# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	)
Plaintiff,	)
v.	) Case No
CARMEN J. MARTINEZ and CJM BOOKKEEPING AND TAXES, LLC, a/k/a CJM BOOKKEEPING,	) ) )
Defendants.	) ) )

# COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION

The plaintiff, the United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this action to permanently enjoin the defendants, Carmen J. Martinez and CJM Bookkeeping and Taxes, LLC, and all persons and entities in active concert or participation with either of them, from directly or indirectly:

- (a) Preparing or filing any federal tax return for any other person or entity;
- (b) Assisting in the preparation or filing of any federal tax return for any other person or entity, including obtaining Individual Tax Identification Numbers (ITINs);
- (c) Engaging in conduct subject to penalty under section 6694 of the Internal Revenue Code (26 U.S.C.) by understating taxpayers' liabilities;
- (d) Engaging in conduct subject to penalty under section 6701 of the Internal Revenue Code by preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendant knows will, if so used, result in the understatement of tax liability; and
- (e) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

#### **Jurisdiction and Venue**

- 1. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. §§ 7402, 7407 and 7408.
- 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendants reside or are located in this judicial district, and because a substantial part of the acts and activities giving rise to the government's claims for a preliminary and permanent injunction in this action occurred in this district.
- 3. The defendant, Carmen J. Martinez ("Martinez") resides in Newark, Delaware, within the jurisdiction of this Court.
- 4. The defendant, CJM Bookkeeping and Taxes, LLC ("CJM"), is a limited liability company that is registered in Delaware and has its principal offices in Wilmington, Delaware, within the jurisdiction of this Court.

# **Defendants' Return Preparation Business**

- 5. Martinez and CJM are income tax return preparers as defined by section 7701(a)(36) of the Internal Revenue Code because they prepare other persons' federal income tax returns for compensation.
- 6. Martinez was born in Columbia and moved to the United States in 2001. Although she has not taken any accounting courses in the United States, Martinez claims that she is a certified public accountant in Columbia, and that she holds a Master's degree in Taxation, also earned in Columbia. She began preparing tax returns after she started working for A to Z Insurance and Taxes in Wilmington, Delaware, in 2002.
- 7. In order to provide refund anticipation loans to her customers through the Santa Barbara Bank, Martinez has completed an online course in processing returns electronically at

the beginning of each tax season. She has also completed an IRS course in preparation for the IRS required testing for return preparers, and is a registered return preparer.

- 8. Martinez operates CJM under the business name of CJM Bookkeeping. In 2004, Martinez began preparing tax returns on her own, and operated CJM as a sole proprietorship until early 2009, when it became a limited liability company. CJM is a partnership entity where Martinez and her husband own 99% of the business, and the remaining 1% is owned by Martinez's adult sons.
- 9. Two individuals hired by Martinez, Luz Osorio and Dayra Annetta Casteneda, assist Martinez in preparing tax returns for CJM's customers. Osorio came to the United States in 1999 from Columbia, and worked as a cafeteria cashier before she began preparing tax returns in 2010. Casteneda began preparing returns in 2012 after working at CJM as an office assistant. She previously worked for a cleaning company and as a caregiver for the elderly. Martinez provided training to Osario and Casteneda in preparing federal tax returns, and reviews the returns prepared by them before they are filed with the Internal Revenue Service. Sometime before the middle of October 2013, Castaneda ceased working at CJM.

#### **Defendants' Customers**

10. Defendants' customers are primarily Spanish-speaking immigrants who lack proficiency in the English language and have little or no understanding of the tax laws of the United States. Many are undocumented. Their education level is generally limited to high school or lower, and they were generally referred to Martinez and CJM by friends in their communities. Because defendants' customers were not in a position to educate themselves with respect to U.S. tax laws, they relied heavily on defendants to prepare accurate returns.

- 11. More than half of the returns prepared by the defendants over the past five years utilized an Individual Tax Identification Number ("ITIN") for either the primary taxpayer or a dependent claimed on the returns that the defendants prepared and filed for their customers. An ITIN is a tax processing number that is issued to foreign nationals and others who have federal tax reporting or filing requirements and do not qualify for a Social Security Number (SSN). Examples of individuals who need ITINs include:
  - A nonresident alien required to file a U.S. tax return
  - A U.S. resident alien (based on days present in the United States) filing a U.S. tax return
  - A dependent or spouse of a U.S. citizen/resident alien
  - A dependent or spouse of a nonresident alien visa holder
- 12. Only individuals who have a valid filing requirement or who are filing a U.S. federal income tax return to claim a refund of over-withheld tax are eligible to receive an ITIN.

