

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Case No. 8:13-cv-00342-RWT
)
 v.)
)
 MARVIN L. BINION, SR., et al.,)
)
 Defendants.)
_____)

**UNITED STATES’ MOTION FOR ORDER TO SHOW CAUSE FOR WHY
DEFENDANT MARVIN BINION, SR. SHOULD NOT BE HELD IN CIVIL CONTEMPT**

On May 8, 2013, this Court entered a final injunction permanently barring Marvin Binion, Sr. from preparing federal tax returns for others. Binion, Sr. has been violating this Court’s order almost from the day it was entered by personally preparing tax returns and by apparently running and/or profiting from a tax return preparation business. Not only that, Binion, Sr. is engaging in the same unlawful conduct – filing false or fraudulent federal tax returns on behalf of customers – that led to the injunction in the first place. The 2017 tax preparation season has begun and Binion, Sr. and his cohorts are likely planning on filing hundreds, if not thousands, of tax returns for others this year. This Court should take action to stop him.

In February 2013, the United States moved under 26 U.S.C. §§ 7402, 7407, and 7408 to permanently enjoin Binion, Sr. from preparing federal tax returns for others. Binion, Sr. consented to the entry of a permanent injunction. But Binion, Sr. apparently had no intention of abiding by the Court’s order. He has brazenly continued to personally prepare customers’ tax returns – and apparently continued to operate a federal tax return preparation business – since at least early 2014, just months after signing the consent injunction and shortly after completing a

prison sentence for filing false tax returns and perjury. See *United States v. Marvin Binion*, 8:03-cr-00523-PJM (D. Md.); *United States v. Marvin Binion*, 8:09-cr-00160-DKC (D. Md.). There is no doubt that Binion, Sr. knows that he is running afoul of this Court's order — he has taken steps to hide his actions from both the Court and the IRS.

The United States moves for an order requiring the Defendant, Marvin Binion, Sr., to show cause why he should not be held in contempt for failing to comply with the Court's May 8, 2013 order prohibiting him from acting as a federal tax return preparer under Sections 7402, 7407, and 7408 of the Internal Revenue Code.

BACKGROUND

On February 1, 2013, the United States filed a complaint under 26 U.S.C. ("Internal Revenue Code" or "I.R.C.") §§ 7402, 7407, and 7408 seeking a permanent injunction prohibiting the Defendant, Marvin L. Binion, Sr., from acting as a federal tax return preparer. (Dkt. No. 1.) The complaint alleged that Binion, Sr. had been in the tax preparation business for over 20 years, operating Universal Tax Service and People's Tax Service. (*Id.* ¶ 8.) Binion, Sr., along with the co-defendants Marvin Binion II (his son) and Tonya Hubbard (his ex-wife), prepared federal income tax returns for customers using TurboTax preparation software, with the entire preparation process often taking less than 15 minutes. (*Id.* ¶ 6, 7, 9.) The complaint also alleged that the defendants did not sign or affix a preparer tax identification number (PTIN) to the returns they prepared to avoid detection. Rather, the defendants would print the return and instruct the customer to sign and mail the return to the IRS. (*Id.* ¶ 11.) Binion, Sr. prepared tax returns that claimed inflated and/or bogus itemized deductions in order to extract higher refunds for his customers. (*Id.* ¶¶ 23-27.) The complaint alleged that the defendant's fraudulent tax return

preparation caused as much as \$45 million in losses to the public for each year his business prepared returns. (*Id.* ¶ 53.)

On May 8, 2013, the United States moved the Court to approve a consent judgment, in the form of a “Final Stipulated Permanent Injunction Order,” agreed to by the United States and Binion, Sr. (Dkt. No. 5.) Also on May 8, 2013, this Court entered the Final Stipulated Permanent Injunction Order. (Order and Judgment, “Injunction,” Dkt. No. 6.) The injunction permanently enjoined Binion, Sr. from, among other things, acting as a federal tax return preparer, assisting in any way in the preparation or filing of any federal tax returns for anyone but himself, or owning, managing, supervising, or profiting from a tax preparation business. (*Id.* at 2.) Binion, Sr. agreed to the entry of this Injunction. (*Id.* at 3.) On July 31, 2013, the United States provided Binion, Sr. notice of the entry of the Injunction by sending him a copy via Federal Express and email. On August 10, 2013, Binion, Sr. signed an Acknowledgement of Receipt of Final Stipulated Permanent Injunction Order. (Exh. 1.)

ARGUMENT

I. Binion, Sr. has failed to comply with the terms of the Injunction this Court entered on May 8, 2013 because he prepares tax returns for others and apparently runs, manages, and/or profits from a tax preparation business.

