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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil No. 8:02-cv-2052-T-23MSS

CAREL A. PRATER, a/k/a CHAD PRATER, d/b/a AERO INVESTMENTS, a purported trust, d/b/a GOLDCOAST ENTERPRISES, a/k/a GOLDENCOAST ENTERPRISES, a purported trust, d/b/a BARTHOLOMEW ENTERPRISES, a purported trust, d/b/a C.A.P. ENTERPRISES, a purported trust, d/b/a TAX INFORMER ENTERPRISES, d/b/a FAMILY VALUES INTERNATIONAL; TAX ESCAPE SERVICE, a purported trust or purported limited liability corporation; NEW FOUND FREEDOM, a purported trust or purported limited liability corporation; and RICHARD W. CANTWELL,

Defendants.
_____/

PRELIMINARY INJUNCTION

The United States of America moves to preliminarily enjoin the defendants from engaging in various abusive tax schemes (Doc. 2). The defendants oppose the motion (Doc. 19).[1] An evidentiary hearing on the motion occurred on December 17, 2002.

Standards for Preliminary Injunction. In order to obtain a preliminary injunction pursuant to 26 U.S.C. (Internal Revenue Code, I.R.C.) §§ 7407 and 7408, the

[1]The defendants have filed a "Motion Relating to Length of Response" (Doc. 9), which the Court construes as a motion to file a response to the United States's preliminary injunction motion in excess of the twenty page limit established by the Local Rules. Due to the brief interval between the filing of the motion and the December 17, 2002, hearing on the preliminary injunction, the motion (Doc. 9) is GRANTED. Future filings shall comply with the Local Rules.

United States must show that (1) defendants engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; or that (2) defendants engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; or that (3) injunctive relief is appropriate to prevent the recurrence of such conduct.

To obtain a preliminary injunction pursuant to I.R.C. § 7402, the United States must show (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury to the United States if the injunction is not granted; (3) that the threatened injury to the United States outweighs the harm an injunction may cause the defendants; and (4) that granting the injunction would not disserve the public interest. See United States v. Ernst and Whinney, 735 F.2d 1296, 1301 (11th Cir. 1984) ("the decision to issue an injunction under [I.R.C.] § 7402(a) is governed by the traditional factors shaping...the use of the equitable remedy"); American Red Cross v. Palm Beach Blood Bank, Inc., 143 F.3d 1407, 1410 (11th Cir. 1998) (listing the equitable factors for a preliminary injunction).

Findings of Fact and Conclusions of Law. Based on the evidence and the parties' arguments, the Court finds as follows:

- Defendants (1) Carel E. "Chad" Prater, individually and through his associated entities Aero Investments, Goldcoast Enterprises, Goldencoast Enterprises, Bartholomew Enterprises, C.A.P. Enterprises, Tax Informer Enterprises, Family Values International, Tax Escape Service, New Found Freedom ("associated entities"), and (2) Richard Cantwell promote abusive tax schemes based on the so-called "§ 861 argument," a meritless position that domestic income is not subject to the federal income tax, and make other false and fraudulent representations regarding tax law. They promote their schemes through seminars,

newspaper advertisements, a book, and a website, and charge clients for products and services related to their abusive tax schemes.

- Prater, Cantwell, and the associated entities promote, and Prater and the associated entities file, putative legal documents, which are actually nullities but which Prater calls "*nihil dicit* judgments" against the IRS, by which judgments the defendants falsely claim to bar the IRS from collecting taxes from their clients.

- Prater and Cantwell falsely advise clients, individually and through seminars and written materials, to cease filing federal income tax returns (IRS Forms 1040) and paying federal income tax.

- Prater, Cantwell, and the associated entities sell sham trusts, called Unincorporated Business Trust Organizations (UBTOs) or Unincorporated Personal Trusts (UPTs), and falsely advise their clients that by placing the clients' assets and income into these trusts the clients can avoid federal income tax.

- Prater, Cantwell, and the associated entities promote, and Prater and the associated entities set up, limited liability corporations (LLCs) structured to obscure their clients' identities. Prater, Cantwell, and the associated entities falsely instruct their clients that by moving the clients' assets and income between these LLCs and the UBTOs the clients can avoid federal income tax.

- Prater and the associated entities prepare and file federal income tax returns (IRS Forms 1040), falsely claiming that their clients have no taxable income and are not liable for federal income tax. Prater and his staff fail to sign their own names to these returns and fail to provide their identifying numbers, in violation of 26 U.S.C. § 6695.

- Prater and his associated entities prepare and file amended federal income tax returns (IRS Forms 1040X), falsely claiming that their clients' previous returns were filed in error and requesting a refund of paid taxes. Prater and his staff fail to sign their own names to these returns and fail to provide their identifying numbers on them.

- Prater and his associated entities prepare and submit to their clients' employers Employee's Withholding Allowance Certificates (IRS Forms W-4) and statements in lieu of IRS Form W-4 falsely claiming that their clients are exempt from withholding tax.

- The returns, amended returns, and W-4s that Prater and his associated entities have prepared are based on an unrealistic position, the § 861 argument, which concludes that the defendants' clients are not liable for tax on domestic-source income, and which yields a gross understatement of his clients' tax liability.

- Prater misleads his clients and the IRS by claiming that he is qualified to represent clients before the IRS; Prater induces his clients to execute Power-of-Attorney and Declaration of Representation Forms (IRS Forms 2848), purportedly granting him authority to represent them by falsely asserting that he is his clients' full-time employee.

- Prater interferes with the administration of the internal revenue laws by attempting to block IRS examination and collection efforts through frivolous correspondence and mock legal documents.

- Prater and Cantwell have continued to promote their abusive tax schemes even after learning that they are under IRS investigation and after the IRS executed a search warrant on their business premises. Cantwell has stated his intention to continue his abusive tax activity after learning that he is under IRS investigation for promoting abusive tax schemes.

- Absent this preliminary injunction, Prater and Cantwell will continue to promote the abusive tax scheme.

- If this injunction is not granted, the United States will suffer irreparable harm because Prater advises his clients to not file returns, to file returns falsely claiming no income, to file amended returns demanding a refund of paid taxes, to stop their employers from withholding taxes from their paychecks, and to hide their income from the IRS in sham trusts and LLCs. Further, substantial resources of the United States are expended reviewing and dealing with Prater-prepared returns, amended returns, and correspondence.

- The § 861 argument is frivolous and without merit.[2] Prater and Cantwell knew or should have known that their representations regarding the § 861 argument and the tax benefits to be derived from participation in their scheme are false because (1) the § 861 argument is frivolous on its face, (2) numerous judicial decisions reject the § 861 argument and abusive trusts such as Prater's, (3) the IRS has issued numerous public documents explaining the invalidity of the § 861 argument, (4) Prater and Cantwell kept copies of an IRS public notice regarding frivolous tax arguments and a press article describing injunction actions against others who promoted schemes similar to his own, and (5) Prater holds himself out (that is, palms himself off) as an expert in tax law.

- Prater and his associated entities have filed with the IRS documents, including frivolous W-4 Forms, 1040 Forms, 1040X Forms, that relate to a material tax matter and that Prater knew would, if accepted, result in an understatement of tax liability. Prater's submission of these forms and other frivolous documents to the IRS has substantially interfered with the administration of the internal revenue laws.

- Prater and the associated entities have substantially interfered with the administration of the tax laws by pressuring employers to cease withholding taxes from their clients' wages and by pressuring others to reject IRS collection efforts.

- In sum, the record reveals that Prater, Cantwell, and the associated entities have engaged in conduct in violation of I.R.C. §§ 6700, 6694, 6695, and 6701.[3] Therefore, the United States will likely prevail on the

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[2]See United States v. Rosile, No. 8:02-cv-466-T-24MSS, 2002 WL 1760861, at *2 (M.D. Fla. June 10, 2002); United States v. Bossett, No. 8:01-cv-2154-T-17TBM, 2002 WL 1058105, at *3 (M.D. Fla. March 26, 2002).

At the hearing on the motion for a preliminary injunction, the defendants proffered the testimony of Larken Rose, a purported expert on the § 861 argument. The defendants also submitted as an exhibit "Theft By Deception," an instructional video on the § 861 argument prepared by Mr. Rose. Because Mr. Rose qualifies neither as a lay witness under Rule 701 nor as an expert witness under Rule 702, Federal Rules of Evidence, Mr. Rose's testimony and the instructional video are excluded. Nevertheless, having carefully viewed "Theft by Deception," I confidently retain the conviction that the § 861 argument is frivolous and illogical.

[3]The record reveals that a subscription to one of the defendants' various tax schemes costs the client up to $20,000. The record further reveals that the defendants' implementation of the various abusive tax schemes has resulted thus far in an estimated potential tax loss to the United States of roughly $18 million. This matter acquires a heightened urgency and implies more serious consequences

(continued...)

merits. Further, the record demonstrates that Prater, Cantwell, and the associated entities will continue to violate I.R.C. §§ 6700, 6694, 6695, and 6701 absent the entry of a preliminary injunction.

- This injunction is tailored to prevent Prater, Cantwell, and the associated entities from causing further injury and from further violating the law. Thus, the threatened injury to the United States outweighs any injury an injunction might cause to defendants.

