

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

UNITED STATES OF AMERICA,

Plaintiff,

v.

GERARDO HERRERA, individually and d/b/a  
El Lobo MultiServicios Profesionales, Inc.;  
Lobo Multiservicios; and  
Lobos Multiservicios LLC,

Defendant.

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**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

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The United States of America, for its Complaint for Permanent Injunction and Other Relief, states the following claims against the defendant:

1. The United States seeks an order to enjoin Gerardo Herrera, and anyone acting in concert or participation with him, from the following activities:
  - a. acting as a federal tax return preparer or requesting the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;

- b. assisting in the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;
- c. directing the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;
- d. representing, or appearing on behalf of, any person or entity before the Internal Revenue Service;
- e. instructing, advising, or assisting others in the violation of the tax laws including the evasion of payment of taxes;
- f. engaging in conduct subject to penalty under 26 U.S.C. § 6694, which concerns tax preparers who understate taxpayers' liability; and
- g. engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws.

### **JURISDICTION AND VENUE**

- 2. This action has been requested by the Chief Counsel of the Internal Revenue Service (the "IRS"), a delegate of the Secretary of the Treasury, and is brought at the direction of the Attorney General of the United States.
- 3. This Court has jurisdiction under 28 U.S.C. §§ 1340 and 1345, which concern actions involving the internal revenue laws and actions in which the United States is a plaintiff,

respectively; and under 26 U.S.C. §§ 7402, 7407, and 7408, which authorize the Court to issue orders enjoining violations of the Internal Revenue Code.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396, and 26 U.S.C. §§ 7407 and 7408, because Defendant resides in this district, and a substantial part of the events constituting Defendant's tax-fraud scheme occurred in this district.

#### **HERRERA AND LMS**

5. Herrera was a resident of Colorado at all relevant times.
6. Herrera owns and operates El Lobo Multiservicios Profesionales, Inc., a business that prepares tax returns, sells car insurance, brokers real estate transactions, and notarizes documents. It also sends clients to a local immigration attorney in exchange for referral fees, and translates documents for use in immigration proceedings.
7. Herrera appears to have done business using different corporate forms over time, under different but very similar names. He incorporated El Lobo Multiservicios Profesionales, Inc. in 2003; registered the trade name Lobo Multiservicios in 2013; and established Lobos Multiservicios LLC in 2014 (collectively or individually, "LMS"), according to the Colorado Secretary of State. Herrera is the registered agent or registrant for all three. While professionally prepared tax returns are required to disclose the name of the individual and the firm that prepared the return, an entirely different firm's name and Employer Identification Number appear on some of the returns LMS prepares. This is because instead of obtaining its own license for the tax preparation software it uses, LMS

shares the other firm's account. However, the LMS returns at issue here are all signed with Herrera's individual Preparer Tax Identification Number ("PTIN").

#### **HERRERA AND LMS'S TAX PREPARATION BUSINESS**

8. Herrera and LMS prepared approximately 8,875 tax returns from 2011 through 2014.
9. Herrera and LMS also help clients apply for Individual Taxpayer Identification Numbers ("ITINs") for themselves or for others. An ITIN is a tax processing number that the IRS issues to individuals who are ineligible for Social Security Numbers but who must be identified on tax filings, *e.g.*, foreign nationals who are required to file tax returns, or who are married to U.S. taxpayers. However, only persons who meet certain IRS requirements may act as ITIN acceptance agents, *i.e.*, accept and submit ITIN applications, and Herrera is not an approved agent.
10. A large percentage of LMS's tax clients are Spanish-speaking and have difficulty reading or speaking English. Many are recent immigrants who have limited familiarity with the tax laws.

#### **HERRERA AND LMS'S IMPROPER TAX PREPARATION ACTIVITIES**

11. Since at least 2011, Hererra and LMS have systematically and intentionally falsified tax returns. The IRS began investigating Herrera around 2013, and by early June of 2015 had interviewed numerous taxpayers and audited over 200 returns. More than 99% of the audited returns required corrections.

12. While Herrera has changed his tactics over time, most of the misrepresentations on returns audited to date fall into two general categories: false claims for dependents, and fabricated or inflated itemized deductions.
13. LMS repeatedly claims dependency exemptions for persons who do not meet the statutory definition. Among other requirements, a dependent must be a qualifying relative (*e.g.*, cousins do not typically count) or a full-time member of the taxpayer's household, and must receive more than half his or her support from the taxpayer. *See* 26 U.S.C. §§ 151, 152.
14. One of LMS's most common tactics for falsifying returns is to ask taxpayers if they send money to anyone abroad. LMS then takes dependency exemptions for such recipients, whether or not they are qualifying relatives, and whether or not a taxpayer provided the majority of the "dependent's" support. In limited circumstances, a taxpayer may properly claim dependents living in Mexico or Canada. But IRS audits have shown that LMS repeatedly claimed non-resident dependents that taxpayers could not show (and did not, in interviews, claim) met the applicable requirements. In interviews with the IRS, taxpayers consistently reported that LMS did not advise them of the various tests for dependents.
15. By law, the IRS cannot allow a dependency exemption unless the dependent's identifying number, typically a Social Security Number, appears on the return. If a putative dependent did not have a Social Security Number (a fact that would have prompted a

legitimate preparer to ask questions), LMS offered to help the taxpayer apply for an ITIN for the “dependent”—for an additional fee.