Binion, Sr. has repeatedly and continuously violated the Injunction. Among other things, the order 1) enjoined Binion, Sr. from preparing, or assisting in the preparation of, tax returns for anyone other than himself; and 2) owning or profiting from a tax preparation business. (Injunction at 2.) Because Binion, Sr. has personally prepared at least five tax returns and is by all appearances running Universal Tax Services (“UTS”), a tax preparation business, he has failed to comply with the terms of the Injunction and should be ordered to show cause for why he should not be held in civil contempt.

In March 2016, Walter S. Pauli, an investigator with Madison Associates, Inc., an international law enforcement consulting firm contracting with the United States Department of Justice, was assigned to investigate whether Marvin L. Binion, Sr. was violating this Court's injunction. (Exh. 2, Declaration of Walter S. Pauli, "Pauli Decl.," ¶¶ 4-5.) Pauli's investigation was hampered by Binion, Sr.'s deliberate attempt to mask his tax preparation activities – he (and those with whom he works in concert) do not sign the tax returns they prepare or affix PTINS to the return. This is improper. *See, e.g.*, I.R.C. § 6694(b)-(c) (setting penalty tax return preparers that do not sign returns or furnish an identifying number). Starting in 2012, tax return preparers that reasonably anticipate filing 11 or more tax returns per year must file returns electronically and register with the IRS. (*See IRS Urges Tax Professionals to Prepare for New E-File Rules*, IR-2011-100 (I.R.S.), 2011 WL 4818457.) The IRS assigns tax preparation businesses an Electronic Filing Identification Number ("EFIN") and individual preparers are assigned a PTIN. *See, e.g.*, I.R.C. § 6109(a)(4) (requiring tax return preparers to affix numbers used to identify return preparers, their employer, or both). In conjunction, the EFIN and PTIN on a return serve to identify the tax return preparer and the tax return preparer's firm. *Id.* If a tax preparer does not sign a customer's tax return or affix an identifying number, as in Binion, Sr.'s practice, the IRS cannot determine the actual preparer of the return. In Binion, Sr.'s case, neither he nor apparently anyone working at UTS even have a PTIN.

Binion, Sr. and the UTS employees' refusal to sign the returns they prepare, while unsurprising, made the task of contacting potential customers difficult. To assist in identifying potential customers, the IRS compiled a list of Binion, Sr.'s (and his family's) former customers that, according to IRS records, either self-prepared their 2015 tax returns or did not file a return. (Pauli Decl. ¶ 6.) The list revealed that a high number of Binion, Sr.'s former customers filed a

paper return for tax year 2015. (*Id.*) Pauli focused his investigation on those former customers that filed a paper return because of Binion, Sr.'s past practice of preparing returns then instructing customers to mail in their return. (*Id.*) Ultimately, Pauli successfully contacted and interviewed four of Binion, Sr.'s current or recent tax return preparation customers.¹ (*Id.* ¶ 9.) Each of the four customers had their tax returns prepared for one or more years at UTS, either by Binion, Sr. himself or by someone else at the business. (*Id.* ¶¶ 10-21.) These customers show that Binion, Sr. is not abiding by this Court's order – he is not only personally preparing tax returns for customers but appears to be operating a tax return preparation business. At least one customer, Thomas Gunn, had a tax return prepared at UTS that contained fabricated deductions leading to an inflated refund. Three other customers had their tax returns prepared by Binion, Sr. or UTS staff without being asked a single question by their preparer. While we have only identified four of his customers to date, Binion, Sr. and UTS had a steady stream of customers in April 2016 and we are likely to uncover others as we continue our investigation.

A. Thomas Gunn's 2013 tax return is riddled with false information inserted by Binion, Sr. or a UTS employee.

As alleged in the United States' complaint, Binion, Sr.'s business model relied on claiming inflated and/or bogus expenses on behalf of customers in order to artificially inflate their refunds. (Compl., Dkt. No. 1 ¶¶ 25-27.) Thomas Gunn's testimony shows that this Court's injunction not only failed to stop Binion, Sr. from preparing tax returns for others, but that

¹ Pauli attempted to contact 32 of Binion, Sr.'s former customers by telephone and 80 of his former customers in person. (Pauli Decl. ¶ 7-8). His low success rate illustrates the difficulty in identifying Binion, Sr.'s current customers due to Binion, Sr. and UTS employees' refusal to lawfully identify themselves as tax preparers.

Binion, Sr. and UTS' employees continued the practice of preparing false tax returns on behalf of customers.

