

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
EMANUEL R. GHEBREMICHAEL and)	Civil No. 1:12-cv-2282
ERG FINANCIAL CORPORATION (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 Emanuel R. Ghebremichael and ERG Financial Corporation (“ERG Financial”), 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. Defendants Ghebremichael and ERG Financial operate 16 stand-alone tax preparation stores and tax preparation kiosks in or near Chicago, Illinois, under the name Instant Tax Service, and create an environment within their business where fraudulent tax return preparation and violation of federal tax law flourishes.

2. Instant Tax Service is a brand and franchise business marketed throughout the United States by the franchisor ITS Financial, LLC (“ITS Financial”). 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! We provide all the training you need.”

3. Defendants Ghebremichael and ERG Financial are the largest Instant Tax Service franchisees in the Chicago metro area. At Ghebremichael’s direction and under his control as the sole owner of ERG Financial, defendants’ employees improperly reduce their customers’ reported tax liabilities and prepare federal tax returns that claim fraudulent refunds by reporting, among other things, false or inflated Schedule C income and expenses to obtain improper Earned Income Tax Credits (“EITC”), bogus dependents, false filing statuses, improper education credits, and fraudulent itemized deductions.

Jurisdiction and Venue

4. 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).

5. 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

6. 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

7. The United States commences this action 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.

8. The illegal conduct at the Instant Tax Service stores operated by Ghebremichael and ERG Financial is not isolated to this franchise. Separate injunction suits against ITS Financial and its CEO, Fesum Ogbazion, 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

9. Defendant Ghebremichael resides in Chicago, Illinois and is the operator, founder and sole shareholder of ERG Financial. Ghebremichael graduated from Indiana University in 1999 with a major in Finance and a minor in Accounting and has worked as a tax return preparer since 2000.

10. Ghebremichael established his Instant Tax Service franchise in Chicago in 2004, prior to which he operated Instant Tax Service locations under a licensing agreement with ITS Financial.

11. Defendant ERG Financial is an active domestic business corporation under Illinois law and conducts business as Instant Tax Service, a tax preparation service that, as of 2011, had 15 locations in Chicago, Illinois and one in Calumet City, Illinois. The Instant Tax Service store at 754 East 79th Street, Chicago serves as the main office for ERG Financial, employed the largest number of preparers in 2011, and is co-managed by Ghebremichael.

12. Ghebremichael's Instant Tax Service stores prepared over 15,000 tax returns in 2009, 2010 and 2011 combined, and in 2011 employed approximately 35 tax preparers at its 16 locations.

13. Ghebremichael personally prepares tax returns at Instant Tax Service. Over 250 tax returns filed with the IRS in 2008, 2009, and 2010 identify Ghebremichael as the tax return preparer.

14. Ghebremichael works from the main office location of Instant Tax Service at 754 East 79th Street and co-manages tax preparation activities at that store. Other Instant Tax Service locations operate with minimal or no direct supervision from Ghebremichael's main office.

15. Due to high turnover among employees, many Instant Tax Service preparers hired by defendants each tax season are new employees with little to no experience preparing tax returns prior to joining Instant Tax Service.

16. Defendants conduct limited, and in some instances no background checks of the individuals they hire as tax return preparers. Employees at Ghebremichael's Instant Tax Service locations have included tax return preparers with felony criminal backgrounds.

17. Defendants purport to provide training to their employees who prepare tax returns through an annually held "tax school" operated by Ghebremichael's Instant Tax Service several months before each tax season. Most recently, in 2011, Ghebremichael personally oversaw and conducted the training at Instant Tax Service's "tax school" and has supervised training during earlier tax years.

18. At Ghebremichael's direction, some preparers are hired by Instant Tax Service with little or no experience preparing tax returns and are not required to attend "tax school." Instead, these preparers are given brief onsite training a few weeks prior to tax filing seasons, after which they are authorized by Ghebremichael to prepare tax returns for others.

19. Before tax returns are filed with the IRS, managers of Ghebremichael's Instant

Tax Service locations purportedly review tax returns prepared by other employees, along with each customer's hard-copy file which, pursuant to IRS Rules, must contain certain substantiation and due diligence documentation when claiming credits, such as the EITC. Ghebremichael, as co-manager at the 754 East 79th Street Instant Tax Service main office, reviews tax returns prepared by his employees before they are submitted to the IRS.

