

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. <b>WMN05CV1297</b>
	)	
JOHN BAPTIST KOTMAIR, JR.,	)	
and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

**DEFENDANT SAVE-A-PATRIOT’S MOTION TO COMPEL PLAINTIFF’S DISCOVERY RESPONSES**

The Plaintiff in this action has refused to answer several of Save-a-Patriot Fellowship’s (“SAPF”) interrogatories and requests for production of documents based on groundless objections. Pursuant to L.R. 104.7, the undersigned has conferred in good faith with United States Attorney, Thomas Newman, regarding these matters. The United States has objected on various grounds to certain of SAPF’s discovery requests, as more fully set forth in the attached memorandum in support.

SAPF prays that the Court enter an order compelling the United States to answer these discovery requests in full, for the reasons set forth more fully in its attached supporting memorandum.

Dated this 3rd day of April, 2006

/s/ George Harp  
**GEORGE HARP** Bar number 22429  
Attorney for Save-A-Patriot Fellowship  
610 Marshall St. Ste., 619

Shreveport, LA 71101  
(318)424-2003

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing DEFENDANT SAVE-A-PATRIOT'S MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 3rd day of April, 2006

*JOHN B. KOTMAIR, JR*  
Defendant  
Pro se  
P. O. Box 91  
Westminster, MD 21158

*THOMAS M. NEWMAN*  
Attorney for United States of America  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P. O. Box 7238  
Washington, D.C. 20044

/s/ George Harp  
GEORGE HARP Bar number 22429  
Attorney for Save-A-Patriot Fellowship  
610 Marshall St. Ste., 619  
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and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT SAVE-A-PATRIOT'S  
MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES**

Plaintiff United States of America has declined to answer several of Defendant Save-A-Patriot Fellowship's ("SAPF") interrogatories and requests for production of documents based on untimely and groundless objections. For the reasons set forth hereinbelow, this Court should enter an order compelling Plaintiff to answer these discovery requests in full.

**I. United States' Objections to Interrogatories and Request for Production of Documents are untimely and therefore waived.**

Defendant SAPF served a Request for Production of Documents and Interrogatories upon Plaintiff United States of America on January 16, 2006. The government submitted their response to Defendant SAPF on February 28, 2006 - forty- two days later. Since Plaintiff's response was considerably over the thirty days

provided by the rules, all objections should be deemed waived.

Federal Rule of Civil Procedure 33 states in relevant part:

*Rule 33. Interrogatories to Parties*

*(b) Answers and Objections.*

*(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, **within 30 days** after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.*

*(4) All grounds for an objection to an interrogatory shall be stated with specificity. **Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.** [Emphasis added]*

Moreover, Federal Rule of Civil Procedure 34 states in relevant part:

*Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes*

*(b) Procedure. The request shall set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity. \* \* \* The party upon whom the request is served shall serve **a written response within 30 days** after the service of the request. [Emphasis added]*

Therefore, since the objections to SAPF's Interrogatories and Requests for Production of Documents were untimely, Plaintiff has waived them. See also *Dorrough v. Mullikin*, 563 F.2d 187, 191 (5th Cir. 1977). Plaintiff should be ordered by this court to comply with the discovery requests of Defendant SAPF.

**II. Plaintiff's Objections to SAPF's Discovery Requests are without merit.**

SAPF only propounded ten interrogatories and three related requests for production. Plaintiff's responses, dated February 28, 2006, answered virtually none of SAPF's discovery requests, stating that certain responses would be irrelevant, premature, or are protected by the work product doctrine. Below, following, are the unmerited objections that Plaintiff has untimely raised

**“Interrogatory No. 2:** Please identify persons you intend to use as witnesses at trial and a brief summary of expected testimony from each.

**“Plaintiff's response:** The United States objects that Interrogatory No. 2 is premature and that the requested information is work-product (until disclosure is required under the pre-trial order.) The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.”

