

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

4/14/16

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PATRICK CLARKE, TAX MD, INC.,)
RUBY RODRIGUEZ, and)
V.I.P TAX SERVICES, INC.)
)
Defendants.)

Date Time
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA
Civil No.
6:16-cv-639-D-18TAB

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America, for its complaint against Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. alleges the following:

1. This is a civil action brought by the United States under 26 U.S.C. §§ 7402, 7407, and 7408 to enjoin Clarke, Rodriguez, Tax MD, Inc., V.I.P Tax Services, Inc., and anyone in active concert or participation with them, from:

- a. acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- b. preparing or assisting in preparing federal tax returns that they know or reasonably should know would result in an understatement of tax liability or the overstatement of federal tax refund(s) as penalized by 26 U.S.C. § 6694;
- c. owning, operating, managing, working in, controlling, licensing, consulting with, or franchising a tax return preparation business;
- d. training, instructing, teaching, and creating or providing cheat sheets, memoranda, directions, instructions, or manuals, pertaining to the preparation of federal tax returns;

- e. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision in the Internal Revenue Code; and
- f. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

This action also seeks, under 26 U.S.C. § 7402, an order requiring Clarke and Rodriguez to disgorge to the United States the gross receipts that Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) received for the preparation of federal tax returns.

AUTHORIZATION

2. This action has been requested and authorized 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 of the United States, pursuant to 26 U.S.C. §§ 7402, 7407, and 7408.

JURISDICTION AND VENUE

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

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1), (2) because Rodriguez resides in this district, and a substantial part of the activities giving rise to this suit occurred in this judicial district.

DEFENDANTS

5. Patrick Clarke resides in Hallandale Beach, Florida. Clarke is the sole owner of Tax M.D., Inc. Through this entity, Clarke owns and operates (or has owned and operated) tax preparation franchises in Orlando, Tampa, West Palm Beach, and Hallendale, Florida under various names, including, but not limited to, TaxMon\$ter, LBS Tax Services and Tax MD. In

addition to these Florida locations, Clarke owns and operates (or has owned and operated) stores in North Carolina.

6. Tax M.D., Inc. is a business entity owned by Patrick Clarke and incorporated in the State of Florida.

7. Ruby Rodriguez resides in Orlando, Florida. Rodriguez began preparing returns at Clarke's store located at 2013 Wellfleet Ct. Orlando, FL in 2011. In 2014, Rodriguez was the district sales manager for this Clarke-owned tax return preparation store. In 2015, Rodriguez continued to manage this store.

8. V.I.P Tax Services, Inc. is a business entity owned by Ruby Rodriguez and incorporated in the State of Florida.

9. LBS Tax Services was a tax return preparation business that Walner G. Gachette franchised through Loan Buy Sell, Inc., a corporation organized in the State of Florida. In 2013, there were at least 239 LBS Tax Services stores in Florida, Georgia, North Carolina, South Carolina, Tennessee, Alabama, Mississippi, and Texas. LBS Tax Services franchise stores prepared more than 55,000 federal income tax returns in 2013. Clarke was an LBS franchisee during 2012 and 2013. Clarke structured his LBS franchise and his tax preparation stores according to the LBS business model. In 2013, Clarke's LBS stores prepared approximately 2,000 returns.

10. Clarke's preparers, including managers such as Rodriguez, make – and/or direct or encourage others to make – false claims on their customers' tax returns, including: fabricating business income and expenses, reporting false itemized deductions, reporting bogus education credits, inflating federal withholding taxes, and engaging in other fraudulent activities aimed that maximize their customers' refunds and, in turn, the preparation fees.

11. This lawsuit is related to the ten lawsuits filed by the United States of America against Gachette, the LBS franchisor, various LBS franchisees and managers, and/or former LBS Tax Services franchisees, managers, and preparers operating under new business names, seeking injunctive and equitable relief under the Internal Revenue Code to stop systematic and pervasive fraud committed by the defendants. The other filed cases are: *United States v. Walner G. Gachette*, Case No. 6:14-cv-1539-ACC-TBS (M.D. Fla.); *United States v. Douglas Mesadieu*, Case No. 6:14-cv-1538-ACC-TBS (M.D. Fla.); *United States v. Jean R. Demesmin, et al.*, Case No. 6:14-cv-1537-ACC-TBS (M.D. Fla.); *United States v. Kerny Pierre-Louis, et al.* 6:14-cv-1536-ACC-TBS (M.D. Fla.); *United States v. Demetrius Scott*, 6:14-cv-1535-ACC-TBS (M.D. Fla.); *United States v. Jason Stinson*, 6:14-cv-1534-ACC-TBS (M.D. Fla.); *United States v. Milot Odne*, 8:15-cv-1079-VMC-EAJ (M.D. Fla.); *United States v. Jacqueline Nunez*, Case No. 1:14-cv-23512 (S.D. Fla.)¹; *United States v. Wilfrid Antoine*, Case No. 9:14-cv-8119 (S.D. Fla.) and *United States v. Christopher Lawrence, et al.*, Case No. 0:15-cv-62233 (S.D. Fla.).

BACKGROUND

12. LBS Tax Services (“LBS”) began in 2008 as a tax return preparation business in Orlando operated by Walner Gachette. In 2011, Gachette began franchising the LBS name to his employees to broaden his revenue base.

13. Clarke began working at LBS in 2012. Before Clarke joined LBS, Clarke operated a tax return preparation store in Orlando called TaxMon\$ter for Christopher Lawrence, Gachette’s brother-in-law. In 2012, Clarke signed a franchise agreement with Gachette (through

¹ The United States’ complaint against Nunez, Civ. No. 14-23512-Moreno (S.D. Fl.), was dismissed without prejudice on January 26, 2015, due to lack of service.

Gachette's business, Loan Buy Sell, Inc.). As a franchisee, Clarke owned 3 LBS stores in 2012 and at least 8 LBS stores in 2013.

14. When Clarke increased the number of his LBS stores in 2013, he installed Rodriguez as the manager of his Orlando LBS store. In 2014, Clarke left the LBS franchise and continued operating these stores using the name Tax MD. After Clarke transitioned his stores away from LBS, Ruby Rodriguez continued to manage his Orlando store.

15. In 2015, preparers working at stores owned by Clarke prepared 2,969 tax returns, of which 99 percent requested a refund. Notably, the Orlando store managed by Rodriguez prepared 1,025 of these 2,969 returns in 2015. Every return prepared at the Orlando Tax MD store in 2015 requested a refund.

16. Before beginning work for Clarke in late 2010, Rodriguez prepared tax returns for a tax preparation business called Fast Tax. Clarke hired Rodriguez to be a tax return preparer in a TaxMon\$ter store Clarke managed. In 2012, when Clarke left TaxMon\$ter to join LBS, Rodriguez followed Clarke and served as the manager of his Orlando LBS store. Likewise, when Clarke left LBS in 2014 to operate as Tax MD, Rodriguez followed him and managed Clarke's Orlando Tax MD store.

STORE OPERATIONS

17. Clarke's stores are managed by a District Sales Manager ("DSM"). For example, Rodriguez served as the DSM of Clarke's Orlando LBS store in 2013. Despite Rodriguez's prior tax return preparation experience, Clarke typically recruits DSMs who have no prior tax return preparation experience. The DSM oversees the office managers, tax return preparers, marketers, and other employees. According to Clarke, the DSMs are responsible for hiring and training of the preparers. Clarke, however, bears ultimate authority over his stores.

