

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF SOUTH CAROLINA  
ANDERSON DIVISION

UNITED STATES OF AMERICA	)	CA No. 8:05-2734-HMH-BHH
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ROBERT BARNWELL CLARKSON,	)	
individually and operating as	)	
THE PATRIOT NETWORK,	)	
	)	
Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AND PERMANENT INJUNCTION BY UNITED STATES OF AMERICA**

The United States moves for summary judgment under Sections 7408 and 7402(a) of the Internal Revenue Code (26 U.S.C.) against defendant Robert Barnwell Clarkson, individually and operating as the Patriot Network, to enjoin him and any other individuals working in association with him from further promoting the false claims that people need not pay federal income taxes, need not file income tax returns, and may evade the payment of taxes through one of the many methods he espouses. By promoting these statements through the Patriot Network and through his lectures and books, Clarkson has damaged and continues to damage the United States and expose his followers to potential civil and criminal liability. The Court should issue the requested injunction, because the undisputed facts demonstrate that Clarkson's promotion of these false theories must be stopped.

### STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.<sup>1</sup> While the facts and all reasonable inferences drawn therefrom are viewed in the light most favorable to the non-moving party,<sup>2</sup> the non-moving party may not rest upon mere allegations or denials of pleading, but must instead set forth specific facts showing that there is a genuine issue for trial.<sup>3</sup>

### STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendant Robert Clarkson holds himself out as an expert on the tax laws, “specializ[ing] in Tax Procedure Law, (i.e. Tax Audits, Collections and Hearings.) FOIA Lawsuits & Litigation, Privacy and all forms of Constitutional Rights including Freedom issues and Financial Privacy.” (Declaration of Barbara Cantrell at 127.) He boasts that he has “helped thousands of Patriotic Americans fight the evil dungeons of the IRS, protect their assets, and preserve their privacy.” (*Id.* at 246.) He claims to have “‘untaxed’ more than 8,000 of his fellow American citizens and assisted innumerable others in the field of tax freedom and law” through 30 years of work “beat[ing] the IRS.” (*Id.* at 149, 209.) He states that he has represented a dozen clients before the Tax Court at one court session and boasts of defeating the IRS at three appeals of collections due process hearings. (*Id.* at 160, 126-127.) He touts his law degree, through which he refers to himself as “Dr. Clarkson,” and teaches, among other courses, the “Clarkson Law Course” and law library workshop in which he teaches students how to research and write legal briefs. (*Id.* at

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<sup>1</sup> Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

<sup>2</sup> *Anderson*, 477 U.S. at 255.

<sup>3</sup> *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 522 (4th Cir. 2003).

141-142, 148, 149, 152-155, 156, 157, 158, 209.) Although he admits he is not licensed to practice law, he refers to himself as a “legal coach” and “advisor” who is “standing by to assist you in your own legal matters” and states he “can help” because he “has nothing to lose” and “cannot be disbarred for using arguments that the government does not want to hear!” (*Id.* at 126, 245, 247, 150.)

Clarkson organized and leads the Patriot Network. (*Id.* at 148, 149.) The Patriot Network is comprised of a national organization and local independent clubs in various states. (*Id.* at 163, 138-140.) It describes itself as a political organization with the purpose of achieving a return to Constitutional government through a tax revolt – “a massive refusal of the productive sector of the population to support the unConstitutional taxing and spending programs of the national government.” (*Id.* at 131-132.) It calls upon members to “drive up the cost of administrating the corrupt tax system, to fight the taxacrats every inch of the way” through “well-planned, active resistance, not merely non-cooperation” to achieve the “collapse” of “the hated IRS.” (*Id.* at 132.) The Patriot Network operates the <http://www.patriotnetwork.info> website, through which, among other activities, it sells taped lectures, books, and other materials by Clarkson and others. (*Id.* at 255-269.)