- The public interest is served by granting this injunction. This preliminary injunction helps stem the spread of, and protects the public from, defendants' frivolous arguments and fraudulent tax schemes.

Accordingly, the United States' motion for a preliminary injunction (Doc. 2) is **GRANTED**. Pursuant to of I.R.C. §§ 7402, 7407, and 7408, Prater and Cantwell (either individually or doing business through any entity), their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order are enjoined from:

a. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will result in an understatement of tax liability;

b. Advocating, through seminars, websites, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);

c. Filing so-called judgments *nihil dicit* or default judgments against the Internal Revenue Service, the United States of America, or any agency, department, or instrumentality of the United States of America;

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[3](...continued)
beginning January 1, 2003, when the taxpayers begin preparing and filing their tax returns for the tax season that persists through April 15, 2003.

d. Selling any type of trust, limited liability corporation, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the ownership or receipt of income;

e. Representing, offering to represent, or claiming an a bility to represent any other person in any tax matter before the Internal Revenue Service or any court;

Corresponding with, or assisting in the preparation of any correspondence or other documents to be sent to, the Internal Reven ue Service on behalf of any other person in exchange for payment (includ ing for those who paid for any other tax-related services);

g. Preparing or assisting in the preparation of any tax-related document to be sent to any other person or entity, including an employer, on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services);

h. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

i. Promoting, marketing, organizing, or selling any plan or arrangement regarding the excludability of income that they know or have reason to know is false or fraudulent as to any material matter. Accordingly, the defendants shall remove from their websites all abusive-tax-scheme promotional materials and materials designed to incite or induce others imminently to violate the tax laws.

j. Engaging, directly or indirectly, in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; and

k. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Further, the Court **ORDERS** that Prater, his associated entities, and Cantwell provide their complete client list from January 1, 1997 through the present, including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers, to counsel for the United States within ten days of the

date of this order. Prater and Cantwell must each individually file a sworn certificate of compliance, each swearing that he has complied with this portion of the order, within ten days of the date of this order.

ORDERED in Tampa, Florida, on December 19th, 2002, at 4:21 p.m.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:02-cv-2052-T-23MSS

CAREL A. PRATER, et al.,

Defendants.
_____/

SEP 26 2003

ORDER

On August 19, 2003, United States Magistrate Judge Mary S. Scriven issued a report and recommendation (Doc. 67) on the plaintiff's motion to hold the defendants in contempt (Doc. 30) and the plaintiff's motion for a show cause order (Doc. 31). The plaintiff and the defendants have both filed objections to the report and recommendation (Docs. 68, 72). Upon consideration, the plaintiff's objections to the report and recommendation (Doc. 68) are sustained in part and overruled in part, the defendants' objections to the report and recommendation are overruled, and the report and recommendation is **ADOPTED.**[1] Accordingly, the plaintiff's motion to hold the defendants in contempt is (Doc. 30) **GRANTED IN PART** and **DENIED IN PART** as discussed in the report and recommendation.[2] The plaintiff's motion for a show cause order (Doc. 31) is

[1]The Court adopts the findings in the report and recommendation. The Court overrules section A of the plaintiff's objections but sustains sections B, C, D, and E and modifies Judge Scriven's recommended sanctions slightly to align with these sustained objections.

[2]As noted in the report and recommendation, "a finding of contempt or imposition of sanctions against [defendant Richard Cantwell] in his individual capacity is

DENIED AS MOOT. The Court sanctions the defendants as follows:

1. The defendants are ordered to publish a copy of the preliminary injunction on the <http://www.taxinformer.com> website with no other accompanying commentary or explanatory statement.

2. The defendants are ordered to post a copy of this order (including the attached report and recommendation) on the <http://www.taxinformer.com> website with no other accompanying commentary or explanatory statement.

3. The defendants shall be fined $5,000 per publication date if the defendants subsequently disseminate additional newsletters or updates violating the preliminary injunction by either United States Mail, facsimile, email, or other means.

4. The defendants are allowed a period of ten (10) days from the date of this order to terminate any and all automatic debits from client accounts in payment for products or services prohibited by the preliminary injunction.

5. The defendants shall produce to the plaintiff a strict accounting of any and all payments that have been received since December 19, 2002.

6. The defendants shall produce to the plaintiff within ten (10) days of the date of this order an affidavit stating, under oath and subject to penalty of perjury, that all payments (including automatic debits) have either been terminated or continued with the client's express, written consent for the limited purpose of funding the defendants' legal defense in this action.

7. The defendants are ordered to mail all of their clients a letter stating that the

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unwarranted." Accordingly, no sanctions are imposed against Cantwell.

defendants are enjoined from continuing to accept payment for tax-related services. This letter should also notify the defendants' clients of the termination of their automatic monthly debit payments and require express, written consent from any client that wishes to continue paying to fund the defendants' legal defense. The defendants should be required to do so within thirty ten (10) days of entry of the Court's final order of contempt.

8. The defendants should be required to disgorge and refund to their clients any and all payments received from clients on or after December 19, 2002, and before the effective date of the clients' written consent to continue making such payments toward the defendants' legal defense fund.

9. The defendants shall pay a daily fine of $5,000 for every day after the allowed ten (10) days that the defendants do not comply with the requirements set forth above.

10. The defendants are subject to coercive incarceration if, and only if, the $5,000 daily fine prescribed above exceeds $50,000 and further review is undertaken by the Court.

11. Pursuant to Rule 53, Federal Rules of Civil Procedure, the Court appoints Michael O'Leary of Trenam Kemker, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, Tampa, FL, 33601, as Special Master, to ensure further compliance with the preliminary injunction. Mr. O'Leary shall audit the defendants' bank accounts (including all bank accounts that now exist as well as any that may be created in the name of any named defendant in this action, as well as any successor corporation or nominal entity, with the exception of Cantwell) for any irregularities or transactions that appear to violate

the preliminary injunction and shall issue a monthly report to the Court and the parties in the event any improper transactions are revealed by the monthly audits. The plaintiff shall pay for the services of Mr. O'Leary. This payment shall be assessed as a cost in this action, to be paid by the non-prevailing party.

12. As a penalty for those violations of the preliminary injunction that are not continuing in nature, the defendants shall pay the costs incurred by the plaintiff in bringing the motion for contempt, exclusive of any costs incurred as a result of the continued evidentiary hearing. The plaintiff's application for costs, which is due **October 10, 2003**, shall include documentation supporting the amount sought. The defendants may file a response by **October 24, 2003**.

ORDERED in Tampa, Florida, on September 25th, 2003.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

cc: United States Magistrate Judge
Michael O'Leary

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 8:02-cv-2052-T-23MSS

CAREL A. PRATER, et al.,

Defendants.

/

REPORT AND RECOMMENDATION

THIS CAUSE comes on for consideration of Plaintiff's Motion to Hold Defendants in Contempt (Dkt. 30); Plaintiff's Motion for Show Cause Order (Dkt. 31); Plaintiff's Memorandum of Law in Support of Motion for Show Cause Order and Motion to Hold Defendants in Contempt (Dkt. 32); the Local Rule 3.01(g) Statement of Counsel for the United States Anne Norris Graham (Dkt. 33); Defendants' Argument in Support of Counter Affidavits Incorporating Memorandum of Law (Dkt. 46); Defendants' Notice of Assertion of Fifth Amendment Privilege (Dkt. 58); Defendants' Response to United States' Supplemental Evidence in Support of Motion to Hold Defendants in Contempt (Dkt. 65); Defendants' Response to the Court's Order Regarding Fifth Amendment Protection in Commerce (Dkt. 64); the affidavits, declarations, and documentary exhibits submitted by the parties in connection with the referenced pleadings (Dkts. 34-40, 44-45, 55-56, and 66); and following evidentiary hearings held before the Undersigned on April 2, 2003,

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and April 11, 2003 (Dkts. 43, 47, 48, 49, 51, and 62).[1]

For the reasons set forth below, the Undersigned respectfully **REPORTS** and **RECOMMENDS** that the District Court **GRANT IN PART** and **DENY IN PART** Plaintiff's Motion to Hold Defendants in Contempt (Dkt. 30) and **DENY AS MOOT** Plaintiff's Motion for Show Cause Order (Dkt. 31).

I. PROCEDURAL HISTORY

Plaintiff, the United States, brings this action for preliminary and permanent injunctive relief, pursuant to 26 U.S.C. §§ 6700, 6701, 7401, 7407, and 7408 (2003), against individual Defendants Carel Prater (a/k/a Chad Prater) and Richard Cantwell and corporate Defendants Tax Escape Service and New Found Freedom, among others, to enjoin these parties from promoting allegedly abusive tax-avoidance schemes. (Dkt. 1.)

Plaintiff alleges, inter alia, that Defendants prepared, promoted, and marketed tax-avoidance schemes purporting to exempt Defendants' clients from federal income taxation and advising clients how to conceal their assets and income from the Internal Revenue Service ("IRS"). (Dkt. 1.)

On November 7, 2002, Plaintiff moved this Court for issuance of a preliminary injunction. (Dkts. 9-10.)

