

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

|   |   |                       |
|---|---|-----------------------|
| UNITED STATES OF AMERICA,                   | ) |                       |
|   | ) |                       |
| Plaintiff,                                  | ) |                       |
|   | ) |                       |
| v.  | ) |                       |
|   | ) |                       |
| DAVID RAY FRANKLIN, RACHEL WIGGINS,         | ) | Civil No. 1:12-cv-394 |
| WILLIAM BROWN, AND INSTANT TAX              | ) |                       |
| REFUND SERVICE, (d/b/a Instant Tax Service) | ) |                       |
|   | ) |                       |
| Defendants.                                 | ) |                       |

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The United States of America seeks a permanent injunction against defendants David Ray Franklin Jr., Rachel Wiggins, William Brown, and Instant Tax Refund Service, doing business as Instant Tax Service, barring them from further acting as federal tax return preparers.

The United States of America states as follows:

1. Defendant David Franklin owns and operates numerous Instant Tax Service offices in Indianapolis, Indiana, that engage in systemic and pervasive tax fraud.
2. Instant Tax Service is a brand and franchise business marketed throughout the United States by the franchisor ITS Financial, LLC. ITS Financial is headquartered in Dayton, Ohio, and was founded by current owner and CEO Fesum Ogbazion in 2004. Instant Tax Service claims on its website to be the “4th largest tax preparation company” in America, one of “the fastest growing franchises,” and the “number one new franchise” brand in the country as of 2009. It also says that to purchase a new Instant Tax Service franchise, “[n]o tax experience [is] necessary!”

3. Franklin is the largest Instant Tax Service franchisee in the Indianapolis metro area. In 2011 he operated nine stand-alone Instant Tax Service offices and 13 tax preparation kiosks. Franklin owns his franchise through defendant Instant Tax Refund Service (ITRS). Franklin is ITRS's sole shareholder. Franklin's Instant Tax Service stores prepared over 10,000 tax returns in 2010 and 2011 combined.

4. Franklin directs, supervises and manages dozens of tax return preparers who illegally prepare false and fraudulent federal income tax returns at his numerous Instant Tax Service locations. His Instant Tax Service employees, for instance, routinely prepare tax forms that falsely claim education and dependent care credits, that depict phony Schedule C companies, and that report fictitious income and expenses in order to fraudulently inflate the Earned Income Tax Credit (EITC) for their customers. In addition, defendants hold training sessions where they teach new employees how to perpetrate tax fraud for the purpose of maximizing the profits of Franklin's Instant Tax Service franchise.

5. In 2009, Franklin received Instant Tax Service's "most valuable" franchisee of the year award.

6. Defendant William ("Willie") Brown manages one of Franklin's busiest Instant Tax Service stores—typically the location at 38th Street and Post Road, Indianapolis. Brown began working for Franklin as a tax preparer almost a decade ago and became a manager shortly thereafter. Brown personally prepares false and fraudulent federal income tax returns, and helps Franklin train new employees to prepare fraudulent tax returns.

7. Defendant Rachel Wiggins serves as the CFO of Franklin's Instant Tax Service franchise. Wiggins, a Certified Public Accountant, began working for Franklin as a tax preparer

in 2001, left in 2002, and returned as a senior executive in July 2007. Wiggins also assists Franklin in supervising Instant Tax Service managers and tax preparers, and helps Franklin teach new employees how to prepare fraudulent tax returns.

8. The United States brings this complaint pursuant to 26 U.S.C. §§ 7402, 7407 and 7408 of the Internal Revenue Code, to enjoin defendants, and anyone in active concert with them, from preparing or directing the preparation of federal income tax returns, from engaging in and facilitating tax fraud, and from engaging in any other conduct that substantially interferes with the administration or enforcement of the tax laws.

#### **Jurisdiction and Venue**

9. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. (I.R.C.) §§ 7402(a), 7407 and 7408.

10. Venue is proper pursuant to 28 U.S.C. §§ 1391(b), because defendants reside or conduct business within this judicial district, and because a substantial part of the events or omissions giving rise to this suit occurred and are taking place in this judicial district.

#### **Authorization**

11. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to I.R.C. §§ 7401, 7402, 7407 and 7408.

#### **Nature of Action**

12. The United States commences this action to stop defendants from engaging in and facilitating extensive and pervasive tax-fraud schemes. Specifically, the government seeks to enjoin defendants, and all those in active concert or participation with them, from directly or

indirectly:

- a. Acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that defendants know or have reason to know will be used as to a material matter arising under federal tax law, and will result in the understatement of the liability for tax of another person;
- c. Organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising, or managing abusive plans or arrangements that violate the Internal Revenue laws;
- d. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) customers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that defendants know (or have reason to know) will result in the understatement of any tax liability as subject to penalty under I.R.C. § 6694;
- e. Improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;
- f. Engaging in any activity subject to penalty under I.R.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining customers' eligibility for the Earned Income Tax Credit;
- g. Organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business

or tax services that facilitate or promote noncompliance with federal tax laws; and

- h. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

13. The illegal conduct at Franklin's Instant Tax Service offices is not isolated to his franchise. Separate injunction suits against ITS Financial, as well as other Instant Tax Service franchises that routinely prepare false or fraudulent tax returns, are being filed in other cities across the country.

### **Facts**

14. Defendants, and others acting with them, have created and maintain a business environment at Franklin's Instant Tax Service franchise that expressly promotes and encourages the preparation of false and fraudulent federal income tax returns. Defendants train new Instant Tax Service employees to prepare false and fraudulent tax returns for the purpose of significantly and illegally enlarging Instant Tax Service's profits. Defendants also direct employees to engage in other illegal conduct, such as the preparation of fabricated Forms W-2.

15. Most of defendants' customers are unsophisticated taxpayers with very low incomes. Many receive public assistance. Some of these customers have no knowledge that Instant Tax Service employees prepare and file fraudulent tax returns on their behalf. For others, Instant Tax Service employees—at defendants' urging—encourage customers to participate in the tax fraud by promising them thousands of dollars of illegal refunds. Defendants keep a significant portion of their customers' fraudulently obtained refunds, which they and Instant Tax Service retain as purported fees.