18. In exchange for the opportunity to earn up to 70% of the fees generated at their respective locations, the DSMs pay Clarke at least \$5,000 per filing season. For example, Rodriguez paid Clarke \$5,000 in order to receive 30% of the fees generated by Clarke's Orlando store. In 2012, Clarke's tax preparers were compensated hourly. Since 2012, the preparers receive a salary.

19. The IRS requires that individuals applying for an Electronic Filing Identification Number (EFIN), such as Clarke and his DMSs, like Rodriguez, complete an application and submit to a background check. The IRS does not provide training on tax law or tax return preparation in connection with its EFIN application. The requirements to obtain an EFIN are available at: <http://www.irs.gov/Tax-Professionals/e-File-Providers-&-Partners/Become-an-Authorized-e-file-Provider>.

20. An EFIN is a unique number that clearly identifies the authorized provider and the location where the return was prepared. Before a person may prepare and electronically transmit tax returns for customers, he or she must obtain authorization from the IRS to become an authorized provider. Every authorized provider must apply for and receive an EFIN from the IRS. The EFIN requirement is not a means for the IRS to "train" applicants on tax law or how to prepare tax returns.

21. DSMs serve as the Electronic Return Originator ("ERO") for the stores they manage. ERO is an Internal Revenue Service designation for the person or entity that electronically submits tax returns on behalf of customers. EROs are identified by their registered EFIN and are responsible for preparing and filing with each tax return an IRS Form 8879, "IRS e-file Signature Authorization." Form 8879 is a signature authorization for an e-filed return filed by an ERO on behalf of a customer. LBS required managers, like Rodriguez, to create a business

entity and acquire an EFIN for this entity. Rodriguez incorporated VIP Tax Services, Inc. and obtained an EFIN for this entity.

22. An ERO must be diligent in recognizing fraud and abuse, reporting it to the IRS and preventing it when possible. Clarke and his DSMs, including Rodriguez, conduct no meaningful quality control or oversight over their tax return preparers, much less act diligently to prevent the fraud and abuse that is undertaken with respect to the preparation of customers' tax returns. Indeed, fraudulent return preparation flourishes at many of Clarke's stores, including the store Rodriguez manages and substantially interferes with the proper enforcement of the Internal Revenue laws.

CLARKE'S AND RODRIGUEZ'S CONDUCT

23. Clarke and those acting in concert with him and at his direction, such as Rodriguez in her capacity as a DSM of his Orlando store, have created and maintained a business environment at Clarke's tax return preparation stores that enables the preparation of false and fraudulent federal income tax returns to generate bogus refunds and charge exorbitant fees, thereby maximizing profits. By doing so, Clarke and Rodriguez are able to acquire the ill-gotten gains of fraudulent tax preparation—all at the expense of their customers and the United States Treasury.

24. Many of Clarke's customers, including those from the store managed by Rodriguez, earn low to moderate incomes and lack knowledge regarding tax law and tax return preparation. Customers often have no knowledge that the preparer has prepared and filed fraudulent tax returns on their behalf. For others, Clarke's tax preparers mislead customers about the law, particularly with respect to various credits and deductions, and by promising them

thousands of dollars of (illegal) refunds to convince them to hire Tax MD, or another Clarke-related entity to prepare their tax returns.

25. Clarke and Rodriguez charge exorbitant fees which are deducted directly from the customers' refunds.

26. Clarke required his managers, including Rodriguez, to attend LBS training in 2012 and 2013. LBS trained the managers and preparers of Clarke's stores to engage in illegal practices in 2012 and 2013. When Clarke left the LBS franchise to operate his stores as Tax MD in 2014 and 2015, fraudulent return preparation practices continued, including but not limited to:

- a. Making fraudulent claims for the Earned Income Tax Credit (EITC);
- b. Circumventing due diligence requirements in order to fraudulently maximize the Earned Income Tax Credit;
- c. Improperly claiming false filing status, such as Head of Household when the customer is actually married;
- d. Fabricating businesses, business income and expenses on Schedule C (Profit or Loss From Business) on the Form 1040;
- e. Fabricating deductions on Schedule A (Itemized Deductions) on the Form 1040, including but not limited to deductions for unreimbursed employee business expenses, automobile expenses, and charitable contributions;
- f. Falsely claiming education credits to which customers are not entitled;
- g. Failing to provide customers with a copy of the completed tax return; and
- h. Charging deceptive and unconscionable fees.

“Guerilla Marketing”

27. Clarke, his managers, such as Rodriguez, and employees at LBS stores, including the stores Clarke owned in 2012 and 2013, were trained to solicit customers through what they called “Guerilla Marketing.” “Guerilla Marketing” involves misleading advertising and aggressive in-your-face individual sales pitches, targeted at low to moderate income individuals. The purpose is to get as many potential customers in the door, prepare their tax returns, and prepare and attach to their tax returns additional and unnecessary forms containing bogus claims and credits, under the guise they are doing so in order to legally increase the customer’s tax refund.

28. In 2012 and 2013, Clarke’s stores charged customers exorbitant fees for preparing their returns, for each form prepared and attached to the return, and for filing the return. The preparers at Clarke’s stores made fraudulent claims on these forms, in order to improperly increase customers’ refunds. The preparers falsely told the customers that these forms legally increased the customers’ refunds, and charged higher fees for preparing the additional forms and because a higher refund was claimed. These fees are all deducted from the customer’s tax refund, often without the customer being told the amount of the fee.

29. “Guerilla Marketing” began long before the commencement of the tax filing season. LBS advertising focused on the Earned Income Tax Credit, with street signs, flyers, and business cards that simply state an amount that a potential customer can receive for each child that they have and listing a phone number to call.

30. In 2012 and 2013, LBS instructed preparers and marketers to approach potential customers, ask whether they have children, hand out business cards, put up yard signs, and lure the potential customers to the LBS stores, including those owned by Clarke, with promises of

large refunds. This marketing occurs predominantly at large-scale retailers and grocery stores, dollar stores, apartment complexes, public plazas, and large public events where LBS believes they can find potential customers who fit the low to moderate income demographic that it targets.

31. Instead of focusing on honest, accurate tax return preparation, the LBS and Clarke's business model is result-oriented and maximizes profits by preparing fraudulent returns that claim bogus refunds.

32. In 2012 and 2013 when Clarke was an LBS franchisee, LBS trained and instructed their preparers on how to request on their customers' tax return a refund amount that is not based on the customer's actual income, expenses, deductions, and applicable qualifying credits, but instead is based on fraudulent income, expenses, deductions, and credits reported by LBS in order to generate an entirely false or fraudulently inflated refund. LBS so instructed their managers and preparers so that they can subtract from their customers' refunds an exorbitant and undisclosed fee without the customers realizing that the customers are not receiving a substantial portion of their claimed (albeit bogus due to the false claims reported on their tax returns) refunds.

Earned Income Tax Credit Fraud and Failure to Comply with Due Diligence Requirements

33. Clarke's tax return preparers, including Rodriguez, prepare tax returns that include fraudulent claims for the Earned Income Tax Credit often based fabricated business income and expenses, and/or false filing status.

34. The EITC is a refundable tax credit available to certain low-income working people. The amount of the credit is based on the taxpayer's income, filing status, and claimed number of dependents. The requirements for claiming the EITC are set forth in 26 U.S.C. § 32 and the accompanying Treasury Regulations.