#### A. Joining the Patriot Network

The Patriot Network requires that prospective members submit an application, purchase and study Patriot Network materials, and pay dues (called “donations” at a “suggested amount”) that must be kept current. (*Id.* at 163, 166, 257.) Members must promise not to “cooperate with evil, illegal and unconstitutional government agencies, nor furnish information to them” and to notify the Patriot Network if contacted by IRS employees. (*Id.* at 166.) Members can also join local chapters that are indirectly controlled by Clarkson. (*Id.* at 176-188.) Members can

participate in e-mail groups, local meetings, and conventions. (*Id.* at 164, 168-174.) Members are also given access to a “members only” section of Clarkson’s website, access to the Patriot Network’s lawyers on retainer to the organization, and the opportunity to pay admission fees and attend seminars at which Clarkson speaks on various topics such as IRS audits, liens, and levies. (*Id.* at 164, 175, 137.)

B. New membership

Promising to provide all the information and instructions needed to stop paying taxes he claims they do not owe, Clarkson offers new members the Beginners Packet. (*Id.* at 190.) For \$100, the uninitiated receive videos and printed materials produced by Clarkson and others that Clarkson claims thousands of “Patriotic Americans” have used with success. (*Id.*) Clarkson offers an introductory video and companion workbook for “untaxing” entitled *Tax Loopholes for Working People*. (*Id.*) At a seminar of the same title, Clarkson instructs that wages are not income. (*Id.* at 146, 196.)

Clarkson also counsels prospective members that he has the research that shows that there is no law requiring persons to file income tax returns. (*Id.* at 192, 198-202.) He claims that Congress “forgot [this] one important little detail” and that income taxes need not be paid because they are voluntary. (*Id.* at 192.) He states that this “fact is usually hard . . . to grasp” and that Patriot Network members have not paid income taxes for 30 years. (*Id.* at 192-193.) He provides the details in a \$30 video entitled *Introduction to the US Constitution and the Income Tax*. (*Id.* at 202, 256.) Clarkson offers to help newcomers “take the plunge” and promises that the Patriot Network’s “fearless leader, Dr. Robert Clarkson, will always be there to go with [members], along with about a dozen protestors.” (*Id.* at 193.)

C. “Untaxing”

For \$300, *The Patriot Network Untaxing Packet* advises readers how to “untax” themselves. (*Id.* ¶ 3.) Clarkson states in the book’s introduction that “This untaxing packet is designed to completely remove any and all liability or commitment that you may have with respect to the Internal Revenue Service (IRS), the Federal Reserve, and their fraudulent taxation schemes.” (*Id.* at 7.) The six-step process involves revoking associations with the Federal Reserve, IRS, Social Security Administration, and private banks. (*Id.* at 8.) Clarkson instructs that one can unilaterally make oneself ungoverned by federal tax laws by sending out letters to these and other entities and provides form letters for readers to copy. (*Id.* at 10-21, 23-24, 30-60.) Clarkson assures that “thousands have opted out of the system and have had no problem” and “are enjoying a ‘new’ state of self-determination under true law.” (*Id.* at 11, 151.)

Clarkson also instructs readers in this book to file forms with employers that claim sufficient numbers of exemptions (not to exceed 10) to eliminate income tax withholding from paychecks. (*Id.* at 8.) He claims that the federal tax laws permits taxpayers to claim any number of exemptions for tax withholding that they wish without explanation. (*Id.*)

D. Evading payment of taxes

When the IRS attempts to collect taxes owed, Clarkson instructs members to call him and offers various products for sale to avoid payment. (*Id.* at 203-232 generally.) Clarkson instructs members to begin an “earnest writing” campaign to respond to collection letters sent by the IRS (two tapes provided for \$10 each). (*Id.* at 212-213.) Clarkson also instructs members to invoke the Fifth Amendment (details provided in \$25 tape), stop the lien (details provided in a \$30 video), file a quiet title action, file bankruptcy (details provided in a three-book set for \$20), file an action against the IRS, deed real property to spouses or children, and foreclose on themselves.