16. Even when Instant Tax Service prepares non-fraudulent tax returns for customers,

defendants improperly charge those customers unconscionably high tax preparation and added fees. ITS Financial CEO Fezum Ogbazion calls the added charges “junk fees” and “revenue generators.” The junk fees include bogus charges for “service bureau,” “document preparation,” “return estimate,” “technology/software,” “account set up,” “check printing,” and “Efile/electronic transmission.” Collectively these charges average more than \$400–\$500, and sometimes run as high as \$1,000, for as little as 15 minutes of return preparation. Because Instant Tax Service deliberately targets low-income taxpayers, defendants’ unconscionably high fees frequently pose a significant financial hardship for their customers.

17. Defendants also routinely fail to disclose all fees or try to hide them, for example, by placing other paperwork over most of the fee disclosure sheet, covering everything except for the refund amount and the signature line at the bottom of the page, and pressuring the customer to quickly sign it. Alternatively, they tell customers one amount for fees and then later increase the fees without the customer’s knowledge or consent.

18. Defendants also peddle false and deceptive loan products to low-income customers who are in need of money quickly. Defendants tell customers that they can receive significant cash loans as advances on their expected refunds within 48 hours. Most of defendants’ customers, however, are either denied the loans outright or receive amounts that are so small that they are subsumed by the accompanying junk fees alone, before factoring in the exorbitant tax preparation fees. Even customers whose loan applications are denied are charged junk “transmission fees,” “technology fees,” “account set up fees,” and “check-print fees” that go directly to franchisor ITS Financial or to its affiliate, Tax Tree.

19. Apart from being profitable in their own right, the false and deceptive loan

products principally serve as an inducement for people to have their tax returns prepared and filed by defendants' Instant Tax Service stores, so that defendants can charge them their unconscionably high fees.

20. Defendants instruct, direct, assist, and encourage Instant Tax Service employees in illegal practices that include, but are not limited to:

- a. Preparing fabricated Forms W-2;
- b. Using bogus EIN numbers when preparing returns;
- c. Preparing phony Forms Schedule C depicting fabricated businesses and income;
- d. Illegally selling and claiming dependants;
- e. Falsely claiming education credits to which their customers are not entitled;
- f. Improperly claiming false filing status;
- g. Reporting fictitious income and deliberately circumventing due diligence requirements in order to fraudulently maximize the Earned Income Tax Credit; and
- h. Filing federal income tax returns without the taxpayer's consent and fraudulently omitting certain sources of reportable income.

21. Following defendants' instruction, direction and assistance, Franklin's Instant Tax Service employees, in fact, prepare and file false and fraudulent federal tax returns, including as detailed below.

**a. Fabricated Forms W-2**

22. Franklin and defendants teach employees to prepare federal income tax returns using customers' end-of-year paystubs, and to create fabricated Forms W-2 (W-2s) with those paystubs.

23. Federal tax returns for wage earners must be prepared using W-2s. Using end-of-year paystubs to prepare and file tax returns is improper and violates IRS rules. Moreover, paystubs frequently omit income and distributions that are shown on employer-issued W-2s. Thus, preparing and filing federal income tax returns based on information from end-of-year paystubs inevitably results in errors and omissions on federal tax returns, which necessarily interferes with the administration and enforcement of the Internal Revenue laws.

24. Using paystubs to forge fictitious W-2s constitutes outright fraud.

25. Defendants, for instance, held two or three weeks of training for approximately 30 prospective employees at a facility near the intersection of 12th Street and Ritter, beginning the last week of November 2010 and ending the second week of December 2010. During that time, Franklin—assisted by Wiggins and Brown—taught employees how to prepare and file federal tax returns using customers' end-of-year paystubs. They also taught employees how to use those paystubs, along with a program in the Drake tax preparation software, to create fictitious W-2s.

26. Following the creation of the fabricated W-2s, defendants told the trainees to cut off the small-print on the W-2 stating that it was not an original W-2, but rather was made using the Drake software. Defendants also directed trainees to put the forged W-2 in the customer's case file, and the end-of-year paystub (used to prepare the return and bogus W-2) in a separate, undisclosed file to prevent the IRS from detecting the fraud.

27. Although defendants spend very little time on substantive tax topics during the weeks of employee training, they provide lengthy and detailed instruction on how to prepare returns using end-of-year paystubs and how to create fabricated Forms W-2.

28. Brown circulated a spreadsheet to simplify the process of preparing returns and phony W-2s with end-of-year paystubs. Using the information on customers' paystubs, the numbers generated by the spreadsheet sometimes come very close to the numbers that later appear on the genuine, employer-issued W-2s, but typically do not match precisely. But because paystubs frequently omit end-of-year distributions, preparing and filing returns using paystub information inevitably results in errors and omissions on federal tax returns. The franchisor—ITS Financial—supplied defendants with the initial formula for preparing returns with paystubs.

29. Preparing forged W-2s for the purpose of deceiving the IRS is obviously illegal. Defendants also had reason to know that using paystubs to prepare and file returns violates the law because in order to participate in the IRS's electronic filing program, all tax preparation company owners must acknowledge that they will comply with the IRS's documentation and due diligence requirements, which expressly prohibit filing returns prepared with paycheck stubs and without genuine W-2s.

30. In addition, the IRS gave defendants warnings during compliance visits and audits regarding IRS documentation and due diligence requirements.

31. During one IRS compliance visit in January 2009—after which the IRS fined Franklin's Instant Tax Service office—the investigating agent confronted Franklin with numerous violations, including improperly using paystubs to prepare returns. In response to the

paystub violations, Franklin told the agent he would hold a conference call with his employees that same day to instruct them to stop filing returns using paystub information and tell them instead to use only W-2s. Yet Franklin had no intention of ending his company's practice of preparing and filing tax returns with paystubs. Using paystubs allows defendants to file those returns at the earliest possible moment and gives Instant Tax Service a competitive advantage over rival tax preparers who obey the law and wait for employers to issue W-2s before preparing and filing their customers' returns. Eleven months later, Franklin and defendants knowingly and falsely told nearly 30 prospective Instant Tax Service employees that they could *and must* prepare and file tax returns using customers' paystubs. Defendants then devoted hours of training on how to prepare and file returns using paystubs, complete with practice drills.