Gunn has gone to a business affiliated with Binion, Sr. to have his tax return prepared for at least three years, most recently at 717 Kennedy Street NW, in Washington, D.C. (Exh. 3, Tr. of the Dep. of Thomas Gunn ("Gunn Dep.") at 6:5-7:11). Gunn went to at least two of Binion, Sr.'s business locations prior to Kennedy Street to have his tax return prepared. (*Id.* at 7:7-8:10.) UTS or its predecessors sent Gunn a postcard to inform him of the new location each time the business relocated. (*Id.* at 7:7-11.)

Gunn recalled having his tax return prepared at the Kennedy Street location. (*Id.* at 12:10-13:16.) There were four different people at UTS during Gunn's most recent visits – two young women and two men, one in his 60s and one younger. (*Id.* at 8:20-9:2.) Gunn believes that one or both of the men is named Marvin. (*Id.* at 9:3-10.) Upon arrival, Gunn signed in with an employee and left his Form W-2 and Form 1098 – mortgage interest payments. (*Id.* at 14:15-15:12.) The employee did not ask Gunn any questions but took Gunn's contact information so that he could be informed when his tax return was complete. (*Id.* at 15:15-21.) Gunn paid \$300 by check for UTS to prepare his 2013 tax return. (*Id.* at 28:6-12.)

Gunn's 2013 tax return is riddled with false claims. His preparer listed \$11,500 in cash donations to his church and an additional \$19,980 in goods donated to charity. (*Id.* at 20:10-16.) Gunn did not give his preparer a donation statement from his church nor did he provide receipts totaling \$19,980 for any donated goods. (*Id.* at 21:3-19.) Gunn, in fact, does not recall giving any number to UTS to include as cash donations on his tax return. (*Id.* at 21:10-22:5.) Gunn donated to Goodwill in 2013 but did not provide UTS with receipts totaling almost \$20,000. (*Id.* at 22:6-

9.) In sum, Gunn could not say where his tax preparer came up with the charitable donation amounts listed on his 2013 tax return. (*Id.* at 22:10-13.)

Gunn's 2013 tax return also included false or fabricated job expense deductions. Gunn does not recall providing receipts to UTS for work uniforms despite his tax return claiming over \$2,000 for clothes. (*Id.* at 23:7-15.) Gunn did not spend any money on training for his job in 2013, yet his preparer listed \$3,500 in expenses. (*Id.* at 23:16-21.) The preparer (Binion, Sr. or someone apparently working with him) also fabricated a side business for Gunn's 2013 tax return and reported a \$15,000 loss. (*Id.* at 25:18-26:3.) Gunn was stunned when he learned that loss was included on his tax return: "Q Did you tell your tax preparer that you lost \$15,000 on a tech services business in 2014? A No. Oh, my God." (*Id.* at 25:22-26:3.)

Gunn never sat down with anyone from UTS during the tax return preparation process. (*Id.* at 29:9-15.) UTS employees never asked Gunn if the information on his tax return was correct. (*Id.* at 24:3-7.) Gunn did not review his tax returns after receiving copies from UTS. (*Id.* at 23:22-24:2.) Even if he had, Gunn is not trained in tax preparation and has never prepared his own tax return. (*Id.* at 5:5-11.) Gunn signed copies of his tax returns when he returned to UTS and "the store filed them however they file them." (*Id.* at 16:4-9.) Gunn believed that UTS would electronically submit his tax return and give him a copy. (*Id.* at 15:21-16:3.) Gunn went to UTS to get an accurate tax return prepared. (*Id.* at 24:13-15.) He got the opposite.

The first time Gunn reviewed his 2013 tax return was during his deposition and he was "at a loss for words." (*Id.* at 27:22-28:5.) Gunn testified that finding out what UTS put on his tax return "scares the life out of [him]." (*Id.* at 30:8-14.) Gunn did not know, and was alarmed to learn, that his tax return preparer did not sign his tax return before it was submitted to the IRS.

(*Id.* at 29:16-18 (“Q And did you know that your tax preparer did not sign your return? A No. Oh, my God.”).)

B. Other customers had their tax returns prepared by Binion, Sr. or his employees and were also not asked basic questions about their income or expenses.

