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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	Case No. 2:13CV999DBP
)	
v.)	COMPLAINT FOR PERMANENT
)	INJUNCTION AND OTHER RELIEF
SERGIO FERNANDO SOSA and SERGIO)	
CENTRO LATINO,)	Honorable Dustin B. Pead
Defendants.)	
_____)	

The United States of America, for its Complaint for Permanent Injunction and Other Relief, through counsel, states the following claims against the defendants:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402(a), 7407 and 7408 to enjoin Sergio Fernando Sosa (“Sosa”) and Sergio Centro Latino (“SCL”), and anyone in active concert or participation with Sosa and/or SCL (collectively “the defendants”), from the following activities:

a. Directly or indirectly organizing, promoting, marketing, or selling, or assisting in organizing, promoting, marketing, or selling, any plan or arrangement that advises or encourages taxpayers to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including plans or arrangements that promote, sell, or advocate the use of tax returns which fraudulently allege the existence of deductions or credits to which the taxpayers are not entitled.

b. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 or 6701, including preparing and filing tax returns and other documents that fraudulently underreport the tax liabilities of others;

c. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695 including preparing and filing tax returns and other documents that defendants know or have reason to believe, will be used in any material matter arising under the internal revenue laws, which use would result in an understatement of the liability for another person;

d. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any person other than himself;

e. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

f. Engaging in conduct that violates the standards of 31 U.S.C. § 330; and

g. Engaging in any other activity subject to penalty under the Internal Revenue Code.

JURISDICTION AND VENUE

2. Pursuant to 26 U.S.C. §§ 7401, 7402, 7407 and 7408, this action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and 26 U.S.C. §§ 7407 and 7408 because defendants have engaged in activities related to a tax-fraud scheme in this judicial district.

DEFENDANTS

5. Defendant Sergio Fernando Sosa was at all relevant times a resident of Utah residing within this judicial district. Sosa owns and operates a tax return preparation business currently called Sergio Centro Latino (“SCL”).

6. Defendant Sergio Centro Latino is a Utah business entity formed, owned and operated by Sosa in connection with a tax fraud scheme in this judicial district.

DEFENDANTS’ ABUSIVE TAX SCHEME

7. Sosa began preparing tax returns for individuals (sometimes referred to herein as “customers”) in Orem, Utah at least as early as 1994.

8. In each of the years between 1994 and 1997, the IRS assessed tax preparer penalties against Sosa for the following: understatements reported on returns due to taking unreasonable positions in violation of 26 U.S.C. § 6694(a) (13 separate assessments); understatements due to willful or reckless conduct in violation of 26 U.S.C. § 6694(b) (13

separate assessments); various defects in preparation under 26 U.S.C. § 6695(a) – (e) (46 separate assessments); and negotiating a check issued by the Treasury to a taxpayer in violation of 26 U.S.C. § 6695(f) (one assessment). The total amount of assessed penalties associated with these violations is \$32,150. To date, Sosa has made no effort to pay these statutory penalties.

9. In each of the years between 2003 and 2010, the IRS assessed tax preparer penalties against Sosa for the following: understatements reported on returns due to taking unreasonable positions in violation of 26 U.S.C. § 6694(a) (5 separate assessments); and understatements due to willful or reckless conduct in violation of 26 U.S.C. § 6694(b) (10 separate assessments). The total amount of assessed penalties associated with these violations is \$39,000. To date, Sosa has made no effort to pay these statutory penalties.

10. In 2000, Sosa founded a sole proprietorship under the registered name “d/b/a/ Sergio Centro Latino” for the purpose of preparing tax returns. In 2005, Sosa changed the formal status of that entity by filing articles of incorporation for SCL. Although registered as a corporation, SCL is and was at all relevant times operated as a sole proprietorship.

11. Although the defendants utilized a number of methods to improperly and unlawfully increase their customers’ income tax refunds, the methods utilized the most were: false filing status election (i.e., head of household and married filing jointly) in order to claim higher standard deductions, falsely claiming dependency exemptions; falsely claiming or inflating claims related to the Earned Income Tax Credit (“EITC”); falsely claiming or inflating claims related to the Additional Child Tax Credits (“ACTC”); falsely including expenses and deductions related to fictitious business entities; underreporting income and inflating expenses of legitimate business entities; and failing to calculate or incorrectly calculating self-employment tax liabilities.

