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U.S. DISTRICT COURT
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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA)

v. Plaintiff,)

ROBERT J. STEVENS)
NEAL R. BERGSTROM)
KEVIN T. ANDERSON)

Defendants.)

INDICTMENT

Count 1: 18 U.S.C. § 371
Counts 2-55: 18 U.S.C. § 1343 and
2(a)
Counts 56-58: 26 U.S.C. § 7202 and
18 U.S.C. § 2(b)

Judge Tena Campbell
DECK TYPE: Criminal
DATE STAMP: 04/05/2006 @ 14:00:39
CASE NUMBER: 2:06CR00207 TC

THE GRAND JURY CHARGES:

COUNT ONE
(18 U.S.C. § 371 – Conspiracy)

PARTIES, PERSONS, AND ENTITIES

At all times relevant to this indictment:

1. Defendant ROBERT JOHN STEVENS, age 48, of Salt Lake City, Utah,
was Chairman of the Board, shareholder, and primary owner of Advantius, Inc.

2. Defendant NEAL ROY BERGSTROM, age 41, of Sandy, Utah, was Chief Executive Officer (CEO) of Advantius, Inc. In his role as CEO, BERGSTROM was responsible for signing contracts with clients on behalf of Advantius.

3. Defendant KEVIN T. ANDERSON, age 32, of Salt Lake County, Utah, was Controller, Vice President of Finance and Accounting and Chief Financial Officer of Advantius, Inc. In his role as Controller Anderson was responsible for, among other things, wiring clients' tax withholding and F.I.C.A. payments to the I.R.S.

4. Advantius, Inc., was a Delaware corporation. Advantius offered its clients human resource services; the primary service Advantius offered was the filing of federal, state, and local employment tax returns and the automated collection and payment of such taxes.

5. The Internal Revenue Service (IRS) was an agency of the United States Department of the Treasury, responsible for administering and enforcing the tax laws of the United States.

THE CONSPIRACY

6. From on or about November 24, 2002 and continuing at least until on or about October 20, 2003, within the Central Division of the District of Utah, and elsewhere,

**ROBERT J. STEVENS
NEAL R. BERGSTROM
KEVIN T. ANDERSON,**

DEFENDANTS herein, and others known and unknown to the Grand Jury, did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree together to commit offenses against the United States, that is:

- A. To violate Title 18, United States Code, Section 1343; and
- B. To violate Title 26, United States Codes, Section 7202 and Title 18, United States Code, Section 2(b).

THE OBJECTIVES OF THE CONSPIRACY

7. It was a part and an object of the conspiracy that the DEFENDANTS, having devised and intending to devise and carry out a scheme to defraud Advantius's clients and to obtain money and property from Advantius's clients by means of false and fraudulent pretenses, representations and promises and for purposes of executing this fraudulent scheme, did knowingly use or cause to be used interstate wire communications, in violation of Title 18, United States Code, Section 1343; and

8. It was a part and an object of the conspiracy to defraud that the DEFENDANTS, having collected and accounted for payroll taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes owed by Advantius's clients, did willfully fail to pay over to the IRS such payroll and F.I.C.A. taxes, did willfully cause Advantius to fail to pay over to the IRS such payroll and F.I.C.A. taxes, and did willfully cause Advantius's clients to fail to pay over to the IRS such payroll and F.I.C.A. taxes in violation of Title 26, United States Code, Section 7202, and Title 18, United States Code, Section 2(b).

MANNER AND MEANS OF THE CONSPIRACY

Among the means by which the DEFENDANTS and their co-conspirators would and did carry out the conspiracy were the following:

9. It was a part of the conspiracy that the DEFENDANTS devised a scheme to defraud Advantius's clients by causing Advantius to enter into contracts with clients to provide payroll tax service. As part of these contracts, Advantius agreed to collect payroll and F.I.C.A. taxes to be paid over to various federal, state, and local taxing agencies. It was further part of the contracts that Advantius would file all required employer payroll tax returns with the appropriate federal, state, and local taxing agencies. It was further part of the contracts that, having collected the employer withholding funds from the clients, Advantius would pay over these funds to the appropriate federal, state, and local taxing agencies.