(*Id.* at 213, 204-205, 255-257.) He also recommends filing civil lawsuits against the IRS employees attempting collection. (*Id.* at 208.) He advocates that these steps be taken slowly and in succession and instructs followers to make deliberate procedural mistakes, because the “principal weapon against the bureaucracy is non-cooperation and dilatory tactics.” (*Id.* at 213, 216, 219-222, 218-229 generally, 230-232, 233.)

Clarkson also offers *Audit Procedure I and II*, a video for \$30 in which he instructs his viewers to throw away automated collection letters and close out bank accounts at the outset of IRS collection efforts. (*Id.* at 120, 122.) If the IRS proceeds with collection, Clarkson advises filing bankruptcy “on the IRS” to discharge tax debt after the IRS has spent “millions” conducting a protracted audit. (*Id.* at 118-119, 124.) He refers viewers to other materials he sells on bankruptcy (the three-book set mentioned above for \$20) and offers to “walk” members through bankruptcy. (118-119, 124, 257.) He also directs customers to other videos for sale on judgment proofing (three videos for \$30 each), on how to handle the IRS (video for \$20), and to his *No Checks* materials. (*Id.* at 105, 108, 121-122, 256.)

Patriot Network members must agree to avoid keeping bank accounts “whenever possible.” (*Id.* at 166.) In *Clarkson’s No Checks*, sold as a video for \$30 or book for \$10, Clarkson instructs that IRS collection and summons efforts can be thwarted by closing all bank accounts and dealing in cash or money orders. (*Id.* at 66, 69, 72, 76, 63-102 generally.) Clarkson also teaches readers how to “recycle” checks by endorsing checks received from a debtor to a third-party creditor as payee. (*Id.* at 71-72.) He also instructs readers to “borrow” a bank account by having a third party with a bank account sign blank checks on the account and, as each check is used, instructs readers to deposit cash in an equal amount into the account. (*Id.* at 83-84.) Readers with less trusting friends are advised to exchange cash for checks with a

specific amount listed. (*Id.* at 84.) For those who ignore his admonition not to maintain bank accounts, Clarkson recommends foreign banking in a “tax haven” country. (*Id.* at 91.)

Clarkson also instructs members that property placed in trusts is protected “from greedy lawyers, spiteful ex-spouses and government fraud” and offers his personal advice in creating a “properly constructed trust” that he claims will protect homes and other property from tax collectors. (*Id.* at 235.) He states that trusts keep “financial information from credit cards (*sic*) companies, illegal tax collectors, and others wanting a piece of your action.” (*Id.*)

Clarkson endorses and offers to connect members with “an associate who has a (*sic*) employee leasing company” so that members can avoid tax withholdings, payroll taxes, and wage levies. (*Id.* at 128.) The associate offers to hire members and then lease them back to their employers so that members become independent contractors of Clarkson’s associate. (*Id.* at 128, 207.) His associate then will forward members their gross pay “minus a small fee.” (*Id.* at 128.) Clarkson explains these theories in *Clarkson’s Independent Contractor Agreements*, which he offers for \$10. (*Id.* at 207, 133.)

#### E. The Patriot Advisory Service

Patriot Network members automatically have access to the “Patriot Advisory Service” through which Clarkson, “qualified paralegals,” “procedure experts,” and others provide personal advice about an individual’s tax situation. (*Id.* at 164, 165, 244-248.) Clarkson claims that only 25% to 50% of people who stop filing tax returns receive any contact from the IRS and that only 1% of non-filers receive a personal visit. (*Id.* at 244, 225, 215.) Should the IRS contact members, however, Clarkson offers telephone and written advice as well as assistance at tax audits, collections, and other IRS hearings. (*Id.* at 244.) Callers must provide their “member

number” to receive Clarkson’s advice. (*Id.* at 227.) Members must also first purchase and study any relevant Patriot Network books or videos before receiving detailed advice. (*Id.* at 245-246.)

