

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

Case Number: 0:11-cv-60032

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DIANELYS ARMENGOL GUEVARA a/k/a)
DIANELYS ARMENGOL,)
)
Defendant.)

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America, brings suit against Defendant, Dianelys Armengol Guevara a/k/a Dianelys Armengol (“Guevara”), for a permanent injunction pursuant to Internal Revenue Code §§ 7402(a), 7407 and 7408.

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of 26 U.S.C. (I.R.C.) §§ 7402, 7407 and 7408.

Jurisdiction and Venue

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

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Guevara resides in this judicial district, the vast majority of Guevara’s customers reside in this judicial

district, and a substantial portion of the events giving rise to this action have occurred in this judicial district.

Defendant

4. Guevara currently resides in Pembroke Pines, Florida.
5. Guevara graduated from high school in 2004 and studied business administration for two years at Broward Community College in Hollywood, Florida.
6. Besides attending a yearly tax course which her former employer offered to his preparers, Guevara has no training in tax return preparation.

Defendant's Activities

7. Guevara is a tax return preparer as defined by I.R.C. § 7701(a)(36). She prepares her customers' federal tax returns for compensation.
8. Guevara prepared federal tax returns for customers during the 2005 through the 2009 filing seasons while she was an employee of a Liberty Tax Service franchise located at 2500-1 N. State Road 7 in Hollywood, Florida ("Liberty franchise"). This Liberty franchise is managed by Aleksandr Sorsher.
9. Sorsher terminated Guevara's employment prior to the 2010 tax filing season, at which time she began preparing customers' federal income tax returns and filing them with the IRS using the IRS's free online filing program.
10. As described in more detail below, Guevara has repeatedly prepared returns for customers which contain false claims for the First-Time Homebuyer Credit, report fictitious wages, report false income and expense items on Schedule C, and fail to properly identify her as the paid preparer.

False Claims for the First-Time Homebuyer Credit

11. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit (“Credit”) in July 2008. Initially, the Credit, which is codified at I.R.C. § 36, permitted qualifying taxpayers to claim a refundable tax credit up to \$7,500, to be repaid interest-free over 15 years. Congress subsequently amended I.R.C. § 36, increasing the allowable Credit to \$8,000 and eliminating the repayment provision. Because the Credit is refundable, the taxpayer may receive a refund up to the full amount of the Credit even if he does not have any federal income tax liability for that year.

12. To be eligible for the Credit, the taxpayer must have actually purchased a home within the qualifying period and must not have owned a home in the previous three years ending on the date of purchase.

13. To claim the Credit, a taxpayer must complete and attach IRS Form 5405 to his income tax return. This form, which sets forth the Credit’s eligibility requirements, requires the taxpayer to list the purchased home’s address and acquisition date.

14. In April 2009, Sorsher met with his paid preparers, including Guevara, and instructed them regarding proper use of the Credit.

15. The IRS determined that during the 2009 filing season, Guevara prepared at least 665 returns and amended returns for the 2008 tax year, 129 of which included claims for the Credit.

16. Guevara falsely claimed the Credit on 98% of these 129 returns and amended returns because the taxpayers had not purchased a home or had purchased a home outside of the qualifying period. These results are summarized in the table below:

Type of Return	Number of Returns Claiming the Credit Analyzed by the IRS	Returns Falsely Claiming the Credit	% Returns Falsely Claiming the Credit
Electronic	92	89	96.7%
Paper	25	25	100%
Amended	12	12	100%
<i>Total</i>	129	126	97.7%

17. Guevara claimed the Credit on customers' returns even though she knew they did not qualify for it. Interviews with some of these customers reveal that Guevara misrepresented the requirements for the Credit, failed to mention that an actual home must have been purchased in order to claim the Credit, and even claimed the Credit against the wishes or without the knowledge of some customers.

18. For example, in preparing Magaly Maza's 2008 federal income tax return, Guevara falsely stated that purchasing a home was not a condition of receiving the Credit and that individuals merely looking to purchase a home could claim it. Even though Maza never stated that she had purchased a home or was intending to purchase a home, Guevara claimed an \$8,000 Credit on Maza's return. After examination, the IRS disallowed the falsely claimed Credit. Maza subsequently consented to assessment and collection of \$8,407.50, which included the amount of the improperly claimed Credit.