Other customers had similar experiences to Mr. Gunn. Rose Kajuru and husband have gone to Binion, Sr.’s businesses since 2009 to have their tax returns prepared. (Exh. 4, Declaration of Rose Kajuru ¶ 3.) In 2014 and 2015, Binion, Sr. himself prepared their returns at 717 Kennedy St. NW. (*Id.* ¶¶ 4-5.) Consistent with the *modus operandi* that led to this Court’s injunction in the first place, the Kajurus provided their Forms W-2 and receipts, were not asked any questions by Binion, Sr., and did not review their completed returns with Binion, Sr. (*Id.* ¶¶ 5-6.) Binion, Sr. did not sign either return before mailing them to the IRS. (*Id.* ¶¶ 7-9.) For his “service,” the Kajurus paid Binion, Sr. \$350. (*Id.* ¶ 10.) Binion, Sr. told the Kajurus to pay in cash. (*Id.*)

Jason Henry has had his tax returns prepared at Binion, Sr.’s business since at least 2013. (Exh. 5, Declaration of Jason Henry ¶ 3.) Binion, Sr. himself prepared Mr. Henry’s tax return for tax years 2013 and 2015. (*Id.* ¶ 5.) Mr. Henry believes that Binion, Sr.’s son, Marvin Binion, Jr., prepared his 2014 tax return. (*Id.* ¶ 6.) Mr. Henry provided his Form W-2s, Form 1099s, and receipts to itemize to Binion, Sr. (*Id.* ¶ 5.) Neither of the Binions reviewed the completed returns with Mr. Henry. (*Id.* ¶ 7.) The Binions told Mr. Henry that they would mail in his completed returns and had Mr. Henry sign copies. (*Id.* ¶ 8.) The Binions did not sign the returns at the same time as Mr. Henry. (*Id.*) Mr. Henry paid \$300 to have each of his tax returns prepared. (*Id.* ¶ 9.) He paid the fee in cash for his 2015 tax return. (*Id.*)

Mary Johnson has gone to Binion, Sr.’s tax preparation business to have her tax return prepared for the past three years. (Exh. 6, Declaration of Mary Johnson ¶ 3.) Binion, Sr. himself

prepared her 2013 tax return, and someone else in the office prepared her 2014 and 2015 returns. (*Id.* ¶¶ 5-6.) Binion, Sr. or the other preparers gave Mrs. Johnson unsigned copies of her tax returns. (*Id.* ¶ 7.) Mrs. Johnson did not see the preparers sign her tax returns. (*Id.* ¶ 8.) Mrs. Johnson paid \$300 cash each year to have her tax returns prepared by Binion, Sr. or his employees. (*Id.* ¶ 10.)

C. Binion, Sr. had a healthy business at the end of the 2016 tax return preparation season.

In addition to the customer interviews, on April 14 and April 15, 2016, Pauli conducted stationary surveillance on UTS at 717 Kennedy St. NW and observed multiple people with papers or bags entering and exiting the building. (Pauli Decl. ¶¶ 22-24, Exhs. 7-10, Photos.)

D. Binion, Sr. is likely to have many more customers than Pauli was able to identify — but our investigation continues.

The evidence makes clear that Binion, Sr. is preparing returns and employing or working with others who prepare returns, in violation of this Court's order. The question, actually, is the extent of Binion, Sr.'s violations. The four customers Pauli was able to identify are likely only a drop in the bucket, given Pauli's observation during tax filing season of multiple customers entering the building where Binion, Sr. is preparing returns. (*Id.*) Unfortunately, we cannot now identify an exact number of customers of Binion, Sr. because of his practice of subverting IRS regulations and mailing in, or having his customers mail in, paper returns without identifying the paid preparer. *See* I.R.C. §§ 6109(a)(4), 6695.

We intend to have a Madison investigator personally serve a copy of this motion on Binion, Sr. at the Kennedy Street business.² While serving the motion, the Madison investigator will also attempt to identify customers who had their *2016 tax year* returns prepared by Binion, Sr. or UTS employees.

II. Binion, Sr.’s failure to comply with this Court’s order constitutes civil contempt.

A district court may impose sanctions upon a party for civil contempt “to coerce obedience to a court order or to compensate the complainant for losses sustained as a result of the contumacy.” *In re Gen. Motors Corp.*, 61 F.3d 256, 258 (4th Cir. 1995) (citing, e.g., *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947)). “An individual may be held in civil contempt if he or she had actual or constructive knowledge of a valid decree; the decree was in the movant’s favor; the individual violated the terms of the decree and had at least constructive knowledge of such violations; and the movant suffered harm as a result.” *Reaching Hearts Int’l, Inc. v. Prince George’s Cnty.*, 2011 WL 3101801, at *4 (D. Md. July 22, 2011) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000)).

