

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

| | | |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | Case No. 3:16-cv-02160-DRD |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| VICTOR RIVERA-RIVERA |) | |
| d/b/a Rivera Gas, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

DEFAULT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

The plaintiff, the United States of America, commenced this civil action under 26 U.S.C. § 7402(a) to collect the federal employment and unemployment taxes, penalties and statutory interest assessed against the defendant taxpayer, Victor Rivera-Rivera, for the taxable periods between 2001 and 2015, and to permanently enjoin the defendants from violating and interfering with the administration of the internal revenue laws, and compelling him to: (1) timely file his employment and unemployment tax returns; and (2) timely collect and pay over to the Internal Revenue Service his accruing federal employment and unemployment taxes. Defendant Victor Rivera-Rivera failed to file an answer or otherwise defend in this action, and the Clerk entered the default of the defendant on November 17, 2016.

The United States has now moved for the entry of a default judgment against Victor Rivera-Rivera for the total amount of the federal employment and unemployment taxes, penalties and interest owed by it as of May 16, 2016, in the amount of \$122,169.18 plus statutory additions to tax accruing thereafter, along with a permanent injunction and for other equitable relief.

The Court, having considered the United States' motion for a default judgment with respect to Victor Rivera-Rivera's unpaid federal tax liabilities and for the entry of a permanent injunction under 26 U.S.C. § 7402 requiring him to comply with the internal revenue laws by timely reporting, depositing, and paying over his federal employment and unemployment taxes, the Declaration of Revenue Officer Laudelina Borrero, and the entire record in this matter, hereby **GRANTS** the United States' motion, and **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED** as follows:

1. This Court has jurisdiction over the subject matter of this case and the defendant Victor Rivera-Rivera pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.
2. Victor Rivera-Rivera is indebted to the United States for unpaid federal taxes, including statutory additions to tax, in the total amount of \$122,169.18 as of May 16, 2016 for the tax periods and in the amounts indicated below:

| Tax Type | Tax Period | Outstanding Balance as of May 16, 2016 |
|-----------------|-------------------|---|
| Form 941 | 12/31/2001 | \$937.52 |
| Form 941 | 3/31/2002 | \$1,754.53 |
| Form 941 | 6/30/2002 | \$1,731.28 |
| Form 941 | 9/30/2002 | \$1,708.48 |
| Form 941 | 12/31/2002 | \$1,687.17 |
| Form 941 | 9/30/2003 | \$805.68 |
| Form 941 | 12/31/2003 | \$1,080.94 |
| Form 941 | 3/31/2004 | \$1,689.72 |
| Form 941 | 6/30/2004 | \$3,697.97 |
| Form 941 | 9/30/2004 | \$3,765.20 |
| Form 941 | 12/31/2004 | \$3,995.79 |
| Form 941 | 3/31/2005 | \$2,623.93 |
| Form 941 | 6/30/2005 | \$3,288.41 |
| Form 941 | 9/30/2005 | \$3,945.84 |
| Form 941 | 12/31/2005 | \$4,059.94 |
| Form 941 | 3/31/2006 | \$2,652.05 |
| Form 941 | 6/30/2006 | \$2,726.51 |
| Form 941 | 9/30/2006 | \$2,694.87 |
| Form 941 | 12/31/2006 | \$3,011.73 |