On December 19, 2002, this Court, the Honorable Steven D. Merryday presiding, entered a preliminary injunction finding that Defendants' conduct violated the Internal Revenue Code, specifically 26 U.S.C. §§ 6700, 6701, 6694, and 6695 ("I.R.C."). (Dkt. 23.)

[1] The District Court has referred this matter to the Undersigned for issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B)-(C), Fed. R. Civ. P. 72, and Local Rules 6.01(a),(b) and 6.02(a), M.D. Fla. (Dkt. 42.)

By way of the motions sub judice, Plaintiff alleges that Defendants have continued to promote and sell their abusive tax schemes by various means in direct violation of the December 19, 2002, preliminary injunction. As such, Plaintiff requests that the Court find Defendants in contempt and impose appropriate sanctions for Defendants' alleged conduct.

The Undersigned held an evidentiary hearing on April 2, 2003, which hearing was continued to April 11, 2003, due to the illness of Defendants' counsel. Based upon the documentary evidence, testimony, and argument of counsel proffered at the April 11, 2003, evidentiary hearing and the parties' April 17, 2003, April 22, 2003, and May 23, 2003, supplemental filings, (Dkts. 55-56, 58, 64-66) the Undersigned finds as follows.

II. FINDINGS OF FACT

1. The Court's December 19, 2002, preliminary injunction enjoined Defendants Prater, Cantwell, Tax Escape Services, and New Found Freedom from

a. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will result in an understatement of tax liability;

b. Advocating, through seminars, websites, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the "§ 861 Argument");

c. Filing so-called judgments nihil dicit or default judgments against the Internal Revenue Service, the United States of America, or any agency, department, or instrumentality of the United States of America;

d. Selling any type of trust, limited liability corporation, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the ownership or receipt of income;

e. Representing, offering to represent, or claiming an ability to represent

any other person in any tax matter before the Internal Revenue Service or any court;

f. Corresponding with, or assisting in the preparation of any correspondence or other documents to be sent to, the Internal Revenue Service on behalf of any person in exchange for payment (including for those who paid for any other tax-related services);

g. Preparing or assisting in the preparation of any tax-related document to be sent to any other person or entity, including an employer, on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services);

h. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

i. Promoting, marketing, organizing, or selling any plan or arrangement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter. Accordingly, the defendants shall remove from their website all abusive-tax-scheme promotional materials and materials designed to incite or induce other imminently to violate the tax laws[;]

j. Engaging, directly or indirectly, in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; and

k. Engaging in other similar conduct that subsequently interferes with the proper administration and enforcement of the internal revenue laws.

(Dkts. 23 at 6-7.) In addition, the Court ordered individual Defendants Prater and Cantwell to provide Plaintiff with a list of their clients to enable Plaintiff to notify those individuals of the preliminary injunction. (Id. at 7-8.)

2. Pursuant to the preliminary injunction, Defendants provided Plaintiff with a client list, including contact information, and filed the list with this Court on January 7, 2003. (Dkt. 24.)

3. Plaintiff thereafter sent letters to approximately 600 persons identified on Defendants' client list in an attempt to notify these individuals that the preliminary injunction had issued. (Dkt.

37 at Ex. A.) Plaintiff also enclosed a copy of the preliminary injunction with each letter sent. (Id. at Ex. B.)

4. In or about the second or third week of January 2003, one of Defendants' clients, Mr. Robert Reid, received a newsletter in the mail from Defendant Tax Escape Services entitled "The Tax Informer." (Dkt. 34 at 4 and Ex. G.) This publication was dated December 2002. (Id.) Another of Defendants' clients, Mayank Mehta, received the December 2002 newsletter in late January or early February 2003. (Dkt. 36.)

5. The December 2002 issue of "The Tax Informer" espoused, inter alia, Defendants' position that income derived from domestic sources is not subject to taxation – i.e., the so-called § 861 Argument – and announced that "[s]tarting January 2003, Tax Escape will begin referring clients to a third (3rd) step to assure them of their 1040 non-filing status." (Dkt. 34 at Ex. G p. 2.) (original italics omitted).

6. The December 2002 issue of "The Tax Informer" also announced the creation of a "Rapid Awareness program" whereby Defendants would provide their clients with bi-monthly updates to each client's preferred email address. (Id.)

7. In or about early February 2003, another of Defendants' clients, Mr. George Katzenberger, received an email message from <newsletter@taxinformer.com> announcing that Defendants' website, which was removed after the preliminary injunction, was again available. (Dkt. 35.) On or about February 14, 2003, this same client received a second email message from <newsletter@taxinformer.com> containing an attached file. (Id. at Ex. A.) The attached file was an issue of "The Tax Informer" dated February 2003.

8. The February 2003 issue of "The Tax Informer" espoused, inter alia, the § 861

Argument and made several references to the pendency of the above-styled litigation. (Dkt. 35 at Ex. B p. 2-3.)

9. The February 2003 newsletter stated that Defendants "want to take this opportunity to say thanks for bringing your accounts up to date. Virtually all incoming cash is being used to cover legal expenses and the attendant costs of 'expert' witnesses." (Id. at Ex. G p. 2.)

10. The February 2003 newsletter also warned that Defendants had begun to reverse notices of default filed on behalf of certain clients whose accounts had since become delinquent. (Id.)

11. The February 2003 newsletter again announced Defendants' intention to send additional newsletters to clients every month via email and requested that clients provide their preferred email addresses. (Id.)

12. The February 2003 newsletter also detailed the specific tax-related services and products Defendants offered their clients prior to the preliminary injunction, including the filing of Notices of Default and the use of Limited Liability Corporations ("LLCs") and Trusts to avoid taxation. (Id. at Ex. G p. 3.)

13. On January 10, 2003, a document entitled "Second Notice of Default - No Jurisdiction" was filed against the IRS in the Sarasota County Circuit Court on behalf of individual taxpayers Douglas W. Allison and Doris W. Allison. (Dkt. 39 at Ex. A.) This document is consistent with Defendants' practice of filing so-called "judgments nihil dicit" and nearly identical to documents Defendants filed on behalf of clients prior to issuance of the preliminary injunction. (Id.)

14. On February 3, 2003, IRS Revenue Agent Paul A. Cratty received a letter dated

January 9, 2003, and postmarked January 31, 2003, in which an individual taxpayer, Mr. Larry Cunningham, purported to disavow tax liability based upon the § 861 Argument. (Dkt. 40 at Ex. A.) Attached to this letter were various exhibits, including a facsimile, dated January 6, 2003, from Mr. Cunningham to Defendant Prater, requesting that Mr. Prater "advise [Cunningham] what steps to initiate" in response to correspondence from the IRS. (Id.)

15. On January 10, 2003, the IRS received a letter dated December 31, 2002, and postmarked January 8, 2003, from individual taxpayer Barry G. Lusk. (Dkt. 57 Hr'g Ex. 3.) This letter was written in response to an appointment notice issued by the IRS and purported to challenge the IRS' authority to tax Mr. Lusk's income. (Id.) Enclosed with this letter were a set of "Administrative Interrogatories" requesting that the IRS produce several categories of documents and information in support of its authority to tax Mr. Lusk. (Id.)

16. On February 25, 2003, the IRS received a letter dated February 20, 2003, and bearing a Tax Escape letterhead that included Defendant Prater's name. (Dkt. 57 Hr'g Ex. 4.) This letter was purportedly signed by Mr. Lusk and his wife, Mrs. Kelly Lusk, and again challenged the IRS' authority to tax their income based upon the § 861 Argument. (Id.)

17. On January 15, 2003, the IRS' processing center in Philadelphia, Pennsylvania received a Form 1040 U.S. Individual Income Tax Return for Mr. and Mrs. Lusk dated January 8, 2003. (Dkt. 57 Hr'g Ex. 5.) The face of the Form 1040 was conspicuously stamped "NOT LIABLE IRS LETTER 112c." (Id.) Enclosed with the Form 1040 was a letter dated December 27, 2002, and signed by Mr. and Mrs. Lusk. (Id.) This letter challenged the IRS' authority to tax the Lusks' joint income and requested an appropriate refund based upon an assumption of no income tax liability. (Id.) On the basis of the Form 1040 and accompanying documentation, the IRS refunded the Lusks

$38,000.00 in income tax. (Dkt. 62 at 27:4-7.)

18. On January 7, 2003, February 19, 2003, and March 20, 2003, automated electronic debits or deductions in the amount of $20.00 each were paid from the personal bank account of Mr. Douglas A. Allison, one of Defendants' clients, to "New Found Freedo [sic] PPD TAX." (Dkt. 57 Hr'g Ex. 1.)

19. Defendants removed their primary website, <http://www.taxinformer.com>, in its entirety immediately following entry of the preliminary injunction. (Dkt. 44.) By February 14, 2003, Defendants had reinstated their website, and through it they continued to set forth, inter alia, the § 861 Argument and commentary regarding this Court's preliminary injunction. (Dkt. 38 at Ex. A.) The website also stated "[y]ou may have received information from the Department of Justice. **This is their** [sic] **normal procedure when you go to court** . . . The information you received is a scare tactic. If you look at it closely you will see that it is a form letter." (Id. at 17) (original emphasis and typeface).