12. Not including amended returns filed for prior years, between 2008 and 2013 (i.e., tax years between 2007 and 2012), the defendants prepared and/or signed approximately 39,698 federal income tax returns as tax return preparers for customers.

13. Of this amount of federal income tax returns prepared by defendants, the IRS has audited 90 individual income tax returns of 46 individual income taxpayers as of this date. These audits resulted in a finding of a tax deficiency or claim disallowance for all but two of the individual taxpayers. The average adjustment resulting from these audits was \$10,495.63 per return.

14. Each defendant has continually and/or repeatedly engaged in conduct subject to penalty under Section 6694, Title 26 U.S.C., in that each has, among other things, (1) taken unrealistic and unsustainable positions on clients' tax returns, resulting in understatements of tax due, and (2) willfully or recklessly understated the tax due (and, in nearly every case, overstated the refund due) on customers' tax returns.

15. Each defendant has continually and/or repeatedly engaged in conduct subject to penalty under Section 6695(c), Title 26 U.S.C., in that each has failed to furnish a correct identifying number for Sosa and/or SCL on the majority of prepared returns.

16. Further, each defendant has continually or repeatedly engaged in fraudulent and deceptive conduct which has substantially interfered with the proper administration of the Internal Revenue laws in that each defendant has, among other things, improperly and purposefully reduced and understated customers' tax liabilities by false filing status elections, falsely claiming dependency exemptions, falsely claiming or inflating claims related to the EITC, falsely claiming or inflating claims related to the ACTC, falsely including expenses and deductions related to fictitious business entities, underreporting income and inflating expenses of

legitimate business entities, and failing to calculate or incorrectly calculating self-employment tax liabilities, resulting, in most case, in an undeserved refund.

17. Each of the defendants has been informed by the Internal Revenue Service that their conduct is improper and illegal; however, upon information and belief, each defendant has continued to prepare improper tax returns.

SPECIFIC ALLEGATIONS REGARDING DEFENDANTS' CONDUCT

How the SCL return-preparation scheme worked

18. At all times relevant hereto, the defendants' typical customers were middle-income individual wage earners or small business owners. Advertising was largely by word of mouth. Customers typically were referred by friends or relatives who had received tax refunds through SCL. Over 95% of the Form 1040 individual federal income tax returns the defendants prepared resulted in a refund, a number much higher than the national average for each of the years in question.

19. SCL operated a high-volume business. In the 2008 tax return season (i.e., tax returns for 2007), SCL prepared 6,008 returns; in the 2009 season, 7,020 returns; in the 2010 season, 7,397 returns; in the 2011 season, 6,302 returns; in the 2012 season, 5,592 returns; and in the 2013 season, 7,379 returns. Returns were prepared using computer software and were filed electronically by defendants. The majority of the audited returns used an invalid Preparer Tax Identification Number ("PTIN").

20. SCL typically prepared each return after only one or two conferences with the customer. During these conferences, Sosa and/or SCL employees would inquire as to the customer's filing status, dependents, and possible business expenses. Neither Sosa nor any other SCL employee made reasonable inquiries or otherwise attempted to determine or substantiate the

information provided by the customers. Further, in numerous instances, the defendants intentionally misrepresented or ignored the information obtained from the customers during these conferences without the knowledge of the individual customer.

21. From the various audits, several false claims were common. For example, six of the 46 audited taxpayers were found to have claimed an incorrect filing status, and ten of the audited taxpayers were found to have claimed false dependency exemptions for individuals who did not qualify for such an exemption, to include nephews, nieces, brothers, sisters, parents, cousins, girlfriends, and mistresses.

22. In addition, the audits revealed numerous examples of questionable Schedule C business and Schedule E partnership income and expenses. The defendants filed federal income tax returns for several customers that greatly underreported income and overreported expenses. At least four of the customers' returns claimed business expenses for clearly personal expenses, including haircuts, clothing and food. Further, the defendants claimed expenses for some customers related to the operation of a business, although in fact those customers did not operate a trade or business. Further, the defendants repeatedly aided their customers in avoiding employment or self-employment taxes.

23. The defendants did not point out or explain these bogus deductions or false claims for expenses to the customers.

24. In over 95% of the returns filed, the defendants appear to have improperly generated false deductions large enough to create a refund. The refund claimed on the typical return prepared by defendants was much larger than the fee charged by defendants.