35. Because the EITC is a refundable credit, claiming an EITC can, in certain circumstances, reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a payment from the U.S. Treasury.

36. Due to the method used to calculate the EITC, an individual can claim a larger EITC by claiming multiple dependents and, for certain income ranges, individuals with higher earned income are entitled to a larger credit than those with lower earned income. The amount of the credit increases as income increases between \$1 and \$13,650, and decreases as income increases beyond \$17,830. Some tax preparers who manipulate reported income to maximize the EITC refer to this range of earned income corresponding to a maximum EITC as the "sweet spot" or "golden range." For tax year 2014, the maximum EITC was \$6,143 and was available to eligible individuals with three dependent children who earned income between \$13,650 and \$17,830.

37. Because of the way the EITC is calculated, reporting more income, up to a certain point, allows customers to receive a larger refundable credit. Similarly, claiming losses to offset higher income to decrease the total reported income and to fall within the "sweet spot" allows customers to claim a larger refundable credit.

38. Because of the potential for abuse in claiming the EITC, Congress has authorized the Secretary of the Treasury to impose "due diligence" requirements on federal tax return preparers claiming the EITC for their customers. *See* 26 U.S.C. § 6695(g). These "due diligence" requirements obligate the tax return preparer to make "reasonable inquiries" to ensure the customer is legitimately entitled to the EITC. The tax return preparer may not "ignore the implications of information furnished to, or known by, the tax return preparer, and must make reasonable inquiries if the information furnished to the tax return preparer appears to be

incorrect, inconsistent, or incomplete.” *See* 26 C.F.R. § 1.6695-2 (2011). Tax return preparers must also document their compliance with these requirements and keep that documentation for three years. *Id.*

39. To document compliance with the due diligence requirements, tax return preparers must complete either the “Paid Preparer’s Earned Income Credit Checklist” (Form 8867) and record and maintain other documentation verifying customer eligibility for the EITC.

40. To solicit business, Clarke and his businesses use enticements of higher refunds based on a potential customer’s number of children.

41. Unscrupulous tax return preparers, such as Rodriguez, at Clarke’s stores exploit the rules by claiming on their customers’ returns bogus dependents and/or by reporting phony business income or expenses on Schedule C. To bring the customer’s reported earned income within the “sweet spot” for the EITC, and depending on a customer’s actual income, Clarke’s preparers concoct businesses to fabricate income to fraudulently increase customers’ reported earned income, or claim bogus business expenses to fraudulently decrease customers’ reported earned income.

42. Reporting bogus income not only improperly enables Clarke’s preparers to falsely claim the EITC, but to fraudulently claim other credits as well, including the Child Tax Credit and American Opportunity Tax Credit.

43. Because of the amount of the EITC credit, these preparers frequently charge higher fees in connection with their preparation of a bogus Schedule C.

44. As an LBS franchisee in 2012 and 2013, Clarke’s preparers attended training provided by LBS. LBS provided preparers with specific instructions or cheat sheets that provide predetermined answers to input into the tax return preparation software to claim the EITC on

customers' returns, and dictate what boxes to check on the IRS Form 8867, "Paid Preparer's Earned Income Credit Checklist." These instructions – and the predetermined answers – demonstrate that the actual information (if any) provided by customers is disregarded by preparers, who simply answer the questions in the manner that LBS instructed in order to claim the EITC for customers who are not actually eligible for the credit (or for the inflated amount claimed by Clarke's LBS stores).

45. Because the Forms 8867 EITC Checklists that Clarke's LBS stores generated are based on instruction sheets providing pre-determined answers showing that customers are eligible for the EITC, these forms, maintained in customers' files, appear to be complete, accurate, and based on statements and documentation provided by customers. In reality, because the answers are pre-determined, the only function of the Form 8867 EITC Checklist completed by Clarke's LBS stores is to give the illusion that LBS comply with the due diligence requirements.

46. The conduct of Clarke's preparers, including Rodriguez, shows an intentional disregard for the tax laws and in particular for the due diligence requirements, and demonstrates their unwillingness to comply with the requirements. Not only do Clarke's tax return preparers, including Rodriguez, fail to adhere to the due diligence requirements, but they are falsifying information in order to maximize the EITC for their customers.

Intentionally Claiming an Improper Filing Status

47. Clarke's tax return preparers, including Rodriguez, also routinely prepare tax returns reporting false filing status. Specifically, Head of Household filing status is claimed on customers' tax returns to increase the amount of the customers' standard deduction, even though Clarke's preparer is aware that the customer does not qualify for Head of Household filing status.

48. Clarke's tax return preparers, including Rodriguez, frequently file separate returns for married couples who are not living apart, improperly using the "head-of-household" or "single" filing status, both of which are unavailable to married couples living together. Often, this is an attempt to increase the claimed EITC; a couple with at least two children who, together, would otherwise receive a single EITC refund of \$5,000 by properly claiming "married, filing jointly," may instead each receive a refund of \$3,000 or more, by both falsely claiming Head of Household or single status and each claiming at least one dependent.

49. Notably, the manager of Clarke's Charlotte, NC store admitted that in 2012 LBS trained preparers to instruct a married couple, not living apart from one another, to have one spouse file as head-of-household and the other as single in order for each to claim a higher EITC than the couple would have been properly entitled to. This also enabled Clarke's stores to charge more fees to the married customers.

50. Additionally, Clarke's tax return preparers, including Rodriguez, claim dependents that do not actually qualify as dependents on customers' tax returns, and then claim Head of Household filing status to increase the customers' refunds through both the false filing status and fraudulent EITC claim based on the bogus dependents.

Fabricated Business Income and Expenses

51. Clarke's tax return preparers, including Rodriguez, also prepare tax returns reporting non-existent businesses on bogus Schedules C. On some returns, Tax MD reports substantial purported business income, but little or no business expenses. On other returns, Tax MD reports substantial business expenses, but little or no business income. The determining factor is whether Tax MD needs to inflate a customer's income (or create income when the customer has none) to bring the income within the EITC range or "sweet spot," or to lower the

taxable income of a customer who has actual income (such as wages reported on a W-2) in order to either bring the income within the EITC “sweet spot” or simply to create a phony business loss to offset the customer’s wages and fraudulently reduce the customer’s income tax liability.

Bogus Itemized Deductions

52. Clarke’s tax return preparers, including Rodriguez, commonly report bogus itemized deductions on Schedule A to reduce customers’ taxable income. As with bogus Schedule C business losses, the bogus Schedule A deductions are typically reported on the tax returns of customers who have more than \$24,000 in wage income reported on Forms W-2 in order to understate the customer’s income for purposes of generating a higher EITC claim or claim a higher tax refund.

53. Clarke’s tax return preparers, including Rodriguez, often prepare tax returns for customers which include false claims for purported unreimbursed employee business expenses. Section 162 of the Internal Revenue Code governs trade or business expenses. These returns often claim deductions for fabricated, fraudulently inflated, and/or non-qualifying business expenses. IRS Publication 529 (which is readily available and easy to understand) provides examples of qualifying business expenses, including “Union dues and expenses” and “Work clothes and uniforms if required and not suitable for everyday use.” *See* IRS Publication 529 (2013) (available online at: <http://www.irs.gov/publications/p529/ar02.html>). Publication 529 also provides examples of expenses that do not qualify as business expenses, including “Commuting expenses,” “Lunches with co-workers,” “Meals while working late,” and “Personal, living, or family expenses.”