20. Following the April 2, 2003, evidentiary hearing, Defendants deleted most of the content of their website, leaving only a few pages to notify visitors that the website had been removed. (Dkt. 57 Hr'g Ex. 2(B).) The website also provided visitors with Defendants' contact information, including a mailing address, telephone number, and email address. (Id.) Specifically, Defendants' revised website stated:

> As you know, Tax Escape, along with 35 other promoters throughout the country currently have injunctions against them. We are in federal court with the IRS and Department of Justice (DOJ) at this moment. We have not been demanded to remove our website. However, to avoid being found in contempt, we are now removing all educational material.
>
> We completely changed our website when Judge Merryday first issued the injunction on December 19, 2002. We then proceeded to exhibit IRS forms and government publications for informational purposes only. Anne Graham with the

> DOJ did not find that satisfactory. Therefore, we have now removed our second website. We will keep you posted concerning any future hearings, and most definitely, the trial.

(Id.)

21. Following the April 11, 2003, continued evidentiary hearing, the Government obtained evidence of a second website, <http://www.nomoreirs.com>, that advocated the § 861 Argument and purported to sell Defendants' tax products and services using PayPal, an Internet payment service. (Dkts. 55-56.)

III. STANDARD FOR CIVIL CONTEMPT AND SANCTIONS

District Courts have inherent power to enforce compliance with orders through civil contempt. See Shillitani v. United States, 384 U.S. 364, 370 (1966); Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1296 (11th Cir. 2002) (stating "an injunction can be enforced . . . through a contempt proceeding"). In the Eleventh Circuit, the party moving for contempt bears the burden of establishing by "clear and convincing" evidence that the underlying order was violated. See Howard Johnson Co., Inc. v. Khimani, 892 F.2d 1512, 1516 (11th Cir. 1990). This clear and convincing proof must also demonstrate that: (1) the allegedly violated order was valid and lawful; (2) the order was clear, definite, and unambiguous; and (3) the alleged contemnor had the ability to comply with the order. See McGregor v. Chierco, 206 F.3d 1378, 1383 (11th Cir. 2000); Riccard, 307 F.3d at 1296. "This burden of proof is more exacting than the 'preponderance of the evidence' standard but, unlike criminal contempt, does not require proof beyond a reasonable doubt." Jordan v. Wilson, 851 F.2d 1290, 1293 (11th Cir. 1988) (citing United States v. Rizzo, 539 F.2d 458, 465 (5th Cir. 1976)).

If the moving party makes a prima facie showing that a party subject to a court order has violated that order, the burden shifts to that party to produce evidence explaining its noncompliance.

See Citronelle-Mobile Gathering, Inc. v. Watkins, 943 F.2d 1297, 1301 (11th Cir. 1991) (citing United States v. Rylander, 460 U.S. 752, 755 (1983)). Due process requires that the court inform the alleged contemnor of the contemptuous conduct and provide a hearing to allow the contemnor to explain why the court should not make a contempt finding. See id. at 1305 (citing Mercer v. Mitchell, 908 F.2d 763, 767 (11th Cir. 1990)).

Further, in fashioning a remedy or sanction for civil contempt, the court has broad discretion, "measured solely by the 'requirements of full remedial relief.'" See United States v. City of Miami, 195 F.3d 1292, 1298 (11th Cir. 1999) (quoting Citronelle-Mobile, 943 F.2d at 1304); see also McGregor, 206 F.3d at 1385 n.5 (explaining that civil contempt sanctions may serve to either coerce compliance with a court order or compensate a party for losses caused by contemnor's failure to comply). In so doing, the Court should consider "the character and magnitude of the harm threatened by continued contumacy and the probable effectiveness of any suggested sanctions in bringing about the result desired." United States v. United Mine Workers, 330 U.S. 258, 304 (1947); see also Citronelle-Mobile, 943 F.2d at 1304. Appropriate sanctions may include a coercive daily fine, a compensatory fine, attorney's fees and costs, or coercive incarceration. See Citronelle-Mobile, 943 F.2d at 1304 (citing cases).

Against this standard, Plaintiff complains of five (5) discrete acts of allegedly contemptuous conduct. First, Plaintiff contends that Defendants continued to advocate the so-called § 861 Argument and market their products through the December 2002 and February 2003 issues of "The Tax Informer." Second, Plaintiff contends that Defendants violated the preliminary injunction by continuing to advocate the § 861 Argument through Defendants' primary website, <http://www.taxinfomer.com>, and through an alternate website, <http://www.nomoreirs.com>.

Third, Plaintiff contends that Defendants filed at least one "judgment nihil dicit" or default judgment on behalf of individual taxpayers Douglas W. Allison and Doris W. Allison. Fourth, Plaintiff contends that Defendant Prater drafted and mailed letters to the IRS on behalf of clients Larry Cunningham, Barry G. Lusk, and Kelly Lusk. Lastly, Plaintiff contends that Defendants continued to receive payments from at least one client, Douglas Allison, as a subscription fee for Defendants' pre-paid tax assistance program.

On this basis, the Government contends that individual Defendants Prater and Cantwell, and their associated entities should be held in civil contempt and fined or incarcerated until they comply with the December 19, 2002, preliminary injunction. Specifically, the Government proposes the following sanction:

> The United States requests the sanction of a coercive fine of $5,000 per day until the Defendants remove all promotion materials and the § 861 argument from their website and cease distributing newsletters and/or other communications containing promotional materials and the § 861 argument. If, after monetary sanctions reach $50,000, Prater, Cantwell, and their associate entities continue to defy the Court, either by failing to comply with the preliminary injunction or failing to pay the fines, coercive incarceration would be appropriate. The United States therefore requests that any contempt order automatically impose coercive incarceration should monetary sanctions fail to produce Prater and Cantwell's full compliance.
>
> . . . To correct the misconception Defendants have created that this Court has made no finding against them, their frivolous positions, and their abusive tax schemes, as a condition of purging the contempt they should be required to post both the preliminary injunction and the Order of Contempt prominently on their websites and to send copies of both to the recipients of their newsletter and to others who have purchased their products or services since December 19, 2002.

(Dkt. 32 at 11-12.)

In response, Defendants initially raised five (5) procedural and substantive objections. First, Defendants contended that Plaintiff's motions should be denied for failure to comply with the conciliation requirement of Local Rule 3.01(g), M.D. Fla. Second, Defendants contended that

Defendant Cantwell was uninvolved in the conduct Plaintiff alleges to be violative of the preliminary injunction. Third, Defendants contended that its post-injunction conduct is protected by the First Amendment of the United States Constitution. Fourth, Defendants contended that they lacked the requisite intent to violate the December 19, 2002, preliminary injunction. Fifth, Defendants contended that the specific sanctions Plaintiff seeks are excessive in light of the specific conduct alleged.

At the outset, the Undersigned finds that Defendants' first objection – i.e., that Plaintiff failed to include in its motions a certification of compliance with Local Rule 3.01(g) – is without merit. The Undersigned notes that Plaintiff filed an adequate certification of compliance with Local Rule 3.01(g) simultaneously with its motions. (Dkt. 33.) Moreover, the Undersigned finds that Defendants have suffered no prejudice to the extent Defendants, in their written response and counter-affidavits, unequivocally oppose the relief sought by the Government here.

Additionally, the Undersigned finds that Defendants' second and third objections have been rendered moot. Plaintiff conceded at the April 11, 2003, evidentiary hearing that it has presented no evidence to suggest Mr. Cantwell was involved in the allegedly contemptuous conduct at issue. (Dkt. 62 at 92:3-19.) Absent this requisite showing, the Undersigned finds that a finding of contempt or imposition of sanctions against Mr. Cantwell in his individual capacity are unwarranted. Further, Defendants withdrew their First Amendment challenge to the validity of the Court's preliminary injunction at the April 11, 2003, evidentiary hearing. (Dkt. 62 at 99:4-12.) As such, the Undersigned finds no basis in either law or fact to conclude that the preliminary injunction is invalid or unlawful. Additionally, absent a challenge by Defendants, the Undersigned finds that the terms of the preliminary injunction are clear, definite, and unambiguous, as required by the contempt

standard articulated above.

The only remaining questions, therefore, are (1) whether Defendants' conduct, as alleged, violated the preliminary injunction; (2) whether Defendants had the ability to comply with the preliminary injunction; and (3) whether the sanctions requested by Plaintiff are necessary and adequate to ensure Defendants' compliance going forward in this litigation. The Court addresses Defendants' remaining objections below in the context of the applicable legal framework.

IV. DISCUSSION

A. Whether Plaintiff has made a prima facie showing that Defendants violated the preliminary injunction.

1. The websites.

Plaintiff complains first that Defendants continued to exposit promotional materials for their abusive tax schemes, including the § 861 Argument, on Defendants' primary website, <http://www.taxinformer.com>, (Dkt. 38) and through an alternative website, <http://www.nomoreires.com>, the latter of which was not discovered until after the April 11, 2003, evidentiary hearing. (Dkt. 56.) Plaintiff contends that this conduct violates the express terms of the preliminary injunction, to the extent Defendants were specifically enjoined from:

> b. Advocating through seminars, websites, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);
> . . .
> i. Promoting, marketing, organizing, or selling any plan or arrangement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter. Accordingly, the Defendants shall remove from their websites all abusive-tax-scheme promotional materials and materials designed to incite or induce others imminently to violate the tax laws.

