

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:14-cv-23512
	)	
JACQUELINE NUNEZ, individually and	)	
d/b/a LBS TAX SERVICES and TAX	)	
MASTER XPRESS SERVICES, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The United States of America, for its complaint against Jacqueline Nunez, individually and doing business as LBS Tax Services and Tax Master Xpress Services, Inc., alleges as follows:

1. This is a civil action brought by the United States under I.R.C. (26 U.S.C.) §§ 7402, 7407, and 7408 to enjoin Nunez, and anyone in active concert or participation with her, from:

- (1) acting as a federal tax return preparer 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 herself;
- (2) preparing or assisting in preparing federal tax returns that she knows or reasonably should know would result in an understatement of tax liability or the overstatement of federal tax refund(s) as penalized by I.R.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 I.R.C. §§ 6694, 6695, 6701, or any other penalty provision in the I.R.C.; and
- (6) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

This action also seeks, under I.R.C. § 7402, an order requiring Nunez to disgorge to the United States the proceeds that Nunez and her businesses received for the preparation of federal tax returns that make false or fraudulent claims.

### **Jurisdiction and Venue**

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to I.R.C. §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. § 7402.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because the Defendant resides in this district and all or a substantial portion of the activities occurred within this district.

### **Defendant**

5. Jacqueline Nunez resides in North Bay Village, Florida. Nunez is a franchisee of LBS Tax Services. Nunez is the sole owner of Tax Master Xpress Services, Inc., a corporation registered in the State of Florida. Through this entity, Nunez owns and operates 3 tax return preparation stores in Florida.

6. LBS Tax Services is a tax return preparation business that Walner G. Gachette franchises 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 over 55,000 federal income tax returns in 2013.

7. This lawsuit is one of several being filed simultaneously against the LBS franchisor and LBS Tax Services franchisees, managers, and preparers (and/or former LBS Tax Services franchisees, managers, and preparers operating under new business names) seeking injunctive relief under the Internal Revenue Code. The other cases filed on this date are: *United States v. Walner G. Gachette*, 6:14-cv-1539 (M.D. Fla.); *United States v. Douglas Mesadieu*, Case No. 6:14-cv-1538 (M.D. Fla.); *United States v. Jean R. Demesmin, et al.*, Case No. 6:14-cv-1537 (M.D. Fla.); *United States v. Kerny Pierre-Louis, et al.*, Case No. 6:14-cv-1536 (M.D. Fla.); *United States v. Demetrius Scott*, Case No. 6:14-cv-1535 (M.D. Fla.); *United States v. Jason Stinson*, Case No. 6:14-cv-1534 (M.D. Fla.); and *United States v. Wilfrid Antoine* (S.D. Fla.).

### **LBS Tax Services' Business Structure**

8. 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.

9. Nunez began preparing tax returns in 2009 at a "Tax Mon\$ter" tax return preparation store owned by Christopher Lawrence. In 2010, Nunez created Tax Master Xpress Services, Inc. and opened her own tax return preparation business.

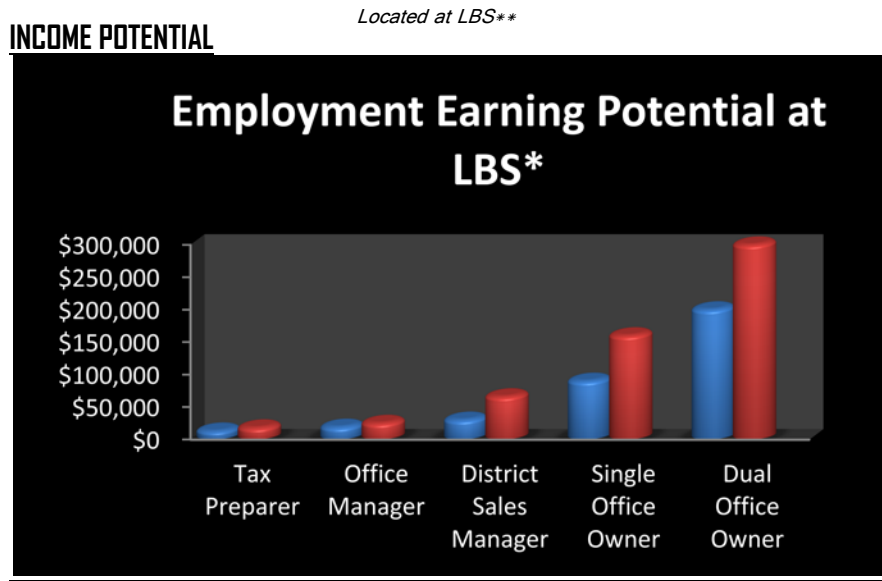
10. In 2011, Gachette, who was married to Lawrence's sister, asked Nunez to operate her Tax Master Xpress Services, Inc. store as an LBS franchise, and Nunez then became an LBS franchisee. As a franchisee, Nunez owned 3 LBS stores in 2013.

11. LBS's stated goal is to have 1,000 tax return preparation stores by 2016.

12. Each of Nunez’s individual LBS stores is managed by a District Sales Manager who works for Nunez. DSMs, in turn, oversee office managers, tax return preparers, and marketers (employees whose sole job is to solicit customers).

13. LBS lures prospective employees with promises of wealth and possible rapid advancement to franchisee level. One recruiting advertisement for LBS uses a graph to show that for 4 months of work, LBS employees have the following earning potentials:

On-Site job training / Rapid advancement opportunity / Complimentary company cell phone while employed / Most be self-motivated/ Will be IRS certified



Tax Preparer	\$5,000	\$10,000
Office Manager	\$10,000	\$15,000
DSM	\$25,000	\$66,000
Single Office Owner	\$90,000	\$160,000
Dual Office Owner	\$200,000	\$400,000

**IN 4 MONTHS**



14. The DSMs and the tax return preparers that Nunez employs are not required to have any tax return preparation experience, knowledge of federal tax laws or accounting, or minimum education. Rather, the focus is on finding potential employees who have “customer service” experience.

15. According to LBS, an LBS tax preparer's job is "60% outside marketing and 40% tax filing." LBS's emphasis on marketing, rather than tax return preparation, is apparent.

16. Franchisees sign (or are supposed to sign) a franchise agreement, titled a "General Independent Contractor Agreement," with Loan Buy Sell, Inc. that defines the relationship between the parties. The agreement requires the franchisee to pay Gachette a \$5,000 franchising fee and \$5,000 marketing fee for every LBS store he owns, and \$50 "or more" in "service bureau" and "LBS transmittal" fees for each tax return filed. The terms disguise the nature of these fees from customers – there is no "service bureau," nor is there any "transmittal" cost. In 2013, these two fees totaled \$74 for each tax return filed.

17. Essentially, the \$5,000 franchise fee is for "buying" a zip code from LBS, as Gachette limits LBS to two stores per zip code. Gachette recommends zip codes to franchisees where he believes new LBS stores should be opened based on demographic studies. LBS seeks to have most, if not all, of its offices in areas with lower income taxpayers.

18. Franchisees, including Nunez, are required to use (and pay for) the LBS advertising and marketing created by Gachette. Franchisees select a marketing package that may include, among other things, business cards, flyers, and yard signs.

19. Nunez and her District Sales Managers enter into contracts, similar to the franchise agreements described above. Loan Buy Sell, Inc. is also a party to these contracts. The contract provides that payments are made to the DSM based on the number of customers at the DSM's store; the more customers that a store secures, the greater the financial benefit to the DSM, including a \$3,000 bonus if the store secures more than 500 customers. DSMs are also required to pay a fee, varying from \$2,500 to \$15,000 or more. The fee amount that a DSM contributes is dependent on LBS's classification of the DSM as a 15 percent, 25 percent, 70

percent, or other percentage stakeholder in the store that the DSM manages. The DSM's stake in his or her LBS store increases each year as steps towards becoming a franchisee.

20. Nunez and LBS emphasize the volume of tax returns as opposed to the accuracy. For example, the contract between Nunez and DSMs provides that a DSM can be fired if by **January 18** the projected number of fees generated by tax returns to be filed by the DSM's store is less than \$35,000. The number is projected because the IRS does not allow returns to be filed until after this date - the IRS began accepting 2012 tax returns on January 30, 2013. In other words, before tax return filing is even permitted, DSMs are supposed to have solicited a sufficient number of customers to generate \$35,000 in fees.

21. Nunez's DSMs, in turn, hire tax return preparers and enter into employment agreements with the preparers that set forth, among other things, compensation and a two-year non-compete agreement. Nunez's DSMs are purportedly required to train their tax return preparers based on the purported training that the DSMs received from Nunez and in Orlando from LBS.

22. Nunez and LBS franchisees use tax return preparation software selected by Gachette which automatically deducts the customers' tax return preparation fees from customers' tax refunds. By mandating that LBS's fees be deducted from refunds rather than requiring payment when the tax return is prepared, Gachette effectively requires that LBS prepares tax returns for customers that result in the customer receiving a tax refund, even in instances where legally the customer is not due a refund.

#### **LBS Tax Services' "Training" and Lack of Quality Control**

23. LBS does not provide any substantive tax law training. Gachette and other LBS-affiliated individuals provide week-long training to LBS franchisees and DSMs annually at an

LBS facility in Orlando. This training focuses on LBS policies, particularly how to market to potential customers and solicit business, how to manage employees, and how to use the tax return preparation software.

24. Gachette holds frequent meetings and conference calls with franchisees, including Nunez, and DSMs. These meetings or calls may discuss, among other things, LBS policies, fees, and marketing. Gachette also provides copies of LBS's training and policy materials to franchisees and DSMs who attend these meetings, in addition to having franchisees and DSMs give presentations. Gachette emails (or directs his assistants to email) the LBS training and policy materials to franchisees and DSMs to ensure that anyone who does not participate in the in-person training or other meetings in Orlando has access to his training materials and copies of LBS's policies.

25. Nunez and her DSMs train the tax return preparers employed at her individual LBS stores. This training focuses on marketing and data entry to prepare tax returns and how to charge related fees to customers in accordance with LBS's policies.

