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**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
) Civil No. 2:12-cv-516  
v. )  
)  
BENYAM TEWOLDE, YORDANOS )  
KIDANE, KORAGGIO, LLC )  
(d/b/a Instant Tax Service), )  
)  
Defendants. )

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The United States of America seeks a permanent injunction pursuant to 26 U.S.C. §§ 7402(a), 7407 and 7408 against Benyam Tewolde, Yordanos Kidane, and Koraggio, LLC (“Koraggio”), doing business as Instant Tax Service, barring them from further acting as federal tax return preparers and from engaging in tax fraud. The United States of America states as follows:

1. Defendants Tewolde and Kidane own, control, and operate Instant Tax Service, a tax return preparation business with multiple locations throughout the Las Vegas, Nevada area. From the 2008 to 2010 tax seasons, defendants' Instant Tax Service offices filed over 13,000 federal income tax returns.

2. Instant Tax Service is a brand and franchise business marketed throughout the United States by the franchisor ITS Financial, LLC ("ITS Financial"). ITS Financial is headquartered in Dayton, Ohio, and was founded by current owner and CEO Fesum Ogbazion in 2004. Instant Tax Service claims on its website to be the "4th largest tax preparation company" in America, one of "the fastest growing franchises," and the "number one new franchise" brand in the country as of 2009. It also says that to purchase a new Instant Tax Service franchise, "[n]o tax experience [is] necessary!"

3. Tewolde personally prepares false and fraudulent federal income tax returns and directs, supervises, manages, and trains tax return preparers at his Instant Tax Service stores who also prepare false and fraudulent federal income tax returns. Tewolde often works out of and manages employees from his 6820 West Cheyenne Avenue Instant Tax Service office in Las Vegas. Tewolde and Instant Tax Service employees, for instance, prepare tax forms for their customers that falsely claim dependent care credits, depict phony Schedule C companies, and report fictitious income and expenses in order to fraudulently inflate claims for the Earned Income Tax Credit ("EITC").

4. Kidane is Tewolde's wife. She personally prepares tax returns each tax season and actively takes part in the management of Instant Tax Service. Kidane supposedly was the sole legal owner of Koraggio in 2010, an active domestic limited liability company under

Nevada law, but she subsequently transferred supposed ownership of Korraggio to MII Limited Family Partnership, which is solely controlled by Kidane and Tewolde.

5. The United States brings this complaint pursuant to 26 U.S.C. §§ 7402, 7407 and 7408 of the Internal Revenue Code, to enjoin defendants, and anyone in active concert with them, from preparing or directing or assisting in the preparation of federal income tax returns, from engaging in and facilitating tax fraud, and from engaging in any other conduct that substantially interferes with the administration or enforcement of the tax laws.

#### **Jurisdiction and Venue**

6. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. (I.R.C.) § 7402(a).

7. Venue is proper pursuant to 28 U.S.C. § 1391(b), because defendants conduct business within this judicial district, and because a substantial part of the events or omissions giving rise to this suit occurred and are taking place in this judicial district.

#### **Authorization**

8. 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. §§ 7401, 7402, 7407 and 7408.

#### **Nature of Action**

9. The United States commences this action to stop defendants from engaging in and facilitating extensive and pervasive tax fraud schemes. Specifically, the government seeks to enjoin defendants, and all those in active concert or participation with them, from directly or indirectly:

- a. Acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that defendants know or have reason to know will be used as to a material matter arising under federal tax law, and will result in the understatement of the liability for tax of another person;
- c. Organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising, or managing abusive plans or arrangements that violate the Internal Revenue laws;
- d. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) customers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that defendants know (or have reason to know) will result in the understatement of any tax liability as subject to penalty under I.R.C. § 6694;
- e. Improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;
- f. Engaging in any activity subject to penalty under I.R.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining customers' eligibility for the Earned Income Tax Credit;
- g. Organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax services that facilitate or promote noncompliance with federal tax

laws; and

- h. Engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

10. The illegal conduct taking place at defendants' Instant Tax Service locations in and around Las Vegas is not isolated to this franchise. Separate injunction suits against ITS Financial and its CEO, Fesum Ogbazion, as well as other Instant Tax Service franchises that routinely prepare false or fraudulent tax returns, are being filed in other cities across the country.