(Dkt. 23 at 6-7.)

a. The <http://www.taxinformer.com> website.

Defendants deny in their counter-affidavit (Dkt. 44) that they continued to advocate or promote the § 861 Argument on the <http://www.taxinformer.com> website after it was revised and reinstated on or about February 14, 2003. Defendants contend, rather, that their website featured mere commentary regarding the preliminary injunction hearing and the Court's subsequent finding that the § 861 Argument was "frivolous." Defendants also contend that their website merely reproduced government tax publications. Further, Defendants pointed out at the April 11, 2003, evidentiary hearing that they have since removed the bulk of the material of which Plaintiff now complains from this website. (Compare Dkt. 57 Hr'g Ex. 2(A) and 2(B).) Defendants contend that Plaintiff's concerns regarding the content of the website have been rendered moot by these subsequent revisions and, thus, a finding of contempt is unwarranted.

The Undersigned finds that the content of the <http://www.taxinformer.com> website, as it was formulated in February 2003, violated the Court's preliminary injunction. While it is true that Defendants repeatedly disclaimed throughout the website any attempt to "promote" the § 861 Argument, the actual content of the website belied that disclaimer to the extent Defendants simultaneously described in exhaustive detail their position regarding § 861. Contrary to Defendants' assertion, they did more than merely reprint IRS documents on their website. Rather, Defendants selectively reproduced certain public, tax-related materials and presented these materials in an orderly, methodical, and deliberate attempt to convince the reader that the § 861 Argument was in fact valid. Further, Defendants liberally annotated the government publications contained on the website and italicized, bolded, or underlined certain text to provide emphasis of Defendants' choosing. By doing so, Defendants effectively corrupted these government publications to promote

their discredited tax theories, which promotion was expressly enjoined by the Court.

Additionally, the Undersigned finds that the post-injunction content of this website was intended to frustrate the effect of the preliminary injunction by understating the significance of the Court's preliminary injunction. Tellingly, Defendants invited visitors to their website to "be the judge" and determine for themselves whether the § 861 Argument was valid, irrespective of this Court's preliminary determination that the argument was frivolous. To this end, Defendants stated in relevant part:

> In a recent federal hearing, a judge by the name of Stephen Merryday decided that the 861 law is not law but rather the 861 argument. Therefore, the law is not law but rather the **861 argument**. The law proceeded to be an argument in that Mr. Merryday ruled that it was frivolous! Although Mr. Merryday is a very intelligent individual, it is believed he was not versed on the tax laws as have been researched in depth by many others. This is only assumed because **NO EXPLANATION WAS GIVEN CONCERNING THE 861 LAW** and the word "frivolous".

(Dkt. 38 at Ex. A p. 4) (original emphasis and typeface). The Undersigned further finds that Defendants attempted to counteract and frustrate the Plaintiff's attempts to notify Defendants' clients of the injunction by characterizing it as a mere "form letter," "normal procedure," and "scare tactic" of the IRS. (Id. at 17.)

The preliminary injunction, by its express terms, enjoined Defendants from, at the very least, publishing materials on their website designed to incite or induce others to violate the tax laws. The Undersigned finds that the <http://www.taxinformer.com> website was, at a minimum, designed to incite or induce others to violate the tax laws by continuing to advocate the § 861 Argument and obscure the significance of the preliminary injunction. The Undersigned's finding in this regard is further bolstered by the finding set forth below that Defendants continued to market their products and services to clients through a post-injunction newsletter dated February 2003. See discussion

infra at Part IV.A.2.[2] This evidence, viewed as a whole, demonstrates clearly and convincingly that Defendants continued to promote their commercial tax abuse schemes using the <http://www.taxinformer.com> website as a primary conduit in that endeavor.

Nevertheless, Defendants have subsequently revised the <http://www.taxinformer.com> website to delete the contemptuous content described above. Despite these revisions, Plaintiff maintains that the website continues to violate the preliminary injunction because it refers generally to the former content as "IRS forms," "government publications," and "educational material." (Dkt. 57 Hr'g Ex. 2(B).) Plaintiff contends that by describing the former content of the website in this manner, Defendants effectively mislead visitors to believe that the § 861 Argument has merit and / or bears the official imprimatur of the IRS.

The Undersigned finds that the website, in its revised form, does not violate the terms of the December 19, 2002, preliminary injunction. Referring to the former content of the website as "IRS forms," "government publications," and "educational material" is largely insignificant when the referenced materials are no longer accessible to visitors.

[2] For example, Defendants' February 2003 issue of "The Tax Informer" newsletter informed Defendants' clients that:

> More Tax Escape clients have been contacted by the IRS. They immediately called us and things are under control. The IRS works exclusively with fear and intimidation. ***Knowledge is Power!*** Once you understand the law and their [sic] game they [sic] are powerless. Check our website periodically for updates. **Call us if they make contact.** ***That's why you pay us!***

(Dkt. 35 at Ex. B. p. 2) (original emphasis and typeface). Additionally, one of Defendants clients, George Katzenberger, states that Defendants announced the reinstatement of their revised website via email to their clients in February 2003. (Dkt. 35.) It is clear from this evidence that Defendants used their website as yet another tool in their ongoing efforts to promote and market their theories for commercial purposes in violation of the preliminary injunction.

Accordingly, the Undersigned finds that the revised <http://www.taxinformer.com> website cannot serve as the basis for a finding of continuing contempt and imposition of continuing sanctions as requested by Plaintiff. The Undersigned takes into consideration, however, the content of the website prior to April 8, 2003, in fashioning an appropriate sanction as set forth below. See discussion infra at Part IV.C.

b. The <http://www.nomoreires.com> website.

With regard to the second website, <http://www.nomoreirs.com>, Defendants state that this site was created and maintained by a third-party, Ruben Santiago, without their knowledge or consent and has since been deleted in its entirety. Defendants state further that they have derived no profit or revenue from the <http://www.nomoreirs.com> website. As such, Defendants contend that this website cannot serve as the basis for a finding of contempt or the imposition of sanctions.

The Undersigned finds that the <http://www.nomoreirs.com> website advertised, promoted, and marketed Defendants' complete line of tax schemes now enjoined. (Dkt. 56 at Ex. A.) Significantly, however, the Plaintiff here bears the burden of demonstrating by clear and convincing evidence that Defendants were responsible for this second website and, therefore, should be held in contempt. See Citronelle-Mobile, 943 F.2d at 1301. Plaintiff's sole basis for imputing ownership or control of the website to Defendants is that the site promotes and sells Defendants' products and services using PayPal, an Internet payment service. (Dkt. 56.) In response, Defendants have produced evidence that the <http://www.nomoreirs.com> website is registered to Mr. Ruben Santiago, a non-party to this litigation, and that the PayPal account referenced on the website has been inactive since the date of the preliminary injunction. (Dkt. 66 at Exs. 3-4.) Plaintiff has not attempted to rebut Defendants' evidence in this regard. Accordingly, the Undersigned finds no clear

and convincing evidence upon which to conclude that Defendants should be held accountable here for the content of the <http://www.nomoreirs.com> website. Assuming, arguendo, that Plaintiff could establish a connection between Defendants and this second website, Plaintiff's objection has been rendered moot by the deletion of the website in its entirety.

2. The newsletters.

Plaintiff contends next that Defendants violated the preliminary injunction by disseminating at least two (2) issues of their newsletter entitled "The Tax Informer" in December 2002 and February 2003. Plaintiff contends that these acts violated the preliminary injunction to the extent Defendants were enjoined from:

> d. Selling any type of trust, limited liability corporation, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the ownership of income;
> e. Representing, offering to represent, or claiming any ability to represent any other person in any tax matter before the Internal Revenue Service or any court;
> . . .
> i. Promoting, marketing, organizing, or selling any plan or arrangement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter.

(Dkt. 23 at 7.) Additionally, Plaintiff expressed concerns at the April 11, 2003, evidentiary hearing that Defendants have continued to disseminate other newsletters or updates to their clients via email because both the December 2002 and February 2003 newsletters solicited clients' email addresses and promised future distributions via email.

In their counter-affidavit (Dkt. 44), Defendants deny generally that the December 2002 and February 2003 newsletters continued to advocate or promote abusive tax schemes in violation of the preliminary injunction. At the April 11, 2003, evidentiary hearing, Defendants argued that the December 2002 newsletter was disseminated prior to entry of the preliminary injunction. Defendants

further argued at the hearing that the February 2003 newsletter was intended to rally Defendants' clients to contributed to Defendants' legal defense in this action and, as such, does not violate the preliminary injunction. Additionally, Defendants stated at the evidentiary hearing that no further newsletters have been disseminated in print or via email since February 2003.