10. It was further part of the scheme that the DEFENDANTS represented to Advantius's clients that Advantius would pay over to the relevant federal, state, and local taxing agencies all necessary payroll and F.I.C.A. taxes using funds collected from the clients.

11. It was further part of the scheme that the DEFENDANTS sent and caused to be sent by the United States Postal Service and by interstate wire communications invoices detailing the amount of federal, state and local payroll and F.I.C.A. taxes owed by the clients and to be collected from the clients by Advantius.

12. It was further part of the scheme that the DEFENDANTS caused Advantius's clients to grant Advantius direct electronic access to the clients' bank accounts through the use of interstate wire communications.

13. It was further part of the scheme that, through the use of interstate wire communications, the DEFENDANTS withdrew millions of dollars from Advantius's clients' bank accounts under the guise of collecting and accumulating payroll and F.I.C.A. taxes owed by the clients for the purpose of paying these taxes over to federal, state, and local taxing authorities.

14. It was further part of the scheme that the DEFENDANTS commingled all client funds in a single account that was also used for Advantius's operating expenditures.

15. It was further part of the scheme that the DEFENDANTS, having collected millions of dollars from their clients for the purpose of paying over payroll and F.I.C.A. taxes to federal, state, and local taxing authorities, willfully failed to pay over millions of dollars in payroll and F.I.C.A. taxes owed by Advantius's clients to federal, state, and local taxing authorities, including the IRS.

16. It was further part of the scheme that the DEFENDANTS identified which of Advantius's clients had the largest payroll withholdings and knowingly failed to pay over the payroll and F.I.C.A. taxes on behalf of those clients; the DEFENDANTS continued paying over payroll and F.I.C.A. taxes on behalf of the clients with smaller payrolls.

17. It was further part of the scheme that the DEFENDANTS created a business structure at Advantius that centralized control over all major decisions and allowed the DEFENDANTS to personally maintain control over all cash-flow decisions. In order to maintain this control, the DEFENDANTS instituted controls that required the approval of two of the DEFENDANTS in order to authorize any expenditure of funds on behalf of Advantius.

18. It was further part of the scheme that the DEFENDANTS used approximately \$4,446,192.21 in funds collected from Advantius's clients for purposes other than to pay the clients' payroll withholdings and F.I.C.A. taxes.

19. It was further part of the scheme that the DEFENDANTS knowingly undercapitalized Advantius such that in order to continue to operate the business the DEFENDANTS needed funds, either from outside investors or from clients funds.

20. It was further part of the scheme that the DEFENDANTS falsely represented to Advantius's clients that they had made the required tax deposits.

OVERT ACTS

In furtherance of the conspiracy and in order to accomplish its objectives within the District of Utah and elsewhere, the DEFENDANTS and their co-conspirators committed overt acts, including the following:

21. On numerous occasions, the DEFENDANTS caused Advantius to send invoices to Advantius's clients through the mails and using interstate wire

communications, which invoices led the clients to believe that their payroll and F.I.C.A. taxes were being paid over to the relevant federal, state, and local taxing agencies.

22. On numerous occasions, the DEFENDANTS caused Advantius to withdraw from its clients' bank accounts funds totaling approximately \$4.4 million ostensibly for the purpose of paying the clients' payroll and F.I.C.A. taxes, which funds were never paid over to the appropriate federal, state, and local taxing agencies.

23. On or about November 24, 2002, NEAL BERGRSTOM in his capacity as CEO of Advantius, signed an Administrative Services Agreement with Myfamily.com.

24. In or about January, 2003, KEVIN ANDERSON, in a meeting with a potential investor, told the potential investor that Advantius operated its business by borrowing money from the IRS.

25. Defendant KEVIN ANDERSON created and maintained a spreadsheet detailing the amounts of payroll taxes collected from clients, the amounts of payroll taxes paid over to federal, state, and local taxing agencies and the shortfalls in clients' tax payments; this spreadsheet also forecast the likely dates on which the clients would receive notice from the IRS of their payroll tax deficiencies.

26. On numerous occasions KEVIN ANDERSON willfully failed to authorize the payment of tax payments on behalf of Advantius's clients that were then due and owing.