20. Despite purported training at Ghebremichael's Instant Tax Service and supposed manager review of tax returns prepared by employees prior to submission to the IRS, tax returns prepared by defendants include, for instance, false or inflated Schedule C income and expenses to obtain improper claims for the EITC, bogus dependents, false filing statuses, improper education credits, and false itemized deductions. Tax returns prepared at Instant Tax Service also incorrectly or inaccurately report income that is inconsistent with valid customer Forms W-2 and 1099. In some cases, tax returns are filed with the IRS without Forms W-2 and/or 1099—a violation of the internal revenue laws.

21. 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 encourage customers to participate in the tax fraud by promising them thousands of dollars of illegal refunds. In either event, defendants keep a significant portion of their customers' fraudulently obtained refunds, which defendants retain as purported fees.

22. Even when Ghebremichael's 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 Fesum Ogbazion calls the added charges “junk fees” and “revenue generators.” The junk fees include bogus charges for “service bureau,” “document preparation,” “technology/software,” “account set up,” “check printing,” and “Efile/electronic transmission.” Collectively these charges average more than \$400–\$500 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.

23. 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. 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.

24. 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.

A. Fraudulent Tax Returns for 2010

25. The IRS selected a random sample of tax returns prepared by Ghebremichael’s Instant Tax Service for the 2010 tax year and obtained interviews with over 100 customers

associated with these tax returns. Based on an analysis of information appearing on the tax returns and information volunteered by Instant Tax Service customers during interviews, the IRS identified violations of the internal revenue laws associated with over half of these randomly selected customers, including instances of outright fraud. Specific violations include, among other things, fraudulent claims for the Earned Income Tax Credit (“EITC”), claiming false dependents, reporting inconsistent or improper filing statuses, and bogus claims for education credits.

i) *False Claims for the EITC*

26. Among the improper 2010 tax returns prepared by Instant Tax Service, employees at defendants’ tax preparation locations prepare tax returns to claim fraudulent refunds based on the EITC. The EITC is a refundable tax credit intended to help low-income individuals and families. Unlike many tax credits, a refundable tax credit entitles qualifying taxpayers to receive refunds even if they have no tax liability and have made no withholding payments. Today it is one of the largest anti-poverty tools in the United States, intended to act as a wage supplement and to increase workforce participation.

27. A proper claim for refund based on the EITC, as well as the amount of that refund, depend upon certain variables. These variables include, among other things, the taxpayer’s marital status, filing status (e.g., married filing separately, married filing jointly), number of qualified dependents, and income caps. If a taxpayer otherwise qualifies for the EITC, the optimal amount—or “target” amount—of income needed to maximize the credit for a single filer with two dependants is approximately \$15,000. If a taxpayer has adjusted gross income under this target amount, by claiming additional income on the tax return’s Schedule C,

he or she may fraudulently qualify for a larger EITC refund.

28. Defendants' employees encourage customers to create false documents to illegally inflate income and to substantiate phony expenses in order to improperly claim the EITC. One example identified from the IRS's random sample of tax returns prepared at Instant Tax Service for the 2010 tax season includes an Instant Tax Service customer (Customer 1) whose 2010 tax return indicates that it was prepared at the 6858 South Ashland Instant Tax Service location in Chicago on approximately January 13, 2011. The customer informed the IRS that she was self-employed and had earned income as a hair stylist in 2008 and 2009, but not 2010. According to the customer, her Instant Tax Service preparer suggested that she should go home and create fraudulent receipts for non-existent 2010 hair styling income in order to claim a larger refund. The customer informed the IRS that she declined to do so.

29. Defendants also prepare false Schedule C's for customers that grossly inflate income from existing businesses to fraudulently qualify customers for higher refunds under the EITC. Another example from the 2010 tax year includes Customer 2, whose 2010 tax return (signed by the customer on February 16, 2011) discloses that it was prepared at the 758 North Cicero Avenue Instant Tax Service location in Chicago. This customer informed the IRS that she made between \$4,000 and \$5,000 as a babysitter. Nonetheless, in order to inflate the EITC, the preparer fabricated a Schedule C reporting nearly \$15,000 of income and over \$200 of expenses from babysitting. The customer said she did not give the inflated sums to the preparer and that the reported \$15,000 figure was unreasonably high.

