

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Civil No. WMN 05 CV 1297  
)  
JOHN BAPTIST KOTMAIR, JR., et al., )  
)  
Defendants. )

**UNITED STATES' RESPONSE TO DEFENDANT KOTMAIR'S  
FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Plaintiff, the United States of America, responds as follows to defendant Kotmair's First Set of Interrogatories and Production of Documents:

**Interrogatory No. 1.** Please identify all prospective witnesses the government intends to call to testify in any trial or hearing in this matter, and please furnish a summary of the anticipated testimony of each witness.

**Response to Interrogatory No. 1.** The United States objects that Interrogatory No. 1 is premature. The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals whom may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

**Interrogatory No. 2.** Please identify all witnesses known to the government who could supply exculpatory evidence, or evidence which might tend to be favorable to the defendants in this matter.

**Response to Interrogatory No. 2.** The United States objects to the use of the term "exculpatory," as this is not a criminal case. The United States has not identified any witness who has evidence that might tend to be favorable to the defendants.

**Interrogatory No. 3.** Please identify all affidavits, documents, recordings, and other tangible items which the government intends to introduce into evidence in this matter.

**Response to Interrogatory No. 3.** The United States objects that this interrogatory is premature. The United States has not yet identified its trial exhibits. The United States' Rule 26(a)(1) Initial Disclosures include a list of documents that the United States may use in support of its claims.

**Request for Production No. 1.** Please provide a copy of any items referred to in your response to interrogatory #3.

**Response to Request for Production No. 1.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Interrogatory No. 4.** Please identify all affidavits, documents, recordings, and other tangible items that government has knowledge of which may be exculpatory or favorable to defendants in this matter.

**Response to Interrogatory No. 4.** The United States objects to the use of the term "exculpatory," as this is not a criminal case. The United States does not have knowledge of any affidavits, documents, recordings, or other tangible item that the may be favorable to defendants in this matter.

**Request for Production No. 2.** Please provide a copy of any items referred to in your response to interrogatory #4.

**Response to Request for Production No. 2.** The United States did not refer to any documents in response to Interrogatory No. 4.

**Interrogatory No. 5.** Paragraph 11 of the Complaint states:

"Both associate and full members are covered by the "Member Assistance Program," also known as the "Victory Express," which provides financial incentives for members to violate the internal revenue laws."

Please identify any member or members of Save A Patriot Fellowship who the government claims to have been motivated to commit a crime subsequent to, and on account of, payment or promise of a "financial incentive" of the Membership Assistance Program and/or the Victory Express Program.

**Response to Interrogatory No. 5.** The United States objects that this request calls for information protected from disclosure by I.R.C. § 6103 and the Government deliberative-process privilege. Subject to and without waiving this objection, the United States responds that it does not have the identities of members of the Membership Assistance Program or the Victory Express Program.

**Interrogatory No. 6.** Paragraph 17 of the Complaint states:

"For members who give Kotmair power of attorney over their tax matters, Kotmair staffers working at his direction respond to IRS notices of deficiency, liens, levies, and seizures, and other correspondence with letters making frivolous arguments about the internal revenue laws and indicating a refusal to cooperate with the IRS. Defendants charge an additional \$38 to \$48 per letter."

Please identify the particular letters or documents that he government claims to contain the "frivolous arguments about the internal revenue laws" referred to in Paragraph 17 of the original complaint.

**Response to Interrogatory No. 6.** The United States objects that, given the volume of letters defendants have sent to the IRS, this request is overly broad and unduly burdensome. The United States will produce copies of the frivolous letters that it has identified thus far as having been drafted by defendants. Included within these copies are lists of the customers to whom the letters relate.

**Request for Production No. 3.** Please provide a copy of any items referred to in your response to interrogatory #6.

**Response to Request for Production No. 3.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Request for Production No. 4.** Paragraph 18 of the Complaint states:

“Kotmair and SAPF staffers working at his direction file frivolous Freedom of Information Act (FOIA) requests on behalf of members.”

Please provide copies of the particular freedom of information requests that the government claims to contain “*frivolous Freedom of Information Act*” requests.

**Response to Request for Production No. 4.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Interrogatory No. 7.**

A. List the specific “advice” given with respect to federal taxes alleged in paragraph 43 of the complaint.

B. Identify the person or persons giving, or any document conveying, advice alleged in paragraph 43 of the complaint.

C. Identify the person or persons to whom such advice was given alleged in paragraph 43 of the complaint.

**Response to Interrogatory No. 7A.** According to defendants’ websites, this advice is to not withhold federal taxes from wages, to stop filing federal income tax returns, to stop paying federal income tax, and to not cooperate with IRS investigations.

