

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

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 UNITED STATES OF AMERICA,  
  
                                   Plaintiff,  
  
                                   v.  
  
 MICHAEL BRIER,  
 JEFFREY SROUFE,  
 ESTHER SANTIAGO,  
 MARIA CAROLINE HALOG,  
 CRISELYN RIVERA,  
 NITZA BENITEZ,  
 CARMEN MIRANDA,  
 REFUNDS NOW, INC.,  
 RNTS, INC. (a/k/a REFUNDS NOW TAX  
                   SERVICE, INC.),  
 FTIRS, INC.,  
 POTIRS, INC., and  
 IHIRS, INC.,  
  
                                   Defendants.  
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CA09- 607 ML

Civil No.

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION**

This is a civil action brought by the United States to permanently enjoin defendants Michael Brier, Jeffrey Sroufe, Esther Santiago, Maria Caroline Halog, Criselyn Rivera, Nitza Benitez, Carmen Miranda, Refunds Now, Inc., RNTS, Inc., FTIRS, Inc., POTIRS, Inc., and IHIRS, Inc. (collectively "the Defendants") from preparing federal income tax returns, amended federal income tax returns and other related documents and forms for others; filing federal income tax returns for others, representing customers before the Internal Revenue Service ("IRS"), advising, assisting, counseling, or instructing anyone about the preparation of a federal

tax return; engaging in any activity subject to penalty under 26 U.S.C. § § 6694, 6695, or 6701; promoting tax-fraud schemes or other plans or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of federal income taxes; or engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

1. 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 26 U.S.C. §§ 7402(a), 7407, and 7408.

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. §§ 7402(a), 7407, and 7408.

3. Mr. Brier resides in Providence, Rhode Island within the jurisdiction of this Court.

4. Mr. Sroufe resides in Providence, Rhode Island within the jurisdiction of this Court.

5. Ms. Santiago resides in North Providence, Rhode Island within the jurisdiction of this Court.

6. Ms. Halog resides in Warwick, Rhode Island within the jurisdiction of this Court.

7. Ms. Rivera resides in Providence, Rhode Island within the jurisdiction of this Court.

8. Ms. Benitez resides in Pawtucket, Rhode Island within the jurisdiction of this Court.

9. Ms. Miranda resides in Pawtucket, Rhode Island within the jurisdiction of this Court.

10. Refunds Now, Inc., RNTS, Inc., FTIRS, Inc., POTIRS, Inc., IHIRS, Inc. provide tax preparation services that operate within the jurisdiction of this Court.

### **Overview of the Scheme**

11. The Defendants are entities or employees of those entities that prepare or assist in the preparation of federal income tax returns for other people for compensation.

12. Refunds Now, RNTS, Inc., FTIRS, Inc., POTIRS, Inc., and IHIRS, Inc. operate from at least eight locations within the State of Rhode Island and the Commonwealth of Massachusetts.

13. The IRS estimates that the Defendants have been directly or indirectly responsible for the preparation and filing of at least 24,399 federal income tax returns for tax years 2003 through 2007. It is not possible for the IRS to determine the exact number of returns by each Defendant due to their failure to accurately report their preparer tax identification numbers (“PTINs”) in order to disguise the true identity of the actual return preparer.

14. As of August 24, 2009, the IRS has closed examinations on 345 returns of the 24,399 tax returns that have been directly or indirectly prepared and filed by Refunds Now, Inc., RNTS, Inc., and/or their employees for the tax years 2003 through 2007. Of these 345 returns that were examined, 313 returns or 91% of the returns resulted in additional tax assessments. As of August 24, 2009, the IRS has determined that Refunds Now, Inc., RNTS, Inc., and/or their employees have directly or indirectly prepared and filed 7,748 federal income tax returns for the 2008 tax year. The IRS has not examined any of these returns.

15. The IRS’ examinations of the 313 returns that resulted in additional tax being owed revealed that additional tax was owed for a variety of reasons including but not limited to the: (A) use of incorrect filing statuses to reduce tax liabilities and maximize the earned income tax credit (“EITC”); (B) failure to apply the appropriate tests to determine if individuals qualify for the

dependent exemption; (C) fabrication or manipulation of Schedule C gross receipts for the purposes of maximizing the EITC or minimizing net taxable income subject to self-employment taxes; (D) fabrication or inflation of various Schedule A deductions such as charitable contributions and/or employee business expenses; and (E) fabrication or manipulation of income and expenses on Schedule E, including failure to allocate for non-deductible personal use of rental properties.