32. Moreover, Franklin specifically instructed and directed those approximately 30 trainees to fabricate phony W-2s, and to put them in the customer's case file in the event of future IRS audits or compliance visits. He also told them to hide the end-of-year paystub used to prepare the return and phony W-2 in a separate, undisclosed file. Franklin gave these instructions to prevent the IRS from detecting the fraudulent W-2s and because the IRS had already warned defendants against preparing returns using paystubs.

33. Franklin personally conducted additional employee training via the internet in the first week of January 2011, during which he encouraged employees to continue fabricating W-2s using the Drake software and customers' paystubs. In addition, Franklin berated employees who—after creating forged W-2s per his instruction—failed to cut off the small-print indicating that it was not a genuine W-2 issued by an employer, but rather was created using the Drake software. Franklin was angry that some employees were forgetting to dispose of this identifying

information, because it could lead to the IRS discovering the phony W-2s. Consequently, he admonished his employees: “How hard is this people?”

34. In March 2010, an IRS agent conducting spot checks of customer files during a compliance visit asked Franklin and Brown about numerous, identical W-2s. Franklin and Brown falsely told the agent that the W-2s looked identical because they obtained them from “ADP,” a payroll and business outsourcing company. In fact, they were identical because they were fabricated W-2s that Franklin, Brown and Instant Tax Service employees created using the Drake tax preparation software.

35. Defendants also altered and destroyed various tax records knowing of IRS compliance visits, audits or investigations.

36. In 2009, 2010 and 2011, numerous Instant Tax Service employees—at defendants’ specific instruction and direction—illegally used paystubs to prepare federal income tax returns and to create scores of phony W-2s.

**b. Use of Bogus EIN Numbers**

37. Defendants instruct employees to deliberately use incorrect Employer Identification Numbers (“EINs”) when filing federal tax returns and fabricating W-2s.

38. Before one may electronically file a tax return with the IRS on behalf of a customer who received income or wages from an employer, a tax return preparer must have a valid EIN for that employer. Genuine W-2s list the employer’s EIN in “box b” of the W-2. The preparer must type in that EIN (and other W-2 information) into an electronic W-2 that then accompanies the electronically submitted tax return. If a preparer files a return with an electronic W-2 that has an *invalid* EIN that does not match a genuine business, an automated

system at the IRS rejects the entire return with the filing error code “502.” Numerous automatic rejections for invalid EINs may bring unwanted attention from the IRS and trigger audits or compliance visits.

39. The use of a genuine employer’s correct EIN on an electronic W-2 when filing the accompanying return is required not just because IRS rules mandate it, but also because the IRS tracks and utilizes that information in connection with its tax enforcement efforts. Reporting an incorrect EIN on an electronic W-2 accompanying a tax return impacts not only the customer taxpayer and the preparer, but also may cause problems for both the genuine employer whose EIN is omitted from the W-2, as well as the wrongly identified company whose EIN is improperly on the W-2. Thus, the use of incorrect or false EINs causes multiple tax enforcement issues and necessarily interferes with the IRS’s administration and enforcement of the Internal Revenue laws.

40. Paystubs ordinarily do not show the employer’s EIN. To illegally prepare and file a return with a paystub and overcome the lack of an EIN, defendants instruct Instant Tax Service employees to collect and save valid company EINs from genuine W-2s obtained from other customers. Defendants then tell employees to use those EINs when preparing tax returns with paystubs. If a customer’s employer is not included in that saved collection, or cannot be found on the Internet, defendants instruct employees to use an incorrect but otherwise valid EIN for a different employer. Thus, for example, if a customer worked for “Company One,” and the preparer cannot find the EIN for that business, defendants tell the employee to use the EIN for “Company Two” when falsely filling out the electronic W-2 from a Company One paystub.

41. Defendants also use the collected and saved EINs when creating forged W-2s that

they print out and include in the customer file to deceive the IRS in the event of an audit or compliance visit to avoid penalties or fines.

42. In 2010 and 2011, numerous Instant Tax Service employees—at defendants’ specific instruction and direction—fraudulently and deliberately used incorrect EINs to prepare and file federal income tax returns and to create phony W-2s.

**c. Schedules C Depicting Fabricated Businesses and Inflated Income**

43. Defendants train new Instant Tax Service employees to prepare and file federal income tax returns with Schedules Cs reporting phony businesses and fraudulently inflated income for the purpose of significantly increasing customer Earned Income Tax Credit (EITC) refunds. The EITC is a refundable tax credit intended to help low-income individuals and families. Unlike many tax credits, a refundable credit entitles qualifying taxpayers to receive refunds even if they have no tax liability. Today the EITC is one of the largest anti-poverty tools in the United States, intended to act as a wage supplement and to increase workforce participation.

44. During the 2010 end-of-year training sessions described above, defendants taught approximately 30 prospective employees how to prepare federal income tax returns with phony Forms Schedule C depicting fabricated businesses and income. Defendants explained that the ideal amount—or “target amount”—of income needed to maximize the EITC and other refundable tax credits for a single filer with two dependents is around \$15,000. Defendants told trainees that if a taxpayer’s income is below the target amount, the preparer should try to increase the reported income. One way to do this, defendants said, is to suggest to the taxpayer that he should pretend to have a business that can be reported on Form Schedule C, such as a

lawn-care company, daycare or hair-styling business.

45. The phony income enables the preparer to reach the income target amount, and to maximize the EITC refund for the customer, sometimes increasing it by as much as \$4,000. At the same time, it makes it easier for Instant Tax Service to charge the taxpayer unconscionably high fees, sometimes upwards of \$1,000. Those exorbitant fees also benefit the preparer, because, as discussed below, they are directly tied to Instant Tax Service's commission and bonus structure.

46. Defendants Brown and Wiggins—with Franklin's supervision—also conducted role-playing exercises with new employees as part of the 2010 training. Defendants began those sessions by pretending to be a customer with income below the target amount. They then led the trainee through exercises designed to encourage a new customer to fabricate a Schedule C company by initially showing the taxpayer a small refund amount based on their actual income, and contrasting that with a significantly larger refund if, instead, they reported a phony business with fake income on their return.

47. Following training, Franklin's Instant Tax Service employees, as instructed, regularly prepared and filed federal income tax returns with phony Forms Schedule C that depicted fabricated businesses and income. This was done both with and without the knowledge of customers.