Particular customers' experiences

25. Sosa and/or SCL prepared the tax return of Taxpayer LC¹ for the 2007, 2008 and 2009 tax years. LC was an independent contractor engaged to provide services directly to SCL. After examination, the IRS determined that the tax returns submitted by the defendants on behalf of LC underreported more than \$90,000 in income received by LC from SCL for services rendered to SCL during these three years, and overstated cumulative expenses by at least \$11,000. These false claims were made without consultation with, or the consent of, LC. The false claims resulted in a cumulative adjustment of over \$29,000 in additional tax liabilities against LC, including cumulative disallowed ACTC of \$6,167.

26. Sosa and/or SCL prepared the tax return of Taxpayer DAI for the 2008, 2009 and 2010 tax periods. After examination, the IRS determined that DAI's returns had wrongly claimed his girlfriend's children as dependents for all three years, that his 2009 tax return reflected a \$23,000 business loss that DAI had no knowledge of, and that his 2008 and 2009 returns failed to report any income from restaurants owned and operated by DAI in those years, despite the fact that DAI had provided defendants with information concerning this income. The false claims resulted in a cumulative adjustment of over \$112,000 in additional tax liabilities against DAI, including disallowed ACTC of \$4,000.

27. Sosa and/or SCL prepared the tax return of Taxpayer AR for the 2008 and 2009 tax periods. After examination, the IRS determined that the tax returns underreported more than \$107,000 in business income over the two years, and overstated cumulative expenses by at least \$20,000. False expenses were put on the taxpayer's Schedule C in each year by defendants to

¹ Individual taxpayer's names are indicated only by their initials to protect the identities and privacy of non-parties.

increase the amount of EITC. The false claims resulted in a cumulative adjustment of over \$36,000 in additional tax liabilities against AR, including cumulative disallowed EITC of \$9,405, disallowed ACTC of \$1,258, and additional self-employment tax in excess of \$15,000.

28. Sosa and/or SCL prepared the tax return of Taxpayer SP for the 2008, 2009 and 2010 tax periods. After examination, the IRS determined that the tax returns falsely claimed personal expenses as business expenses and underreported self-employment income. These false claims resulted in a cumulative adjustment of over \$11,000 in additional tax liabilities against SP, including disallowed EITC of \$4,043.

29. Sosa and/or SCL prepared the tax return of Taxpayer RM for the 2008, 2009 and 2010 tax periods. After examination, the IRS determined that the tax returns falsely claimed personal expenses as business expenses, to include the ownership of a vacation cabin and horses, and failed to include substantial income from the taxpayer's business. These false claims resulted in a cumulative adjustment of over \$45,000 in additional tax liabilities against SP, including disallowed ACTC of \$1,000.

INJURY TO THE UNITED STATES

30. The Internal Revenue Service has thus far examined 90 of the 39,698 returns filed by defendants from the beginning of 2008 through mid-2013. Over 95% of these audited returns claimed false deductions and/or credits, claimed false exemptions, and/or omitted income.

31. The percentage of these returns claiming a refund varied from a low of 95.9% (in 2008) to a high of 98.1% (in 2012). This percentage is significantly higher than the overall national percentage of Form 1040 returns claiming refunds over that same time period.

32. The false information contained in or omitted from the returns prepared by defendants cannot be automatically detected by cross-checking information reported to the IRS

by employers or other third parties, as the majority of the errors are related to false business expenses and/or omitted business income, or personal/business deductions. Time-intensive audits by revenue agents, including interviews with the taxpayer-customers, are usually necessary to ferret out the bogus deductions and omitted income on the returns prepared by the defendants.

33. As a result of the defendants' improper actions, the United States has suffered a significant tax loss. The exact loss is unknown, but based on the total number of returns prepared by SCL for the periods at issue (39,698), and assuming that in excess of 95% of these returns contain understatements of tax (as did the audited returns), and further assuming an average tax loss per return of \$10,495.63 (as determined by the audit of the 90 returns), the IRS estimates the aggregate tax loss at over \$416 million.

INJURY TO DEFENDANTS' CUSTOMERS

34. As a result of the defendants' improper actions, many of their customers have been required to file amended returns or undergo audits by the IRS. They have incurred severe, and in most cases unanticipated, financial burdens due to their liability for additional tax beyond the amount reported on their original returns, plus statutory interest and civil penalties.

35. As a further result of the defendants' improper actions, many additional customers will be required in the future to file amended returns or undergo audits by the IRS. They will likely incur severe, and in most cases unanticipated, financial burdens due to their liability for additional tax beyond the amount reported on their original returns, plus statutory interest (and possible civil penalties).

