IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

THE UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.
	)	
JOHN E. ROGERS, SUGARLOAF FUND LLC,	)	
and JETSTREAM BUSINESS LIMITED	)	
	)	
Defendants.	)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff, United States of America, for its complaint against Defendants John E. Rogers, Sugarloaf Fund LLC and Jetstream Business Limited, states as follows:

Nature of Action

1. John E. Rogers ("Rogers") conceives of, creates and promotes abusive tax avoidance schemes that are marketed throughout the United States. Rogers is a Harvard educated lawyer and self-professed tax expert. Rogers' illicit tax schemes include the Distressed Asset Debt ("DAD") tax shelter and the Distressed Asset Trust ("DAT") tax shelter. Both the DAD and the DAT schemes falsely claim to enable Rogers' U.S. customers to use millions of dollars of foreign losses, obtained from foreign entities that pay no U.S. tax, to offset their unrelated U.S. income, even though his customers incur no actual losses in connection with the debt involved in the schemes. Rogers' DAD and DAT schemes have generated over $370 million of fictitious tax deductions for his customers.

2. The United States brings this complaint pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 of the Internal Revenue Code ("I.R.C.") to enjoin John E. Rogers, Sugarloaf Fund LLC and

Jetstream Business Limited, and all those in active concert or participation with them, from directly or indirectly:

a) Organizing, promoting, or selling (directly or indirectly) the DAT tax schemes described in this complaint, the DAD tax schemes described in this complaint, the I.R.C. § 743(f) distressed debt scheme described in this complaint, any substantially similar plans or arrangements, or any other business or tax services that:

- use, involve or relate to distressed debt, distressed receivables or other distressed assets;
- attempt to shift losses from a foreign tax-indifferent party to or for the benefit of a U.S. taxpayer; and/or
- attempt to shift purported losses among entities claiming to be trusts, corporations or entities taxed as partnerships for the benefit of U.S. taxpayers who did not incur the losses;

b) Organizing, promoting, or selling (or helping others to organize, promote, or sell) any other tax shelter, plan, or arrangement, that violates the internal revenue laws or improperly incites customers to evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;

c) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(A), including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that Rogers knows or has reason to know is false or fraudulent as to any material matter;

d) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(B), including making statements as to the value of property or services when the value stated exceeds 200% of the amount determined to be correct and is directly related to the amount of a deduction or credit;

e) Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, assisting, procuring, or advising with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that Rogers knows or has reason to know will be used as to a material matter arising under federal tax law, and will result in the material understatement of the liability for the tax of another person;

f) Engaging in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares a return or claim for refund that contains an unreasonable position and the return preparer knew (or reasonably should have known) of the position;

g) Engaging in conduct subject to penalty under I.R.C. § 6695(c), which penalizes a tax return preparer for failing to furnish an identifying number for a return that he prepared;

h) Engaging in conduct subject to penalty under I.R.C. § 6707, which penalizes a material advisor for: (1) failing to file a Form 8918, Material Advisor Disclosure Statement; (2) failing to obtain a Reportable Transaction Number; and (3) failing to furnish the Reportable Transaction Number to his copromoters and tax shelter customers;

i) Engaging in conduct designed or intended to obstruct or delay an Internal Revenue Service ("IRS") investigation or audit;

j) Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws; and

k) Engaging in conduct subject to penalty under any provision of the Internal Revenue Code.

Jurisdiction and Venue

3. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402(a) 7407(a), and 7408(a).

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to this action took place in this judicial district, because the defendant John E. Rogers resided in this judicial district at the time this action was filed, and because Rogers managed and operated the defendants Sugarloaf Fund LLC and Jetstream Business Limited from within this judicial district at the time this action was filed.

Authorization

5. This action for injunctive relief is brought at the request of the Chief Counsel of the IRS, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to 26 U.S.C. §§ 7401, 7402, 7407 and 7408.

Introduction

6. Since at least 2003, Rogers has devised and promoted multiple illegal tax schemes that have enabled U.S. taxpayers to improperly claim over $370 million dollars of foreign losses to offset unrelated U.S. income, despite the fact that those taxpayers incur no actual economic losses in connection with the various schemes.

7. Rogers created and promotes, for instance, the Distressed Asset Trust ("DAT") tax scheme. In his DAT shelter, a foreign entity that is not subject to United States taxes (typically a Brazilian retail company) in substance sells high-basis, low-value debt, such as aged unpaid checks ("distressed debt"), to one of Rogers' companies such as Sugarloaf Fund LLC ("Sugarloaf"), a U.S. entity created and controlled by Rogers. In exchange, Sugarloaf pays the foreign entity cash representing a fractional percentage (1% - 2%) of the face value of the debt. DAT customers are falsely told that the Brazilian companies are real partners in Sugarloaf, and that the Brazilian companies made genuine partnership contributions to Sugarloaf, rather than sales of debt to Sugarloaf.

8. Sugarloaf later takes a portion of the distressed debt and contributes it to multiple supposed "trusts," also created and controlled by Rogers. Rogers sells the "trusts" to tax shelter

customers for a price pegged to the tax loss generated by the shelter.[1]

9. The DAT shelter customers are told that they can deduct most of the face value of the foreign distressed debt allocated to their trust as "losses" on their U.S. tax returns to offset other unrelated U.S. income and reduce their taxable income. Those statements also are false or fraudulent because the supposed losses were never preserved and passed on to the tax shelter customers.

10. The DAT shelters are abusive tax avoidance schemes that violate the longstanding judicial tax doctrines ("judicial doctrines") of: (1) economic substance; (2) substance over form; (3) step transaction; and (4) sham partnership. *See e.g. Coltec Industries, Inc. v. United States*, 454 F.3d 1340 (Fed. Cir. 2006) (noting that "[o]ver the last seventy years, the economic substance doctrine has required disregarding, for tax purposes, transactions that comply with the literal terms of the tax code but lack economic reality."). These doctrines were and are well known to Rogers.

11. The DAT shelter also violates various technical requirements of the I.R.C., including, I.R.C. §§ 166, 704(c), 707, 734, 743, and 1001, which – given Rogers' education, sophistication and supposed area of expertise – also are well known to him.

12. Rogers' DAT shelter is not his first foray into this illicit area. Indeed, it is not even his first "distressed debt" tax shelter. Rather, the DAT scheme constitutes a substantively meaningless modification of another, earlier illegal shelter that Rogers promoted from approximately 2003 through at least 2004 called the Distressed Asset Debt ("DAD") transaction.

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[1] References in this Complaint to terms such as "trust," "partnership," "contribution," "losses," and "built-in-losses" (with or without quotation marks) in no way connote acceptance of the legitimacy for federal tax purposes of any of the entities, transactions or portions of transactions discussed herein.

13. Rogers' DAD scheme likewise uses high-basis, low-value distressed debt effectively purchased from foreign entities that are not subject to United States taxation. In fact, his DAD scheme used the same distressed debt that Rogers uses in his DAT shelter – *i.e.*, the *identical* portfolios of Brazilian distressed debt purchased from the same Brazilian retailers. The primary difference between the two schemes is that in the DAD shelter the distressed debt is contributed to a series of U.S. entities claiming to be taxed as partnerships, rather than trusts.

14. Just like the DAT shelter, Rogers' DAD shelter also violates the well-known judicial doctrines of: (1) economic substance; (2) substance over form; (3) step transaction; and (4) sham partnership. *See e.g., Southgate Master Fund v. United States*, 651 F. Supp. 2d 596, 598, & 657-660 (N.D. Tex. 2009) (holding transaction involving DAD shelter that used foreign distressed receivables and appeared to fall within the literal terms of the statute nonetheless violated the economic substance, substance over form, and sham partnership doctrines).

15. The DAD shelter similarly violates various technical requirements of the Internal Revenue Code, including I.R.C. §§ 166, 704(c), 707, 734, 743, and 1001.

16. Unlike his DAT shelter, however, Rogers was not the only promoter of DAD. *See e.g., Southgate*, 651 F. Supp. 2d at 598 (ruling on DAD scheme involving Chinese distressed receivables). Even though the DAD class of shelters violated the judicial doctrines from their inception, they were widely promoted. *See e.g., Southgate*, 651 F. Supp. 2d at 652-53. Given their prevalence, Congress specifically outlawed all DAD schemes with the passage of the American Jobs Creation Act ("AJCA") in October 2004. *See* American Jobs Creation Act of 2004, P.L. 108-357 (amending, among other provisions, I.R.C. §§ 704(c), 734 and 743.

17. Rogers not only knew about the AJCA at the time of its enactment, he closely monitored the legislation prior to its passage. In direct contravention of the Congressional mandate, Rogers continued to promote his DAD shelter even after the statute took effect. Rogers also attempted to circumvent the law through the creation of his DAT shelter.

18. Upon information and belief, Rogers has once again made substantively minor modifications to his distressed asset shelter in an attempt to further circumvent the law. Rogers is currently promoting his distressed asset shelter in yet another form, claiming as justification for his continued promotion of the scheme still another technical provision of the code, I.R.C. §743(f).

19. Just like Rogers' DAT and DAD shelters, upon information and belief his new I.R.C. § 743(f) distressed debt shelter violates the judicial doctrines of: (1) economic substance; (2) substance over form; (3) step transaction; and (4) sham partnership, as well as various technical requirements of the Internal Revenue Code.

20. Upon information and belief, some of Rogers' customers were themselves tax shelter promoters, who used the purported losses from Rogers' DAT and I.R.C. §743(f) schemes as part of their abusive "intermediary transactions." Intermediary transactions are tax shelters that the IRS identified, along with substantially similar transactions, as abusive "listed" transactions pursuant to Notice 2001-16, 2001-1 C.B. 730, and Notice 2008-111, 2008-2 C.B. 1299.

The Defendants

a. Rogers

21. John E. Rogers resides in Kenilworth, Illinois. He is a practicing attorney and a certified public accountant. Rogers received his law degree from Harvard University and has an M.B.A. in international finance from the University of Chicago. Rogers currently practices law through Rogers & Associates, 55 West Monroe Street, Suite 2400, Chicago, Illinois 60603.

22. From 1970 through 1991, Rogers was a senior partner in the accounting firm of Arthur Andersen, where he purportedly was a tax advisor to leading U.S. and foreign-based multinationals in tax controversies, acquisitions, divestitures, financings and compensation matters. From 1992 through 1997, Rogers served as Director of Taxes and Assistant Treasurer of FMC Corporation. From 1998 to early 2003, Rogers was a partner in the law offices of Altheimer & Gray. When Altheimer & Gray went bankrupt in July of 2003, Rogers joined the Chicago office of the law firm of Seyfarth Shaw, LLP as a tax lawyer and non-equity partner. Rogers became an equity partner the following year and stayed with Seyfarth until his forced resignation in May 2008.

23. Rogers' current firm, Rogers & Associates, consists of Rogers and one associate. On his firm's website, Rogers holds himself out as practicing in areas of law pertaining to (among others) the "development of global tax strategies" and "a range of foreign tax credit and deferral provisions relevant to both U.S. and foreign multinationals."

24. Based on his education and experience, Rogers knew or had reason to know that his DAD, DAT, and I.R.C. § 743(f) distressed debt tax shelters were abusive and illegal when he created them.

b. Sugarloaf

25. At the center of Rogers' tax shelter business is Sugarloaf Fund, LLC. *See* www.sugarloaffund.com (accessed Oct. 5, 2010). Rogers formed Sugarloaf as a Delaware LLC in 2003 and activated it in 2004. Rogers chose the name "Sugarloaf" because he believed it was something that had worldwide recognition as a name associated with Brazil.

26. According to Rogers, Sugarloaf: (1) provides stewardship over the DAD and DAT shelters; (2) supplies DAD and DAT transactional documents (created by Rogers); (3) acquires portfolios of foreign distressed debt from foreign owners in connection with the DAD and DAT tax schemes; (4) holds the foreign distressed debt until it is assigned to customers' entities; and (5) monitors collection activities. In addition, recent promotional materials indicate that Sugarloaf is involved in Rogers' I.R.C. § 743(f) scheme.

27. Rogers is the sole director and manager of Sugarloaf. He exercises control over all aspects of Sugarloaf's operations, has signatory authority over its bank accounts, is the company's tax matters partner, and serves as the company's lawyer

c. Jetstream

28. Jetstream Business Limited ("Jetstream") is a British Virgin Islands limited liability company that Rogers formed in approximately 2002. Rogers personally traveled to the British Virgin Islands in connection with Jetstream's formation.

29. Rogers is the sole director of Jetstream and controls Jetstream. Anything that Jetstream does, it does through Rogers as its director. Rogers also claims that Jetstream, as the managing member Sugarloaf, provides services to Sugarloaf.

30. Jetstream holds a 1% membership interest in and is the managing member of Sugarloaf. Jetstream also holds a 1% membership interest in and is the managing member of Warwick Trading LLC. Jetstream is wholly-owned by Portfolio Properties, Inc., another of Rogers' companies.

31. Rogers reorganized Jetstream in the State of Delaware in late 2008 or early 2009. Rogers claims he did so because of litigation in the Tax Court involving Jetstream and his DAD shelter and due to concerns that the Tax Court had about his ability as the sole director to represent a British Virgin Islands company that had no officers. Rogers, however, did nothing in the British Virgin Islands to effectuate the conversion.