| | | |
|---------------|------------|------------|
| Form 941 | 3/31/2007 | \$2,565.40 |
| Form 941 | 6/30/2007 | \$2,667.37 |
| Form 941 | 9/30/2007 | \$2,404.63 |
| Form 941 | 12/31/2007 | \$2,618.23 |
| Form 941 | 3/31/2008 | \$3,031.25 |
| Form 941 | 6/30/2008 | \$2,871.34 |
| Form 941 | 9/30/2008 | \$5,053.51 |
| Form 941 | 12/31/2008 | \$4,837.92 |
| Form 941 | 3/31/2009 | \$3,442.53 |
| Form 941 | 6/30/2009 | \$3,615.04 |
| Form 941 | 9/30/2009 | \$3,499.91 |
| Form 941 | 12/31/2009 | \$4,269.67 |
| Form 941 | 3/31/2010 | \$2,455.18 |
| Form 941 | 9/30/2010 | \$1,803.27 |
| Form 941 | 12/31/2010 | \$3,729.70 |
| Form 941 | 6/30/2011 | \$2,823.91 |
| Form 941 | 9/30/2011 | \$2,585.82 |
| Form 941 | 12/31/2011 | \$2,533.94 |
| Form 941 | 3/31/2012 | \$2,390.44 |
| Form 941 | 6/30/2012 | \$2,071.82 |
| Form 941 | 9/30/2012 | \$989.47 |
| Form 941 | 12/31/2012 | \$1,037.12 |
| Form 941 | 3/31/2013 | \$1,286.26 |
| Form 941 | 6/30/2013 | \$1,115.18 |
| Form 941 | 9/30/2013 | \$1,104.72 |
| Form 941 | 12/31/2013 | \$1,158.39 |
| Form 941 | 3/31/2014 | \$1,078.14 |
| Form 941 | 6/30/2014 | \$1,046.06 |
| Form 941 | 9/30/2014 | \$1,014.20 |
| Form 941 | 12/31/2014 | \$78.39 |
| Form 941 | 3/31/2015 | \$950.13 |
| Form 940 | 12/31/2009 | \$254.01 |
| Form 940 | 12/31/2010 | \$295.05 |
| Form 940 | 12/31/2011 | \$233.54 |
| Form 940 | 12/31/2012 | \$168.18 |
| Form 940 | 12/31/2013 | \$55.67 |
| Civil Penalty | 12/31/2008 | \$1,176.23 |

TOTAL: \$122,169.18

3. Victor Rivera-Rivera has interfered with the proper administration of the internal revenue laws by:

(a) Failing to make sufficient tax deposits for employment and unemployment tax liabilities as required by law; and

(b) Requiring the Internal Revenue Service to expend considerable resources to induce him to comply with the federal tax laws by filing notices of federal tax lien and attempting to administratively to collect the unpaid federal tax liabilities.

4. A permanent injunction is necessary and appropriate under section 7402(a) because Victor Rivera-Rivera has violated, and will continue to violate the tax laws by refusing to withhold and deposit the taxes and comply with the filing requirements that apply to employers. An injunction is necessary to prevent future violations of the law, as the Internal Revenue Service's attempts to bring him into compliance have been unsuccessful.

4. The United States lacks an adequate remedy at law to coerce the defendant's compliance with the internal revenue laws, as evidenced by his continual failure to pay over the withheld federal employment taxes along with his share of FICA and FUTA taxes to the Internal Revenue Service.

5. The United States would suffer irreparable injury in the absence of an injunction in this case if the defendants were allowed to continue to refuse to pay over to the IRS the lawful tax revenues due the government. When statutory interest and penalties are taken into consideration, the defendants have deprived the United States of more than \$120,000. The defendant should not be allowed to continue on their present path of converting the government's tax monies to his own use.

6. Additionally, the United States is being harmed because it is being required to devote considerable IRS resources to the tasks of persuading the defendants to comply with the tax laws, and attempting to collect the federal taxes that he should have deposited.

7. The balance of harms tips sharply in favor of the issuance of an injunction. If Victor Rivera-Rivera is not restrained from continuing to violate the federal tax laws, the government will experience irreparable harm in the form of the permanent loss of its tax revenue. If an injunction is issued, Victor Rivera-Rivera will not be harmed because he will merely be required to obey the same laws as other employers.

8. An injunction would serve the public interest. The tax system relies on employers to collect employment and unemployment taxes and to pay those taxes over to the United States. Victor Rivera-Rivera undermines this system by continuing to accrue or “pyramid” his tax liabilities. Enjoining him will protect the public’s interest in the fair administration of the internal revenue laws and in fair competition by halting these wrongful practices.

9. Accordingly, it is adjudged, determined and decreed that the defendant has engaged and is engaging in conduct that interferes with the administration of the internal revenue laws, and that injunctive relief under Code section 7402(a) and the Court’s inherent equity powers is necessary and appropriate to stop that conduct.