54. If customers respond, for example, that they drove to and from work, Clarke’s tax return preparers, including Rodriguez, then claim a non-qualifying expense for commuting

mileage on the customers' returns. Clarke's tax return preparers, including Rodriguez, thus coax customers to provide information that Clarke's preparers can manipulate to make bogus claims on customers' tax returns.

55. For example, to create a phony Schedule A for customers, Clarke's preparers ask customers how many miles they drove their car that year, how much they spent on gas and tolls for the year, and how much they spend on lunch each day. Based on the information provided by customers for these non-deductible expenses, Clarke's preparers would fabricate purported expenses for unreimbursed employee business expenses on a Schedule A. Clarke's tax return preparers, including Rodriguez, frequently report on Forms Schedule A that customers had qualifying expenses such as unreimbursed employee business expenses, medical expenses, state and personal property taxes, charitable contributions, and uniforms, when the customer incurred no such expenses.

56. Clarke's tax return preparers, including Rodriguez, commonly improperly deduct vehicle expenses on the Forms Schedule A attached to customers' returns. Clarke's preparers frequently report that a customer used a personal vehicle for a business purpose and that the customer drove tens of thousands of miles for work. In reality, the majority of this purported mileage is for commuting from home to work, which is not a qualifying vehicle expense. Clarke's preparers also inflate the customer's actual commuting mileage on the tax return. Therefore, not only are Clarke's preparers claiming an improper, non-qualifying expense, but they are falsely inflating the mileage number in order to further increase the bogus deduction on customers' tax returns.

57. Clarke's tax return preparers, including Rodriguez, also report fabricated or inflated charitable contributions on customers' Schedules A.

Bogus Education Credits

58. Another common practice at Clarke's tax preparation stores is fabricating education expenses and falsely claiming refundable education credits, including the American Opportunity Education Credit, on customers' federal income tax returns. Unlike many tax credits, a refundable tax credit entitles qualifying taxpayers to receive refunds even if they have no tax liability. Clarke's tax return preparers, including Rodriguez, routinely and repeatedly claim false education credits on the tax returns of customers who did not attend college and had no qualifying education expenses, in order to fraudulently reduce their customers' taxable income and generate a larger bogus refund (and increasing the fees that they charge to customers).

Unconscionable and Undisclosed Fees

59. Clarke and his businesses charge unconscionably high fees to prepare tax returns, mostly through added, fees which are typically charged without the customers' knowledge.

60. Clarke's preparers intentionally deceive customers regarding the fees charged for the preparation of tax returns.

61. Clarke's preparers inform customers that the tax return preparation fees are hundreds of dollars lower than the amount actually charged to the customer. Clarke's preparers charge additional fees for each form and schedule (such as a Schedule C or a Form 8863 for an education credit) attached to the Form 1040 tax return. These fees result in a total tax return preparation fee much higher than the amount advertised.

62. The high fees (and fee structure, which encourages the addition of unnecessary and often improper forms and schedules to the Form 1040) are a strong incentive for Clarke's

DSMs to encourage his preparers to prepare and file fraudulent returns claiming excessive refunds based on bogus claims and associated forms and schedules.

63. Because Clarke's preparers targets low to moderate income individuals, the high fees frequently can pose a significant financial hardship for customers. Customers may be required to pay back the improper refunds that they receive due to Tax MD's fraudulent tax return preparation. Because Tax MD deducts its high fees, sometimes \$1,000 or more, directly from the refund, customers required to return these improper refunds to the government must also return the portion subtracted as fees. Thus, customers are then out-of-pocket the high fees charged by Tax MD. Additionally, fees are unconscionable for the basic – albeit fraudulent – tax returns being prepared for these customers, who are often eligible for free tax return preparation elsewhere.

64. Clarke's preparers also routinely and intentionally fail to disclose to customers all fees charged. When at LBS, Clarke's preparers were trained how to present forms to customers to sign, including a form acknowledging the fees charged, without allowing the customer to closely review or understand the forms they are signing. Alternatively, Clarke's preparers tell customers one amount for fees and then later increase the fees without the customers' knowledge or consent. Customers are often surprised to learn that the refund requested on their return is hundreds if not thousands of dollars more than the refund amount that they received after the fees were deducted.

65. Customers often complain that they did not know in advance that they would be charged exorbitant fees. Clarke's preparers provide customers with the amount of the refund that they will be receiving, which is much less than the refund amount that was actually claimed on their tax return (which is not disclosed to customers at the time their tax returns are prepared).

66. To the extent that customers are advised that additional fees may be charged per each additional form, they are not advised upon completion of the preparation of the tax return the total amount of those fees.

67. The fees Clarke's customers are charged are not paid by customers at the time of the preparation of their tax returns, but instead are subtracted from the customers' tax refund. By doing so, Clarke's preparers are able to conceal from unsuspecting customers the actual cost for the preparation of the tax return. Customers typically do not discover that Clarke's store charged much more than the customers anticipated for the preparation of their tax return until the customers receives a copy of the tax return, if a copy is received at all, and compares the amount of the refund claimed on the return to the amount of the refund check the customer receives.

68. Tax refunds issued to customers are directed from the IRS to a third-party processor's bank account. The processor then deducts and transmits the fees owed to Clarke's store for preparing the tax return, and directs the remaining refund amount to the customer through direct deposit. The direct deposit does not state the amount of fees deducted, which makes it easy for Clarke's stores to conceal, inflate and/or lie about their fees.

69. Clarke stores' practice of charging unconscionable and undisclosed fees interferes with the administration and enforcement of the internal revenue laws. Potential customers go to Clarke's stores believing that they will be charged a reasonable fee for the honest and accurate preparation of their tax return. Instead, Clarke's stores charges unconscionable fees (based on the inclusion of additional forms and schedules that frequently make fabricated claims designed to fraudulently increase the customers' refund), that are subtracted from customers' falsely inflated refunds, without full disclosure to the customer. Such behavior erodes consumer

confidence in tax return preparers and dissuades taxpayers from seeking professional assistance with the preparation of their federal tax returns.

**Failure to Provide Customers with Copies of their Completed Tax Returns
in Violation of 26 U.S.C. § 6701(a)**

70. Clarke's tax return preparers, including Rodriguez, commonly fail to provide customers with copies of their completed tax returns. The completed tax return, filed with the IRS, shows the refund that Clarke's store is claiming for the customer. By giving a copy of the tax return to the customer, the customer is able to determine the amount of fees charged by Clarke's store by subtracting the amount of the refund that the customer actually receives from the amount of the refund claimed on the tax return. The failure of Clarke's store to provide a copy of a customer's completed tax return is part of Clarke's strategy to conceal the actual fees from their customers.

71. Failing to provide a customer with a copy of the completed tax return also violates 26 U.S.C. § 6107(a), which requires that a tax return preparer "shall furnish a completed copy of [a tax return or claim for refund] to the taxpayer not later than the time such return or claim is presented for such taxpayer's signature."

**Examples of the Widespread and Common Fraud at
Clarke's Tax Preparation Stores**

72. The IRS examined (and is continuing to examine) the tax returns of many of Clarke's customers, and the government interviewed other customers. The following examples illustrate the conduct described above.

