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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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

UNITED STATES OF AMERICA, Plaintiff, v. JOSE A. FERNANDEZ, ALICIA C. BURGOS, and ECONOMY LEGAL SERVICES, INC., doing business as Economy Legal Services and as Economy Income Tax Services II, and formerly doing business as Economy Income Tax Service, Defendants.	)	Civil No. 6:04-CV-1772-ORL-31JGG

UNITED STATES' COMPLAINT FOR PERMANENT INJUNCTIONS

Plaintiff United States of America in its complaint against defendant Jose A. Fernandez, Alicia C. Burgos, and Economy Legal Services, Inc., d/b/a Economy Legal Services and Economy Income Tax Services II, and f/d/b/a Economy Income Tax Services states as follows:

NATURE OF COMPLAINT

1. This is a civil action brought by the United States of America pursuant to Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402 and 7407 to enjoin the defendants from:

a. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;

b. Providing any tax advice or services for compensation, including preparing returns, providing consultative services, or purported representation of customers;

c. Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability;

d. Making false representations that:

1) prospective customers may claim tax exemptions for relatives without evidence that those individuals meet the required dependency tests set forth in the Internal Revenue Code;

2) prospective customers may take business tax deductions or credits without regard to whether its customers have a bona fide business and business purpose;

3) prospective customers are entitled to claim a filing status when the customer does not qualify for such filing status, such as advising married taxpayers living in the same residence to claim a head-of-household filing status;

4) prospective customers may take itemized deductions for state sales taxes;

e. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of tax returns and/or representation of customers in front of the IRS.

AUTHORIZATION

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 of the United States, pursuant to the provisions of I.R.C. §§ 7401, 7402, and 7407.

JURISDICTION

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 pursuant to 28 U.S.C. § 1391 and 1396, and 26 U.S.C. § 7407.

DEFENDANTS

5. JOSE A. FERNANDEZ resides at 1014 Vigo Avenue, Orlando, Florida 32822.

6. ALICIA C. BURGOS resides at 1014 Vigo Avenue, Orlando, Florida, 32822.

7. ECONOMY LEGAL SERVICES, INC., is a corporation located and doing business as Economy Legal Services at 7205 Curry Ford Rd., Suite 2, Orlando, Florida 32822 and also doing business as Economy Income Tax Services II at 2050 N. Forsyth Road, Orlando, Florida 32807. Defendant Fernandez is the president of Economy Legal Services, Inc., and Burgos is its vice president and current registered agent.

DEFENDANTS' FRAUDULENT TAX PREPARATION SCHEME

8. Fernandez started preparing personal tax returns in 1981. In 1983, he began operating under the name of Economy Income Tax Services, a sole proprietorship. In 2001, he incorporated the business and renamed it Economy Legal Services, Inc. In 2002 Fernandez and Burgos, either as sole proprietors or through Economy Legal Services, Inc., opened Economy Income Tax Services II to service additional customers.

9. The Internal Revenue Service investigated Fernandez's preparation of income tax returns for the 1996 and 1997 tax years. The investigation revealed that 97 percent of the sampled returns prepared by Fernandez showed improper deductions or other improprieties. The IRS proposed that penalties be assessed against him. In addition, Fernandez's 1997 and 1998 personal returns were examined and a statutory notice of deficiency was issued for those years which notice included the assertion of the civil fraud penalty. Mr. Fernandez never responded to either the assertion of the preparer penalties or to the statutory notice of deficiency relating to the assertion of fraud on his individual tax return. Preparer penalties were assessed on February 28, 2000, and additional income taxes and penalties were assessed on June 18, 2001. Fernandez has paid both assessments in full.

10. Burgos is an unenrolled income tax return preparer who resides and works in the Orlando Area. She prepares returns using the Employee Identification Number of Economy Legal Services, Inc.

11. The Internal Revenue Service first became aware of Burgos while investigating returns prepared by Economy Legal Services, Inc. A number of the tax returns prepared by Economy Legal Services which were audited by the Internal Revenue Service were signed by Alicia Burgos.

12. Burgos has also signed and filed a State of Florida Uniform Business Report for 2001, 2002 and 2003, showing herself as the Vice President of Economy Legal Services, Inc., and Jose Fernandez as President.

13. Burgos stated in an interview with the Internal Revenue Service that she works under the direction of Fernandez and that she follows his instructions.

14. Burgos has advised clients that she was trained by Fernandez and prepares returns in the same manner as Fernandez.

15. Defendants falsely tell customers that they do not need verification for their deductions and that estimates are sufficient.