Additional Players and Companies Used to Perpetrate Rogers' Tax Schemes

32. Rogers employs hundreds of entities, including limited liability companies ("LLCs"), partnerships and trusts, in promotion of his illegal tax shelters.

33. Rogers forms separate entities for each of his tax shelter customers. More than 100 customers have participated in Rogers' DAD and DAT tax shelters and he has created no fewer than 400 customer-specific partnerships and trusts in connection with his schemes. Rogers also creates, uses and contracts with dozens of foreign and domestic companies separate and apart from his customer-specific entities in furtherance of his DAD and DAT shelters.

a. Warwick

34. Warwick Trading LLC ("Warwick") is an Illinois limited liability company Rogers formed on December 17, 2001. Rogers formed Warwick as a "shelf company" that he could activate at a later date. Rogers selected the name "Warwick" because he used to live on Warwick Road in Kenilworth, Illinois.

35. Rogers describes Warwick as a pilot program for Sugarloaf. Like Sugarloaf, Warwick's purported activities included acquiring a portfolio of foreign distressed debt (from Brazilian retailer Arapua), in connection with the DAD tax scheme, holding that distressed debt, and contracting with DAD customers.

36. Rogers claims the Warwick transactions were isolated to 2003 and early 2004, and were later rolled into Sugarloaf in approximately 2006. Warwick is still in existence and Rogers is its sole director.

37. Upon information and belief, in approximately 2006, Warwick played some role in DAT transactions that were used by other tax shelter promoters in conjunction with abusive "intermediary transactions."

b. PPI

38. Portfolio Properties, Inc. ("PPI") is a U.S. corporation formed and controlled by Rogers. PPI is the sole owner of Rogers' company Jetstream. Until 2009, Rogers was the sole shareholder of PPI. In approximately 2009, Rogers transferred ownership of PPI to his wife for no consideration.

39. Rogers is the sole Director of PPI. One of PPI's supposed activities is providing services to Sugarloaf. PPI has entered into various foreign and domestic transactions in connection with Rogers' DAD and DAT tax schemes. Rogers claims that some of the contracts PPI entered into should have been executed by Sugarloaf, not PPI.

c. Other "Sugarloaf" Entities

40. *Sugarloaf Investimentos* is a Brazilian company formed at the direction of Rogers and co-owned by Sugarloaf. Rogers claims the company is a joint venture between himself and

Renato Mazzucchelli. The supposed purpose of Sugarloaf Investimentos is to serve as a nominee of Sugarloaf, since American companies may not directly conduct business in Brazil. Rogers exercises signatory authority on behalf of Sugarloaf Investimentos.

41. *Sugarloaf International, LLC* is a company formed by Rogers in approximately 2008. Rogers claims Sugarloaf International is a passive entity managed by Sugarloaf. Upon information and belief, Sugarloaf International is controlled by Rogers and serves some role in Rogers' I.R.C. § 743(f) distressed debt shelter.

42. *Sugarloaf Limited* is a British Virgin Islands company. Marc Joory, a Swiss national, is an authorized signatory of the company. Upon information and belief, Sugarloaf Limited was formed and/or is controlled by Rogers and serves some role in the DAD and/or DAT schemes.

43. *Sugarloaf Institutional Fund* is, upon information and belief, a company formed and/or controlled by Rogers.

44. *Sugarloaf Global* is, upon information and belief, a company formed and/or controlled by Rogers.

45. *Sugarloaf Emerging Markets Fund LLC* purportedly is a private investment company that invests primarily in equity securities and fixed income instruments traded in Brazilian over-the-counter markets or listed on Brazilian national exchanges. According to Rogers, the company is owned by Renato Mazzucchelli. Rogers claims to have no personal knowledge of the activities of Sugarloaf Emerging Markets. Yet Rogers used the word processing department of his law firm, Seyfarth Shaw, to type up Sugarloaf Emerging Markets transactional documents, supposedly on behalf of Mazzucchelli.

46. *Sugarloaf Overseas* is a Swiss company involved in the DAD and DAT shelters. Marc Joory, a Swiss national, serves as a director of Sugarloaf Overseas. Rogers claims to have no personal knowledge of the activities of Sugarloaf Overseas. Yet Joory and Rogers signed an agency agreement between Sugarloaf and Sugarloaf Overseas on July 1, 2005. And Rogers wired at least $1 million dollars to Sugarloaf Overseas in connection with his DAT shelter in 2006.

d. Multicred

47. *Multicred Investimentos Limitada* ("Multicred") is a Brazilian entity ostensibly owned by Renato Mazzucchelli and formed in July 2003. Multicred was formed after Rogers met at least twice with Mazzucchelli and Jennifer Dowek (first in New York, NY and then in Brazil) in connection with Rogers' DAD shelter. Multicred's only client in 2003 was Rogers' company Warwick.

48. Multicred's purported role included sourcing and servicing the Brazilian distressed debt used in Rogers' DAD and DAT tax schemes. Rogers claims Multicred was his and/or Sugarloaf's agent. Mazzucchelli and Dowek purportedly ran Multicred and thus they also supposedly acted as Rogers' and/or Sugarloaf's agents. Rogers hired Multicred in 2003 and purportedly fired it in 2007 or 2008.

49. Rogers alleges that the principals of Multicred wanted him to be a partner in Multicred at the time of its formation. He claims he did not partner with them because it would have been improper to do so, since he was going to serve as the lawyer for the enterprise. Notwithstanding, Rogers partnered with the principals of Multicred in two other Brazilian

entities involved in the DAD and DAT schemes: Sugarloaf Investimentos and Rio Iguacu. Rogers also later partnered with the principals of Multicred in Sugarloaf itself.

50. Rogers exercised signatory authority on behalf Multicred. He claims this authority is not reflected in any documents but was given to him over the telephone.

51. *Multicred Investments Ltd* ("Multicred BVI") is a British Virgin Islands company ostensibly owned by Renato Mazzucchelli and Jennifer Dowek. Marc Joory, a Swiss national, is an authorized signatory of the company. Rogers claims to have no personal knowledge of the activities or formation of Multicred BVI. Yet Rogers, on behalf of Warwick, entered into a Loan Management and Servicing Agreement with Multicred BVI on May 12, 2003.

e. Additional Non-customer Entities

52. Additional foreign and domestic entities that Rogers formed, controlled and/or transacted with in connection with the DAD or DAT shelters include: Rio Iguacu (Brazilian joint venture between Rogers and Mazzucchelli, formed at the direction of Rogers); Ridge Trading (formed and managed by Rogers); Teviot Investment Limited (Brazilian entity allegedly owned by Mazzucchelli); Itapeva Planejamento Fincinciro (Brazilian entity allegedly owned by Mazzucchelli); Portfolio Recovery Associates Limitada (Brazilian entity allegedly owned by Dowek); Barnard; Palladium Capital Corporation; Rainbow Holdings; FMC; Warner Fund; West End Fund; Acquisition Strategies International; Global Asset Fund; Global Asset Recovery; and others.

f. Customer-Specific Entities

53. In addition to the foregoing entities, Rogers forms multiple customer-specific entities for each of his tax shelter customers. Upon information and belief, Rogers formed no

fewer than 400 partnerships and trusts for his more than 100 customers in connection with the DAD and DAT tax shelters. Rogers formed many of these companies in advance as inactive "shelf companies." He did this so that, in his words, they would be "old and cold." As new customers joined the scheme, Rogers would pull a company off the shelf and redo its bylaws to conform to the particulars of the transaction for the new customer.

54. Following formation, Rogers and/or a company controlled by him served as the manager of virtually all of the 400 customer-specific entities involved in the DAD and DAT schemes. Rogers' company Jetstream acted as the managing member and Tax Matters Partner for the DAD entities, and Rogers personally acted as the Trustee for the DAT entities. Rogers signed the tax returns for most of the hundreds of entities involved in the DAD and DAT schemes.

g. Foreign Owners of Foreign Distressed Debt

55. Sugarloaf purchased portfolios of foreign distressed debt with substantial built-in losses from three Brazilian companies in 2003 and 2004: Lojas Arapua ("Arapua"), Ponte De Sucra ("PDA"), and Globex.

56. Arapua is a large Brazilian consumer electronics retailer, similar to Best Buy or the Circuit City. Arapua sold distressed debt to Sugarloaf in 2004, and to Warwick and Ridge Trading in 2003. Arapua was in bankruptcy protection from approximately 1998 through 2003. The Arapua distressed debt portfolio consisted primarily of aged bounced checks with relatively small balances.

57. PDA (also known as "CBD") is a large Brazilian discount retailer, similar to Wal-Mart. PDA sold Sugarloaf distressed debt in 2004. Like the Arapua debt, the PDA distressed debt portfolio consisted primarily of aged bounced checks in relatively small denominations.

58. Globex operates the "Ponte Frio" chain of Brazilian department stores, which sell consumer electronics and furniture. Globex sold Sugarloaf distressed debt in 2004. The Globex distressed debt portfolio consisted primarily of consumer contracts.

59. As industry rules of thumb: (1) the older the distressed debt is, the more difficult it is to collect; and (2) it is far more difficult to make money with smaller, rather than larger balance distressed debt.

60. Rogers knew that the Arapua distressed debt portfolio, for example, consisted primarily of aged unpaid checks with relatively small balances and that this negatively affected its value. Notwithstanding, Rogers failed to obtain an appraisal of the Arapua portfolio prior to its acquisition. Prior to acquisition Rogers also failed to determine other basic characteristics that materially affect value, such as verifying the number of times the debt had been previously "worked" by other collection agencies – another factor that diminishes value. Although Rogers claims that Arapua's draft financial statements gave him the sense that the portfolio had not been serviced by another collection agency, he claims he has since "lost" those documents. Arapua's final financial statements suggest that the distressed debt Rogers acquired had been previously contributed to another collection company.

61. Sugarloaf used the foreign distressed debt purchased in 2003 and 2004 from Arapua, PDA and Globex in the DAD and DAT schemes. No other distressed debt was acquired and used in connection with Rogers' DAD and DAT schemes promoted in the U.S.

h. Copromoters

62. Although Rogers is the mastermind behind the DAT scheme and his version of the DAD shelter, he works with a number of sales people ("copromoters") who directly market his schemes to customers. The three principal copromoters Rogers worked with in the U.S. in marketing his DAD and DAT shelters are Michael Hartigan (of Boston, MA), Thomas (aka "TJ") Agresti (of Denver, CO), and Jonathan Greer (of Baton Rouge, LA).

The DAD Tax Shelter

63. In early 2003, Rogers conceived of and created his first tax shelter using foreign distressed debt. Rogers' Distressed Asset Debt abusive tax scheme uses low-value, high-basis, distressed debt from Brazil with substantial "built-in losses." Rogers' DAD scheme purports to shift those supposed built-in losses from the foreign owners of the distressed debt to U.S. taxpayers who do not otherwise incur an economic loss in connection with the transaction, with the goal of the U.S. taxpayers improperly deducting those losses and reducing their taxable income in violation of U.S. law.

64. Rogers drafted all of the core transactional documents used in his DAD scheme. Rogers used essentially the same core transactional documents in each of his DAD transactions.

Stage One

65. At the commencement of the DAD scheme, a foreign entity that is not subject to United States taxation (such as Brazilian retailer Arapua) "contributes" distressed foreign debt with substantial built-in losses (such as aged unpaid checks) to a Rogers-controlled partnership. Rogers calls this partnership a "Master LLC." Sugarloaf served as Rogers' primary Master LLC for both the DAD and DAT transactions. Rogers initially used Warwick as the Master LLC in a

"pilot" run of the DAD scheme, but claims those transactions were "rolled up" into Sugarloaf in approximately 2006.

66. According to Rogers, the Brazilian entity contributes the high-basis, low-value distressed debt to Sugarloaf in exchange for an ownership interest in the Master LLC. Arapua, PDA and Globex all made such contributions. Rogers drafted the purported contribution agreements for those transactions.

67. Arapua essentially made two "contributions" to the scheme, first in May 2003 (to Rogers' managed Master LLC company Warwick; notably, a portion of this first contribution was later carved off and transferred to Ridge Trading), and second on July 1, 2004 (to Sugarloaf). Globex made one contribution of distressed debt on July 31, 2004 (to Sugarloaf), and PDA made one on October 1, 2004 (to Sugarloaf)

68. Following Arapua's July 1, 2004 contribution, it purportedly held a 99% interest in Sugarloaf. Following Globex's July 31, 2004, contribution, it too purportedly held a 99% interest in Sugarloaf. Rogers knows it is impossible for two genuine partners to each have 99% interests in the same venture.

69. Rogers claims the Master LLC keeps the same basis in the distressed debt that the Brazilian retailer had, and that the substantial built-in losses are preserved and later may be transferred to and used by U.S. taxpayers to offset unrelated U.S. income, because: (1) the Brazilian entities were true partners; (2) the transaction is not a sale of the distressed debt, but involves genuine partnership contributions; and (3) the partnership does not make an election under I.R.C. §754.

