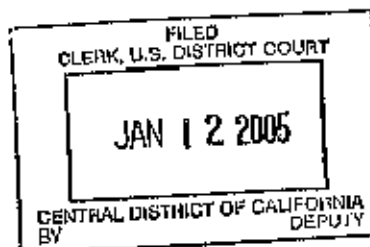


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6 Pro Se

7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE CENTRAL DISTRICT OF CALIFORNIA

9 UNITED STATE OF AMERICA,)

10 Plaintiff)

Case No. CV04-2100 FMC (JWJx)

11 v.)

DEFENDANT'S CROSS MOTION FOR
SUMMARY JUDGMENT FOR
LACK OF EVIDENCE

12 JOSEPH O. SALADINO,
13 individually and dba FREEDOM & PRIVACY)
14 COMMITTEE)
15 Defendant)

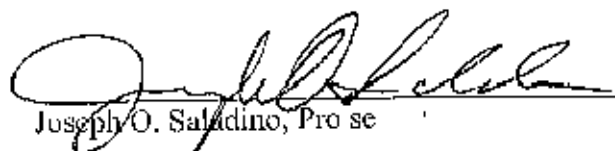
Hearing: 100:00 a.m., Jan. 24, 2005
Judge Florence-Marie Cooper

16 Defendant Joseph O. Saladino has filed a Cross-motion for summery judgment on the
17 evidence supported on the record in the above-captioned case.

18 Upon consulting with counsel for the Plaintiff, Parties will argue Plaintiff's Motion for
19 Summary Judgment and Defendant's Cross Motion for Summary Judgment at the January 24,
20 2004 motions hearing.

21 A Memorandum in Support of said Motion is attached hereto and incorporated herein.

22 Executed this 11th day of January, 2005.

23
24 
25 Joseph O. Saladino, Pro se

26
27
28
29
30 DEFENDANT'S CROSS MOTION FOR
SUMMERY JUDGMENT FOR
LACK OF EVIDENCE

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7 IN THE UNITED STATES DISTRICT COURT
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9 UNITED STATE OF AMERICA,)
10)
11 Plaintiff) Case No. CV04-2100 FMC (JWJx)
12)
13 v.)
14)
15 JOSEPH O. SALADINO,)
16)
17 individually and dba FREEDOM & PRIVACY)
18)
19 COMMITTEE)
20)
21 Defendant)
22)
23)
24)
25)
26)
27)
28)
29)
30)

MEMORANDUM IN SUPPORT OF
DEFENDANT'S CROSS MOTION FOR
SUMMERY JUDGMENT FOR
LACK OF EVIDENCE

Defendant, Joseph O. Saladino, respectfully submits this memorandum and supporting affidavits and evidence in support of his Cross Motion for Summery Judgment and Motion to Dismiss for Lack of Evidence.

PROCEDURAL HISTORY

1. On March 29, 2004, the Plaintiff, the UNITED STATES OF AMERICA, filed a Complaint in this Court, adopted and incorporated herein by reference, naming as Defendant, myself, Joseph O Saladino.

2. On October 18, 2004, there was a hearing in the Court on Plaintiff's Preliminary Injunction.

3. On October 18, 2004, the District Court entered its order of Preliminary Injunction against Defendant.

4. The Order in its entirety was drafted, not by this Court, but by the Plaintiff weeks prior to the hearing for Plaintiff's Motion for Preliminary Injunction. Said Order was issued by this Court with virtually no changes with the exception of the deletion of one paragraph in a ten

MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMERY JUDGMENT
FOR LACK OF EVIDENCE

1 page Order.

2 5. On date certain November 1, 2004, Defendant filed, in this Court, a Notice of Appeal
3 to the 9th Circuit Court of Appeals.

4 6. On November 1, 2004, Defendant filed a Motion for Stay of the Preliminary
5 Injunction Pending Interlocutory Appeal with this Court and a hearing for Defendant's said
6 Motion was scheduled for November 29, 2004 at 10:00AM at the District Court.

7 7. On or about November 9, 2004, Plaintiff filed an Objection to Defendant's said
8 Motion for Stay of Preliminary Injunction.

9 8. On November 23, 2004 and prior to the scheduled hearing date for Defendant's said
10 Motion for Stay, Defendant filed, with this Court, a response to Plaintiff's Objection to
11 Defendant's Motion for Stay of Preliminary Injunction.

12 9. On November 30, 2004, an Order issued from this Court denying Defendant's said
13 Motion for Stay of Preliminary Injunction wherein the Court stated that Defendant had not
14 replied to Plaintiff's said Objection.

15 10. Presumably, on the same day, November 30, 2004, an Order issued from this Court
16 wherein the Court recognized that Defendant had responded (the Court had received) and replied
17 to Plaintiff's said Objection on November 24, 2004 which was prior to the scheduled hearing
18 date and again this Court denied Defendant's said Motion for Stay.

19 11. Notice and Motion for Summary Judgment was filed by Plaintiff on December 24,
20 2004, incorporated herein by reference as Exhibit A.

21 12. Defendant hereby responds to said Motion as follows:

22 **STATEMENT OF THE CASE**

23 13. The Plaintiff contends that Defendant is promoting abusive tax programs, and in so
24 doing is conspiring to circumvent the federal tax laws by the marketing and selling of said tax
25 program. Plaintiffs also contend that Defendants are making false statements relating to the sale
26 and marketing of the tax program.

27 14. Plaintiff's complaint contains no specific allegations from consumers, attachments,
28 exhibits or other documents/evidence, supporting Plaintiff's conclusory statements and
29

30 MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMARY JUDGMENT
FOR LACK OF EVIDENCE

1 allegations contained in said complaint.

2 15. Plaintiff has concealed from this Court the fact that Plaintiff's agents, the Internal
3 Revenue Service, has listed in its publications that a Corporation Sole is a valid and recognized
4 organizational structure and this Court must take judicial notice of that fact (see IRS Publication
5 1828, page 4, attached hereto and incorporated herein as Exhibit B, Pg. 2).

6 16. Plaintiff has also concealed from this Court the fact that it has no admissible evidence
7 or witnesses from the general public to corroborate its claims.

8 17. On October 18, 2004, this Court entered an injunction against Defendant based solely
9 on serious misrepresentations by counsel for the Plaintiff, Mr. MARTIN SHOEMAKER
10 (SHOEMAKER), and others (in affidavit form) regarding the Freedom and Privacy Committee
11 (FPC) website who, in fact, did not have any firsthand knowledge that Defendant created certain
12 referenced content of said FPC website.

13 **FACTUAL FINDINGS**

14 **SUPPORTING DEFENDANTS CROSS SUMMERY JUDGMENT'**

15 New Evidence

16 18. Since the October 18, 2004 preliminary injunction, there has been discovery and new
17 evidence collected from Plaintiff which is detrimental to Plaintiff's case wherein certain
18 confessions were made by SHOEMAKER bringing into questions the appropriateness of this
19 case being filed against the Defendant.

20 19. On or about November 19, 2004, Defendant served upon SHOEMAKER; counsel for
21 the Plaintiff, with Defendant's First Set of Interrogatories and Request for the Production of
22 Documents, attached hereto and incorporated herein as Exhibit C. SHOEMAKER'S answers to
23 said Interrogatories presents new evidence to this Court which proves that there is no basis for
24 Plaintiff's claims from the beginning of this instant case and proves the validity of Defendant
25 Saladino's arguments to date.

26 Corporation Sole

27 20. This Court lacks subject matter jurisdiction with regards to the issue of the
28 Corporation Sole church in this instant case.