30. Fraudulent inflation of Schedule C income and expenses in order to improperly claim the EITC also occurred at Instant Tax Service's main office. For instance, a woman

(Customer 3), whose 2010 tax return reports that it was prepared at 754 East 79th Street in Chicago on or before February 1, 2011, told the IRS that she earned between \$7,000 and \$8,000 as a childcare provider and incurred approximately \$200 to \$300 in expenses. The customer's tax return reports over \$13,000 in gross receipts from a childcare business and over \$900 in expenses. The customer said she did not provide her Instant Tax Service preparer with the income and expense numbers appearing on her Schedule C, nor did she give the preparer any receipts for expenses.

ii) *False Dependents*

31. To claim unallowable EITC refunds, child tax credits and dependent exemptions, Ghebremichael's Instant Tax Service employees prepare tax returns that report false dependents. Among the qualifications for dependent status, a person must reside with the taxpayer for more than half the year and must be under the age of 19, or be under the age of 24 and a full-time student, or qualify as totally and permanently disabled.

32. Examples of false dependents claimed on 2010 tax returns prepared at Instant Tax Service include Customer 4, a resident of Chicago who had his 2010 tax return (signed by the customer on January 30, 2011) prepared at the Instant Tax Service location at 4115 West Madison Avenue in Chicago. This customer informed the IRS that the two dependents claimed on his tax return are the children of his cousin who live two hours away from him. He further stated to the IRS that he informed his Instant Tax Service preparer that these children did not live with him. The preparer also improperly listed both dependents on tax forms claiming the EITC and child tax credit.

33. Another example includes Customer 5, a woman who had her 2010 tax return

prepared at a 6424 South Cottage Grove Avenue Instant Tax Service location in Chicago on or before January 20, 2011. Her tax return improperly claims her 21-year old nephew as a dependent. This customer told the IRS that the preparer asked no questions about the nephew to determine if he qualified as a dependent, which he did not.

34. From Instant Tax Service's main office location at 754 East 79th Street, the randomly selected sample for the 2010 tax season includes Customer 6, whose tax return was prepared on or before January 22, 2011 and falsely claims two dependents who did not live with the customer. The customer informed the IRS that his preparer did not ask any questions about the living arrangements for his purported dependent son, who resided with his mother, or his purported dependent mother, who lived by herself.

iii) *Inconsistent or Improper Filing Statuses*

35. Defendants' employees prepare tax returns with inconsistent or improper filing statuses to claim unallowable tax benefits, including tax benefits provided to unmarried individuals who qualify for head-of-household status. Among the random sample of tax returns selected by the IRS for 2010, customers asserted that their Instant Tax Service preparer knew the customer was married and improperly claimed head-of-household status.

36. Examples of inconsistent or improper filing statuses from the 2010 tax season at Instant Tax Service include Customer 7, a married couple who had their tax returns prepared at the 754 East 79th Street Instant Tax Service main office in or about March of 2011. During their interview with the IRS, they recounted that they informed the preparer of their married status, the preparer calculated their taxes using various filing statuses, showed them the differences, and then improperly prepared and filed a tax return for the husband as head-of-household and a

separate tax return that falsely reported the wife as single.

37. Additional examples include Customer 8 and Customer 9, whose tax returns (signed by the customers on January 29, 2011 and January 31, 2011, respectively) identify defendants' preparers operating from the 11122 South Halsted Street Instant Tax Service location. Customer 8, a resident of Chicago, told the IRS that he has been married for 21 years, lives with his wife year-round, and filled-out an intake form at Instant Tax Service that accurately disclosed his marital status. The customer informed the IRS that his Instant Tax Service preparer nonetheless falsely told him that he could file as head-of-household because his wife is not employed. Customer 9 informed the IRS that she told her preparer of her married status, that her husband separately had his tax return prepared by Instant Tax Service that year, but her tax return preparer nonetheless filed her tax return with a false claim for head-of-household status.

iv) *Improper Claims for Education Credits*

38. Employees at Ghebremichael's Instant Tax Service prepare tax returns that claim fraudulent refunds for educational expenses and false education credits. For example, the random sample of 2010 tax returns selected by the IRS identified instances where Instant Tax Service employees prepared tax returns that falsely claim American Opportunity Credits, a partially refundable credit for certain education expenses. Among the conditions for claiming the American Opportunity Credit (Form 8863), a taxpayer can claim only qualified expenses, and can seek the credit only if the student is the taxpayer, the taxpayer's spouse, or a dependent who is properly claimed on the tax return.