19. Two other customers, Jesus and Gisela Ramos, had their joint 2008 federal income tax return prepared by Guevara. Guevara insisted they claim the Credit even though she knew they had not purchased a home during the qualifying period. Guevara falsely told these customers that the Credit could be used if they were performing repairs on and remodeling their

home. After receiving a \$7,500 refund from the IRS as a result of the improperly claimed Credit, these two customers prepared an amended return and returned the funds to the IRS.

20. Another customer, Betty Scott, had her 2008 federal income tax return prepared by Guevara. Guevara falsely told Scott that the Credit could be used to help her purchase a new home. Scott did not tell Guevara that she purchased a home during the qualifying period and in fact she had not. After examination, the IRS disallowed the falsely claimed Credit on Scott's return and she consented to assessment and collection of \$9,109.38, which included the amount of the improperly claimed Credit.

21. On at least one occasion, Guevara falsely claimed the Credit on a customer's return without the customer's knowledge. The version of Aliuska Marino's 2008 federal income tax return that Guevara prepared and filed with the IRS claimed the Credit in the amount of \$7,500. However, the version of the return that Guevara provided to Marino did not include a claim for the Credit.

22. Even though Sorsher reminded Guevara of the proper use of the Credit in April 2009, Guevara continued to claim it on returns she prepared with knowledge that the customers did not qualify for it. In fact, of the 126 returns Guevara prepared that improperly claimed the Credit, Guevara prepared at least 30 of them after this meeting with Sorsher. Guevara admitted that she claimed the Credit on these returns even though she knew the customers did not qualify for it.

23. The IRS determined that of the 129 returns Guevara prepared that claimed the Credit, at least 90 returns reported an adjusted gross income under \$20,000. Notwithstanding the fact that many of these customers informed Guevara that they had not purchased a home, this

absence of income reported on the returns should have alerted Guevara that the customers likely did not have sufficient funds to purchase a home entitling them to the Credit.

24. The IRS determined that the 126 returns Guevara prepared in which she falsely claimed the Credit resulted in a total of \$951,125 in false Credits.

Fictitious W-2s

25. For certain tax credits, individuals with higher incomes may be entitled to larger credits, such as with the Earned Income Tax Credit. Additionally, higher wages can create the appearance of propriety for returns fraudulently claiming the First-Time Homebuyer Credit.

26. During the course of reviewing returns Guevara prepared that claimed the Credit, the IRS discovered that many of those returns reported false wages from fictitious Forms W-2. The IRS has determined that 12 of the 92 electronic returns claiming the Credit reported false wages totaling over \$230,000.

27. For example, Guevara prepared Tobias Portillo's 2008 federal income tax return. This return reported fictitious wages from BCI Inc. in the amount of \$16,520 and fictitious income tax withholding in the amount of \$1,765. Mr. Portillo did not receive wages in 2008 from BCI Inc. Additionally, Guevara falsely claimed the Credit on Portillo's return, which the IRS subsequently disallowed. After examination, Portillo consented to assessment and collection of \$9,166.90, which included the amount of the improperly claimed Credit.

28. Employers have verified that in at least four other cases, Guevara prepared returns for customers that reported fictitious wages and fictitious income tax withholding.

False Schedule C Preparation

29. In addition to preparing returns that falsely claimed the First-Time Homebuyer Credit and reporting non-existent income from fictitious Forms W-2, Guevara prepared customers' federal income tax returns that included fictitious items on Schedule C.

30. Schedule C is a tax form where self-employed individuals report income and expenses from their self-proprietorships. The profit or loss shown on Schedule C is reported on a taxpayer's Form 1040. Guevara reported false items on Schedule C in order to understate her customers' federal tax liability.

31. For example, Hebert Echeverri and Nazly Vargas had their joint 2008 federal income tax return prepared by Guevara. Schedule C of their return reported car and truck expenses of \$7,102. These customers did not incur these expenses and did not give information regarding these items to Guevara. After examination, the IRS disallowed this deduction in full and the taxpayers consented to assessment and collection of \$12,635.56 in taxes and interest.

32. Another customer, Robert Van De Wouw, had his 2008 federal income tax return prepared by Guevara. Even though he told Guevara that he was unemployed during 2008, Guevara urged him to report some income. Accordingly, he reported \$4,985 in fictitious income on his Schedule C that the IRS subsequently disallowed. Guevara also falsely claimed the Credit on Van De Wouw's return even though he told Guevara he had not purchased a home.

Failure to Include Proper Identification Numbers

33. Guevara fails to properly identify herself as the paid preparer on many of the returns she prepares for her customers.

34. Guevara used a fictitious social security number to identify herself as the paid preparer on at least 497 of the returns she prepared for the 2008 tax year.