### **Facts**

11. Defendants, and others acting with them, have created and maintain a business environment at their Instant Tax Service stores that promotes and encourages the preparation of false and fraudulent federal income tax returns. Defendants direct and are aware that Instant Tax Service employees prepare false and fraudulent tax returns for the purpose of significantly and illegally enlarging defendants' profits.

12. Most of defendants' customers are unsophisticated taxpayers with very low incomes. Many receive public assistance. Some of these customers have no knowledge that Instant Tax Service employees prepare and file fraudulent tax returns on their behalf. For others, Instant Tax Service employees encourage customers to participate in the tax fraud by promising them thousands of dollars of illegal refunds. In either event, defendants keep a significant portion of their customers' fraudulently obtained refunds, which defendants retain as purported fees.

13. Even when Instant Tax Service prepares non-fraudulent tax returns for customers, defendants improperly charge those customers unconscionably high tax preparation and added fees. ITS Financial CEO Fesum Ogbazion calls the added charges "junk fees" and "revenue

generators.” The junk fees include bogus charges for “service bureau,” “document preparation,” “technology/software,” “account set up,” “check printing,” and “Efile/electronic transmission.” Collectively, these charges average more than \$400–\$500 for as little as 15 minutes of return preparation. Some customers of defendants’ Instant Tax Service assert that their fees exceeded \$1,000 for preparation of 2010 tax returns. Because Instant Tax Service deliberately targets low-income taxpayers, defendants’ unconscionably high fees frequently pose a significant financial hardship for their customers.

14. Defendants also aggressively market false and deceptive loan products to low-income customers who are in need of money quickly. For example, as Tewolde explained in an e-mail to ITS Financial CEO Fesum Ogbazion, defendants’ Instant Tax Service calls clients from earlier tax years “under the guise [sic] of Toys for Tots” to peddle cash loan advances on expected refunds. Most of defendants’ customers, however, are either denied the loans outright or receive amounts that are so small that they are subsumed by the accompanying junk fees alone, before factoring in the exorbitant tax preparation fees. Even customers whose loan applications are denied are charged junk “transmission fees,” “technology fees,” “account set up fees,” and “check-print fees” that go directly to franchisor ITS Financial or to its affiliate, Tax Tree.

15. Apart from being profitable in their own right, the false and deceptive loan products principally serve as an inducement for people to have their tax returns prepared and filed by defendants’ Instant Tax Service stores, so that defendants can charge them their unconscionably high fees.

16. Defendants personally violate the internal revenue laws by, or encourage, direct,

and assist Instant Tax Service employees in:

- a. Preparing phony Forms Schedule C depicting fabricated businesses and income;
- b. Falsely claiming education credits;
- c. Improperly claiming false filing status;
- d. Claiming false dependents;
- e. Selling misleading and deceptive loan products;
- f. Filing federal income tax returns without the taxpayer's consent or authorization, and fraudulently omitting certain sources of reportable income;
- g. Preparing fabricated Forms W-2 and filing tax returns with paystubs; and
- h. Preparing tax returns that violate other provisions of the internal revenue laws.

17. Following defendants' encouragement, direction and assistance, Tewolde and Instant Tax Service employees, in fact, prepare and file false and fraudulent federal tax returns, as detailed below.

**a. Phony Forms Schedules C and Fabricated Income**

18. Tewolde and defendants' Instant Tax Service employees prepare and file federal income tax returns that include false Schedule Cs in order to claim fraudulent refunds based on the Earned Income Tax Credit ("EITC").

19. The EITC is a refundable tax credit intended to help low-income individuals and families. Unlike many tax credits, a refundable credit entitles qualifying taxpayers to receive

refunds even if they have no tax liability and have made no withholding payments. Today the EITC is one of the largest anti-poverty tools in the United States, intended to act as a wage supplement and to increase workforce participation.