39. Improper claims for the American Opportunity Credit at Instant Tax Service for

the 2010 tax year include Customer 10, a resident of Skokie, Illinois whose tax return (signed by the customer on or before January 13, 2011) indicates that it was prepared at the 1656 West Howard Street Instant Tax Service location in Chicago. His tax return includes a claim for the American Opportunity Credit for a purported \$1,000 in education expenses that the customer purportedly incurred as a qualifying student. Based on information provided by the customer during his interview, the IRS determined that the claim was improper because, *inter alia*: (1) the customer did not attend school in 2010; and (2) the customer gave some money to his brother who attended school, but the brother was not a dependent or otherwise a qualified student in order to be listed on the customer's Form 8863.

40. Similarly, Customer 11 hired one of defendants' employees at the 11122 South Halsted Street location to prepare her tax return on or before January 29, 2011. That tax return claims the American Opportunity Credit and identifies the customer as the qualifying student. During her IRS interview, the customer indicated that she did not know where the educational expenses claimed came from and stated that she was not in school during the 2010 tax year.

v) *Other Violations Identified from IRS's Random Sample*

41. Defendants' employees prepare tax returns that improperly claim deductions, including, among other things, inflated or non-existent business expenses. For example, an employee for a Cook County government agency (Customer 12) had her 2010 tax return prepared at Instant Tax Service's 106 East 47th Street location in Chicago on or before February 19, 2011. Her return was randomly selected for review by the IRS, and she informed agents that she never incurred the more than \$10,000 in un-reimbursed employee business expenses that Instant Tax Service reported on her tax return.

42. Based on the random sample of 2010 tax returns and customer interviews, the IRS identified tax returns prepared at Instant Tax Service that fail to accurately disclose the individual who prepared the tax return by providing an accurate Preparer Tax Identification Number (“PTIN”)—a violation of I.R.C. 6695(c).

B. Improper Tax Returns Prepared Prior to the 2010 Tax Season

43. IRS audits of individual Instant Tax Service customers, as well as other efforts by the IRS to monitor Instant Tax Service’s compliance with the internal revenue laws, demonstrate that preparation of improper tax returns at Ghebremichael’s Instant Tax Service locations is not isolated to the 2010 tax season.

44. Audits of defendants’ customers for tax years 2007 to 2009 indicate that tax returns for those years contain, *inter alia*, improper filing statuses, false claims for tax credits, as well as other improper claims for tax deductions associated with non-existent businesses.

Examples include:

- a. Customer 13. A 2007 tax return (signed by the customer on February 1, 2008) that identifies Ghebremichael as the preparer. The IRS determined that this tax return falsely claimed head-of-household status for the customer, despite the fact that she was married and lived with her husband for most of the year. The IRS also identified improper deductions, including over \$9,000 in non-deductible home improvements, as well as additional expenses that fail to properly differentiate between those attributed to rental portions of the customer’s property and those incurred to the customer’s residence, which fail to qualify for deduction;
- b. Customer 14. A customer’s tax returns for 2007 (signed by the customer on January 22, 2008) and 2008 (signed by the customer on January 16, 2009) prepared by the Instant Tax Service manager of the 9533 South Jeffrey location. Based on the tax returns, lack of documentation, and statements by the customer, the IRS determined that both tax returns claimed false deductions for expenses for a phony business, including bogus utility expenses, meals and entertainment, supplies, office expenses, as well as advertising costs;

- c. Customer 15. A husband and wife who had their 2007 tax returns prepared at the 9533 South Jeffrey location of Instant Tax Service in or about March 2008. They indicated that their preparer falsely told them that they could receive a larger tax refund if they filed separately. As a result, the husband's tax return improperly reports that he is single, and his wife's tax return falsely reports her as head-of-household. The tax returns also contain false Schedule C's, including bogus expense deductions for non-existent businesses, as well as a claim for education credits for the wife, despite the fact that she indicated that she was not a student in 2007.

45. In 2010, the IRS assessed penalties against individual preparers at Instant Tax Service, including defendant Ghebremichael for tax returns he personally prepared, and asserted violations of the due diligence requirements for EITC claims. Among its findings, an IRS investigation identified instances where:

- a. Instant Tax Service customer files lacked documentation to substantiate claims by the customer of legal guardianship of a dependent or that dependents lived with the customer;
- b. Customer tax returns included questionable Schedule C's that reported no expenses associated with purported earnings; and
- c. Instant Tax Service customer files lacked documentation to substantiate expenses appearing on Schedule C of the customer's tax return.