The United States has established by clear and convincing evidence that the Defendant has violated the Injunction entered by the Court on May 8, 2013. First, this Court entered a valid order unequivocally commanding Binion, Sr. to stop preparing federal tax returns for individuals other than himself. (Injunction at 2-3.) Binion, Sr. consented to the entry of the Injunction and received notice of the entry of the Injunction. (*Id.* at 5; Exh. 1, signed Acknowledgement.) Second, the relevant portions of the Injunction are in the United States’ favor, as they require

² We previously attempted to serve Binion, Sr. with a notice of depositions and service of subpoenas in this case but the process server was unable to complete service despite more than ten attempts covering at least three locations.

Binion, Sr. to stop preparing federal tax returns for individuals other than himself. (Injunction at 2-3.) Third, Binion, Sr. has knowingly and willfully violated the Injunction. (*See supra*, Section I.) Finally, the United States has been harmed by Binion, Sr.'s failure to comply with the Injunction because it has been forced to continue to expend resources to ensure that Binion, Sr. complies with it and because Binion, Sr. and his apparent UTS employees are likely preparing fraudulent tax returns that rob the Treasury through inflated or undeserved refunds.

III. The Court should impose sanctions to coerce Binion, Sr. into complying with the Injunction it entered.

Once a court determines that a defendant has not complied with the court's order, the court may impose both coercive and compensatory sanctions on the defendant. *United Mine Workers*, 330 U.S. at 303-04; *Reaching Hearts*, 2011 WL 3101801 at *4 (internal citations omitted). When devising sanctions to ensure compliance with its order, a court should consider "the character and magnitude of the harm threatened by continued contumacy and the probable effectiveness of any suggested sanction in bringing about the result desired." *United Mine Workers*, 330 U.S. at 304 (footnote omitted). Binion, Sr. should also be warned that, if he does not comply with the sanctions imposed against him for his failure to comply with the Injunction, the Court may order incarceration. *See SEC v. Dunlop*, 253 F.3d 768, 771 (4th Cir. 2001) (incarceration as civil contempt sanction was within discretion of district court.).

The Defendant has defied this Court's order by preparing tax returns since at least early 2014 despite being enjoined from doing so on May 8, 2013. In this case, the United States respectfully requests that the Court impose the following sanctions on Binion, Sr.:

1. Adjudge Binion, Sr. to be in contempt of this Court;
2. Order Binion, Sr. to comply with the May 8, 2013 Injunction;

3. Order Binion, Sr. to provide the United States, within 30 days after the entry of any order adjudicating Binion, Sr. to be in civil contempt of the May 8, 2013 Injunction, a list of all of the customers for whom he has prepared federal tax returns since the entry of the Injunction;
4. Order Binion, Sr. to send a letter, to be sent within 30 days after the entry of any order adjudicating Binion, Sr. to be in contempt of the May 8, 2013 Injunction, to each of the customers for whom he has prepared federal tax returns since the entry of the May 8, 2013 Injunction informing them of the Injunction and that neither he nor those working in concert with him are permitted to prepare tax returns for others;
5. Order Binion, Sr. to disgorge \$300 for each of the 11 federal tax returns the United States has established that Binion, Sr. or his employees prepared after the Injunction, to be paid to the United States within 30 days after the entry of any order adjudicating Binion, Sr. to be in contempt of the May 8, 2013 Injunction;
6. Fine Binion, Sr. \$1,000 per day, following the entry of any order adjudicating Binion, Sr. to be in contempt of the May 8, 2013 Injunction, for each day that he does not comply with the May 8, 2013 injunction;
7. Order Binion, Sr. to produce bank records for the account or accounts into which tax preparation fees are deposited or have been deposited since the entry of the May 8, 2013 Injunction and pay a daily fine for each day he fails to produce the requested records; and
8. Order, following a showing by the United States based on the above-referenced bank records, that Binion, Sr. disgorge any tax preparation fees he received personally or through a tax preparation business since the entry of the May 8, 2013 Injunction.

CONCLUSION

The United States respectfully requests that the Court direct Binion, Sr. to show cause why he should not be held in contempt of this Court, impose appropriate sanctions, and award the United States such other relief as is just and proper.

Dated: February 6, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2017, I caused the United States' Motion for Order to Show Cause for Why Defendant Marvin Binion, Sr. Should Not Be Held in Contempt to be served by personal service on the following:

Marvin Binion, Sr.
1433 Parkwood Place NW
Washington, DC 20010

and I hereby certify that on the same date I have caused the United States' Motion for Order to Show Cause for Why Defendant Marvin Binion, Sr. Should Not Be Held in Contempt to be mailed by United States Postal Service to the following non-CM/ECF participants:

Marvin Binion II
1240 Holbrook Terrace, Apt. 62
Washington, DC 20002

/s/ Joshua Y. Levine
JOSHUA Y. LEVINE
Trial Attorney
United States Department of Justice, Tax Division