48. To illustrate, on or about January 25, 2011, defendant Brown prepared a tax return for Customer 1, who told Brown that she babysat her sister's children intermittently during the 2010 tax year. She said she earned at most \$150 every 2 weeks for watching the children, although some weeks she was not paid. Customer 1 thus had an annual income of less

than \$4,000. Despite knowing this, Brown prepared a fabricated Schedule C that showed Customer 1 as having a daycare business that earned \$13,832 in gross income. Brown fabricated the nearly \$9,000 of additional income to maximize the EITC and inflate the customer's refund by thousands of dollars. Brown also fabricated \$2,225 in phony expenses so it would look like a real business and make it more difficult for the IRS to detect the fraud.

49. Similarly, on approximately January 5, 2011, another employee at Franklin's Instant Tax Service franchise at 38th Street and College Avenue prepared a fraudulent federal tax return for Customer 2 that listed a fictitious janitorial company and showed substantially inflated income. Although Customer 2 told the Instant Tax Service employee that in 2010 he only made \$1,100 (from a lawn care business), the preparer also falsely increased Customer 2's income to \$9,500. The preparer fraudulently inflated the taxpayer's income to maximize the EITC, illegally increase the customer's refund by thousands of dollars, and to allow Instant Tax Service to retain a portion of the bogus refund as a "fee." The preparer also fabricated \$1,000 in expenses to conceal the fraud.

50. In the same way, on or about January 20, 2011, an employee at Franklin's Instant Tax Service store at 6000 East 10th Street, prepared a fraudulent tax return for Customer 3 that included a phony child-care business. Customer 3 told the preparer that she did not operate an actual business, but rather did occasional babysitting for her friend. Despite knowing the truth, the Instant Tax Service employee prepared a fraudulent Form Schedule C, showing a fictitious child care company. The customer also told Instant Tax Service that she made a total of only \$900 that year. But the preparer inflated the customer's cash receipts for the phony business to more than \$9,000 in order to maximize the Earned Income Tax Credit by thousands of dollars.

Instant Tax Service also fabricated expenses for the phony business of \$820 to make it more difficult for the IRS to detect the fraud. When Customer 3 asked if she would get in trouble because of the false information on the return, the Instant Tax Service employee said if she was ever audited by the IRS, she could buy a receipt book and have her friend fill it out.

**d. Falsely Claiming Education Credits**

51. Another common illegal practice at Franklin's Instant Tax Service stores involves fabricating education expenses and falsely claiming refundable education credits on customers' federal income tax returns. Unlike many tax credits, a refundable tax credit entitles qualifying taxpayers to receive refunds even if they have no tax liability.

52. On approximately January 22, 2011, for example, defendant Brown prepared a federal income tax return for Customer 4, who told Brown specifically that she paid a total of \$300–400 towards her granddaughter's education in 2010. Despite knowing the truth, Brown fraudulently inflated the customer's 2010 education expenses to \$4,000, so that she would be eligible for the maximum American Opportunity Education Credit. As a result, Brown illegally increased the customer's refund by nearly \$1,000.

53. Likewise, on or around January 14, 2011, an employee at Franklin's Instant Tax Service store at 7237 North Michigan Road, fraudulently indicated on Customer 5's return that she incurred \$4,000 in qualified education costs under the American Opportunity Education Credit. In fact, the customer neither attended college, nor had any qualified education expenses for the year. Nor did she tell the preparer that she had any such expenses. The Instant Tax Service employee's education credit fraud resulted in a \$1,000 illegal refund being paid to Customer 5.

**e. Fraudulently Claiming False Filing Status**

54. Defendants' Instant Tax Service employees also routinely prepare tax returns reporting false filing status. In particular, married couples who are not living apart are often improperly instructed to each file separately using the "head-of-household" or "single" filing status—both of which are unavailable to married couples living together. Often, this is an attempt to increase the claimed EITC, because, for example, a couple with at least two children who, together, would otherwise receive a single EITC refund of \$5,000 by properly claiming "married, filing jointly," may instead each receive a refund of \$3,000 or more, by both falsely claiming head-of-household or single status and each claiming at least one dependent.

55. Defendant Brown, for example, prepared a tax return for Customer 4 (noted above), who told Brown that she is and was married during the tax year at issue, and lived with her husband throughout that time. Brown falsely told her that because she made more money than her husband, she could claim head-of-household filing status. This fraudulently increased her refund by thousands of dollars.

56. On or about December 28, 2010, another employee at Franklin's Instant Tax Service store at 2143 Prospect Avenue, prepared a fraudulent federal tax return for Customer 6 for the 2010 tax year. The taxpayer informed Instant Tax Service that she was married throughout the tax year and lived with her husband during that time. The preparer falsely told Customer 6 that she could claim head-of-household filing status. After the customer asked the preparer to confirm whether she was allowed to file as head-of-household even though she was married, the preparer consulted with a supervisor, who likewise falsely told the customer that she qualified. This fraudulently increased Customer 6's refund by thousands of dollars, from which

Instant Tax Service deducted a supposed fee of nearly \$900.

**f. Fraudulently Increasing EITC and Circumventing Due Diligence**

57. Franklin's Instant Tax Service employees commonly report fictitious income and expenses in order to fraudulently maximize the Earned Income Tax Credit. In most cases, this is done by using phony businesses and income reported on Schedule C, as described in detail above. Alternatively, it may involve simply fabricating wages and creating an accompanying fake W-2 for the file.

58. In addition, Franklin teaches his Instant Tax Service employees to deliberately circumvent the requisite due diligence required to claim the Earned Income Tax Credit, for the purpose of significantly and illegally enlarging Instant Tax Service's profits.

59. Internal Revenue Code section 6695(g) and Treasury Regulation § 1.6695-2(b) require tax return preparers to exercise "due diligence" in determining whether customers qualify for the EITC. Among the mandatory due diligence requirements, preparers must complete an EITC Worksheet and an Eligibility Checklist, or must otherwise record that information in the customer's file. Franklin and defendants not only continually and repeatedly fail to satisfy these statutory and regulatory mandates, they affirmatively tell employees to violate the EITC due diligence requirements—and even teach them precisely how to do so.

60. Defendants, for example, make all new return preparers memorize set responses to the EITC due diligence questions that appear in the Drake software. In the event a preparer were to forget the memorized responses, Franklin's version of the Drake software also has the fraudulent "answers" highlighted in green.