16. Defendants Fernandez, Burgos, and Economy Legal Services, Inc., claim large refunds for their customers by fraudulently offsetting taxable income with fictitious deductions and\or claiming improper filing status. Examples include:

> a. *Improper filing status*: Fernandez and/or Burgos prepared and/or filed returns claiming unsupported filing status such as Head-of-Household. Fernandez prepared and/or filed returns for taxpayers claiming Head-of-Household filing status, although he was aware that they were married and living in the same residence. This was done to increase the clients' refunds.
>
> b. *Sham Business Deductions*: Fernandez and/or Burgos prepared and/or filed tax returns on which there were claimed fictitious business expenses, thereby fraudulently reducing taxable income. Examples of fraudulent business expenses taken by Fernandez's customers include cost of a wedding, costs of all clothing, cost of nail care, haircuts, cosmetics, and drycleaning.
>
> c. *Improper Itemized Deduction for Taxes Paid*: Fernandez and/or Burgos claimed deductions for taxes paid on clients' tax returns when the taxpayers had only paid sales taxes, not taxes for which a deduction is allowed to offset taxable income.

d. *Improper Claim of Dependents*: Fernandez and/or Burgos told clients that if they sent any money at all to a relative they could claim that relative as a dependent, and the dependent did not have to reside with them. Fernandez also asked his clients if they knew of someone who was not being claimed as a dependent, then Fernandez would request that persons Social Security Number and use it on that client's tax return to claim an additional dependent.

17. The Internal Revenue Service has examined at least 113 federal income tax returns prepared by defendants for the tax years 1999, 2000, 2001, and 2002. 100 percent of those returns that were examined resulted in adjustments based on fraudulent deductions or improper filing status.

DEFENDANTS' KNOWLEDGE OF
THE ILLEGALITY OF THEIR SCHEME

18. Both Fernandez and Burgos, in the their personal capacities and as officers of Economy Legal Services, Inc., know or should know that their scheme is illegal.

19. Fernandez was audited by the Internal Revenue Service for his personal 1997 and 1998 federal income tax returns, and a civil fraud penalty under Internal Revenue Code Section 6663 was asserted.

20. In addition to civil fraud penalties, preparer penalties under Internal Revenue Code Section 6694 were asserted against Fernandez for 1996 and 1997 due to his claiming deductions, dependents and filing status without any reasonable basis.

21. Fernandez acknowledged that he is highly knowledge about the Internal Revenue Code rules and regulations.

HARM TO THE UNITED STATES

22. Defendants prepared at least 3,763 tax returns for the tax year 2001. Fernandez indicated in an interview with Internal Revenue Service agents that he prepared between 4,000 to 5,000 tax returns each year since 2000.

23. The Internal Revenue Service has examined at least 113 of those returns and 100 percent of those returns required audit adjustments which increased the tax owed because of the frivolous positions described above.

24. The average audit adjustment for the 113 examined federal income tax returns resulted in increased tax owed of $2,821 per return. Assuming that examination of all returns prepared by defendants would yield similar increases in tax, the understated tax liability resulting from the defendants' acts for the 3,763 returns prepared for just the year 2001 would result in a tax loss of $10,615,423. Based on approximately 12,000 returns prepared for 1999 through 2002, the tax loss to the United States' treasury would be in excess of $33 million.

25. On information and belief, Defendants continued to prepare federal income tax returns for the 2003 tax year.

COUNT I: INJUNCTION UNDER § 7407

26. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 25 above.

27. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin an income tax return preparer (a) from engaging in conduct subject to penalty

under I.R.C. § 6694, which penalizes a return preparer who knowingly prepares a return that contains an unrealistic position, who willfully attempts to understate tax liability on a return that he prepares, or who prepares a return that understates tax liability as a result of his or her reckless or intentional disregard of rules or regulations; (b) from guaranteeing the payment of any tax refund or the allowance of any tax credit; or (c) from engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

28. Defendants have engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns claiming frivolous and fraudulent deductions based on positions which defendants know do not have a realistic possibility of being sustained on the merits and they have prepared and/or filed tax returns which understate tax liabilities due to willful attempts to understate a tax liabilities, or take positions which recklessly or intentionally disregard Internal Revenue Code rules or regulations, or otherwise engage in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

29. Defendants are known in the community as individuals who prepare tax returns that generate tax refunds.

30. Defendants have engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

31. Defendants actions described above fall within 26 U.S.C. §§ 7407(b)(1) and are thus subject to injunction under § 7407.

32. Because of Fernandez's and Burgos' continual and repeated conduct subject to injunction under 26 U.S.C. § 7407 they should be permanently enjoined from acting as income tax return preparers.