F. Patriot Network Executive Service Plans

Clarkson offers two Patriot Network Executive Service Plans for “business owners, medical doctors, dentists, and those who need extra services.” (*Id.* at 248.) For an initiation fee of \$4,000 and annual dues of \$700, “experienced professionals” “contract[ing] for the Patriot Network” provide “full consultation and representation” in assisting members to respond to letters, inquiries, and administrative hearings for federal and state tax issues. (*Id.* at 249-251.) For an initiation fee of \$6,000 and annual dues of \$2,000 to \$2,500, members can have the “professionals” respond and represent them directly. (*Id.* at 252-254.) Each plan “also includes a legal defense fund which has many years of operation and has been spectacularly successful (*sic*)” and offers “[i]ron clad protection from criminal attacks . . . all the way up to the Supreme Court, if necessary” at no additional cost. (*Id.* at 248, 249, 252.)

G. Knowledge

Clarkson was convicted in North Carolina of instructing others “to claim false exemptions, to hide income, and to refuse to file income tax returns or pay income tax” in violation of the internal revenue laws. *United States v. Fleschner*, 98 F.3d 155, 159 (4th Cir. 1996). His conviction also stemmed from the operation of D-G Labor Services, an employee leasing company in which he “provided individuals for employment to other businesses” without withholding proper taxes. *Id.* at 160.



## ARGUMENT

The first two sections of this memorandum address the violation of each statute as a basis for injunction. The final section then addresses how the requested injunction comports with the protections of the First Amendment.

**A. Injunctive relief is warranted under 26 U.S.C. § 7408, because the undisputed facts demonstrate that Clarkson promotes false and fraudulent tax schemes.**

Section 7408 of the Internal Revenue Code authorizes a federal district court to enjoin any person engaging in conduct subject to penalty under Section 6700 of the Code from engaging in such conduct or any conduct subject to penalty under the Internal Revenue Code if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. Section 6700 generally penalizes those who make false statements in connection with the organization or sale of a fraudulent tax shelter. Although the legislative history shows that Sections 6700 and 7408 were enacted to give the IRS more effective tools to deal with “the growing phenomenon of abusive tax shelters,” these statutes do not apply only to typical investment tax shelters, but also to “other abusive tax avoidance schemes.”<sup>4</sup>

Sections 7408 and 6700 require the United States to demonstrate five requirements by a preponderance of the evidence to obtain an injunction:

- (1) the defendant organized or sold, or participated in the organization or sale of, an entity, plan, or arrangement;
- (2) he made or caused to be made, false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;
- (3) he knew or had reason to know that the statements were false or

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<sup>4</sup> S. Rep. No. 97-494, at 266 (1982), *reprinted in* 1982 U.S.C.C.A.N. 781, 1014. *See United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985); *United States v. Buttorff*, 761 F.2d 1056, 1063 (5th Cir. 1985).

fraudulent; (4) the false or fraudulent statements pertained to a material matter; and (5) an injunction is necessary to prevent recurrence of this conduct.<sup>5</sup>

Because Section 7408 sets forth specific criteria for injunctive relief, the United States need only meet those statutory criteria and need not demonstrate the traditional equitable factors to obtain a permanent injunction.<sup>6</sup> The undisputed facts clearly demonstrate that Clarkson and the Patriot Network engaged in this conduct and will continue unless enjoined.

*1. Clarkson organized and sells the Patriot Network, an entity, plan, or arrangement.*

First, Clarkson organized and sells an entity, plan, or arrangement, namely the Patriot Network. In addition to the membership fee it charges members, the Patriot Network operates a website with “members only” areas, holds monthly meetings throughout the Southeast, hosts speakers at the meetings and at separate conferences, and sells publications and recordings of lectures ranging in price from \$5 to \$300. Through speaking engagements and the website, Clarkson and the Patriot Network lure in new members with claims of great financial savings. Membership and the details to these claims require the purchase of books and videos that then promote other books and videos explaining other topics. As members face ever-increasing problems with the IRS, Clarkson and the Patriot Network offer the Patriot Advisory Service to support and charge members for more services and materials. They also promise full consultation and representation through a separate membership in one of the Patriot Network Executive Service Plans.