20. A proper claim for refund based on the EITC, as well as the amount of that refund, depend upon certain variables. These variables include, among other things, the taxpayer's marital status, filing status (e.g., married filing separately, married filing jointly), number of qualified dependents, and income caps. If a taxpayer otherwise qualifies for the EITC, the optimal amount—or “target” amount—of income needed to maximize the credit for a single filer with two dependants is approximately \$15,000. If a taxpayer has adjusted gross income under this target amount, by claiming additional income on the tax return's Schedule C, he or she may fraudulently qualify for a larger EITC refund.

21. Defendants' Instant Tax Service employees prepare and file federal income tax returns with phony Forms Schedule C that depict fabricated businesses and income to maximize the EITC refund for the customer. This is done both with and without the customers' knowledge. At the same time, the illegally inflated refund makes it easier for Instant Tax Service to charge the taxpayer unconscionably high tax preparation and junk fees, which are paid directly to Instant Tax Service from the customer's refund.

22. To illustrate, on or about February 28, 2011, Tewolde prepared a tax return with a fraudulent Schedule C for Customer 1 at his 6820 West Cheyenne Avenue Instant Tax Service location. The customer, selected at random by the IRS, told government investigators that his preparer advised him that he could increase his refund if he reported income from a false business on his Schedule C. On the tax return prepared and filed by Instant Tax Service, in



addition to approximately \$7,000 of reported wages, the preparer reported \$5,300 from a landscaping business on Schedule C, and claimed no expenses. This fraudulently increased the customer's EITC refund by thousands of dollars. The customer confirmed to the IRS that the landscaping business reported on the tax return does not exist.

23. Similarly, on or before January 3, 2011, one of defendants' employees prepared a tax return with a false Schedule C for Customer 2 at the 4255 East Charleston Boulevard location of Instant Tax Service. The tax return, randomly selected by the IRS for review, reports \$9,500 of purported income from a childcare business on Schedule C, with no expenses. During an interview with government investigators, the customer informed the IRS that the reported childcare business was, in fact, occasional babysitting for the children of her sister who lived in the same house as the customer. The customer also said that she earned only \$250 each month (or \$3,000 for the 2010 tax year) from babysitting and was unaware how her preparer came up with the \$9,500 amount reported on her return. The fraudulent additional income increased Customer 2's refund, from which Instant Tax Service deducted its exorbitant fees.

24. On or before January 15, 2011, another one of defendants' preparers at the 1021 West Owens Avenue Instant Tax Service store fabricated Schedule C income on Customer 3's 2010 tax return. According to information provided by the customer during an interview with IRS agents, she earned \$1,500 from babysitting and disclosed this sum to her preparer. Nonetheless, the preparer falsely reported the \$1,500 as over \$10,000 of income from a "home care" business on the customer's Schedule C. In addition, the customer informed the IRS that she gave her preparer Forms SSA-1099 (reporting social security income) and 1099-R (reporting pension income), but those sums, over \$15,000 combined, were not reported as income on the

tax return.

25. In addition to the examples discussed above from the random sample of 2010 tax returns, pursuant to I.R.C. § 6695(g), the IRS assessed penalties against defendants' Instant Tax Service for violations of EITC due diligence requirements for 2009 tax returns. The IRS identified 83 tax returns prepared by defendants' employees and 32 additional tax returns prepared by Tewolde that violate I.R.C. § 6695(g). Among its conclusions from review of tax returns prepared by Tewolde, for instance, the IRS found that he:

- a. Prepared tax returns that claimed the EITC based on incomplete customer questionnaires, despite instances when defendants' tax preparation software automatically warned of missing or incomplete information;
- b. Claimed head-of-household status for customers without asking the correct questions to determine proper filing status; and
- c. Failed to maintain records or notes that would support the reasonableness of the EITC claim for his customers, including instances where the reported income and family status of the customer appeared economically improbable (e.g., a taxpayer purportedly supporting himself and two dependents, as head-of-household, while only earning \$7,500 of annual income).

**b. Falsely Claiming Education Credits**

26. Another illegal practice at defendants' Instant Tax Service stores involves fabricating education expenses and falsely claiming refundable education credits on customers' federal income tax returns.

