

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALBERTO CAMEJO and
ABCY STAR SERVICE, LLC,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, United States of America, alleges against defendants Alberto Camejo and ABCY Star Service, LLC, as follows:

1. The United States brings this complaint to enjoin Alberto Camejo and ABCY Star Service, LLC, and any entity through which they conduct business and all persons and entities in active concert or participation with them, from:

- (a) Preparing or filing, or assisting in the preparation or filing of, any federal tax return that claims 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 preparing federal income tax returns that improperly claim the First-Time Homebuyer Credit;
- (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including willfully attempting to understate the tax liability of another person by preparing returns that improperly include claims for the First-Time Homebuyer Credit;
- (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6695 by failing to provide customers with a completed copy of the return they prepare, and

endorsing or otherwise negotiating a customer's tax refund check; and

- (e) 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 the defendants reside or conduct business in this district and because a substantial part of the actions giving rise to this suit took place in this district.

Defendants

5. Alberto Camejo resides and conducts business in the Southern District of Florida in Hialeah, Florida.

6. ABCY Star Service, LLC ("ABCY"), is located and conducts business in Hialeah, Florida. It was formed by Camejo in May 2008 as a Florida limited liability company. Camejo is its managing member.

Defendants' Activities

7. Alberto Camejo is a tax return preparer as defined by Code § 7701(a)(36). He prepares other people's federal tax returns for compensation.

8. Camejo began preparing returns for others in 2009. Prior to being a tax return

preparer, Camejo was a mortgage broker licensed by the State of Florida.

9. ABCY is a tax return preparer as defined by Code § 7701(a)(36). It prepares other people's federal tax returns for compensation.

10. Camejo operates ABCY out of his home and is its sole return preparer.

11. Depending on the complexity of the return, the defendants generally charged customers \$100 to \$350 to prepare an individual customer's return and file it electronically.

12. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit ("the credit") in July 2008. The credit allowed first-time homebuyers a credit against their federal income tax of the lesser of ten percent of the home's purchase price or \$8,000 (the maximum credit).

13. 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 sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home's address and acquisition date.

14. 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 after April 8, 2008.

15. During the 2009 tax filing season, the defendants prepared and electronically filed 758 federal income tax returns. Of these returns, around 147 returns claimed the First-Time Homebuyer Credit.

16. The IRS reviewed 40 of the returns that claimed the credit and determined that none of the taxpayers was entitled to the credit. None of the 40 taxpayers associated with the returns

purchased a home that would qualify the taxpayer to claim the credit.

17. The defendants made no attempt to determine whether their customers were qualified to claim the credit. To the contrary, Camejo misrepresented the requirements for the credit to customers and failed to mention that there must have been an actual home purchased.

18. The defendants included the credit on returns they prepared with knowledge that the customers had not purchased a home during the applicable time period.

19. For example, customer Neubel Hernandez informed Camejo that he already owned a home, but Camejo told him that the credit was a loan that could be used for the future purchase of a home. Camejo prepared and filed a 2008 return for Hernandez that erroneously claimed the credit in the amount of \$8,000.

20. Camejo prepared the 2008 federal income tax return for Antonio and Beatriz Suniga. The Sunigas informed Camejo that they had not purchased a home, but Camejo told them that he could help them “apply” for the credit. The return prepared by Camejo falsely reported that the Sunigas bought a home on April 6, 2009, and falsely claimed an \$8,000 credit. The IRS examined the Sunigas 2008 return, disallowed the credit, and assessed an accuracy related penalty against them.

21. Camejo also falsely claimed the First-Time Homebuyer Credit on each of the 2008 federal income tax returns he prepared for Juan Garcia-Chicano and Blanca Vega. Camejo listed the same property address as having been purchased by both taxpayers on the Forms 5405, although the property had actually been purchased by Vega in 2006.

22. In the 40 returns reviewed by the IRS that falsely claimed the credit, each of the returns reported adjusted gross income of less than \$8,600. This should have alerted the

defendants that the customer did not have sufficient income to purchase a home that would entitle him to the credit.