**Discussion of Interrogatory No. 2:** Plaintiff's assertion that providing a list of witnesses is “premature” has no basis in law or the rules. Nowhere in FRCP 26 (or other discovery rules) does it state that Plaintiff need not comply with a discovery request until a pre-trial order is submitted; and Plaintiff cites no authority to substantiate this claim. More importantly, Plaintiff waived this objection by failing to raise it within the 30 days required by FRCP 33(b)(4).

Further, Plaintiff's claim that its Initial Disclosures contained a list of individuals is in error. That document contains only one individual's name - Defendant John Kotmair - and a general description of a *class* of persons - “Defendant's customers.” Likewise, Plaintiff's claim that its Initial Disclosures

contained a “summary of the subject matter of their knowledge” is equally untrue. Said “summary” was nothing but this solitary statement: “Defendants’ customers have knowledge of defendants’ tax-fraud schemes.” It must also be noted that SAPF did not request a summary of anyone’s knowledge. Rather, the request was for the expected *testimony* of witnesses. Thus, Plaintiff’s answer is clearly not responsive to this interrogatory.

Plaintiff also asserts that the work-product doctrine is applicable here. Not only does a list of witnesses not fall within the definition of “work-product,” that is, but common sense dictates that it is necessary to know who the witnesses are and their anticipated testimony, so that an adverse party can be adequately prepared for trial.

FRCP 12(b)(5) states:

*“When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”*

Plaintiff failed to comply with this provision. No description of the withheld information was provided by Plaintiff that would enable Defendant to assess the applicability of Plaintiff’s claim.

**“Interrogatory No. 3:** Please identify persons you may call as witnesses at trial and a brief summary of expected testimony or possible testimony from each.

**“Response to Interrogatory No. 3:** The United States objects that Interrogatory No. 3 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order)

The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge."

**Discussion of Interrogatory No. 3:** See Discussion of Interrogatory No. 2, *supra*.

Further, Plaintiff's statement that it has not yet identified its trial witnesses is irrelevant. This request is for the identification of those who *may* be called as witnesses - that is, those individuals in the pool of potential witnesses from which Plaintiff will ultimately draw its trial witnesses.

**"Interrogatory No. 4:** Please list and identify all documents you intend to introduce at trial.

**"Response to Interrogatory No. 4:** The United States objects that Interrogatory No. 4 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order.) The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pretrial order, which is due five days before the pre-trial conference. As no pretrial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims."

**Discussion of Interrogatory No. 4:** See Discussion of Interrogatory No. 2, *supra*.

Further, as discussed *infra*, it is not premature for the United States to respond to this interrogatory. Moreover, all that is asked for here, is a *list* of said documents, and to describe them. Any such list and description does not fit the definition of "work product" in the first instance. Additionally, there is nothing in the rules stating

that this discovery request need not be complied with previous to a pre-trial order.

**“Request for Production No. 1:** Please provide copies of all of the above documents listed in Answer to Interrogatory No. 4.

**“Response to Request for Production No. 1:** The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent this request is for materials in preparation for trial, the United States objects that Request for Production No. 1 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).

**Discussion of Request for Production No. 1:** See Discussion of Interrogatory No. 2, *supra*, and discussion of “premature” and “work product” claims, *infra*.

Again, no description of the withheld information was provided by Plaintiff that would enable Defendant to assess the applicability of Plaintiff’s claim.

**“Interrogatory No. 5:** Please list and identify all tangible evidence, other than documents, that you intend to introduce at trial.

**“Response to Interrogatory No. 5:** The United States objects that Interrogatory No. 5 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order. The United States has not yet identified its trial Exhibits. Under Local Rule 106(h), a list of exhibits to be introduced at trial must be disclosed in the pretrial order, which is due five days before the pretrial conference. As no pretrial conference has been set, this request is premature. Notwithstanding this objection, the United States’ Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.”