70. In truth, however, the substantial foreign built-in losses are not preserved at Stage One of the scheme for the following principal reasons:

71. First, in violation of the "sham partnership" doctrine, none of the Brazilian entities ever truly intended to become genuine partners. None acted in a manner consistent with actual partners, none had an active role in the business, none intended to share profits or losses, and all were redeemed out of the transaction for cash within a relatively short period of time or were told they would be redeemed out for a sum certain.

72. Arapua, for instance, purportedly contributed distressed debt with a face value of 103,864,188 Brazilian Reais ($R) to Warwick in May 2003, in exchange for a 99% interest in Warwick. Rogers drafted the "contribution agreement" and claims it was "negotiated" by Arapua but does not remember who negotiated on Arapua's behalf. Rogers also claims that Arapua – at one time Brazil's largest consumer electronics retailer – and its Chairman did not seek to be paid a sum certain for its debt portfolio, but instead "trusted" Rogers that he would treat Arapua "fairly." According to Rogers, Arapua and its Chairman trusted Rogers to treat Arapua fairly despite the fact that:

a. Rogers had no prior relationship with Arapua or its Chairman;

b. Rogers' company, Warwick, and his collections agent, Multicred, were both start-up companies with no track record in the debt collection business in Brazil or anywhere else;

c. The agreement required Arapua to relinquish physical possession of supposedly valuable assets representing the sole evidence of its customers' debt (*i.e.*, the tens-of-thousands of original, signed, unpaid checks, possession of which is a prerequisite to

performing collections in Brazil) – solely for the purported opportunity to become a partner with Rogers in his new venture;

d. Relinquishment of physical possession of its unpaid checks also made it impossible for Arapua to sell them to another bidder and prevented Arapua from breaching the agreement;

e. Rogers claims Arapua took significant risk in contributing its distressed debt to Warwick;

f. Arapua had no security interest in its distressed debt after it relinquished it to Rogers;

g. Warwick was capitalized (according to the contribution agreement) with only $1,000 from Jetstream and had no other assets or collateral;

h. Warwick had no loan or capital guarantees;

i. Arapua was in bankruptcy at the time and was in need of cash;

j. The agreement allowed Rogers and his entity Jetstream to manage the business, not Arapua (subject to another agreement drafted by Rogers);

k. The agreement allowed Rogers to decide whether any cash distributions would occur, not Arapua;

l. Arapua would otherwise have no active role in the business;

m. Rogers made the agreement subject to Illinois law (where Rogers resided), not Brazilian law;

n. Arapua had no contractual or legal right to require its redemption out of Warwick;

o. No formal exit-strategy existed for Arapua, apart from Rogers' promise to treat them "fairly;" and

p. The agreement did not guarantee Arapua a specific monetary return.

73. Rogers says he was "surprised" that Arapua agreed to the deal.

74. Notwithstanding Rogers' claim that there was no side agreement to purchase Arapua's debt portfolio for a sum certain, Jennifer Dowek (Rogers' agent) told Arapua it could get cash out of the transaction. Dowek also asked Rogers to draft an "Interest Purchase Agreement" or an equivalent document by which Arapua could monetize their membership interest before execution of the contribution agreement, and Rogers agreed to do so.

75. Rogers also admits that it was his plan from the beginning to redeem out Arapua's "interests" for cash as money came in from new customers.

76. Shortly after its contribution to Warwick, Arapua sought to be paid in full. By August 2003, Arapua was pressuring Rogers and Dowek for cash. In a September 4, 2003 email, Dowek told Rogers that Arapua has "more assets which they won't contribute unless we SHOW THEM THE MONEY." (emphasis in original). Sometime prior to March 1, 2004, Warwick transferred cash to Arapua. By no later than March 1, 2004, Arapua, in fact: (1) had been entirely redeemed out of Warwick for cash; (2) had received all of the money it thought it was entitled to for its "contribution;" and (3) had no continuing interest in the company after that date. Rogers admits Arapua was redeemed out, and says it was done because Arapua was in bankruptcy and in need of cash.

77. But Arapua sought to be and was paid in full after its "contribution" of distressed debt because it was *not* a genuine partner and the purported contribution was, in reality, a sale.

At best, the transaction was similar to an "installment sale," but in no event was it a true partnership contribution.

78. Documentation concerning PDA's and Globex's contributions also reflects a sale of those debt portfolios for a sum certain, rather than genuine partnership contributions. PDA, in fact, had been entirely redeemed out of Sugarloaf within two months of its supposed "contribution."

79. Second, under the "substance over form" doctrine and the "economic substance" doctrine, the true substance and economic reality of each Brazilian party's contribution is a sale of the distressed debt to Sugarloaf, not a partnership contribution.

80. As noted, all of the Brazilian retailers were redeemed out for cash within a relatively short period of time or were told they would be redeemed out, and the documentation concerning the PDA and Globex transfers reflects a sale of those portfolios for a sum certain. In addition, a report prepared by Grant Thornton, an accounting firm hired by Rogers to examine Multicred's records in Brazil, confirms that PDA's debt was in fact "purchased," using a series of steps that hid what was actually occurring. Rogers even acknowledges in promotional materials available on Sugarloaf's website that the Brazilian distressed debt that Sugarloaf acquired was "purchased."

> The Sugarloaf Fund is a portfolio of Brazilian distressed assets which are *purchased* for the purpose of collecting on the debts and earning profit for Sugarloaf investors. These assets are *purchased* only after meeting specific criteria designed to maximize return on investment. Sugarloaf's debt acquisition strategy allows investors to purchase assets at a fraction of face value.

See www.sugarloaffund.com (accessed Oct. 5, 2010) (emphasis added).

81. Third, Sugarloaf agreed to pay the Brazilian entities fair market value (or more) for the distressed debt within two years of the contributions. Indeed, it appears Arapua was actually paid in less than one year for its initial contribution, and PDA was paid within a few *months* of its contribution. Such payments, made within two years of contribution, are presumed "disguised sales" under I.R.C. § 707(a). Moreover, Rogers attempted to disguise the sale in other ways. For instance, the Grant Thornton report demonstrates that PDA's debt was purchased using a series of steps that hid what was actually occurring. And in tax returns that Rogers prepared and filed with the IRS on behalf of Warwick, he falsely listed Arapua as a continuing partner at the end of 2004, despite the fact that it had been completely redeemed out of Warwick by no later than March 1, 2004.

82. Finally, and contrary to Rogers' assertions, I.R.C. §754 has no bearing on the transaction because the built-in losses were never preserved, and Stage One of the scheme otherwise violates the judicial doctrines and various technical provisions of the I.R.C. Rogers even admits that one purpose of Warwick (and later Sugarloaf) was to shift the built-in losses held by the Brazilian retailers to a U.S. taxing jurisdiction.

83. For all of these reasons, the Brazilian retailers were not true partners, their "contributions" of foreign distressed debt were, in fact, "sales" to Sugarloaf, the substantial built-in losses fail to convey to Sugarloaf, and the high basis in the distressed debt is not preserved. Instead, Sugarloaf obtains a cost basis in the distressed debt (*i.e.*, a very low basis equal to its purchase price, which was typically 1% - 2% of the face value of the debt). This entirely eliminates the purported tax benefits associated with the DAD and DAT schemes.

Stage Two

84. In the second stage of the DAD scheme, Sugarloaf breaks up the distressed debt into smaller pieces. Sugarloaf contributes these smaller pieces of distressed debt to additional partnerships created and controlled by Rogers, which he refers to as "Trading LLCs." In exchange, Sugarloaf acquires a 99% ownership interest in the Trading LLC. Rogers' company Jetstream acquires the remaining 1% in Trading LLC and acts as its sole manager.

85. After the Trading LLC receives a portion of distressed debt, Sugarloaf contributes 98% of its "equity" interest in Trading to another partnership that Rogers creates and controls called a "Holding LLC." In exchange, Sugarloaf receives a 99% interest in Holding LLC. Jetstream acquires the remaining 1% in Holding LLC and once again acts as the sole manager.

86. The Holding LLC is then sold to a U.S. customer. Pursuant to the sale, the customer acquires a direct 99% interest in Holding LLC (Jetstream holds the remaining 1%), and an indirect 98% interest in Trading LLC (Sugarloaf and Jetstream each continue to hold 1%).

87. Rogers claims he recommends to customers that they perfect their ownership of Holding LLC by later redeeming Jetstream's 1% interest (giving customers 100% ownership of Holding). Upon information and belief, most customers do not redeem Jetstream out of Holding LLC. Likewise, in virtually all cases customers leave the ownership of Trading LLC alone (*i.e.*, Jetstream's and Sugarloaf's 1% interests are not redeemed out of Trading), and thus Rogers continues on as both the manager and co-owner of Trading LLC.

88. The amount of distressed debt contributed to the Trading LLC (and held indirectly by the Holding LLC) is pegged to the supposed tax losses generated by the shelter and the purchase price paid by the customer. Typically the purported tax loss is about ten times the

amount of the purchase price, including fees. For example, if a customer pays a total of $100,000 to buy a Holding LLC, that customer concomitantly acquires a supposed tax loss of a little more than $1 million.

89. Rogers valued the distressed debt contributed to the Trading LLC using an historical exchange rate of approximately one Brazilian Real ($R) to one U.S. Dollar (1-to-1). Although the Real was once artificially tied to the Dollar at that rate, it had been decoupled from the Dollar for years before Rogers' first DAD transaction. Instead, one Real typically was worth only about 33 cents (3-to-1) throughout Rogers' promotion of DAD.

90. Rogers not only forms all of the Trading LLCs and Holding LLCs, he prepares and signs most of the core transactional documentation. He often signs documentation on behalf of two or three supposedly independent parties at the same time. Subsequently, Rogers manages virtually all of the companies, even after they are purchased by customers, and virtually all of the companies designate another entity controlled by Rogers – Jetstream – as their tax matters partner.

91. Rogers charges customers money and fees for structuring the transaction, providing legal services, creating and registering customer-specific entities, and managing the various companies involved in the scheme.

92. Customers paid substantial fees to participate in the DAD scheme. The customer's total out-of-pocket costs were a percentage of the face value (or "notional" amount) of the distressed debt used in each customer's transaction. Typically this amount was about 9% of the face value, or even higher.

a. Rogers typically charged customers 6% of the face value of the distressed debt. Rogers claims he allocated half of this amount (3% notional) to the customer's actual "investment," which Rogers says he records as a contribution to the customer's capital account. Rogers allocates the remaining half of the customer's money (3% notional) to Sugarloaf, Jetstream and/or PPI to cover Rogers' fees and the purported costs associated with structuring and managing the scheme.

b. The customer's personal advisor and/or the sales person who directly marketed the scheme to the customer (*i.e.*, Rogers' "copromoter") also charged a fee. Generally this fee was an additional 3% notional, for a total transaction cost of 9%, but it could be substantially more, depending on the copromoter. For example, customers who entered the transaction through copromoter Hartigan normally paid Hartigan about 10% notional on top of the money they paid Rogers (although the fee paid to Rogers in some cases was then reduced from 6% to 5% notional).

93. The effect of Rogers' allocations is that the typical customer can profit on collection activity (the alleged primary reason for the investment) only with respect to the 3% notional Rogers supposedly assigns to the "investment" piece of the transaction. The customer cannot profit from the remaining 6% notional (or more) he pays; rather, that money is simply a "sunk cost" for doing the transaction. Thus, before a customer can actually turn profit from the scheme, he first must earn returns equal to and above his sunk costs.

94. Shortly after the customer's purchase of Holding LLC, the Trading LLC generally takes a partially worthless bad debt deduction under I.R.C. §166. Trading LLC typically claims 97% of the face value of the distressed debt as a deduction, even though Sugarloaf paid only a

small fraction of the face value (1-2% notional) to acquire that distressed debt before transferring it to Trading LLC. The substantial deduction is then passed onto the customer to offset other, unrelated U.S. income.

95. Rogers claims that this partially worthless bad debt deduction may be taken whenever the customer wants to use it, and thus sometimes at the customer's request the Trading LLC waits until the following tax period to "recognize" and pass on the deduction. Rogers also claims the deduction may be split between multiple years if needed.

96. Rogers' customers incur no real economic losses in connection with the DAD transactions.

97. Rogers later "rolled up" all of the Trading and Holdings LLCs in his DAD scheme back into Sugarloaf, as if the transactions never took place. Rogers claims it was his plan from day one of the scheme to later roll up into one entity.

98. Rogers acknowledges that there are tax benefits associated with his DAD scheme and admits they are "important." Notwithstanding the substantial tax benefits, Rogers says the transaction is primarily motivated by non-tax business reasons. At times, Rogers has gone so far as to describe the scheme's tax benefits as "incidental."

99. The alleged primary business purpose for the DAD scheme is collecting on the contributed foreign distressed debt. But this supposed business purpose has no relationship to the formation and use of the Holding and Trading LLCs in Stage Two of Rogers' scheme. The Holding and Trading entities serve no legitimate business purpose. They are needless entities created and used by Rogers for the purpose of purportedly preserving and passing on substantial foreign losses to his customers.

