

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CATHARINE HARVEY,)
 JASEN HARVEY, and)
 HARVEYS TAX SERVICE)
)
 Defendants.)
 _____)

Case No. 8:20-cv-60-T-02AAS

ORDER

This matter came before the Court on the United States’ Motion for an Order to Show Cause (ECF No. 29). After presentation of evidence and hearing argument of counsel, Defendants Jasen Harvey and Harveys Tax Service are found in contempt of this Court’s Orders (ECF Nos. 21, 28), and the United States’ request for disgorgement and travel costs is granted in full.

The power to find a party in civil contempt for disobeying an injunction stems from the Court’s inherent power to enforce compliance with its lawful orders. *Citronelle–Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991). “A finding of civil contempt must be supported by clear and convincing evidence that ‘the allegedly violated order was valid and lawful; . . . the order was clear and unambiguous; and the . . . alleged violator had the ability to comply with the order.’” *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (quoting *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002)).

Here, the Court entered valid and lawful orders—first a preliminary injunction and then a permanent injunction—that unambiguously barred Mr. Harvey and Harveys Tax Service from

preparing and filing returns. The United States has demonstrated by clear and convincing evidence that Mr. Harvey and Harveys Tax Service, despite receiving personal service of these orders and having the ability to comply with them, willfully violated them. The Court finds that Mr. Harvey received personal service of the preliminary injunction on February 19, 2020 and that he received personal service of the permanent injunction on February 28, 2020. The Court further finds that Mr. Harvey and Harveys Tax Service filed at least 92 returns following service of the preliminary injunction on Mr. Harvey. Of those, at least 5 came after he received service of *both* the preliminary and permanent injunctions.

The Court has “wide discretion” to craft a remedy for contempt. *United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999). The Court’s “civil contempt power is measured solely by the requirements of full remedial relief.” *Id.* (internal quotation marks omitted). This includes ordering disgorgement of ill-gotten gains. *Leshin*, 618 F.3d at 1237. Disgorgement requires only a “reasonable approximation of a defendant’s ill-gotten gains.” *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004). Moreover, sanctions can be either coercive or compensatory. *City of Miami*, 195 F.3d at 1298. “[A] court may impose a coercive daily fine, a compensatory fine, attorney’s fees and expenses, and coercive incarceration.” *FTC v. RCA Credit Servs., LLC*, No. 8:08-CV-2062-T-27MAP, 2012 WL 11406549, at *1 (M.D. Fla. Mar. 20, 2012).

In the context of contempt, the United States does not need to establish that the returns filed in violation of the injunction were inaccurate or fraudulent before disgorgement can be ordered. Instead, the very act of filing those returns is sufficient to characterize all fees obtained from that contemptuous activity as ill-gotten gains. *See Leshin*, 618 F.3d at 1237 (holding, in the contempt context, that the “district court was not required to find that the defendants had committed fraud before ordering disgorgement”); *see also United States*

v. Ireland, No. 2:11-CV-14068, 2019 WL 3759533, at *2 (E.D. Mich. July 24, 2019)

(“Disgorgement is also appropriate because Ireland should not be allowed to profit from her violations of the Order.”); *United States v. Edmond*, No. 2:13-CV-02938, 2016 WL 1312155, at *5 (W.D. Tenn. Apr. 4, 2016).

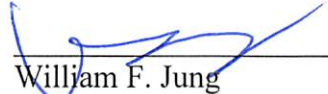
Here, Mr. Harvey testified that he and Harveys Tax Service charge between \$200 and \$225 per return. The Court finds that \$212.50 is therefore a reasonable approximation of fees per return for purposes of disgorgement. That results in disgorgement of fees for the 92 returns filed after Mr. Harvey and Harveys Tax Service were personally served with the preliminary and/or permanent injunction of \$19,550.

On the basis of these findings and the record established during the March 13, 2020 hearing, it is hereby **ORDERED AND ADJUDGED**:

1. Defendants Jasen Harvey and Harveys Tax Service are found to be in willful contempt of this Court’s preliminary and permanent injunctions;
2. Defendants Jasen Harvey and Harveys Tax Service are directed to pay to the United States \$19,550 in disgorgement within 30 days of the entry of this Order; and
3. Defendants Jasen Harvey and Harveys Tax Service are directed to pay to the United States \$631.04 for the travel costs incurred by the United States to attend the hearing on the Motion for the Order to Show Cause, as evidenced by United States’ Notice of Filing of Receipts (EFC No. 41).
4. The permanent injunction remains in effect. All persons should be governed accordingly.
5. The Court will sentence Mr. Harvey for his willful contempt. Sentencing is set for 10:00 AM, July 9, 2020 in Courtroom 15 B of the United States Courthouse, 801 North Florida Avenue, Tampa, Florida. Mr. Harvey must attend. The Plaintiff will personally serve this

Order upon Mr. Harvey and Harveys Tax Service, and file proof of same.

IT IS SO ORDERED at Tampa, Florida, on March 17, 2020.



William F. Jung
U.S. District Court Judge