16. “Adopting” extra dependents artificially reduces the amount of income subject to tax. It also allowed Herrera and LMS to further decrease their clients’ liability by using putative dependents to claim the Child Tax Credit or other credits, or to claim an advantageous, but incorrect, filing status. For example, an unmarried taxpayer who lives with a dependent child and who meets certain other conditions can file as head of household, which is often more favorable than filing as a single person. *See* 26 U.S.C. § 2(b)(1)(B). LMS repeatedly submitted head of household returns for taxpayers based on a “dependent child” who actually lived in Mexico, or who otherwise did not qualify.
17. LMS also grossly inflated or fabricated itemized deductions. A favorite strategy was to ask taxpayers the mileage they incurred driving to work, or the amount they spent on cell phones, insurance, car repair or other personal, non-deductible expenses—and then claim an “employee business expense” deduction for these amounts. Worse, audits showed that LMS exaggerated these already wrongful deductions, claiming more for mileage or personal expenses than the taxpayers reported to LMS.
18. LMS used a variety of other tactics to increase deductions. Return after return shows the same \$500 deduction for charitable contributions. Some taxpayers reported that Herrera had advised them they could take the deduction for gifts to family or friends in Mexico, though LMS exaggerated the amounts taxpayers reported to them. Other taxpayers disclaimed the deductions entirely, and reported in interviews that they did not know or

understand what LMS was claiming. Audits also showed improper or inflated deductions for personal property taxes, medical expenses, and other costs.

19. The following are example of specific LMS-prepared returns that substantially understated tax liabilities:
  - a. Client #1's 2012 return claimed itemized deductions equaling about 70% of the client's total income of \$44,656, as reported on a W-2. The largest deductions were for wholly personal, non-deductible costs reported as "Unreimbursed Employee Expenses." But LMS also claimed \$4,505 in other personal expenses reported as deductible property taxes, and \$500 in charitable deductions that the client did not attempt to corroborate during her audit, and which the client did not even recall Herrera asking about. LMS also falsified the client's 2013 return, overstating deductions by more than \$17,000. Client #1 went to a different preparer for 2014, and has noticed that the refund for that year was much lower than when LMS was the preparer.
  - b. Client #2's 2013 return claimed \$35,099 in itemized deductions, again almost 70% of reported income. Claims for \$13,124 for non-federal taxes and \$11,401 in unreimbursed employee expenses accounted for most of the reported deduction amount. An audit showed that almost none of these amounts were deductible. LMS also prepared the client's 2012 and 2014

returns, which again contained improper deductions for personal property taxes, employee expenses, and other items.

- c. Client #3's 2012 return showed four dependents: a niece, two nephews, and a parent. But an audit revealed that the niece and nephews lived with their parents in Mexico City, not with LMS's client, and could not be claimed as dependents. The return also claimed about \$24,000 in itemized deductions, including \$13,789 in unreimbursed employee business expenses and \$3,895 in personal property taxes. But only \$1,444 of the \$13,789 "business expenses" and only \$246 of the \$3,895 of the "property taxes" were actually deductible. The client's 2013 and 2014 returns, also prepared by LMS, contained similar misrepresentations.

### **HARM TO THE UNITED STATES**

20. Herrera and LMS's misrepresentations have caused the United States substantial revenue loss. The average deficiency on LMS returns audited to date is about \$3,900. Because LMS prepared approximately 8,875 returns from 2011 through 2014, and 99% of the returns the IRS audited required adjustments, it is reasonable to project that Herrera and LMS have cost the United States millions in lost tax revenue.
21. Herrera and LMS have also forced the United States to expend significant resources to examine and correct the returns they prepared, and to collect the payments LMS's customers owed. Herrera and LMS's conduct has also caused significant distress to their



customers, who relied on LMS's representations and who now face audits and higher tax bills than LMS had led them to believe.

22. There is little reason to believe that Herrera will stop his wrongful conduct unless he is completely barred from preparing tax returns. He appears to gross a substantial sum each tax season, charging in the range of \$100 to \$160 per return. He has been on notice of the investigation since at least 2014, when the IRS interviewed him and some of his workers. The IRS has already assessed penalties against him totaling over \$400,000 (which he has yet to pay). But he and his firm continued to prepare fraudulent returns in 2015. Audits and taxpayer interviews concerning a sample show that LMS and Herrera continued to inflate or fabricate dependents and deductions.