COUNT II: INJUNCTION UNDER 26 U.S.C. § 7402

33. The United States incorporates herein by reference the allegations in paragraphs 1 through 32 above.

34. Section 7402(a) of the Internal Revenue Code authorizes a district court to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.

35. Defendants, through the conduct described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws. Unless enjoined by this Court they are likely to continue to engage in such conduct. Their conduct causes significant injury to the United States. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a) to prevent such conduct.

APPROPRIATENESS OF INJUNCTIVE RELIEF

36. Unless enjoined, defendants are likely to continue to engage in conduct described in paragraphs 1 through 35, above.

37. Defendants' conduct, as described above, causes irreparable harm to the United States. Specifically, defendants' conduct is causing and will continue to cause substantial revenue losses to the United States treasury, some of which may never be recovered, thus resulting in a permanent loss. Unless defendants are enjoined, the IRS

will have to devote substantial amounts of its limited resources to detecting and auditing future fraudulently prepared returns.

38. If defendants are not enjoined, they likely will continue to engage in conduct subject to penalty under 26 U.S.C. § 6694.

39. If Fernandez and Burgos are not enjoined, they likely will continue to engage in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

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

A. That the Court find that defendants Jose A. Fernandez, Alicia C. Burgos, and Economy Legal Services, Inc., continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694, or otherwise engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them is appropriate pursuant to 26 U.S.C. § § 7402(a) and 7407 to prevent recurrence of that conduct;

B. That the Court, pursuant to 26 U.S.C. § 7407, enter a permanent injunction prohibiting defendants Jose A. Fernandez, Alicia C. Burgos, and Economy Legal Services, Inc., from directly or indirectly:

a. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;

b. Providing any tax advice or services for compensation, including, preparing returns, providing consultative services, or purported representation of customers;

c. Further engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position or preparing a return or claim for refund that willfully or recklessly understates a tax liability;

d. Making false representations that:

1) prospective customers may claim tax exemptions for relatives without evidence that those individuals meet the required dependency tests set forth in the Internal Revenue Code;

2) prospective customers may take business tax deductions or credits without regard to whether its customers have a bona fide business and business purpose;

3) prospective customers are entitled to claim a filing status when the customer does not qualify for such filing status, such as advising married taxpayers living in the same residence to claim a head-of-household filing status;

4) prospective customers may take itemized deductions for state sales taxes;

e. Engaging in any other conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of tax returns and/or representation of customers in front of the IRS.

C. That the Court, pursuant to 26 U.S.C. § 7402, enter an injunction:

a. Requiring defendants, at their own expense, to send by certified mail, return receipt requested, a copy of the final injunction entered against them in this action to each person for whom they, or anyone at their direction or in their employ, prepared federal income tax returns or any other federal tax forms after January 1, 1999;

b. Requiring defendants, within forty-five days of entry of the final injunction in this action, to file a sworn statement with the Court

evidencing their compliance with the customer notification requirement; and

c. Requiring defendants to keep records of their compliance with this provision, which may be produced to the Court, if requested, or to the United States pursuant to paragraph E, below;

D. That the Court, pursuant to 26 U.S.C. §§ 7402 and 7407 enter an injunction requiring defendants and anyone who prepared tax returns at the direction of or in the employ of Fernandez, Burgos, or Economy Legal Services, Inc., to turn over to the United States copies of all returns or claims for refund and the name and social security or taxpayer identification number, address, e-mail addresses, and telephone numbers of all customers for whom they prepared returns or claims for refund after December 31, 1999;

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

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

Dated: December 2, 2004

PAUL I. PEREZ
United States Attorney

By: Robert L. Welsh

ROBERT L. WELSH
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JS 44 (USAO Rev.7/98)

CIVIL COVER SHEET

6:04-CV-1772-31JGG

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM).

I. (a) PLAINTIFFS
UNITED STATES OF AMERICA,

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS
JOSE A. FERNANDEZ, ALICIA C. BURGOS, and ECONOMY LEGAL SERVICES, INC. doing business as Economy Legal Services, etc.,

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT **ORANGE**
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
ROBERT WELSH, Trial Attorney
Department of Justice, Tax Division
Post Office Box 14198
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6068

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE "X" IN ONE BOX ONLY)

[X] **1** U.S. Government Plaintiff
[ ] **2** U.S. Government Defendant
[ ] **3** Federal Question (U.S. Government Not a Party)
[ ] **4** Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY) (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ]1	[ ]1	Incorporated or Principal Place	[ ]4	[ ]4
Citizen of Another State	[ ]2	[ ]2	Incorporated and Principal Place of Business in Another State	[ ]5	[ ]5
Citizen or Subject of a Foreign Cntry	[ ]3	[ ]3	Foreign Nation	[ ]6	[ ]6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