29
30 MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMERY JUDGMENT
FOR LACK OF EVIDENCE

1 21. In Defendant's Discovery questions¹, Defendant asked Plaintiff for the names of
2 individuals in Plaintiff's records who have purchased Corporations Sole from Defendant as
3 follows:

4 *"INTERROGATORY NO. 1 State the number of corporation sole packages that*
5 *the U.S.A. has a record of that Defendant has sold during the past five years"...*²

6 22. In his response, SHOEMAKER confesses that the "United States" [sic] has absolutely
7 no evidence with regard to the Corporation Sole packages allegedly sold by Defendant:

8 *ANSWER: During the execution of its search warrants on or around March 3,*
9 *2004, the Internal Revenue Service seized many of the defendant's business*
10 *records, Presumably, these records reveal details regarding the corporation sole*
11 *packages sold by the defendants prior to that date. However, undersigned counsel*
12 *or IRS civil personnel do not have access to the seized records, and therefore*
13 *cannot respond to this interrogatory at this time. Moreover, the United States is*
14 *seeking this information in this suit.*³ (Emphasis added)

15 23. In Plaintiff's First Set of Interrogatories and Request for Production of Documents,
16 attached hereto and incorporated herein as Exhibit D, SHOEMAKER asked Defendant the
17 following question and asked for the following documents:

- 18 a. "State the number of corporation sole packages you have sold during the past five
19 years, including the names, addresses and social security numbers of the
20 purchasers." (Exhibit D, Pg. 2 line 7);
- 21 b. "A copy of the 'FPC Corporation Sole Administration Manual' used in the
22 Corporation Sole program." (Exhibit D, Pg. 8 Line 6); and
- 23 c. "A copy of the standard (or typical) articles of incorporation (or other enabling
24 instruments) used in the corporation sole program." (Exhibit D, Pg. 8, line 8)

25 24. In the initial complaint in this instant case, incorporated herein by reference as
26 Exhibit B, SHOEMAKER accused Defendant of fraud with regard to the "Corporation Sole
27 program" and yet he has confessed that he cannot produce any evidence to substantiate said

28 ¹ Exhibit C, Pg. 2

29 ² Exhibit C, Pg. 2 line 5

30 ³ Exhibit C, Pg. 2 Line 5

1 **claims and furthermore he requires that Defendant supply him with numerous documents**
2 **and other evidence which he presumes will give him the evidence to substantiate his claims**
3 **of fraud by Defendant⁴.**

4 25. SHOEMAKER also confesses that the accusations in the civil complaint relative to
5 the Corporation Sole are based on presumptions of alleged incriminating evidence he believes is
6 contained in the records seized by the IRS from Defendant Saladino on March 3, 2004.
7 SHOEMAKER has admitted that he does not have access to said seized records, he has
8 confessed that he cannot bring forward any evidence of any individual who has obtained a
9 Corporations Sole from Freedom & Privacy Committee (FPC) or anyone who is allegedly using
10 said Corporations Sole illegally and is depending on the seized evidence (which he admits he
11 does not have access to) to corroborate his presumptions that there are, in fact, members who
12 have obtained Corporation Sole churches from FPC, that Defendant has encouraged said church
13 members to use their Corporation Sole churches in fraudulent ways and that said unknown
14 individuals are, in fact, using said Corporation Sole churches in fraudulent or illegal ways.

15 26. Further, SHOEMAKER, in said Complaint and in his answers to Defendant
16 Discovery #1, contends that the "Churches" Defendant Saladino allegedly helps organize are not
17 really churches and yet he presents no evidence as to what kind of churches Defendant Saladino
18 is allegedly helping FPC members organize⁵.

19 27. SHOEMAKER makes it clear in said complaint and in the Plaintiff's Response to
20 said Defendant's Discovery questions that he (or some other undisclosed person or entity) has
21 been authorized by the Constitution and by Congress to make binding determinations as to what
22 a church is and what a church is not and presents to this Court no evidence granting him said
23 authority.⁶

24 28. SHOEMAKER refers to the usual definition of the term "church" numerous times⁷

25
26 ⁴ See Exhibit D Pg. 5 Line 15 and Pg. 4 Line 23 and Exhibit B, footnote 18 pg. 7 line 24.

27 ⁵ Exhibit A, Pg. 5 line 10 and Exhibit C, Pg. 5-7).

28 ⁶ Exhibit C, Pp. 5 & 6

29 ⁷ Exhibit C, Pg. 5 line 18

1 and also states that Defendant's use of the term "Church" is ambiguous⁸.

2 29. SHOEMAKER, by said confessions, reveals that he assumes that he can take it upon
3 himself to exercise authority not granted to him or Plaintiff by the Constitution by attempting to
4 bring specificity to the definition of a "church" where the Constitution purposefully leaves out
5 any definition for the meaning of "church" and/or "religion" thus requiring that said meaning be
6 construed by this Court as purposefully ambiguous; Amendment I of the Constitution is quoted
7 in part:

8 *Congress shall make no law respecting an establishment of religion, or*
9 *prohibiting the free exercise thereof... Constitution for the United States of*
10 *America. Amendment I*

11 30. SHOEMAKER confesses that a "church" within the usual meaning of that word is
12 exempt from applying for exempt status and in the same paragraph, SHOEMAKER states that
13 said "church" must meet the requirements of 26 U.S.C., § 501(c)(3) — which flies in the face of
14 Amendment I of the Constitution *supra* — "Congress shall make no law..." — without his
15 supplying any shred of evidence to support his outrageous claim of any such requirement in the
16 Constitution or in United States law⁹.

17 *"ANSWER: The United States objects to this interrogatory because the word*
18 *"church" is ambiguous and the question is confusing. If the term is meant as the*
19 *type of entity promoted by the Defendant in his corporation sole program, such*
20 *entity is not excepted from notifying the Secretary under 26 U.S.C., § 508(c)(1)(A)*
21 *from applying for exempt status and from the presumption that it is a private*
22 *foundation.*

23 31. SHOEMAKER has not provided Defendant or this Court with a statutory definition
24 of the term "Church" from United States law nor has SHOEMAKER provided any evidence to
25 this Court to substantiate that a Corporation Sole "Church" is not indeed a legitimate church and
26 therefore not protected by Amendment I of the Constitution as one's right to freely exercise their
27 "religion" without any intervention by the United States or the United States of America; the

28 ⁸ Exhibit C, Pg. 5 line 3

29 ⁹ Exhibit C pg. 5-7

1 parties to the Constitution.

2 32. Therefore SHOEMAKER is taking it upon himself to determine for this Court:

- 3 a. What a legitimate "Church" is;
- 4 b. What kinds of "Churches", in SHOEMAKER'S estimation, are Constitutionally
and Statutorily recognized by Plaintiff;
- 5 c. What kinds of "Churches", in SHOEMAKER'S estimation, are not required to
6 file returns pursuant to 26 U.S.C. § 6033(a)(2)(A);
- 7 d. What kind of "Churches", in SHOEMAKER'S estimation, are not required to
8 inform the Secretary that they even exist pursuant to 26 U.S.C. § 508(c)(1),

9 all without any Constitutional or Statutory authority cited by SHOEMAKER granting him or any
10 other entity (including this Court of limited jurisdiction) the right to make said determinations.

11 **33. On the other hand, Defendant's position is supported by United States law and**
12 **IRS publications:**

13 *"(a) New organizations must notify Secretary that they are applying for*
14 *recognition of section 501 (c)(3) status Except as provided in subsection (c), an*
15 *organization organized after October 9, 1969, shall not be treated as an*
16 *organization described in section 501 (c)(3)—*

17 *(1) unless it has given notice to the Secretary in such manner as the*
18 *Secretary may by regulations prescribe, that it is applying for recognition*
19 *of such status, or*

20 *(2) for any period before the giving of such notice, if such notice is given*
21 *after the time prescribed by the Secretary by regulations for giving notice*
22 *under this subsection.*

23 *(b)...*

24 *(c) Exceptions*

25 *(1) Mandatory exceptions*

26 *Subsections (a) and (b) shall not apply to—*

27 *(A) churches, their integrated auxiliaries, and conventions or*
28 *associations of churches, or*

29 *(B) any organization which is not a private foundation (as defined*
30 *in section 509 (a)) and the gross receipts of which in each taxable*
31 *year are normally not more than \$5,000." Title 26, U.S.C., §*
32 *508(a)(c)(1), attached hereto and incorporated herein as Exhibit K.*

33 *"You can deduct your contributions only if you make them to a qualified*
34 *organization. To become a qualified organization, most organizations other than*

1 *churches ... must apply to the IRS.*" IRS Publication 526¹⁰, attached hereto and
2 incorporated herein as Exhibit M.

3 34. SHOEMAKER makes clear by his confessions on the record¹¹ and in Plaintiff's
4 Response to Defendant Discovery #1¹² that Defendant and FPC members do not qualify as
5 Citizens which have the constitutionally protected right to freely exercise their religion especially
6 if the free exercise thereof is in the form of a Corporation Sole Church which might be provided
7 by Defendant to his members.

8 35. Plaintiff also confesses¹³ he has NO evidence supporting his claims in that he
9 repeatedly presumes to rely on evidence which he is not entitled to even see, evidence which the
10 Court cannot consider in this instant case, presuming that said alleged evidence will support his
11 claims made in this instant case on March 29, 2004. All the while, the record now shows that
12 SHOEMAKER has known all along that he had no concrete admissible evidence in his
13 possession on March 29, 2004 nor has he submitted any admissible evidence in the record, since
14 that time, which would substantiate the claims he has made regarding any fraud by Defendant.

15 36. In the complaint in this instant case¹⁴, SHOEMAKER states that:

16 *"17. Defendants market an FPC arrangement known as a 'corporation sole' as a*
17 *means to evade the reporting and payment of federal income taxes, as well as a*
18 *means to conceal assets and thereby evade estate and inheritance taxes and the*
IRS collection efforts."