26. Gachette, Nunez, and LBS actually train DSMs and tax return preparers how to prepare tax returns fraudulently in order to falsely and improperly maximize customers' tax refunds. Nunez's DSMs and tax return preparers are specifically trained to increase the tax return preparation fees charged to LBS customers as they increase the customers' bogus refunds.

27. Nunez provides instruction sheets to her DSMs and tax return preparers that direct the preparers to input specific information into the tax preparation software to create the maximum bogus refund for customers. LBS preparers follow the instruction sheet to report customers' income within a specific range on their tax returns, even if the customers' actual income and circumstances (married, having dependents) that they provide to the preparer

conflicts with what the preparer inputs into the software. By following these instruction sheets, LBS generates bogus refunds that customers are not entitled to. One such instruction sheet, frequently taped to the preparer's desk or on a wall next to the preparer's computer, indicated which boxes to check on the Earned Income Tax Credit checklist (IRS Form 8867) in order to make it appear as though the preparer complied with the "due diligence" requirements (discussed in more detail below) necessary to claim the credit (regardless of the information provided by customers and whether the customers actually qualify for the credit).

28. One LBS instruction sheet is brazenly captioned "Magic numbers." Preparers follow the instruction sheet, fabricating deductions on a Form 1040 Schedule A or creating bogus income or expenses on a Form 1040 Schedule C. The magic numbers sheet identifies the magic numbers as "16000-18000," and states that "anything lower then this you try to add income to get as close as possible" and "anything higher then this you try to take away income to get as close as possible."<sup>1</sup> The magic numbers sheet includes an example, for a customer who earned \$3,000 in wages, instructing the LBS tax preparer in such a situation to "input an income of 10000 on sch c" in order to falsely report the customer's income as \$13,000. The sheet also instructs the preparer to report unemployment income as Form W-2 wages. A similar LBS instruction sheet includes the following: "**Magic range 16,000 to 18,000**"; "If made less than 10,000 **goal is to increase income so client to get more money** (add forms to get them more money) add Schc"; "**Made more than 24,000 you have to take income out so that you can get client more money.** (add deductions) 2106, SchA." (emphasis added.) The purpose of

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<sup>1</sup> All quotations in this Complaint are copied exactly as they appear on the source document, including any spelling, punctuation, typographical, or grammatical errors.



manipulating a customer's income in this manner is to falsely increase the amount of the Earned Income Tax Credit.

29. LBS franchisee Douglas Mesadieu, when deposed by the City of Orlando on August 26, 2013, testified that the "magic numbers would be how you can get – it's numbers where you can get the most amount for your client... [W]orking with numbers every day, you will know how to get your clients the max, you know how to get the least." Mesadieu further testified about "pushing numbers" to avoid detection from the IRS:

A lot of when I spoke about pushing numbers, you don't want to be in the sweet spot every time. You don't want to – because that's a – basically, I mean, that's a red flag. You cannot be in a sweet spot every time, so you know – you're aware of your sweet spot, and you don't want to put a return where your client is getting the max every time because it would implement (sic) that you have a pattern. It would implement that something is wrong. Sweet spot is just for people to actually know and understand what not to do on certain circumstances, or what they can do on other circumstances.

30. Nunez also provides scripts directing her employees on how to interact with customers and potential customers. One script by LBS informs customers that they will be

receiving a refund, although not all customers legally qualify for a refund:

**SCRIPT:**

**There are three things that I am going to do for you today**

- 1. I'm going to enter you information into the system**
- 2. I will tell you how much your refund will be and**
- 3. I will look for more forms and ways to get you more money legally, ok?**

31. Nunez and LBS fail to teach Nunez's DSMs and tax return preparers crucial elements related to basic tax return preparation. For example, they provide no genuine instruction on the legal requirements to claim the Earned Income Tax Credit and the related due diligence requirements, procedures for detecting fraudulent Forms W-2, and the methods to question customers who provide suspicious, false, or fraudulent information. To the contrary, Nunez and LBS affirmatively instruct Nunez's DSMs and preparers on how to prepare returns that improperly claims bogus refunds based on false claims, credits, and deductions and to maximize the fees extracted from those refunds.

32. Gachette and LBS franchisees (including Nunez) and employees give presentations to DSMs at the training in Orlando. DSMs are shown a power point presentation titled "Top 10 Things District Sales Managers Need to Know." The top ten list does not include any training on tax law. The power point focuses on marketing, hiring employees, interacting with customers (including selling tax return preparation to "hesitant" customers through scripts and "rebuttals"), how to maintain and organize files, and what to wear and not wear in the office.

33. The scripts to talk to customers are the primary focus of the training provided to LBS employees. Nunez requires her employees to memorize the scripts to solicit customers face-to-face and over the phone, and when preparing tax returns and attempting to coerce

customers to agree to the inclusion of additional (and improper/false) IRS forms with, and bogus claims on, their tax returns. The purpose of these scripts is to solicit customers and, once those customers have come in the door, to run up the tax return preparation fees by attaching forms to the return at an additional charge to the customer. LBS includes bogus claims, credits, and deductions on these forms to generate a higher refund for the customer, and uses this higher refund to justify its additional tax return preparation fees.

34. As part of the training session, LBS gives its DSMs a “test.” Nunez and other LBS franchisees are supposed to give the “test” to DSMs who cannot attend the training. The majority of the “test” and training is dedicated to marketing and soliciting business. The “test” also addresses LBS policies, such as how to maintain customer files and the fact that LBS’s tax return season “begins on December 26th.”

35. The training questions in the LBS “test” focus on data entry in the Drake software (the provider of the tax return preparation software that LBS licenses and uses to prepare LBS customers’ tax returns) and, in particular, how to input information on the forms that will generate the maximum (and bogus) refund for customers.

36. To the extent that the test addresses tax return preparation, the questions are very basic and, not surprisingly, the acceptable answers are not thorough and, occasionally, entirely incorrect.

37. The LBS “test” lists “Identification, Social Security Card, W-2, 1099” as the documents that a customer is purportedly required to provide to have their tax return prepared.

38. Nunez’s DSMs, in turn, are purportedly required to train the tax return preparers at their stores. However, the training slides in the top ten list power point presentation only pertain to marketing and Drake software. For example, the first slide regarding training,

captioned “How to Train,” discusses teaching the “Appointment setting ‘on-the-spot’ script,” “Telephone script,” and “Presentation script” to employees. There is no instruction on how to convey to employees even basic tax law concepts, how to explain IRS forms such as a 1040, or how to train tax return preparers to actually prepare tax returns.

39. Nunez and LBS also train Nunez’s DSMs and preparers how to use Drake software to prepare tax returns. However, Drake software does not train preparers on tax law, and the training is limited to data entry and practice tax returns so that preparers know where to enter information in the software. Drake software itself does not provide in-person training.

40. Incredulously, Gachette claims that the IRS, not he and LBS, is responsible for providing tax training to LBS franchisees (like Nunez) and tax return preparers, and that it is up to the IRS and Drake software to train LBS employees on how to prepare tax returns. However, the IRS and Drake software do not train LBS employees on tax law or proper tax return preparation, nor is it the IRS’s duty to train LBS employees how to prepare honest, accurate tax returns. That is LBS’s responsibility, which it is completely and utterly failing to meet.

41. The IRS requires that individuals applying for an Electronic Filer Identification Number (“EFIN”), such as LBS franchisees (including Nunez) and DSMs, 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>.

42. 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.

43. DSMs serve as the Electronic Return Originator (“ERO”) for their store. 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.

44. IRS Publication 1345 requires that an ERO “be diligent in recognizing fraud and abuse, reporting it to the IRS and preventing it when possible.” Nunez and LBS 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 is encouraged and flourishes at many LBS stores.

45. The only supposed quality control that Nunez conducts is purportedly having “Area Managers,” also known as “Area Developers,” conduct occasional reviews of other LBS Tax Services offices. These reviews consist of making sure that employees are dressed properly, that customer files are stored properly, that the “presentation script” and various “cheat sheets” (such as the earned income tax credit “cheat sheet” that lists the answers that must be input into Drake software to complete to claim the Earned Income Tax Credit for a client) are taped to desks, and that the “forms order” cheat sheet (listing the order of forms that must be signed and placed in a customer’s file) is posted on the wall. The reviews also purportedly require the Area Manager to review up to five customer files for quality control; however, the Area Manager does

not review whether the customers' tax returns were properly prepared, but only whether certain forms are maintained in the files.

**Defendant's Fraudulent Activity**

46. Nunez and those acting in concert with her and at her direction have created and maintain a business environment and culture of greed at her LBS stores that expressly promotes and encourages the preparation of false and fraudulent federal income tax returns in order to maximize corporate and individual profits. By doing so, Nunez profits at the expense of her customers and the United States Treasury.

47. Many of LBS's customers have low incomes and are unsophisticated with respect to tax law and tax return preparation. Customers often have no knowledge that LBS prepares and files fraudulent tax returns on their behalf. For others, LBS preparers—with Nunez's consent and urging—mislead customers about the law, particularly with respect to various credits and deductions, and by promising them thousands of dollars of (illegal) refunds to coerce them to pay LBS to prepare their tax returns. Nunez benefits by receiving a significant portion of LBS customers' fraudulently obtained refunds, which she retains through fees.

48. Nunez instructs, directs, assists, advises, encourages, and causes her managers and preparers to engage in illegal practices. These practices include, but are not limited to:

- a. Making fraudulent claims for the Earned Income Tax Credit;
- 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 Schedule C businesses and related business income and expenses;

- e. Fabricating Schedule A deductions, including but not limited to deductions for unreimbursed employee business expenses and automobile expenses;
- f. Falsely claiming education credits to which their customers are not entitled;
- g. Failing to provide customers with a copy of the completed tax return;
- h. Guaranteeing refunds; and
- i. Charging deceptive and unconscionable fees.

### **LBS Tax Services' "Guerilla Marketing"**

49. Nunez and LBS solicit customers through what Gachette calls "Guerilla Marketing." "Guerilla Marketing" involves misleading advertising and aggressive in-your-face individual sales pitches, targeted at low 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 that LBS is doing so in order to legally increase the customer's tax refund.