The Undersigned finds no evidence that the December 2002 issue of "The Tax Informer" newsletter was distributed to Defendants' clients after entry of the preliminary injunction on December 19, 2002. The exhibit submitted to the Court does not contain a postmark, nor have any of the newsletter's recipients stated conclusively that the newsletter was sent to them after the date of the preliminary injunction. (Dkts. 34 and 36.) Thus, Plaintiff has failed to meet its burden of demonstrating by clear and convincing evidence that the December 2002, newsletter should give rise to a finding of contempt and imposition of sanctions.

With regard to the February 2003 newsletter, however, the Undersigned finds that the Plaintiff has proffered clear and convincing evidence that Defendants violated the terms of the preliminary injunction. This newsletter post-dates the preliminary injunction and was, in fact, transmitted to at least one of Defendants' clients via email following entry of the preliminary injunction. (Dkt. 35.) The February 2003, newsletter stated in relevant parts:

> We also want to take this opportunity to say thanks for bringing your accounts up to date. Virtually all incoming cash is being used to cover legal expenses and the attendant costs of "expert" witnesses. . . . However, there are still a few delinquent clients who have not called the office and we regrettably have begun to **REVERSE** their "Notices". We feel that the IRS is deathly afraid of your "Notices". To date not one has ever been challenged and we believe that without them you'll be ***...easy pickins.***

(Dkt. 35 at Ex. B p. 2) (original emphasis and typeface) (second ellipses in original).

Further, the February 2003 newsletter states:

> More Tax Escape clients have been contacted by the IRS. They immediately called us and things are under control. The IRS works exclusively with fear and intimidation. ***Knowledge is Power!*** Once you understand the law and their [sic] game they [sic] are powerless. Check our website periodically for updates. **Call us if they make contact.** ***That's why you pay us!***

(Id.) (original emphasis and typeface).

> Additionally, the February 2003 newsletter states:
>
> Review the Function of Tax Escape's Services and Products
>
> Tax Escape provides 1 service and 2 separate products.
> SERVICE: Common law "Notice of Default" complaint. (2)
>
> PRODUCTS: LLCs and Trusts.
> . . .
> The "Notices" are administrative processes that collectively confirm to the IRS that you are NOT a "taxpayer" as defined by LAW. They individually confirm "NO LIABILITY" for filing a 1040 and the second confirms the IRS has "NO JURISDICTION" over you.
> . . .
> LLC's and Trusts are PRODUCTS used merely to mitigate any liability you would be exposed to in the normal course of business.

(Id.) (original emphasis and typeface).

These excerpts demonstrate that Defendants' conduct went beyond mere solicitation of financial support for their legal defense in this action. Rather, Defendants tacitly demanded that their clients keep their accounts current and unequivocally warned that Defendants would undertake steps to retract work performed on behalf of clients whose accounts had become delinquent. Thus, it is clear from this evidence that Defendants continued to offer their clients ongoing, post-injunction consultation and representation for tax-related matters in exchange for payment. Even more revealing is that the February 2003 newsletter enumerates the specific tax schemes Defendants purport to offer their paying clients despite the existence of the preliminary injunction. (Id. at 3.) The fact that Defendants may have funneled their business profits to benefit their legal defense in

this action does not negate that the profits were derived from commercial activity in violation of the preliminary injunction in the first instance. The above language makes clear that Defendants continued to engage in the business of offering tax products and services to paying clients, an activity from which they had been expressly enjoined.

Thus, the Undersigned finds that while the Government has not proven that the December 2002 newsletter violated the preliminary injunction, the Government has clearly and convincingly demonstrated that the February 2003 newsletter violated the preliminary injunction. Accordingly, Defendants should be held in contempt and sanctions imposed against them for this conduct.

3. "Judgments nihil dicit" or default judgments.

Plaintiff contends next that Defendants violated the preliminary injunction by filing a so-called "judgment nihil dicit" or default judgment on behalf of individual taxpayers Douglas W. Allison and his wife, Doris W. Allison, on January 10, 2003.[3] Plaintiff contends that this conduct violates the preliminary injunction to the extent Defendants were enjoined from:

> c. Filing so-called judgments nihil dicit or default judgments against the Internal Revenue Service, the United States of America, or any agency, department, or instrumentality of the United States of America[.]

(Dkt. 23 at 6.)

In response, Defendants state that they have not filed default judgments on behalf of clients

[3] In the preliminary injunction order, the Court made the following factual finding regarding this practice:

> Prater, Cantwell, and the associated entities promote, and Prater and the associated entities file, putative legal documents, which are actually nullities but which Prater calls "nihil dicit judgments" against the IRS, by which judgments the defendants falsely claim to bar the IRS from collecting taxes from their clients.

(Dkt. 23 at 3.)

since the preliminary injunction issued. Rather, Defendants contend that they provided certain clients with packets of printed forms prior to entry of the preliminary injunction, which forms the clients must have subsequently completed and filed themselves without Defendants' assistance.

The Undersigned finds no clear and convincing evidence that Defendants violated the preliminary injunction by filing the January 10, 2003, default judgment on behalf of the Allisons. Plaintiff's only basis for attributing this conduct to Defendants is the fact that the document is nearly identical to other default judgments that Mr. Prater filed on behalf of his clients before the preliminary injunction issued. (Dkt. 39 at 2 ¶ 5.) While Plaintiff's contention in this regard may be true (Compare Dkt. 39 at Ex. A with Dkt. 34 at Ex. B), this limited showing alone is insufficient to support a finding of contempt. Significantly, Mr. Prater did not sign this default judgment as he had in the past and the Government has offered no evidence to rebut Defendants' explanation that Mr. Allison completed and filed this document himself. Accordingly, the Undersigned finds that the January 10, 2003, default judgment cannot serve as the basis for holding Defendants in contempt or imposing sanctions.

4. Correspondence with the IRS on behalf of clients.

Plaintiff contends next that Defendants violated the preliminary injunction by drafting and mailing correspondence to the IRS on behalf of clients Larry Cunningham, Barry G. Lusk, and Kelly Lusk. Specifically, Plaintiff alleges that Defendant Prater drafted or assisted in drafting two (2) letters, the first dated December 31, 2002, and the second dated February 20, 2003, ("the Lusk letters") to the IRS on behalf of the Lusks. (Exs. 3-4.)[4] Plaintiff also alleges that Defendant Prater

[4] The Undersigned notes that Plaintiff moved into evidence at the April 11, 2003, hearing a third letter dated December 27, 2002, signed by the Lusks and addressed to the IRS. Plaintiff did not contend in either its motion for contempt or at the April 11, 2003, evidentiary hearing that this

assisted the Lusks in filing a frivolous tax return on January 8, 2003, which resulted in the erroneous payment of a $38,000.00 tax refund to the married couple. (Dkt. 57 Hr'g Ex. 5.) Plaintiff alleges further that Defendant Prater drafted or assisted in drafting a letter dated January 9, 2003, to the IRS on behalf of Mr. Cunningham ("the Cunningham Letter"). Plaintiff states that Mr. Lusk and Mr. Cunningham indicated to IRS agents that Defendant Prater drafted or assisted in drafting this correspondence.[5] Plaintiff also states that this correspondence is similar, if not identical to, other correspondence that Mr. Prater submitted on behalf of clients prior to issuance of the preliminary injunction. As such, Plaintiff contends that this conduct is attributable to Defendants and violates the preliminary injunction to the extent Defendants were enjoined from:

> b. Advocating, through seminars, websites, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the "§ 861 Argument");
>
> . . .
>
> f. Corresponding with, or assisting in the preparation of any correspondence or other documents to be sent to, the Internal Revenue Service on behalf of any person in exchange for payment (including for those who paid for any other tax-related services);
>
> g. Preparing or assisting in the preparation of any tax-related document to be sent to any other person or entity, including an employer, on behalf of any other

letter constitutes a separate violation of the preliminary injunction. Accordingly, the Undersigned need not address that issue here.

[5] At the April 11, 2003, evidentiary hearing, the parties stipulated to admit into evidence the sworn declarations of Plaintiff's agents. (Dkts. 34-40.) In one of these declarations, Agent Paul Cratty states that Mr. Cunningham admitted to him that Mr. Prater sent the January 9, 2003, letter on Mr. Cunningham's behalf. (Dkt. 40 at 2.) Additionally, Agent Dora Smith testified at the evidentiary hearing that Mr. Lusk told her Mr. Prater would correspond with the IRS on the Lusks' behalf pursuant to his power of attorney. (Dkt. 62 at 13:16-14:11.) Plaintiff relies heavily on these statements to link Defendants to the Cunningham and Lusk letters. Defendants did not object on hearsay grounds to the admissibility of these statements and, as such, the parties have not addressed the applicability of the hearsay exclusion to these statements. The Undersigned does not, however, rely upon these potentially hearsay statements in reaching the conclusions set forth infra.

person in exchange for payment (including for those who paid for any other tax-related services);
h. Preparing or assisting in the preparation of federal tax returns for any other person or entity[.]

(Dkt. 23 at 7.)