19 *"21. Defendant falsely advises participants that they can treat their corporations*
20 *sole as a 'church' with no tax return filing requirement, and yet can control and*
use the assets and income of the corporation sole for their own personal benefit"

21 37. SHOEMAKER seems to believe that one has the substantive right to freely exercise
22 their religion as long as there are no tax implications or consequences to Plaintiff or the United
23 States in so doing. Article I of the Constitution *supra* does not qualify the Citizen's right to
24

25 ¹⁰ See also Tax-Exempt Status of Your Organization, Publication 557, attached hereto and incorporated herein as
26 Exhibit N.

27 ¹¹ Among other things, Exhibit C, Pp. 5-7

28 ¹² Exhibit C, Pp. 5-7

29 ¹³ Exhibit C, Page 2 Line 8, Page 3 Line 4 and Page 8 Line 13

30 ¹⁴ Exhibit A paragraphs 17 and 21

1 freely exercise their religion by adding "as long as there are no tax consequences to the United
2 States or the United States of America."

3 38. Evidence in the record shows that SHOEMAKER claims that the government has the
4 right to disallow a Citizen's substantive right to freely exercise their religion at the whim of over
5 zealous government agents, such as SHOEMAKER, who either disagree with said Citizen's
6 religion or who don't personally have a religion and consequently could care less about a
7 Citizen's Constitutionally protected right to freely exercise THEIR religion.

8 39. The evidence in the record shows conclusively that SHOEMAKER has presented to
9 this Court no admissible evidence to substantiate any claims of fraud by Defendant with regards
10 to said Corporation Sole churches.

11 40. Further, The evidence in the record supports Defendant's contention that this Court
12 lacks subject matter jurisdiction to bring any specificity to the "usual meaning of the term"
13 Church, lacks subject matter jurisdiction to prevent one from establishing churches and lacks
14 subject matter jurisdiction to require any Church to comply with 26 U.S.C., § 501(c)(3)
15 especially when United States law makes no such requirement and Congress has not granted this
16 Court (of limited jurisdiction) any authority to regulate any church in any manner. This is
17 especially true when said church has not contracted with and submitted to the authority of the
18 Federal United States corporation by applying for a 501(c)(3) exemption which it is not, in fact,
19 required, by United States law or the Constitution, in the first place.

20 41. It should be self evident to this Court, by its careful review of the evidence in the
21 record in this instant case that Plaintiff has failed to present any evidence to this Court to support
22 its claims of fraud by Defendant with regard to the Corporation Sole churches.

23 42. SHOEMAKER has been on a fishing expedition in hopes that he could discover
24 evidence or uncover some disgruntled church member, whom he could turn against Defendant
25 during the course of the pre-trial and/or trial period, to support his unfounded and outrageous
26 claims.

27 **Claim of Right**

28 43. In Plaintiff's First Set of Interrogatories and Request for The Production of
29

30 MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMERY JUDGMENT
FOR LACK OF EVIDENCE

1 Documents¹⁵, attached hereto and incorporated herein as Exhibit D, SHOEMAKER confesses
2 that he is unaware of the details of the Claim of Right and made two revealing requests of
3 Defendant:

- 4 a. "INTERROGATORY NO. 4, State the basis for your contention that persons who
5 participate in the claim of right program are entitled to exclude or deduct on their
6 income tax returns the amount of compensation earned from their personal
7 labor."; and
8 b. "INTERROGATORY NO. 5, State the difference, if any, between your claim of
9 right program and your 'not-for-profit' program."

10 44. First of all, the basis in law for the claim of right program is clearly and adequately
11 spelled out in the returns themselves leaving no one with any doubt as to the basis in law for the
12 claims being made by the claimants (see sample tax claim of right return, attached hereto and
13 incorporated herein as Exhibit E). Further, protests, which have been filed with the IRS Appeals
14 Office by Defendant, present an even more in-depth basis in law for said Claim of Right and
15 SHOEMAKER has not availed himself of said evidence which is on record with the IRS Appeals
16 Office in Defendant's name (see sample Appeals Protest, attached hereto and incorporated herein
17 as as Exhibit F).

18 45. Secondly, SHOEMAKER seems totally unaware that Defendant had not been filing §
19 1341 returns since on or about the end of October of 2003 and that said § 1341 returns previously
20 filed had been amended and corrected by Defendant in the ensuing months. This fact is even
21 further illustrated by the fact that, at the Defendant deposition conducted by SHOEMAKER,
22 SHOEMAKER presented Defendant with an Exhibit consisting of an old obsolete copy of a
23 1040 return, which had already been amended, corrected and filed with the IRS Appeals Office
24 months earlier leaving said jurisdiction and said determination in the claim of right matter
25 exclusively with the Commissioner and the IRS Appeals Office¹⁶. This further demonstrates that
26 SHOEMAKER is unaware that said corrections and amendments have been made by

27
28 ¹⁵ Exhibit D, pp. 5 and 6

29 ¹⁶ In this regard, as of this date, said IRS Appeals Office and commissioner have been completely silent on the
30 matter of the Claim of Right returns prepared by Defendant.

1 Defendant/FPC/FPC Members since October, 2003. Had SHOEMAKER or CINDY ALLEN
2 attempted to resolve their misunderstandings administratively prior to the filing of this case
3 against Defendant, this whole case would have been unnecessary.

4 46. Thirdly, in Plaintiff's response to Defendant's Motion for Stay of Preliminary
5 Injunction Pending Interlocutory Appeal filed on or about December 17, 2004 in the 9th Circuit
6 Court of Appeals, ELLEN PAGE DELSOLE (DELSOLE), counsel for the Plaintiff, asserts, by
7 quoting a Court ruling¹⁷, attached hereto and incorporated herein as Exhibit G, that:

8 *"(Every Court which has ever considered the issue has unequivocally rejected the*
9 *argument that wages are not income.)"*

10 47. Not only has DELSOLE misunderstood the Claim of Right and
11 SHOEMAKER appears unaware of the details of said claim, there is no evidence in the
12 returns prepared by Defendant or in Defendant's cases previously filed in the Court of
13 Federal Claims, wherein Defendant has ever made the claim that "Wages are not
14 income". Defendant has never prepared a return for any church member wherein said
15 claim was ever made.

16 48. Notwithstanding any claims by SHOEMAKER and DELSOLE to the contrary,
17 anyone who will take the time to read the basis in law in said returns and the IRS Appeals
18 Protests as filed will immediately comprehend that no such claim has been made in any said
19 returns or said appeals protests prepared by Defendant for any of his church members.

20 49. Further, Plaintiff has not presented to this Court any evidence such as:

- 21 a. Certified copies of any returns which have not been amended by Defendant
22 and his church members;
- 23 b. Certified copies of any returns providing evidence to this Court of the basis in
24 law for the claim of right; or
- 25 c. A Certified list of FPC church members which have been damaged by
26 Defendant by the filing of said returns.

27 50. In fact, Plaintiff has presented no admissible evidence to this Court to show that

28 ¹⁷ Exhibit G pg. 10

1 anyone, other than SHOEMAKER and other government officers with a career stake in this case,
2 has firsthand evidence that Defendant committed fraud. In addition, Defendant has attempted to
3 litigate the issues numerous times and no Court of competent jurisdiction has ruled that said
4 returns are, in fact, "fraud" or "fraudulent".

5 51. This Court, at the preliminary injunction hearing, made a determination that said
6 claim of right returns were fraudulent without:

- 7 a. Any evidence in the record from which the Court could even ascertain what
8 the claim of right return is and what the basis in law is regarding said returns;
9 b. Any evidence in the record substantiating Plaintiff's claim that the Public has
10 been damaged by the filing of said claim of right returns; and
11 c. Any evidence in the record substantiating the claim that Plaintiff has been
12 damaged by the filing of said claim of right returns.

13 52. In order to bring forth evidence of damages to the Public, SHOEMAKER requires
14 that Defendant provide him with evidence (a member list) from which he presumes he can
15 provide this Court with evidence of fraud and therefore substantiate his case against Defendant.

16 53. The Court's ruling on Plaintiff's Preliminary Injunction against Defendant with no
17 said evidence might be excusable at the preliminary level but after careful review of the evidence
18 in the record and the SHOEMAKER confessions cited herein and in the record, any continued
19 attempt to deprive Defendant of his substantive rights, by this Court, is profoundly inexcusable.

20 54. On October 18, 2004, Defendant noticed this Court, at the Preliminary Injunction
21 hearing, that the claim of right issue is on appeal with the IRS Appeals Office and that said
22 Appeals Office and the Commissioner have exclusive jurisdiction in the matter. Further, now
23 after almost 5 months after filing of said appeals with the IRS Appeals Office, the Commissioner
24 and said Appeals Office have been completely silent and have failed to make a determination on
25 the duly filed appeals.