**Discussion of Interrogatory No. 5:** See Discussion of Interrogatory No. 2, *supra*.



Requesting that the United States “list and identify all tangible evidence” does not fit the definition of “work product”; it is merely requesting a list of certain items, some of which may or may not be protected by the work product doctrine.

Again, no description of the withheld information was provided by Plaintiff that would enable Defendant to assess the applicability of Plaintiff’s claim.

**“Request for Production No. 2:** Please provide copies or photographs of all of the above tangible evidence listed in Answer to Interrogatory No. 5.

**“Response to Request for Production No. 2:** The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that Request for Production No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).”

**Discussion of Request for Production No. 2:** See discussion of response to Request for Production No. 1, *supra*, and discussion of “premature” and “work product” claims, *infra*.

Again, no description of the withheld information was provided by Plaintiff that would enable Defendant to assess the applicability of Plaintiff’s claim.

**“Interrogatory No. 7:** Please identify all persons who participated in the decision making process to prosecute this lawsuit, including in the identification, their names, addresses, job titles, and description.

**“Response to Interrogatory No. 7:** The United States objects to this Interrogatory No. 7 based on relevance as the requested information is not reasonably calculated to lead to discoverable information.”

**Discussion of Interrogatory No. 7:** First, as noted *supra*, Plaintiff's relevancy objection has been waived pursuant to FRCP 33(b)(4), in that it was not made within 30 days as required by FRCP 33(b)(3).

Nevertheless, Plaintiff's relevancy objection is misplaced. Plaintiff's complaint makes allegations that Defendant has made statements which were false or fraudulent. These allegations must be based on whatever investigations were performed by the United States and its various agents and employees. According to Plaintiff's response to Interrogatory No. 6, such investigations were performed by IRS agents Metcalfe and Rowe. Defendant is entitled to know if these are the only two persons who participated in the decision to prosecute this lawsuit or the identity of every other person who participated in the decision-making process to prosecute this action. These people are likely to possess information which is itself discoverable.

**Interrogatory No. 10:** Please list and identify all documents and other tangible evidence you are relying upon to determine IRC §6700 fraud.

**Response to Interrogatory No. 10:** The United States objects to the use of the term "fraud" as stated in this request. I.R.C. § 6700 provides for penalties if an individual makes "false or fraudulent" statements regarding a material matter. Any false or fraudulent statements made by defendants are contained in their websites, correspondences sent by defendants to the IRS, defendants' membership handbook, petitions that defendants filed on behalf of employees before the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission, and any bankruptcy petitions filed by defendants on behalf of SAPF members."

**Discussion of Interrogatory No. 10:** This answer is evasive and ultimately non-responsive, because either there is evidence of "fraud," or there is not. As

Plaintiff points out, the language of this statute refers to “false *or* fraudulent” statements; Defendant has requested “documents and other tangible evidence” *relied upon* to determine fraud. If Plaintiff has no evidence of fraud, then its response should state that fact. Deferring to the SAPF Membership Handbook, correspondences and websites, without citing any specific instance of fraudulent speech, is non-responsive. The United States is obligated to identify what it is claiming is fraudulent speech or writing. Likewise, if there is none, then Plaintiff is obligated to state that fact. The United States should be compelled to answer this interrogatory with sufficient particularity so as to enable SAPF to prepare its defense against the complaint.

**III. The work product doctrine is inapplicable to the interrogatories and document requests propounded on the United States.**

Plaintiff claims that the documents requested in Defendant SAPF’s “Interrogatories and Request for Production of Documents Propounded to Plaintiff” are protected by the work product doctrine. The work product doctrine was designed to allow free attorney client communications and protect such from disclosures. Work product is “any notes, working papers, memoranda or similar materials, prepared by an attorney in anticipation of litigation” (Black’s Law Dictionary, 6<sup>th</sup> Ed.)