50. Nunez and LBS charge the customer exorbitant fees for preparing the return, for each form prepared and attached to the return, and for filing the return. LBS makes fraudulent claims on these forms, in order to improperly increase customers' refunds. LBS then falsely tells the customers that these forms legally increased the customers' refunds, and charges higher fees due to the additional forms and the higher refund that LBS claimed. These fees are all deducted from the customer's tax refund, often without the customer being told the amount that LBS actually charged for preparing the tax return.

51. "Guerilla Marketing" begins long before the tax filing season begins. LBS advertising focuses on the Earned Income Tax Credit, with street signs, flyers, and business

cards that simply state, for example, that a potential customer can receive “\$3169 per child” from the IRS and listing an LBS phone number to call.

52. Nunez and LBS instruct her employees 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 with promises of large refunds. This marketing occurs predominantly at large-scale retailers and grocery stores (marketers are specifically directed to solicit business at Wal-Mart), dollar stores, apartment complexes, public plazas, and large public events where LBS believes it can find potential customers who fit the low income demographic that it targets. LBS has also used radio ads, automated telephone calls, flyers on parked cars, billboards, and letters or mailers to previous or potential customers.

53. LBS’s “Guerilla Marketing” is so aggressive that the LBS franchise agreement anticipates and accounts for the related fines that are inevitably imposed against LBS’s stores by cities and municipalities for violations of local ordinances, particularly regulations pertaining to signs and advertising placed alongside streets. The agreement provides that the first \$500 in fines are paid by the franchisee, with any additional amounts paid by DSMs.

54. DSMs are instructed that if the “city comes to your office, you should apologize and beg; say you weren’t aware of the rules,” and then go put out “200 yard signs 3 miles away from your office in each direction” at midnight. If a DSM receives a “letter before February 14th saying you have to go to court,” the DSM is instructed to “call the courthouse, tell them you have an emergency and can come to court any day in March.” The purpose of this is to avoid going to court until LBS’s tax preparation and filing season is effectively over.

55. Nunez recruits and employs individuals, referred to as marketers, whose sole job is to solicit customers. Marketers are trained to “be discrete (pretend your shopping)” and “be



careful for security that will kick you out.” The suggested times to market are “Before work, noon, 6-7 PM and midnight.” Marketers are advised to avoid security guards and store employees who will make them leave the premises.

56. Nunez and LBS provide scripts to marketers (in addition to managers and tax return preparers) on how to solicit customers. One script contains general introductory language, with three variations (depending on the date) used to schedule an appointment for the customer to have his or her tax return prepared. In all three variations, the script begins:

**“Hi, I’m John a tax preparer. This year the IRS is giving \$3000 dollars per kid. What’s your name? How many kids do you have?”**

[The script uses the answer of two children as the example.]

**“Perfect, I can get you \$6000 to \$7000 dollars legally.”**

From December 6 to December 26, before the tax year is even over, the script concludes:

“Do you have you last paycheck stub?”

If the customer says no, the script continues: “OK, What’s your name and number; I will have my secretary give you a call after Christmas to give you directions to the office one hour before.”

From December 26 to January 8, the script concludes:

“Do you have you last paycheck stub?”

If the customer says yes, the script continues: “I can do your taxes with that, what time and date can you come to my office?”

From January 8 to March 14, the script concludes:

“Do you have your W2?”

If the customer says yes, the script continues: “What time and date works best for you to come to my office?”

(emphasis added.)

57. Of course, the IRS does not “give” taxpayers \$3,000 per child. Whether a taxpayer is entitled to a credit, such as the Earned Income Tax Credit or Child Tax Credit, and the amount of the credit that the taxpayer can claim, depends on numerous factors, including whether the child lives with the taxpayer, whether the taxpayer financially supports the child, and the age of the child.

58. Nunez and LBS also provide similar scripts to tax return preparers and administrative staff at each store.

59. Instead of focusing on honest, accurate tax return preparation, LBS’s business model is result-oriented. LBS instructs preparers to “SELL ON FEAR!” and to “ALWAYS try to get the customer more than they received the last year filed taxes.” LBS’s power point presentation at its training session reiterates the script that preparers are repeatedly taught: “If you agree I will leave the forms, If you don’t I will take them off’ – BUILDS TRUST!” If a customer hesitates, preparers are told to keep reiterating the portion of the script about how each form will get the customer more money from the IRS, and if the customer appears ready to walk away, preparers are instructed to get a DSM to help convince the customer to agree to the LBS’s return preparation.

60. LBS employees speaking with potential customers over the phone are instructed to entice the customer by deceptively declaring how much money LBS can get refunded to the customer. For example, if a potential customer questions whether an LBS sign, business card, or radio ad was correct in saying the potential customer could get a tax refund of “\$3169 per child,” the employee is instructed to respond that the potential customer “can get this much per child,” ask how many children the potential customer has, and then tell the customer that “I can get you anywhere from 6-8 thousand” or “I can get you anywhere from 8-9 thousand,” depending on

whether the customer has 2 or 3 children. If the potential customer responds by questioning whether there is an income limit for the child credit, the employee is instructed to say that LBS “specialize[s] in maximizing your refund so come on in and we will show you exactly what you are entitled to.”

61. The LBS scripts setting forth what employees are required to say upon completing customers’ tax returns (or, more specifically, the Form 1040) are egregious and show a blatant disregard of the law. Once an LBS employee has completed the Form 1040, he or she is instructed to say to customers:

“At this time I am getting you back \$ [amount]. Ma’am or Sir, I can search for more forms to get you more money legally. Each form I use will cost you more but you get more money. For instance, I see I can get you an extra \$3000 by using 7 more forms and each form cost[s] about \$75.00. At the end I will let you know how much your refund will be, minus our fees. If you agree I will leave the forms on, if you don’t agree, I will take them off.”

LBS cannot legally “get” a customer \$3,000 by “using forms” (for example, the 7 forms in the above script). Individuals receive a refund if it is legally owed and based on the honest reporting of facts, not, as is the case with LBS’s tax return preparation, by adding to tax returns forms that do not apply and that customers do not understand. LBS entices customers with the possibility of a bigger (albeit fraudulent) refund based on LBS’s addition of forms to customers’ tax returns but, in reality, a form or schedule applies or does not apply and must be attached to a return only based on customer-specific facts or circumstances.

62. LBS’s tax return preparation is result-oriented, rather than being honest and accurate. LBS’s tax return preparation is based on maximizing LBS’s own profits by drawing customers into a web of deception with promises of money, which comes in the form of bogus

refunds issued by the U.S. Treasury as a direct result of the fraudulent claims made on LBS-prepared tax returns.

63. LBS primarily solicits business using deceptive marketing focusing on the Earned Income Tax Credit, particularly as it relates to claiming dependents. During the 2012 filing season, in addition to the yard signs which read “Tax Refund \$3094.00 per child,” LBS also passed out the following business cards to potential customers:



64. LBS’s advertisements regarding the Earned Income Tax Credit are misleading, at best, because the amount of the credit depends on several factors, such as income, marital status, and whether the child actually qualified as a dependent. LBS’s advertisements simply recite the maximum amount of the credit that a qualifying taxpayer may be eligible to receive per child with no mention, let alone explanation, of the criteria that must be met to qualify for such an amount. Rather the advertisements clearly suggest that if you have children you will receive refunds of \$3,094 for one child and \$5,112 for two children. Moreover, preparing tax returns

using a taxpayer's pay stub, as advertised, rather than a Form W-2, violates IRS regulations.

And, of course, the IRS does not issue a "same day tax refund."

65. LBS effectively offers guarantees to its customers that they will receive refunds. LBS's advertising clearly suggests that customers with children will receive a refund. Some of the ads specifically refer to "EIC," and for those that do not, it is evident, based on the specific amount identified in the ads and the income demographic that LBS targets, that the approximately \$3,000 "per child" is due to the Earned Income Tax Credit. In addition, the "three things that I am going to do for you today" script that LBS requires employees to memorize and recite explicitly states, "I will tell you how much your refund will be." Guaranteeing the payment of any tax refund or the allowance of any tax credit violates 26 U.S.C. § 7407(b)(1)(C). LBS's tax return preparation practices ensure that customers do receive a refund, frequently based on bogus claims for the Earned Income Tax Credit.

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

66. Nunez and many of her managers and tax return preparers prepare tax returns that include fraudulent claims for the Earned Income Tax Credit (EITC) often based on bogus dependents, fabricated business income and expenses, and/or false filing status.

67. 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 I.R.C. § 32 and the accompanying Treasury Regulations.

68. 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.

69. 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 \$13,050, and decreases as income increases beyond \$17,100. 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 2012, the maximum EITC was \$5,891 and was available to eligible individuals with three dependent children who earned income between \$13,050 and \$17,100.

70. 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.

71. To solicit business, LBS uses enticements of higher refunds based on the number of children that a potential customer has.

72. Nunez and many of her managers and preparers acting at her direction and with her knowledge and consent, falsify information to claim the maximum EITC for customers. Unscrupulous tax return preparers at LBS exploit the rules by claiming on their customers’ returns bogus dependents and/or by reporting phony Schedule C businesses and income. Consistent with the “magic numbers” instruction sheet, to bring the customer’s reported earned income within the “sweet spot” for the EITC, and depending on a customer’s actual income, LBS preparers inflate or fabricate Schedule C income to fraudulently increase customers’

reported earned income, or claim bogus Schedule C expenses to fraudulently decrease customers' reported earned income.