61. Defendants expressly instruct Instant Tax Service employees *not to ask* their

customers the required EITC due diligence questions. That is because doing so, in Franklin's view, would "waste time." More importantly, any answer other than the memorized responses would jeopardize the customers' ability to qualify for the EITC and obtain a substantial refund, thereby reducing the money available from which Instant Tax Service extracts its exorbitant fees.

62. Defendants therefore don't simply ignore the legal requirements for claiming the EITC. Rather, they actively teach Instant Tax Service employees how to consciously circumvent the requisite due diligence—and how to falsify the customers' responses. Following this instruction, Instant Tax Service employees, in fact, routinely prepare and file federal income tax returns for which they fail to conduct mandatory due diligence, and then falsify their customer's responses to the questions.

**g. Fraudulently Omitting Income and Filing Without Consent**

63. Another widespread practice at Franklin's Instant Tax Service stores is filing "estimated" income tax returns without the customer's permission, as well as omitting income from customers' returns.

64. Franklin's Instant Tax Service stores cater to low-income taxpayers, many of whom are in need of money quickly. Frequently these customers inquire about the company's various—but false and deceptive—loan products (discussed below), in the hope of securing an advance on an expected refund. Other customers come in seeking to obtain an early estimate of their possible refund amount, prior to filing their tax return. In both cases, defendants instruct preparers to complete an "estimated" income tax return. Instant Tax Service says the basic information is needed to determine whether the customer qualifies for the loan or to get an accurate estimate. Defendants also tell customers that to qualify for any loan they must sign the

purported estimated return and other tax forms authorizing defendants to file the return, but promise that the estimated return won't actually be filed with the IRS. Later, however, defendants routinely and illegally file those estimated income tax returns without the customers' knowledge, contrary to their promises not to do so.

65. Defendants file tax returns based on paycheck stubs and without customer authorization to "lock-in" prospective customers. This practice effectively prevents the customer from later filing with a competitor, because a taxpayer can file only one electronic return with the IRS per year. It also gives defendants a competitive advantage over tax return preparers who obey the law and wait to prepare and file returns using W-2s. Most importantly, the practice generates an unauthorized refund and guarantees defendants that they will receive their unconscionably high tax preparation and junk fees, which are paid directly from the customer's refund only after the return has been electronically filed.

66. Another aspect of Instant Tax Service's practice of filing unauthorized tax returns includes the deliberate failure to ask customers about additional sources of income that cannot increase a refund. Defendants consciously fail to ask about unemployment benefits, for example, which are taxable but are not treated as "income" for purposes of calculating the EITC. They also deliberately fail to ask about other sources of income once they reach the target amount of approximately \$15,000. And they purposely prepare returns with paystubs—before employers and payors are required to issue W-2s and 1099s showing the full amount of income and taxable benefits paid to Instant Tax Service's customers.

67. Because of unauthorized and premature filing, and the failure of Instant Tax Service to include all of their customers' income on their customers' returns, many of their

customers are later audited and must repay refunds that they were never entitled to receive: refunds from which Instant Tax Service has already deducted unconscionably high fees, and which their customers, who are often low-income taxpayers, have no realistic hope of repaying.

68. For example, on approximately January 31, 2011, defendant Brown prepared a tax return for Customer 7, who told Brown that she had received thousands of dollars in unemployment income, but said she did not yet have a Form 1099-G listing the total. Brown told the taxpayer not to worry about it, and prepared the customer's federal income tax return using her paystub. Brown then deliberately omitted *all* of the customer's unemployment income, which allowed Brown to fraudulently inflate her refund amount—based in large part on a \$5,186 EITC credit. When the customer later received her Form 1099-G from the State of Indiana, it showed a total of \$15,800 in taxable unemployment benefits. If Brown had properly included that money, the customer's refund—and Instant Tax Service's exorbitant fees—would have been substantially reduced.

**h. Additional Improprieties**

(i). False and deceptive loan products

69. Defendants also peddle false and deceptive loan products to their tax preparation customers. These purported loan products include the Instant Cash Loan (“ICL”) and the Refund Anticipation Loan (“RAL”).

70. Defendants begin offering the ICL (also called the “Holiday Loan” and “Instant Cash Advance”) to the public in December and early January before the tax-filing season begins. Ostensibly, ICLs are small and purportedly non-recourse loans intended to get customers in the door, with the hope that these customers will voluntarily return to have their tax returns filed

when the filing season begins and after they receive their W-2s. In reality, the ICLs provide cover to enable Instant Tax Franchisees to prepare and file tax returns based on paycheck stubs rather than W-2s and file without customer authorization.

71. Because defendants offer the ICLs before the filing season even begins, most of their customers do not yet have their W-2s. Thus, defendants' employees complete a loan application using the customer's last paycheck stub, along with an "estimated" tax return. Although Instant Tax Service purports to prepare estimated returns merely as part of the loan application process, as discussed above, defendants and their employees routinely file these returns without awaiting W-2s. They also often file without customer authorization. This practice generates an unauthorized refund and guarantees defendants that they will receive their unconscionably high tax preparation and junk fees, which are paid directly from the customer's refund only after the return has been electronically filed.

72. Once the IRS begins accepting tax returns in mid-January, defendants market the RAL product. The RAL is a recourse loan that uses the customer's expected tax refund as collateral. RAL funds are advanced to a customer only after Instant Tax Service has prepared and filed the customer's federal tax return and the return has been accepted by the IRS.

73. Tax Tree, LLC is Instant Tax Service's primary ICL and RAL provider. Instant Tax Services' 2010-2011 "Bank Product Application" states that Tax Tree "is not affiliated with the Tax Preparer." ITS Financial franchise agreements likewise declare that its loan products will be financed "by one or more banks that are not affiliated with ITS." Tax Tree also supposedly is headquartered in Miami, Florida.

74. In fact, ITS Financial owner and CEO Obgbazion is the sole owner and CEO of

Tax Tree. Tax Tree's Miami office is empty and has no employees. Tax Tree operates out of ITS Financial's headquarters and uses ITS Financial personnel to market and process loans. Tax Tree also is substantially undercapitalized and has been from its inception. Tax Tree's actual relationship to ITS Financial and Instant Tax Service is not disclosed to customers who apply for the loans. Nor is the fact that it is undercapitalized. Rather, loan documentation provided to Instant Tax Service customers suggests that Tax Tree is a viable, independent, third-party lender.

