

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: _____

UNITED STATES OF AMERICA,

Plaintiff,

v.

HENRY ERNESTO MEDINA, JR., and
MEDINA GROUP, INC., d/b/a MEDINA &
ASSOCIATES,

Defendants.

COMPLAINT FOR PERMANENT INJUNCTION

The plaintiff, United States of America, alleges against defendants Henry Ernesto Medina, Jr., and Medina Group, Inc., d/b/a Medina & Associates, as follows:

1. The United States brings this complaint to enjoin Henry Ernesto Medina, Jr. (“Medina”), and Medina Group, Inc. (“Medina Group”), and any entity through which they conduct business and all persons and entities in active concert or participation with them, from:
 - (a) Preparing or filing federal tax returns, or advising, assisting or instructing anyone to prepare or file federal tax returns that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to that credit in accordance with 26 U.S.C. § 36;
 - (b) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendants know will (if so used) result in the understatement of tax liability, including, but not limited to, preparing federal income tax returns that improperly include claims for the First-Time Homebuyer Credit;
 - (c) Engaging in conduct subject to penalty under 26 U.S.C. § 6694; *i.e.*, including, but not limited to, willfully attempting to understate the tax liability of another person by preparing returns that improperly include claims for the First-Time Homebuyer Credit; and

- (d) Engaging in similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

2. This action has been requested by 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 §§ 7402, 7407 and 7408 of the Internal Revenue Code, 26 U.S.C. (the “Code”).

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and Code §§ 7402(a), 7407 and 7408.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the defendants reside or conduct business in this district and because a substantial part of the actions giving rise to this suit took place in this district.

Defendants

5. Henry Ernesto Medina, Jr. resides and conducts business in the Southern District of Florida in the Miami, Florida, area.

6. Medina Group, Inc., is located and conducts business in Miami, Florida. It was incorporated with the State of Florida in 2001. Medina is its vice-president. Its other officers and employees are Medina family members.

7. Medina Group sometimes conducts business as Medina & Associates.

Defendants’ Activities

8. Medina is a tax return preparer as defined by Code § 7701(a)(36). He prepares other people’s federal tax returns for compensation.

9. Medina is an experienced tax return preparer who has prepared returns since at least

2001.

10. Medina Group is a tax return preparer as defined by Code § 7701(a)(36). It prepares other people's federal tax returns for compensation. According to its website, Medina Group engages in a variety of accounting, tax and financial services.

11. Medina is Medina Group's sole preparer of individuals' federal income tax returns.

12. Medina Group generally charged \$100 to \$200 to prepare an individual customer's return and file it electronically.

13. The defendants prepared and filed 768 federal individual income tax returns for tax year 2008. Of these returns, 174 claimed the First-Time Homebuyer Credit ("the credit").

14. The IRS reviewed 30 of the 174 returns and determined that only one of them was entitled to the credit. Twenty-nine of the 30 taxpayers associated with the returns failed to purchase a home that would qualify the taxpayer to claim the credit.

15. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit in July 2008. The credit allowed first-time homebuyers a credit against their federal income tax of the lesser of ten percent of the home's purchase price or \$8,000 (the maximum credit).

16. The credit, which is codified at Code § 36, is claimed by completing and attaching to the income tax return an IRS Form 5405. Form 5405 clearly sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home's address and acquisition date.

17. To be eligible for the credit (as in effect for tax year 2008) a person must not have owned a home in the previous three years and must have actually purchased a home after April 8, 2008.

18. The defendants made no attempt to determine whether their customers were qualified to claim the credit. To the contrary, Medina misrepresented the requirements for the credit to customers and failed to mention to customers that there must have been an actual home purchased. He told customers that the credit could be used for the future purchase of a home.

19. As an example, customer Jose Fernandez went to the defendants to have his 2008 return prepared. He informed Medina that he had not purchased a house in 2008. However, Medina falsely told him that he was eligible for the credit but that if he did not purchase a home the credit would have to be repaid. The defendants prepared and filed Fernandez's 2008 that improperly claimed the credit in the amount of \$7,500. On the Form 5405 attached to the 2008 return, the defendants reported a home purchase date of August 14, 2009. Fernandez did not buy a house in either 2008 or 2009.

20. Medina made a similar false statement about the availability of the credit to another customer, Juan Gonzalez. Medina told him the credit was a loan that had to be repaid if he did not buy a house. Medina did not tell him that a home must have already been purchased in order to claim the credit. The defendants prepared and filed the 2008 federal income tax return of Gonzalez that falsely claimed the credit. Gonzalez did not buy a house in 2008 or 2009, although the defendants reported a home purchase date of November 30, 2009, on the Form 5405 attached to the 2008 return. The defendants prepared and filed the Gonzalez return in March 2009.

21. On twenty of the thirty returns reviewed by the IRS in which the defendants claimed the credit, the defendants reported a home purchase date that was after the date the return was prepared and filed. As an example, the defendants falsely reported a home purchase date of December 8, 2009, on the Form 5405 attached to the 2008 return of customer Edran Rosales,

though the return was received by the IRS on March 13, 2009.