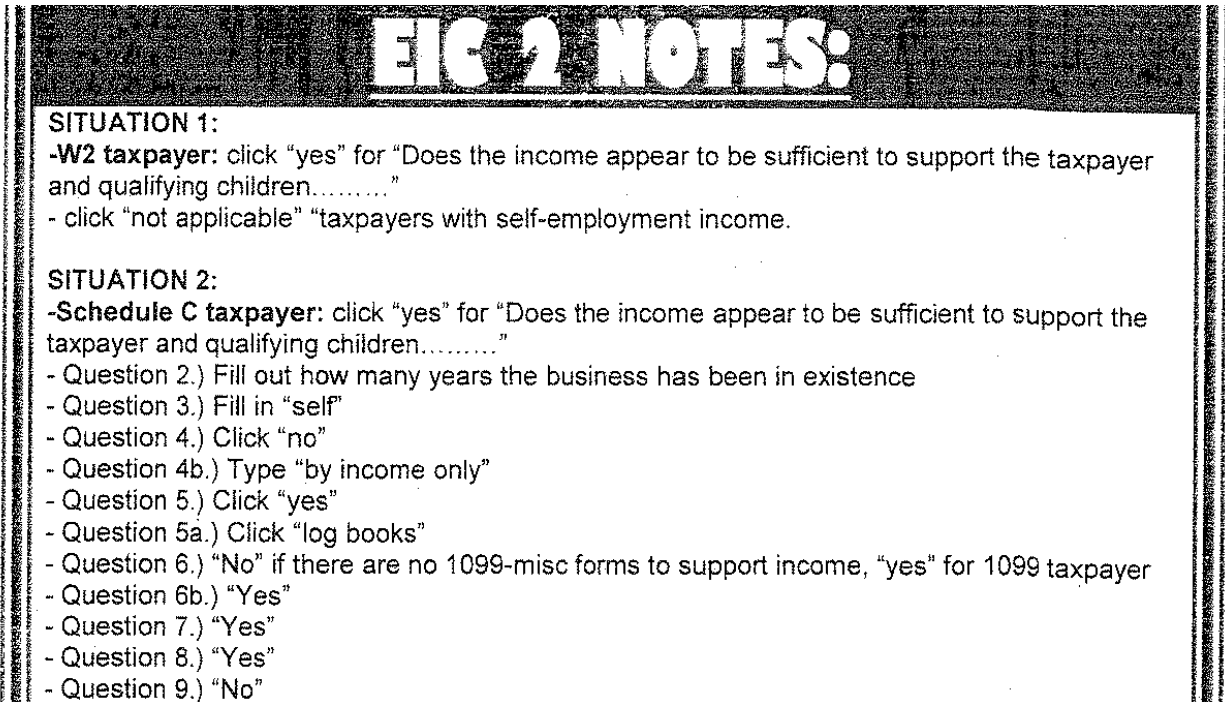
73. Reporting bogus income not only improperly enables LBS to falsely claim the EITC, but to fraudulently claim other credits as well, including the Child Tax Credit and American Opportunity Tax Credit.

74. Schedule C fraud is a means by which unscrupulous tax return preparers, like many of those at LBS, manipulate customers' income in order to obtain bogus refunds based on fictitious claims for the EITC and other credits. Because of the amount of the EITC credit, these preparers frequently charge higher fees in connection with their preparation of bogus Schedules C. Of the fees that LBS charges per IRS form, it charges \$250 or more for a Schedule C, the most for any form.

75. 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.*

76. 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.

77. As mentioned above, Nunez and LBS provide her DSMs and preparers with specific instructions or cheat sheets that provide predetermined answers to input into the Drake 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 instructs in order to claim the EITC for customers who are not actually eligible for the credit (or for the inflated amount claimed by LBS):



**EIC 2 NOTES:**

**SITUATION 1:**

- **W2 taxpayer:** click "yes" for "Does the income appear to be sufficient to support the taxpayer and qualifying children....."
- click "not applicable" "taxpayers with self-employment income."

**SITUATION 2:**

- **Schedule C taxpayer:** click "yes" for "Does the income appear to be sufficient to support the taxpayer and qualifying children....."
- Question 2.) Fill out how many years the business has been in existence
- Question 3.) Fill in "self"
- Question 4.) Click "no"
- Question 4b.) Type "by income only"
- Question 5.) Click "yes"
- Question 5a.) Click "log books"
- Question 6.) "No" if there are no 1099-misc forms to support income, "yes" for 1099 taxpayer
- Question 6b.) "Yes"
- Question 7.) "Yes"
- Question 8.) "Yes"
- Question 9.) "No"



78. A portion of a similar LBS instruction sheet is below (the Drake software questions are followed by the predetermined answers in bold):

**EIC2 INCOME (NOT A SCHC)**

DOES THE INCOME APPEAR TO BE SUFFICIENT TO SUPPORT THE TAXPAYER AND QUALIFYING CHILDREN? **CHECK YES**  
TAXPAYERS WITH SELF-EMPLOYMENT INCOME: **CHECK NOT APPLICABLE**

**EIC2 INCOME (W/SCH C)**

DOES THE INCOME APPEAR TO BE SUFFICIENT TO SUPPORT THE TAXPAYER AND QUALIFYING CHILDREN? **CHECK YES**

HOW LONG HAVE YOU OWNED YOUR BUSINESS? **1 YEAR**

CAN YOU PROVIDE ALL DOCUMENTATION TO SUBSTAIATE YOUR BUISNESS? **CHECK RECEIPTS OR RECEIPT BOOK**

WHO MAINTAINS THE BUISNESS RECORDS? **SELF**

DO YOU MAINTAIN SEPARATE BANKING ACCOUNTS FOR PERSONAL AND BUISNESS TRANSACTIONS? **CHECK NO**

IF "NO" HOW DO YOU DIFFERNTIATE BETWEEN PERSONAL AND BUISNESS TRANSACTIONS AND MONETARY ASSETS? **CASH LOG**

WERE SATISFACTORY RECORDS OF INCOME AND EXPENSE PROVIDED? **CHECK YES**

IF "YES" IN WHAT FORM WERE THESE RECORDS PROVIDED? **CHECK PAID INVOICES**

**FORM 1099-MISC NO/YES/YES/NO**

79. Because the Forms 8867 EITC Checklists that Nunez's LBS stores generate 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 LBS-completed Form 8867 EITC Checklist is to give the illusion that LBS complies with the due diligence requirements.

80. A closer review of LBS customer files reveals that Nunez and many of her managers and preparers utterly fail to comply with the due diligence requirements. Customers are given an intake form to complete, which is comprised of several sections. The first few sections request basic information such as name, address, social security number, filing status, and dependents. The final section pertains to any business that the customer operated. Often these intake forms are not fully completed by the customer, if they are marked at all. In many instances the LBS preparer entirely disregards the customer's responses on the intake form.

81. The LBS intake form apparently serves no other purpose than to give the illusion that LBS is questioning its customers and complying with the due diligence requirements. Frequently LBS preparers, rather than the customers, complete the form to support the claims that the preparer is fabricating on customers' tax returns.

82. The conduct of Nunez and many of her managers and preparers 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 Nunez and many of her managers and preparers 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 and Bogus Dependents**

83. Nunez and many of her managers and preparers 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 LBS is aware that the customer does not qualify for head-of-household status.

84. Nunez and many of her managers and preparers 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.

85. Additionally, Nunez and many of her managers and preparers claim dependents who 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.

86. For example, customer K.B. had her 2011 and 2012 federal income tax returns prepared the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. Nunez prepared K.B.'s 2011 return, and another LBS preparer prepared her 2012 return. On both returns, LBS falsely claimed K.B.'s filing status as head of household. K.B. did not qualify as head of household in either year, because the majority of the financial support for her household came from the state and social security. Nunez was aware of this because K.B. told Nunez and the other LBS preparer that she earned around \$2,400 both years working as a caregiver, received food stamps, and that her son received approximately \$720 each month from social security. Additionally, Nunez and the other LBS preparer falsely reported on the Forms Schedule C attached to K.B.'s 2011 and 2012 tax returns that K.B. earned \$14,901 and \$15,744 in 2011 and 2012, respectively, as a caregiver. These amounts far exceeded what K.B. actually earned. By reporting these vastly inflated amounts, Nunez and LBS fraudulently claimed the maximum EITC in the amounts of \$5,751 and \$5,891 and bogus refunds in the amounts of \$6,540 and \$5,702 on K.B.'s tax returns for 2011 and 2012, respectively.

#### **Fabricated Schedule C Business Income and Expenses**

87. Nunez and many of her managers and preparers also prepare tax returns reporting non-existent businesses on bogus Forms Schedule C. On some of these returns, LBS reports substantial income, but little or no expenses. On other returns, LBS reports substantial expenses, but little or no income. The determining factor is whether LBS 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.

88. Nunez and many of her managers and preparers also coerce customers to provide information that LBS can then use to fabricate claims on the customers’ tax return. One LBS script, captioned “Schedule C,” instructs preparers as follows: “if the person has a W-2 and made 5,000 or less ask if they have their own business give them examples of their own business (ex. hairstyling, nails, cutting grass).” Thus, based on LBS’s suggestions, if a customer responds that they cut a friend’s hair, or cut a family member’s lawn, or cooked for a church event, LBS then falsely reports that as a business on a Schedule C with bogus income and/or expenses in order to bring the income within the EITC “sweet spot” or to simply reduce the taxable income.

89. For example, married customers J.W. and A.R. had their 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. J.W. was employed selling business loans for a lending company, from which he received a Form W-2. A.R. provided the preparer with copies of the couple’s Forms W-2. The preparer asked A.R. if she and her husband had expenses, such as for gas, clothing, shoes and computers. The preparer then falsely claimed on the Schedule C attached to the tax return that J.W. had a business, not identified by name or type of business, through which J.W. earned no gross receipts but incurred a loss in the amount of \$39,561. The phony business expenses included \$1,881 for car and truck expenses, \$12,657 for renting business property (the non-existent business was purportedly operated from J.W.’s and A.R.’s apartment), \$6,489 in supplies, \$365 for taxes and licenses, \$2,412 for supplies, and \$15,757 for “other” expenses (\$2,520 for cell phone, \$12,589 for business clothes, and \$648 for business shoes). J.W. had no such business and neither he nor

A.R. informed LBS that he had such a business. By claiming this phony business loss on J.W.'s and A.R.'s tax return, LBS fraudulently claimed an EITC in the amount of \$2,813 and a bogus refund in the amount of \$4,522.