75. Defendants tell customers that they can receive cash loans of \$1,000 or more within 48 hours as part of the ICL and RAL programs. Most of defendants' customers, however, are either denied the loans outright, or receive loan amounts that are so small that they are subsumed by the accompanying junk fees alone, before factoring in the exorbitant tax preparation fees. Because Tax Tree is undercapitalized, overall loan denial rates at times exceed 90%. Certain types of customers receive automatic denials of their loan applications, but those customers are still encouraged to apply to increase defendants' profits.

76. As discussed above, Instant Tax Service and Tax Tree charges customers bogus fees for "service bureau," "document preparation," "return estimate," "technology/software," "account set up," "check printing," and "Efile/electronic transmission." Even customers whose loan applications are denied are still charged the following four junk fees by ITS Financial and Tax Tree: "electronic transmission," "technology," "account set up," and "check-print."

77. Apart from being profitable in their own right, the false and deceptive loan products principally serve as an inducement for people to have their tax returns prepared and filed by defendants' Instant Tax Service stores. This enables defendants to charge them unconscionably high tax preparation fees and junk fees, which are paid directly from the

customer's refund only after the return has been electronically filed.

(ii) Improper and deficient "training"

78. Defendants, in addition to expressly teaching employees to prepare fraudulent tax returns, intentionally recruit unsophisticated individuals, with little or no return-preparation experience, to become tax preparers. Defendants then supposedly train these potential employees during two or three weeks of short, half-day classes.

79. In addition to overtly encouraging the preparation of false and fraudulent tax returns, as discussed above, training largely focuses on: (1) how to use the Drake tax preparation software; (2) billing and office procedures; (3) how to sell Instant Tax Services' various fraudulent loan products; and (4) preparing returns using paystubs.

80. Franklin fails, however, to teach his preparers crucial elements related to basic tax return preparation. For example, he provides no genuine instruction on the Earned Income Tax Credit due diligence requirements, procedures for detecting fraudulent Forms W-2, and the methods to question customers who provide suspicious, false or fraudulent information. Indeed, Franklin affirmatively instructs his employees to deliberately *circumvent* the mandatory due diligence requirements and methods for detecting fraud, and to fabricate customers' responses.

81. Franklin's training also fails to give return preparers the knowledge or experience to properly and consistently complete basic income tax returns—let alone more complicated tax returns, such as those requiring Schedules A and C. This inadequate training further contributes to the preparation of inaccurate, incomplete, and false tax returns.

82. Defendants further instruct Instant Tax Service employees to accept, without question, customer-provided information, even if it appears to be suspicious or false. Franklin,

for instance, tells return preparers faced with potentially fraudulent customer information not to inquire further and to blindly accept the information because, “[w]e are not the Tax Police.” Defendants explain to employees that Instant Tax Service will lose business if it turns away customers suspected of providing fraudulent information.

83. Defendants constantly stress volume and profit at the expense of competence and accuracy. Defendants tell employees that they should spend no more than 15 minutes on each return, and should attempt to charge each customer, on average, at least \$400. Evidence suggests that in 2011 Franklin raised his average fee from \$400 to \$600.

84. Once filing season begins, employees are routinely fired, but not for a lack of competence or accuracy. Rather, employees who fail to prepare and get credit for a sufficient number of returns are let go. Employees who prepare, file, and receive credit for large numbers of returns—irrespective of competence or accuracy—are retained and financially rewarded.

85. Defendants also knowingly expose their employees to possible civil and criminal liability, by falsely telling them that they are not legally responsible for preparing tax returns containing false or fraudulent information, and that such responsibility falls solely on the customer.

(iii). Employees’ wages are improperly tied to the fees they charge

86. Instant Tax Service directly ties its employees’ overall compensation to the fees charged to customers.

87. Franklin initially pays low wages to his preparers—approximately \$5 an hour. This hourly wage is more than doubled, however, if two conditions are met. First, the employee must prepare, file, and have *accepted* by the IRS, a set number of returns—typically 25. If a

return is not accepted, it is not counted toward the employee's bonus.

88. Second, and more importantly, the employee only gets full credit for one return if she charges the customer Franklin's "average fee." In the past, Franklin set the average fee for preparing a routine, uncomplicated return at \$400. Thus, for instance, if an employee charges the customer \$400, she gets credit for preparing one (1) full return. If, however, an employee charges less than \$400, he or she only gets partial credit towards one return. Thus, if a preparer charges a customer \$100, he or she obtains credit for one quarter (1/4) of a return. Conversely, if the employee charges more than \$400, he or she receives credit for preparing more than a single return. Consequently, by charging \$800 for a single return he or she would be *credited* with preparing two (2) returns. Therefore, it is possible for employees to reach the 25 return mark and more than double their compensation in as few as 13 returns, if on average they charge their customers \$800 per return.

89. The bonus is further increased for employees who receive credit for 75 returns, and is increased again for those who get credit for 125 returns.

90. Franklin therefore directly ties his employees' compensation to the amount of fees charged—and illegally incentivizes his preparers to charge customers unconscionably high fees. This, by extension, also incentivizes his preparers to fraudulently inflate their customers' refunds in the first place, because a customer who receives a large, fraudulent refund is unlikely to complain about an outrageous fee deduced from those ill-gotten funds.

(iv) Disregard of repeated IRS warnings

91. Franklin and his Instant Tax Service franchise has been repeatedly warned and penalized by the IRS, following IRS examinations, inspections and compliance visits. For

instance, the IRS warned Instant Tax Service and penalized employees who were improperly using paystubs to prepare and file returns in 2009. During a separate EITC compliance visit that same year, the IRS also warned Instant Tax Service for failing to conduct EITC due diligence. Notwithstanding, defendants continued to teach employees how to use paystubs to prepare and file returns in 2010—and, in fact, employees continued to follow defendants' instruction. Defendants also continued to teach employees how to deliberately circumvent EITC due diligence—and, consequently, employees continued to violate the EITC requirements in 2010 and 2011.