22. As stated above, only taxpayers who made first-time home purchases after April 8, 2008, may be eligible for the credit. Notwithstanding this requirement, the defendants also claimed the credit for taxpayers who purportedly purchased a home prior to that date. For instance, the Form 5405 attached to the 2008 return Medina prepared for customer Juan Marquez reports a home purchase date of February 11, 2008. (In addition to not meeting the time requirement for credit qualification, a search of property records reveals that Marquez did not purchase a home at all during 2008 or 2009.)

23. The defendants are claiming the credit on returns they prepare with knowledge that the customers have not purchased a home during the applicable time period.

24. On each of the 174 returns prepared by the defendants that claim the credit, the defendants claimed the credit in the amount of \$7,500. In other words, the defendants claimed that each of these 174 customers purchased a home after April 8, 2008, that cost at least \$75,000.

25. Of the 30 returns reviewed by the IRS, each reported that the customer earned adjusted gross income of less than \$12,300, and 19 of the returns reported adjusted gross income of less than \$400.

26. Thirty-one of the returns prepared by the defendants that claimed the credit reported adjusted gross income of \$0. In addition to the fact that customers informed them that they had not purchased a home, this absence of income should have alerted the defendants that the customers did not have sufficient income to purchase a home that would have entitled them to the credit claimed.

COUNT I – Injunction under Code § 7407

27. Code § 7407 authorizes a court to enjoin a tax return preparer if, *inter alia*, the court

finds that the return preparer has engaged in conduct subject to penalty under Code § 6694 and that injunctive relief is appropriate to prevent the recurrence of the conduct.

28. Code § 6694(b) imposes penalties on a tax return preparer who willfully attempts to understate the tax liability of another person or whose reckless or intentional disregard of rules and regulations results in the understatement of tax liability.

29. The defendants have continually and repeatedly engaged in conduct subject to penalty under Code § 6694(b) by preparing returns that they know contain erroneous claims for the First Time Homebuyer Credit.

30. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, the defendants are likely to continue preparing and filing false federal income tax returns that contain erroneous claims for the First-Time Homebuyer Credit.

31. The defendants should be permanently enjoined under Code § 7407 from preparing or filing federal tax returns that claim the First-Time Homebuyer Credit unless the defendants ensure that the customer is entitled to the credit under Code § 36.

32. The defendants should be further permanently enjoined under Code § 7407 from engaging in any other conduct subject to penalty under Code § 6694.

COUNT II – Injunction under Code § 7408

33. Code § 7408 authorizes courts to enjoin any person from engaging in conduct that is subject to penalty under Code § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

34. Code § 6701(a) penalizes any person who aids or assists in the preparation of any portion of a federal tax return or other document knowing 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

would result in an understatement of another person's tax liability.

35. The defendants have prepared federal tax returns and IRS Forms 5405 for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit and thereby understate the customers' correct federal tax liability. Their conduct is subject to penalty under Code § 6701.

36. Unless enjoined by the Court, the defendants are likely to continue to prepare tax returns that they know will result in the understatement of tax liability.

37. Accordingly, the defendants should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code § 6701.

COUNT III – Injunction under Code § 7402

38. Code § 7402 authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under that statute “are in addition to and not exclusive of any and all other penalties.” Code § 7402(a).

39. The defendants, through the actions described above, have engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and are likely to continue to engage in such conduct unless enjoined.

40. The defendants' conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate. If the defendants are not enjoined from preparing tax returns that contain a false claim for the First-Time Homebuyer Credit the United States will suffer irreparable injury by erroneously providing tax refunds to persons not entitled to receive them and by taxpayers not reporting and paying the correct amount of taxes.

41. Unless the defendants are enjoined, the IRS will have to devote substantial time and

resources to identify and locate their customers, and then examine those customers' tax returns and property records. Pursuing all individual customers may be impossible given the IRS's limited resources.

42. Enjoining the defendants is in the public interest because an injunction will stop their illegal conduct and the harm it causes the United States.

43. The Court should therefore order injunctive relief under Code § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. The Court find that the defendants have continually and repeatedly engaged in conduct subject to penalty under Code §§ 6694 and 6701, by willfully preparing false federal income tax returns that improperly claimed the First-Time Homebuyer Credit, and that an injunction under Code §§ 7407 and 7408 is appropriate to prohibit that conduct and any other conduct subject to penalty under Code § 6694 and 6701;

B. The Court, pursuant to Code §§ 7407, 7408 and 7402(a), enter a permanent injunction prohibiting the defendants from preparing or assisting in the preparation or filing of federal income tax returns or other related documents and forms for others that claim the First-Time Homebuyer Credit unless ensuring that the taxpayer is entitled to such credit in accordance with Code § 36;

C. The Court find that the defendants have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against them and anyone acting in concert with them is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and Code § 7402(a);

D. The Court, pursuant to Code § 7402(a), enter an injunction requiring the defendants to contact by United States mail (or by e-mail, if a postal address is unknown) all persons for

whom they prepared a federal tax return since January 1, 2009, that includes a claim for the First-Time Homebuyer Credit to inform them of the Court's findings in this matter and enclose a copy of the injunction entered against them, and to file with the Court within fifteen days of the date the permanent injunction is entered, a certification signed under penalty of perjury by Henry Ernesto Medina, Jr., that they have done so;

E. The Court authorize the United States to engage in post-judgment discovery pursuant to the Federal Rules of Civil Procedure in order to monitor compliance with the Court's injunction; and

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

Dated: February 23, 2010.

JEFFREY H. SLOMAN
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