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<sup>5</sup> *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

<sup>6</sup> *Estate Pres. Servs.*, 202 F.3d at 1098; *Abdo v. United States Internal Revenue Service*, 234 F. Supp. 2d 553, 564 (M.D.N.C. 2002).

Under Section 6700, any plan or arrangement “having some connection to taxes can serve as a ‘tax shelter.’”<sup>7</sup> As explained above, the Patriot Network has extensive connection to taxes. Tax evasion is what Clarkson and the Patriot Network promise their customers. Despite his political rhetoric, tax evasion, in fact, appears to be the only feature of the promotion.

2. *Clarkson makes false and fraudulent statements about the tax benefits of the plan.*

The gist of Clarkson’s false and fraudulent statements, laid out in more detail above, is that joining the Patriot Network and following the methods preached will render members absolved from liability for federal taxes. This is patently false. Clarkson falsely claims that no law requires the filing of federal income tax returns.<sup>8</sup> He falsely claims that persons can declare themselves to be tax free merely by sending some letters to various government agencies.

Clarkson also promotes membership by promising members that they will be able to evade IRS collection through the use of trusts, the transfer of assets to evade creditors, and the use of cash and “recycled” checks.<sup>9</sup> Clarkson instructs others to file bankruptcy and offers to “walk” members through the process, but fails to mention the limited dischargeability of federal income tax liabilities and tax liabilities arising from unfiled tax returns.<sup>10</sup> Clarkson promises near immunity from collection when, in fact, his tactics only lead members to liability for interest, civil penalties, and potentially criminal investigation.

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<sup>7</sup> *United States v. Raymond*, 228 F.3d 804, 811 (7th Cir. 2000).

<sup>8</sup> 26 U.S.C. §§ 6011(a), 6012(a), 6072(a).

<sup>9</sup> 28 U.S.C. §§ 3301-3308 (fraudulent conveyances); *United States v. Schmidt*, 935 F.2d 1440 (4th Cir. 1991) (trusts).

<sup>10</sup> 11 U.S.C. § 523(a)(1).

3. *Clarkson knows or should know that these statements are false and fraudulent.*

Clarkson knows that these statements are false and fraudulent. He was convicted in North Carolina of peddling these same theories that people may legally stop filing income tax returns, stop paying income tax, claim false withholding exemptions, and hide income.<sup>11</sup> His conviction also stemmed from the operation of D-G Labor Services, an employee leasing company through which he did not withhold the proper taxes for others. The conviction clearly gives Clarkson reason to know that his recent statements about federal tax law and the instructions to Patriot Network members and customers described above are false and fraudulent.

Moreover, the “knew or had reason to know” standard includes “what a reasonable person in the [defendant’s] . . . subjective position would have discovered.”<sup>12</sup> The law is well settled that the tax statements made by Clarkson are false or fraudulent. “[T]he average citizen knows that the payment of income taxes is legally required.”<sup>13</sup> A modicum of research would reveal that a person cannot legally avoid federal taxes by mere unilateral refusal and cannot avoid collection by transferring property, filing legal actions, or any of the other tactics he promotes.

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<sup>11</sup> *United States v. Fleschner*, 98 F.3d 155, 159 (4th Cir. 1996).

<sup>12</sup> *Estate Pres. Servs.*, 202 F.3d at 1103.

<sup>13</sup> *Schiff v. United States*, 919 F.2d 830, 834 (2d. Cir. 1990). *See also Abdo*, 234 F. Supp. 2d at 564 (attributing to a self-proclaimed tax expert the knowledge that his “personal belief that paying taxes is a voluntary activity does not represent the current state of the law”).