92. Once again in 2010, the IRS warned Franklin and Instant Tax Service about using paystubs to prepare and file returns. Just as before, defendants not only ignored the warnings, but continued to *teach* employees how to file and prepare returns with paystubs. Incredibly, defendants also fraudulently instructed employees to create fictitious W-2s to hide the fact that employees were preparing returns with paystubs. Defendants later lied to the IRS about the fabricated W-2s when questioned about them.

#### **Harm to the Public and Necessity of Injunction**

93. Franklin's Instant Tax Service and the defendants' fraudulent and predatory practices harm the public and the United States Treasury.

94. Defendants' fraudulent and predatory practices harm the public by illegally causing their customers to incorrectly report their federal tax liabilities and underpay their taxes. Defendants also harm their customers by charging them unconscionably high fees to prepare false or fraudulent tax returns that understate their correct income tax liabilities. Defendants further harm their customers by subjecting them to possible civil and criminal sanctions resulting

from the false and fraudulent tax returns. Compounding defendants' harm, many of their customers are unsophisticated, low-income taxpayers, who have little or no ability to repay the illegal refunds (and accompanying penalties and interest) that defendants' fraud procures. Finally, defendants exploit and harm their customers by selling them fraudulent loan products tied to anticipated tax refunds.

95. Defendants' fraudulent practices likewise harm the United States Treasury. The government estimates that defendants' misconduct resulted in a tax loss to the Treasury of approximately \$3.7 million in tax year 2010 alone. This estimate was derived from a statistically random sample of the more than 5000 taxpayers whose 2010 tax returns were prepared by the defendants in 2011. Based on an analysis of information from over 100 taxpayers, the IRS determined that more than 60% of the tax returns prepared by defendants' were non-compliant.

96. The defendants' misconduct further harms the United States and the public by requiring the IRS to devote scarce resources to detecting the fraud and assessing and collecting lost tax revenues from defendants' customers. Prior to the investigation that led to the discovery of defendants' tax fraud described in this complaint, IRS employees spent thousands of hours conducting hundreds of audits of tax returns prepared by Franklin's Instant Tax Service stores. The majority of those audits resulted in adjustment.

97. In addition, IRS employees devoted still more time in 2009 and 2010 making repeated compliance visits to Franklin's franchise and issuing warnings to defendants. Following those IRS actions, defendants not only failed to comply with the law, they engaged in further tax fraud, taught employees to engage in tax fraud, and actively concealed their fraud from the IRS by, among other actions, fabricating federal tax documents and destroying tax

records. Consequently, identifying and recovering all lost tax revenues resulting from defendants' fraud and illegal activities may be impossible.

98. Furthermore, defendants' misconduct harms their employees. Defendants knowingly expose their employees to possible civil and criminal liability, by falsely telling them that they are not legally responsible for preparing tax returns containing false or fraudulent information, and that such responsibility falls solely on the customer.

99. The defendants' fraudulent tax return preparation also harms legitimate tax return preparers who refuse to engage in such illegal conduct. Legitimate tax return preparers unfairly lose business to defendants as a result of the defendants' willingness to break the law. Some of defendants' customers, for instance, had their returns prepared with paystubs at Instant Tax Service after a law-abiding preparer told them they could not prepare a tax return without an employer-issued W-2. Other customers left their return preparer after learning that Instant Tax Service could get them a larger, albeit erroneous, refund.

100. Finally, defendants' flagrant misconduct harms the public at large by undermining public confidence in the federal tax system and encouraging widespread violations of the internal revenue laws.

101. The harm to the government and the public will increase unless defendants are enjoined because—given the seriousness and pervasiveness of their illegal conduct—without an injunction defendants are likely to continue preparing false and fraudulent federal income tax returns for customers. An injunction will serve the public interest because it will put a stop to defendants' illegal conduct and the harm that such conduct causes the United States and its citizens.

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

102. The United States incorporates by reference the allegations in paragraphs 1 through 101.

103. Section 7408 of the Internal Revenue Code 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 (“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. 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.

104. Defendants, through their actions detailed above, caused the presentation and preparation of false, fraudulent and abusive tax returns and other documents. In addition, Franklin’s 21 Instant Tax Service stores, ITRS, its owner David Franklin, and its managers, including Wiggins and Brown, procured and assisted in the preparation of false and fraudulent tax returns by encouraging the filing of tax returns they knew were false or fraudulent, and by employing and supervising tax return preparers engaging in tax fraud.

105. Defendants’ actions resulted in the understatement of many of their customers’ tax liabilities. Given defendants’ roles at Franklin’s Instant Tax Service, and their active participation in promoting and teaching employees to engage in tax fraud, defendants knew that their actions would lead to the understatement of their customers’ tax liabilities.

106. In addition, defendants have not altered their behavior despite being previously warned and assessed penalties for similar conduct. Given their occupations, defendants are likely to continue violating the law absent an injunction. Tax return preparation is Instant Tax Service's only source of revenue. While training his employees, Franklin emphasizes that he and the other defendants make the majority of their annual incomes during tax preparation season. To maximize that income, defendants counsel employees to prepare fraudulent returns. That fraudulent conduct, in turn, gives Instant Tax Service a competitive edge over law-abiding preparers. It also provides a means for defendants to further exploit their unsophisticated customers by charging them unconscionably high fees, while defendants' fraud simultaneously and callously exposes their customers to possible civil and criminal liability. Consequently, if the Court does not enjoin defendants, they are likely to continue to engage in tax fraud and conduct subject to penalty under I.R.C. § 6701.

107. Accordingly, penalties under I.R.C. § 6701 are warranted and an injunction is necessary to prevent the recurrence of defendants' illegal conduct.

**Count II: Injunction Under I.R.C. § 7407**

108. The United States incorporates by reference the allegations in paragraphs 1 through 107.

109. 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(a), 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;

- b. Engaging in conduct subject to penalty under I.R.C. § 6694(b), which among other conduct, penalizes a return preparer who recklessly or intentionally disregards IRS rules or regulations;
- c. Engaging in conduct subject to penalty under I.R.C. § 6695(g), which penalizes a return preparer who fails to comply with the statutory due diligence requirements;
- d. Guaranteeing a tax refund or allowance of a tax credit; or
- e. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

110. In order for a court to issue an injunction under I.R.C. § 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.

111. 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 tax preparer.