90. Married customers K.H. and A.H. had their 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. K.H. was employed at a salon and spa in 2012, and received a Form W-2 from his employer. K.H. provided this Form W-2, and A.H. provided her Forms W-2, to the LBS preparer. However, LBS falsely reported on the Schedule C attached to the H.'s tax return that K.H. operated a hair stylist business out of their apartment, and that this non-existent business had no sales in 2012 but incurred expenses totaling \$30,208, including \$13,702 for car and truck expenses, \$2,178 for renting vehicles, machinery, and equipment, \$5,760 for supplies, \$105 for taxes and licenses, \$3,550 for meals and entertainment, and \$4,913 for "other expenses (\$2,405 for work clothes and \$2,508 for cell phone). By claiming this phony business loss on the H.'s tax return, LBS claimed a bogus refund in the amount of \$4,571. According to A.H., she and her husband received \$3,875 of that refund, with the remaining \$696 taken by LBS as a preparation fee.

91. Married customers N.A. and Y.P. had their 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. N.A. and Y.P. were both employed as nurses in 2012, and received Forms W-2 from their employers, which they provided to the LBS return preparer. LBS falsely reported on the Schedule C attached to N.A.'s and Y.P.'s tax return that N.A. operated a nursing business out of their home, and that this non-existent business had \$6,301 in gross receipts and \$19,779 in expenses, resulting in a loss in the amount of \$13,478. The phony business expenses included \$2,823 for advertising, \$2,881 for repairs and maintenance, \$5,498 for supplies, \$1,311 for meals and entertainment, and \$7,266 for

“other” expenses (\$4,718 for “3 computers” and \$2,548 for “3 printers”). By reporting this phony business loss on the Form 1040, and through other false claims (described in paragraph 102), LBS claimed a bogus refund in the amount of \$6,021 on N.A.’s and Y.P.’s tax return. N.A. and Y.P. were not aware that LBS made these claims on their tax return.

### **Bogus Schedule A Deductions**

92. Reporting bogus Form Schedule A deductions is another tactic commonly used by Nunez and many of her managers and preparers to fraudulently 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 over \$24,000 in wage income reported on Forms W-2.

93. Nunez and many of her managers and preparers 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.”

94. One LBS script instructs the preparer to ask specific questions to customers:

**(SCHEDULE A QUESTIONS)**

- HOW MUCH DID YOU SPEND ON GAS?
- DID YOU ATTEND CHURCH? ( 10% TITHES) OR -DID YOU GIVE TO ANY CHARITIES?
- DID YOU PURCHASE ANY WORK UNIFORM(S)?
- DID YOU PURCHASE ANY WORK SHOES?
- DID YOU PURCHASE ANY TOOLS?
- ANY MEDICAL OR DENTAL EXPENSES?
- WHAT WAS YOUR CELL PHONE BILL?

If customers respond, for example, that they drove to and from work, Nunez and many of her managers and preparers then claim a non-qualifying expense for commuting on the customers' returns. If customers respond that they attend church, Nunez and many of her managers and preparers claim that the customers made charitable contributions, even if they did not. Nunez and many of her managers and preparers thus push customers to provide information that Nunez and many of her managers and preparers can manipulate to make bogus claims on customers' tax returns.

95. The LBS training "test" specifically instructs preparers that "Schedule A should only be used when the taxpayer has an outstanding income of 24,000 [dollars] or higher." Nunez and many of her managers and preparers frequently report on Forms Schedule A that customers had qualifying expenses such as medical expenses, state and personal property taxes, charitable contributions, and uniforms, when the customer had no such expenses.

96. For example, Nunez prepared the 2011 federal income tax return for married customers D.L. and J.J. at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. Nunez falsely reported on the Schedule A attached to the return that D.L. and J.J. paid \$18,430 in home mortgage interest in 2011. In reality, D.L. and J.J. paid \$9,215 in mortgage interest, the

amount shown on the Form 1098 that they provided to Nunez. Nunez fraudulently reported exactly double that amount. By doing so, and by falsely claiming other credits (described in paragraph 104), Nunez claimed a bogus refund in the amount of \$7,926 on D.L.'s and J.J.'s tax return. Nunez did not give D.L. and J.J. a copy of their completed 2011 tax return. According to their 2012 tax return, D.L. and J.J. paid \$800 to have Nunez prepare their 2011 tax return.

97. D.L.'s and J.J.'s 2012 federal income tax return was prepared by a different LBS preparer at the same location. LBS claimed different phony Schedule A deductions on that return. LBS falsely claimed that D.L. and J.J. had medical expenses totaling \$15,506, paid general sales taxes in the amount of \$2,555, and had unreimbursed employee business expenses totaling \$14,665. The bogus unreimbursed employee business expenses were for work shoes (\$824), work clothes (\$5,217), and work tools (\$6,023). LBS also falsely claimed employee business vehicle expenses in the amount of \$1,672, and meals and entertainment expenses in the amount of \$5,201. Neither D.L. nor J.J. were aware that these expenses were claimed on their tax return. As a result, LBS claimed a bogus refund in the amount of \$4,462 on D.L.'s and J.J.'s tax return.

98. Similarly, married customers B.A. and W.C. had their 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. LBS falsely claimed \$34,211 in Schedule A deductions on B.A.'s and W.C.'s tax return. This included bogus expenses for medical and dental (\$7,675), general sales taxes (\$18,051), and unreimbursed employee business expenses (\$13,548). B.A. and W.C. were not aware that LBS claimed these amounts on their tax return; they only provided LBS with copies of their identification, child's social security card, and Forms W-2 and 1099. W.C. believes that the medical expense amount that LBS falsely reported is the pre-tax insurance premium paid through his employer. As a



result of these fabricated expenses, LBS claimed a bogus refund in the amount of \$7,798 on B.A.'s and W.C.'s tax return.

99. Nunez and many of her managers and preparers commonly improperly deduct vehicle expenses on the Forms Schedule A attached to customers' returns. In fact, LBS's training "test" lists "Auto Expense" as one of the "4 forms that can get the client the maximum refund." Forms Schedule A and C are also on among those listed forms.

100. Nunez and many of her managers and 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. Nunez and many of her managers and preparers also inflate the actual mileage that the customer drives each day to and from work. Therefore, not only are Nunez and many of her managers and 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.

101. For example, customer A.B. had her 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. A.B. was employed as a delivery driver for a beer distributor in 2012, and used a company car to make deliveries. However, LBS falsely claimed on the Schedule A attached to her return that A.B. had \$5,745 in unreimbursed employee business vehicle expenses, based on a purported 10,352 miles driven for work in 2012 in her personal vehicle. Based on this deduction, and a phony \$15,249 loss for a non-existent "health care services" business reported on a Schedule C attached to the return (which included bogus \$7,034 vehicle expenses), LBS falsely claimed a refund in the amount of \$5,116 on A.B.'s tax return. A.B. had no such business or expenses, did not tell the tax return preparer that she had

any such business or expenses, and was unaware that the preparer reported the business and expenses on her return, as the preparer did not give A.B. a copy of her tax return until after A.B. received her tax refund.

102. LBS also falsely claimed on the Schedule A attached to the 2012 Form 1040 tax return of customers N.A. and Y.P., described above in paragraph 91, that N.A. and S.P. had \$7,648 in unreimbursed employee business vehicle expenses, based on a purported 13,786 miles driven for work in 2012. LBS also falsely claimed that N.A. and Y.P. had \$3,016 in unreimbursed meals and entertainment expenses (in addition to the bogus meals and entertainment expenses that LBS reported on the Schedule C attached to the return). In reality, N.A. and Y.P. had no such expenses, and did not tell the LBS return preparer that they had any such expenses.

#### **Bogus Education Credits**

103. Another practice at Nunez's LBS 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. Nunez and many of her managers and preparers 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).

104. For example, Nunez prepared the 2011 federal income tax return for married customers D.L. and J.J., described in paragraph 96. Nunez falsely claimed that both D.L. and J.J. attended school in 2011, when they did not. In 2011, D.J. was employed at Seminole Casino

and J.J. was employed at Costco. Nunez falsely claimed that D.L. and J.J. each had \$4,000 in education expenses in 2011, and falsely claimed two American Opportunity education credits totaling \$2,000 on D.L.'s and J.J.'s tax return.

105. Nunez also prepared the 2011 federal income tax return for K.B., described in paragraph 86. Nunez falsely claimed that K.B. had \$3,919 in education expenses in 2011, and falsely claimed an American Opportunity education credit in the amount of \$992 on K.B.'s tax return. K.B. did not attend school in 2011 and did not know why Nunez reported education expenses on her tax return.

106. A.R. and Y.P. had their 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. Neither A.P. nor Y.P. attended college in 2012 or had any education expenses. LBS falsely reported that Y.P. incurred education expenses for the "New Professions Technical Institute," and claimed a bogus American Opportunity education credit in the amount of \$1,000 on A.R.'s and Y.P.'s tax return.

107. Similarly, B.V. had her 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. B.V. did not attend college in 2012 or have any education expenses. LBS falsely reported that B.V. incurred education expenses for the "New Professionals Institute," and claimed a bogus American Opportunity education credit in the amount of \$618 on B.V.'s tax return.

108. M.D. had had her 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. M.D. did not attend college in 2012 or have any education expenses; M.D. explained to the LBS preparer that she paid for her daughter to have a home school teacher to help her graduate high school. LBS. however, falsely reported that M.D.

incurred education expenses for the “Florida National University Inc,” and claimed a bogus American Opportunity education credit in the amount of \$1,000 on M.D.’s tax return.

### **Unauthorized Filing of Customers’ Tax Returns and Identity Theft**

109. LBS also prepares and files tax returns without the individual’s knowledge or consent.

110. LBS caters to low-income taxpayers, many of whom are in need of money quickly. Gachette and many LBS franchisees and managers instruct preparers to complete an “estimated” income tax return, purportedly to determine whether the customer qualifies for a refund anticipation loan or to give the customer an accurate estimate of their expected refund. Customers sign the return and other tax forms authorizing LBS to file the return and are falsely told by LBS that the return will not be filed with the IRS until the customer returns with a Form W-2 issued by their employer.