35. Guevara failed to include her social security number or preparer tax identification number on all of the 25 paper returns claiming the Credit that she prepared for the 2008 tax year. However, Sorsher's client files reveal that she did in fact prepare all of these returns, and during an interview with the IRS, Guevara admitted she prepared them on her own time and that she kept the preparation fees for herself.

36. In 2010, after being terminated from this Liberty franchise, Guevara began preparing returns for customers using the IRS's free online filing system, which paid preparers are not permitted to use.

37. The returns Guevara prepared using this system falsely state that they are self-prepared. Therefore, these returns do not contain Guevara's social security number or any other information identifying her as the person who prepared the return.

38. Because Guevara has been preparing returns using the IRS's free online filing system and without identifying herself as the return's preparer, the IRS has been able to identify only 6 returns she prepared for the 2009 tax year. Interviews with these customers reveal that at least five of these returns contain significant errors, including false education credits, inflated job expenses, false student loan payments, and false deductions for new car taxes.

39. For example, Guevara prepared Eduardo Hernandez's 2009 federal income tax return using the IRS's free online filing system. This return reported an education credit in the amount of \$2,939, based on \$4,800 in qualified education expenses, as well as a \$2,741 deduction for

new motor vehicle taxes. Hernandez did not incur these education expenses or new car taxes and he did not discuss these items with Guevara.

40. Another customer, Alfonso Escobar, had his 2009 federal income tax return prepared by Guevara using the IRS's free online filing system. This return reported an education credit in the amount of \$1,523, based on \$7,915 in qualified education expenses, as well as a \$1,147 deduction for student loan interest. Escobar did not incur these education expenses or pay any interest on student loans and he did not discuss these items with Guevara.

Harm to the United States

41. Guevara's preparation of false and fraudulent tax returns has resulted in customers receiving substantial federal income tax refunds to which they are not entitled and in customers not reporting and paying taxes that they owe.

42. Guevara prepared returns that included more than \$950,000 in fraudulent claims of the First-Time Homebuyer Credit alone. Additionally, the IRS has determined that Guevara has prepared returns for customers reporting fictitious wages totaling over \$230,000.

43. Guevara's conduct harms the United States because her customers are receiving refunds to which they are not entitled.

44. In addition to the direct harm caused by preparing tax returns that understate her customers' tax liabilities, Guevara's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

45. Guevara further harms the United States because the IRS must devote its limited resources to identifying Guevara's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. Guevara's

conduct undermines the IRS's efforts because she conceals her tax preparation activities by failing to identify herself as the paid preparer of a return, failing to list her true identification number on the returns she prepares, and improperly using the IRS's free online filing system.

Count I: Injunction under § 7407 for Conduct Subject to Penalty under §§ 6694 and 6695

46. The United States incorporates by reference the allegations contained in paragraphs 1 through 47.

47. I.R.C. § 7407 authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under I.R.C. §§ 6694 and 6695 and from engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

48. If a preparer's misconduct is continual or repeated and the court finds that a narrower injunction would not be sufficient to prevent the preparer's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a tax return preparer. See I.R.C. § 7407(b).

49. Guevara has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing returns that understate her customers' tax liabilities based on unreasonable and reckless positions. See I.R.C. § 6694(a)-(b). Her misconduct includes preparing returns that she knows contain fictitious wages, false income and expense items, and fraudulent claims for the First-Time Homebuyer Credit.

50. Guevara has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695 by preparing returns using fictitious identifying numbers. See I.R.C. § 6695(c).

Guevara has also engaged in conduct subject to penalty under I.R.C. § 6695 by failing to sign many of the returns she prepared. See I.R.C. § 6695(b).

51. Guevara's continual and repeated violations of I.R.C. §§ 6694 and 6695 fall within I.R.C. § 7407(b)(1)(A) and (D) and thus she is subject to injunction under I.R.C. § 7047.

52. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Guevara is likely to continue preparing false federal income tax returns and to continue failing to furnish identify herself properly on returns she prepares.

53. Guevara should be permanently enjoined under I.R.C. § 7407 from acting as a tax return preparer because a more limited injunction would be insufficient to stop her continual and repeated interference with the proper administration of the internal revenue laws.

Count II: Injunction under § 7408 for Conduct Subject to Penalty under § 6701

54. The United States incorporates by reference the allegations contained in paragraphs 1 through 47.

55. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under I.R.C. § 6701 if injunctive relief is necessary to prevent a recurrence of the conduct.