Clarke Customers 1 and 2

73. Customers 1 and 2 ("C1 and C2") of Palm Coast, Florida are married, and went to Clarke's LBS store then located at 2013 Wellfleet Ct. Orlando, Florida to have their joint 2012

and 2013 federal income tax returns prepared. C1 stated that the preparer never gave him or his wife (C2) a copy of either tax return.

74. For C1 and C2's 2012 tax return, Rodriguez reported on a Schedule C that C1, who was not self-employed, incurred more than \$16,000 in self-employment expenses that he did not incur.

75. For the C1 and C2's 2013 tax return, the preparer itemized deductions for them and prepared a Schedule A reporting false employee business expenses. According to the Schedule A fabricated by the preparer, C1 and C2 incurred more than \$18,000 in unreimbursed employee expenses related to their W-2 employment. But, all business expenses C1 and C2 incurred were fully reimbursed in 2013.

76. These fabrications (identified in ¶¶74-75) resulted in the C1 and C2's tax returns underreporting their taxable income in 2012 and 2013.

77. Following an IRS examination of the C1 and C2's 2012 and 2013 tax returns, they had to pay more than \$3,500 in taxes.

Clarke Customer 3

78. Customer 3 ("C3") of Mebane, North Carolina had her 2013 and 2014 federal income tax returns prepared at Clarke's Tax MD store located at 1003 W Main St. Haw River, North Carolina. The preparer falsely reported that C3 owned and operated a babysitting business in 2013 and a home health care business in 2014. C3 was not self-employed for either of these years and did not tell the Tax MD preparers that she was. Nevertheless, Tax MD preparers reported self-employment losses of more than \$15,000 in 2013 and \$13,000 in 2014 for fictitious businesses on C3's tax returns without her permission which resulted in the underreporting of C3's income by these amounts for these years.

Clarke Customer 4

79. Customer 4 (“C4”) of Burlington, North Carolina J.E. of Margate, Florida went to Clarke’s Tax MD store located at 1003 W Main St. Haw River, North Carolina to have his 2014 federal income tax return prepared.

80. C4 informed the Tax MD preparer that he earned about \$1,000 doing landscaping jobs and drove less than 1,000 miles in total to get to and from his job sites. The preparer did not report these figures on the Schedule C included on C4’s 2014 tax return. Instead, the preparer falsely reported that C4 drove more than 12,000 miles for landscaping jobs in 2014 and falsely inflated his income to more than \$5,000. As a result of the preparer’s false reporting, C4’s income tax return underreported the income he received in 2014.

Clarke Customers 5 and 6

81. Customers 5 and 6 (“C5 and C6”) of Ocoee, Florida had their 2011 and 2012 federal income tax returns prepared at Clarke’s LBS store then located at 2013 Wellfleet Ct. Suite 2 Orlando, Florida.

82. For the 2011 return, Ruby Rodriguez falsely reported that C5 owned and operated a pressure washing business. For the 2012 return, the LBS preparer falsely reported that C5 owned and operated a painting service. C5 was not self-employed in either 2011 or 2012.

83. For each of these years, the LBS preparer reported business losses of more than \$8,000 in 2011 and more than \$23,000 in 2012. These fabricated losses resulted in an underreporting of the C5 and C6’s income by these amounts.

84. Following an examination of their tax returns for 2011 and 2012, C5 and C6 owed more than \$9,000 as a result of Clarke’s LBS store reporting these false expenses.

Clarke Customers 7 and 8

85. Customers 7 and 8 (“C7 and C8”) of Boca Raton, Florida had their 2012 federal income tax return prepared by Rodriguez at Clarke’s LBS store then located at 2013 Wellfleet Ct. Orlando, Florida.

86. Rodriguez falsely reported more than \$26,000 in unreimbursed employee business expenses on the C7 and C8’s 2012 tax returns without their knowledge. Indeed, C7 and C8 incurred no such expenses. As a result of Rodriguez reporting these fabricated expenses, C7 and C8 owed more than \$4,000 in tax for 2012.

Clarke Customer 9

87. Customer 9 (“C9”) of Orlando, Florida went to Clarke’s LBS store then located at 2013 Wellfleet Ct. Orlando, Florida to have her 2011 tax return prepared. After preparing her tax return, Clarke’s preparer issued C9 a copy.

88. After C9 returned home from LBS she reviewed her copy and noticed that her income did not appear correct and her return claimed an education credit for which she knew she was not eligible. The next day C9 returned to LBS and spoke with the manager “Ruby.” Ruby told C9 that human error was the cause of the mistaken education credit claimed on her return; however, C9 should keep it on her return because she will get a higher refund, and the IRS only audits 1 out of 1,000 tax returns. C9 subsequently filed a complaint with the IRS about LBS’s actions.

Clarke Customer 10

89. Customer 10 (“C10”) of Orlando, FL had her 2014 federal income tax return prepared at Clarke’s Tax MD store located at 2013 Wellfleet Ct. Orlando, Florida. Although

Ruby Rodriguez is listed as the preparer of this tax return, C10 never met her. Customer 10 said that a person named Johanna prepared her return.

90. The Tax MD preparer fraudulently claimed more than \$6,000 in unreimbursed employee expenses on C10's 2014 tax return and reported more miles than C10 actually drove for work on the return. Specifically, the Tax MD preparer reported more than \$6,000 in parking fees, tolls, and overnight travel expenses on C10's return. C10 did not incur any such expenses and did not tell her preparer that she did. In addition, C10 did travel throughout Florida looking for work in 2014; however, she did not drive more than 25,000 miles which is the amount of miles the Tax MD preparer falsely reported on her return.

91. The preparer's bogus claims for C10's unreimbursed employee expenses resulted in underreporting her income by at least \$6,000 in 2014.

Clarke Customers 11 and 12

92. C11 and C12 of Orlando, Florida their 2011, 2012, 2013, and 2014 federal income tax returns prepared at Clarke's then LBS store (2011-2012) and later his Tax MD store (2013-2014) located at 2013 Wellfleet Ct. Orlando, Florida. C11 and C12 have been married since 2007, always went to LBS and Tax MD together, and always told their tax return preparer at LBS and Tax MD that they were married. However, the LBS and Tax MD preparers (including Ruby Rodriguez) prepared separate tax returns for C11 and C 12 for 2011, 2012, and 2013, falsely claiming head of household filing status on C11's tax returns and single on C12's tax returns.

93. Ruby Rodriguez prepared C11's and C12's 2012 and 2013 tax returns. When the C11 and C12 had their 2013 tax returns prepared, Rodriguez falsely told them that they could file

separate tax returns because they each owned real property, and could each be head of household for that property.

94. When preparing C11's and C12's 2011-2013 returns, the preparers questioned the them about expenses, such as cell phone bills and tolls driving to and from work. Using this information about C11's and C12's personal expenses, LBS and Tax MD preparers falsely claimed unreimbursed employee business expenses on C11's 2011, 2012, and 2013 tax returns in the amounts of \$8,443, \$15,415, and \$13,097. On C11 and C12's joint 2014 tax return, the preparer falsely claimed \$26,464 in unreimbursed employee business expenses. C11 and C12 were unaware that separate returns had been prepared for them and that the preparers at LBS and Tax MD had reported fabricated employee business expenses.