27. On numerous occasions, the DEFENDANTS made assurances to clients that all of their payroll withholding and F.I.C.A. taxes had been paid when the

DEFENDANTS then and there well knew that the payroll withholding and F.I.C.A. taxes had not been paid.

28. On or about August 28, 2003, NEAL BERGSTROM blamed the failure to pay over payroll and F.I.C.A. taxes for numerous clients on a "clerical error."

29-82. On or about the dates listed below, the DEFENDANTS caused Advantius to withdraw from the below listed clients' bank accounts funds in the amounts listed using interstate wire communications:

<u>Par. Number</u>	<u>Date</u>	<u>Client Name</u>	<u>Amount of Transfer</u>
29	1/15/2003	MyFamily.com	\$225,472.48
30	1/15/2003	MyFamily.com	\$35,268.19
31	1/30/2003	MyFamily.com	\$566,657.36
32	1/30/2003	MyFamily.com	\$121,439.78
33	1/30/2003	MyFamily.com	\$6,700.31
34	2/14/2003	MyFamily.com	\$840,145.43
35	2/14/2003	MyFamily.com	\$117,661.24
36	2/14/2003	MyFamily.com	\$8,338.88
37	2/27/2003	MyFamily.com	\$703,346.08
38	2/27/2003	MyFamily.com	\$102,976.17
39	2/27/2003	MyFamily.com	\$5,209.15
40	3/13/2003	MyFamily.com	\$576,802.08
41	3/13/2003	MyFamily.com	\$108,606.44
42	3/13/2003	MyFamily.com	\$4,370.88
43	3/31/2003	MyFamily.com	\$561,677.10
44	3/31/2003	MyFamily.com	\$112,054.66

45	3/31/2003	MyFamily.com	\$4,677.71
46	4/14/2003	MyFamily.com	\$651,111.99
47	4/14/2003	MyFamily.com	\$110,387.69
48	4/14/2003	MyFamily.com	\$4,701.76
49	4/29/2003	MyFamily.com	\$740,333.51
50	4/29/2003	MyFamily.com	\$110,898.83
51	4/29/2003	MyFamily.com	\$4,832.40
52	5/14/2003	MyFamily.com	\$708,714.86
53	5/14/2003	MyFamily.com	\$118,277.49
54	5/14/2003	MyFamily.com	\$4,703.60
55	5/29/2003	MyFamily.com	\$5,420.01
56	5/29/2003	MyFamily.com	\$130,802.59
57	5/29/2003	MyFamily.com	\$712,187.72
58	6/12/2003	MyFamily.com	\$4,828.89
59	6/12/2003	MyFamily.com	\$119,077.97
60	6/12/2003	MyFamily.com	\$708,996.20
61	6/30/2003	MyFamily.com	\$3,097.02
62	6/30/2003	MyFamily.com	\$92,170.29
63	6/30/2003	MyFamily.com	\$483,581.39
64	4/14/2003	Sapers & Wallach	\$74,743.98
65	4/29/2003	Sapers & Wallach	\$71,229.02
66	4/29/2003	Sapers & Wallach	\$75,446.16
67	5/01/2003	Sapers & Wallach	\$308,517.42
68	5/01/2003	Sapers & Wallach	\$401,664.98
69	5/15/2003	Sapers & Wallach	\$68,043.19

70	6/02/2003	Sapers & Wallach	\$19,931.60
71	6/12/2003	Sapers & Wallach	\$61,209.13
72	6/27/2003	Sapers & Wallach	\$70,300.51
73	6/27/2003	Sapers & Wallach	\$151,365.80
74	7/03/2003	Intrepid Group, Inc.	\$6,991.72
75	7/18/2003	Intrepid Group, Inc.	\$7,405.28
76	8/05/2003	Intrepid Group, Inc.	\$8,670.98
77	8/20/2003	Intrepid Group, Inc.	\$8,360.38
78	9/04/2003	Intrepid Group, Inc.	\$8,607.16
79	9/18/2003	Intrepid Group, Inc.	\$8,607.38
80	10/03/2003	Intrepid Group, Inc.	\$7,868.73
81	10/07/2003	Intrepid Group, Inc.	\$1,350.87
82	10/20/2003	Intrepid Group, Inc.	\$8,366.40

83. On numerous occasions the DEFENDANTS caused Advantius to send, through the mails and by use of interstate wire communications, invoices to Advantius's clients listing amounts of payroll and F.I.C.A. taxes to be withheld and paid over to the IRS.