26 55. This Court has no statutory jurisdiction whatsoever to make any determination
27 regarding the validity of the claim of right issues Defendant has before the IRS Appeals Office
28 during the pendency of said appeal. In fact, IRS regulations dictate that the Commissioner has
29 exclusive jurisdiction during the pendency of said appeal (see 26 C.F.R., § 601.103 and 26
30

1 C.F.R. § 601.106, attached hereto and incorporated herein as Exhibits H and I respectively).

2 56. Therefore, this Court lacks jurisdiction to make any determination that said claim of
3 right returns are fraudulent when the IRS Appeals Office has yet to make such a determination
4 on this issue over which they have exclusive jurisdiction. Said Appeals Office failure to make
5 said determination and any attempt by this Court to violate said exclusive jurisdiction of said
6 Appeals Office by making any determination as to the validity of Defendant's claim apart from
7 and during the pendency of said appeal, constitutes a denial of Defendant's substantive right to
8 due process.

9 57. SHOEMAKER and his cohorts seem to think that just by their claiming that
10 Defendant has committed fraud, when they have no Constitutional or statutory authority to make
11 allegations with no supportive/admissible evidence, is sufficient to persuade this Court that fraud
12 has, in fact, been committed and thereby persuade this Court to deny Defendant his substantive
13 rights to due process without any said admissible evidence.

14 **58. SHOEMAKER has had over nine months to bring forth admissible evidence and**
15 **injured parties who can substantiate his claims and he as done neither.**

16 **Other Evidence**

17 59. While Defendant, as a programmer, did create the majority of the FPC website¹⁸,
18 there is no evidence in the record confirming that Defendant was solely responsible for the
19 content of said web pages, that he was cognizant of all the contents of the website or that he had
20 sole control of said web pages. Therefore, for this Court to rely on testimony from individuals
21 without firsthand knowledge that said website content was, in fact, created in its entirety by
22 Defendant and to rely on testimony which is based entirely on said web pages as an exhibit in
23 affidavits (hearsay evidence) without Defendant having the opportunity to cross-examine said
24 witnesses, constitutes a violation of the FRCP 803(8), attached hereto and incorporated herein as
25

26 _____
27 ¹⁸ Defendant is a professional web designer/programmer. Programmers routinely create significant websites without
28 contributing at all to the content of said developed/created websites. Plaintiff has no idea how FPC is organized and
29 who is responsible for what activities in the day to day operation of the organization and cannot certify from
30 firsthand knowledge which pages were allegedly created by Defendant and which were created by others in the FPC
organization.

1 Exhibit L, and Defendant's substantive rights to due process.

2 60. CINDY ALLEN and others, brought forward as witnesses, in affidavit form, by
3 SHOEMAKER, have provided only hearsay evidence to this Court by relying entirely on what
4 they read on the website and relying entirely on whom they presume to be the author of said
5 website content, without any firsthand knowledge; contrary to their certification, under oath, that
6 they indeed did have firsthand knowledge. Said witnesses did not have firsthand knowledge that
7 Defendant created all of the content of the FPC website.

8 61. SHOEMAKER and his cohorts have failed to present to this Court any admissible
9 evidence demonstrating any *mens rea* and *actus reus* of any fraud by Defendant.

10 62. Actions in this case by SHOEMAKER are extremely prejudicial to the Defendant and
11 said actions have damaged Defendant significantly; all without any evidence in the record to
12 substantiate his grandiose claims other than other government employees who supplied this
13 Court with faulty hearsay evidence under oath and who have a vested career interest in shutting
14 down Defendant, his church and its members.

15 **BINDING RULES FOR THIS COURT**

16 63. The parties have filed cross-motions for summary judgment on the plaintiff's
17 complaint pursuant to FRCP 56. Both rules provide that summary judgment "shall be rendered
18 forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,
19 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
20 that the moving party is entitled to a judgment as a matter of law¹⁹."

21 64. **A fact is material if it will make a difference in the result of a case under the**
22 **governing law.** Irrelevant or unnecessary factual disputes do not preclude the entry of summary
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27 ¹⁹ Fed. R. Civ. P. 56(c); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *Adickes v. S. H.*
28 *Kress & Co.*, 398 U.S. 144, 157 (1970); *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1323 (Fed.
29 *Cir.*), reh'g denied and reh'g en banc denied (2001); *Moton Corp. v. Stoughton Trailers, Inc.*, 239 F.3d 1253, 1257
(Fed. Cir. 2001); *Avenal v. United States*, 100 F.3d 933, 936 (Fed. Cir. 1996), reh'g denied (1997); *Creppel v.*
United States, 41 F.3d 627, 630-31 (Fed. Cir. 1994).

1 judgment²⁰.

2 65. When reaching a summary judgment determination, the judge's function is not to
3 weigh the evidence and determine the truth of the case presented, but to determine whether there
4 is a genuine issue for trial²¹.

5 66. The judge must determine whether the evidence presents a disagreement sufficient to
6 require submission to fact finding, or whether the issues presented are so one-sided that one party
7 must prevail as a matter of law²².

8 **67. When the record could not lead a rational trier of fact to find for the nonmoving**
9 **party, there is no genuine issue for trial, and the motion must be granted²³.** In such a case,
10 there is no need for the parties to undertake the time and expense of a trial, and the moving party
11 should prevail without further proceedings.

12 68. Summary judgment saves the expense and time of a full trial when it is unnecessary.
13 When the material facts are adequately developed in the motion papers, a full trial is useless.
14 "Useless" in this context means that more evidence than is already available in connection with
15 the motion for summary judgment could not reasonably be expected to change the result²⁴.

16 69. Summary judgment, however, will not be granted if "the dispute about a material fact
17 is 'genuine,' that is, if the evidence is such that a reasonable [trier of fact] could return a verdict
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21 ²⁰ Anderson v. Liberty Lobby, Inc., 477 U.S. at 247-48; see also Monon Corp. v. Sloughon Trailers, Inc., 239 F.3d
22 at 1257; Curtis v. United States, 144 Ct. Cl. 194, 199, 168 F. Supp. 213, 216 (1958), cert. denied, 361 U.S. 843
(1959), reh'g denied, 361 U.S. 941 (1960).

23 ²¹ Anderson v. Liberty Lobby, Inc., 477 U.S. at 249; see, e.g., Ford Motor Co. v. United States, 157 F.3d 849, 854
24 (Fed. Cir. 1998) (the nature of a summary judgment proceeding is such that the trial judge does not make findings of
fact); Johnson v. United States, 49 Fed. Cl. 648, 651 (2001), aff'd, No. 01-5143, 2002 WL 31724971 (Fed. Cir. Dec.
3, 2002); Becho, Inc. v. United States, 47 Fed. Cl. 595, 599 (2000).

25 ²² Anderson v. Liberty Lobby, Inc., 477 U.S. at 250-52; Jay v. Sec'y of Dep't of Health and Human Servs., 998 F.2d
26 979, 982 (Fed. Cir.), reh'g denied and en banc suggestion declined (1993).

27 ²³ See, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Hull v. Aqua Queen Mfg.,
28 Inc., 93 F.3d 1548, 1553 n.3 (Fed. Cir. 1996).

29 ²⁴ Dehne v. United States, 23 Cl. Ct. 606, 614-15 (1991) (citing Pure Gold, Inc. v. Syntex, Inc., 739 F.2d 624, 626
30 (Fed. Cir. 1984)), vacated on other grounds, 970 F.2d 890 (Fed. Cir. 1992); United States Steel Corp. v. Vasco
Metals Corp., 394 F.2d 1009, 1011 (C.C.P.A. 1968).

MEMORANDUM IN SUPPORT
OF DEFENDANT'S CROSS MOTION
FOR SUMMERY JUDGMENT
FOR LACK OF EVIDENCE

1 for the nonmoving party.²⁵ In other words, if the nonmoving party produces sufficient evidence
2 to raise a question as to the outcome of the case, then the motion for summary judgment should
3 be denied. Any doubt over factual issues must be resolved in favor of the party opposing
4 summary judgment, to whom the benefit of all presumptions and inferences runs²⁶.

5 70. The initial burden on the party moving for summary judgment to produce evidence
6 showing the absence of a genuine issue of material fact may be discharged if the moving party
7 can demonstrate that there is an absence of evidence to support the nonmoving party's case²⁷. If
8 the moving party makes such a showing, the burden shifts to the nonmoving party to demonstrate
9 that a genuine dispute regarding a material fact exists by presenting evidence which establishes
10 the existence of an element essential to its case upon which it bears the burden of proof²⁸.

11 71. Pursuant to FRCP 56, a motion for summary judgment may succeed whether or not
12 accompanied by affidavits and/or other documentary evidence in addition to the pleadings
13 already on file²⁹. Generally, however, in order to prevail by demonstrating that a genuine issue
14 for trial exists, the nonmoving party must go beyond the pleadings by use of evidence such as
15 affidavits, depositions, answers to interrogatories and admissions.