111. However, in order to “lock-in” prospective customers, LBS routinely and illegally files those estimated income tax returns, based on pay stubs, without customer authorization. This practice effectively prevents the customer from later using one of LBS’s competitors to prepare and file a return, because a taxpayer can file only one electronic return with the IRS per year. It also gives LBS a competitive advantage over tax return preparers who obey the law and wait to prepare and file returns using Forms W-2. Most importantly, the practice generates an inaccurate return and an unauthorized refund, impedes tax administration, and guarantees that Gachette and LBS franchisees, managers, and preparers will receive their unconscionably high fees, which are paid directly from the customer’s refund only after the return has been electronically filed.

112. LBS also prepares and files bogus tax returns using taxpayer information apparently stolen or otherwise misappropriated from the taxpayer.

113. For example, Nunez's LBS store at 419 W. 49th St., Hialeah, Florida, prepared and filed a 2012 federal tax return listing C.P.D.'s and S.C.F.'s names (although naming them only as C.P. and S.C.) and social security numbers. C.P.D. and S.C.F. did not knowingly have LBS prepare this tax return. C.P.D. and S.C.F. both received wages reported on Forms W-2 in 2012. LBS, however, did not report any Form W-2 information on the tax return it prepared, but instead falsely reported \$17,604 in income on a Schedule C attached to the return. LBS also claimed a bogus education credit on the return. LBS claimed an EITC in the amount of \$5,236, and requested a refund of \$6,074. It is not known what happened to that refund. C.P.D. and S.C.F. were unaware of LBS' filing of this tax return until contacted by the IRS; C.P.D. and S.C.F. were not required to file a tax return in 2012 because of the amount of their income.

#### **Deceptive, Unconscionable, and Undisclosed Fees**

114. Nunez's LBS stores charge unconscionably high fees to prepare tax returns, mostly through added, deceptive fees. These fees are typically charged without customers' knowledge.

115. LBS intentionally deceives its customers regarding the fees charged for the preparation of tax returns.

116. The LBS training "test" specifically instructs employees to tell potential customers who call LBS asking what the charge is for preparing a tax return to respond with: "\$75. Would you like to set an appointment?" The "Telephone Script" instructing employees how to speak to a potential customer on the phone directs employees to respond to the question

“How much do you charge?” with: “We charge \$75. You do not have to pay us up front; it will be deducted automatically from your refund.”

117. However, the actual cost may be several hundred dollars or more depending on the forms and schedules attached to the tax return. LBS charges 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. LBS charges separate fees for forms and schedules such as the electronic filing authorization (Form 8879) which is required for e-filing, the EITC qualifying child form (Schedule EIC), and the related EITC due diligence checklist (Form 8867), which must be completed in connection with a claim for the EITC. These fees result in a total tax return preparation fee much higher than the \$75 advertised.

118. LBS also has so-called “999 charge weeks.” During these periods, Gachette and LBS franchisees (including Nunez) encourage LBS stores to charge \$999 – or “as much as possible,” according to franchisee Douglas Mesadieu – for the preparation of tax returns that, at other times, would not result in such high fees. The sole purpose of “999 charge weeks” is to maximize the amount of revenue generated by LBS stores, and the high fees charged during these periods are not based on the difficulty or amount of time in preparing customers’ tax returns.

119. Customers must also pay the “service bureau” and “LBS transmittal” fees, totaling \$74, and fees to Drake software and EPS Financial (the refund processor) of \$7 and \$15 to \$20, respectively, in 2013. Thus, for a customer to have LBS prepare and e-file a basic federal income tax return (which is the appropriate return for the majority of customers), the actual bare minimum is far more than the \$75 advertised amount.

120. 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 LBS to prepare and file fraudulent returns claiming excessive refunds based on bogus claims and associated forms and schedules.

121. Because LBS targets low-income individuals, the high fees frequently pose a significant financial hardship for its customers. Additionally, fees are unconscionable for the basic tax returns being prepared for these customers, who are often eligible for free tax return preparation and electronic filing elsewhere.

122. Nunez and her LBS stores also routinely and intentionally fail to disclose to customers all fees charged. LBS trains its employees 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, LBS tells customers one amount for fees and then later increases 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.

123. Customers often complain that they did not know in advance that they would be charged exorbitant fees. LBS provides its 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). This is a recurring theme of complaints filed with the IRS and the Better Business Bureau, as well as local news reports regarding LBS locations across the country.

124. 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. If customers question the fee, LBS employees are instructed to tell the customer how much more money the preparer got the customer by adding additional forms to the tax return to increase the refund, and that, as the preparer stated in the initial “presentation script” each of those forms to get the customer more money back costs an additional fee.

125. LBS’s fees 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, LBS is able to conceal from unsuspecting customers the actual amount that the customers pay to have their tax return prepared. Customers typically do not discover that LBS charged much more than the customers anticipated for the preparation of their tax return until the customers receive a refund that is much less than quoted by the tax return preparer because LBS had subtracted its high fees.

126. 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 Gachette and Nunez for preparing the tax returns. The remaining refund amount is then directed to the customer, through direct deposit or check. The check issued to the customer makes no reference to the amount of fees deducted, which makes it easy for LBS to conceal, inflate and/or lie about its fees.

127. LBS’s practice of charging unconscionable and undisclosed fees violates consumer protection laws. The undisclosed and unconscionable fees also interfere with the administration and enforcement of the internal revenue laws. Potential customers go to LBS believing that they will be charged a reasonable fee for the honest and accurate preparation of their tax return. Instead, LBS 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 predatory 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)**

128. Nunez and many of her managers and preparers commonly fail to provide customers with copies of their completed tax returns. The completed tax return, filed with the IRS, shows the refund that LBS 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 LBS by subtracting the amount of the refund that the customer actually receives from the amount of the refund claimed on the tax return. LBS's failure to provide a copy of a customer's completed tax return is part of LBS's strategy to conceal its actual fees from its customers.

129. 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."

130. LBS's training "test" states that employees should provide a customer with a copy of the customer's tax return, but "Only if we will be E-filing the same day or if we have already E-filed." In reality, LBS customers do not receive copies of their tax returns, particularly those whose returns are prepared based on a pay stub days or weeks before the IRS even begins to accept filed tax returns. The answer to the LBS "test" question about whether to "give customers their copies of their 1040 tax papers" on January 5, 2013 is simply "NO."

131. Not only does LBS not provide a copy of the completed tax return to customers at the time it is prepared, but it fails to provide a copy after electronically filing the return, and also refuses to provide a copy later on the customer's demand.

**Examples of the Widespread and Common Fraud at  
Nunez's LBS Tax Services Locations**

132. The IRS has examined tax returns of many customers of Nunez's LBS stores. In addition to the customers described above, the following examples show the rampant fraud.

133. M.O. and A.L. had their 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. The LBS preparer asked M.O. if he had any other job in 2012, and he said no. The LBS preparer also asked M.O. if his wife worked, and he said no. The preparer asked M.O. if he drove to work in 2012 and he said yes. LBS then falsely claimed on the Schedule C attached to the tax return that M.O. had a business (not identified by name or type of business) that had no sales in 2012 but incurred \$13,335 in expenses, including \$6,081 in car and truck expenses, \$1,707 in meals and entertainment, and \$5,547 in other expenses (\$1,912 cell phone, \$1,523 clothes, \$412 shoes, and \$1,700 "training"). By claiming this phony business loss of \$13,335, LBS fraudulently claimed an EITC in the amount of \$1,008 and a bogus refund of \$9,685. LBS told M.O. that he would receive a refund in the amount of \$8,689, which he received. M.O. believed he was paying \$75 to have his tax return prepared, based on statements made to him by the return preparer, and did not realize that LBS had deducted almost \$1,000 in fees until seeing his tax return during the IRS examination of his tax return in 2014.

134. In 2014, M.O. received an email stating that LBS no longer existed and that the new company was called Tax Master Xpress Services. M.O. and A.L. then went to Tax Master

Xpress Services, located at the former LBS store at 6301 W. Atlantic Blvd., to have their 2013 tax return prepared. The LBS (or Tax Master Xpress) preparer asked M.O. the same questions about whether he had any other jobs and whether his wife worked. However, LBS (Tax Master Xpress) did not claim a phony business on M.O.'s and A.L.'s 2013 tax return. Instead, to fraudulently reduce their taxable income through a different scheme, LBS (Tax Master Xpress) falsely claimed that M.O. and A.L. paid an astounding \$268,633 in general sales taxes in 2013. M.O.'s and A.L.'s combined wages and pension income was \$76,491, far less than they purportedly paid in sales taxes. This resulted in LBS (Tax Master Xpress) claiming a bogus refund of \$9,002 on M.O.'s and A.L.'s 2013 tax return. The preparer told M.O. that he would be receiving a refund of \$8,058, which he received. M.O. believed he was paying \$170 to have his tax return prepared, based on statements made to him by the return preparer, and did not realize that LBS (Tax Master Xpress) had deducted almost \$1,000 in fees for 2013 until seeing his tax return during the IRS examination of his returns in 2014. M.O. contacted Nunez after the IRS contacted him as part of the examination in 2014. Nunez told him to ask the IRS for additional time so that she could file amended returns, but M.O. did not hear from her again.

135. J.P.B. had her 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. J.P.B. provided the LBS preparer with a copy of her Forms W-2 and documents showing the residency of her children. LBS falsely reported J.P.B.'s filing status as head of household; in fact, J.P.B. did not qualify for head of household status, because she did not provide more than 50% of the financial support for her household. However, the preparer did not ask J.P.B. any questions to determine her correct filing status, and simply reported head of household on J.P.B.'s return. LBS also falsely reported on the Schedule C attached to her return that J.P.B. had a business as a message therapist, and that this business

received income of \$17,852, with expenses of \$5,162 (including car and truck expenses of \$3,098), for a profit of \$12,690. By falsely claiming head of household and fabricating a Schedule C reporting a profit of \$12,690, LBS fraudulently claimed an EITC in the amount of \$5,236 and a bogus refund in the amount of \$6,743 on J.P.B.'s tax return.