The specific items for which Plaintiff asserted the work product doctrine include:

- (1) the **identity of persons** who are the intended witnesses at trial and a brief summary of the expected **testimony** of those Plaintiff intends to use as witnesses at trial (Interrogatory No. 2).
- (2) the **identity of persons** that may be called as witnesses at trial, and a brief summary of the expected **testimony** of those who may be called as a witness at trial (Interrogatory No. 3);
- (3) the **identity of all documents** that the United States intends to produce at trial (Interrogatory No. 4);
- (4) **production of documents** identified in response to Interrogatory No. 4 (Request for Production No. 1);
- (5) a **list and identification of all tangible items**, other than documents that the United States intends to use at trial (Interrogatory No. 5); and,
- (6) **copies or photographs** of items responsive to Interrogatory 5 (Request for Production 2).

None of the six categories of items requested above fit the definition of “work product” so as to invoke the doctrine.

Moreover, FRCP 12(b)(5) states:

*“When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.”*

Plaintiff failed to comply with this provision. No description of the withheld information was provided by Plaintiff that would enable Defendant to assess the applicability of Plaintiff’s claim.

All in all, the Plaintiff is attempting to improperly use the work product doctrine as a way to defeat Defendant's right to discoverable material, inconsistent with the meaning and intent of the rules governing such.

**IV. Plaintiff erroneously asserts it is premature to comply with discovery requests of Defendant SAPF.**

In response to Interrogatory No. 4, the United States asserts:

"The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pretrial order, which is due five days before the pretrial conference. As no pre-trial conference has been set, this request is premature."

This objection, and a virtually identical objection, that disclosures need not be made before a pre-trial order, is made for Interrogatory Nos. 2, 3 and 5; and for Request for Production Nos. 1 and 2. However, nothing in the local rules - nor, indeed, the Federal Rules of Civil Procedure, for that matter - substantiate this objection. The United States cites Local Rule 106.2(h), but this rule merely enumerates the contents of a Pre-Trial Order. Subparagraph *h* states:

*"2.h. A listing of each document or other exhibit, including summaries of other evidence, other than those expected to be used solely for impeachment, separately identifying those which each party expects to offer and those which each party may offer if the need arises. The listing shall indicate which exhibits the parties agree may be offered in evidence without the usual authentication. This requirement may be met by attaching an exhibit list to the pretrial order."*

This rule governs the contents of a document that, according to L.R. 106.4(a), is to be submitted to the court, presumably to apprise it of what it can expect to encounter in the trial of the case. It does not supplant Plaintiff's requirement to comply with other discovery procedures. Nor does it mean that the United States may conceal documents and evidence until the time of the preparation of said order. The United States should be ordered to respond fully to all requests for production and interrogatories, where this objection has been made.

**VI. Conclusion.**

For the foregoing reasons, the Court should enter an order compelling Plaintiffs to respond in full to the above-listed discovery requests.

Dated April 3rd, 2006.

/s/ George E. Harp

GEORGE HARP Bar number 22429

610 Marshall St. Ste., 619

Shreveport, LA 71101

(318) 424 2003

Attorney for Save-A-Patriot Fellowship

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a printed copy of the foregoing Interrogatories and request for production of documents was sent to counsel for plaintiff, THOMAS M. NEWMAN, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, and John Baptist Kotmair, Jr., P.O. Box 91,

Westminster, Maryland 21158, both by first class U. S. Mail with sufficient postage affixed this 3rd day of April, 2006.

