

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

<b>United States of America,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>Civil No.</b>
<b>Jose E. Cabrera, dba JEC</b>	)	
<b>Business Consulting,</b>	)	
	)	
	)	
<b>Defendant.</b>	)	

**Complaint for Permanent Injunction**

The plaintiff, United States of America, alleges against defendant Jose E. Cabrera, dba JEC Business Consulting, as follows:

1. The United States brings this complaint to enjoin Cabrera, dba JEC Business Consulting, and any entity through which he conducts business and all persons and entities in active concert or participation with him, from:

- (a) Preparing or filing federal tax returns, or advising, assisting or instructing anyone to prepare or file federal tax returns that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to that credit in accordance with 26 U.S.C. § 36;
- (b) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, 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 defendants know will (if so used) result in the understatement of tax liability, including, but not limited to, preparing federal income tax returns that improperly include claims for the First-Time Homebuyer Credit;
- (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6694; *i.e.*,

including, but not limited to, willfully attempting to understate the tax liability of another person by preparing returns that improperly include claims for the First-Time Homebuyer Credit; and

- (d) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

2. This action has been requested by a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of §§ 7402, 7407 and 7408 of the Internal Revenue Code, 26 U.S.C. (the “Code”).

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and Code §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Cabrera resides or conducts business in this district and because a substantial part of the actions giving rise to this suit took place in this district.

### **Defendants**

5. Cabrera resides in Pharr, Texas, within this judicial district.

6. Cabrera conducts business through JEB Business Consulting in Pharr, Texas, within this judicial district.

### **Defendants’ Activities**

7. Cabrera is a tax return preparer as defined by Code § 7701(a)(36). He prepares federal tax returns for compensation.

8. Cabrera generally charged \$75 to prepare his customer’s federal tax return.

9. During 2009, Cabrera prepared 1,884 federal income tax returns for tax year 2008.

10. Of these returns, 137 returns claimed the First-Time Homebuyer Credit (“the credit”).

11. The total credit claimed by Cabrera on these returns was at least \$985,204.

12. The IRS audited 11 of the 137 returns and determined that none of Cabrera’s customers were entitled to the credit.

13. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit in July 2008. Under this law, first-time home buyers are granted a tax credit of up to \$7,500 for home purchases completed in 2008.

14. The credit, which is codified at Code § 36, is claimed by completing and attaching to the income tax return an IRS Form 5405. Form 5405 clearly sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home’s address and acquisition date.

15. To be eligible for the credit (as in effect for tax year 2008) a person must not have owned a home in the previous three years and must have actually purchased a home during 2008.

16. Cabrera made no attempt to determine whether his customers were qualified to claim the credit and repeatedly filed false federal income tax returns and IRS Forms 5405 on his customers’ behalf.

17. As an example, Cabrera prepared the 2008 federal income tax return for Amado and Silvina Garza of Donna, Texas, claiming a \$7,500 credit, even though the Garzas had not purchased a new home and had lived in their home for over 40 years. On the Garzas' IRS Form 5405, Cabrera falsely stated that the Garzas had purchased their home on January 7, 2008.

18. In another instance, Cabrera prepared the 2008 federal income tax return of Delfino and Gloria Benavides of Edinburg, Texas, claiming a \$7,500 credit, even though the Benavides had purchased their home in 2006. On the Benavides' IRS Form 5405, Cabrera falsely stated that the Benavideses had purchased their home on January 6, 2008.

19. As another example, Cabrera prepared the 2008 federal income tax return of Clemente Aguillon of Rosenberg, Texas, claiming a credit of \$7,500. On Aguillon's IRS Form 5405, Cabrera falsely stated that Aguillon had purchased his house on January 11, 2008. Cabrera filed this form even though he knew that Aguillon had not purchased a home and that Aguillon intended to use the credit to remodel property he already owned.

20. Cabrera claimed the credit on returns he prepared with knowledge that the customers had not purchased a home during the applicable time period.

21. The 2011 return-filing season (for returns for the 2010 tax year) will begin in January of 2011, when W-2s are issued to employees.

22. While the credit is currently scheduled to expire as a matter of law, the credit remains available for first-time home buyers who purchased a principal residence on or

after April 9, 2008, and before May 1, 2010.

23. Accordingly, the credit can be claimed for qualifying taxpayers on their 2010 federal income tax returns, which returns are due on or before April 15, 2011.

24. Unless he is enjoined, Cabrera is likely to continue to claim false credits for his customers on their 2010 federal income tax returns.