16 72. Even if both parties argue in favor of summary judgment and allege an absence of
17 genuine issues of material fact, however, the Court is not relieved of its responsibility to
18 determine the appropriateness of summary disposition in a particular case³⁰. “[S]imply because
19

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21 ²⁵ Anderson v. Liberty Lobby, Inc., 477 U.S. at 248; Eli Lilly & Co. v. Barr Labs., Inc., 251 F.3d 955, 971 (Fed. Cir.
2001), cert. denied, 534 U.S. 1109 (2002); Gen. Elec. Co. v. Nintendo Co., 179 F.3d 1350, 1353 (Fed. Cir. 1999).

22 ²⁶ Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. at 587-88; Monon Corp. v. Stoughton Trailers,
23 Inc., 239 F.3d at 1257; Woollass v. Fedders Corp., 145 F.3d 1461, 1463 (Fed. Cir.), reh'g denied and en banc
suggestion declined (1998).

24 ²⁷ Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986); see also Trilogy Communications, Inc. v. Times Fiber
25 Communications, Inc., 109 F.3d 739, 741 (Fed. Cir.) (quoting Contoy v. Reebok Int'l Ltd., 14 F.3d 1570, 1575
(Fed. Cir. 1994), reh'g denied and en banc suggestion declined (1995)), reh'g denied and en banc suggestion
declined (1997); Lockwood v. Am. Airlines, Inc., 107 F.3d 1565, 1569 (Fed. Cir. 1997).

26 ²⁸ See Celotex Corp. v. Catrett, 477 U.S. at 322; Am. Airlines v. United States, 204 F.3d 1103, 1108 (Fed. Cir.
2000); see also Schepell v. Regal Marine Indus., Inc., 247 F.3d 1202, 1207 (Fed. Cir. 2001).

27 ²⁹ Celotex Corp. v. Catrett, 477 U.S. at 324.

28 ³⁰ Prineville Sawmill Co. v. United States, 859 F.2d 905, 911 (Fed. Cir. 1988) (citing Mingus Constructors, Inc. v.
29 United States, 812 F.2d 1387, 1391 (Fed. Cir. 1987)); Chevron USA, Inc. v. Cayetano, 224 F.3d 1030, 1037 n.5 (9th
Cir. 2000), cert. denied, 532 U.S. 942 (2001).

1 both parties moved for summary judgment, it does not follow that summary judgment should be
2 granted to one or the other."³¹

3 73. Cross-motions are no more than a claim by each party that it alone is entitled to
4 summary judgment. The making of such inherently contradictory claims, however, does not
5 establish that if one is rejected the other necessarily is justified³².

6 74. The Court must evaluate each party's motion on its own merits, taking care to draw
7 all reasonable inferences against the party whose motion is under consideration³³.

8 75. In the instant case, the Plaintiff claims that there are no material issues of fact in
9 dispute. Defendant agrees that there are no material issues of fact in dispute but contends that
10 confessions by SHOEMAKER confirm that facts Plaintiff contends are not in dispute are in fact
11 misrepresentations made to this Court by SHOEMAKER and that without said
12 misrepresentations, material facts submitted by Defendant are not in fact undisputed by Plaintiff
13 since there is no evidence controverting the facts as brought forward by Defendant.

14 GRAND JURY USED TO GATHER INFORMATION FOR A CIVIL CASE

15 76. SHOEMAKER confesses that the claims in the civil complaint are based on his
16 presumptions that alleged incriminating evidence presumably exists in the records seized by the
17 IRS from Defendant on March 3, 2004. SHOEMAKER refers numerous times to said alleged
18 evidence from said raid, knowing full well that he cannot have access to said seized records and
19 documents. Defendant wonders if Plaintiff is trying to tell this Court that it knows that there is
20 evidence in said seized record while at the same time being careful not to confess to the crime of
21 his having access to said records?

22 77. SHOEMAKER claims that he does not have access to said seized records and that he

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25 ³¹ LewRun Television, Inc. v. D.H. Overmyer Leasing Co., 401 F.2d 689, 692 (4th Cir. 1968), cert. denied, 393 U.S.
1083 (1969); see also B.F. Goodrich Co. v. U.S. Filter Corp., 245 F.3d 587, 593 (6th Cir. 2001); Massey v. Del
Labs., Inc., 118 F.3d 1568, 1573 (Fed. Cir. 1997).

26 ³² B.F. Goodrich Co. v. U.S. Filter Corp., 245 F.3d at 593; Atl. Richfield Co. v. Farm Credit Bank of Wichita, 226
27 F.3d 1138, 1148 (10th Cir. 2000); Allstate Ins. Co. v. Occidental Int'l, Inc., 140 F.3d 1, 2 (1st Cir. 1998); Reading
& Bates Corp. v. United States, 40 Fed. Cl. 737, 748 (1998).

28 ³³ DeMarini Sports, Inc. v. Worth, Inc., 239 F.3d 1314, 1322 (Fed. Cir. 2001); Gart v. Logitech, Inc., 254 F.3d 1334,
29 1338-39 (Fed. Cir. 2001), cert. denied, 534 U.S. 1114 (2002).

1 is depending on said seized alleged evidence to corroborate his presumptions that he can
2 substantiate said claims with said alleged evidence.

3 78. Is it the standard of American Jurisprudence and this Court that one can bring forward
4 a case based solely on hearsay and presumed evidence which is not in ones possession?

5 79. To initiate this instant case, after the raid by the IRS on Defendant's church office and
6 parsonage on March 3, 2004, is a complete misuse and abuse of the judicial system.

7 80. It is a misuse of process to institute a grand jury investigation solely to aid in a civil
8 suit. When the government uses the grand jury as a pretext to obtain records for a civil
9 investigation, the grand jury process is subverted. In Matter of April 1956 Term Grand Jury
10 (Cain), the IRS used grand jury subpoenas to compel the production of tax records. The records
11 were produced before the grand jury and turned over to IRS agents, who examined the records
12 and assisted the grand jury in determining whether the witnesses should be indicted. The Court
13 held that third persons "**may not in any manner use [the evidence]...for any civil purpose,**
14 **such as tax collection or otherwise.**"

15 81. The government's entire case is based on presumed evidence and hearsay evidence in
16 the form of the FPC web pages. The United States Court of Federal Claims (CFC) in its order of
17 October 6, 2004³⁴, attached hereto and incorporated herein as Exhibit J, clarifies that web pages
18 are not public records and are not evidence in accordance with FRCP 803(8). The following is a
19 quote from the CFC order:

20 *Finally, defendant relies on information culled from or cited to the Internet.*
21 *Although the Internet plays a significant role in the lawsuits filed by plaintiff on*
22 *his behalf or as the putative representative of other named plaintiffs, defendant*
23 *has not supplied legal authority for recognizing Internet sites or information*
culled from Internet sites that do not purport to be public records within the
contemplation of Fed. R. Evid. 803(8).

24 82. On December 30, 2003, Defendant filed a complaint in the CFC (Joseph O. Saladino
25 v. The United States — case # 03-2871T), wherein the subject matter in that case was directly
26

27
28 ³⁴ Exhibit J, Pg. 3 paragraph 1

1 related to the returns which Defendant prepares for his members. This case was dismissed for
2 lack of subject matter jurisdiction and said case had no returns in the record upon which the
3 Court could make a binding ruling. To date, no Court of competent jurisdiction has reviewed
4 said Claim of Right returns and ruled that said returns are "fraudulent". Said CFC case was
5 active on March 29, 2004 when this instant case was filed and was still active on October 18,
6 2004 when this Court instituted a Preliminary Injunction against Defendant.

7 83. Plaintiff's filing of the complaint in this instant case against Defendant and this
8 Court's issuing of the Preliminary Injunction against Defendant, while the matter was being
9 litigated in another Court, is conclusive evidence that Plaintiff and this Court have circumvented
10 said pending case in another jurisdiction and have denied Defendant his substantive right to due
11 process.

12 CONCLUSION

13 84. Plaintiff filed this instant action against Defendant knowing that there was no
14 admissible evidence that: 1) Defendant ever created a Corporation Sole church for one of his
15 church members, 2) The issues relative to the Claim of Right were being litigated by the
16 Defendant in another jurisdiction, 3) Plaintiff could not produce anyone from the Public who
17 claims to have been damaged by Defendant and the Claim of Right returns, 4) That he did not
18 have a list of FPC members who filed Claim of Right returns, and 5) He was unable to produce
19 admissible evidence of injury to Plaintiff in this case.

20 85. No matter how much this Court would like to rule in favor of the Plaintiff in this
21 matter, the Court is completely without subject matter jurisdiction regarding the Corporation
22 Sole churches (which are protected by the Constitution) and regarding any determination as to
23 the validity of the Claim of Right (which is currently under the exclusive jurisdiction of the
24 Commissioner and the IRS Appeals Office). For any judge in this instant case to act without said
25 jurisdiction places said judge outside his/her robe and makes him/her subject to civil rights
26 violations for compensatory and punitive damages in his/her personal capacity and for which
27 there is no judicial immunity.