/s/George E. Harp  
GEORGE HARP Bar number 22429  
Attorney for Save-A-Patriot  
610 Marshall St. Ste., 619  
Shreveport, LA 71101  
(318)424-2003

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA, )  
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*Plaintiff,* )  
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v. ) Civil No. WMN 05 CV 1297  
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JOHN BAPTIST KOTMAIR, JR., )  
and SAVE-A-PATRIOT FELLOWSHIP, )  
 )  
Defendants. )

**INTERROGATORIES AND REQUESTS FOR PRODUCTION  
OF DOCUMENTS PROPOUNDED TO PLAINTIFF**

TO: UNITED STATES OF AMERICA  
Through ANNE NORRIS GRAHAM  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 7238  
Washington, D.C., 20044

Pursuant to Rule 26-37 of the Federal Rules of Civil Procedure, DEFENDANT, *SAVE-A-PATRIOT FELLOWSHIP* requests *PLAINTIFF*, to answer separately and fully, in writing, under oath, each of the following interrogatories and requests for production of documents in accordance with the following definitions and instructions, and further to serve its responses and objections, and to produce any and all responsive documents, if any, to these interrogatories and requests for production within 30 days of this request.



These interrogatories and requests for production are continuing in nature. The Federal Rules of Civil Procedure require your supplementation of your initial responses to include any information learned and materials acquired after your initial response. Your supplementation must include, without limitation, the identity and location of persons having knowledge of discoverable matters.

You must seasonally amend any prior response if:

- (a) You obtain information on which you know that previous response was incorrect;
- (b) You know that a previous response to a discovery request was correct when made, but is no longer true under the circumstances; or
- (c) Your failure to amend is in substance a knowing concealment.

**DEFINITIONS:**

1. "DEFENDANT" means defendant in the instant action.
2. "Person" means an individual, partnership, firm or corporation, partnership, proprietorship, joint venture, organization, group of natural persons or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.
3. "An Agent" of any person is any (1) official, director, officer or employee thereof, or (2) any other individual or business entity that acts or purports to act for or on behalf of that person.
4. "You" or "your" means the person answer these requests, (its present and former officers, its agents) and all other persons acting on behalf of such defendant, including all past or present employees.
5. A "person having knowledge of" any given subject means any agent or any person with whom you have communicated about the subject.
6. "Document" has the same meaning as in Rule 34(a) of the Federal Rules of Civil Procedure, and includes but is not limited to the original and all drafts

of all written, printed, typed, or other graphic matter, however produced or reproduced, of any kind or description, and all copies thereof which are different from the original (whether different by interlineation, receipt stamp, notation, indication of copies sent or received, or otherwise). Included in such definition are: books, records, reports, memoranda or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, contracts, releases, studies, blueprints, canceled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, correspondence, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, and data cards, as well as any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, on which information is recorded in writing, electronically, or in sound or in any other manner, in the possession, custody, or control of defendant or known by defendant to exist.

7. If any requested written record or document was, but is no longer in your possession or subject to your control or in existence, state whether it (1) is missing or lost, (2) has been destroyed, (3) has been transferred, voluntarily or involuntarily, to others, or (4) has been otherwise disposed of, and in each of the foregoing instances, explain the circumstances surrounding and the authorization for such disposition thereof and state the date or approximate date thereof.
8. "Identify," when used in reference to a natural person means to state his/her full name, his/her present or last know address, his/her present or last known position and business affiliation, and title or position held and by whom employed at the time of each event, transaction, or occurrence hereinafter referred to. "Identify," when used in reference to any entity, means to state its name, address, the name and address of each of its agents who acted for it

with respect to the matters involved, and its relationship, if any, with defendant or its agents. "Identify," when used in reference to a document, means to state the date and author, type of document (e.g., letter, memorandum, telegram, chart, etc.), or some other means of identifying it, its location and the name and address of its custodian. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made. "Identify," when used in reference to an oral conversation, means to state the substance, date, place, persons involved and/or present, type (e.g., telephone face-to-face, etc.) or some other means of identifying it, and if any written record of said oral conversations or statement exists.

9. "Date" means the exact day, month and year, if ascertainable, or, if not, the best approximation (including relationship to other events).
10. "Communication" means any transfer of information by written, oral, electronic, or any other means.
11. "Relate(s) to" or "that reflect, refer, or relate to" means to refer to, reflect, pertain to or in any manner be connected or involved with the matter discussed.
12. The singular shall include the plural and vice versa, the masculine shall include the feminine and neuter, and vice versa, and the disjunctive shall include the conjunctive, all as the context may require.