In response, Defendant Prater states that he has not corresponded with the IRS on behalf of clients as alleged. Defendant Prater admits, however, that he provided Larry Cunningham and other unidentified clients with unspecified "IRS forms and publications, printed by the offices of the U.S. Government as law." (Dkt. 44 at 2.) At the April 11, 2003, evidentiary hearing, Defendants contended further that the documents at issue were sent to Defendants' clients as blank, standardized forms in a package sometime prior to December 19, 2002. Defendants argue that the clients drafted and submitted the correspondence without Mr. Prater's assistance. In support of this contention, Defendants point out that Mr. Prater did not sign the documents, which bear only the clients' signatures. Defendants also point out that the return address on the Lusk letters confirm that the documents were mailed from the Lusks' residence in South Carolina rather than Mr. Prater's place of business in Florida. Defendants contend, therefore, that Defendants cannot be held in contempt for their clients' post-preliminary-injunction conduct.

The Undersigned is unpersuaded by Defendants' contention that the December 31, 2002, and February 20, 2003, Lusk letters and the IRS and the January 9, 2003, Cunningham letter were the result of fill-in-the-blank, standardized forms that Defendants provided to these clients prior to entry of the preliminary injunction. Defendants contended vehemently at the April 11, 2003, evidentiary hearing that they provided the documents to clients in printed form prior to December 19, 2002. However, Defendants were unable to explain, upon direct inquiry by the Undersigned, how then these documents could possibly bear typed information unique to the individual clients and typed

date stamps post-dating the preliminary injunction. Tellingly, the font type, point size, and typeface of the return addresses and date stamps on the documents are consistent with the bodies of the documents such that this information would appear to have been part of the documents at the time they were first printed, not added sometime later.

In addition, the Undersigned finds significant that the format of these documents, including the bold and unmistakable "NOT LIABLE IRS LETTER 112c" stamp across the Lusks' January 8, 2003, tax return, is identical to other, pre-injunction documents that the Government has proven were prepared by Mr. Prater for clients. (Dkt. 34.) Moreover, the fact that the February 20, 2003, Lusk letter was printed on Defendant Tax Escape's letterhead bearing Defendant Prater's name is facially suggestive of Defendants' involvement. The Undersigned also finds significant the January 6, 2003, facsimile cover sheet submitted by the Government in which Mr. Cunningham requested Mr. Prater's assistance in communicating with the IRS. (Dkt. 40 at Ex. A p. 3.) Interestingly, the Cunningham letter was sent on January 9, 2003, only three (3) days after Mr. Cunningham requested Mr. Prater's assistance. This evidence, viewed together and in conjunction with the February 2003 newsletter in which Defendants advertised their continued willingness to represent clients in tax matters, establishes clearly and convincingly that Defendants prepared or assisted in the preparation of the Lusk letters, the Lusks' frivolous tax return, and the Cunningham letter.

Accordingly, the Undersigned **REPORTS** and **RECOMMENDS** that the District Court find that the Government has proffered clear and convincing evidence that Defendants violated the December 19, 2002, preliminary injunction by preparing or assisting in the preparation of the above-referenced documents.

5. Defendants' continued receipt of automatic debits from client accounts.

Lastly, Plaintiff alleged at the April 11, 2003, evidentiary hearing that Defendants continued to receive electronic debit payments from at least one client, Douglas Allison, for tax-related products and services after December 19, 2002. Specifically, Plaintiff contends that Mr. Allison initially subscribed to Defendants' pre-paid tax assistance program whereby subscribers would receive tax-related legal advice in the event the IRS contacted them. Plaintiff contends that subscribers to this service were required to pay a monthly fee of $20.00, which amount was automatically deducted from the subscribers' personal bank accounts. In support of this allegation, Plaintiff produced copies of monthly statements from Mr. Allison's personal bank account, which reflected six (6) automated monthly debits paid to "NEW FOUND FREEDO [sic] PPD TAX CO. ID. 1547735692" in the amount of $20.00 beginning October 2002 and continuing through March 20, 2003. (Dkt. 57 Hr'g Ex. 1.) Three of these automatic debits occurred after issuance of the preliminary injunction on January 7, 2003, February 19, 2003, and March 20, 2003. (Id.) Plaintiff contends this evidence demonstrates that Defendants violated the preliminary injunction to the extent Defendants were enjoined from selling their tax-abuse schemes and offering to represent clients in IRS proceedings in exchange for money.

Defendants contended at the evidentiary hearing, without any documentary or testimonial support, that Mr. Allison's payments were intended as contributions to Defendants' legal defense in this case rather than as payment for tax-related services.

The Undersigned finds that the automatic debits from Mr. Allison's personal bank account violate the terms of the preliminary injunction. The Government has proven clearly and convincingly that Mr. Allison initially subscribed to Defendants' pre-paid tax assistance program

in or about October 2002 and that his subscription continued, uninterrupted through March 2003. The Undersigned finds significant that the $20.00 amount deducted from Mr. Allison's bank account is consistent with the rate Defendants charged for the pre-paid tax assistance service and that the funds were transferred directly to an account held in the name of corporate Defendant New Found Freedom. Morever, the Undersigned finds no evidence that Mr. Allison authorized these payments to be applied to Defendants' legal defense in this action rather than to continue his subscription to the pre-paid tax assistance program. As noted supra, the fact that Defendants may have accepted post-injunction payments from their clients and directed that revenue toward their legal defense does not negate Plaintiff's showing that these monies were paid in the first instance to purchase Defendants' commercial tax services.

Having reached this preliminary determination at the April 11, 2003, evidentiary hearing, the Undersigned ordered Defendants to produce any and all documents reflecting Defendants' receipt and deposit of funds from purported clients from December 19, 2002, the date of the preliminary injunction, to the date of production. The Undersigned ordered that Defendants' production include any and all available bank records, receipts, and deposit statements indicating (1) the amount of funds Defendants received from purported clients; (2) the number of any such deposits; and (3) the source of the deposited funds. The Undersigned further authorized Defendants to file their supplementation under seal, in camera, and ex parte, without prejudice to the Government's right to move the Court to unseal the file at a later date if circumstances so warranted. The Government did not object to this procedure.

The Defendants initially raised a blanket Fifth Amendment objection to production of these documents, (Dkt. 58) which objection was subsequently withdrawn. (Dkt. 64.) Pursuant to the

Undersigned's order, Defendants produced copies of bank statements for a single account held in the name of "NFF Group LLC (d/b/a/ Tax Escape)." (Dkt. S-1.) These statements reflect a significant number of deposits and withdrawals in the period following entry of the preliminary injunction. The bank statements do not, however, reflect the source of the deposited funds such that the Court can determine independently whether these deposits were derived from Defendants' clients in violation of the preliminary injunction. In an accompanying memorandum, however, Defendants' counsel states that Defendants received approximately thirty-one (31) deposits from clients since December 19, 2002, which deposits total approximately $96,576.16. Defendants contend, however, that these deposits represent a combination of monies paid for services rendered prior to entry of the preliminary injunction as well as post-injunction client contributions to Defendants' legal defense.

At the outset, the Undersigned finds Defendants' production of bank statements for a single bank account in response to an order to produce statements for any and all such accounts in Defendants' possession disturbing and disingenuous. The account numbers referenced on the bank statements produced to the Court do not correspond to the identification numbers referenced in Mr. Allison's automatic monthly debits. The bank statements produced reflect a significant number of large deposits, none of which equal the $20.00 amount shown to have been debited from Mr. Allison's personal bank account. It is, therefore, impossible for the Undersigned to determine whether Mr. Allison's payments were deposited in the account identified by Defendants or whether they were diverted elsewhere. In any event, it is clear to the Court that Defendants failed to maintain an accurate accounting of their deposits and have commingled funds such that deposits received in violation of the preliminary injunction cannot be distinguished from potentially non-contemptuous deposits. Based upon Mr. Allison's monthly payments alone, however, the Undersigned finds clear

and convincing evidence that Defendants have violated the terms of the preliminary injunction and, thus, a finding of contempt and imposition of sanctions is warranted for this conduct.

B. Whether Defendants Possessed the Ability to Comply with the Preliminary Injunction.

In light of the Plaintiff's prima facie showing that certain of Defendants' conduct violated the preliminary injunction, the Court must consider whether Defendants had the ability to comply with the preliminary injunction and undertook efforts in good faith to do so. See U.S. v. Hayes, 722 F.2d 723, 725 (11th Cir. 1984). Significantly, the burden of production shifts to the Defendants at this stage of the analysis to produce evidence explaining their noncompliance. See Citronelle-Mobile, 943 F.2d at 1301. In meeting this burden, Defendants must offer proof beyond "a mere assertion of inability." See id. "Defendants may demonstrate an inability to comply with the Court's order only by showing that they have made 'in good faith all reasonable efforts to comply.'" Id. (citing United States v. Ryan, 402 U.S. 530, 534, 91 S. Ct. 1580, 1583, 29 L. Ed. 85 (1971)).

Defendants do not contend that they were unable to comply with the preliminary injunction. Rather, Defendants contend generally that their conduct evinces a "a profound absence of any willful intent to violate a court order." (Dkt. 46 at 3 ¶ 11.) Defendants contend that the absence of such intent should be considered by the Court "in mitigation" of a finding of contempt. (Id.)