**Count I: Injunction Under I.R.C. § 7408 for Engaging in Conduct
Subject to Penalty Under IRC § 6701**

36. The United States incorporates by reference the allegations in paragraphs 1 through 35.

37. Section 7408 of the Internal Revenue Code (Title 26, U.S.C.) (“IRC”) authorizes a district court to enjoin conduct subject to penalty under section 6701. Section 6701 imposes a penalty: (1) on any 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; (2) when that person knows or has reason to believe that such portion will be used in connection with a material matter arising under the internal revenue laws; and (3) that person knows that such portion (if used) would result in an understatement of the liability for the tax of another person. Procuring the preparation of tax returns includes ordering (or otherwise causing) a subordinate to do an act, as well as knowing of, and not attempting to prevent, participation by a subordinate in an act.

38. The defendants, by reason of their preparation, or assistance in the preparation, of federal income tax returns for which they are compensated, are income tax return preparers within the meaning of IRC § 7701(a)(36).

39. Defendants, through their actions detailed above, have continually, repeatedly, and knowingly engaged in conduct subject to penalty under IRC § 6701 by preparing false tax returns and other documents that they knew or had reason to believe would result in an understatement of liability for their customers. Defendants prepared tax returns that claimed, *inter alia*, false or inflated Schedule C income and expenses, false filing status elections, false dependency claims, and false itemized deductions for customers, and knew the false returns would understate their customers’ correct tax liabilities.

40. If the Court does not enjoin defendants, they likely to continue to engage in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

Count II: Injunction Under IRC § 7407

41. The United States incorporates by reference the allegations in paragraphs 1 through 40.

42. Section 7407 of the IRC 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 IRC § 6694(a), which penalizes a tax return preparer who prepares a tax return or claim for refund that contains an unreasonable position and the tax return preparer knew (or reasonably should have known) of the unreasonable position;

b. Engaging in conduct subject to penalty under IRC § 6694(b), which among other conduct, penalizes a tax return preparer who recklessly or intentionally disregards IRS rules or regulations;

c. Engaging in conduct subject to penalty under IRC § 6695(c), which penalizes tax return preparers who fail to furnish their identifying numbers on tax returns that they prepare;

d. Engaging in conduct subject to penalty under IRC § 6695(g), which penalizes a tax return preparer who fails to comply with the statutory due diligence requirements for determining eligibility for the EITC;

e. Guaranteeing a tax refund or allowance of a tax credit; or

f. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

43. In order for a court to issue an injunction under IRC § 6694, 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.

44. If the court finds that a preparer has continually or repeatedly engaged in such conduct, the court may issue an injunction prohibiting that specific enumerated conduct or, if it determines that a conduct-specific injunction 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 tax return preparer.

45. Defendants, as shown above, are tax return preparers who have repeatedly and continually prepared or submitted tax returns or portions of tax returns that contain unreasonable positions and substantially understate the liability for tax on the return by, *inter alia*, false or inflated Schedule C income and expenses, false filing status elections, false dependency claims, and false itemized deductions for customers. Accordingly, defendants knew (or reasonably should have known) of the unreasonable, unrealistic, frivolous and fraudulent positions. This conduct is subject to penalty under IRC § 6694.

46. Defendants, as also detailed above, have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694(b) by intentionally or recklessly disregarding pertinent rules and regulations. This conduct is subject to penalty under IRC § 6694.

47. Furthermore, defendants, as addressed above, have engaged in conduct subject to penalty under IRC §§ 6695(c) and 6695(g). Defendants have failed to satisfy the mandatory due diligence requirements of IRC § 6695(g) and Treas. Reg. § 1.6695-2(b).

48. In addition, defendants continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws. Examples of such misconduct include knowingly preparing, assisting in preparing, and encouraging the preparation of tax returns containing false and fraudulent information. All of this constitutes conduct that may and should be enjoined under IRC § 7407(b).

49. Defendants repeatedly and continuously engaged in illegal conduct subject to injunction under IRC § 7407.

50. If defendants are not enjoined, they are likely to continue to cause the filing of false and fraudulent tax returns and engaging in fraudulent conduct.

51. Defendants' continual and repeated conduct subject to an injunction under IRC § 7407, detailed above, shows that a narrow injunction prohibiting only specific conduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws. Thus, defendants should be permanently barred from acting as a federal tax return preparer.