**INSTRUCTIONS:**

1. Answer each interrogatory and request for production fully, providing all information actually and constructively available to you or to anyone acting on your behalf, including, but not limited to, employees, agents, representatives, attorneys, accountants, and any other person or firm that any of them know to possess or to have access to the requested information.

2. If you fail to answer any interrogatory or request for production in accordance with instruction no. 1, above, specifically state the reason(s) for your failure.
3. If you object to any interrogatory or request for production state fully the grounds of the objection and the legal authority upon which you will rely in response to a motion to compel.
4. Identify, for each interrogatory and request for production the person who provided any portion of your answer or response.
5. These interrogatories and requests for production do not call for the disclosure of information or production of documents falling within the ambit of the attorney-client privilege; however, for each instance that you invoke the attorney-client privilege or any other privilege, identify, in the case of writings: general subject-matter of the writing, its date and all persons who have seen it; or, in the case of other communications: the general subject matter of the communication, its date and all persons aware of its contents.

**INTERROGATORY NO. 1:**

Please identify each person participating or assisting in the formulation of the answers to these interrogatories.

**ANSWER:**

**INTERROGATORY NO. 2:**

Please identify persons you intend to use as a witnesses at trial and a brief summary of expected testimony from each.

**ANSWER:**

**INTERROGATORY NO. 3:**

Please identify persons you may call as witnesses at trial and a brief summary of expected testimony or possible testimony from each.

ANSWER:

INTERROGATORY NO. 4:

Please list and identify all documents you intend to introduce at trial.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Please provide copies of all of the above documents listed in Answer to Interrogatory No. 4.

INTERROGATORY NO. 5:

Please list and identify all tangible evidence, other than documents, that you intend to introduce at trial.

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

Please provide copies or photographs of all of the above tangible evidence listed in Answer to Interrogatory No. 5.

INTERROGATORY NO. 6:

Please identify all persons who investigated defendants, including their names, addresses, job titles and descriptions.

ANSWER:

**INTERROGATORY NO. 7:**

Please identify all persons who participated in the decision making process to prosecute this lawsuit, including in the identification, their names, addresses, job titles, and description.

**ANSWER:**

**INTERROGATORY NO. 8:**

Please list all documents reviewed by or relied upon by persons in No. 6 above who investigated or conducted an investigation in order to prosecute this lawsuit.

**ANSWER:**

**INTERROGATORY NO. 9:**

Please list and identify all documents reviewed by or relied upon by persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

**ANSWER:**

**INTERROGATORY NO. 10:**

Please list and identify all documents and other tangible evidence you are relying upon to determine IRC §6700 fraud.

**ANSWER:**

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:**

Please provides copies of all of the documents listed in Answer to Interrogatory No. 9 above.

Dated January 15, 2006.

GEORGE E. HARP, Bar #22429

610 Marshall St., Ste. 619  
Shreveport, Louisiana 71101  
Phone (318) 424 2003  
Fax (318) 424 2060

Attorney for Save-A-Patriot Fellowship

CERTIFICATE

The undersigned hereby certifies that a printed copy of the foregoing Interrogatories and request for production of documents was sent to counsel for plaintiff, ANNE NORRIS GRAHAM, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238 , Washington, D.C., 20044, by first class U. S. Mail with sufficient postage affixed this \_\_\_\_\_ day of January, 2006.

Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

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

**UNITED STATES' RESPONSE TO DEFENDANT SAVE-A-PATRIOT'S  
FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

**Interrogatory No. 1.** Please identify each person participating or assisting in the formulation of the answers to these interrogatories.

**Response to Interrogatory No. 1.**

Thomas M. Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Ben Franklin Station, Washington, D.C. 20044.