100. Rogers acknowledges that the DAD transactions were structured and designed in a way to shift economic losses from Brazilian retailers to the United States. Rogers acknowledges that one purpose of the Holding companies is to allow customers to use the losses that supposedly flow from Sugarloaf to the Trading companies.

101. While Rogers claims collection revenues were obtained by Sugarloaf and its agent Multicred in connection with DAD, that activity, even if it actually took place, cannot imbue the separate U.S. Holding and Trading LLCs with business purpose.

102. In any event, upon information and belief, actual collection revenues were *de minimis* compared to the tax benefits generated by the scheme. Rogers, for example, reported small amounts of supposed collection revenue on some Schedules K-1 he issued to customers, but did not actually pay out any money to customers. More importantly, the cost of the "investment" (3% notional), and the substantial fees (or sunk costs) paid by customers (at least 6% notional) – coupled with the poor quality of the foreign distressed debt and high collection costs – made it extremely unlikely (if not impossible) that customers would ever realize any modicum of profit from the DAD scheme, let alone realize a reasonable return on investment.

103. Upon information and belief, the DAD scheme never produced a profit for any of Rogers' DAD customers, apart from substantial tax deductions.

104. Rogers, by contrast, personally profited from his promotion of the DAD transactions.

105. Transactional documentation prepared by Rogers told customers that any built-in losses purportedly associated with the foreign distressed debt are preserved in the Trading LLC,

and that the customers may deduct those losses on their tax returns (even though they incur no actual losses in connection with the scheme).

106. Those statements are false or fraudulent because the DAD shelters are abusive tax avoidance schemes. Even if Stage One of the DAD involved legitimate partnerships and genuine partnership contributions (which it does not), Stage Two of Rogers' scheme, standing alone, violates the longstanding judicial doctrines of: (1) economic substance, (2) substance over form, (3) step transaction, and (4) sham partnership, as well as various technical provisions of the Internal Revenue Code. *See e.g., Southgate Master Fund v. United States*, 651 F. Supp. 2d 596, 598, 657-660 (N.D. Tex. 2009) (holding steps of a second, related scheme (namely the formation of a series of partnerships that served no genuine purpose apart from transferring tax losses to the customer) violated the: (1) economic substance doctrine, (2) substance over form doctrine, and (3) sham partnership doctrine – despite the fact that the first part of the transaction (Chinese debt collection business) apparently had economic substance).

107. The Trading and Holding LLCs that Rogers creates and controls serve no genuine business purpose, are not true partnerships, and do not preserve the built-in losses from the foreign distressed debt. Rogers knew or had reason to know that his statements to the contrary were false or fraudulent and that the DAD scheme is a sham.

108. Rogers also knew or had reason to know that the DAD scheme is a sham because customers incur no economic losses in connection with the deductions they claim, and the immediate supposed tax benefits of $10 for each $1 spent are simply too good to be true. *See e.g., Ackerman v. Schwartz*, 947 F.2d 841, 842 (7th Cir. 1991) (describing tax shelter whose benefits were "too good to be true."); *cf., Chemco v. U.S.*, 515 F.3d 749, 751 (7th Cir. 2008)

(affirming district court's ruling that transaction with insubstantial out-of-pocket costs, which generated a tax loss of $ 3.6 million, lacked economic substance and is the sort of thing that the "Internal Revenue Service frowns on.").

109. As a consequence of the DAD scheme, Rogers' customers improperly claim as deductions significant built-in foreign losses from distressed debt when, in fact (1) those losses never passed to them and, in any event, (2) they did not incur economic losses in connection with the transaction. Rogers' customers also improperly claim deductions for money and fees paid to him for structuring the transaction and managing the various entities involved in the scheme.

Congress Outlaws the DAD Tax Shelter

110. Although the DAD scheme violated the judicial doctrines from its inception, it nonetheless was widely promoted. In October 2004, Congress enacted the American Jobs Creation Act of 2004 ("AJCA"), which effectively shut down the entire class of DAD tax shelters by amending I.R.C. §§ 704, 734 and 743.

111. Rogers closely monitored the news of the legislation and its passage. Subsequent to the AJCA's enactment, he remarked in an email to his copromoters, "Statute passed. Train has left." Notwithstanding, and in direct contravention of the Congressional mandate, Rogers continued to promote his DAD shelter even after the statute took effect.

112. To facilitate the post-AJCA promotion of his DAD tax shelter, Rogers devised and drafted what he called a "letter of intent" ("LOI"). Rogers falsely told customers and his copromoters that the LOI was a legal way to continue to participate in the DAD tax shelter even though Congress had expressly outlawed it. The LOI stated that the customer and Sugarloaf "have negotiated in good faith a definitive purchase agreement" and indicated that the customer

could use the LOI to get around the statute and finalize the transaction even after the statute's passage. Those statements were false or fraudulent.

113. Numerous customers who executed LOIs drafted by Rogers, in fact, entered into and/or finalized DAD transactions after the AJCA's enactment.

Specific Examples of the DAD Tax Shelter

114. Rogers drafted the core transactional documentation for the DAD scheme. Rogers uses the same core set of transactional documents for each DAD transaction.

115. As the following example demonstrates, Rogers' DAD tax shelter enables his customers to improperly claim as tax benefits the significant built-in foreign losses from distressed debt when the U.S. taxpayer did not incur any economic loss in connection with the transaction.

a. Michael Weiser

116. Rogers' customer Michael Weiser of Metairie, Louisiana, owns a prosperous security company. Weiser was introduced to Rogers' DAD shelter in late 2004 and became a repeat customer of Rogers' schemes. Prior to engaging Rogers to implement the DAD tax shelter on his behalf, Weiser was told by Rogers or someone working at Rogers' direction that Weiser would receive a portion of Brazilian distressed debt in connection with his transaction, and that it would be declared worthless shortly after the shelter was implemented. This purportedly would trigger the debt's built-in losses and enable Weiser to take millions of dollars in tax deductions, which he could then use to offset unrelated U.S. income and reduce his taxes.

117. Rogers or someone working at his direction falsely told Weiser that he needed to sign an LOI to take advantage of the DAD shelter, and that the LOI was a legal way to continue

to participate in the DAD scheme even though Congress had expressly outlawed it. Weiser signed an LOI dated October 12, 2004.

118. To implement the 2004 DAD tax shelter for Weiser, Rogers used a shelf company, Zugersee Trading LLC ("Zugersee"), which Rogers had formed on December 29, 2003. Rogers signed the necessary formation documents as the "organizer" of Zugersee. On January 2, 2004, Rogers prepared and signed the Application for an Employer Identification Number, which Rogers submitted to the IRS. On April 16, 2004, Rogers or someone working at his direction drafted and executed an Operating Agreement for Zugersee. The Operating Agreement indicates that Zugersee was owned by two Rogers-controlled entities: Sugarloaf (99% ownership) and Jetstream (1% ownership).

119. Rogers or someone working at his direction then drafted a Contribution Agreement. The Contribution Agreement, also dated April 16, 2004, reflects that Rogers had his primary Master LLC, Sugarloaf, contribute a pool of Arapua distressed debt to Zugersee with an aggregate outstanding balance of R$4,000,000.

120. On October 12, 2004, Rogers formed Harbor Bay Fund, LLC ("Harbor Bay") as a Holding LLC. Rogers signed the formation documents as the "organizer" of Harbor Bay, and also submitted a request to the IRS for an employer identification number. Harbor Bay's Operating Agreement is virtually identical to that of Zugersee's, and shows that it was owned by two Rogers-controlled entities: Sugarloaf (99% ownership) and Jetstream (1% ownership).

121. Rogers or someone working at his direction drafted a Membership Interest Contribution Agreement. It indicates that on October 12, 2004, Rogers contributed Sugarloaf's 98% membership interest in Zugersee (which held R$4 million in distressed debt) to Harbor Bay

in exchange for 99% of the membership interest in Harbor Bay. Consequently, Sugarloaf owned 99% of Harbor Bay, which in turn owned 98% of Zugersee.

122. Next, Rogers drafted a Membership Interest Purchase Agreement. This agreement, dated October 13, 2004, shows that Rogers sold Sugarloaf's 99% interest in Harbor Bay to Weiser for $200,000. Weiser was told that the purchase price of $200,000 was 5% of the face value (5% notional) of the distressed debt held by Harbor Bay. Weiser paid, upon information and belief, another 9% notional in fees to Michael Hartigan, a copromoter working in concert with Rogers.

123. Rogers also drafted a so-called "promissory note," dated December 31, 2004, pursuant to which Weiser supposedly agreed to pay Harbor Bay an additional $3,800,000. The alleged purpose of this note was to generate tax basis for Weiser and allow him to claim the foreign debt's supposed built-in losses as deduction. In fact, the unenforceable, non-recourse note did not constitute genuine indebtedness and generated no basis for Weiser.

124. Shortly after Weiser's purchase of Harbor Bay (Holding), Rogers declared the majority of the foreign debt held by Zugersee (Trading) to be partially worthless under I.R.C. § 166. Upon information and belief, Rogers failed to obtain a valuation of the specific distressed debt held by Zugersee immediately prior to declaring it partially worthless.

125. Weiser did not need all of the supposed $3,880,000 loss (97% of $4,000,000) in 2004. Rogers agreed to split the supposed $3,880,000 loss between Weiser's 2004 and 2005 tax years. Rogers prepared and sent Weiser a Schedule K-1 that reported Weiser's losses from the 2004-DAD to be $3,192,840 for tax year 2004. Rogers also prepared and sent Weiser a Schedule K-1 that reported Weiser's losses from the 2004-DAD to be $675,107 for tax year

2005. Weiser, in fact, did not incur a genuine economic loss in connection with Harbor Bay, Zugersee, or any entity involved in the DAD scheme, in 2004 or 2005 (or at any time).

126. Weiser, upon information and belief, claimed a bad debt loss of over $3,100,000 on his 2004 income tax return, which improperly offset other taxable income of his and artificially lowered his taxes. Weiser also, upon information and belief, claimed a bad debt loss of over $670,000 on his 2005 income tax return, which improperly offset other taxable income of his and artificially lowered his taxes. Rogers or someone working at his direction falsely told Weiser that using the DAD transaction was a legal way to lower his income taxes.

127. Weiser not only engaged in Rogers' DAD tax shelter, he also participated in Rogers' DAT tax shelter in 2006 and 2007. Upon information and belief, Rogers' DAD and DAT schemes generated a total of more than $5,500,000 of combined fictitious deductions for Weiser.

128. Upon information and belief, Weiser also is participating in Rogers' newest I.R.C. § 743(f) distressed debt tax shelter.

<u>The DAT Tax Shelter</u>

129. After the passage of the AJCA, Rogers created and devised a new tax shelter, the Distressed Asset Trust scheme, in a transparent attempt to circumvent the new law. The DAT scheme is markedly similar to DAD. The only real structural difference between the two shelters is that in the DAT scheme the distressed debt is ultimately contributed to a series of *trusts*, rather than to entities claiming partnership status.

130. Rogers continues to use Sugarloaf as the Master LLC for his DAT transactions.

131. Rogers drafted all of the core transactional documents used in his DAT scheme. Rogers uses essentially the same core transactional documents in each of his DAT transactions.

132. Just like the DAD shelter, the DAT uses high-basis, low-value distressed Brazilian debt (such as aged unpaid checks) to shift foreign losses to benefit U.S. taxpayers that did not incur those losses. Indeed, Rogers' DAT shelter uses the *identical* portfolios of Brazilian distressed debt that he purchased from the same three Brazilian retailers (Arapua, PDA and Globex) in 2003 and 2004 and used in his DAD scheme.

Stage One

133. Because Rogers uses a portion of the distressed debt from the same portfolios that he used in his DAD scheme, Stage One of the DAT shelter fails to retain the substantial built-in losses or preserve the high basis in the distressed debt for the same reasons the DAD scheme failed to do so. *See paragraphs* 66-83.

134. Thus, for example, because the Brazilian entities were redeemed out for cash within a relatively short period of time or were told they would be redeemed out, because certain transactional documents reflect a sale of the debt portfolios for a sum certain, because the Brazilian retailers never intended to share profits and losses, and because Rogers employed a series of steps to hide what was actually occurring, the Brazilian retailers never truly intended to become actual partners, the substance and economic reality of the "contributions" were sales, not genuine partnership contributions, and the purported contributions are deemed disguised sales under I.R.C. § 707.

Stage Two

135. The mechanics of Stage Two of the DAT transaction also are basically the same as the DAD scheme, but use "trusts" instead of LLCs. As the first step, Rogers sets up a supposed common law "business trust" that he calls a "Main-Trust." Sugarloaf later funds the Main-Trust with a portion of Brazilian distressed debt. The amount of distressed debt contributed to the Main-Trust is directly pegged to the supposed tax losses generated by the shelter and the price paid by the customer. Typically the purported tax loss is about ten times the amount of the customer's cost to acquire the Main-Trust, including fees.

136. Next, Rogers generates the necessary documentation to create a "Sub-Trust," which will purportedly operate as a "grantor trust" with the customer as the sole beneficiary. According to Rogers, the formation of the Sub-Trust ordinarily takes a few days to a week. Upon information and belief, Rogers does not finalize the Main-Trust or the Sub-Trust until the customer transfers cash to a Main-Trust account, which Rogers has signatory authority over.