4. *Clarkson's false or fraudulent statements were material.*

In proving materiality, the United States need not demonstrate that a customer relied on the misrepresentations.<sup>14</sup> Rather, “a matter is considered material to the arrangement ‘if it would have a substantial impact on the decision making process of a reasonably prudent investor.’”<sup>15</sup> Statements pertaining to the “availability of tax deductions, credits, or to other mechanisms for reducing tax liability . . . clearly qualify as ‘material’” under Section 6700.<sup>16</sup>

Members would not join the Patriot Network or purchase Clarkson's materials unless he promised total reduction of tax liability. As such, the statements made in the promotion of the Patriot Network certainly are material.

5. *An injunction is necessary to stop this conduct.*

The following factors are relevant in determining the likelihood of future violations of Section 6700, and, thus, the need for an injunction under Section 7408:

(1) the gravity of the harm caused by the offense; (2) the extent of the defendant's participation; (3) the defendant's degree of scienter; (4) the isolated or recurrent nature of the infraction; (5) the defendant's recognition (or non-recognition) of his own culpability; and (6) the likelihood that defendant's occupation would place him in a position where future violations could be anticipated.<sup>17</sup>

These factors are satisfied here. First, the harm caused to Patriot Network members, customers of its products, the United States, and the public is grave. Members and customers are

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<sup>14</sup> *Estate Pres. Servs.*, 202 F.3d at 1099.

<sup>15</sup> *United States v. Buttorff*, 761 F.2d, 1056 1062 (5th Cir. 1985) (quoting S. Rep. No. 97-494, at 267 (1982), reprinted in 1982 U.S.C.C.A.N. 781, 1015).

<sup>16</sup> *United States v. Estate Pres. Servs.*, 38 F. Supp. 2d 846, 855 (E.D. Cal. 1998), *aff'd* 202 F.3d 1093 (9th Cir. 2000).

<sup>17</sup> *United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1105 (9th Cir. 2000).

harméd when they fail to report and pay their income tax liabilities, because they subject themselves to payment of the original tax, additional interest and penalties, and potential criminal liability. The United States is harmed because members and customers do not and may never pay the correct amount of tax to the United States Treasury. At this point, the actual and potential damage caused by Clarkson and the Patriot Network is impossible to estimate because of the very nature of his scam, which pulls people out of the tax system altogether while hiding their identities. Clarkson's customers also flood government agencies with frivolous letters.

The public is harmed because the IRS is forced to devote some of its limited resources to identifying and attempting to recover revenue lost as a result of Clarkson's activities, thereby reducing the level of service that the IRS can give to other taxpayers. Clarkson advocates purposeful delay to burden the IRS and drive up the cost of tax administration. Further, Clarkson's bold and overt defiance of the IRS causes additional damage by encouraging people other than his members and customers to dodge taxes.

Second, the extent of Clarkson's participation is broad. Clarkson is the founder of the Patriot Network and author of many of its publications. He directly or indirectly controls all the Patriot Network's operations. Third, with regard to scienter, Clarkson promotes himself as knowledgeable about the law, but actually attempts to wrench tax provisions out of context to promote a misreading of the law. Further, the conduct is recurrent. Clarkson continues to operate the Patriot Network, lecture, and sell books arguing the same theories that led to his conviction. If Clarkson will not stop under these circumstances, then only a direct order to stop, in the form of an injunction from this Court, will prevent further misconduct and the attendant harm to the United States and Clarkson's members and customers.