112. Defendants, as shown above, are tax preparers who have repeatedly and continually prepared or submitted returns or portions of returns (or employed or managed others

who prepared or submitted returns or portions of returns) that contain unreasonable positions and substantially understate the liability for tax on the return. Defendants also instructed and directed employees of Instant Tax Service to engage in tax fraud, and to prepare federal income tax returns asserting unreasonable, unrealistic, frivolous and fraudulent positions. Accordingly, defendants knew (or reasonably should have known) of the unreasonable, unrealistic, frivolous and fraudulent positions.

113. Defendants, as also detailed above, have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694(b) by (1) willfully attempting to understate their customers' tax liabilities or directing others to do so, and by (2) intentionally or recklessly disregarding pertinent rules and regulations. This conduct is subject to penalty under I.R.C. § 6694.

114. Furthermore, defendants, as evidenced throughout the complaint, have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695(g). Defendants have not only failed to satisfy the mandatory due diligence requirements of I.R.C. § 6695(g) and Treas. Reg. § 1.6695-2(b), they deliberately circumvent them. Defendants also teach others to circumvent these due diligence requirements and to falsify their customers' responses.

115. 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: (1) knowingly preparing, assisting in preparing, and encouraging the preparation of tax returns containing false and fraudulent information; (2) creating and directing the preparation of fabricated tax documents, such as fabricated W-2s; (3) teaching employees to engage in tax fraud; (4) encouraging and soliciting

customers to provide false and fraudulent information for the purpose of filing false tax refund claims; and (5) teaching employees to deliberately circumvent the statutory due diligence requirements and to fabricate customers' responses. All of this constitutes conduct that may and should be enjoined under I.R.C. § 7407(b).

116. Defendants repeatedly and continuously engaged in egregious and illegal conduct subject to injunction under I.R.C. § 7407, even after being penalized and warned by the IRS to comply with the law. Defendants not only consciously chose to disregard those warnings, they engaged in further tax fraud, taught employees to engage in tax fraud, and actively concealed their fraud from the IRS. Penalties alone will not change defendants' behavior because they view such measures as the cost of doing business.

117. Defendants' actions are so flagrantly illegal and so egregious they demonstrate that a narrow injunction prohibiting only specific conduct would be insufficient. Accordingly, defendants should be permanently barred from acting as federal tax preparers, and from owning, managing, controlling, working for, or volunteering for a tax return preparation business.

**Count III: Injunction Under I.R.C. § 7402(a) as Necessary to Enforce the Internal Revenue Laws**

118. The United States incorporates by reference the allegations in paragraphs 1 through 117.

119. Section 7402(a) of the Internal Revenue Code 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.

120. 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.

121. Defendants, through their actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined, defendants are likely to continue to engage in such conduct.

122. The tax returns defendants prepared for their customers improperly and illegally reduced their federal income tax liabilities. In addition, defendants' actions directing the preparation of tax returns containing false and fraudulent information, teaching employees to engage in tax fraud, tying compensation to fees, directing the preparation of phony tax documents, filing returns without taxpayers' permission, and instructing employees to fabricate responses to statutory due diligence requirements, directly results in, as defendants know and intend, the filing of false, fraudulent and incorrect tax returns.

123. An injunction is necessary to stop defendants' tax fraud, and should prohibit defendants from, directly or indirectly, as detailed further below: (1) improperly instructing, advising, encouraging, enabling, inciting or assisting customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds; (2) organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising or managing, abusive plans or arrangements that violate the Internal Revenue laws; (3) organizing, promoting, providing, advising, or selling business or tax services that facilitate or promote noncompliance with federal tax laws; and (4) otherwise engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

124. 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 IRS §§ 6694, 6695 and 6701, but also to engage in other conduct that substantially interferes with the enforcement of the internal revenue laws. Such conduct includes: (1) creating and directing the preparation of fabricated tax documents, such as fabricated W-2s; (2) teaching employees to engage in tax fraud; (3) failing to adequately train their preparers, knowing that such inadequate training will lead to the filing of inaccurate returns; (4) tying employees' compensation directly to the amount of fees received and incentivizing employees to charge unconscionably high fees; (5) illegally filing tax returns without the taxpayer's authorization; (6) selling fraudulent loan products tied to anticipated tax refunds; and (7) destroying and illegally altering tax records. 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 to increase.

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

126. Enjoining 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 defendants 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;

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

C. That the Court, pursuant to I.R.C. § 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 26 U.S.C. § 7402(a);

E. That this Court, pursuant to 26 U.S.C. §§ 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:

- a. Acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that defendants know or have reason to know will be used as to a material matter arising under federal tax law, and will result in the understatement of the liability for tax of another person;

- c. Organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising, or managing abusive plans or arrangements that violate the Internal Revenue laws;
- d. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) customers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that defendants know (or have reason to know) will result in the understatement of any tax liability as subject to penalty under I.R.C. § 6694;
- e. Improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;
- f. Engaging in any activity subject to penalty under I.R.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining customers' eligibility for the Earned Income Tax Credit;
- g. Organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax services that facilitate or promote noncompliance with federal tax laws; and
- h. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407 and 7408 enter an injunction requiring defendants, within thirty days of the entry of an injunction against them, to contact by mail all: (1) employees or former employees; and (2) persons for whom they prepared a federal tax return since December 1, 2010, and inform them of the Court's findings concerning the falsity or fraudulent attributes of those tax returns, and enclose a copy of the permanent injunction against defendants, and file a certification with the Court, under penalty of perjury,

stating that they have complied with this provision;

G. That the Court, pursuant to I.R.C. §§ 7402(a), 7407 and 7408 enter an injunction requiring defendants to produce to counsel for the United States, within thirty days of the entry of an injunction against them, a list that identifies by name, social security number, address, e-mail, telephone number, and tax period(s) all persons for whom defendants prepared federal tax returns or claimed a tax refund since December 1, 2009, and file a certification with the Court, under penalty of perjury, stating that they have complied with the provision;

H. That the Court retain jurisdiction over the defendants, and this action for the purpose of enforcing any permanent injunction entered against defendants;

I. That the United States be entitled to conduct all discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring defendants' compliance with the terms of the permanent injunction entered against them; and

J. That the Court grant the United States such other and further relief, including costs, as the Court deems appropriate.

Dated: March 28, 2011.

Respectfully submitted,

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