and 6701 and that injunctive relief is appropriate under I.R.C. § 7408 to prevent them and anyone acting in concert with them from engaging in any further such conduct;

B. That the Court find that all defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them and their representatives, agents, servants, employees, attorneys, and anyone acting in concert with them is appropriate to prevent the recurrence of that conduct under the Court's inherent equity powers and I.R.C. § 7402(a);

C. That the Court find that Weddington has continually and repeatedly engaged in fraudulent and deceptive conduct that interferes with the administration of the internal revenue laws, and has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694, and find that injunctive relief is appropriate under I.R.C. §§ 7402 and 7407 to permanently bar Weddington and anyone acting in concert with him from (a) advising or assisting anyone with regard to federal taxes, (b) representing anyone before the Internal Revenue Service, and (c) preparing or filing federal tax returns or forms for anyone other than himself and (d) owning, managing, supervising, or otherwise being involved in the tax-return-preparation or tax-advice business in any way;

D. That the Court, under I.R.C. §§ 7402 and 7408 enter a permanent injunction prohibiting defendants as well as their agents, servants, employees, attorneys, and anyone in active concert or participation with them from directly or indirectly:

(1) Organizing, promoting, marketing, or selling the IDC scheme or any other tax shelter, plan, or other arrangement that advises or assists customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;

(2) Causing other persons and entities to understate their federal tax liabilities on their tax returns;

(3) Making false statements about the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by the reason of participating in such tax shelters, plans or arrangements, or making gross valuation overstatements;

(4) Engaging in any other conduct subject to penalty under I.R.C. § 6700, including making or furnishing, in connection with the organization or sale of a tax shelter, plan or arrangement, a gross valuation overstatement or a statement about the securing of tax benefits that the defendants know or have reason to know is false or fraudulent as to any material matter;

(5) Engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a document related to a material matter under the internal revenue laws that includes a position they know will

result in an understatement of tax liability;

(6) Representing scheme customers in any matter before the IRS related to the customers' participation in the scheme;

(7) Altering or backdating documents or delaying the negotiation of checks in order to deceive the IRS or to obstruct or impede IRS investigations;

(8) Issuing letters of credit to any scheme customers or any bills to collect for renewal fees relating to any letters of credit; and

(9) Engaging in any other conduct subject to penalty under any penalty provision of the IRC, or engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants to produce to counsel for the United States a list identifying (by name, address, e-mail address, phone number, and Social Security or other tax identification number) all participants who have used any tax shelter, plan, or other arrangement that defendants have sold or promoted.

G. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants at their own expense to contact by mail (or by e-mail, if a mailing address is unknown) all individuals who have participated in their abusive tax shelter, plan or arrangement, and inform those individuals of the Court's findings concerning the falsity of defendants' prior representations and attach a copy of the permanent injunction, and to file with the Court, within 20 days of the date when the permanent injunction is entered, a

certification signed under penalty of perjury that they have done so;

H. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction;

I. That the Court retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

J. That the Court grant the United States such other and further relief as the Court deems appropriate.

Respectfully submitted,

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Dated: April 21, 2008.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2008, I electronically filed the foregoing AMENDED COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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