IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	
	)	Case No.
Plaintiff,	)	
	)	
v.	)	
	)	
FINECIA R. DRAPER,	)	
	)	
	)	
Defendant.	)	
	)	

COMPLAINT FOR PERMANENT INJUNCTION

The United States of America, by and through undersigned counsel, complains and alleges as follows:

1. The United States of America brings this action to restrain and enjoin defendant Finecia R. Draper from:

a. preparing, filing, or assisting in the preparation or filing of federal tax returns, amended returns, and other related documents and forms, including any electronically-submitted tax returns or tax-related documents, for any entity or person other than herself;

b. engaging in any activity subject to penalty under 26 U.S.C. §§ 6694 or 6695; and

c. engaging in any fraudulent or deceptive conduct which substantially interferes with the proper enforcement of the internal revenue laws.

2. This action is authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of a delegate of the Attorney General of the United States.

Jurisdiction and Venue

3. This Court has jurisdiction to hear this action pursuant to 28 U.S.C. §§ 1340, 1345 and 26 U.S.C. § 7402(a).

4. Venue is proper in this Court under 26 U.S.C. § 7407 and 28 U.S.C. § 1391(b) because defendant resides in and has her principal place of business in Simmesport, Louisiana, Avoyelles Parish, within this judicial district.

Draper's Background

5. Defendant Finecia R. Draper is a paid tax-return preparer who prepares federal income tax returns for customers. She is neither a public accountant nor a lawyer and has no professional licenses. Draper has taken a few classes on preparing individual income tax returns and has attended workshops given by the IRS. She has taken online courses offered by Main Street, the tax software provider that she uses to prepare tax returns for others.

6. In 2008, Draper applied for and received an Electronic Filing Identification Number (EFIN) from the IRS. She has been filing returns for others using that EFIN since that time.

7. Draper also applied for and received a Preparer Tax Identification Number (PTIN) from the IRS. She uses that PTIN to identify herself as the preparer on her customers' returns.

8. From 2008 through 2012, Draper provided tax preparation services through B&R's Unlimited Fashion ("Unlimited Fashion"), a sole proprietorship that she operated. Draper incorporated Unlimited Fashion as a limited liability company in 2012, and she continues to offer her services through that enterprise. Unlimited Fashion's principal place of business is 245 Moreau Street, Simmesport, LA 71369.

9. Draper prepares tax returns for customers residing in Louisiana and does not have a website for her business. Rather, Draper obtains customers through word-of-mouth referrals.

Defendant's Scheme

10. Draper has continuously, repeatedly, and knowingly prepared false federal income tax returns that understate her customers' tax liability and/or overstate the refund they claim utilizing several common schemes.

11. To understate her customers' tax liabilities and, if applicable, overstate the refund they claim, Draper prepares false Schedules C that are included with her customers' returns. Draper will often include a Schedule C for taxpayers who neither own nor operate a business. For taxpayers who are business owners, Draper will inflate their expenses. By including a Schedule C for taxpayers who are not business owners, and inflating or fabricating the business expenses her customers claim, Draper manufactures fictitious business losses. Those losses offset other taxable income, reduce the tax reported on the returns, and increase the refund her customers claim.

12. In addition to using false or inflated Schedule C losses to understate her customers' tax liability and/or inflate the refund they claim, Draper also uses fabricated items reported on Schedules C to include or increase the Earned Income Tax Credit (EITC) claimed on the returns she prepares. The EITC is a benefit for working taxpayers with low to moderate income. The amount of EITC for which a person may qualify increases in relation to the taxpayer's "earned income." Taxpayers with earned income above the EITC threshold cannot claim the credit. By fabricating Schedule C losses, Draper manipulates the earned income her customers report and claims the maximum EITC even if they are otherwise ineligible to claim

the credit. And, because the EITC is a refundable credit, the taxpayer can receive a refund for the amount claimed even when he or she reports no tax is owed. Many of the returns Draper prepares include fabricated or inflated EITC claims.

13. In addition to reporting bogus Schedule C losses to shield customers' income, Draper falsely assigns her customers dependents to bolster the EITC they claim. The EITC of a qualifying taxpayer increases with each additional dependent claimed, up to three dependents. Draper increases the EITC claimed on returns she prepares by falsely claiming more dependents than her customers actually have.