[X] **1** Original Proceeding
[ ] **2** Removed from State Court
[] **3** Remanded from Appellate Court
[] **4** Reinstated or Reopened
[] **5** Transferred from another district (specify)
[] **6** Multidistrict Litigation
[] **7** Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT

[] 110 Insurance
[] 120 Marine
[] 130 Miller Act
[] 140 Negotiable Instrument
[] 150 Recovery of Overpayment & Enforcement of Judgment
[] 151 Medicare Act
[] 152 Recovery of Defaulted Student Loan (Excl. Veterans)
[] 153 Recovery of Overpayment at Veteran's Benefits
[] 160 Stockholders' Suits
[] 190 Other Contract
[] 195 Contract Product Liability

REAL PROPERTY

[] 210 Land Condemnation
[x] 220 Foreclosure
[] 230 Rent Lease & Ejectment
[] 240 Torts to Land
[] 290 All other Real Property

TORTS

PERSONAL INJURY

[] 310 Airplane
[] 315 Airplane Product Liability
[] 320 Assault, Libel & Slander
[] 330 Federal Employers Liability
[] 340 Marine
[] 345 Marine Product Liability
[] 350 Motor Vehicle
[] 355 Motor Vehicle Product Liability

CIVIL RIGHTS

[] 441 Voting
[] 442 Employment
[] 443 Housing/ Accommodations
[] 444 Welfare

PERSONAL INJURY

[] 362 Personal Injury Med Malpractice
[] 365 Personal Injury Product Liability
[] 368 Asbestos Personal Injury ProductLiability

PERSONAL PROPERTY

[] 370 Other Fraud
[] 371 Truth in Lending
[] 380 Other Personalroperty Damage
[] 385 Property Damage Product Liability

PRISONER PETITIONS

[] 510 Motions to Vacate Sentence

Habeas Corpus

[] 530 General
[] 535 Death Penalty
[] 540 Mandamus & Other
[] 550 Other (including 1983 Actions)

FORFEITURE/PENALTY

[] 610 Agriculture
[] 620 Other Food & Drug.
[] 625 Drug Related Seizure of Property 21U.S.C. 881
[] 630 Liquor Laws
[] 640 R.R. & Truck
[] 650 Airline Regs.
[] 660 Occupational Safety/Health
[] 690 Other

LABOR

[] 710 Fair Labor Standards Act
[] 720 Labor/Mgmt.Relations
[] 730 Labor/Mgmt. Reporting & Disclosure Act
[] 740 Railway Labor Act
[] 790 Other Labor Litigation
[] 791 Empl. Ret. Inc. Security Act.

BANKRUPTCY

[] 422 Appeal 28 U.S.C. 158
[] 423 Withdrawal 28 U.S.C. 157

PROPERTY RIGHTS

[] 820 Copyrights
[] 830 Patent
[] 840 Trademark

SOCIAL SECURITY

[] 861 HIA (1395f)
[] 862 Black Lung (923)
[] 863 DIWC/DIWW (405(g))
[] 864 SID Title XVI
[] 865 RSI (405(g))

FEDERAL TAX SUITS

[X] 870 Taxes (U.S. Plaintiff or Defendant)
[] 871 IRS - Third Party 26 U.S.C. 7609

OTHER STATUTES

[] 400 State Reapportionment
[] 410 Antitrust
[] 430 Banks and Banking
[] 450 Commerce/ICC Rates; etc
[] 460 Deportation
[] 470 Racketeer Influenced Corrupt Organizations
[] 810 Selective Service
[] 850 Securities/ Commodities/Exchange
[] 875 Customer Challenge 12 U.S.C. 3410
[] 891 Agricultural Acts
[] 892 Economic Stabilization Act
[] 893 Environmental Matters
[] 894 Energy Allocation Act
[] 895 Freedom of Information Act
[] 900 Appeal of Fee Determination Under Equal Access to Justice
[] 950 Constitutionality of State Statutes
[] 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTE UNLESS DIVERSITY)

CIVIL INJUNCTION PURSUANT TO INTERNAL REVENUE CODE (I.R.C.) (26 U.S.C.) §§ 7401, 7402 AND 7407

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION [ ] UNDER F.R.C.P. 23 **DEMAND** **JURY DEMAND:** [ ] YES [X] NO **CHECK YES only if demanded in complaint:**

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE December 2, 2004 SIGNATURE OF ATTORNEY OF RECORD Robert L. Welsh
Trial Attorney, Tax Division, U.S. Department of Justice

FOR OFFICE USE ONLY
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____