23. In one instance, the defendants prepared and filed a return claiming the credit for a taxpayer without that taxpayer's knowledge or consent. The defendants prepared and filed a 2008 return for Noriel Veloz even though Veloz had no income for that year, did not purchase a home, and never met with or communicated with the defendants in any fashion. The defendants prepared and filed a return for Veloz that falsely reported wages of \$6,900 and falsely claimed the credit. The defendants did not provide Veloz with a copy of the return they prepared.

24. Camejo's misconduct was not limited to preparing erroneous returns. In at least ten instances, customer tax refund checks were directly deposited into a bank account controlled by the defendants. On returns he prepared, Camejo illegally listed ABCY's bank account as the account to deposit the customers' tax refund checks.

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 the tax liability.

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

28. Code § 6695(a) imposes penalties on a tax return preparer who fails to furnish a completed copy of the return to the taxpayer.

29. The defendants engaged in conduct subject to penalty under Code § 6695(a) by failing to furnish a completed copy of a return they prepared to a customer.

30. Code § 6695(f) imposes a penalty on a return preparer who endorses or negotiates a refund check issued to a taxpayer other than the return preparer.

31. The defendants engaged in conduct subject to penalty under Code § 6695(f) by having customers' tax refund checks directly deposited into bank accounts that the defendants controlled.

32. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, the defendants are likely to continue preparing and filing false federal income tax returns that contain erroneous claims for the First-Time Homebuyer Credit, failing to provide a completed copy of the return to their customers, and improperly having customer refund checks deposited into the defendants' bank account.

33. The defendants should be permanently enjoined under Code § 7407 from preparing or filing federal tax returns that claim the First-Time Homebuyer Credit unless the defendants ensure that the customer is entitled to the credit in accordance with Code § 36.

34. The defendants should be permanently enjoined under Code § 7407 from preparing or filing federal tax returns unless they provide a copy of the completed copy to the customer, and should be permanently enjoined from directing customer refund checks to the defendants' bank account.

35. The defendants should be further permanently enjoined under Code § 7407 from

engaging in any other conduct subject to penalty under Code § 6694 or 6695.

COUNT II – Injunction under Code § 7408

36. 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.

37. 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.

38. The defendants have prepared federal tax returns and related documents, including IRS Form 5405, for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit thus understating the customers' correct federal tax liability. Their conduct is subject to penalty under Code § 6701

39. Unless enjoined by the Court, the defendants are likely to continue to prepare tax returns that they know will result in the understatement of tax liability.

40. Accordingly, the defendants should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code § 6701.

COUNT III – Injunction under Code § 7402

41. 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).

42. The defendants, through the actions described above, have engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and are likely to continue to engage in such conduct unless enjoined.

43. The defendants' conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate. If the defendants are not enjoined from preparing tax returns that include 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. Furthermore, the defendants' conduct has led to penalties and interest assessed against their customers.

44. Unless the defendants are 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.

45. Enjoining the defendants is in the public interest because an injunction will stop their illegal conduct and the harm it causes the United States.

46. 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 defendants have continually and repeatedly engaged in conduct subject to penalty under Code §§ 6694, 6695 and 6701, by willfully preparing false federal income tax returns that improperly claimed the First-Time Homebuyer Credit, by failing to provide a completed copy of a return to a taxpayer, and by improperly directing customer

refund checks be deposited to accounts that the defendants control, 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, 6695 and 6701;

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

C. The Court, pursuant to Code §§ 7407, 7408 and 7402(a), enter a permanent injunction prohibiting the defendants from:

- (1) Preparing or filing, or assisting in the preparation or filing of, any federal tax return that claims the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to that credit in accordance with Code § 36;
- (2) Engaging in conduct subject to penalty under Code §§ 6694 or 6701, including preparing federal income tax returns that improperly claim the First-Time Homebuyer Credit;
- (3) Engaging in conduct subject to penalty under Code § 6695 by failing to provide customers with a completed copy of the return they prepare, and endorsing or otherwise negotiating a customer's tax refund check; and
- (4) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

D. The Court, pursuant to Code § 7402(a), enter an injunction requiring the defendants to contact by United States mail (or by e-mail, if a postal address is unknown) all persons for whom they prepared a federal tax return since January 1, 2009, to inform them of the Court's findings in this matter and enclose a copy of the injunction entered against them, 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 Alberto Camejo that they have 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: September 10, 2010.

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