14. Draper's abuse of the EITC is not limited to inflating the amount of the credit her customers claim–she does not exercise due diligence to determine whether her customers are even eligible to claim the EITC. IRS regulations require tax return preparers to, among other things, make reasonable inquiry into seemingly incorrect, inconsistent, or incomplete information, to retain records of the questions asked and answers given, and to retain other documents relied upon to determine a taxpayer's eligibility to claim the credit. Draper routinely fails to make (let alone document any) reasonable inquiries to address incomplete or inconsistent items relating to EITC eligibility. She also fails to retain copies of documents that she uses to calculate her customers' EITC. Nevertheless, IRS records indicate that Draper claims the EITC for approximately 90% of her customers.

15. IRS records show that between 2011 and 2015, Draper personally prepared 2,002 returns bearing her PTIN. Nearly all of the returns claimed a refund and the overwhelming majority claim the EITC, as illustrated by the following summary:

Filing Year	# of Returns	Refunds Claimed	EITCs Claimed
2011	234	232 (99%)	216 (92%)
2012	373	370 (99%)	347 (93%)
2013	415	413 (99%)	381 (91%)
2014	459	459 (100%)	409 (89%)
2015	521	518 (99%)	464 (89%)

16. The following examples demonstrate a pattern of abuse and misconduct that warrants an injunction barring Draper from preparing tax returns for others. To protect the privacy of the taxpayers discussed in these examples, they are identified by number (i.e. Customer 1, etc.).

17. Draper prepared the tax returns for Customers 1 and 2, a married couple, for the 2012, 2013, and 2014 tax years. On the Schedules C attached to the tax returns, Draper reported fabricated income and expenses for a fictitious construction business resulting in claimed losses of $17,632, $19,805, and $18,579 for the 2012-2014 tax years, respectively. Customers 1 and 2 did not operate a construction business in 2012-2014, and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 2 stated that she and Customer 1 "do not have a business," and were "not aware of a business reported on the return."

18. Draper prepared the tax returns for Customer 3 for 2013 and 2014. On the Schedule C attached to the tax returns, Draper reported fabricated income and expenses for a fictitious business resulting in claimed losses of $9,699 and $23,750 for the 2013 and 2014 tax years, respectively. Customer 3 did not operate a business in 2013 or 2014, and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 3 stated that she "did not have a business in 2014 and 2013," that she "was not aware that a business was reported on the 2013 return," and "does not know how it came about."

19. Draper prepared the tax return for Customer 4 for the 2014 tax year. On the Schedule C attached to the tax return, Draper reported fabricated income and expenses for a fictitious construction business resulting in a claimed loss of $16,009. Customer 4 did not operate a business in 2014, and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 4 stated that he "had a trucking business years ago, but he works for a company now."

20. Draper prepared the tax returns for Customers 5 and 6, a married couple, for 2011-2014. On the Schedule C attached to the tax returns, Draper reported fabricated income and expenses for a fictitious construction business resulting in claimed losses of $22,462, $23,820, $23,422, and $29,491 for the 2011-2014 tax years, respectively. Customers 5 and 6 did not operate a construction business in 2011-2014, and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 6 stated that she and Customer 5 raised "cattle, horses and chickens for sale" but that they "do not have any other business." When asked about the Schedule C, Customer 6 stated that she did not "know where the numbers came from."

21. Draper prepared the tax returns for Customer 7 for the 2012, 2013, and 2014 tax years. Although Customer 7 operated a small business, the Schedule C that Draper prepared greatly inflated expenses for that business resulting in claimed losses of $5,250, $4,842, and $7,814 for the 2012- 2014 tax years, respectively. In an interview with an IRS agent, Customer 7 stated that he "cut yard and do[es] small construction type jobs on the side." He explained that "the jobs are small remodeling/renovations, such as a bathroom and building a porch." He could not explain how Draper arrived at the numbers on his return but stated that they "were not right."

22. Draper prepared the tax return for Customer 8 for the 2014 tax year. On the Schedule C attached to the tax return, Draper reported fabricated income and expenses for a fictitious business resulting in a claimed loss of $13,999 for the 2014 tax year. The fictitious losses allowed Customer 8 to reduce the income reported on her returns and claim a greater EITC (and thus a larger refund) than she was otherwise entitled. Customer 8 did not operate a business in 2014 and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 8 stated the she does "not have a business" and "did not know a business was reported on her tax return." Additionally, Draper claimed two dependents on Customer 8's return. Customer 8 stated that the two dependents claimed on her return were her son and her "significant other". A "significant other" does not qualify as a dependent for the EITC.