**B. Injunctive relief is warranted under 26 U.S.C. § 7402(a) because Clarkson's activities interfere with the administration of the internal revenue laws**

Section 7402(a) of the Internal Revenue Code (26 U.S.C.) grants federal district courts broad authority to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” Because Section 7402(a) expressly provides that the injunction remedy is “in addition to and not exclusive of” other remedies, the United States need not establish that it has no adequate remedy at law. Rather, Section 7402(a) manifests “a Congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws,”<sup>18</sup> and “has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute.”<sup>19</sup>

Here, injunctive relief under Section 7402 is appropriate to prevent Clarkson from continuing to interfere with tax enforcement. Clarkson's false tax statements interfere by advising members not to file tax returns and to evade collection by transferring or concealing assets from the IRS. He urges members to frustrate and delay IRS collection efforts through illegal and obstructionist acts he hopes will lead to the collapse of the IRS. The United States has suffered and will continue to suffer irreparable injury from his promotion. Because he shows no sign of ending his activities, the United States will continue to lose money as long as Clarkson and the Patriot Network continue to promote false tax advice.

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<sup>18</sup> *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957). See also *United States v. First National City Bank*, 568 F.2d 853, 855-56 (2nd Cir. 1977).

<sup>19</sup> *United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984) (“the statute has been relied upon to enjoin activities of third parties that encourage taxpayers to make fraudulent claims”).

Clarkson, on the other hand, would not be harmed by a court order enjoining him from breaking the law.<sup>20</sup> Finally, the public interest is clearly served by shutting down an illegal tax evasion scheme.

The United States also requests that the Court, under the broad authority of Section 7402(a), order Clarkson to furnish the United States with the identities of those persons who have purchased his tax programs and order Clarkson to notify those customers of the Court's ruling in this matter. The United States also requests that the Court order Clarkson to remove false and fraudulent tax promotional materials from his websites and post a copy of the Court's injunction order on those websites. These actions are necessary to publicize the false and fraudulent nature of the Clarkson's scheme and to notify members and customers of the potential civil and criminal consequences of following Clarkson's advice.

**C. Because Clarkson's activities aid and abet others to violate the tax laws and relate to his economic interests, they are not protected by the First Amendment.**

The First Amendment prohibits any law that abridges the freedom of speech.<sup>21</sup> It is a powerful protector of individual rights, but does not require the government to allow unscrupulous persons to aid and abet others to violate the law<sup>22</sup> or to make a profit by spreading false or fraudulent information.<sup>23</sup> In the instant case, because Clarkson aids and abets others to

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<sup>20</sup> See *Metzler v. IBP, Inc.*, 127 F.3d 959, 963 (10th Cir. 1997), *Martin v. Funtime, Inc.*, 963 F.2d 110, 114 (6th Cir. 1992), *United States v. Campbell*, 897 F.2d 1317, 1324 (5th Cir. 1990).

<sup>21</sup> U.S. Const. Amend. I.

<sup>22</sup> *Rice v. Paladin Enter., Inc.*, 128 F.3d 233 (4th Cir. 1997) (holding that the First Amendment does not protect step-by-step instructions for murder).

<sup>23</sup> *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978) (holding the First Amendment does not protect personal solicitation of accident victims by an attorney).



violate the tax laws, and because he recruits members to join the Patriot Network and buy the required associated materials, his related false and fraudulent statements about federal taxes may be enjoined under 26 U.S.C. §§ 7408 and 7402(a) without violating the First Amendment.

This case bears great similarity to other cases where courts have determined that false tax advice constituted speech unprotected by the First Amendment. For example, Dennis Kaun, through his Wisconsin Society for Educated Citizens, held weekly meetings at which Kaun led discussions focused on constitutional law and ways in which members could interfere with the workings of the IRS.<sup>24</sup> Kaun, like Clarkson, held himself out to be a person educated about tax laws and qualified to advise others as to their federal tax liability.<sup>25</sup> Kaun, like Clarkson, assisted others to eliminate or reduce the required federal income tax withholding from paychecks.<sup>26</sup> Kaun, like Clarkson, sold materials containing further explanations of his erroneous tax advice.<sup>27</sup> The chief difference between Clarkson's scheme and the scheme that was enjoined in *Kaun* is that rather than telling his members to file false tax returns, as Kaun did, Clarkson promotes not filing a tax return at all.<sup>28</sup> The district court enjoined Kaun from pursuing his campaign to spread his false information, from selling materials to assist individuals in filing fraudulent tax returns with the IRS, and from otherwise interfering with the administration of the tax laws.<sup>29</sup>

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<sup>24</sup> *United States v. Kaun*, 827 F.2d 1144, 1145-46 (7th Cir. 1987)

<sup>25</sup> *Id.* at 1152.