C. False and Deceptive Loan Products and Unconscionable Fees

46. As discussed above, defendants also peddle false and deceptive loan products to their tax preparation customers. Most of Ghebremichael's Instant Tax Service customers are unsophisticated taxpayers, have very low incomes, are on public assistance, and are in need of fast money. Defendants tell customers that they can receive significant cash loans as advances on their expected refunds within 48 hours.

47. Most of defendants' customers, however, are either denied the loans outright or receive minimal amounts (*i.e.*, \$10 to \$50) that are, in turn, subsumed by the accompanying tax

preparation and junk fees charged by defendants. 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. Even customers whose loan applications are denied are still charged junk "transmission fees," "technology fees," "account set up fees," and "check-print fees," which defendants collect out of the customers' eventual tax refunds.

48. The loan products marketed by defendants include the Instant Cash Loan ("ICL") and the Refund Anticipation Loan ("RAL"). They begin offering the ICL (also called the "Holiday Loan" and "Instant Cash Advance"), to the public in December and January. Once the IRS begins accepting tax returns in mid-January, defendants push the RAL (also called the Refund Anticipation Advance) product, which uses the customer's expected tax refund as collateral for the loan.

49. 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.

50. 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.

51. 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 unconscionably high tax preparation fees and junk fees.

52. Randomly selected customers for the 2010 tax season asserted to the IRS that they were not informed of the amount and nature of the fees they would be charged before Instant Tax Service prepared their tax return. For example, a woman (Customer 16), whose tax return (signed by the customer on January 25, 2011) indicates that it was prepared at the 11122 South Halsted Street location of Instant Tax Service, informed the IRS that her preparer never told her how much Instant Tax Service would charge to prepare her tax return and that she was told that her fees would depend upon the amount of the refund. The customer told the IRS that Instant Tax Service charged her \$500-600 and recalled that only after she complained about this amount was a portion of the fee refunded.

D. Filing Returns Based on Paystub Information and/or Without Permission

53. Because a customer's Form W-2 reporting annual income is not available when Instant Tax Service begins offering its ICLs in December and early January, defendants require their customers to provide their Instant Tax Service preparer with end-of-year paystubs, which the preparer uses to prepare a federal tax return to determine if the customer might be eligible for a loan based on the customer's estimated federal tax refund.

54. Defendants' employees prepare and subsequently file federal income tax returns

using customers' end-of-year paystubs before a valid W-2 becomes available. Using paystubs to prepare and file tax returns is improper and violates IRS rules. Moreover, end-of-year 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. Filing tax returns without customer authorization constitutes outright fraud.

55. Customers of Ghebremichael's Instant Tax Service have told the IRS that their tax returns were filed without their authorization using information provided on paystubs. For example, a customer (Customer 17), who obtained a holiday loan from the 4115 West Madison Street location of Instant Tax Service, claimed to IRS investigators that her tax return for the 2010 tax season was filed without her authorization, and the tax return, by relying on the paystub information, failed to accurately report all her income. This customer was among those selected at random by the IRS (*see supra* ¶¶ 25-42).

Harm to the Public and Necessity of Injunction

56. Defendants' 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 tax preparation and junk fees to prepare tax returns, including for false or fraudulent tax returns that understate 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).

57. Defendants' practices likewise harm the United States Treasury. Based on a statistically random sample of the more than 4,000 taxpayers whose 2010 tax returns were prepared by defendants, as well as analysis of information obtained from interviews of over 100 taxpayers, the IRS identified violations of the internal revenue laws associated with over half of these randomly selected Instant Tax Service customers, including instances of outright fraud. The government estimates that defendants' misconduct resulted in a tax loss to the Treasury of approximately \$2.1 million for returns prepared in 2011 alone.

58. The defendants' misconduct further harms the United States and the public by requiring the IRS to devote scarce resources to detecting that misconduct and assessing and collecting lost tax revenues from defendants' customers. For the 2009 tax year alone, the IRS estimates that it spent as much as 1,500 hours auditing tax returns prepared by Ghebremichael's Instant Tax Service. In addition, IRS employees devoted still more time in 2009 and 2010 making repeated compliance visits to Ghebremichael'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 misconduct. Consequently, identifying and recovering all lost tax revenues resulting from defendants' illegal activities may be impossible.

59. The defendants' misconduct harms their employees. Defendants knowingly expose their employees to possible civil and criminal liability.

60. The defendants' improper tax return preparation also harms honest tax return preparers who refuse to engage in such illegal conduct. Honest tax return preparers unfairly lose business to defendants as a result of the defendants' willingness to allow violations of the law.