136. D.G.A. had her 2011, 2012, and 2013 federal income tax returns prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. D.G.A. was employed as a waitress these years, earning slightly above \$30,000 per year, and she also earned around \$600 annually doing some catering work for friends. On the Schedule A attached to D.G.A.'s tax return, LBS falsely claimed that D.G.A. had itemized deductions totaling \$21,283 (over half of her income from her job in 2011). These bogus itemized deductions included \$18,983 in medical expenses that D.G.A. did not actually have in 2011. On the Schedule C attached to the return, LBS falsely reported that D.G.A. had a business that received no income but incurred \$17,037 in expenses, including \$7,543 for supplies, \$3,076 for "food," \$5,432 for gas, and \$986 for "plastic container." Thus, D.G.A.'s combined reported Schedule C expenses and Schedule A deductions exceeded her income. LBS also falsely claimed an education credit in the amount of \$1,000. As a result of these bogus expenses and deductions, LBS fraudulently claimed an EITC in the amount of \$3,094, and a bogus refund in the amount of \$6,589. On D.G.A.'s 2012 tax return, LBS made similar fabricated claims. LBS falsely reported itemized deductions on the Schedule A, including \$2,593 in phony medical expenses and \$7,410 in bogus unreimbursed employee business expenses, including \$5,326 for car and truck expenses, \$292 for meals and entertainment, \$949 for uniforms, \$214 for shoes, and \$629 for "phone." LBS again falsely reported that D.G.A. had a business, with a principal business or service classified as "Catherine," that earned \$4,964, but incurred expenses totaling \$18,953, for a loss of \$13,989.

The fabricated expenses included \$7,515 for car and truck expenses, \$6,321 in repairs and maintenance, and \$4,660 in other expenses (\$2,068 for “merchandise,” \$359 for “beverage bin,” \$1,252 for “buffet warning carts,” and \$981 for a cell phone. LBS also reported a bogus education credit in the amount of \$926. LBS’s fraudulent claims and credits resulted in D.G.A.’s 2012 tax return falsely claiming an EITC in the amount of \$2,276 and a bogus refund of \$5,696. On her 2013 tax return, LBS (now Tax Master Xpress) falsely reported on the Schedule A that D.G.A. paid an incredible \$121,801 in sales taxes in 2013; D.G.A.’s wages in 2013 totaled \$34,677. D.G.A. did not pay any such sales taxes and did not know why LBS reported that amount. LBS (Tax Master Xpress) also again fabricated amounts on the Schedule C attached to D.G.A.’s 2013 return, reporting that she had a business that had \$2,964 in income and \$16,508 in losses (\$657 in advertising, \$8,781 in car and truck expenses, \$5,321 in supplies, and \$1,749 in meals and entertainment), for a \$13,544 phony business loss. By doing so, LBS (Tax Master Xpress) falsely claimed an EITC in the amount of \$2,676, and a bogus refund of \$5,638. As a result of LBS’s fraudulent return preparation for these three years, D.G.A. must repay over \$15,000 in taxes.

137. S.S. had her 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. S.S. received wages totaling \$25,989 in 2012. On the Schedule A attached to S.S.’s tax return, LBS falsely claimed deductions totaling \$9,792, including \$6,885 in medical expenses and \$3,067 in unreimbursed employee business expenses. LBS falsely reported on the Schedule C attached to the return that S.S. had a hair styling business that had no sales in 2012, but incurred expenses totaling \$5,311, including \$234 for advertising, \$1,813 for car and truck expenses, \$846 for supplies, \$606 for meals and entertainment, and \$1,812 for cell phone expenses. S.S. did not tell the preparer that she had

such a business, medical expenses, or employee business expenses, and did not know that LBS had reported this phony business, business loss, and itemized deductions on her tax return. By claiming these fabricated itemized deductions and the phony business loss, LBS fraudulently reduced S.S.'s taxable income to zero, falsely claimed an EITC in the amount of \$4,481, and claimed a bogus refund of \$8,482.

138. O.L. and V.B.C. had their 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. O.L. and V.B.C. received wages totaling \$25,530 in 2012. O.L. came to the United States in 2012, and earned around \$300 that year doing small side jobs, and told the LBS preparer that he earned this amount. O.L. did not incur any expenses for these side jobs because the friends for whom he did the work provided the tools and supplies. Despite knowing this, LBS falsely claimed on the Schedule C attached to the return that O.L. had a painting business that had \$2,036 in sales and incurred \$6,999 in expenses in 2012. The phony expenses included \$253 for advertising, \$4,139 for car and vehicle expenses, \$145 for repairs and maintenance, \$325 for supplies, \$1,440 for cell phone, and \$324 for uniforms. By claiming a phony business loss of \$4,963, LBS fraudulently claimed an EITC in the amount of \$5,236 and a bogus refund of \$7,897 on O.L.'s and V.B.C.'s tax return. O.L. and V.B.C. believed that they were charged \$75 to have their return prepared based on statements from the LBS preparer. However, upon viewing their completed tax return during the IRS examination of that return in 2014, O.L. and V.B.C. realized that they were actually charged around \$1,000 to have their return prepared based on the difference between the amount of the refund that they received and the amount requested on their tax return.

139. D.H. had his 2012 federal income tax return prepared at the LBS store located at 6301 W. Atlantic Blvd., Margate, Florida. LBS falsely reported on the Schedule C attached to

the return that D.H. had a business that had no sales in 2012, but incurred expenses totaling \$10,199, including \$6,512 for renting or leasing property, \$2,401 for meals and entertainment, \$342 for supplies, and \$944 for other expenses. D.H. did not tell the preparer that he had a business or these expenses. By claiming this phony business loss, LBS fraudulently reduced D.H.'s taxable income claimed a bogus refund of \$2,664 on D.H.'s tax return.

140. J.R. and Y.R. had their 2012 federal income tax return prepared at the LBS store located at 419 W. 49th St., Hialeah, Florida. J.R. received wages from two employers totaling \$46,017 and Y.R. did not work in 2012. J.R. provided the preparer with a copy of his Forms W-2 and Form 1098 for his home mortgage interest. On the Schedule A attached to the return, LBS falsely claimed that in 2012, the Rs. had medical expenses of \$7,193, paid general sales taxes in the amount of \$11,383, and had unreimbursed employee business expenses totaling \$6,719 (including \$5,227 in vehicle expenses and \$1,190 for meals and entertainment). In reality, the Rs. had less than \$1,000 in medical expenses, did not incur the reported sales taxes, and had no unreimbursed employee business expenses. The Rs. did not tell the LBS preparer that they had the reported expenses, and LBS gave the Rs. a copy of the return which did not include the Schedule A with the fabricated expenses. LBS also falsely reported on the Schedule C attached to the tax return that J.R. had a carpentry business, that had sales of \$6,778 and expenses totaling \$18,857, including \$5,369 for car and truck expenses, \$345 for renting vehicles and machinery, \$3,448 for supplies, \$3,500 for wages, and \$6,195 in other expenses (\$1,104 for cell phone, \$4,896 for tools, and \$195 for boots). The LBS prepare did not ask J.R. whether he had a business, and did not go over the completed tax return with the Rs. By reporting the fabricated Schedule A deductions and phony business loss of \$12,079, LBS fraudulently claimed an EITC in the amount of \$1,311 and a bogus refund of \$7,320 on the Rs.' 2012 tax return.

### **Investigations and Lawsuits have Not Deterred the Defendant**

141. Despite knowing of the widespread and pervasive fraudulent conduct surrounding her tax return preparation business, the IRS's examinations of customers' tax returns, lawsuits filed against LBS by the State of Texas and H & R Block, and the well-publicized complaints, including those by the Better Business Bureau, online consumer protection sites, and various local media outlets throughout the country, Nunez has not taken any meaningful steps to stop the fraud.

142. In fact, the only apparent change in 2014 is that several LBS stores (including Nunez's) began doing business under different names.

143. To the extent that Nunez claims that she does not know of the fraud committed by her LBS stores, her ignorance is deliberate, and she, in furtherance of her own greed, intentionally ignores and turns a blind eye to complaints documenting LBS's fraudulent practices.

144. Nunez has little incentive to stop the wrongdoing because she directly profits from the misconduct at her LBS stores by taking a percentage of all gross revenues. Accordingly, Nunez promotes a culture of greed that favors volume and profits over accuracy and integrity, and creates an environment where fraudulent tax return preparation and violations of federal tax laws flourish.

### **Harm Caused by the Defendant**

145. Nunez's knowledge and encouragement of fraud at her 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. Nunez and many of her managers and preparers 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.

146. The fraudulent practices of Nunez and many of her managers and preparers harm the United States Treasury in the form of lost tax revenue. Based on the IRS's completed examinations of tax returns prepared at Nunez's LBS stores from 2011 through 2014, the average tax deficiency per examined tax return, and the total number of tax returns prepared at Nunez's LBS stores during this period, the IRS estimates the tax loss caused by Nunez's LBS stores from 2011 to 2014 at \$6 million or more.

147. Nunez's customers have also been harmed because they relied on LBS 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 sizeable penalties and interest.

148. Customers are harmed by the unconscionably high and frequently undisclosed tax preparation fees and related bogus fees tied to anticipated tax refunds. These fees are subtracted from the erroneous refunds that result from LBS's fraudulent tax return preparation. 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 LBS's culture of greed at others' expense, but customers may also have to repay the portion of the refund that LBS subtracted for its high fees. Customers may also have to pay additional fees to other tax return preparers who will file correct, accurate amended tax returns to correct the fraudulent tax returns that LBS prepared and filed.

149. Other customers are harmed by LBS's fraudulent practices because they have lost or become ineligible for federal and/or state benefits due to the false claims that LBS made on their tax returns.

150. Nunez's misconduct 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 defendants' customers. IRS employees have spent thousands of hours conducting audits or reviewing tax returns prepared by LBS and interviewing hundreds of customers. In addition, IRS employees have devoted still more time making compliance visits to various franchises. Consequently, identifying and recovering all lost tax revenues resulting from LBS's fraudulent and illegal activities may be impossible.