84. On the below listed dates the DEFENDANTS filed and caused to be filed Forms 941, Employer's Quarterly Federal Tax Returns, for the quarters ending on the dates listed below, for Advantius's clients listed below, which reported payroll withholding and F.I.C.A. tax liabilities in the amounts listed below. Notwithstanding the tax liabilities listed on the returns, the DEFENDANTS knowingly failed to pay over the appropriate taxes, and knowingly caused the clients identified below to fail to pay over

the appropriate amounts; instead the DEFENDANTS caused Advantius's clients to make payments in the amounts listed below, if any:

<u>Date</u>	<u>Quarter Ending</u>	<u>Client</u>	<u>Tax Liability Reported</u>	<u>Tax Paid</u>
4/15/2003	3/31/2003	MyFamily.com	\$1,090,257.16	\$0
7/15/2003	6/30/2003	Sapers & Wallach	\$817,940.39	\$169,442.66

85. During the course of the conspiracy the DEFENDANTS caused at least thirty-seven of Advantius's clients to fail to pay over payroll withholding and F.I.C.A. taxes to the IRS. The total amount of taxes that the DEFENDANTS knowingly failed to pay over and knowingly caused Advantius's clients to fail to pay over to the IRS totaled at least approximately \$4,446,192.21.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FIFTY-FIVE
(18 U.S.C. § 1343 – Wire Fraud)

86. Paragraphs 1 through 5 of Count One are realleged and reincorporated herein.

87. Paragraphs 9 through 20 of Count One are realleged and reincorporated herein.

88. Beginning on or about November 20, 2002, and continuing to on or about October 20, 2003 in the Central Division of the District of Utah and elsewhere, the DEFENDANTS did knowingly devise a scheme and artifice to defraud and to obtain

money and property by means of materially false and fraudulent pretenses, representations, and promises.

89. It was part of this scheme to defraud and to obtain money and property by materially false and fraudulent pretenses, representations, and promises that the

DEFENDANTS:

- A. caused Advantius's clients to grant Advantius direct electronic access to the clients' bank accounts;
- B. sent and caused to be sent to Advantius's clients invoices detailing the amount of federal, state, and local payroll and F.I.C.A. taxes to be collected from the clients by Advantius and to be paid over to the federal, state, and local taxing authorities;
- C. withdrew millions of dollars from Advantius's clients' bank accounts under the guise of collecting and accumulating payroll and F.I.C.A. taxes to be paid over to federal, state, and local taxing authorities;
- D. failed to pay over to federal, state, and local taxing authorities millions of dollars in payroll and F.I.C.A. taxes collected by Advantius from its clients;
- E. used these collected funds for purposes other than to pay the payroll withholding and F.I.C.A. tax obligations of the clients; and,
- F. falsely represented to Advantius's clients that Advantius had made the required tax deposits.

90. On or about the dates set forth below, in the Central Division of the District of Utah,

**ROBERT J. STEVENS
NEAL R. BERGSTROM
KEVIN T. ANDERSON**

DEFENDANTS herein, for the purpose of executing and attempting to execute the aforementioned scheme to defraud and to obtain money and property by false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted, in interstate and foreign commerce, by means of wire, radio, and television communication, writings, signs, signals, pictures, and sounds, namely the DEFENDANTS, through the use of interstate wire communications, withdrew funds in the amounts listed below from the clients identified below on the dates identified below:

<u>Count</u>	<u>Date</u>	<u>Client</u>	<u>Amount</u>
2	1/15/2003	MyFamily.com	\$225,472.48
3	1/15/2003	MyFamily.com	\$35,268.19
4	1/30/2003	MyFamily.com	\$566,657.36
5	1/30/2003	MyFamily.com	\$121,439.78
6	1/30/2003	MyFamily.com	\$6,700.31
7	2/14/2003	MyFamily.com	\$840,145.43
8	2/14/2003	MyFamily.com	\$117,661.24
9	2/14/2003	MyFamily.com	\$8,338.88
10	2/27/2003	MyFamily.com	\$703,346.08
11	2/27/2003	MyFamily.com	\$102,976.17