  Martinez usually charged her customers a \$40 fee to help them apply for an ITIN.
- 13. Any individual who is not eligible to obtain an SSN but who must furnish a taxpayer identification number to the Internal Revenue Service must apply for an ITIN on Form W-7/W-7(SP) (Application for IRS Individual Taxpayer Identification Number), and must include original documentation such as passports and birth certificates, or certified copies of these documents by the issuing agency. Generally, a U.S. federal income tax return must accompany the ITIN application.

## **Defendants' Activities**

14. According to IRS records, defendants have prepared and filed the following federal individual and corporate income tax returns over the past five years:

<b>Processing Year</b>	Individual Returns	% of Returns Filed With An ITIN <sup>1</sup>	<b>Business Returns</b>
2009	2,131	Not Available	-
2010	2,578	66%	27
2011	2,590	63%	35
2012	1,847	59%	46
2013	858	49%	53
Total:	10,004		161

15. Martinez and her employees at CJM provide their customers with handouts written in Spanish that explain the financial and tax information that they need to provide to CJM to prepare their federal income tax returns. Martinez or another CJM return preparer would also orally inform their customers of the documents that they would need to bring with them in order for CJM to prepare their federal tax returns.

# Martinez and CJM Prepare Tax Returns that Falsely Claim Deductions for Dependents, the Child Tax Credit, and the Additional Child Tax Credit

16. Defendants have repeatedly and continually prepared federal income tax returns for their customers that contain numerous false deductions including unqualified dependents, the Child Tax Credit, the Additional Child Tax Credit, and tax rate benefits derived from improper filing status as Head of Household or Married Filing Jointly, as well as the improper reporting of expenses related to sole proprietorships.

<sup>&</sup>lt;sup>1</sup> These percentages include tax returns filed by an individual using a SSN claiming a dependent using an ITIN. Additionally, the returns for processing year 2013 were not part of the 45 returns audited.

17. A taxpayer may be entitled to claim a dependency deduction for each individual who qualifies as the taxpayer's dependent under sections 151(a) - (c) and 152 of the Internal Revenue Code. Under these Code provisions, an individual must meet the following five tests in order to qualify as a dependent of the taxpayer:

- (1) support test;
- (2) relationship or household test;
- (3) citizenship or residency test;
- (4) gross income test; and
- (5) joint return test.
- 18. The citizenship or residency test requires that the dependent be a United States citizen or national, or a resident of the United States, Canada or Mexico at some time during the calendar year in which the taxable year of the taxpayer begins.
- 19. Section 24 of the Internal Revenue Code provides that a taxpayer may claim a child tax credit, *i.e.*, a credit against federal income tax of up to \$1,000 for each qualifying child of the taxpayer. Under Code section 24(a), the term "qualifying child" means a qualifying child of the taxpayer, as defined in 26 U.S.C. § 152(c). Code section 152(c) also requires that the individual be a U.S. resident.
- 20. The Internal Revenue Service initiated an investigation into defendants' activities as income tax return preparers in December of 2011 after receiving information that an unusually high number of tax refund checks had been deposited in accounts belonging to a check cashing business. When the IRS reviewed the accounts, Martinez was identified as the return preparer for a number of the returns for which refund checks were issued.

- 21. A subsequent IRS analysis of the returns prepared by Martinez revealed a large number of ITIN filers. Many of the returns sampled by the IRS in its analyses were found to be claiming numerous dependents and associated child tax credits, which, in turn, resulted in a high percentage of refunds claimed on those returns (more than 90%) for 20 individual taxpayers and two related businesses between 2010 and 2013 (tax years 2009 through 2012). These audits encompassed 45 years of tax returns. In addition, the IRS Agent interviewed seven additional clients of the defendants whose returns were not audited.
- 23. The results of the audits and interviews obtained by the IRS, along with the evidence gathered from analyses of the returns prepared by the defendants and filed with the IRS, demonstrate that Martinez and CJM have displayed a total lack of regard for the tax laws of the United States, and have failed to use due diligence in preparing federal income tax returns. Defendants also failed to exercise sound return preparation practices by failing to properly inform her clients of the tax laws, particularly as they relate to the requirements for properly claiming the dependency exemption provided by Code sections 151 and 152, and the Child Tax Credit provided by Code section 24.