16. Employees of Refunds Now, Inc., RNTS, Inc., and other entities controlled by Mr. Brier have a financial incentive to understate their customers' tax liabilities or to overstate the EITC as several of these employees' compensation structure includes a bonus component equal to five percent of the total amount of tax refunds generated. This compensation structure contributes to an environment where employees prepare tax returns for customers without regard to the accuracy or the quality of the returns prepared.

17. The IRS has suspended the electronic filing privileges of some of the Defendants. The IRS suspended electronic filing identification numbers ("EFINs") obtained by these defendants for: (A) misrepresentations on application forms that incorrectly identified the principal and responsible official of the entity; (B) submissions of federal income tax returns under another preparer's electronic filing number after their electronic filing number was suspended; (C) failure to file corporate returns for Refunds Now, Inc. (employee identification number XX-XXX8294) and RNTS, Inc. (employee identification number XX-XXX6591); and/or (D) adversely impacting the quality of electronically filed returns. Mr. Brier's electronic filing privileges were suspended for failure to file his personal federal income tax returns. Nevertheless,

Defendants continue to prepare and file electronic returns as further described herein.

18. In order to circumvent the IRS' suspension of their electronic filing privileges, the Defendants utilize electronic filing numbers assigned to newly formed entities such as FTIRS, Inc. POTIRS, Inc., and IHIRS, Inc. that are affiliated with Refunds Now, Inc. as evidenced by the addresses provided on the applications that list one of RNTS, Inc.'s business locations as the address of the newly formed entity. For example, the IRS has identified at least 53 electronic filing numbers assigned to 15 different PTINs associated with various Refunds Now, Inc. office locations.

19. Defendants have provided inappropriate representation of their customers before the IRS and have interfered with IRS procedures and authority for the examination of their customers' returns by advising their customers not to appear for their examinations and advising and assisting their customers in the creation of falsified documents for submission to the IRS in connection with the examination of their returns.

20. The Defendants' actions cause harm to the United States and to the public.

21. The IRS has issued erroneous refunds based on fraudulent returns prepared by the Defendants and has then had to audit their customers and take collection action to attempt to recoup the money. As of August 24, 2009, the IRS has incurred an actual tax loss to date from the examined returns in excess of \$1.1 million. If this rate of loss were applied to all 24,399 returns, the estimated tax loss to the United States by the Defendants' actions could be more than \$85 million for the 2003 through 2007 tax years.

22. The IRS has spent considerable time and resources auditing returns prepared by the Defendants and collecting the taxes owed and erroneous refunds paid.

23. The Defendants have also harmed their customers because they pay the Defendants to prepare these returns, and, after the fraud is detected, are responsible for paying all taxes, interest, and penalties.

### **Facts Pertaining to Individual Defendants**

#### **A. Michael Brier, Refunds Now, Inc. and RNTS, Inc.**

24. Mr. Brier manages tax preparation services known as Refunds Now, Inc. and RNTS, Inc. Mr. Brier is employed by RNTS, Inc. as the Director of Marketing but he is the de facto owner-operator of Refunds Now, Inc. and RNTS, Inc.

25. Mr. Brier has been listed as the President of Refunds Now, Inc. based on information provided to the Office of the Secretary of State for the State of Rhode Island and Providence Plantations as of January 3, 2002.

26. In June 2003, the IRS' Office of Professional Responsibility suspended Mr. Brier's privileges to practice before the IRS because his Certified Public Accountant license was suspended by the Rhode Island Board of Accountancy and he was found guilty by a trial judge in the State of Rhode Island Superior Court of tortuous interference with a contractual relationship after he disclosed confidential business information of a former client in violation of his fiduciary duties. See Clifford McFarland and Read & Lundy, Inc. v. Michael Brier, et al., C.A. No. 96-1007, (Super. Ct. R.I.), aff'd 769 A.2d 605 (R.I. 2001).

27. Despite his suspension by the IRS' Office of Professional Responsibility which prohibits Mr. Brier from representing customers during IRS examinations of their tax returns, Mr. Brier has accompanied corporate clients to the IRS' examination of their returns which he purportedly did not prepare.

28. Mr. Brier has hired, trained, supervised, directed, and managed employees of Refunds Now, Inc. and RNTS, Inc., and other entities under his control who have prepared or assisted in the preparation of large numbers of improperly prepared federal income tax returns and otherwise engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

29. Mr. Brier and others acting in concert with him have created, directed, fostered and maintained businesses that provide income tax preparation services where improper tax return preparation is encouraged and flourishes.