28 86. Further, the Court has a duty, because of the oaths the judge in this case has

1 presumably taken to protect and defend the Constitution,³⁵ to protect those who claim their
2 substantive right to freely exercise their religious beliefs and their substantive right to due
3 process; both rights which are explicitly protected by the Constitution from attacks by over
4 zealous government officials.

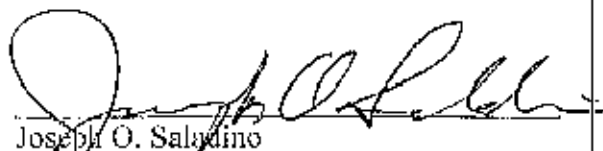
5 **PRAYER**

6 May the God of creation intervene in the hearts of the men and women that truth may
7 prevail over deception and that law may prevail over lawlessness. May God move the heart of
8 the Presiding Judge of this Court to:

- 9 1. Set aside the Preliminary Injunction in this instant case; and
10 2. Dismiss this case in its entirety with prejudice and each party taking nothing from
11 this instant action.

12 If this motion is denied, Defendant demands that this Court issue a finding of fact and
13 conclusions of law supporting said denial.

14 Dated this 11th day of January, 2005.

15 
16 Joseph O. Saladino
17 416 Alamosa Ave.
18 Palmdale, California 93551
19 Telephone 661-267-0234
20 Fax 212-659-0754

21
22
23
24
25
26 ³⁵ An Article III judge, in order to be properly seated, shall take two oaths; a Civil Service Oath — Title 5, § 3331
27 and a Judicial Oath — Title 28, § 453. In addition, said Article III judge shall not be subject to a diminishment of
28 his/her judicial salary (income tax) see Evans v. Gorg 253 U.S. 245. Any ruling by any judge in this Court shall be
29 confirmation and acknowledgement by said judge that that he/she is a true Article III judge as described above and
30 that said Article III judge is properly seated, one who has taken both oaths as required by United States law *supra*
and the Constitution and one who's judicial salary is not diminished by federal or state income tax.

Department of the Treasury
Internal Revenue Service
Publication 512 (1986)

tax guide for
**Churches
and
Religious
Organizations**

How to file and compute your tax
under the Federal Tax Code

Introduction

This publication explains the benefits and the responsibilities under the federal tax system for churches and religious organizations. The term church is found, but not specifically defined, in the Internal Revenue Code (IRC). The term is not used by all faiths; however, in an attempt to make this publication easy to read, we use it in its generic sense as a place of worship including, for example, mosques and synagogues. With the exception of the special rules for church audits, the use of the term church throughout this publication also includes conventions and associations of churches as well as integrated auxiliaries of a church.

Because special tax rules apply to churches, it is important to distinguish churches from other religious organizations. Therefore, when this publication uses the term "religious organizations," it is not referring to churches or integrated auxiliaries. Religious organizations that are not churches typically include non-denominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion.

Churches and religious organizations may be legally organized in a variety of ways under state law, such as unincorporated associations, nonprofit corporations, corporations sole, and charitable trusts.

Certain terms used throughout this publication—church, integrated auxiliary of a church, minister, and IRC section 501(c)(3)—are defined in the Glossary on page 23.

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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 JOSEPH O. SALADINO,
17 individually and dba FREEDOM &
PRIVACY COMMITTEE,

18 Defendant.

Case No. CV04-02100 FMC (JWJx)

19 UNITED STATES' RESPONSE TO
20 DEFENDANT'S 1ST SET OF
21 INTERROGATORIES AND
22 REQUEST FOR PRODUCTION OF
23 DOCUMENTS

24 The United States objects to Defendant's First Set of Interrogatories and
25 Request for Production of Documents on the grounds that they were not timely
26 served. According to the Scheduling Order entered in this case, all discovery was
27 to have been completed by the discovery cutoff date of December 3, 2004. Thus,
28 the deadline for serving written discovery was on or around November 1, 2004.
Defendant's discovery was not served until November 19. Without waiving this
objection, the United States responds as follows.

USA's Resp. to Def.'s 1st Set
of Interrogatories and Doc. Request

1 INTERROGATORY NO. 1: State the number of corporation sole packages
2 that the U.S.A. has a record of that Defendant has sold during the past five years,
3 along with the date of sale, and the name and address of each purchaser.

4
5 ANSWER: During the execution of its search warrants on or around March 3,
6 2004, the Internal Revenue Service seized many of the defendant's business
7 records. Presumably, these records reveal details regarding the corporation sole
8 packages sold by the defendants prior to that date. However, undersigned counsel
9 or IRS civil personnel do not have access to the seized records, and therefore
10 cannot respond to this interrogatory at this time. Moreover, the United States is
11 seeking this information in this law suit. See United States' 1st Set of
12 Interrogatories No. 1 and the Complaint.
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18 INTERROGATORY NO. 2: State the number of claim of right packages
19 that the U.S.A. has record of that Defendant has sold during the past five years,
20 along with the date of sale, and the name and address of each purchaser.

21
22 ANSWER: Attached is a list of persons compiled by IRS Technical Advisor
23 Shauna Henline who have been identified as customers of Defendant who have
24 filed returns or claims with the IRS utilizing the claim of right package. (Social
25 security numbers have been redacted for privacy reasons.)
26
27

1 Also, during the execution of its search warrants on or around March 3,
2 2004, the Internal Revenue Service seized many of the defendant's business
3 records. Presumably, these records reveal details regarding the claim of right
4 packages sold by the defendants prior to that date. However, undersigned counsel
5 or IRS civil personnel do not have access to the seized records, and therefore
6 cannot respond fully to this interrogatory. Moreover, the United States is seeking
7 this information in this law suit. See United States' 1st Set of Interrogatories No.
8 2 and the Complaint.
9
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12

13
14 INTERROGATORY NO. 3: Has the U.S.A. at any time been specifically
15 damaged by Defendant as alleged in the Complaint.
16

17 ANSWER: Yes.

18 If the answer is Yes: Provide a detail accounting of the financial damage
19 alleged to be caused by Defendant.
20

21 ANSWER: The total amount of damages is presently incalculable. The
22 accounting sought in this interrogatory would require Saladino to identify his
23 customers, and would require an examination of those persons' tax returns and
24 liabilities. An incomplete accounting of damage is contained in the Declaration of
25
26
27

1 Shauna Henline filed in this case in support of the United States' Motion for
2 Summary Judgment.
3

4
5 INTERROGATORY NO. 4: State the name, address and phone number of
6
7 each person who you believe has personal knowledge relevant to the issue of
8 whether Defendant promoted the corporation sole and claim of right programs as
9
10 alleged in the complaint.

11 ANSWER: 1. Joseph O. Saladino

12 2. The following subpromoters of Saladino's FPC corporation sole and
13 claim of right programs have relevant personal knowledge. The addresses and
14 phone numbers of these persons are already in the defendant's possession.

15 Marcel R. Bendshadler, Elizabeth Detwiler, Richard M. Blackstock,
16 Thomas and Charlene Chapin, Janice E. Greehey, Edwin Jordan,
17 Donald and Patricia Kahl, Nancy Lloyd, Frank Perkinson, Dennis Styles,
18 Michael Mungovan, and Ralph Marlowe.

19 3. Cindy Allan, Internal Revenue Service, 1220 S.W. 3d, Mail Stop O121,
20 Portland, OR 97204, (503) 326-3476.

21 4. Shauna Henline, IRS, 105 East 23rd Street, M/S 4390, Ogden, UT
22 84401, (801) 620-2405.

23 5. Each of the defendant's customers and each member of the defendant's
24 sales force (*i.e.*, those not listed above) also possesses this knowledge. These
25 persons' names, addresses and phone numbers are in the possession of the
26 defendant.

1 INTERROGATORY NO. 6: Admit or Deny that according to United States
2 law Title 26 § 6033(a)(2) Churches are excepted from filing tax returns.