137. Once the customer contributes the required cash to the Main-Trust account, the customer supposedly obtains a 100% undivided interest in the Sub-Trust and a 100% undivided interest in the assets of the Main-Trust. Following this transfer of cash, upon information and belief, Sugarloaf then transfers distressed debt to the Main-Trust. On average DAT customers pay slightly more than DAD customers, about 10% of the face value of the distressed debt (10% notional), or even more, to participate in the DAT scheme.

a. Rogers typically charges customers 6% of the face value of the distressed debt. Customers pay this money into an account that Rogers exercises signatory control over. Rogers claims he allocates two-thirds of this money (4% notional) to the

customer's actual "investment," which he says he records as a contribution to the customer's capital account. Rogers says he allocates the remaining one third of the money (2% notional) to Sugarloaf, Jetstream and/or PPI to cover Rogers' fees and the purported costs associated with structuring and managing the scheme.

b. The customer's personal advisor and/or the sales person who directly markets the scheme to the customer (*i.e.*, Rogers' "copromoter") also charges a fee. Generally this fee is an additional 4% notional, for a total transaction cost of 10%, but at times is substantially more, depending on the copromoter. For example, customers who entered the transaction through copromoter Hartigan normally paid Hartigan about 10% notional on top of the money they paid Rogers (although the fee paid to Rogers in some cases was then reduced from 6% to 5% notional).

138. The effect of Rogers' allocations is that the customer can profit on collection activity (the alleged primary reason for the investment) only with respect to the 4% notional Rogers purportedly assigns to the "investment" piece of the transaction. Just like in the DAD scheme, the customer cannot profit from the remaining 6% notional (or more) he pays; rather, that money is simply a "sunk cost" for doing the transaction. Thus, before a customer can actually turn profit from the DAT scheme, he first must earn returns equal to and above his sunk costs.

139. Shortly after the transfer of cash by the customer to the Main-Trust, the Sub-Trust takes a partially worthless bad debt deduction under I.R.C. §166. The Sub-Trust – acting through Rogers – generally claims 97% of the face value of the distressed debt as a deduction, even though Sugarloaf originally paid only a small fraction of the face value (1-2% notional) to

acquire that distressed debt. The substantial deduction is then passed onto the customer and improperly lowers the customer's taxable income.

140. Rogers claims that this partially worthless bad debt deduction may be taken in whichever tax year the customer wants to use it. He also claims it may be split between multiple years if needed.

141. Rogers acknowledges that there are substantial tax benefits associated with his DAT transaction. Notwithstanding, Rogers claims that the DAT has the same business purpose as his DAD scheme.

142. Like DAD, however, the collection revenues from the DAT scheme were *de minimis* compared to the tax benefits generated. More importantly, the combined costs and fees paid by customers (at least 10% notional), coupled with the poor quality of the foreign distressed debt and high collection costs, made it extremely unlikely (if not impossible) that customers could ever realize any profit from the DAT scheme, let alone a reasonable rate of return.

143. Upon information and belief, the DAT scheme never produced a profit for any of Rogers' DAT customers, apart from massive tax deductions.

144. Rogers received fees and/or compensation and personally profited from his promotion and management of the DAT transactions.

145. In the final step of the scheme, the Main-Trust distributes the customer's cash to Sugarloaf, to Rogers and/or to other entities controlled by Rogers. Rogers claims that this distribution takes anywhere from a few months to a year, depending on the business exigencies. Rogers uses this cash to pay for items such as his fees, administrative costs, and other expenses.

Rogers fails, however, to declare the customer's cash as income on Sugarloaf's tax return or on his personal tax return.

146. Rogers claims that, as with his DAD partnership entities, he recently "rolled up" the hundreds of trusts in his DAT scheme back into Sugarloaf, as if the transactions never took place. Rogers claims that this was his plan from the beginning.

147. Transactional documentation prepared by Rogers falsely told customers that the substantial built-in losses purportedly associated with the foreign distressed debt are preserved in the trusts, and that the customers may deduct those losses on their tax returns (even though they incur no actual losses in connection with the scheme).

148. Those statements are false or fraudulent because Rogers' DAT shelter is an abusive tax avoidance scheme. Even if Stage One of DAT involved legitimate partnerships and genuine partnership contributions (which it does not), Stage Two of Rogers' scheme, standing alone, violates the longstanding judicial doctrines (including economic substance, substance over form, and step transaction) as well as various technical provisions of the Internal Revenue Code.

149. The trusts that Rogers creates and controls serve no legitimate business purpose, are not genuine trusts, and do not preserve the built-in losses from the foreign distressed debt. For these reasons Rogers knew or had reason to know that statements to the contrary are false or fraudulent and that the DAT scheme is a sham. Rogers also knew or had reason to know that the DAT scheme is a sham because customers do not incur economic losses in connection with the deductions they claim, and the immediate supposed tax benefits of $10 for each $1 spent also are simply too good to be true.

150. As a consequence of the DAT scheme, Rogers' customers improperly claim as tax benefits (by virtue of a deduction lowering their taxable income) the significant built-in foreign losses from the distressed debt when, in fact, (1) those losses were never passed onto his customers and, in any event, (2) his customers never incurred an economic loss in connection with the transaction. Rogers' customers also improperly claim deductions for money and fees paid for structuring the transaction and managing the various entities involved in the scheme.

Specific Example of the DAT Tax Shelter

151. Rogers drafted the core DAT transactional documentation and used the same core documents for each DAT transaction.

152. As the following example demonstrates, Rogers' DAT tax shelter, as with his DAD scheme, enables his customers to improperly claim as tax benefits the significant built-in foreign losses from distressed debt, even though they did not incur any economic loss in connection with the transaction.

a. Thomas Turner

153. Thomas H. Turner of Baton Rouge, Louisiana, is the COO of Turner Industries and is one of Rogers' biggest customers. Turner was introduced to the DAT tax shelter in 2005 after participating in Rogers' DAD scheme in 2004. Prior to engaging Rogers to implement the DAT tax shelter on his behalf, Turner was falsely told by Rogers or someone working at Rogers' direction that the foreign distressed debt used in his transaction would be declared worthless shortly after the shelter was implemented, and that Turner would be able to take a substantial tax deduction based on those foreign losses to offset unrelated U.S. income.

154. To implement the DAT tax shelter for Turner, Rogers formed the Turner 2006 Trust (Main-Trust), by trust agreement dated December 1, 2006. Under the Turner 2006 Trust Agreement, which Rogers drafted, Rogers appointed himself "Trustee" of the trust and Sugarloaf Fund "Grantor" and "Beneficiary." The Trust Agreement authorized Rogers, as Trustee, to establish a "Sub-Trust" of the Main-Trust, for the purpose of appointing another, separate beneficiary (ultimately Turner) who would then be the sole beneficiary of the Sub-Trust.

155. That same day, Sugarloaf Fund supposedly entered into a contribution agreement with Rogers as the Trustee for the Main-Trust. Sugarloaf contributed a pool of distressed debt worth R$17,800,000 to the Main-Trust in exchange for a certificate of beneficial interest in the trust. Rogers later used a Real to Dollar exchange rate of approximately 1-to-1 and thus valued the distressed debt at nearly $18 million for U.S. tax purposes.

156. Also by documentation dated December 1, 2006, Rogers purportedly created a Sub-Trust and made Turner the sole beneficiary. This was done through a document titled "2006-A Supplement to Turner 2006 Trust," which Rogers also drafted. Rogers personally signed the Turner 2006 Trust and Turner 2006 Sub-Trust documents on behalf of himself as "trustee" and Sugarloaf as "beneficiary."

157. Turner entered into a Purchase Agreement dated December 1, 2006 to purchase 100% of the beneficial interests of the Turner 2006 Trust. Rogers or someone working at Rogers' direction then created a "Beneficial Interest Certificate" showing a 100% undivided interest in the assets of the Main-Trust. The certificate, which is dated December 1, 2006, also shows that Turner owns 100% of the Sub-Trust.

158. Again supposedly on December 1, 2006, Rogers as Trustee for the Main-Trust entered into an Asset Management Agreement with Multicred. Under the agreement, Multicred was supposed to collect on the debt instruments, keep records of collection activity, keep a collection account with a designated bank, and furnish the trust with quarterly reports.

159. Rogers signed the Asset Management Agreement on behalf of the Turner 2006 Trust, and also on behalf of Multicred.

160. Upon information and belief, the trust documents dated December 1, 2006, were not executed by all of the parties on that date, but at some later date.

161. On or about December 22, 2006, by check numbered 8932, Turner paid $890,000 to the Turner 2006 Trust. Rogers or someone working at his direction told Turner that the "purchase price" of $890,000 represented 5% of the notional amount (which was lower than the typical 6% Rogers charged) of the distressed debt transferred. All of Turner's money went into an account controlled by Rogers. Upon information and belief, Rogers then wrote a check to himself drawing on the Turner 2006 account for at least 2% notional, or $256,000, to covers Rogers' supposed fees for setting up and managing the DAT shelter. Turner also paid an additional fee of $1,408,000 to copromoter Hartigan.

162. Within days of acquiring the R$17,800,000 of distressed debt and with mere days left in the 2006 tax year, Rogers as the trustee declared 97% of the distressed debt to be worthless under I.R.C § 166. Upon information and belief, Rogers did not obtain a valuation of this distressed debt prior to Rogers declaring it partially worthless.

163. Subsequently, Turner claimed a bogus bad debt deduction of more than $17,000,000 on his 2006 income tax return. Turner was told by Rogers or someone working at his direction that this was a legal way to reduce his taxable income.

164. Turner's use of DAT was not isolated to 2006. He participated in Rogers' DAT shelter in 2005, 2006, and 2007. He also participated in Rogers' earlier DAD scheme in 2004, and split supposed DAD losses between the 2004 and 2005 tax years. Despite purportedly suffering massive losses for consecutive years and earning zero profits, Turner continued with Rogers' schemes year after year.

165. Rogers' various tax shelters, upon information and belief, generated over $38 million in bogus tax deductions for Turner. At Rogers' direction, Turner used those fictitious deductions to offset unrelated U.S. income of his in violation of law.

166. Upon information and belief, Turner also is participating in Rogers' newest I.R.C. § 743(f) distressed debt tax shelter.

I.R.C. § 743(f) Distressed Debt Shelter

167. Upon information and belief, Rogers has once again made substantively meaningless modifications to his distressed asset shelter in an attempt to further circumvent the law. Rogers is believed to be currently promoting his distressed asset shelter in yet another form, claiming as justification for his continued promotion of the scheme still another technical provision of the code, I.R.C. §743(f).

168. Just like Rogers' DAT and DAD shelters, upon information and belief his new I.R.C. § 743(f) distressed debt shelter violates the judicial doctrines of: (1) economic substance;

(2) substance over form; (3) step transaction; and (4) sham partnership, as well as various technical requirements of the Internal Revenue Code.

Count I: Injunction Under I.R.C. § 7408 for Engaging in Conduct Subject to Penalty Under I.R.C. §§ 6700(a)(2)(A), 6700(a)(2)(B), and 6701.

169. The United States incorporates by reference the allegations contained in paragraphs 1 through 168.

170. I.R.C. § 7408(a) authorizes a district court to enjoin persons and entities who have engaged in conduct subject to penalty under I.R.C. §§ 6700(a)(2)(A), 6700(a)(2)(B), and 6701.

A. § 6700(a)(2)(A)

171. I.R.C. § 6700(a)(2)(A) imposes a civil penalty on any person who: (1) organizes or participates in the organization or sale of (2) any plan or arrangement; and who, in connection with that plan or arrangement (3) makes or furnishes, or causes another to make or furnish, a false or fraudulent statement with respect to the allowance of a tax deduction or other tax benefit, (4) if the person knows or has reason to know the statement is false or fraudulent, (5) and if the statement is material.

172. Rogers violated I.R.C. § 6700(a)(2)(A) by creating and promoting plans or arrangements (the DAD, DAT and I.R.C. § 743(f) tax schemes), and by making or furnishing false or fraudulent statements about those schemes' purported tax benefits, which were material and which Rogers knew or had reason to know were false or fraudulent.

(1) Rogers' DAD and DAT tax schemes are plans or arrangements:

173. Any plan or arrangement "having some connection to taxes" falls under I.R.C. § 6700.

174. The DAD, DAT and I.R.C. § 743(f) schemes make explicit tax-related statements in transactional documents and as part of their marketing efforts. Accordingly, the DAD, DAT and I.R.C. § 743(f) schemes are plans or arrangements within the meaning of I.R.C. § 6700.

(2) Rogers participates in the organization and/or sale of the DAD and DAT tax schemes:

175. Rogers participates in the organization and/or sale of the DAD and DAT tax schemes by creating and managing the entities required for implementation of both schemes.

176. For example, Rogers created and manages Sugarloaf, which acts as the primary Master LLC for both the DAD and DAT transactions. Rogers created and manages other entities central to the scheme, including Warwick (Sugarloaf's predecessor) and Jetstream (Sugarloaf's management company). Rogers also hired, fired and supervised the supposed Brazilian collections company Multicred.