**Interrogatory No. 2.** Please identify persons you intend to use as a witness at trial and a brief summary of their testimony.

**Response to Interrogatory No. 2.** The United States objects that Interrogatory No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.



**Interrogatory No. 3.** Please identify persons you may call as a witness at trial and a brief summary of their expected testimony or possible testimony from each.

**Response to Interrogatory No. 3.** The United States objects that Interrogatory No. 3 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial witnesses. The United States' Rule 26(a)(1) Initial Disclosures contains a list of individuals who may have information that the United States may rely upon to support its claims, and includes a summary of the subject matter of their knowledge.

**Interrogatory No. 4.** Please identify all documents you intend to introduce at trial.

**Response to Interrogatory No. 4.** The United States objects that Interrogatory No. 4 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pre-trial order, which is due five days before the pre-trial conference. As no pre-trial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.

**Request for Production No. 1.** Please provide a copy of any items referred to in your response to interrogatory No. 4.

**Response to Request for Production No. 1.** The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that

Request for Production No. 1 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).

**Interrogatory No. 5.** Please list and identify all tangible evidence, other than documents, that you intend to introduce at trial.

**Response to Interrogatory No. 5.** The United States objects that Interrogatory No. 5 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order). The United States has not yet identified its trial Exhibits. Under Local Rule 106.2(h) a list of exhibits to be introduced at trial must be disclosed in the pre-trial order, which is due five days before the pre-trial conference. As no pre-trial conference has been set, this request is premature. Notwithstanding this objection, the United States' Rule 26(a)(1) Initial Disclosures contains a list of exhibits that the United States may rely upon to support its claims.

**Request for Production No. 2.** Please provide copies or photographs of all of the above tangible evidence listed in Answer to Interrogatory No. 5.

**Response to Request for Production No. 2.** The United States previously supplied Defendants with copies of the items referred to in its initial disclosure on November 14, 2005. To the extent the request is for materials in preparation for trial, the United States objects that Request for Production No. 2 is premature and that the requested information is protected work-product (until disclosure is required under the pre-trial order).

**Interrogatory No. 6.** Please identify all persons who investigated defendants, including their names, addresses, job titles and descriptions.

**Response to Interrogatory No. 6.** The United States objects to this Interrogatory No. 6 as overly broad and unduly burdensome inasmuch as the request is not limited to the

investigation of this case. Notwithstanding this objection, the individuals who participated in the investigation of this case are as follows:

Joan Rowe, Revenue Agent, 31 Hopkins Plaza, Room 1010, Baltimore, MD 21201. Job

**Description:**

Conducts independent examinations and related investigations of the most complex income tax returns filed by individuals, small businesses, organizations and other entities. May include those with diversified activities, multiple partners and national scope and operations. Assignments require an integrated analysis of intricate and complex accounting systems, business activities and financing.

Confers with taxpayer or their representatives to explain the accounting and other issues involved and the applicability of pertinent tax laws and regulations and explains proposed adjustments. Considers the collectibility of potential tax deficiencies at all stages of the examination. Prepares workpapers and reports documenting findings and conclusions.

Gary Metcalf, Revenue Agent (retired). Mr. Metcalf resides in Westminster, Maryland.

Job Description: same as stated above.

**Interrogatory No. 7.** Please identify all persons who participated in the decision making process to prosecute this lawsuit, including in the identification, their names, addresses, job titles, and description.

**Response to Request for Production No. 7.** The United States objects to Interrogatory No. 7 based on relevance as the requested information is not reasonably calculated to lead to discoverable information.

**Interrogatory No. 8.** Please list all documents reviewed by or relied upon by the persons in No. 6 above who investigated or conducted an investigation in order to prosecute this lawsuit.

**Response to Interrogatory No. 8.** The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

**Interrogatory No. 9.** Please list all documents reviewed by or relied upon by the persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

**Response to Interrogatory No. 9.** The information contained in defendants' websites, correspondence sent by defendants to the IRS, and defendants' membership handbook.