**COUNT I – Injunction under Code § 7407**

25. Code § 7407 authorizes a court to enjoin a tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under Code § 6694 and that injunctive relief is appropriate to prevent the recurrence of the conduct.

26. Code § 6694(b) imposes penalties on a tax return preparer who willfully attempts to understate the tax liability of another person or whose reckless or intentional disregard of rules and regulations results in the understatement of tax liability.

27. Cabrera continually and repeatedly engaged in conduct subject to penalty under Code § 6694(b) by preparing returns that he knew contain erroneous claims for the First Time Homebuyer Credit.

28. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Cabrera is likely to continue preparing and filing false federal income tax returns that contain erroneous claims for the First-Time Homebuyer Credit.

29. Cabrera should be permanently enjoined under Code § 7407 from preparing or filing federal tax returns that claim the First-Time Homebuyer Credit unless he ensures

that the customer is entitled to the credit under Code § 36.

30. Cabrera should be further permanently enjoined under Code § 7407 from engaging in any other conduct subject to penalty under Code § 6694.

**COUNT II – Injunction under Code § 7408**

31. Code § 7408 authorizes courts to enjoin any person from engaging in conduct that is subject to penalty under Code § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

32. Code § 6701(a) penalizes any person who aids or assists in the preparation of any portion of a federal tax return or other document knowing that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it would result in an understatement of another person's tax liability.

33. Cabrera has prepared federal tax returns and IRS Forms 5405 for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit and thereby understate the customers' correct federal tax liability. His conduct is subject to penalty under Code § 6701.

34. Unless enjoined by the Court, Cabrera is likely to continue to prepare tax returns that he knows will result in the understatement of tax liability.

35. Accordingly, Cabrera should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code § 6701.

**COUNT III – Injunction under Code § 7402**

36. Code § 7402 authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under that statute “are in addition to and not exclusive of any and all other penalties.” Code § 7402(a).

37. Cabrera, through the actions described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined.

38. Cabrera’s conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate. If Cabrera is not enjoined from preparing tax returns that contain a false claim for the First-Time Homebuyer Credit the United States will suffer irreparable injury by erroneously providing tax refunds to persons not entitled to receive them and by taxpayers not reporting and paying the correct amount of taxes.

39. Unless Cabrera is enjoined, the IRS will have to devote substantial time and resources to identify and locate their customers, and then examine those customers’ tax returns and property records. Pursuing all individual customers may be impossible given the IRS’s limited resources.

40. Enjoining Cabrera is in the public interest because an injunction will stop his illegal conduct and the harm it causes the United States.

41. The Court should therefore order injunctive relief under Code § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. The Court find that the Cabrera has continually and repeatedly engaged in conduct subject to penalty under Code §§ 6694 and 6701, by willfully preparing false federal income tax returns that improperly claimed the First-Time Homebuyer Credit, and that an injunction under Code §§ 7407 and 7408 is appropriate to prohibit that conduct and any other conduct subject to penalty under Code § 6694 and 6701;

B. The Court, pursuant to Code §§ 7407, 7408 and 7402(a), enter a permanent injunction prohibiting Cabrera from preparing or assisting in the preparation or filing of federal income tax returns or other related documents and forms for others that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to such credit in accordance with Code § 36;

C. The Court find that Cabrera has have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against him and anyone acting in concert with him is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and Code § 7402(a);

D. The Court, pursuant to Code § 7402(a), enter an injunction requiring Cabrera to contact by United States mail (or by e-mail, if a postal address is unknown) all persons for whom he prepared a federal tax return since January 1, 2009, that includes a claim for the First-Time Homebuyer Credit to inform them of the Court's findings in this matter and enclose a copy of the injunction entered against him, and to file with the Court within fifteen days of the date the permanent injunction is entered, a certification signed under

penalty of perjury by Cabrera, that he has done so;

E. The Court authorize the United States to engage in post-judgment discovery pursuant to the Federal Rules of Civil Procedure in order to monitor compliance with the Court's injunction; and

F. The Court grant the United States such other and further relief as the Court deems appropriate.

Dated: February 7, 2011.

JOSE ANGEL MORENO  
United States Attorney

/s/ Michael R. Pahl  
MICHAEL R. PAHL  
Minn. Bar No. 0234539  
U.S. Dept. of Justice, Tax Division  
P.O. Box 7238  
Washington, D.C. 20044  
(202) 514-6488 phone  
(202) 514-6770 fax  
michael.r.pahl@usdoj.gov