**Response to Interrogatory No. 7B.** According to defendants’ websites, this advice is given by defendant Kotmair and his staff, and is contained in the documents defendants provide their customers as well as defendants’ videotapes, audiotapes, and books.

**Response to Interrogatory No. 7C.** The United States objects that this request is overly broad and unduly burdensome. Defendants have given such advice to their customers and to visitors to defendants’ websites, as evidenced in defendants’ websites and in defendants’ letters to the IRS on behalf of their customers.

**Request for Production No. 5.** Please provide a copy of any documents referred to in your response to interrogatory #7.

**Response to Request for Production No. 5.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Interrogatory No. 8.** Paragraph 15 of the Complaint has several subparts consisting of quotations from various sources. Please identify each of the quotes, including, but not by way of limitation, the person who authored each quote and/or the source of each quote.

**Response to Interrogatory No. 8.** These quotes come from defendants' websites.

**Request for Production No. 6.** Please provide a copy of any items referred to in your response to Interrogatory #8.

**Response to Request for Production No. 6.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Request for Production No. 7.** Paragraph 29 of the Complaint makes reference to the preparation of "documents understating their customers' tax liabilities." Please identify each of these documents and provide copies of any and every such documents [sic] that are referred to in your response to this paragraph.

**Response to Request for Production No. 7.** The United States objects to this request as vague and ambiguous. Paragraph 29 of the Complaint does not make such a reference.

Paragraph 30 of the Complaint states:

Section 6701 penalizes any person who prepares a document that he has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

It does not reference documents that understate customers' tax liabilities but to documents that may *result* in the understatement of another person's tax liability. The United States is in the process of copying the documents it has identified as having been drafted by defendants and will produce such documents during the week of November 7, 2005.

**Interrogatory No. 9.** With respect to Paragraph 22 of the complaint: Please identify the items that you are claiming contain “false commercial speech,” and what you are claiming in each item, to be false commercial speech.

**Response to Interrogatory No. 9.** As stated in paragraph 22, the United States is referring to the videotapes, audiotapes, and books defendants sell. The book “Piercing the Illusion” is advertised on defendants’ websites as “piercing the illusion . . . that citizens are subject to an ‘income’ tax on their wages and other domestic income.” The videotape series “Just the Facts” is advertised on defendants’ websites as explaining that “[p]articipation in Social Security is voluntary for the citizen who lives and works within the 50 states,” that IRS “computers must be ‘tricked’” to make assessments, and that the income tax is unconstitutional. The “Tax Freedom 101 Home Study Programs” is advertised as explaining how “thousand of Americans have stopped filing returns 100% lawfully with no fear of reprisal from the IRS.” The United States is requesting copies of the videotapes, audiotapes, and books that defendants sell.

**Request for Production No. 8.** Please provide a copy of any items referred to in your response to Interrogatory No. 9.

**Response to Request for Production No. 8.** The United States is in the process of copying such documents and will produce them during the week of November 7, 2005.

**Interrogatory No. 10.** With respect to the above cited paragraph 22 of the original Complaint: please identify THE [sic] individuals you are claiming that were “directed” or “incited” to violate internal revenue laws; as the result of the speech referred to.

**Response to Interrogatory No. 10.** The United States does not have the identities of defendants’ customers, other than those identified in the letters the IRS has identified as having been drafted by defendants.

**Request for Production No. 9.** Please provide a copy of any items referred to in your response to Interrogatory #10.

**Response to Request for Production No. 9.** The United States is in the process of copying such documents and will produce them to defendants during the week of November 7, 2005.

**Interrogatory No. 11.** Paragraphs 29 and 32 of the complaint refer to the term, "tax benefit." Please explain or define what is meant by the term "tax benefit" in the cited paragraphs.

**Response to Interrogatory No. 11.** Paragraphs 29 and 32 are paraphrased from I.R.C. § 6700(a)(2)(A), which states "a statement with respect to the allowability of any deduction or credit, the excludibility of any income, or the securing of any other tax benefit." This phrasing is broad and would include any conceivable tax benefit.

ROD J. ROSENSTEIN  
United States Attorney



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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' RESPONSE TO DEFENDANT KOTMAIR'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 4<sup>th</sup> day of November, 2005.

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