3
4 ANSWER: The United States objects to this interrogatory because the word
5 “church” is ambiguous. Without waiving this objection the United States states
6 that the “churches” that Saladino promotes in his corporation sole program are not
7 excepted from filing tax returns. In order for an entity, be it a church or not, to be
8 excepted from filing returns it must (among other things) meet the requirements of
9 26 U.S.C. § 501(c)(3). Some of these requirements are set forth in the
10 Memorandum in Support of United States’ Motion of Preliminary Injunction.
11 Saladino falsely or fraudulently contends that his corporation sole “churches” do
12 not have to qualify under 26 U.S.C. § 501(c)(3) in order to not file federal income
13 tax returns.
14
15
16
17

18 If a “church” meets the usual definition of that term (*i.e.*, is of the type that
19 the Defendant does not promote) and qualifies for tax exempt status under 26
20 U.S.C. § 501(c)(3), then 26 U.S.C. § 6033(a)(2)(A)(i) provides an exception for
21 churches with respect to the requirement to file an Exempt Organizations Annual
22 Return, Form 990 only.
23
24
25
26
27

1 If the Answer is "Deny": State the United States law and/or cases which
2 requires Churches which have not applied for 501(c)(3) status to file tax returns.
3

4 ANSWER: See previous response.
5
6

7 INTERROGATORY NO. 7: Admit or Deny that according to United States
8 law Title 26 § 508 Churches are excepted from notifying the Secretary that they
9 exist.
10

11 ANSWER: The United States objects to this interrogatory because the word
12 "church" is ambiguous and the question is confusing. If the term is meant as the
13 type of entity promoted by the Defendant in his corporation sole program, such
14 entity is not excepted from notifying the Secretary under 26 U.S.C. § 508. If the
15 entity is a church within the usual meaning of that word (and meets the
16 requirements of 26 U.S.C. § 501(c)(3)) then it is exempt under § 508(c)(1)(A)
17 from applying for exempt status and from the presumption that it is a private
18 foundation.
19
20
21

22
23 INTERROGATORY NO. 8: State and identify the proper IRS form
24 required for any entity to submit to the IRS to obtain 501(c)(3) tax exempt status.
25
26
27

1 ANSWER: Form 1023, Application for Recognition of Exemption Under Section
2 501(c)(3) of the Internal Revenue Code.
3
4

5 If there is an official IRS form for such purpose, please produce said form.
6

7 ANSWER: Copy attached.
8
9

10 INTERROGATORY NO. 9: Admit or Deny that a Church is required by
11 United States law to submit said form in order to obtain tax exempt status.

12 ANSWER: The United States objects to this interrogatory because the word
13 "Church" is ambiguous and the question is confusing. If the term is meant as the
14 type of entity promoted by the Defendant in his corporation sole program, such
15 entity is not excepted from submitting said form. If the entity is a church within
16 the usual meaning of that word (and meets the requirements of 26 U.S.C. §
17 501(c)(3)) then it need not submit the form to obtain tax exempt status.
18
19
20
21

22 If the answer is Admit: State the United States law and any relevant cases
23 which requires a Corporation Sole Church to apply for a 501(c)(3) tax exempt
24 status.
25

26 ANSWER: See previous response and response to Interrogatory No. 7, above.
27

1 INTERROGATORY NO. 10: State the name, address and phone number of
2
3 each person, from Plaintiff U.S.A.'s records, who has purchased a Corporation
4 Sole from FPC and in addition, who is using or operating said Corporation Sole
5 Church illegally.

6
7 ANSWER: The United States objects to this interrogatory because it is unknown
8 what is meant by the phrase "using or operating said Corporation Sole Church
9 illegally." Without waiving this objection the United States answers as follows:
10

11 During the execution of its search warrants on or around March 3, 2004, the
12 Internal Revenue Service seized many of the defendant's business records.

13 Presumably, these records reveal details regarding the corporation sole packages
14 sold by the defendants prior to that date. However, undersigned counsel or IRS
15 civil personnel do not have access to the seized records, and therefore cannot
16 respond to this interrogatory at this time. Moreover, the United States is seeking
17 this information in this law suit. See United States' 1st Set of Interrogatories No.
18 1 and the Complaint.
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24 INTERROGATORY NO 11: State the name, address and phone number of
25 each person of the U.S.A. who has first hand personal knowledge of Defendants
26
27

1 making false and fraudulent assertions about the claim of right or corporate sole as
2 alleged in the complaint.
3

4 ANSWER: See response to Interrogatory No. 4.
5
6

7 INTERROGATORY NO. 12: State name, address and phone number of
8 anyone who had first hand personal knowledge, at the time of the filing of the
9 complaint in this case, of any personal activity by Defendant in having or
10 promoting the webpage <http://www.freedomcommittee.com/5721/5721>.
11

12 ANSWER: • Joseph Saladino
13

14 • Donald C. Kahl, 4235 S. Cheney-Spokane Road, PMB #89, Spokane,
15 Washington 99224, 509-443-6465

16 • Patricia A. Kahl, 4235 S. Cheney-Spokane Road, PMB #89, Spokane,
17 Washington 99224, 509-443-6465

18 • Cindy Allan, Internal Revenue Service, 1220 S.W. 3d, Mail Stop O121,
19 Portland, OR 97204, (503) 326-3476.
20

21 INTERROGATORY NO. 13: State with specificity what facts, person,
22 organization, and testimony or any other means that would implicate Defendant's
23 intent to promote future tax avoidance programs or any tax schemes.
24

25 ANSWER: To date there is absolutely no indication that Saladino intends to stop
26 promoting his abusive tax avoidance programs and tax schemes. He has taken no
27

1 steps to comply with the Preliminary Injunction Order. Saladino's website,
2 www.freedomcommittee.com, reveals that Saladino intends to promote his
3 schemes in defiance of a court order.
4

5 Persons with knowledge of Saladino's intent to defy the Court's orders and
6 continue to promote abusive tax schemes include Joseph Saladino, anyone who
7 visits his website, and those persons whom he continues to represent before the
8 IRS regarding those persons' tax liabilities.
9
10

11
12 INTERROGATORY NO. 14: State the United States law which makes
13 Defendant (a member of the Private Sector) liable for Sub-Title A taxes.
14

15 ANSWER: 26 U.S.C. § 1, *et seq.*
16
17

18 INTERROGATORY NO. 15: State the United States law which requires
19 Defendant (a member of the Private Sector) to file a 1040 tax return for Sub-title A
20 type taxes.
21

22 ANSWER: 26 U.S.C. § 6012; Treas. Reg. §§ 1.6012-1 and 1.6012-1(a)(6).
23
24
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1 INTERROGATORY NO. 16: Admit or Deny that MARTIN SHOEMAKER
2 contacted Defendant Saladino "within days of filing" the complaint in this instant
3 case.
4

5 ANSWER: The United States objects to this request because it seeks information
6 that is not relevant and not reasonably calculated to lead to the discovery of
7 admissible evidence. Without waiving this objection, the interrogatory is
8 admitted.
9

10
11 If the answer is Admit: Produce the telephone logs of Mr. SHOEMAKER
12 for the period March 1, 2004 to present and Mr. SHOEMAKER's notes or
13 recordings of any calls initiated by Mr. SHOEMAKER to Defendant.
14

15 ANSWER: The United States objects to this request because it seeks information
16 that is not relevant and not reasonably calculated to lead to the discovery of
17 admissible evidence. Furthermore, the request seeks information that is protected
18 from disclosure by the attorney work product privilege.
19
20
21

22 INTERROGATORY NO. 17: Admit or Deny that CINDY ALLAN
23 contacted Defendant Saladino and attempted to arrange a meeting with said
24 Defendant in Palmdale, California to discuss the FPC website.
25
26
27

1 ANSWER: In a letter dated May 19, 2003, Cindy Allan contacted Saladino and
2 attempted to arrange a meeting with Saladino in the Los Angeles area. In response
3 to Allan's letter requesting a meeting in the Los Angeles area, Saladino sent a
4 letter dated June 19, 2003, in which he made several demands, including payment
5 of a \$12,000 retainer, that had to be met before he would cooperate with the IRS.
6

7
8 If the answer is Admit: Produce the telephone logs of Agent CINDY
9 ALLAN for the period February 1, 2003 to present, any tape recordings made by
10 CINDY ALLAN of any alleged calls between CINDY ALLAN and Defendant
11 Saladino and all notes of CINDY ALLAN relative to Defendant Saladino.
12

13
14 ANSWER: Attached are the following:

- 15 • A letter dated April 25, 2003, from Revenue Agent Cindy Allan to Joseph
16 Saladino notifying him that the IRS was considering possible action under
17 26 U.S.C. §§ 6700 and 7408 for promoting abusive tax shelters. The letter
18 requests a meeting with the IRS in Portland, Oregon, and includes an
19 Information Document Request.
20 • A letter dated May 1, 2003, from Saladino to Allan stating that he no
21 longer lives in Oregon.
22 • The May 19, 2003, letter referenced above.
23 • The June 19, 2003, letter referenced above.
24
25
26
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1 INTERROGATORY NO. 18: Admit or Deny that MARTIN M.