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

62. 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 improper 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**

63. The United States incorporates by reference the allegations in paragraphs 1 through 62.

64. 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.

65. Defendants, through their actions detailed above, caused the presentation and preparation of false, fraudulent and abusive tax returns and other documents. By preparing tax

returns that claim, *inter alia*, false or inflated Schedule C income and expenses to obtain improper EITC claims, bogus dependents, false filing statuses, improper education credits, and false itemized deductions, as detailed above, defendants knowingly and willfully prepared false federal income tax returns for customers and knew the false returns would understate their customers' correct tax liabilities. This conduct, therefore, is subject to penalty under I.R.C. § 6701.

66. If the Court does not enjoin defendants, they are likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

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

67. The United States incorporates by reference the allegations in paragraphs 1 through 66.

68. 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 tax return preparer who prepares a tax return or claim for refund that contains an unreasonable position and the tax return preparer knew (or reasonably should have known) of the unreasonable position;
- b. Engaging in conduct subject to penalty under I.R.C. § 6694(b), which among other conduct, penalizes a tax return preparer who recklessly or

intentionally disregards IRS rules or regulations;

- c. Engaging in conduct subject to penalty under I.R.C. § 6695(c), which penalizes tax return preparers who fail to furnish their identifying numbers on tax returns that they prepare;
- d. Engaging in conduct subject to penalty under I.R.C. § 6695(g), which penalizes a tax return preparer who fails to comply with the statutory due diligence requirements for determining eligibility for the EITC;
- e. Guaranteeing a tax refund or allowance of a tax credit; or
- f. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

69. 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.

70. If the court finds that a preparer has continually or repeatedly engaged in such conduct, the court may issue an injunction prohibiting that specific enumerated conduct or, if it determines that a conduct-specific injunction would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal tax return preparer.

71. Defendants, as shown above, are tax return preparers who have repeatedly and continually prepared or submitted tax returns or portions of tax returns (or employed or managed others who prepared or submitted tax returns or portions of tax returns) that contain unreasonable positions and substantially understate the liability for tax on the return by, *inter alia*, claiming

improper tax refunds. Defendants established a working environment that encouraged preparation of tax returns that assert unreasonable, unrealistic, frivolous and fraudulent positions. Accordingly, defendants knew (or reasonably should have known) of the unreasonable, unrealistic, frivolous and fraudulent positions. This conduct is subject to penalty under I.R.C. § 6694.

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

73. Furthermore, defendants, as addressed above, have engaged in conduct subject to penalty under I.R.C. §§ 6695(c) and 6695(g). Defendants have failed to: (1) furnish their identifying numbers on tax returns that they prepare; and (2) satisfy the mandatory due diligence requirements of I.R.C. § 6695(g) and Treas. Reg. § 1.6695-2(b).

74. 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) encouraging and soliciting customers to provide false and fraudulent information for the purpose of filing false tax refund claims; and (3) knowingly hiring employees with little to no tax background to prepare tax returns while providing inadequate training for these employees. All of this constitutes conduct that may and should be enjoined under I.R.C. § 7407(b).

75. Defendants repeatedly and continuously engaged in illegal conduct subject to

injunction under I.R.C. § 7407, even after being penalized and warned by the IRS to comply with the law.

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

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

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

78. The United States incorporates by reference the allegations in paragraphs 1 through 77.

79. 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.

80. Defendants' activities, described above, substantially interfere with the enforcement of the internal revenue laws by promoting abusive tax schemes that result in customers not paying their true federal income tax liabilities and/or receiving improper tax refunds.

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

82. The tax returns defendants prepared improperly and illegally reduced their customers' federal income tax liabilities. In addition, defendants' actions directing the preparation of tax returns containing false and fraudulent information, filing tax returns without taxpayers' permission, and allowing employees to evade statutory due diligence requirements, directly results in, as defendants know, the filing of false, fraudulent and incorrect tax returns.

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

84. 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 I.R.C. §§ 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) failing to adequately train their preparers, knowing that such inadequate training will lead to the filing of inaccurate returns; (2) illegally filing tax returns without the taxpayer's authorization; and (3) selling fraudulent loan products tied to anticipated tax refunds. 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.

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

86. 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 that 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 I.R.C. § 7402(a);

E. That this Court, pursuant to I.R.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 a federal tax return preparer, 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 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, 2012.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

JOHN A. DiCICCO
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CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): _____

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example:

U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.