177. Regarding the DAD, Rogers created and manages virtually all of the customer-level partnerships involved in the scheme. For example, Rogers created and managed Riversedge Fund, LLC, Warner Fund, LLC, Grand-Combin Fund, LLC, Saddlebrook Trading, LLC, Windrose Trading, LLC, Dante Trading, LLC, Misty Harbor Trading, LLC and Butler Fund, LLC, and numerous other customer-level partnerships.

178. Likewise for the DAT, Rogers created and manages virtually all of the trusts involved in the scheme. For example, Rogers created and managed: Barton 2005 Trust, Beta Com 2005 Trust, Black 2005 Trust, CPS 2005 Trust, Dausman 2006 Trust, DeJesus 2006 Trust, Denneny 2006 Trust, Selser 2007 Trust, Stahl 2007 Trust and Tellefsen 2007 Trust, and numerous other customer-level trusts.

179. Rogers also participates in the organization and/or sale of the DAD and DAT tax shelters by creating and drafting all of the transactional documents required to implement and run both schemes.

180. For example, for each DAD tax shelter, Rogers creates and drafts the following deal documents: Information Memorandum, Operating Agreement, Contribution Agreement, Membership Interest Purchase Agreement, Note Management and Service Agreement, and the partnership formation documents.

181. Likewise, for each DAT tax shelter, Rogers creates and drafts the following deal documents: Private Offering Memorandum, Compliance Booklet, Asset Management and Servicing Agreement, and the trust formation documents.

182. Rogers also creates so-called "Due Diligence" binders that his copromoters use to recruit new customers. Due Diligence binders are given to Rogers' copromoters and to potential customers, and contain numerous documents that falsely attempt to legitimize the DAD and DAT tax shelters.

183. Rogers also drafts and provides to his copromoters (and certain customers) purported objective legal opinions that claim to provide support for the DAD and DAT schemes. Rogers' supposed legal opinions contain numerous false statements and fail to adequately explain and inform of Rogers' numerous conflicts of interest.

(3) Rogers makes or furnishes, or causes others to make or furnish, false or fraudulent statements with respect to the allowance of tax deductions or other tax benefits:

184. In connection with the organization, sale, and promotion of the DAD and DAT schemes, Rogers made or caused to be made, or furnished or caused to be furnished, material

statements about the tax benefits of participating in the scheme that were, and which he knew were or had reason to know were, false or fraudulent.

185. These false or fraudulent statements were made throughout the course of the DAD and DAT schemes and include, *inter alia*, claims:

a. That the Brazilian retailers who contributed foreign distressed debt to the DAD and DAT schemes were genuine partners;

b. That the foreign distressed debt used in the DAD and DAT schemes was acquired pursuant to genuine partnership contributions, rather than by sale and purchase;

c. That the entities created and formed by Rogers on behalf of customers, including Holding LLCs, Trading LLCs, Main-Trusts and Sub-Trusts, are genuine partnerships or trusts;

d. That the entities created and formed by Rogers on behalf of customers, including Holding LLCs, Trading LLCs, Main-Trusts and Sub-Trusts, serve to preserve the built-in losses from foreign distressed debt;

e. That the entities created and formed by Rogers on behalf of customers, including Holding LLCs, Trading LLCs, Main-Trusts and Sub-Trusts, can be used to pass on built-in losses from foreign distressed debt to DAD and DAT customers;

f. That customers of DAD may use non-recourse promissory notes that do not represent genuine indebtedness to generate "basis" in their customer-level LLCs; and

g. That by participating in the DAD and DAT schemes customers can deduct built-in losses from foreign distressed debt on their tax returns and use those deductions to offset unrelated U.S. income, even though the customers incur no actual losses in

connection with the transaction. (*See e.g.*, 2006 Private Offering Memorandum at 2, 15; *also see* 2003 Arapua Analysis).

186. Specific false or fraudulent statements Rogers made in connection with the DAD and DAT include the following claims:

a. That Sugarloaf's "tax basis in the Distressed Assets will equal the tax basis of the Distressed Assets in the creditor's hands immediately before their contribution . . . ." (Rogers' 2006 Legal Opinion re DAT at 20; *see also* Rogers' 2003 Legal Opinion re DAD at 14).

b. That the "Trust and the Sub-Trust are entitled to a bad debt deduction under Section 166 in an amount equal to the face value of any asset which became totally worthless in 2006 . . . ." (Rogers' 2006 Legal Opinion re DAT at 21; *see also* Rogers' 2003 Legal Opinion re DAD at 14 (discussing Trading and Holding companies used in DAD)).

c. That "the step transaction doctrine will not apply to the Transactions;" (Rogers' 2006 Legal Opinion re DAT at 21; *see also* Rogers' 2003 Legal Opinion re DAD at 15).

d. That "the sham transaction doctrine will not apply and the Transactions should have the requisite business purpose and economic substance." (Rogers' 2006 Legal Opinion re DAT at 21; *see also* Rogers' 2003 Legal Opinion re DAD at 15).

e. That "the requisite profit motive should be found to exist to support the bad debt deduction under Section 166." (Rogers' 2006 Legal Opinion re DAT at 21; *see also* Rogers' 2003 Legal Opinion re DAD at 15).

187. Rogers also falsely told customers and his copromoters that his "letter of intent" was a legal way to continue to participate in the DAD tax shelter even though Congress had expressly outlawed it. The LOI stated that the customer and Sugarloaf "have negotiated in good faith a definitive purchase agreement" and would use their best efforts to "close the transaction by October 11, 2004."

188. These statements are false or fraudulent because a letter of intent is not a legal way to continue to participate in a tax shelter that Congress has expressly outlawed. Notwithstanding, neither Rogers nor the customer intended to finalize the transaction by October 11, 2004 and, in fact, those LOI transactions were not completed until after that date and/or the AJCA's enactment.

(4) Rogers knew or had reason to know that the statements were false or fraudulent:

189. Rogers knew or had reason to know that the statements he made in connection with his DAD and DAT tax schemes were false or fraudulent for numerous reasons.

190. First, Rogers knew or had reason to know that the statements he made in connection with his DAD and DAT tax schemes were false or fraudulent based on his education and experience.

a. Based on Rogers' education and experience, he knew or had reason to know that the DAD and DAT schemes violated the judicial doctrines of: (1) economic substance; (2) substance over form; (3) step transaction; and (4) sham partnership. These doctrines have a long history and were well known to Rogers, a Harvard educated lawyer and self-professed tax expert.

b. Indeed, Rogers had actual knowledge of the judicial doctrines before he devised his DAD and DAT schemes. Rogers wrote about the judicial doctrines in connection with his participation in an even earlier illegal tax shelter that the IRS considers the same as or substantially similar to the scheme described in Notice 2002-21 and which is commonly called "CARDs." *See e.g. Sussex Financial Enterprises v. HVB*, 2010 U.S. Dist. LEXIS 73884 (N.D. Cal 2010) (discussing HVB Bank's admission that CARDs was a fraudulent tax shelter; and the fact that HVB entered into a deferred prosecution agreement with the U.S. Department of Justice in connection with its promotion of CARDs).

c. Subsequent to his involvement with CARDs and in furtherance of his promotion of both DAD and DAT, Rogers again wrote about the judicial doctrines (albeit falsely) in his various tax opinions purporting to offer objective support for the schemes. Accordingly, Rogers knew or had reason to know, based on his education and experience, that the DAD and DAT shelters violated the judicial doctrines from their inception.

191. Rogers also knew or had reason to know that the DAD and DAT schemes are shams because customers incur no economic losses in connection with the deductions they claim.

192. And Rogers knew or had reason to know that the DAD and DAT schemes are shams because the immediate supposed tax benefits of approximately $10 for each $1 "invested" are simply too good to be true. *See e.g., Ackerman v. Schwartz*, 947 F.2d 841, 842 (7th Cir. 1991) (describing tax shelter whose benefits were "too good to be true.").

193. Rogers knew or had reason to know that the statements he made in connection with his DAD and DAT tax schemes were false or fraudulent because he devised the DAD and

DAT schemes, structured the transactions, created and controlled the central entities involved, and drafted and executed all of the relevant agreements. Based on Rogers' role and integral involvement in the schemes, he knew or had reason to know that the Brazilian retailers who contributed foreign distressed debt to his tax shelters were not genuine partners – and that statements to the contrary were false or fraudulent.

a. For these same reasons Rogers knew or had reason to know that the foreign distressed debt used in the DAD and DAT schemes was acquired pursuant to sales and purchases, and not genuine partnership contributions – and that statements to the contrary were false or fraudulent.

b. For these same reasons Rogers also knew or had reason to know that the U.S. entities he created and formed on behalf of customers, including Holding LLCs, Trading LLCs, Main-Trusts and Sub-Trusts: (1) were not genuine partnerships or trusts; (2) did not serve to preserve the built-in losses from foreign distressed debt; and (3) cannot be used to pass on built-in losses from foreign distressed debt to DAD and DAT customers – and that statements to the contrary were false or fraudulent.

194. Rogers knew or had reason to know that his DAD and DAT shelters violated the AJCA. Congress specifically outlawed the DAD class of shelters with the passage of the AJCA in October 2004. Rogers not only knew about the AJCA at the time of its enactment, he closely monitored the legislation prior to its passage. The statute thus put Rogers on actual notice that his DAD scheme violated the tax laws. Rogers, of course, already had reason to know it was illegal before passage of the AJCA, because it violated the judicial doctrines from inception. *See e.g., Chemco v. U.S.*, 515 F.3d 749, 752 (7th Cir. 2008) (regulation promulgated after

taxpayer's transaction occurred merely "instantiat[ed] the pre-existing norm that transactions with no economic substance don't reduce people's taxes."); *accord Southgate,* 651 F. Supp. 2d at 653.

195. Notwithstanding the enactment of the AJCA, and in direct contravention of the Congressional mandate, Rogers continued to promote his DAD shelter after the statute took effect. Rogers attempted to circumvent the law by drafting so-called "letters of intent," which he falsely claimed allowed customers to continue participating in the DAD shelter despite the new law. Rogers knew or had reason to know that those statements were false or fraudulent because a letter of intent is not a legal way to continue to participate in a tax shelter that Congress has expressly outlawed.

196. Rogers also knew or had reason to know his statements regarding DAD and DAT were false or fraudulent because he attempted to circumvent the AJCA through the creation of his DAT tax shelter. Rogers' trust-based DAT scheme relied on superficial changes to his DAD structure (namely the use of trusts instead of partnerships) as purported justification. But because Rogers engineered the DAT transaction as a means of circumventing the AJCA, Rogers knew or had reason to know that those modifications were mere changes in form, not substance, and that the DAT transaction otherwise violated the tax laws.

197. Rogers also knew or had reason to know that his DAD and DAT shelters violated the tax laws because he deliberately mischaracterized the treatment of certain losses at the behest of certain customers.

a. Rogers treated virtually all of the purported losses from his DAD scheme as "ordinary losses," which is how they were deducted on his customers' tax returns. At

least two of Rogers' customers, however, had significant long-term capital gains that they wanted to eliminate. Those two customers asked Rogers to divide the purported losses between "ordinary loss" and "long-term capital loss" treatment because of their unique tax situations and to maximize the scheme's tax benefits. Rogers agreed to accommodate both customers' requests despite the fact that such treatment was improper and Rogers knew it.

b. Thereafter, Rogers drafted and provided his customers with false tax forms supporting the improper allocations. On at least one of the forms (Schedule D) Rogers even falsely showed a sale of assets that he admits never took place.

198. Rogers knew or had reason to know his statements regarding DAD and DAT were false or fraudulent because he prepared and filed additional false and/or misleading tax returns with the IRS on behalf of DAD and DAT entities that he controlled.

a. For instance, Rogers prepared and filed tax returns for Warwick (tax years 2003 and 2004), and for Sugarloaf (tax years 2004, 2005, and 2006), that misstated or omitted material information.

b. Rogers also failed to retain adequate books and records and to substantiate numerous items pertaining to the tax returns and forms he prepared in connection with his DAD and DAT schemes, in violation of I.R.C. § 6001 and Treas. Reg. § 1.6001-1(a).