**Count I: Injunction Under 26 U.S.C. §§ 7402 and 7407**

23. The United States incorporates by reference the allegations in paragraphs 1 through 22.
24. Section 7402(a) of the Internal Revenue Code authorizes a district 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.
25. Section 7407(b) describes specific prohibited conduct that a court is authorized to enjoin.

The conduct justifying an injunction includes:

- a. engaging in conduct subject to penalty under 26 U.S.C. § 6694, which, *inter alia*, penalizes a tax return preparer who prepares a tax return that understates tax liability (or overstates a refund) due to an unreasonable position that the preparer

knew or reasonably should have known was unreasonable (§ 6694(a)), or due to reckless disregard for tax rules and regulations (§ 6694(b)); and

b. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws (§ 7407(b)(1)(D)).

26. If a preparer has engaged in the prohibited conduct “continually or repeatedly”, § 7407 authorizes the Court to enjoin the preparer not just from the specified conduct, but from acting as a tax preparer at all. *See* 26 U.S.C. § 7407(b)(2).
27. As detailed above, Herrera and LMS have repeatedly submitted tax returns or other documents that substantially understate their clients’ liability, based on unreasonable positions (that Herrera knew or should reasonably have known were unreasonable), or on intentional or reckless disregard of the law.
28. There is little reason to believe Herrera will stop unless he is enjoined. The business is lucrative, and Herrera has continued his illegal conduct even in the face of an ongoing IRS investigation and penalties in the six-figures.
29. A narrower injunction would be insufficient to prevent Herrera’s interference with the administration of the federal tax laws. This is not a case of a preparer who reports a few questionable deductions, or who corrects his conduct after contact with the IRS. To the contrary, the IRS found misstatements on virtually every one of over 200 returns audited. The IRS has questioned and challenged Herrera and his workers to little effect. If

Herrera stays in business, the IRS must spend additional resources on its investigations and collection efforts, to say nothing of the revenue loss future fraud will cause the United States. Thus, Herrera should be permanently barred from acting as a federal tax return preparer.

WHEREFORE, the plaintiff, the United States of America, respectfully prays for the following:

A. That the Court find that the defendant has repeatedly and continually engaged in conduct subject to penalty under 26 U.S.C. § 6694, and that injunctive relief is appropriate under 26 U.S.C. § 7407(b)(1)(A) to prevent recurrence of that conduct;

B. That the Court find that the defendant has repeatedly and continually engaged in conduct that substantially interferes with the proper enforcement and administration of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to 26 U.S.C. § 7407(b)(1)(D);

C. That the Court enter a permanent injunction prohibiting the defendant—individually or doing business as LMS or as any other entity or under any other name—or any other person working in concert or participation with him, from directly or indirectly:

- a. acting as a federal tax return preparer or requesting the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;
- b. assisting in the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;

- c. directing the preparation or filing of federal tax returns or related documents for any person or entity other than himself or his lawful spouse;
- d. representing, or appearing on behalf of, any person or entity before the Internal Revenue Service;
- e. instructing, advising, or assisting others in the violation of the tax laws including the evasion of payment of taxes;
- f. engaging in conduct subject to penalty under 26 U.S.C. § 6694, which concerns tax preparers who understate taxpayers' liability; and
- g. engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws;

D. That the Court enter an injunction requiring Herrera, at his own expense:

- 1. To send by certified mail, return receipt requested, to each person for whom he or LMS prepared federal income tax returns or any other federal tax forms after January 1, 2013: a copy of the final injunction entered against him in this action; a cover letter in a form either agreed to by counsel for the United States or approved by the Court; and a copy of the Complaint setting forth the allegations as to how Herrera and LMS fraudulently prepared federal income tax returns,;
- 2. To turn over to the United States copies of all returns or claims for refund that he or LMS prepared after January 1, 2013;

3. To turn over to the United States a list with the name, address, telephone number, email address, and social security number or other taxpayer identification number of all customers for whom he or LMS prepared returns after January 1, 2013;
4. To surrender to the Secretary of the Treasury or his delegate the PTIN Herrera holds, or that is assigned to or used by him pursuant to 26 U.S.C. § 6109(a), and any Electronic Filing ID (“EFIN”) he holds, assigns, or uses in connection with his tax business;
5. To prominently post a copy of the injunction at his place of business;
6. To file a sworn statement with the Court evidencing his compliance with the foregoing directives within forty-five (45) days of entry of the final injunction in this action; and
7. To keep records of his compliance with the foregoing directives, which may be produced to the Court, if requested, or the United States pursuant to paragraph F, below;

E. That the Court enter an order allowing the United States to monitor Herrera’s compliance with the injunction, and to engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure; and

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

DATED this 1st day of September, 2015.

Respectfully submitted,

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