# **False Dependency Exemptions**

24. Defendants continually and repeatedly prepared returns that falsely claimed dependency exemptions over four return processing years (2010 to 2013). Defendants' customers claimed dependents on the returns prepared by Martinez and CJM who were not residents of the United States, Canada, or Mexico. The IRS audits disclosed that defendants prepared returns that claimed dependency exemptions for children or relatives living in Honduras, Guatemala and Peru. Martinez herself claimed a grandson who was a resident of Columbia as a dependent on one of her own returns.

- 25. Nearly all of the returns prepared by defendants that claimed dependency exemptions for Mexico residents did not meet the requirement that the taxpayer demonstrate that he or she provided more than half of the claimed dependent's support during a particular tax year. Most of the defendants' customers who were interviewed by the IRS were unaware of the 50% support test or any of the other requirements for properly claiming a dependency exemption.
- 26. Defendants prepared federal income tax returns with a flagrant disregard for the law. They urged their customers to claim dependents on their returns in order to reduce their customers' potential income tax liability without discussing the eligibility requirements, and represented to their customers that the country of the claimed dependent's residence was immaterial.
- 27. One of the defendants' customers related during his interview with the IRS that he was told that "he needed more dependents to offset his income." In another case, Martinez told her customer that he should claim dependents since it would get him more money. Martinez also told him that it did not matter where the dependents lived, and that he just needed an ITIN to claim them. In a third case, defendants never explained or discussed with the customer the legal requirements for claiming dependents. Martinez told the customer that he should claim them and "get money for them."
- 28. The IRS did not interview a single customer of the defendants who was advised or counseled regarding the support requirement pertaining to dependents. This was true even in cases where the customer's income level cast doubt upon that individual's ability to support a dependent. Defendants led their customers to believe that any level of monetary support was sufficient for them to claim a dependent.

#### **False Child Tax Credits**

- 29. Nearly all of defendants' customers claimed Child Tax Credits (or Additional Child Tax Credits) to which they were not entitled. Martinez routinely deducted the Child Tax Credit (a non-refundable credit used to reduce an income tax liability) as well as the Additional Child Tax Credit (a refundable credit) for each child dependency exemption claimed on her customers' returns. Section 24 of the Internal Revenue Code requires, however, that the child either be a United States citizen or reside in the United States. In nearly all of the returns prepared by the defendants that were audited by the IRS, the children for whom the credits were claimed were not U.S. citizens or did not reside in the United States.
- 30. Martinez and CJM knew or should have known that many of their customers were not entitled to claim the Child Tax Credit or Additional Child Tax Credit. Over half of the returns that the defendants prepared utilized an ITIN. Martinez assisted many of her clients in obtaining ITINs (and their claimed dependents) so that they could file federal income tax returns with the IRS. The Form W-7 Application for IRS Individual Taxpayer Identification Number requires the applicant to submit the originals or certified copies of documents such as passports and birth certificates.
- 30. In addition to the documents necessary to apply for an ITIN, Martinez's customers provided her with school and medical records for their claimed dependents. These records, however, disclosed that many of the individuals for whom the defendants' customers claimed the Child Tax Credit and/or Additional Tax Credit provided by Code section 24 had never visited the United States, let alone resided there. That defendants prepared federal income tax returns that claimed the Child Tax Credit or Additional Child Tax Credit for individuals who did not reside in the United States demonstrates that the defendants were willfully blind to the information

provided to them that demonstrated that their customers were ineligible to claim the Child Tax Credit.

31. None of the defendants' customers who were interviewed by the IRS as part of the investigation into defendants' activities as return preparers understood the Child Tax Credit or Additional Child Tax Credit. Based on the results of the sample income tax audits completed for defendants' customers, as well as the testimony secured from other clients of Martinez and CJM, is it apparent that defendants prepared returns for their customers without any discussion of the tax laws whatsoever.