10. This injunction is issued to prevent the defendant Victor Rivera-Rivera from further accruing or “pyramiding” their employment and unemployment tax liabilities by accruing such liabilities beyond the defendants’ ability to pay over the liabilities as they become due.

11. This injunction order authorizes enforceable injunctive relief and, if any provision of this permanent injunction is violated, the injunction can be enforced by the United States or the Court through the mechanisms set forth below.

12. An injunction shall issue as follows from the date of this Order:

- a. Parties Covered by Injunction: This injunction binds Victor Rivera-Rivera as well as his agents, employees, and persons in concert or participation with them, in whatever form they continue to carry on their business.
- b. Withholding Requirement: The defendant Victor Rivera-Rivera shall withhold federal income and FICA taxes from the wages of his employees when those wages are paid, shall keep the withheld funds in a bank account separate from any operating account or other accounts, and shall pay the withheld taxes to the Internal Revenue Service as they become due and payable.
- c. Deposit Requirements: In accordance with federal deposit regulations, Victor Rivera-Rivera shall make timely deposits of withheld federal income and FICA taxes and his share of FICA and FUTA taxes in an appropriate federal depository bank each quarter, in accordance with the federal deposit regulations.
- d. Reporting Requirements: Within three days after Victor Rivera-Rivera makes a federal tax deposit as required by paragraph (c), Victor Rivera-Rivera shall provide proof to the Internal Revenue Service at City View Plaza II, 48 Carr. 165, Suite 2000, Guaynabo, Puerto Rico 00968-8000 or such other location as the Internal Revenue Service may deem appropriate, that the requisite withheld federal income taxes, FICA taxes (both the employees' withheld portion and the employer's portion), and unemployment tax deposits were timely made.

- e. Return Requirements: Victor Rivera-Rivera shall timely file with the IRS all of his employment (Form 941) and unemployment (Form 940) tax returns. Each return shall be considered to be timely filed if it is filed before the date it is due or within three days after the return is due. The defendant shall pay any balance due on those returns upon filing.
- f. Transfer Prohibition: The defendant is prohibited after the date of this permanent injunction from assigning any property or making any disbursements until all income taxes and FICA taxes required to be withheld from employees' wages (together with the employer's liability for FICA taxes and FUTA taxes) are in fact paid to the IRS.
- g. Notification of New Business: For the next five years defendant Victor Rivera-Rivera shall notify the Internal Revenue Service at the address specified in paragraph d, above, of any new or presently operating company or entity with which he becomes involved in relation to federal employment tax withholding, depositing, or reporting and shall also inform the IRS if he assumes a new name or transfers its employees or business operations to another entity. The defendant shall notify the Internal Revenue Service within 10 days after the aforementioned actions.
- h. Failure to Comply: If defendant Victor Rivera-Rivera or anyone subject to this injunction violates any part of this injunction, the following enforcement mechanisms may be taken:

- i. the IRS may seize Victor Rivera-Rivera's business property or any other entity that the defendants use, direct, or control as part of their business, and may sell the seized property to satisfy his outstanding tax liabilities; and
- ii. the Court may find defendant Victor-Rivera-Rivera to be in civil or criminal contempt and punish him with a fine, incarceration, or both.

- i. Enforcement of Injunction: The United States shall be permitted to issue discovery requests during the pendency of the injunction to ensure that the defendant is in compliance with the injunction. The Court shall retain jurisdiction of this action for the purposes of implementing and enforcing this injunction and entering all additional decrees and orders necessary and appropriate for the public interest.

13. The defendant shall deliver to all of his current employees a copy of this Permanent Injunction Order.

14. The United States may provide notice of the entry of this injunction under Fed. R. Civ. P. 65 by mailing a true and correct copy thereof by certified or registered mail to the defendant.

IT IS SO ORDERED, AJUDGED, AND DECREED.
In San Juan, Puerto Rico, this 6th day of December, 2016.

/S/ Daniel R. Domínguez
DANIEL R. DOMÍNGUEZ
United States District Judge