27. In or about December 2010, for instance, Customer 4 applied for a loan at Tewolde's and Kidanes's 6820 West Cheyenne Avenue Instant Tax Service office. According to the customer, who was randomly chosen by the IRS for an interview, her Instant Tax Service preparer said she could get an additional \$1,000 refund if she falsely claimed expenses from

attending school. The customer told the IRS that she refused to claim an education credit because she, in fact, did not attend school, and knew that claiming the credit would be wrong. The tax return prepared and filed for the customer identifies Tewolde as the preparer.

28. An example from the 4255 East Charleston Boulevard location of Instant Tax Service includes the 2010 tax return of a resident of Las Vegas (Customer 5). His tax return, selected at random by the IRS for review, falsely claims \$3,500 in expenses purportedly incurred by the customer that qualify for the Lifetime Learning Credit. The customer told government investigators, however, that his Instant Tax Service preparer asked no questions about education expenses, he did not discuss education expenses with the preparer, and he, in fact, incurred no such expenses in 2010.

29. Defendants' Instant Tax Service employees also prepare tax returns that claim education credits for expenses that, while not wholly fictitious, nonetheless fail to qualify for the education credits sought on the tax returns. For example, a married couple's 2010 tax return (Customer 6), prepared at the 3475 East Flamingo Road location of Instant Tax Service on or before January 27, 2011, improperly claims the American Opportunity Credit for purportedly qualified expenses incurred by the wife. According to her, she paid to take a preparation course for the law school entrance examination and explained the nature of these expenses to her Instant Tax Service preparer. The preparer then reported the cost of the course on the customer's tax return as the basis for an American Opportunity Credit claim, despite the fact that the wife already has an undergraduate degree, which disqualified her from obtaining the American Opportunity Credit, and the course otherwise fails to qualify for the credit.

**c. Fraudulently Claiming False Filing Status**

30. Tewolde and defendants' Instant Tax Service employees also prepare tax returns that report false filing status. In particular, defendants prepare tax returns for married couples who do not live apart and improperly file a separate tax return for one of the individuals using the "head-of-household" status, which is unavailable to married persons living together. Often, this is an attempt to increase the claimed EITC, because, for example, 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 dependant.

31. For instance, Tewolde prepared a 2010 tax return at the 6820 West Cheyenne Avenue location of Instant Tax Service for a woman (Customer 7) on or before January 7, 2011 that reported an incorrect filing status. After interviewing the customer, the IRS determined that this customer was married, not legally separated, and lived with her husband in the same home throughout 2010, where they split household expenses. Tewolde, nonetheless, prepared the customer's tax return with an improper claim for head-of-household status, which fraudulently increased her refund.

32. Another example occurred on or before January 15, 2011 at the 2101 East Lake Mead Boulevard location of Instant Tax Service. The customer (Customer 8) was selected at random by the IRS for an interview, during which he told a revenue agent that he informed his Instant Tax Service preparer that he was married, but filing separately from his wife. The customer's tax return, however, improperly claims head-of-household status and lists the couple's two sons as dependents.

33. Tewolde also prepares tax returns for customers who claim head-of-household status for unmarried individuals who do not qualify. For example, Tewolde prepared a 2010 tax return at the 6820 West Cheyenne Avenue location of Instant Tax Service on or before January 6, 2011 for a single woman residing in Las Vegas (Customer 9). The tax return claims head-of-household status, childcare expenses, and lists the customer's niece as a dependent as well as a qualifying child for the EITC. The randomly selected customer told government investigators that she lived by herself in 2010, watched her niece only on weekends, and that the child's grandfather takes care of the niece—all factors that disqualify the customer from head-of-household status. The customer also told the IRS that she incurred no childcare expenses.

**d. Claiming False Dependents**

34. To claim fraudulent EITC refunds, child tax credits and dependent exemptions, Instant Tax Service employees prepare tax returns that report false dependents, such as for Customer 9, discussed above. Among the qualifications for dependent status, the person must reside with the taxpayer for more than half the year and must be under the age of 19, or be under the age of 24 and a full-time student, or qualify as totally and permanently disabled.