199. Rogers knew or had reason to know that his DAD and DAT tax shelters violate the tax laws because he concealed information from the IRS and interfered with the IRS's efforts to learn about his DAD and DAT schemes.

a. The IRS started a promoter examination of Rogers in 2004, after which Rogers began a protracted campaign to conceal his tax shelter activities. The 2004 investigation was initiated because of Rogers' involvement with yet another illegal tax shelter that the IRS considers the same as or substantially similar to the scheme described in Notice 2002-21 and which is commonly called "CARDs." *See e.g. Sussex Financial Enterprises v. HVB*, 2010 U.S. Dist. LEXIS 73884 (N.D. Cal 2010) (discussing HVB Bank's admission that CARDs was a fraudulent tax shelter; and fact that HVB entered into a deferred prosecution agreement with the U.S. Department of Justice in connection with its promotion of CARDs). During the course of that examination, the government eventually learned about Rogers' DAD shelter. The IRS learned about Rogers' DAD scheme more than a year after its promoter investigation of Rogers began, and not from Rogers, but from a third party.

b. Rogers opposed the IRS's efforts throughout its promoter investigation and largely refused to cooperate. Because Rogers formed, controlled and directed almost all of the hundreds of partnerships used to perpetrate his DAD scheme, the IRS spent thousands of hours trying to determine the identity of those entities, their role in the DAD, and the basic facts surrounding each transaction. It was not until late 2006 that the government discovered Rogers' had devised yet another tax shelter, the DAT, and that he had been promoting it for nearly two years. Because of Rogers' refusal to cooperate, the IRS ultimately was forced to issue summonses for information. Rogers not only refused to respond to those summonses, he filed dozens of meritless legal actions in federal courts across the country seeking to quash the IRS's request for that information, even

when the requests were directed to third parties directly and indisputably involved in the scheme.

c. In *Good Karma, LLC v. United States*, 546 F.Supp. 2d 597 (N.D. Ill. 2008), for instance, the District Court considered several motions to quash filed by Rogers for summonses issued to Rogers-controlled companies: (1) Good Karma, LLC, (2) Portfolio Properties, Inc., and (3) Ridge Trading, LLC. The Court denied all of Rogers' motions to quash in their entirety, rejecting outright his claims that the summonses were improper, and ordered Rogers and his companies to produce the requested documents.

d. Rogers aggressively and repeatedly sought to conceal and obfuscate his involvement with the DAD (and DAT) tax shelter by filing action after action in Federal District Court seeking to prevent the IRS from obtaining basic information about his schemes. *See e.g., Superior Trading, LLC v. United States*, No. 07-195, 2008 WL 5192379 (M.D.Pa. Dec 11, 2008); *Howa Trading, LLC v. United States*, No. 3:07CV324-R, 2008 WL 2323872 (W.D.N.C. June 2, 2008) (Mag. J., Carl Horn, III), *report and recommendation adopted by Howa Trading, LLC v. United States*, Civil No. 3:07cv324, 2008 WL 4949124 (W.D.N.C. Nov.17, 2008); *Bodensee Fund, LLC v. United States*, Civil Action No. 07-3209, 2008 WL 4490361 (D.N.J. Sept. 30, 2008); *Bodensee Fund, LLC v. United States*, Civil No. 07-MC-0111, 2008 WL 1930967 (E.D.Pa. May 2, 2008); *Sterling Trading, LLC v. United States*, 553 F.Supp.2d 1152 (C.D.Cal. 2008); *Lyons Trading, LLC v. United States*, No.3:07-mc-13, 2008 WL 361533 (E.D.Tenn. Feb. 8,

2008); *Ironwood Trading, LLC v. United States*, No. 8:07-mc-59-T-30MSS, 2008 WL 817066 (M.D.Fla. Mar.25, 2008).

e. Rogers lost every case. Federal courts throughout the country uniformly ordered disclosure of the information requested by the IRS. The mounting losses, however, did nothing to deter Rogers from his goal of interfering with the IRS's investigation and he aggressively litigated each meritless action to its conclusion.

f. Although Rogers' efforts to conceal his extensive involvement with the DAD tax shelter ultimately failed, his tactics consumed hundreds upon hundreds of hours of Executive and Judicial Branch time and resources. For example, each of Rogers' motions to quash required Department of Justice attorneys to defend and litigate the action, resulting in a strain on the Department's limited resources. Rogers' tactics also consumed thousands of hours of IRS time. Indeed, the IRS had to assign dozens of Revenue Agents to investigate and audit Rogers' various entities and over 100 customers who participated in his DAD and DAT tax shelters year after year. And Rogers' meritless motions wastefully clogged already overburdened judicial dockets and consumed scarce judicial resources.

g. Rogers thus knew or had reason to know that his DAD and DAT shelters violated the law in light of his extensive efforts to interfere with the IRS's investigation of him and to conceal information about his schemes from the IRS.

200. Rogers also knew or had reason to know that his DAD and DAT shelters violated the tax laws because he lied about his involvement with them to his law firm and the IRS.

a. The IRS began a promoter investigation of Rogers in 2004. Partners at Seyfarth Shaw LLP, Rogers' law firm, met with Rogers in 2005 to get a better understanding of his various tax transactions. Rogers explained to them, among other things, that his DAD/DAT transactions involve foreign distressed debt and a company called Sugarloaf. Seyfarth partners asked Rogers on multiple occasions if he received any fees or compensation in connection with his promotion of his Sugarloaf schemes, apart from legal fees. Rogers falsely told them that he did not. Rogers also falsely told the IRS that, apart from legal fees, he did not receive any fees or compensation from his promotion or management of his DAT scheme.

b. Seyfarth partners eventually concluded that, consistent with federal law and Treasury Regulations, Rogers' DAD and DAT transactions should be disclosed as potentially abusive tax shelters. Rogers tried to persuade them that disclosure was not required, but they rebuffed him and filed disclosures. Around late 2005 or early 2006, Seyfarth partners instructed Rogers to cease promoting any new DAT/Sugarloaf transactions. Rogers falsely told them he would do so. Rogers continued to promote his DAT shelter throughout 2007 and 2008, but concealed his activities from Seyfarth. Sometime in early-to-mid 2008, Seyfarth partners learned that Rogers was still promoting his DAT scheme. Following that discovery, Seyfarth forced Rogers to resign.

201. Rogers also knew or had reason to know that his DAD and DAT shelters were illegal because he used them to improperly avoid paying his personal income taxes, despite earning millions of dollars per year.

a. In 2005, for instance, Rogers and his wife earned more than two million dollars in combined income. Rogers used his DAT scheme to offset that income and pay zero taxes. As the mastermind behind DAT, Rogers knew or had reason to know that one cannot deduct massive foreign losses if one doesn't actually incur any economic losses. He also knew or had reason to know that the losses he was claiming were simply too good to be true.

b. Rogers and his wife fared even better in 2006, earning more than two and half million dollars in combined income. Rogers, however, once again used his DAT shelter to illegally offset all of that income and pay zero taxes.

(5) Rogers' false statements were material:

202. If a particular statement has a substantial impact on the decision-making process or produces a substantial tax benefit to a taxpayer, the matter is properly regarded as "material" within the meaning of I.R.C. § 6700.

203. The DAD and DAT schemes unquestionably produce substantial tax benefits for its customers. Rogers' statements in transactional documents, promotional materials and in purported legal opinions collectively addressed all aspects of the DAD or DAT arrangements, including the schemes' substantial tax benefits.

204. In addition, Rogers' transactional documents, promotional materials and purported legal opinions had a substantial impact on his customers' decision-making process. Indeed, a customer could not participate in the DAD and DAT schemes without reading, signing and returning to Rogers the DAD and DAT transactional documents that he created.

205. Accordingly, Rogers' statements were material.

B. § 6700(a)(2)(B)

206. I.R.C. § 6700(a)(2)(B) imposes a civil penalty on any person or entity who: (1) organizes or participates in the organization or sale of (2) any plan or arrangement; and who, in connection with that plan or arrangement (3) makes or furnishes, or causes another to make or furnish (4) a statement as to the value of property or services, (5) when the value stated exceeds 200% of (or twice) the amount determined to be correct, and (6) the value of the property or services is directly related to the amount of a deduction or credit.

207. The DAD and DAT schemes are plans or arrangements within the meaning of I.R.C. § 6700(a) and Rogers participates in their organization and/or sale by, for instance, creating and managing the entities required for implementation of both schemes. *See* paragraphs 173-183.

208. Rogers violated I.R.C. § 6700(a)(2)(B) by making statements that were gross valuation overstatements as to the value of property – *i.e.*, the foreign distressed debt used in his DAD and DAT shelters. Rogers claimed that the distressed debt had a value for tax purposes of far more than 200% of its true value. Indeed, he claimed the distressed debt had a value for tax purposes equal to 100% of its face amount, when the actual value was no more than what he paid for it, which was 1% to 2% of the face amount. This represents an overstatement of value by Rogers of 10,000% to 5,000%.

209. The value of the distressed debt used in Rogers' DAD and DAT schemes was directly related to the amount of tax deductions claimed by his customers.

210. Therefore, Rogers made valuation overstatements about the value for tax purposes of the distressed debt used in his DAD and DAT schemes that far exceeded 200% of its actual

value, and that distressed debt was directly related to the amount of a tax deduction. Rogers thus engaged in conduct subject to penalty under I.R.C. § 6700(a)(2)(B).

C. § 6701

211. Section 6701 imposes a penalty: (1) on a person who aids, assists, procures, or advises with respect to the preparation or presentation of any portion of a tax return, claim, or other document ("portion"); (2) when that person knows or has reason to know that such portion will be used in connection with a material matter arising under federal tax law; and (3) that person knows that such portion (if used) would result in an understatement of the liability for the tax of another person.

212. Rogers' conduct is subject to penalty under I.R.C. § 6701. Rogers prepares and files tax returns on behalf of the Master LLCs involved in the scheme, including Sugarloaf. Rogers prepares and files Schedules K-1 for the LLCs used in the DAD transactions. And Rogers prepares and files trust returns for the trusts used in his DAT scheme.

213. Rogers also prepares "other" documents used in the DAD and DAT shelters, including transactional documents, promotional materials and purported legal opinions.

214. As the mastermind of the DAD and DAT schemes, Rogers knows or has reason to know that that the documents he drafts and prepares will be used as to material matters arising under federal tax law. Rogers knows, for instance, that the DAD and DAT transactions seek to transfer foreign built-in losses to his U.S. customers, and that his tax returns, Forms K-1, trust documents, and transactional documents will be used in connection with his customers' attempts to deduct those losses for tax purposes.

215. Rogers also knows that the purported losses incurred by his DAD and DAT customers will cause an understatement of their federal tax liabilities, for the same reasons he knows or has reason to know his statements about the DAD and DAT tax schemes were false or fraudulent. *See paragraphs* 189-201.

216. Accordingly, Rogers' conduct in connection to the DAT transaction also is subject to penalty under I.R.C. § 6701.

D. Necessity of Injunction

217. The government has identified 60 of Rogers' DAD transactions to date. Rogers created, promoted, and managed all of these transactions. Customers of Rogers' DAD transactions improperly deducted foreign losses of $68,057,086 for tax year 2003 and $101,537,500 for tax year 2004. Combined, Rogers' DAD transactions have generated purported federal losses of over $169 million.

218. The government has identified 147 DAT transactions to date. Rogers created, promoted, and managed all of these transactions. Customers of Rogers' DAT transactions improperly deducted foreign losses of $65,285,850 for tax year 2005, $104,946,274 for tax year 2006, and $38,256,161 for tax year 2007. Combined, Rogers' DAT transactions have generated purported federal losses of over $208 million.

219. All told, Rogers' DAD and DAT schemes have enabled U.S. taxpayers to improperly claim over $370 million of foreign losses to offset unrelated U.S. income, despite the fact that those taxpayers incur no actual economic losses in connection with the various schemes.

220. Not even specific Congressional action worked to get Rogers out of the distressed debt tax shelter business, and today, upon information and belief, Rogers is still promoting a

variation of his distressed debt scheme. If not enjoined, Rogers is likely to continue creating, devising and promoting abusive tax schemes, such as his DAD, DAT, and I.R.C. § 743(f) distressed debt shelters. In addition, if Rogers and his companies Sugarloaf and Jetstream are not enjoined the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of resources to enforce the internal revenue laws, and the substantial losses caused by Rogers' and his companies' actions will continue to increase.

221. An injunction against Rogers is necessary and appropriate to prevent the recurrence of his conduct, and the conduct of his companies, Sugarloaf and Jetstream, subjecting them to penalty under I.R.C. §§ 6700(a)(2)(A), 6700(a)(2)(B), 6701, and for engaging in any other conduct subject to penalty under the Internal Revenue Code.

Count II: Injunction Under I.R.C. § 7402 for Unlawful Interference with the Enforcement of the Internal Revenue Laws

222. The United States incorporates by reference the allegations contained in paragraphs 1 through 221.

223. I.R.C. §7402(a) authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

224. Rogers' activities and the activities of Sugarloaf and Jetstream described above substantially interfere with the enforcement of the internal revenue laws by promoting abusive tax schemes that result in customers not paying their true federal income tax liabilities.

225. An injunction prohibiting Rogers, Sugarloaf, and Jetstream from organizing, promoting, or selling (or helping others to organize, promote, or sell) abusive tax schemes, including the schemes described in this complaint, is needed to stop the illegal avoidance of tax

liability and to prohibit them from otherwise interfering with the proper administration and enforcement of the internal revenue laws.

226. Unless enjoined by this Court, Rogers and his companies are likely to continue to engage in illegal conduct.

227. If Rogers and his companies are not enjoined, the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of resources to enforce the internal revenue laws, and the losses caused by Rogers' actions will continue to increase.

228. While the United States will suffer substantial, irreparable injury if Rogers, Sugarloaf and Jetstream are not enjoined, Rogers and his companies will not be greatly harmed by being compelled to obey the law.

229. The public interest would be advanced by enjoining Rogers, Sugarloaf and Jetstream because an injunction will stop their illegal conduct and the harm that conduct is causing the United States Treasury and the public.