56. I.R.C. § 6701(a) imposes penalties against anyone who assists, advises or procures the preparation of a document, knows or has reason to know that the document will be used in connection with a material matter arising under the internal revenue laws, and knows that, if used, the document would result in an understatement of tax liability.

57. Guevara has prepared federal tax returns and related documents for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit and contain

false income and expense items. Further, Guevara misled customers regarding this Credit and even prepared returns claiming the Credit, as well as various other false items, without her customers' knowledge. This conduct is subject to penalty under I.R.C. § 6701.

58. Injunctive relief is necessary to prevent this misconduct because, absent an injunction, Guevara is likely to continue preparing false federal income tax returns that she knows will result in the understatement of tax liability. Guevara's failure to identify herself on returns she prepares indicates that she is attempting to conceal her fraudulent preparation activity because she is aware that the filing of these returns will result in the misstatement of her customers' tax liabilities.

59. Guevara should be permanently enjoined under I.R.C. § 7408 from engaging in conduct subject to penalty under I.R.C. § 6701 because a more limited injunction would be insufficient to stop her interference with the proper administration of the internal revenue laws.

Count III: Injunction under § 7402(a) for Unlawful Interference with
the Enforcement of the Internal Revenue Laws

60. The United States hereby incorporates by reference the allegations in paragraphs 1 through 47.

61. I.R.C. § 7402(a) authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

62. Guevara, through the actions described paragraphs 7 through 47 above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

63. Unless enjoined, Guevara is likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws.

64. Unless enjoined, the IRS will have to continue devoting substantial time and resources to identify Guevara's customers and examine their returns. This may be impossible given the IRS's scarce resources and the fact that Guevara has attempted to evade detection by failing to identify herself on returns she prepares. This will cause the United States to suffer irreparable injury.

65. The Court should order injunctive relief under I.R.C. § 7402(a).

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

A. That the Court find that Guevara is a tax return preparer under I.R.C. § 7701(a)(36), has repeatedly and continually engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that a permanent injunction under I.R.C. § 7407 is appropriate to prevent the recurrence of that conduct;

B. That the Court find that Guevara has repeatedly and continually engaged in conduct subject to penalty under I.R.C. § 6701, and that a permanent injunction under I.R.C. § 7408 is appropriate to prevent the recurrence of that conduct;

C. That the Court find that Guevara has repeatedly and continually engaged in conduct that interferes with the enforcement of the internal revenue laws, and that a permanent injunction under I.R.C. § 7402(a) and pursuant to the Court's inherent equity powers is appropriate to prevent the recurrence of that conduct;

D. That the Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction prohibiting Guevara, individually and doing business as any entity, and all those in active concert or participation with her, from:

(1) Preparing, assisting in the preparation of, or filing others' federal tax returns, amended returns, claims for refund or any other federal tax-related documents;

(2) Engaging in any activity subject to penalty under I.R.C. §§ 6694, 6695, 6701, or any other penalty provision of the Internal Revenue Code; and

(3) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

E. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Guevara to mail, within thirty days of the Court's judgment, a notice to all persons for whom she prepared federal tax returns, amended returns, refund claims or any other federal tax-related documents since January 1, 2009. This notice shall inform them that a permanent injunction has been entered against Guevara and contain a copy of that injunction. Further, that the Court, pursuant to I.R.C. § 7402(a), enter an order that Guevara file a certificate of compliance, signed under penalty of perjury and stating that she has complied with this paragraph E, with the Court within thirty days of the Court's judgment;

F. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Guevara to produce to counsel for the United States, within thirty days of the Court's judgment, a complete list of all persons identified in paragraph E, identifying each person's name, social security number, address, e-mail address, and telephone number, and the tax period(s) for which Guevara prepared a tax-related document for that person.

G. That the Court, pursuant to I.R.C. § 7402(a), enter an order requiring Guevara to provide a copy of this permanent injunction within thirty days of the Court's judgment to this Liberty franchise and all of Guevara's principals, officers, managers, employees and independent contractors, and provide to counsel for the United States within thirty days of the Court's judgment a signed and dated acknowledgment of receipt for each person whom Guevara provided such a copy;

H. That the Court order that the United States be permitted to engage in post-judgment discovery to monitor and ensure Guevara's compliance with the terms of the permanent injunction entered against her;

I. That the Court retain jurisdiction over Guevara and over this action; and

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

DATED: January 6, 2011.

Respectfully submitted,

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s/ Harris J. Phillips

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