**Interrogatory No. 10.** Please list and identify all documents and other tangible evidence you are relying upon to determine I.R.C. § 6700 fraud.

**Response to Interrogatory No. 10.** The United States objects to the use of the term "fraud" as stated in this request. I.R.C. § 6700 provides for penalties if an individual makes "false or fraudulent" statements regarding a material matter. Any false or fraudulent statements made by defendants are contained in their websites, correspondence sent by defendants to the IRS, defendants' membership handbook, petitions that defendants filed on behalf of employees before the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission, and any bankruptcy petitions filed by defendants on behalf of SAPF members.

**Request for Production No. 3.** Please provide a copy of any items referred to in your response to Interrogatory No. 9.

**Response to Request for Production No. 3.** The United States provided all documentation responsive to Interrogatory No. 9, with the exception of bankruptcy petitions and

petitions to the Executive Office for Immigration Review and the U.S. Equal Employment Opportunity Commission prepared by defendants, which are in defendants' possession.

ROD J. ROSENSTEIN  
United States Attorney



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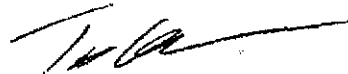
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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' RESPONSE TO DEFENDANT SAPF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 28<sup>th</sup> day of February, 2006.

John Baptist Kotmair, Jr.  
P.O. Box 91  
Westminster, MD 21158

George Harp, Esq.  
610 Marshall St., Ste. 619  
Shreveport, LA 71101



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THOMAS M. NEWMAN  
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U.S. Department of Justice  
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Fax: (202) 514-6770  
Thomas.m.newman@usdoj.gov

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. WMN05CV1297
	)	
JOHN BAPTIST KOTMAIR, JR.,	)	
and SAVE-A-PATRIOT FELLOWSHIP,	)	
	)	
Defendants.	)	

**NOTICE OF SERVICE OF DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S  
MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES AND  
MEMORANDUM IN SUPPORT OF  
DEFENDANT SAVE-A-PATRIOT'S MOTION TO COMPEL  
PLAINTIFF'S DISCOVERY RESPONSES**

Pursuant to Local Rule 104.8.a., George Harp, attorney for Defendant Save-A-Patriot Fellowship, hereby certifies that on April 3, 2006, Defendant Save-A-Patriot Fellowship's Motion to Compel Plaintiff's Discovery Responses and Memorandum in Support of Defendant Save-A-Patriot's Motion to Compel Plaintiff's Discovery Responses, were served on Plaintiff by United States mail, postage prepaid. Said Defendant Save-A-Patriot's Motion to Compel Plaintiff's Discovery Responses and Memorandum in Support of Save-A-Patriot's Motion to Compel Plaintiff's Discovery Responses are attached to this notice for electronic filing with the United States District Court for the District of Maryland.

Dated this 3rd day of April, 2006.

/s/ George Harp  
GEORGE HARP Bar number 22429

Attorney for Save-A-Patriot  
610 Marshall St. Ste., 619  
Shreveport, LA 71101  
(318)424-2003

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing NOTICE OF SERVICE OF DEFENDANT SAVE-A-PATRIOT FELLOWSHIP'S MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES AND MEMORANDUM IN SUPPORT OF DEFENDANT SAVE-A-PATRIOT'S MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES have been made upon the following by depositing a copy in the United States mail, postage prepaid, this 3rd day of April, 2006.

JOHN B. KOTMAIR, JR  
Defendant  
Pro se  
P. O. Box 91  
Westminster, MD 21158

THOMAS M. NEWMAN  
Attorney for United States of America  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P. O. Box 7238  
Washington, D.C. 20044

/s/ George Harp  
GEORGE HARP Bar number 22429  
Attorney for Save-A-Patriot Fellowship  
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