2 SHOEMAKER, RICHARD STACK and DEBRA W. YANG have statutory and
3 delegation of authority to represent the U.S.A. in this instant case.
4

5 ANSWER: Admit.
6

7 If the answer is Admit: Produce relevant United States law, copies of the
8 Bond, oath of office, and civil commission and all other documents which support
9 the contention that MARTIN M. SHOEMAKER, RICHARD STACK and DEBRA
10 W. YANG each have said statutory and delegation of authority to represent the
11 U.S.A.
12

13 ANSWER: The United States objects to this request because it seeks information
14 that is not relevant and not reasonably calculated to lead to the discovery of
15 admissible evidence.
16
17
18

19 INTERROGATORY NO. 19: Admit or Deny that MARTIN M.

20 SHOEMAKER, RICHARD STACK and DEBRA W. YANG are licensed to
21 practice law within the State of California.
22

23 ANSWER: The United States objects to this request because it seeks information
24 that is not relevant and not reasonably calculated to lead to the discovery of
25 admissible evidence. Without waiving this objection, the United States states that
26
27

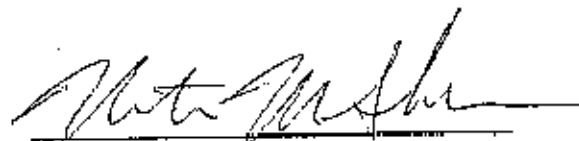
1 Richard Stack and Debra Yang are duly licensed members in good standing of the
2 State Bar of California. Martin Shoemaker is not a member of the California State
3 Bar; he is however authorized to represent the United States within the State of
4 California under the provisions of 28 U.S.C. §§ 510, *et seq.*
5
6
7

8 If the answer is Admit: Produce a certified copy of the State Issued License
9 under which MARTIN M. SHOEMAKER, RICHARD STACK and DEBRA W,
10 YANG each are practicing law within the State of California.
11

12 ANSWER: The United States objects to this request because it seeks information
13 that is not relevant and not reasonably calculated to lead to the discovery of
14 admissible evidence.
15
16
17

18 I declare under penalty of perjury that the answers to the above
19 interrogatories are true and correct.
20

21 12/21/04



22 MARTIN M. SHOEMAKER
23 Trial Attorney, Tax Division
24 U.S. Department of Justice
25
26
27

1 REQUEST FOR PRODUCTION NO. 1: Produce all documents supporting
2 the contention that plaintiff performed all conditions precedent or that all
3 conditions precedent necessary for plaintiff to file suit have occurred.
4

5 The United States objects to this request as being ambiguous and confusing.
6 Without waiving these objections the United States refers the plaintiff to the
7 complaint.
8

9 REQUEST FOR PRODUCTION NO. 2: Produce all documents that show
10 the form and content of the speaking and advising along with promotional and
11 marketing material that is the basis of this lawsuit.
12

13 The United States objects to this request as being ambiguous and
14 confusing. Without waiving these objections the United States refers the plaintiff
15 to the complaint, the motion for preliminary injunction and materials filed
16 therewith, along with the remaining record in this case, and the material contained
17 on the defendant's website, www.freedomcommittee.com.
18

19 REQUEST FOR PRODUCTION NO. 3: Produce all documents that show
20 Defendant's speech is not protected by the First Amendment to the Constitution
21 for the U.S.A.
22

23 The United States refers the plaintiff to the complaint, the motion for
24 preliminary injunction and materials filed therewith, along with the remaining
25

1 record in this case, and the material contained on the defendant's website,
2 www.freedomcommittee.com.

3
4 REQUEST FOR PRODUCTION NO. 4: Produce all documents that show
5 any willful, deliberate, or malicious intent by Defendant to violate Internal
6 Revenue Service code.

7
8 The United States refers the defendant to the record in this action.

9
10 REQUEST FOR PRODUCTION NO. 5: Produce all documents that show
11 the rules, regulations, law, ordinances, policies, or procedures that plaintiff
12 contends were violated by defendant.

13
14 The United States refers the defendant to the record in this action, and also
15 to the Internal Revenue Code and the regulations promulgated thereunder.

16
17 REQUEST FOR PRODUCTION NO. 6: Produce any documents,
18 correspondence, records, notes, newspaper articles, news releases, reports, or
19 editorial letters that relate to the context of the marketing, promotion, advising and
20 speaking that is the subject of this lawsuit.

21
22 The United States objects to this request as being ambiguous, confusing,
23 overbroad and unduly burdensome. Without waiving these objections, the United
24 States produces herewith three U.S. Department of Justice, Tax Division, press
25 releases related to Saladino-led tax scams. These press releases can also be found
26

1 on the Justice Department's website, www.usdoj.gov, along with other releases
2 related to the Government's efforts to stop abusive tax schemes.

3
4 REQUEST FOR PRODUCTION NO. 7: Produce any documents,
5 correspondence, records notes, or reports wherein Mr. Shoemaker and/or any other
6 parties within the DOJ or the IRS (by name, address, phone number and title)
7 which shows who created, edited, approved and released copy for any news
8 releases or news articles wherein the DOJ, IRS, FPC and/or Joseph Saladino were
9 referred to by name.
10

11
12 The United States objects to this request as being overbroad and unduly
13 burdensome. Furthermore, the United States objects to this request because it
14 seeks information that is not relevant and not reasonably calculated to lead to the
15 discovery of admissible evidence.
16

17
18 REQUEST FOR PRODUCTION NO. 8: Produce all documents that show
19 plaintiff complained or sought an appeal of any adverse activity or action taken by
20 defendant.
21

22 The United States objects to this request as seeking documents that are
23 protected from disclosure by 26 U.S.C. 6103. Furthermore, the request is unduly
24 burdensome and oppressive. It would require production of the examination
25 records of all of Saladino's customers who have been examined by the IRS.
26

1 Without waiving these objections, the United States refers the defendant to
2 the records of the numerous actions filed by the defendant in the Court of Federal
3 Claims. The complaint in the instant action is also responsive to this request.
4

5 REQUEST FOR PRODUCTION NO. 9: Produce all documents that show
6 Plaintiff or any IRS Agents complained or sought an administrative remedy
7 relative to the FPC website and any alleged adverse activity or action taken by
8 Defendant.
9
10

11 The United States objects to this request as seeking documents that are
12 protected from disclosure by 26 U.S.C. 6103. Furthermore, the request is unduly
13 burdensome and oppressive. It would require production of the examination
14 records of all of Saladino's customers who have been examined by the IRS.
15

16 REQUEST FOR PRODUCTION NO. 10: Produce all documents relating
17 to the damage to plaintiff's reputation alleged in the original complaint.
18

19 The United States objects to this request in that it mischaracterizes the
20 allegations in the complaint. The United States does not allege that its reputation
21 has been damaged.
22

23 REQUEST FOR PRODUCTION NO. 11: Produce all personnel records of
24 MARTIN SHOEMAKER, CINDY ALLAN, JONATHON W. DITTMAN,
25 DAVID GUSTAFSON and BARBARA CANTRELL in plaintiff U.S.A.'s
26

1 possession, including any documents relating to disciplinary actions, notifications
2 of rules violations, etc.
3

4 The United States objects to this request because it seeks information that is
5 not relevant and not reasonably calculated to lead to the discovery of admissible
6 evidence, and is protected from disclosure under the Privacy Act.
7

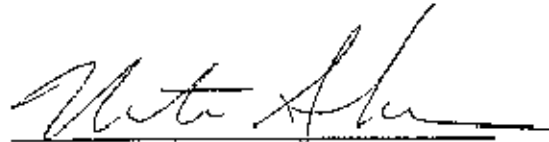
8 REQUEST FOR PRODUCTION NO. 12: Produce all documents that detail
9 any previous lawsuits or complaints that plaintiff has filed concerning a violation
10 of the internal revenue service for claim of right or corporate sole.
11

12 The United States objects to this request as being ambiguous, confusing,
13 overbroad and unduly burdensome. The United States also objects to this request
14 because it seeks information that is not relevant and not reasonably calculated to
15 lead to the discovery of admissible evidence.
16
17

18 REQUEST FOR PRODUCTION NO. 13: Produce all documents that
19 identify the true and legal identify of the person alleged to be CINDY ALLAN in
20 this instant case.
21

22 The United States objects to this request because it seeks information that is
23 not relevant and not reasonably calculated to lead to the discovery of admissible
24 evidence.
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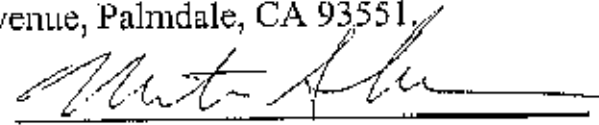
1 DEBRA W. YANG
2 United States Attorney

3
4 

5 MARTIN M. SHOEMAKER
6 Trial Attorney, Tax Division
7 U.S. Department of Justice
8

9
10 CERTIFICATE OF SERVICE

11 IT IS HEREBY CERTIFIED that service of the foregoing has been made
12 upon the following by private delivery service (FedEx) this 21st day of December
13 2004: Joseph O. Saladino, 416 Alamoza Avenue, Palmdale, CA 93551.

14 

15 MARTIN M. SHOEMAKER
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