230. An injunction under I.R.C. § 7402 is necessary and appropriate, and the United States is entitled to injunction relief under I.R.C. § 7402. The injunction, as detailed below, should bar Rogers, Sugarloaf and Jetstream, and anyone acting in concert with them, from organizing, promoting, or selling (or helping others to organize, promote, or sell) the abusive tax schemes described in this complaint, any similar schemes, and any other tax shelter, plan, or arrangement, that incites or assists customers to attempt to violate the internal revenue laws or evade the assessment or collection of their federal tax liabilities or claim improper tax refunds, and from otherwise engaging in conduct that substantially interferes with the proper administration of the internal revenue laws.

Count III: Injunction Under I.R.C. § 7407 for Engaging in Conduct Subject to Penalty Under I.R.C. §§ 6694 and 6695.

231. The United States incorporates by reference the allegations contained in paragraphs 1 through 230.

232. I.R.C. § 7407 authorizes a district court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes, among other things, the following:

a. engaging in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares a return or claim for refund that contains an unreasonable position and the return preparer knew (or reasonably should have known) of the position; and

b. engaging in conduct subject to penalty under I.R.C. § 6695(c), which penalizes a tax return preparer for failing to furnish an identifying number for a return that he prepared.

233. In order for a court to issue such an injunction, the court must find: (1) that the tax return preparer engaged in the prohibited conduct; and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct.

234. If the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax preparer.

235. Rogers has repeatedly and continually prepared or submitted returns or portions of returns that contain unreasonable positions and substantially understate the liability for tax on the return, and Rogers knew (or reasonably should have known) of the position. This conduct is subject to penalty under I.R.C. § 6694.

236. For example, Rogers has repeatedly and continually prepared returns for his DAD customers' LLC entities that claim an I.R.C. § 166 bad debt deduction for approximately 97% of the full face value of the distressed debt. Rogers' preparation of these returns unreasonably understated each customer's tax liability, and Rogers knew (or reasonably should have known) that the position was unreasonable. This conduct is subject to penalty under I.R.C. § 6694. Likewise, Rogers has repeatedly and continually prepared returns for his DAT customers' trust entities that claim an I.R.C. § 166 bad debt deduction for approximately 97% of the full face value of the distressed receivables. Rogers' preparation of these returns unreasonably understated each customer's tax liability, and Rogers knew (or reasonable should have known) that the position was unreasonable. *See paragraphs* 189-201. This conduct is subject to penalty under I.R.C. § 6694.

237. Rogers also has repeatedly and continually failed to furnish an individual identifying number on returns he prepared for others in violation of I.R.C. § 6695(c).

238. For example, in 2003, 2004 and 2005, Rogers received compensation and/or fees for preparing numerous DAD customer-LLC returns through his law firm, Seyfarth Shaw LLP. Rogers repeatedly and continually failed to furnish an individual identifying number on these returns and, instead, falsely claimed that they were "self-prepared." Likewise, in 2005, 2006 and 2007, Rogers received compensation and/or fees for preparing numerous customer "trust"

returns. In violation of I.R.C. § 6695(c), Rogers repeatedly and continually failed to furnish an individual identifying number on these returns and, instead, falsely claimed that they were "self-prepared."

239. Rogers also engaged in other fraudulent and/or deceptive conduct in connection with the DAD and DAT schemes which substantially interfered with the proper administration of the Internal Revenue laws in violation of I.R.C. § 7407(b)(1)(D). *See e.g.*, *paragraphs* 189-201.

240. Rogers' repeated violations of 26 U.S.C. §§ 6694 and 6695 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under 26 U.S.C. § 7407.

241. If Rogers is not enjoined, he is likely to continue to file false or fraudulent federal tax returns on behalf of others. Rogers' repeated conduct subject to injunction under 26 U.S.C. § 7407, including improperly claiming bad debt deductions and failing to use identifying numbers on returns he prepared for others, as well as engaging in other fraudulent and/or deceptive conduct, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent his interference with the proper administration of the internal revenue laws. Thus, Rogers also should be permanently barred from acting as a return preparer for others.

Count IV: Injunction Under I.R.C. § 7408 for Violations of I.R.C. §§ 6707 and 6111

242. The United States incorporates by reference the allegations contained in paragraphs 1 through 241.

243. I.R.C. § 7408(a) authorizes a district court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6707 from engaging in further such conduct if injunctive relief is appropriate to prevent recurrence of the conduct.

244. I.R.C. § 6707 imposes a penalty: (i) upon any person who is a material advisor required to file a certain type of return (Form 8918) under I.R.C. § 6111; (ii) with respect to any reportable transaction; and (iii) if that person fails to file such return, or furnishes false or incomplete information with respect to the transaction.

245. Under I.R.C. § 6111(b), a material advisor is any person: (1) who provides any material aid, assistance or advice with respect to organizing, managing, promoting, selling implementing, insuring or carrying out any reportable transaction; and (2) who derives gross income, directly or indirectly, in excess of $50,000 for such aid, assistance or advice when substantially all the tax benefits from the transaction are provided to natural persons. For reportable transactions that are listed transactions, Treas. Reg. § 301.6111-3(b)(3)(i)(B) provides that the minimum fee threshold is reduced from $50,000 to $10,000. Rogers is a material advisor. He is the mastermind of the DAT scheme and is the person who drafts (and signs many of) the transactional documents required to implement the DAT scheme to provide tax benefits to customers. Additionally, Rogers receives substantial compensation and/or fees, well in excess of $50,000 (let alone $10,000), for implementing and managing the DAT tax shelter for his customers.

246. A transaction is a listed transaction if it is substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction. *See* I.R.C. § 6707A(c)(2); Treas. Reg. § 1.6011-4(b)(2). The regulations define the term "substantially similar" as "any transaction that is expected to obtain the same or similar types of tax benefits

and that is either factually similar or based on the same or similar tax strategy." Treas. Reg. § 1.6011- 4(c)(4).

247. DAT is a listed transaction. The Internal Revenue Service determined the DAT shelter is a tax avoidance transaction and specifically designated the DAT, and substantially similar transactions, as listed transactions for purposes of I.R.C. § 6111 in Notice 2008-34, 2008-12 I.R.B. 645. Notice 2008-34, effective February 27, 2008, described the DAT transaction as one in which:

> a tax indifferent party, directly or indirectly, contributes one or more distressed assets (for example, a creditor's interest in debt) with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss.

248. Rogers knows that his DAT scheme is effectively the same as, or at a minimum, is substantially similar to, the DAT transaction listed in Notice 2008-34. Rogers conceived of, created and promoted the DAT scheme. Rogers' DAT scheme is expected to obtain the same or similar types of tax benefits as those described in Notice 2008-34, and is both factually similar and based on the same or similar tax strategy. Indeed, at this time, Rogers' DAT shelter is the only known version of the DAT transaction being promoted by anyone.

249. Under I.R.C. § 6111(a), each material advisor with respect to any reportable or listed transaction is required to file Form 8918, "Material Advisor Disclosure Statement," no later than the date prescribed by the Secretary. The Form 8918 must set forth: (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may

prescribe. Following submission of Form 8918, material advisors are furnished with a reportable transaction number. Material advisors are then required to furnish that number to customers pursuant to Treas. Reg. § 301.6111-3(d)(2), so customers are on notice that: (1) they have participated in a reportable transaction that is required to be disclosed pursuant to I.R.C § 6011; and (2) must include the reportable transaction number with their next filed return. If customers fail to include the number with their returns, they are potentially subject to substantial penalties under I.R.C. § 6707A.

250. Rogers became a material advisor on February 27, 2008 – the day the Notice 2008-34 became effective – with respect to any DAT transactions which were entered into after October 22, 2004. *See* Treas. Reg. § 301.6111-3(b)(4)(iii). Rogers was required to file Form 8918 by April 30, 2008, the last day of the month after the quarter in which he became a material advisor. Treas. Reg. § 301.6111-3(d) and (e). As of the date of the filing of this Complaint, Rogers has not filed any Form 8918 in connection with any of the DAT transactions he set up for his customers and has refused to disclose that he was a material advisor for the DAT scheme with the IRS.

251. In addition, because Rogers has refused to file material advisor disclosures for his DAT scheme, Rogers has not obtained a reportable transaction number, and consequently has not furnished a reportable transaction number to his customers pursuant to Treas. Reg. § 301.6111-3.

252. Indeed, Rogers falsely told certain customers that the DAT scheme was not a listed transaction. Rogers also falsely told customers that they did not have to disclose the DAT tax shelter to the IRS.

253. Rogers has demonstrated his intention to continue to engage in such conduct and in other conduct subject to penalty under the Internal Revenue Code. He has repeatedly promoted plans and arrangements and assisted others to establish plans or arrangements that are abusive tax schemes and/or listed transactions and require reporting under I.R.C. § 6111 and/or § 6011.

254. An injunction against Rogers is necessary and appropriate to prevent the recurrence of conduct subjecting him to penalty under I.R.C. § 6707, for engaging in other conduct subject to penalty under the Internal Revenue Code, and to protect the public. If not enjoined, Rogers will continue to organize and sell abusive tax schemes, including schemes similar to the DAT tax shelter.

Relief Sought

WHEREFORE, plaintiff, the United States of America, respectfully prays the following:

A. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6700(a)(2)(A) and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct;

B. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6700(a)(2)(B) and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct;

C. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct;

D. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6694, and that injunctive relief under I.R.C. § 7407 is appropriate to prevent recurrence of that conduct;

E. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6695(c), and that injunctive relief under I.R.C. § 7407 is appropriate to prevent recurrence of that conduct;

F. That this Court find Rogers engaged in conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent recurrence of that conduct under 26 U.S.C. § 7402(a);

G. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct;

H. That this Court find Rogers engaged in conduct subject to penalty under I.R.C. § 6707 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence of that conduct;

I. That this Court, pursuant to 26 U.S.C. §§ 7402 and 7408, enter a permanent injunction prohibiting Rogers (individually and through any other name or entity), Sugarloaf and Jetstream, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

a) Organizing, promoting, or selling (directly or indirectly) the DAT tax schemes described in this complaint, the DAD tax schemes described in this complaint, the I.R.C. § 743(f) distressed debt scheme described in this complaint, any substantially similar plans or arrangements, or any other business or tax services that:

- use, involve or relate to distressed debt, distressed receivables or other distressed assets;
- attempt to shift losses from a foreign tax indifferent party to or for the benefit of a U.S. taxpayer; and/or
- attempt to shift purported losses among entities claiming to be, trusts, corporations or entities taxed as partnerships for the benefit of U.S. taxpayers who did not incur the losses;

b) Organizing, promoting, or selling (or helping others to organize, promote, or sell) any other tax shelter, plan, or arrangement, that violates the internal revenue laws or improperly incites customers to evade the assessment or collection of their federal tax liabilities or claim improper tax refunds;

c) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(A), including making, in connection with the organization or sale of any plan or arrangement, any statement about the securing of any tax benefit that Rogers knows or has reason to know is false or fraudulent as to any material matter;

d) Engaging in conduct subject to penalty under I.R.C. § 6700(a)(2)(B), including making statements as to the value of property or services when the value stated exceeds 200% of the amount determined to be correct and is directly related to the amount of a deduction or credit;

e) Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, assisting, procuring, or advising with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that Rogers knows or has reason to know will be used as to a material matter arising under federal tax law, and will result in the material understatement of the liability for the tax of another person;

f) Engaging in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who prepares a return or claim for refund that contains an unreasonable position and the return preparer knew (or reasonably should have known) of the position;

g) Engaging in conduct subject to penalty under I.R.C. § 6695(c), which penalizes a tax return preparer for failing to furnish an identifying number for a return that he prepared;

h) Engaging in conduct subject to penalty under I.R.C. § 6707, which penalizes a material advisor for: (1) failing to file a Form 8918, Material Advisor Disclosure Statement; (2) failing to obtain a Reportable Transaction Number; and (3) failing to furnish the Reportable Transaction Number to his copromoters and tax shelter customers;

i) Engaging in conduct designed or intended to obstruct or delay an IRS investigation or audit;

j) Organizing, promoting, or selling business or tax services that facilitate or promote noncompliance with federal tax laws; and

k) Engaging in conduct subject to penalty under any provision of the Internal Revenue Code.

J. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Rogers to produce to counsel for the United States a list identifying (by name, address, e-mail address, phone number, and Social Security or other tax identification number) all of the customers who, for any of the tax years 2003 to the present, have used the services of Rogers or his business as it is known under any of its names, including *but not limited to* Rogers & Associates, John Rogers, Attorney at Law, Sugarloaf, Jetstream, Warwick, and Portfolio Properties;

K. That the Court, pursuant to I.R.C. § 7402, enter an injunction requiring Rogers at his own expense to contact by mail all of his customers related to any of his tax planning services and inform those individuals of the Court's findings concerning the falsity of his prior representations and attach a copy of the permanent injunction, and to file with the Court, within 20 days of the date on which the permanent injunction is entered, a certification signed under penalty of perjury that he has done so;

L. That the Court allow the United States full post-judgment discovery to monitor compliance with the injunction;

M. That the Court retain jurisdiction over this action for purpose of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

N. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated this 2nd day of November, 2010.

Respectfully submitted,

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