30. Under the direction of Mr. Brier and other managers, Refunds Now, Inc., RNTS, Inc., and other entities controlled by Mr. Brier hire individuals without sufficient education or training to become employees of these entities to prepare federal income tax returns. While Refunds Now, Inc., RNTS, Inc. and these other entities offer minimal online and/or in-house training programs, this training fails to adequately instruct their employees about critical elements related to basic tax return preparation and methods to evaluate questionable, suspicious, or fraudulent information provided by customers.

31. Refunds Now, Inc., RNTS, Inc., and other entities controlled by Mr. Brier cater to prospective customers who are not otherwise entitled to tax refunds but seek to obtain ready cash in the form of Refund Anticipation Loans secured by refunds generated from fabricated information contained in their tax returns.

32. Although Mr. Brier is eligible to prepare federal income tax returns as an “un-enrolled return preparer,” he prepares federal income tax returns for others for compensation but fails to provide his assigned PTIN on the returns that he prepares. Instead, Mr. Brier records various employer identification numbers and social security numbers that do not belong to him in lieu of his assigned PTIN. For example, Mr. Brier used: (A) his own social security number XXX-XX-3272 in tax filing seasons 2004 and 2005; (B) defendant Esther Santiago’s social security number XXX-XX-1483 and defendant Jeffrey Sroufe’s social security number XXX-XX-2662 in tax filing seasons 2006 and 2007; and (C) defendant Esther Santiago’s social security number XXX-XX-3272 and defendant Nitza Benitez’s social security number XXX-XX-1852 in tax filing season 2008. As a result, the IRS is unable to determine the exact number of federal income tax returns prepared by Mr. Brier.

**B. Jeffrey Sroufe.**

33. Mr. Sroufe has been listed as the President of RNTS, Inc. based on information provided to the Office of the Secretary of State for the State of Rhode Island and Providence Plantations. Mr. Sroufe stepped down as President of RNTS, Inc. after his electronic filing privileges were suspended by the IRS to allow defendant Esther Santiago to become President of RNTS, Inc. so that she could apply to the IRS for electronic filing privileges.



34. Mr. Stroufe has been employed by RNTS, Inc. since 2003, working in various roles including overseeing RNTS, Inc.'s information technology issues, preparing federal income tax returns for customers, and creating training materials for RNTS, Inc.'s employees.

**C. Esther Santiago.**

35. Ms. Santiago has been listed as the President RNTS, Inc. based on information provided to the Office of the Secretary of State for the State of Rhode Island and Providence Plantations.

36. Ms. Santiago has been employed by Refunds Now, Inc. and/or RNTS, Inc. for approximately five to six years managing the offices of these entities, including human resources, processing the weekly payroll for Refunds Now, Inc., preparing federal income tax returns for customers, and accessing Refund Anticipation Loans.

**D. Maria Caroline Halog.**

37. Ms. Halog is listed as the incorporator of FTIRS, Inc. based on information provided to the Office of the Secretary of State for the State of Rhode Island and Providence Plantations.

38. Ms. Halog has been employed by Refunds Now, Inc. since as least as early as 2004, preparing federal income tax returns for customers.

**E. Criselyn Rivera.**

39. Ms. Rivera is a long-term employee of RNTS, Inc. who prepares federal income tax returns for customers. She is the responsible officer of POTIRS, Inc. which operated from a new Refunds Now, Inc. location in Warwick, Rhode Island as identified on Refund Now Inc.'s Website. POTIRS, Inc. has secured four EFINs for use in the 2009 tax filing season.

**F. Nitza Benitez.**

40. Ms. Benitez became associated with RNTS, Inc. in the 2008 tax filing season.

41. Ms. Benitez applied for electronic filing privileges with the IRS using her name, social security number, and the address of RNTS Inc.'s Main Street location in Attleboro, MA.

42. Ms. Benitez's identification numbers were used to file 6,338 returns for Refunds Now, Inc.'s customers in the 2008 tax filing season for clients that were similar to the client lists of Mr. Brier, Refunds Now, Inc., and RNTS, Inc. for the 2004 through 2007 tax filing seasons.

43. The tax returns submitted with Ms. Benitez's electronic filing identification number identifies the tax preparation firm as Refunds Now Tax Service and displays her social security number in the format of an employer identification number in an attempt to further disguise her association with Mr. Brier and the other defendants.

44. In addition, some of the returns filed under Ms. Benitez's electronic filing identification number list defendants Mr. Stroufe and Ms. Santiago as preparers, both of whom have had their electronic filing identification numbers suspended by the IRS.