95. As a result of improperly filing separate tax returns and fabricating deductions on the C11's and C12's 2011, 2012, 203, and 2014 tax returns, LBS and Tax MD claimed Earned Income Tax Credits in high amounts for which C11 and C12 did not qualify, and claimed more than \$27,000 in bogus refunds.

Clarke Customer 13

96. Customer 13 ("C13") of Saint Cloud, Florida had his 2013 and 2014 federal income tax returns prepared at Clarke's Tax MD located at 2013 Wellfleet Ct., Orlando, Florida. C13 worked and received a pension in 2013 and 2014, and provided all records of his income to the tax return preparer.

97. On the Schedule A attached to C13's 2013 tax return, the preparer falsely claimed that C13 incurred \$13,647 in unreimbursed employee business expenses, an amount that exceeded the wages that he received from his job by more than \$7,000. These fabricated employee business expenses included \$8,756 in vehicle expenses for a purported 15,498 miles

driven for his job, \$2,876 for parking fees, tolls, and transportation, and \$2,015 for overnight travel expenses. C13 did not incur any such expenses and did not tell the preparer that he did.

98. Similarly, on C13's 2014 tax return, the preparer falsely claimed that C13 incurred \$28,700 in unreimbursed employee business expenses, an amount that exceeded the wages that he received from his job by more than \$7,000. These fabricated employee business expenses included \$13,805 in vehicle expenses for a purported 24,651 miles driven for his job. More than \$14,000 of the purported business expenses were not accounted for on the tax return. C13 did not incur any unreimbursed employee business expenses and did not tell the preparer that he did.

99. The preparers never asked C13 whether he drove his car for work or how many miles he drove it for work. Even assuming that the mileage reflects commuting miles, C13 lived approximately 8 to 10 miles from his job and, according to C13, it was "impossible" for him to drive the number of miles reported on his tax returns.

100. The preparer also falsely claimed on C13's 2013 tax return that C13 incurred medical expenses of \$26,732. The preparer never asked C13 about his medical expenses, all of which were covered by his insurance. C13 never gave the preparer any medical bills and never gave her an estimate of how much he spent on medical costs.

101. After C13's 2014 tax return was prepared, the preparer initially informed C13 that his refund would be \$5,600. However, the preparer left the room and came back a few minutes later to inform C13 that his refund would be \$5,200, with no explanation for why the amount changed.

102. As a result of the fabricated claims, Tax MD claimed bogus refunds in the amounts of \$1,287 and \$5,709, respectively, on C13's 2013 and 2014 tax returns.

Clarke Customer 14

103. Customer 14 (“C14”) of Orlando, Florida had her 2014 federal income tax return prepared at Clarke’s Tax MD located at 2013 Wellfleet Ct. Orlando, Florida. Customer 14 went to Tax MD because she overheard coworkers talking about the store and saw an advertisement on her way to work. C14 provided the preparer with her Form W-2 and social security cards for her children.

104. The preparer told C14 “this is what we can do for you” and stated that there was a standard deduction for law enforcement personnel, and that C14, a corrections officer, qualified for that deduction. The preparer did not explain to C14 what the “standard deduction” represented or the amount of the purported deduction. The preparer did not ask C14 about any specific expenses that C14 had for her job. As a corrections officer, the only expenses C14 incurs are for shoes, uniforms, and dry cleaning, and C14 assumed that this is what the “standard deduction” covered. C14 also has to travel to trainings occasionally for her job, but is usually provided with a government vehicle to travel to those trainings. When she has to use her own vehicle, C14 is reimbursed at the standard mileage rate.

105. The preparer falsely claimed on the Schedule A attached to C14’s tax return that she incurred \$25,539 in unreimbursed employee business expenses. C14 had no such expenses, did not tell the preparer that she had any such expenses. C14 believed, based on what the preparer told her, that she was entitled to a “standard deduction” of an unknown amount as a law enforcement officer, and did not know that the preparer claimed this amount of phony unreimbursed business expenses on her tax return.

106. The preparer quoted C14 a price to have her tax return prepared. When C14 balked at the high price, the preparer later called her to offer a lower price. The preparer later

called back again to tell C14 that the preparer “found more money” for her. Even at the price she paid, C14 believed the fees to be “astronomical” because her tax return, based only on a Form W-2 from her job, should be easy to prepare.

107. As a result of the fabricated expenses, Tax MD claimed a bogus refund in the amount of \$2,433 on C14’s 2014 tax return.

INVESTIGATIONS HAVE NOT DETERRED CLARKE AND RODRIGUEZ

108. In April 2013, the IRS notified Patrick Clarke that the IRS commenced an investigation into Clarke’s tax return preparation business to determine his involvement with tax avoidance transactions that violate Internal Revenue laws. In October 2014, the IRS notified Rodriguez that the IRS commenced an investigation into her involvement with the preparation of tax returns that violated Internal Revenue laws. Despite Clarke and Rodriguez knowing of their respective investigations, Clarke’s preparers, including Rodriguez, have continued to prepare and file fraudulent tax returns.

109. To the extent that Clarke and Rodriguez may claim that they do not know of the fraud committed by preparers at their tax return preparation stores, their ignorance is deliberate, and they, intentionally ignore and turn a blind eye to complaints documenting and investigations into their fraudulent practices.

110. Clarke and Rodriguez have little incentive to stop the wrongdoing because they directly profit from the misconduct at their tax return preparation stores by taking a percentage of all gross revenues. Accordingly, Clarke and Rodriguez promote a culture that favors volume and profits over accuracy and integrity, and create an environment where false tax return preparation and violations of federal tax laws flourish.

HARM CAUSED BY THE DEFENDANTS

111. Clarke's and Rodriguez's knowledge and encouragement of false tax return preparation at their tax return preparation stores, false and misleading statements directed to customers and potential customers, and culture favoring volume and profits over accuracy and integrity have harmed the public and the United States Treasury. These practices harm the public because Clarke's tax return preparers, including Rodriguez, prepare false or fraudulent tax returns that understate their customers' correct income tax liabilities and illegally cause customers to incorrectly report their federal tax liabilities and underpay their taxes.

112. The false tax return preparation practices of Clarke's tax return preparers, including Rodriguez, harm the United States Treasury by causing lost tax revenue. Based on the IRS's completed examinations of tax returns prepared at Clarke's stores, the average tax deficiency per examined tax return, and the total number of tax returns prepared at Clarke's stores, the IRS estimates the tax loss caused by Clarke's stores is more than one million dollars.

113. Clarke's customers have also been harmed because they relied on Clarke's preparers to prepare proper tax returns. Instead, customers' tax returns substantially understated their correct tax liabilities after paying unconscionably high fees to have their tax returns prepared. As a result, many customers, who are often low-income taxpayers, now face large income tax debts and may be liable for penalties and interest.

114. Customers are harmed by the unconscionably high and frequently undisclosed fees tied to anticipated tax refunds. These fees are subtracted from the erroneous refunds that result from the fraudulent tax return preparation perpetrated by Clarke and his businesses. When the IRS conducts audits or examinations of customers and seeks repayment of these erroneous refunds, the customers are liable for the repayment of those refunds. Not only do customers face

the hardship associated with repayment of erroneous refunds resulting from the actions of Clarke's preparers, but customers may also have to repay the portion of the refund that Clarke and his businesses subtracted in fees. Customers may also have to pay additional fees to other tax return preparers to file amended tax returns to correct the fraudulent tax returns prepared and filed by Clarke and his businesses.