151. Nunez's conduct also harms honest tax return preparers who refuse to engage in such illegal conduct. Honest tax return preparers unfairly lose business to LBS as a result of LBS's willingness to break the law. Customers often have their returns prepared with paystubs at LBS because law-abiding preparers do not prepare a tax return without an employer-issued Form W-2. Customers also have their returns prepared at LBS because LBS promises the maximum refund, and delivers by fabricating claims and deductions on customers' returns.

152. Finally, Nunez'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.

153. The harm to the government and the public will increase unless Nunez is enjoined because—given the seriousness and pervasiveness of their illegal conduct—without an injunction, Nunez is likely to continue enabling the preparation of false and fraudulent federal income tax returns for customers. An injunction will serve the public interest because it will put

a stop to Nunez's illegal conduct and the harm that such conduct causes the United States and its citizens.

**Count I**  
**Injunction under I.R.C. § 7407**

154. Section 7407 of the I.R.C. authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under I.R.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 I.R.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 I.R.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 I.R.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.

155. Section 7701(a)(36) of the I.R.C. 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.

156. Nunez, as shown above in paragraphs 1 through 153, is a tax return preparer who has repeatedly and continually prepared or submitted returns or portions of returns (or 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. Nunez also advises, instructs, directs, and causes her managers, preparers, and employees to engage in tax fraud, and to prepare federal income tax returns asserting unreasonable, unrealistic, frivolous and fraudulent positions. Accordingly, Nunez knew (or reasonably should have known) of the unreasonable, unrealistic, frivolous and fraudulent positions.

157. Nunez and those acting in concert with her and at her direction have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns that understate her customers’ liabilities based on unrealistic, frivolous and reckless positions. Nunez, through the actions described above, recklessly or intentionally disregards IRS rules or regulations.

158. Nunez and those acting in concert with her and at her direction have continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695. The Treasury regulations promulgated under I.R.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. § 1.6995-2 (2011). Nunez advises, encourages, and causes her managers, preparers, and employees to circumvent these due diligence requirements and to ignore or disregard the information provided by customers.

159. Nunez's failure to comply with the due diligence requirements for the EITC violates Treasury Regulations and her willingness to falsify information to obtain the EITC for her customers shows a reckless and/or intentional disregard of IRS rules and regulations.

160. Nunez and those acting in concert with her and at her direction have continually and repeatedly prepared federal income tax returns that claim the EITC for customers where she and those acting in concert with her and at her direction have not conducted, let alone documented, the required due diligence procedures.

161. Nunez also fails to comply with I.R.C. § 6695(a), which requires that a tax return preparer provide a copy of the completed tax return to the taxpayer.

162. Nunez's continual and repeated violations of I.R.C. §§ 6694 and 6695 fall within I.R.C. § 7407(b)(1)(A), and thus are subject to an injunction under I.R.C. § 7407.

163. Nunez's continual and repeated fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws falls within I.R.C. § 7407(b)(1)(D), and thus is subject to an injunction under I.R.C. § 7407.

164. Nunez and those acting in concert with her and at her direction 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 I.R.C. § 7407(b)(1)(C), and thus is subject to an injunction under I.R.C. § 7407.

165. If Nunez is not enjoined from all tax preparation, she and those acting in concert with her and at her direction are likely to continue to prepare and file false and fraudulent tax returns.

166. Nunez's continual and repeated conduct subject to an injunction under I.R.C. § 7407, including her 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 Nunez's interference with the proper administration of the internal revenue laws. Accordingly, Nunez 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 I.R.C. § 7408**

167. Section 7408 of the I.R.C. authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. § 6700 or § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

168. Section 6701(a) of the I.R.C. 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 I.R.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."

169. Nunez, through the actions detailed above in paragraphs 1 through 153, caused the presentation and preparation of false, fraudulent, and abusive tax returns and other documents. Nunez prepares, assists, and/or advises with respect to the presentation and preparation of federal tax returns for customers that she knows will understate their correct tax liabilities, because Nunez knowingly prepares, assists, and/or advises with respect to the presentation and preparation of returns claiming bogus expenses and deductions. Nunez

procured and assisted the preparation of false and fraudulent tax returns by encouraging the filing of tax returns she knew were false or fraudulent, and by employing, training, and supervising tax return preparers engaging in tax fraud. Nunez's conduct is thus subject to a penalty under I.R.C. § 6701.

170. Nunez is likely to continue violating the law absent an injunction. Tax return preparation is Nunez's primary source of revenue. To maximize that income, Nunez instructs and directs her managers and preparers to prepare fraudulent returns. That fraudulent conduct, in turn, gives Nunez a competitive edge over law-abiding preparers. It also provides a means for Nunez to further exploit her customers by charging them unconscionably high fees, while Nunez's fraud simultaneously and callously exposes her customers to possible civil and criminal liability.

171. If the Court does not enjoin Nunez, she is likely to continue to engage in conduct subject to penalty under I.R.C. § 6701. Nunez's, and those acting in concert with her and at her direction, preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under I.R.C. § 7408.

**Count III**  
**Injunction and Disgorgement under I.R.C. § 7402(a)**  
**Necessary to Enforce the Internal Revenue Laws**

172. Section 7402 of the I.R.C. 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.

173. Nunez, through the actions described above in paragraphs 1 through 153, including, but not limited to, intentionally understating her customers' tax liabilities and charging unconscionable and undisclosed fees for the preparation of federal tax returns that intentionally

understate her customers' tax liabilities, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

174. Unless enjoined, Nunez and those acting in concert with her and at her direction are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Nunez is not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

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

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

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

178. Nunez's 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 Nunez has unjustly profited at the expense of the United States by subtracting her exorbitant fees from those refunds.

179. The Court should enter an order under 26 U.S.C. § 7402(a) requiring Nunez to disgorge to the United States the proceeds that Nunez and her businesses received for the preparation of federal tax returns that make false or fraudulent claims.

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

A. That the Court find that Jacqueline Nunez has continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and has 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 I.R.C. § 7407, enter a permanent injunction prohibiting Jacqueline Nunez from acting as a federal tax return preparer;

C. That the Court find that Jacqueline Nunez has engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

D. That the Court find that Jacqueline Nunez has 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 I.R.C. § 7402(a);

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Jacqueline Nunez, and all those in active concert or participation with her, from:

- (1) acting as a federal tax return preparer 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 herself;
- (2) preparing or assisting in preparing federal tax returns that she knows or reasonably should have known would result in an understatement of tax liability or the overstatement of federal tax refund(s) as penalized by I.R.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 I.R.C. §§ 6694, 6695, 6701, or any other penalty provision in the I.R.C.; 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 I.R.C. §§ 7402(a) and 7407, enter an order requiring Jacqueline Nunez to immediately and permanently close, because of the pervasive fraud, all tax return preparation stores that she owns directly or through Tax Master Xpress Services, Inc., or any other entity, and whether those stores do business as LBS Tax Services or under any other name;

G. That the Court, pursuant to I.R.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 Jacqueline Nunez owns directly or through Tax Master Xpress Services, Inc., or any other entity, and whether those stores do business as LBS Tax Services or under any other name;

H. That the Court, pursuant to I.R.C. § 7402(a), enter an order prohibiting Jacqueline Nunez, directly or through Tax Master Xpress Services, Inc., or any other entity, from assigning, transferring, or selling any franchise agreement, independent contractor agreement, or employment contract related to LBS Tax Services or any other tax return preparation business to which she or any entity under her control is a party;

I. That the Court, pursuant to I.R.C. § 7402(a), enter an order barring Jacqueline Nunez from: (1) selling to any individual or entity a list of customers, or any other customer information, for whom Jacqueline Nunez, LBS Tax Services, Tax Master Xpress Services, and

any other business or name through which Nunez or those acting at her direction have at any time since 2009 prepared a tax return; (2) assigning, disseminating, providing, or giving to any current or former franchisee, General Sales Manager, District Sales Manager, manager, tax return preparer, employee, or independent contractor of Nunez, LBS Tax Services, Tax Master Xpress Services, or any other business through which Nunez prepares tax returns or owns or franchises a tax return preparation business, a list of customers or any other customer information for customers for whom Jacqueline Nunez, LBS Tax Services, Tax Master Xpress Services, and any other business or name through which Nunez or those acting at her direction have at any time since 2010 prepared a tax return; and (3) selling to any individual or entity any proprietary information pertaining to LBS Tax Services, Tax Master Xpress Services, and any other business or name through which Nunez or those acting at her direction have at any time since 2009 prepared a tax return;

J. That the Court, pursuant to 26 U.S.C. § 7402, enter an order requiring Jacqueline Nunez to disgorge to the United States the proceeds (the amount of which is to be determined by the Court) that Jacqueline Nunez and Tax Master Xpress Services, Inc. received (in the form of fees) 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 2010 at LBS Tax Services and Tax Master Xpress Services stores owned by Jacqueline Nunez and Tax Master Xpress Services, Inc.;

K. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an order requiring Jacqueline Nunez to contact, within thirty 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 Jacqueline Nunez and her managers and preparers prepared federal tax returns or claims for a refund for tax years 2008 through 2013

to inform them of the permanent injunction entered against her, 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 I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Jacqueline Nunez to produce to counsel for the United States, within thirty 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 Jacqueline Nunez and her managers and preparers prepared federal tax returns or claims for a refund for tax years beginning in 2008 and continuing through this litigation;

M. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an order requiring Jacqueline Nunez to produce to counsel for the United States, within thirty 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 Nunez, LBS Tax Services, and Tax Master Xpress Services, Inc., from 2010 to the present;

N. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Jacqueline Nunez to provide a copy of the Court's order to all principals, officers, managers, franchisees, employees, and independent contractors of Nunez, LBS Tax Services, and Tax Master Xpress 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 Jacqueline Nunez provided a copy of the Court's order;

O. That the Court retain jurisdiction over Jacqueline Nunez and over this action to enforce any permanent injunction entered against her;

P. That the United States be entitled to conduct discovery to monitor Jacqueline Nunez's compliance with the terms of any permanent injunction entered against her; and

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

DATED: September 23, 2014

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