#### Other Violations of the Internal Revenue Code

- 32. Several of the returns prepared by defendants for their customers which were audited by the IRS included a Schedule C (Profit or Loss from Business), which is used to report income from a trade or business activity. The audits determined that in several instances that Schedule C expenses (specifically the cost of goods sold) were deducted on a Schedule C with no income from a trade or business reported. In those instances, when the defendants' customers were questioned by the IRS, the customers advised the IRS that they had no business activity, that they were unaware of what a Schedule C was, and that the Schedule C was not discussed with the defendants at the time their returns were prepared.
- 33. In another case, one of defendants' customers had a partnership and a separate sole proprietorship. Martinez advised the customer to improperly report the business activity for his sole proprietorship in the partnership activity.
- 34. With respect to tax return filing status, the IRS determined from one the audits that defendants had prepared and filed at least one joint federal income tax return for a customer who was not married to his live-in girlfriend. In another case, which involved taxpayers who were

legally married and living together, the defendants prepared a return that improperly claimed Head of Household status for their customer.

35. In some cases where defendants prepared returns for their customers that improperly claimed dependency exemptions, the IRS audits of those returns disclosed that they also improperly claimed the Head of Household filing status in order to support the improper claims for dependency exemptions.

#### Harm to the Government

- 36. The Internal Revenue Service audited the federal tax returns that defendants prepared for 20 of their individual customers and two related businesses for 45 tax years. Only one of the audits resulted in no changes or adjustments to the customer's tax returns.
- 37. The IRS made adjustments to the remaining returns that resulted in income tax deficiencies that totaled \$229,752, for an average tax revenue loss of \$5,106 for each of the tax returns that were prepared by the defendants. The projected tax harm is premised on returns of taxpayers with ITINs; the percentage of returns for processing year 2009 filed with an ITIN is not available.
- 38. Based on the information set forth above, the Internal Revenue Service estimates that the U.S. Treasury was deprived of \$25,496,198 in lawful tax revenues as a result of the defendants' activities in preparing federal income tax returns during the four-year period between January 1, 2010 and December 31, 2013.
- 39. The United States has also been harmed because the Internal Revenue Service has been forced to expend a portion of its limited resources to investigating the defendants' preparation of false income tax returns.

40. The harm to the United States of America will increase if the defendants are not enjoined because they are likely to continue to prepare false federal income tax returns for their customers during the 2014 tax return filing season, which commenced on January 31, 2014.

## Count I: Injunction under 26 U.S.C. § 7407

- 41. The United States incorporates by reference the allegations in paragraphs 1 through 40, above.
- 42. A court is authorized to issue an injunction under Code section 7407 if an income tax return preparer engages in conduct subject to penalty under Code sections 6694 or 6695.
- 43. Code section 6694(a) penalizes a tax return preparer if (1) the preparer prepares a return or claim for refund that includes an understatement of liability due to a position for which there is not a realistic possibility of being sustained on the merits; (2) the preparer knew (or reasonably should have known) of such position; and (3) the position was not disclosed in accordance with Code section 6662(d)(2)(B)(ii), or was frivolous.
- 44. Under Code section 6694(e), the term "understatement of liability" includes, but is not limited to, "any overstatement of the net amount creditable or refundable with respect to any such tax."
- 45. Section 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability (1) in a willful attempt to understate the liability; or (2) with a reckless and intentional disregard of rules or regulations.
- 46. Defendants' conduct as described above is subject to penalty under sections 6694(a) and 6694(b) of the Internal Revenue Code.
- 47. Defendants have prepared income tax returns that include understatements of their customers' liabilities which had no realistic possibility of being sustained on the merits.

Defendants knew or reasonably should have known about these understatements of liability, but did not disclose them in accordance with Code section 6662(d)(2)(B)(ii), and such understatements are frivolous. Defendants have thus engaged in conduct subject to penalty under section 6694(a).

- 48. Defendants prepare returns for customers with false entries in a willful attempt to understate the clients' liability or with a reckless and intentional disregard of rules and regulations. Defendants have thus engaged in conduct subject to penalty under section 6694(b).
- 49. Defendants have continually and repeatedly engaged in conduct that violates section 6694. An injunction merely prohibiting defendants from engaging in conduct subject to penalty under section 6694 would not be sufficient to prevent their interference with the proper administration of the tax laws. Accordingly, defendants should be permanently enjoined from acting as income tax return preparers.

# Count II: Injunction under 26 U.S.C. § 7408

- 50. The United States incorporates by reference the allegations in paragraphs 1 through 49 above.
- 51. A court is authorized to issue an injunction if an income tax preparer engages in conduct subject to penalty under 26 U.S.C. § 6701, pursuant to 26 U.S.C. § 7408.
- 52. Code section 6701 penalizes any person who (1) aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim or other document; (2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws; and (3) who knows that such portion, if so used, would result in an understatement of the liability for tax of another person.