**F. Carmen Miranda**

45. Ms. Miranda, an employee of Refunds Now, Inc. and the responsible officer for IHIRS, Inc. secured six EFINs in 2009 for IHIRS, Inc. and operated from the Central Falls, Rhode Island location of Refunds Now, Inc.

**Count I:**

**Injunction under 26 U.S.C. § 7408 for Violation of 26 U.S.C. § 6701**

46. The United States incorporates by reference the allegations in paragraphs 1 through 45.

47. 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.

48. Section 6701 penalizes any person (1) who 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.

49. Defendants prepare or assist in the preparation of federal income tax returns for their customers.

50. 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.

51. Defendants knew that the federal tax returns they prepare will result in understatements of other persons' tax liabilities.

52. If Defendants are not enjoined, they are likely to continue to engage in conduct which violates § 6701.

**Count II:**

**Injunction Under 26 U.S.C. § 7407 for Violation of 26 U.S.C. §§ 6694 & 6695**

53. The United States incorporates by reference the allegations in paragraphs 1 through 45.

54. A court is authorized to issue an injunction if an income tax return preparer engages in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695, pursuant to 26 U.S.C. § 7407.

55. 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 26 U.S.C. § 6662(d)(2)(B)(ii) or was frivolous.

56. 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.

57. Section § 6695(c) penalizes a tax return preparer who fails to comply with the provisions of 26 U.S.C. § 6109(a)(4) which requires that a tax return preparer provide his identifying number assigned by the IRS to secure the proper identification of that tax return preparer on the federal income tax returns that he prepares.

58. Defendants' conduct as described above is subject to penalty under §§ 6694(a), 6694(b), and 6695(c).

59. 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; Defendants did

not disclose them in accordance with 26 U.S.C. § 6662(d)(2)(B)(ii); and such understatement are frivolous. Defendants have thus engaged in conduct subject to penalty under § 6694(a).

60. Defendants prepare returns for customers with false entries in a willful attempt to understate the customers' liability or with a reckless and intentional disregard of rules and regulations. Defendants has thus engaged in conduct subject to penalty under § 6694(b).

61. Defendants prepare tax returns that fail to include their identifying numbers assigned by the IRS to secure the proper identification of those tax return preparer on the federal income tax returns that they prepare. Defendants have thus engaged in conduct subject to penalty under § 6695(c).

62. Defendants have continually and repeatedly engaged in conduct that violates §§ 6694 and 6695. An injunction merely prohibiting Defendants from engaging in conduct subject to penalty under §§ 6694 and 6695 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 III:  
Injunction under I.R.C. § 7402(a) for Unlawful Interference  
with Enforcement of the Internal Revenue Laws  
and Appropriateness of Injunctive Relief**

63. The United States incorporates by reference the allegations in paragraphs 1 through 45.

64. A court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws, pursuant to 26 U.S.C. § 7402(a).

65. Section 7402(a) expressly provides that its injunction remedy is “in addition to and not exclusive of” other remedies for enforcing the internal revenue laws.

66. Defendants, through the actions described above, have engaged in conduct that interferes substantially with the enforcement of the internal revenue laws.

67. Defendants’ conduct causes irreparable harm to the United States and to their customers.

68. Defendants are causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

69. If Defendants are not enjoined, they are likely to continue to engage in conduct that interferes with the enforcement of the internal revenue laws.

70. 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 tax laws.

71. 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 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 6695, 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 an 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 conduct pursuant to 26 U.S.C. § 7402(a) and the Court's inherent equity powers;

D. That this Court, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 enter a permanent injunction prohibiting Defendants, individually, and doing business under the names Refunds Now, Inc., RNTS, Inc., FTIRS, Inc., POTIRS, Inc., and IHIRS, Inc., 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 return preparer;

E. That this Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408 enter a permanent injunction prohibiting Defendants, individually and doing business under the names Refunds Now, Inc., RNTSs, Inc. FTIRS, Inc., POTIRS, Inc., and IHIRS, Inc., or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those 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 customers in connection with any matter before the IRS; and
6. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

F. That this Court, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408 require Defendants at their own expense to contact by mail all customers 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 eleven days of entry of the permanent injunction that they have complied with this provision;

G. That this Court require Defendants 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, 2004, and set forth on said list all of the names, addresses, e-mail addresses, telephone numbers, and social security numbers of the customers;

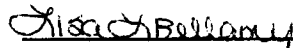


H. That this Court permit the United States to conduct post-judgment discovery to ensure Defendants' compliance with the permanent injunction; and

I. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

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United States Attorney

  
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