23. Draper prepared the tax return for Customer 9 for the 2013 and 2014 tax years. On the Schedule C attached to the tax return, Draper reported fabricated income and expenses for a fictitious construction business resulting in claimed losses of $7,491 and $10,663 for the 2013 and 2014 tax years respectively. Like Customer 8, the fictitious losses allowed Customer 9 to claim a larger EITC (and thus a larger refund) than he was otherwise entitled. Customer 9 did not operate a business in 2013 and 2014, and did not incur any of the expenses Draper reported on the Schedule C. When interviewed by an IRS agent, Customer 9 stated that he "does not have a business," that he "goes to work and gets a paycheck."

24. Draper prepared the tax return for Customer 10 for the 2012 tax year. On Customer 10's return, Draper claimed the maximum EITC. Draper reported wages that did not match the information reported on the corresponding W-2, Wage and Tax Statement. Draper did not ask Customer 8 about this discrepancy. Additionally, Draper assigned Customer 10 three

dependents. An IRS investigation revealed that Customer 10 claimed dependents for two nieces/nephews and a disabled sibling. Draper claimed all three dependents without making reasonable inquiry into the circumstances to determine if the dependents were qualified nor did she retain any records or documentation regarding Customer 10's eligibility for the EITC.

Harm Caused by Draper's Conduct

25. Draper's customers have been harmed by her actions because they paid fees for the preparation of proper tax returns, but Draper has prepared returns that understate the tax they actually owe and/or falsely claimed credits and refunds that they are not entitled to receive. Many customers are now liable for the tax they failed to report, erroneously-claimed refunds, and may be liable for substantial penalties and interest.

26. Draper's conduct harms the United States because her customers are understating the tax that they owe and/or claiming refunds and credits that they are not entitled to receive. The IRS examined 163 returns prepared by Draper during the 2011, 2012, and 2013 filing seasons. Of those returns, 134, or over 80%, understated the tax actually due and/or overstated the claimed refund. In all, the 134 deficient returns overstated refunds and understated tax liability by over $275,000 in the aggregate. Given that Draper prepared over 2,000 returns from 2011 through 2015, the revenue loss her fraudulent practices cause is likely far greater.

27. In addition to the direct harm caused by preparing tax returns that fraudulently understate her customers' tax liability and/or overstate her customers' refunds, Draper's activities encourage noncompliance with the internal revenue laws. Additionally, Draper's fraudulent use of the EITC undermines public confidence in a statutory credit meant to encourage low-income workers with young children to maintain employment.

28. Draper further harms the United States because the IRS must devote its limited resources to identifying her customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting additional taxes and penalties owed.

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

29. The United States incorporates by reference the allegations in paragraphs 5 through 28, above.

30. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from engaging in certain prohibited conduct or from further acting as a return preparer. An injunction is warranted where the preparer's conduct, *inter alia*, includes:

a. engaging in conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a return preparer who prepares a return that contains an understatement of tax liability or overstatement of a refund that is due to an unreasonable position (as defined by section 6694(a)(2)) which the return preparer knew or should have known was unreasonable; or

b. engaging in conduct subject to penalty under 26 U.S.C. § 6695, which penalizes a tax return preparer for, *inter alia*, failing to exercise the prescribed level of diligence while determining a taxpayer's eligibility for the EITC.

31. In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in the specified conduct described in paragraph 27, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

32. The court may permanently enjoin the person from further acting as a federal tax return preparer if it 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.

33. Draper has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing returns that understate her customers' tax liabilities and/or overstate her customers' refunds based upon unreasonable and reckless positions. As described in paragraphs 11 through 29, above, Draper understates her customers' tax liabilities and claims EITCs and refunds to which they are not entitled. She does so with the knowledge that the positions taken on the returns are unreasonable and lack substantial authority. Draper has thus engaged in conduct subject to penalty under 26 U.S.C. § 6694(a).