115. The misconduct of Clarke and Rodriguez further harms the United States and the public by requiring the IRS to devote scarce resources to detecting the fraud and assessing and collecting lost tax revenues from Clarke's customers. IRS employees have spent thousands of hours conducting audits or examinations. Consequently, identifying and recovering all lost tax revenues resulting from Clarke's and his businesses' fraudulent and illegal activities may be impossible.

116. The conduct of Clarke and Rodriguez also harms honest tax return preparers who unfairly lose business to Clarke and his businesses due to Clarke's and Rodriguez's willingness to break the law. Customers often have their returns prepared at Clarke's businesses because the preparers promise the maximum refund, and deliver by fabricating claims and deductions on customers' returns.

117. Finally, Clarke's and Rodriguez's misconduct harms the public at large by undermining public confidence in the federal tax system and encouraging widespread violations of the internal revenue laws.

118. The harm to the government and the public will continue, and likely increase, unless Clarke and Rodriguez are enjoined because—given the seriousness and pervasiveness of their illegal conduct—without an injunction, Clarke and Rodriguez, and those acting at their direction are likely to continue preparing false and fraudulent federal income tax returns for

customers. An injunction will serve the public interest because it will put a stop to Clarke's and Rodriguez's illegal conduct and the harm that such conduct causes the United States and its citizens.

**COUNT I
INJUNCTION UNDER 26 U.S.C. § 7407**

119. Section 7407 of Title 26 authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. § 6694 or § 6695. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court further finds that a narrower injunction (i.e., prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a tax return preparer. The prohibited conduct justifying an injunction includes, among other things, the following:

- a. Engaging in conduct subject to penalty under 26 U.S.C. § 6694(a), which penalizes a return preparer who prepares a return or claim for refund that contains an unreasonable position and the return preparer knew (or reasonably should have known) of the position;
- b. Engaging in conduct subject to penalty under 26 U.S.C. § 6694(b), which among other conduct, penalizes a return preparer who recklessly or intentionally disregards IRS rules or regulations;
- c. Engaging in conduct subject to penalty under 26 U.S.C. § 6695(g), which penalizes a return preparer who fails to comply with the statutory due diligence requirements;
- d. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or
- e. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

120. Section 7701(a)(36) of Title 26 defines tax return preparer to include not only the individual who physically prepares a tax return for compensation, but also anyone “who employs one or more persons” to prepare tax returns for compensation.

121. Clarke and Rodriguez, as shown above in paragraphs 1 through 118, are tax return preparers who have repeatedly and continually prepared or submitted returns or portions of returns (or, through Tax MD, Inc. and V.I.P Tax Services, Inc., employed or managed others who prepared or submitted returns or portions of returns) that contain unreasonable positions and substantially understate the liability for tax on the return. Clarke, as an owner, and Rodriguez, as a manager of one of Clarke’s stores, knew or should have known that the preparers at Clarke’s stores repeatedly and continually prepared or submitted returns or portions of that contain unreasonable positions and substantially understate the liability for tax on the return.

122. Clarke, Rodriguez, and those acting in concert with them and at their direction, including but not limited to preparers Clarke and Rodriguez employ through Tax MD, Inc. or V.I.P Tax Services, Inc., (hereinafter “Clarke, Rodriguez, and their preparers”) have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal tax returns that understate their customers’ liabilities based on unrealistic, frivolous and reckless positions. Clarke, Rodriguez, and their preparers, through the actions described above, recklessly or intentionally disregard IRS rules or regulations.

123. Clarke, Rodriguez, and their preparers have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6695. The Treasury regulations promulgated under 26 U.S.C. § 6695(g) prohibit a return preparer from claiming the EITC without first conducting proper due diligence and documenting his or her compliance with the due diligence requirements. *See* 26 C.F.R. § 1.6695-2 (2011). Clarke and Rodriguez knew or should have

known that their managers, preparers, and employees circumvent these due diligence requirements and to ignore or disregard the information provided by customers.

124. Clarke, Rodriguez, and their preparers collectively fail to comply with the due diligence requirements for the EITC which violates Treasury Regulations and their willingness to falsify information to obtain the EITC for their customers shows a reckless and/or intentional disregard of IRS rules and regulations.

125. Clarke, Rodriguez, and their preparers have continually and repeatedly prepared federal income tax returns that claim the EITC for customers where they and those acting in concert with them and at their direction have not conducted, let alone documented, the required due diligence procedures.

126. Clarke, Rodriguez, and their preparers also fail to comply with 26 U.S.C. § 6695(a), which requires that a tax return preparer provide a copy of the completed tax return to the taxpayer.

127. Clarke's, Rodriguez's, and their preparers' collectively violate 26 U.S.C. §§ 6694 and 6695 on a continual and repeated basis. This conduct falls within 26 U.S.C. § 7407(b)(1)(A), and thus are subject to an injunction under 26 U.S.C. § 7407.

128. The continual and repeated fraudulent or deceptive conduct of Clarke, Rodriguez, and their preparers substantially interferes with the proper administration of the internal revenue laws falls within 26 U.S.C. § 7407(b)(1)(D), and thus is subject to an injunction under 26 U.S.C. § 7407.

129. Clarke, Rodriguez, and their preparers have continuously and repeatedly guaranteed refunds to customers and guaranteed the allowance of tax credits, including but not

limited to the EITC. This conduct falls within 26 U.S.C. § 7407(b)(1)(C), and thus is subject to an injunction under 26 U.S.C. § 7407.

130. If Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc. are not enjoined from all tax preparation, they and those acting in concert with them and at their direction are likely to continue to prepare and file false and fraudulent tax returns.

131. Clarke's, Rodriguez's, and their preparers' continual and repeated conduct subject to an injunction under 26 U.S.C. § 7407, including their continual and repeated fabrication of expenses and deductions, is so flagrantly illegal and so egregious that it demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Clarke's, Rodriguez's, and their businesses' (Tax MD, Inc. and V.I.P Tax Services, Inc.) interference with the proper administration of the internal revenue laws. Accordingly, Clarke and Rodriguez should be permanently barred from acting as a federal tax preparer, and from owning, operating, managing, controlling, licensing, franchising, or working for a tax return preparation business.

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

132. Section 7408 of Title 26 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either 26 U.S.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

133. Section 6701(a) of Title 26 penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having reason to believe) 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 will result in an understatement of another person's tax liability. Under 26 U.S.C. § 6701(c)(1), the

term “procures” includes “ordering (or otherwise causing) a subordinate to do an act,” as well as “knowing of, and not attempting to prevent, participation by a subordinate in an act.”

134. Clarke, Rodriguez, and their preparers, through the actions detailed above in paragraphs 1 through 118, caused the presentation and preparation of false, fraudulent, and abusive tax returns and other documents. Clarke, Rodriguez, and their preparers prepare, assist, and/or advise with respect to the presentation and preparation of federal tax returns for customers that they know will understate their correct tax liabilities, because Clarke, Rodriguez, and their preparers knowingly prepare, assist, and/or advise with respect to the presentation and preparation of returns claiming bogus expenses and deductions. Clarke, Rodriguez, and their preparers procured and assisted the preparation of false and fraudulent tax returns by encouraging the filing of tax returns they knew, or should have known, were false or fraudulent, and by employing, training, and supervising tax return preparers engaging in tax fraud. Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) have thus engaged in conduct subject to a penalty under 26 U.S.C. § 6701.

135. Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) are likely to continue violating the law absent an injunction. Tax return preparation is Clarke’s and Rodriguez’s primary source of revenue. To maximize that income, Clarke and Rodriguez instruct and direct their managers and preparers to prepare false returns. That fraudulent conduct, in turn, gives Clarke and Rodriguez a competitive edge over law-abiding preparers. It also provides a means for Clarke and Rodriguez to further exploit their customers by charging them unconscionably high fees, Clarke’s and Rodriguez’s conduct simultaneously and callously exposes their customers to possible civil and criminal liability.

136. If the Court does not enjoin Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc., they are likely to continue to engage in conduct subject to penalty under 26 U.S.C. § 6701. The preparation of tax returns claiming improper expenses and deductions by Clarke, Rodriguez, and their preparers is widespread over many customers and tax years. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

Count III
Injunction and Disgorgement under 26 U.S.C. § 7402(a)
Necessary to Enforce the Internal Revenue Laws

137. Section 7402 of Title 26 authorizes a district court to issue injunctions, orders, judgments, and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.

138. Clarke, Rodriguez, and their preparers, through the actions described above in paragraphs 1 through 118, including, but not limited to, intentionally understating their customers' tax liabilities and charging unconscionable and undisclosed fees for the preparation of federal tax returns that intentionally understate their customers' tax liabilities, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

139. Unless enjoined, Clarke, Rodriguez, and their preparers are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Clarke and Rodriguez are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by providing federal income tax refunds to individuals not entitled to receive them.

140. While the United States will suffer irreparable injury if Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) are not enjoined, Clarke, Rodriguez,

Tax MD, Inc., and V.I.P Tax Services, Inc. will not be harmed by being compelled to obey the law.

141. Enjoining Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm it causes the United States and the customers of Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc.

142. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

143. Clarke's, Rodriguez's, and their businesses' (Tax MD, Inc. and V.I.P Tax Services, Inc.) conduct, which substantially interferes with the enforcement of the internal revenue laws, caused the United States to issue tax refunds to individuals not entitled to receive them, and Clarke, Rodriguez, and their businesses (Tax MD, Inc. and V.I.P Tax Services, Inc.) have unjustly profited at the expense of the United States by subtracting their exorbitant fees from those refunds.

144. Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc. are not entitled to these ill-gotten gains. But for the conduct of Clarke, Rodriguez, and their preparers, these bogus refunds would not have been issued. The Court should enter an order under 26 U.S.C. § 7402(a) requiring Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc. to disgorge to the United States the gross receipts (in the form of fees subtracted from customers' tax refunds) that Clarke, Rodriguez, Tax MD, Inc., and V.I.P Tax Services, Inc. received for the preparation of federal tax returns.

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

A. That the Court find that Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. have continually and repeatedly engaged in conduct subject to penalty under

26 U.S.C. §§ 6694 and 6695, continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. from acting as a federal tax return preparer;

C. That the Court find that Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. 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;

D. That the Court find that Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc., and all those in active concert or participation with them, from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- (2) preparing or assisting in preparing federal tax returns that they know or reasonably should have known would result in an understatement of tax liability or the overstatement of federal tax refund(s) as penalized by 26 U.S.C. § 6694;
- (3) owning, operating, managing, working in, controlling, licensing, consulting with, or franchising a tax return preparation business;

- (4) training, instructing, teaching, and creating or providing cheat sheets, memoranda, directions, instructions, or manuals, pertaining to the preparation of federal tax returns;
- (5) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, 6701, or any other penalty provision in the Internal Revenue Code; and
- (6) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an order requiring Patrick Clarke and Ruby Rodriguez to immediately and permanently close, because of the pervasive fraud, all tax return preparation stores that they own directly or through Tax MD, Inc., V.I.P Tax Services, Inc. or any other entity, and whether those stores do business as Tax MD, V.I.P Tax Services, or under any other name;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an order appointing a receiver to sell all of the hard assets, such as computers (after any and all taxpayer information has been removed), electronics, and furniture, for all tax return preparation stores that Patrick Clarke and Ruby Rodriguez own directly or through Tax MD, Inc., V.I.P Tax Services, Inc. or any other entity, or any other entity, and whether those stores do business as Tax MD, V.I.P Tax Services, or under any other name;

H. That the Court, pursuant to 26 U.S.C. § 7402(a), enter an order prohibiting Patrick Clarke and Ruby Rodriguez, directly or through Tax MD, Inc., V.I.P Tax Services, Inc., and any other business from assigning, transferring, or selling any franchise agreement, independent contractor agreement, or employment contract related to Tax MD, Inc., V.I.P Tax Services, Inc., or any other tax return preparation business to which they or any entity under their control is a party;

J. That the Court, pursuant to 26 U.S.C. § 7402, enter an order requiring Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. to disgorge to the United States the gross receipts (the amount of which is to be determined by the Court) that Patrick Clarke, Ruby Rodriguez, Tax MD, Inc. and V.I.P Tax Services, Inc., received (in the form of fees subtracted from customers' tax refunds) for the preparation of tax returns that make or report false or fraudulent claims, deductions, credits, income, expenses, or other information that results in the understatement of taxes, prepared since 2011 at LBS Tax Services stores owned by Patrick Clarke, and Tax MD stores owned by Patrick Clarke, Ruby Rodriguez, Tax MD, Inc. or V.I.P Tax Services, Inc.;

K. That the Court, pursuant to 26 U.S.C. §§ 7402(a) and 7407, enter an order requiring Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. to contact, within 30 days of the Court's order, by United States mail and, if an e-mail address is known, by e-mail, all persons for whom Patrick Clarke, Ruby Rodriguez, and their managers, employees, and tax return preparers prepared federal tax returns or claims for a refund for tax years 2011 through 2014 to inform them of the permanent injunction entered against them, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court;

L. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an order requiring Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. to produce to counsel for the United States, within 30 days of the Court's order, a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services,

Inc. and their tax return preparers prepared federal tax returns or claims for a refund for tax years beginning in 2011 and continuing through this litigation;

M. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an order requiring Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. to produce to counsel for the United States, within 30 days of the Court's order, a list that identifies by name, address, e-mail address, and telephone number all principals, officers, managers, franchisees, employees, and independent contractors of Patrick Clarke, Ruby Rodriguez, LBS Tax Services, Inc., Tax MD, Inc. and VIP Tax Services, Inc. from 2011 to the present;

N. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. to provide a copy of the Court's order to all principals, officers, managers, franchisees, employees, and independent contractors of Patrick Clarke, Ruby Rodriguez, Tax MD, Inc. and VIP Tax Services, Inc. within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment of receipt of the Court's order for each person whom Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. provided a copy of the Court's order;

O. That the Court retain jurisdiction over Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc., and over this action to enforce any permanent injunction entered against them;

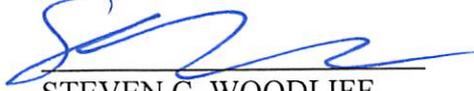
P. That the United States be entitled to conduct discovery to monitor the compliance of Patrick Clarke, Tax MD, Inc., Ruby Rodriguez, and V.I.P Tax Services, Inc. with the terms of any permanent injunction entered against them; and

Q. That the Court grant the United States such other and further relief, including costs, as is just and reasonable.

Dated: April 11, 2016

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