To the contrary, the Undersigned finds that Defendants were able to comply with the preliminary injunction and, in fact, acted in willful violation of it. Most notably, the February 2003 newsletter distributed to Defendants' clients via email manifests an unapologetic disregard for the letter and spirit of the preliminary injunction. This newsletter, viewed in conjunction with the <http://www.taxinformer.com> website, Defendants' preparation of correspondence and tax returns for clients, and Defendants' acceptance of automatic monthly payments from Mr. Allison, evinces

a clear and convincing intent to continue promoting, marketing, and selling abusive tax-avoidance schemes. At best, Defendants' conduct manifests a good faith effort to circumvent the restrictions imposed by the preliminary injunction and to shroud their ongoing commercial activities in ambiguity to avoid being held in contempt. To the extent Defendants maintain that revenues received from their clients are intended as contributions to Defendants' legal defense in this action, the burden has shifted to Defendants to demonstrate the veracity of that assertion. See id. Defendants have produced no evidence upon which the Undersigned may conclude that any of their clients knowingly consented to pay to support Defendants' legal defense in this case rather than to pay for tax-related products and services that Defendants continue to sell.

Accordingly, the Undersigned **REPORTS** and **RECOMMENDS** that the District Court find that Plaintiff has satisfied this element of the contempt standard and find Defendants in contempt for the specific conduct outlined above.

C. Whether the Sanctions Requested by Plaintiff are Excessive.

Having found Defendants in contempt of the preliminary injunction, the Court must determine what sanctions are warranted to ensure Defendants' compliance with the injunction. See Citronelle-Mobile Gathering, 943 F.2d at 1304. In this regard, the Eleventh Circuit has held that:

> Sanctions may be imposed to coerce the contemnor to comply with the court's order, but may not be so excessive as to be punitive in nature. . . . Although the district court has the authority to impose sanctions designed to ensure compliance, the sanctions cannot be any greater than necessary to ensure such compliance.

See id., 943 F.2d at 1304 (internal citations omitted).

Plaintiff contends that the sanctions requested here – i.e., daily fines, coercive incarceration, and mandatory posting of the preliminary injunction on Defendants' website – are adequate and necessary to ensure Defendants' immediate compliance with the preliminary injunction. Plaintiff

contends that Defendants' financial worth at the time the preliminary injunction issued was approximately $500,000.00. As such, Plaintiff contends that any fine or form of financial penalty levied against Defendants would need to be substantial in order to coerce Defendants' into cooperation. Plaintiff also contends that the magnitude of the harm to the IRS if Defendants' clients continue to file frivolous tax protests, as evinced by the $38,000.00 refund paid to the Lusks, warrants a hefty fine and, if the fine proves insufficient, coercive incarceration.

Defendants contend in response that the Court should employ the least possible means necessary to ensure Defendants' compliance. Defendants do not, however, specify how the sanctions requested by the Government here – i.e., daily fines, coercive incarceration, and mandatory posting of the preliminary injunction on Defendants' website – would be excessive. Defendants' counsel stated at the April 11, 2003, evidentiary hearing that this Court's admonition would alone be sufficient to ensure Defendants' future compliance with the preliminary injunction.

The Undersigned finds that Plaintiff's proposed sanction is excessive and inadequate to cure the type of conduct Plaintiff complains of here. With the sole exception of Mr. Allison's and other clients' monthly automatic debits, all of the contemptuous conduct are discrete acts that are not continuing in nature. With regard to the <http://www.taxinformer.com> website, the Undersigned has concluded, as set forth supra, that the website does not, in its current form, violate the preliminary injunction. Thus, there is no clear action or event upon which the Court could terminate a daily fine or indefinite period of coercive incarceration. Moreover, Plaintiff conceded at the evidentiary hearing that there is no evidence in the record that Defendants have distributed additional newsletters or updates to their clients following the February 2003 newsletter. (Dkt. 62 at 66:13-19.) Additionally, the documents and correspondence prepared for the Lusks and Mr. Cunningham

amount to discrete acts of misconduct for which a continuing sanction would not be appropriate. With regard to Mr. Allison's monthly automatic debit, the record reflects that these payments total a meager $60.00. Although not insignificant for purposes of finding Defendants in contempt, the Undersigned finds this nominal figure insufficient to warrant imposition of the hefty $5,000.00 per day fine Plaintiff demands here.

Nevertheless, the Court finds that some sanction, other than a simple admonition, is necessary to ensure Defendants' full compliance with the preliminary injunction over the course of this litigation. In this regard, the Undersigned finds that the following sanctions, or any combination thereof, would be effective under the circumstances presented:

1. Defendants should be ordered to publish a copy of the preliminary injunction on the <http://www.taxinformer.com> website with no other accompanying commentary and explanatory statement.[6]

2. Defendants should be ordered to post a copy of this Court's final order of contempt and sanctions on the <http://www.taxinformer.com> website with no other accompanying commentary and explanatory statement.

3. The District Court should impose a fine of $5,000 per publication date if Defendants subsequently disseminate additional newsletters or updates by either United States Mail, facsimile, email, or other means.

4. The District Court should permit Defendants a period of thirty (30) days in which to terminate any and all automatic debits from client accounts in payment for products and services prohibited by the preliminary injunction.

5. Defendants should be required to produce to Plaintiff a strict accounting of any and all automatic debits that have been received since December 19, 2002.

[6] At least one federal court has deemed it appropriate in a similar case to require an enjoined defendant to post a copy of the Court's preliminary injunction order on the defendant's website. See United States v. Paul Bell, 238 F. Supp. 2d 696, 706 (M.D. Penn. 2003). Additionally, Defendants' counsel stated at the April 11, 2003, evidentiary hearing that Defendants would be willing, at a minimum, to post the preliminary injunction on their website if the Court so ordered.

6. Defendants should be required to produce an affidavit within thirty (30) days to Plaintiff stating, under oath and subject to penalty of perjury, that all automatic debits from client accounts have either been terminated or continued with the client's express, written consent for the limited purpose of funding Defendants' legal defense in this case.

7. Defendants should be required to mail to all of their clients a letter stating that Defendants are enjoined from continuing to accept payment for tax-related services. This letter should also notify Defendants' clients of the termination of their automatic monthly debit payments and require express, written consent from any client that wishes to continue paying to fund Defendants' legal defense. Defendants should be required to do so within thirty (30) days of entry of the Court's final order of contempt.

8. Defendants should be required to disgorge and refund to their clients any and all automatic debits received from clients on or after December 19, 2002, and before the effective date of the clients' written consent to continue making such payments toward Defendants' legal defense.

9. Defendants should be required to pay a daily fine of $5,000 per day for every day after the thirty (30) day period that Defendants do not comply with the requirements set forth above.

10. Defendants should be subjected to coercive incarceration if, and only if, the $5,000 daily fine prescribed above exceeds $50,000 and further review is undertaken by the Court.

11. The Court should appoint a Special Master, pursuant to Fed. R. Civ. P. 53, to ensure future compliance with the preliminary injunction and the Court's final order of contempt. The Court should also appoint a private accountant to audit Defendants' bank accounts, pointing out any irregularities or transactions that violate of the preliminary injunction or the final order of contempt. The appointed accountant should be required to produce monthly reports to the Special Master who shall then issue an in camera report to the Court in the event any improper transactions are revealed by the monthly audits. Defendants should be required to bear the fees and costs associated with the accountant's services and the Special Master's review.

12. The District Court's final order regarding contempt and sanctions should encompass all bank accounts that now exist or that may be created in the name of any Defendant named in this action, except Defendant Cantwell, as well as any successor corporation or nominal entity.

13. As a penalty for those violations of the preliminary injunction that are not

continuing in nature, Defendants should be required to pay the costs incurred by bringing and defending Plaintiff's motions, exclusive of any costs incurred as a result of the continued evidentiary hearing, which costs the Undersigned has previously denied.

The Undersigned finds that these requirements are reasonable and narrowly tailored to prevent the type of misconduct in which Defendants have engaged since entry of the preliminary injunction. Additionally, the Undersigned finds that the fine amounts set forth above are reasonable and commensurate with Defendants' ability to pay as evinced by the significant number of large cash deposits itemized in the bank records Defendants produced to the Court. With regard to the appointment of a Special Master and an accountant to audit Defendants' bank accounts over the course of this litigation, the Undersigned finds this requirement necessary to monitor Defendants' acceptance of deposits in accordance with the requirements of paragraphs 4-8 above should this recommendation be accepted and imposed by the Court.

V. CONCLUSION

Consistent with the foregoing, the Undersigned respectfully **REPORTS** and **RECOMMENDS** that the District Court **GRANT IN PART** and **DENY IN PART** Plaintiff's Motion to Hold Defendants in Contempt (Dkt. 30) and **DENY AS MOOT** Plaintiff's Motion for Show Cause Order (Dkt. 31).

Respectfully **RECOMMENDED** in Tampa, Florida on this 19th day of August 2003.

MARY S. SCRIVEN
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

Failure to file written objections to the proposed findings and recommendations contained in this report within ten (10) days from the date of this service shall bar an aggrieved party from attacking the factual findings on appeal. See 28 U.S.C. § 636(b)(1).

Copies furnished to:

Presiding District Court Judge
Counsel of Record
Unrepresented Parties