12	2/27/2003	MyFamily.com	\$5,209.15
13	3/13/2003	MyFamily.com	\$576,802.08
14	3/13/2003	MyFamily.com	\$108,606.44
15	3/13/2003	MyFamily.com	\$4,370.88
16	3/31/2003	MyFamily.com	\$561,677.10
17	3/31/2003	MyFamily.com	\$112,054.66
18	3/31/2003	MyFamily.com	\$4,677.71
19	4/14/2003	MyFamily.com	\$651,111.99
20	4/14/2003	MyFamily.com	\$110,387.69
21	4/14/2003	MyFamily.com	\$4,701.76
22	4/29/2003	MyFamily.com	\$740,333.51
23	4/29/2003	MyFamily.com	\$110,898.83
24	4/29/2003	MyFamily.com	\$4,832.40
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30	5/29/2003	MyFamily.com	\$712,187.72
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32	6/12/2003	MyFamily.com	\$119,077.97
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37	4/14/2003	Sapers & Wallach	\$74,743.98
38	4/29/2003	Sapers & Wallach	\$71,229.02
39	4/29/2003	Sapers & Wallach	\$75,446.16
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45	6/27/2003	Sapers & Wallach	\$70,300.51
46	6/27/2003	Sapers & Wallach	\$151,365.80
47	7/03/2003	Intrepid Group, Inc.	\$6,991.72
48	7/18/2003	Intrepid Group, Inc.	\$7,405.28
49	8/05/2003	Intrepid Group, Inc.	\$8,670.98
50	8/20/2003	Intrepid Group, Inc.	\$8,360.38
51	9/04/2003	Intrepid Group, Inc.	\$8,607.16
52	9/18/2003	Intrepid Group, Inc.	\$8,607.38
53	10/03/2003	Intrepid Group, Inc.	\$7,868.73
54	10/07/2003	Intrepid Group, Inc.	\$1,350.87
55	10/20/2003	Intrepid Group, Inc.	\$8,366.40

All in violation of Title 18, United States Code, Sections 1343 and 2.

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COUNTS FIFTY-SIX THROUGH FIFTY-EIGHT

(26 U.S.C. § 7202 – Willful Failure to Pay Over Withholding and FICA Taxes)

91. Paragraphs 1 through 5 of Count One are realleged and reincorporated herein.

92. Paragraphs 9 through 20 of Count One are realleged and reincorporated herein.

93. On or about the dates listed below in the District of Utah,


**ROBERT J. STEVENS
NEAL R. BERGSTROM
KEVIN T. ANDERSON,**

DEFENDANTS herein, having collected from the total taxable wages of Advantius's clients' employees federal income taxes and Federal Insurance Contributions Act taxes in the sums listed below, did willfully fail to pay over to the Internal Revenue Service, and did willfully cause Advantius's clients listed below to fail to pay over to the Internal Revenue Service, said federal income taxes withheld and Federal Insurance Contributions Act taxes due and owing to the United States of America, except to the extent listed below, for the quarters ending on the dates listed below:

<u>Count</u>	<u>Quarter Ending</u>	<u>Client</u>	<u>Amount Withheld</u>	<u>Amount Paid Over</u>
56	3/31/2003	MyFamily.com	\$1,090,257.16	\$0
57	6/30/2003	MyFamily.com	\$1,058,877.27	\$0
58	6/30/2003	Sapers & Wallach	\$817,940.39	\$169,442.66

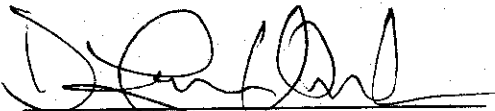
All in violation of Title 26, United States Code, Section 7202 and Title 18, United States Code, Section 2(b).

A TRUE BILL:



FOREPERSON OF THE GRAND JURY

STEPHEN J. SORENSON
United States Attorney



D. LOREN WASHBURN
Assistant United States Attorney