34. As described in paragraphs 14 and 24, above, Draper has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §6695(g) by failing to exercise the prescribed level of EITC due diligence. Indeed, Draper was assessed penalties for failing to comply with due diligence requirements for determining her customers' eligibility to the EITC on two separate occasions, in 2012 (for returns she prepared for the 2010 tax year) and in 2014 (for returns she prepared in the 2012 tax year). Despite being assessed penalties of $9,600 in 2012, and $88,000 in 2014, Draper does not exercise due diligence to determine her customers' eligibility for the EITC and continues to prepare returns that claim fraudulent EITCs.

35. Only a permanent injunction against acting as a return preparer, as opposed to a narrower injunction against specified conduct, will suffice to secure Draper's compliance with the tax laws and prevent her from interfering with the administration of the tax laws. Draper files fabricated or inflated Schedules C on behalf of her customers to understate the tax that they owe and/or overstate the refunds they claim. She also uses the Schedules C with fabricated or inflated losses to reduce her customers' earned income, and reports non-qualifying individuals as

dependents on the returns she prepares, so that her customers can claim the maximum EITC. The imposition of $97,600 of penalties has failed to deter Draper from continuing to utilize fabrications and manipulations to achieve the intended tax results. There may be other schemes she employs to understate tax liabilities and inflate claims for refunds. This underscores the need to enjoin Draper from all tax preparation.

COUNT II – INJUNCTION AND DISGORGEMENT UNDER 26 U.S.C. § 7402(a)

36. The United States incorporates by reference the allegations of paragraphs 5 through 28, above.

37. Section 7402 of the Internal Revenue Code 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.

38. Draper, through the actions described above, including, but not limited to, intentionally understating her customers' tax liabilities, overstating her customers' refunds and falsely claiming and inflating her customers' EITC, has repeatedly and continually engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

39. Unless enjoined, Draper is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If she is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully paying federal income tax refunds to individuals not entitled to receive them and being deprived of tax revenue, much of which will never be recovered. The United States will also suffer irreparable injury because it will have to devote substantial unrecoverable time and resources to auditing Draper's customers to detect future returns understating customers' liabilities or overstating their refunds.

40. While the United States will suffer irreparable injury if Draper is not enjoined, Draper will not be harmed by being compelled to obey the law.

41. Enjoining Draper is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop her illegal conduct and the harm it causes the United States.

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

A. That the Court find that Finecia R. Draper has continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. §§ 6694 and 6695, and that injunctive relief barring her from acting as a federal tax return preparer is appropriate under 26 U.S.C. § 7407 to prevent recurrence of that conduct;

B. That the Court enter a permanent injunction prohibiting Finecia R. Draper 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, including any electronically-submitted tax returns or tax-related documents, for any person or entity other than themselves; and

(2) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6695, or any other penalty provision in the Internal Revenue Code.

C. That the Court enter an injunction requiring Finecia R. Draper, at her own expense:

(1) To send by certified mail, return receipt requested, a copy of the final injunction entered against her in this action, as well as a copy of the Complaint setting forth the allegations as to how she fraudulently prepared

federal income tax returns, to each person for whom she prepared federal income tax returns or any other federal tax forms after January 1, 2013;

(2) 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 she prepared returns after January 1, 2013;

(3) To surrender to the Secretary of the Treasury or his delegate any and all PTINs held by, assigned to, or used by her pursuant to 26 U.S.C. § 6109, and the EFIN held by, assigned to, or used by her;

(4) To prominently post a copy of the injunction in her place of business where tax returns were prepared by her;

(5) To file a sworn statement with the Court evidencing her compliance with the foregoing directives within forty-five (45) days of entry of the final injunction in this action; and

(6) To keep records of her compliance with the foregoing directives, which may be produced to the Court, if requested, or the United States pursuant to paragraph D, below;

D. That the United States be entitled to conduct discovery to monitor Finecia R. Draper's compliance with the terms of any permanent injunction entered against her;

E. That the Court retain jurisdiction over the defendant and over this action to enforce any permanent injunction entered against her; and

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

Dated: April 10, 2017

Respectfully submitted,

DAVID HUBBERT
Acting Assistant Attorney General

/s/ Rebecca E. Layne
REBECCA E. LAYNE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Washington, D.C. 20044
202-514-5879 (v)
202-514-4963 (f)
Rebecca.Layne@usdoj.gov