- 53. Defendants prepare or assist in the preparation of federal income tax returns for their customers.
- 54. Defendants knew or had reason to believe that these income tax returns would be filed with the IRS, and thus would be used in connection with a material matter arising under the internal revenue laws.
- 55. Defendants have known that the federal tax returns they prepare will result in understatements of other persons' tax liabilities.
- 56. If the defendants are not enjoined, they are likely to continue to engage in conduct which violates Code section 6701.

# Count III: Injunction under 26 U.S.C. § 7402(a)

- 57. The United States incorporates by reference the allegations in paragraphs 1 through 56, above.
- 58. A court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws pursuant to Code section 7402(a).
- 59. Section 7402(a) of the Internal Revenue Code expressly provides that its injunction remedy is "in addition to and not exclusive of" other remedies for enforcing the internal revenue laws.
- 60. Defendants, through the actions alleged above, have engaged in conduct that interferes with the enforcement of the internal revenue laws.
- 61. Defendants' conduct causes irreparable harm to the United States and to their customers.
- 62. Defendants are causing and will continue to cause substantial revenue losses to the Unites States Treasury, much of which may be unrecoverable.

- 63. Unless the defendants are enjoined, the Service will have to devote substantial time and resources to identify and locate their clients, and then examine their customers' tax returns and liabilities. Pursuing all individual customers may be impossible given the Service's limited resources.
- 64. The United States will suffer irreparable injury if defendants are not enjoined. This outweighs the harm to defendants from being enjoined from tax return preparation and violating the tax laws.
- 65. The public interest would be advanced by enjoining defendants because an injunction will stop their illegal conduct and the harm that conduct is causing to the United States Treasury.

  WHEREFORE, the plaintiff, the United States of America, prays for the following:
- A. That the Court find that the defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief under 26 U.S.C. § 7408 is appropriate to prevent a recurrence of that conduct;
- B. That the Court find that the defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694, and that, pursuant to 26 U.S.C. § 7407, an injunction prohibiting such conduct would not be sufficient to prevent defendants' interference with the proper administration of the tax laws and that defendants should be enjoined from acting as income tax return preparers or providing tax preparation services;
- C. That the Court find that defendants are interfering with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that interference pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;
- D. That the Court, pursuant to 26 U.S.C. §§ 7402, 7407 and 7408, enter a preliminary and permanent injunction prohibiting defendants, individually, and doing business under the

- name of CJM Bookkeeping, or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from directly or indirectly acting as a federal income tax preparer;
- E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407 and 7408, enter a preliminary and permanent injunction prohibiting defendants, individually, and doing business under the name of CJM Bookkeeping, or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from directly or indirectly:
  - (1) Preparing or assisting in the preparation of any federal tax return for anyone other than themselves;
  - (2) Advising, counseling, or instructing anyone about the preparation of a federal tax return;
  - (3) Filing or assisting in the filing of a federal income tax return for anyone other than themselves;
  - (4) Owning, managing, controlling, working for, or volunteering for a tax return preparation business;
  - (5) Representing clients in connection with any matter before the Service; and
  - (6) Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.
- F. The Court, pursuant to 26 U.S.C. §§ 7402(a), 7407 and 7408, require defendants at their own expense to contact by mail all clients for whom they have prepared federal tax returns or assisted in preparing tax returns, and send them a copy of this complaint and the permanent injunction order and to certify to the Court, within fifteen calendar days of entry of the permanent injunction, that they have complied with this provision;
- G. The Court require the defendants, within twenty calendar days of entry of the permanent injunction, to provide the United States with a list of everyone for whom they have prepared,

or helped to prepare, a federal tax return since January 1, 2008, and set forth on said list all the names, addresses, telephone numbers, and social security numbers of the clients.

- H. That the Court permit the United States to conduct post-judgment discovery to ensure defendants' compliance with the permanent injunction; and
- I. That the Court grant the United States such other relief, including costs, as is just and equitable.

Dated: February 7, 2014

KATHYRN KENEALLY Assistant Attorney General Tax Division, United States Department Of Justice

# /s/ Carmen M. Banerjee

CARMEN M. BANERJEE
Trial Attorney, Tax Division
United States Department of Justice
Post Office Box 227
Washington, D.C. 20044
Telephone: (202) 307-6423

Fax: (202) 514-6866

Email: carmen.m.banerjee@usdoj.gov