**Count III: Injunction Under IRC § 7402(a) as Necessary to
Enforce the Internal Revenue Laws**

52. The United States incorporates by reference the allegations in paragraphs 1 through 51.

53. Section 7402(a) of the IRC 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.

54. Defendants' activities, 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 and/or receiving improper tax refunds.

55. Unless enjoined, the defendants are likely to continue to engage in this improper conduct. If defendants are not enjoined, the United States will suffer irreparable injury by failing to receive accurate tax payments from defendants' customers and erroneously providing federal income tax refunds to customers not entitled to receive them.

56. The tax returns defendants prepared improperly and illegally reduced their customers' federal income tax liabilities. In addition, defendants' actions directing the preparation of tax returns containing false and fraudulent information and evading statutory due diligence requirements, directly results in, as defendants know, the filing of false, fraudulent and incorrect tax returns.

57. Permanently enjoining the defendants is in the public interest because an injunction, backed by the Court's contempt powers, if needed, will stop their illegal conduct and the harm they have already caused the United States.

58. Unless enjoined by this Court, defendants are likely to continue to engage in illegal conduct, as described above. Defendants, if not enjoined, are likely not only to continue to engage in tax fraud subject to penalty under IRC §§ 6694, 6695 and 6701, but also to engage in other conduct that substantially interferes with the enforcement of the internal revenue laws. Moreover, the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of limited resources to enforce the internal revenue laws, and the tax losses caused by defendants' actions will continue.

59. The substantial harm caused to the United States and the public by defendants' misconduct outweighs the harm to the defendants of being enjoined.

60. Enjoining the defendants is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop defendants' predatory practices and illegal conduct and the harm that such actions cause the United States and its citizens.

RELIEF SOUGHT

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

A. That this Court find that defendants engaged in conduct subject to penalty under IRC § 6701 and that injunctive relief under IRC § 7408 is appropriate to prevent recurrence of that conduct;

B. That the Court find that defendants continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and § 6695, and that injunctive relief under IRC § 7407 is therefore necessary and appropriate to prevent the recurrence of that conduct;

C. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting defendants from acting as federal tax return preparers, and expressly prohibiting defendants from owning, managing, supervising, working in, or otherwise being involved in any tax return preparation business in any way;

D. That the Court find defendants 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 IRC § 7402(a);

E. That this Court, pursuant to IRC §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting defendants (individually and through any other name or entity), and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

i. Directly or indirectly organizing, promoting, marketing, or selling, or assisting in organizing, promoting, marketing, or selling, any plan or arrangement that advises or encourages taxpayers to violate internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including plans or arrangements that promote, sell, or advocate the use of tax returns which fraudulently allege the existence of deductions or credits to which the taxpayers are not entitled.

ii. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 or 6701, including preparing and filing tax returns and other documents that fraudulently underreport the tax liabilities of others;

iii. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694 or 6695 including preparing and filing tax returns and other documents that defendants know or have reason to believe, will be used in any material matter arising under the internal revenue laws, which use would result in an understatement of the liability for another person;

iv. Preparing or filing, or assisting in, or directing the preparation or filing of any federal tax return or amended return or other related documents or forms for any person other than himself;

v. Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

vi. Engaging in conduct that violates the standards of 31 U.S.C. § 330;

vii. Engaging in any other activity subject to penalty under the Internal Revenue Code; and

viii. Misrepresenting any of the terms of the said Order;

F. That this Court order that defendants produce to counsel for the United States within one week of, the date of the said order a list that identifies by name, social security number, address, e-mail address, telephone number, and tax period(s) all persons from for whom they prepared federal tax returns, forms, or claims for refund since January 1, 2013;.

G. That this Court order that defendants, within 30 days of the date of the said Order, shall send a letter (approved by counsel for the United States) to customers for whom each prepared federal tax returns since January 1, 2008, informing them that this permanent injunction has been entered and that defendants are no longer permitted to prepare tax returns for others. Defendants shall certify, within 35 days of the said Order, that they have complied with this provision;

H. That this Court enter an order retaining jurisdiction to enforce the injunction and ordering that the United States may conduct discovery using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45 or as otherwise provided in the Federal Rules of Civil Procedure to ensure compliance with this permanent injunction;

I. That this Court enter an order awarding to the government all costs incurred in prosecuting this action; and

J. For other such relief as this Court determines is just and appropriate under the circumstances.

Dated this 1st day of November, 2013.

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