<sup>26</sup> *Id.* at 1146.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1149.

<sup>29</sup> *Id.* at 1146.

Kaun argued that the injunction violated his First Amendment right to freedom of speech. After a lengthy analysis, the Seventh Circuit rejected Kaun's challenge. It determined that Kaun's lectures expressing his negative views about the Internal Revenue Service were protected and could not be enjoined, but upheld the injunction as to Kaun's attempts to incite others to understate their tax liability and to sell documents advising others to understate their tax liability.<sup>30</sup>

More recently, the Third Circuit examined the intersection of the First Amendment and an injunction obtained against Thurston Bell under 26 U.S.C. §§ 7408 and 7402(a).<sup>31</sup> The court affirmed the finding that materials on Bell's website "enticed visitors to join Bell's organization and pay him for tax advice" and were, therefore, predominately commercial speech.<sup>32</sup> The court then examined the reach of the injunction beyond Bell's commercial materials and determined that his political speech could be enjoined where it aids and abets others, directly or indirectly, to violate the tax laws.<sup>33</sup> The court also affirmed the requirement that Bell place a copy of the injunction order on his website.<sup>34</sup>

Here, Clarkson is clearly engaged in commercial speech. He holds himself out as a tax adviser and expert by emphasizing that he graduated from law school, adopting the title "Dr." from this accomplishment, and stating that he has represented dozens of individuals before the

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<sup>30</sup> *Id.* at 1150-1153.

<sup>31</sup> *United States v. Bell*, 414 F.3d 474 (3d Cir. 2005).

<sup>32</sup> *Id.* at 479-80.

<sup>33</sup> *Id.* at 481-84.

<sup>34</sup> *Id.* at 484-85.

IRS and “untaxed” over 8,000 people. Great financial benefits are promised to those who join the Patriot Network. Membership then requires the payment of periodic dues to Clarkson and the purchase of his books and lectures. For those who choose to act upon his teachings, Clarkson offers for sale additional separate materials on specific topics that often intertwine and advertise the sale of other necessary products. The Patriot Network also offers Clarkson’s services and advice to dues-paying members as well as document preparation for additional fees.

The website and Clarkson’s materials also aid and abet the willful failure to file income tax forms, the evasion of the payment of income taxes, and other violations of the tax laws. The materials provide step-by-step instructions, and for an additional fee, form letters, form legal documents, and personalized advice that guide members through the tax troubles brought on by following Clarkson’s theories. Overall, Clarkson’s message is a bald command to disobey the law – first by refusing to file a federal tax return at all, and then by interfering with the orderly enforcement of the federal tax laws. Clarkson’s advice, while couched in pseudo-patriotic terms of reclaiming one’s rights, can be distilled to “Stop filing tax returns and the IRS will never find you.” By following these methods, he claims that members will be able to keep all the money otherwise paid in taxes because they will likely get away with it. If members do not give the IRS an address and tell the IRS that they earn wages, Clarkson claims that the IRS will never issue a garnishment order, will never file a notice of federal tax lien, and will never send a notice of deficiency or notice of assessment, because it will not know where members are. He claims that up to 75% of people who follow his path never hear from the IRS.

Clarkson’s website and materials are nothing more than an invitation to and instructions on how to violate the federal tax laws and take the chance that you will not get caught.

### CONCLUSION

The undisputed facts clearly show that Clarkson promotes tax advice that he knows to be false and fraudulent and that he aids and abets others to violate the tax laws. The Court, through its powers under 26 U.S.C. §§ 7408 and 7402(a), should enjoin Clarkson from these activities and prevent his ongoing harm to customers, the federal government, and the public.

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