35. The IRS, for instance, randomly interviewed a Las Vegas woman (Customer 10) whose 2010 tax return indicates that it was prepared by Instant Tax Service at 4343 North Rancho Drive on February 4, 2011. The tax return lists the customer's 30-year old son as a dependent. The customer told government investigators that she informed her Instant Tax Service preparer that she sent a few hundred dollars each month to her son, who lives in California. The preparer asked the customer for her son's social security number and birth date, but the customer said she was unaware that the preparer falsely listed the son as a dependent on

her tax return.

36. Similarly, Customer 11's 2010 tax return, which was prepared at the 2101 East Lake Mead Boulevard Instant Tax location on or before January 26, 2011, improperly claims two dependents (as well as improper filing status and credits for which he is ineligible). The customer told Instant Tax Service that in 2010 he lived at his mother's house with his mother, his mother's spouse, his girlfriend, and his son. The customer's tax return claims both his girlfriend and his son as dependents, and claims head-of-household status and the child tax credit. Based on an interview and the tax return, the IRS determined that the girlfriend failed to qualify as a dependent, as did the customer's son because the customer's mother provided more than half of the son's support. Furthermore, the customer failed to qualify for head-of-household status, and he failed to meet the criteria for claiming the child tax credit. The customer also told the IRS that Instant Tax Service claimed his girlfriend as a dependent without his knowledge.

**e. Deceptive and Misleading Loan Products**

37. Defendants also peddle false and deceptive loan products to their tax preparation customers. These purported loan products include the Instant Cash Loan ("ICL") and the Refund Anticipation Loan ("RAL").

38. Defendants begin offering the ICL (also called the "Holiday Loan" and "Instant Cash Advance") to the public in December and early January before the tax-filing season begins. Ostensibly, ICLs are small and purportedly non-recourse loans intended to get customers in the door, with the hope that these customers will voluntarily return to have their tax returns filed when the filing season begins and after they receive their W-2s. In reality, the ICLs provide cover to enable Instant Tax Franchisees to illegally prepare and file tax returns based on

paycheck stubs rather than W-2s and to file without customer authorization.

39. Because defendants offer the ICLs before the filing season even begins, most of their customers do not yet have their W-2s. Thus, defendants' employees complete a loan application using the customer's last paycheck stub, along with an "estimated" tax return. Although Instant Tax Service purports to prepare estimated returns merely as part of the loan application process, as discussed below, defendants and their employees routinely file these returns without awaiting W-2s. They also file without customer authorization. This practice generates an unauthorized refund and guarantees defendants that they will receive their unconscionably high tax preparation and junk fees, which are paid directly from the customer's refund only after the return has been electronically filed.

40. Once the IRS begins accepting tax returns in mid-January, defendants market the RAL product. The RAL is a recourse loan that uses the customer's expected tax refund as collateral. RAL funds are advanced to a customer only after Instant Tax Service has prepared and filed the customer's federal tax return and the return has been accepted by the IRS.

41. Tax Tree, LLC is Instant Tax Service's primary ICL and RAL provider. Instant Tax Services' 2010-2011 "Bank Product Application" states that Tax Tree "is not affiliated with the Tax Preparer." ITS Financial franchise agreements likewise declare that its loan products will be financed "by one or more banks that are not affiliated with ITS." Tax Tree also supposedly is headquartered in Miami, Florida.

42. In fact, ITS Financial owner and CEO Obgbazion is the sole owner and CEO of Tax Tree. Tax Tree's Miami office is empty and has no employees. Tax Tree operates out of ITS Financial's headquarters and uses ITS Financial personnel to market and process loans. Tax

Tree also is substantially undercapitalized and has been from its inception. Tax Tree's actual relationship to ITS Financial and Instant Tax Service is not disclosed to customers who apply for the loans. Nor is the fact that it is undercapitalized. Rather, loan documentation provided to Instant Tax Service customers suggests that Tax Tree is a viable, independent, third-party lender.

43. Defendants tell customers that they can receive cash loans of \$1,000 or more within 48 hours as part of the ICL and RAL programs. Most of defendants' customers, however, are either denied the loans outright, or receive loan amounts that are so small that they are subsumed by the accompanying junk fees alone, before factoring in the exorbitant tax preparation fees. Because Tax Tree is undercapitalized, overall loan denial rates at times exceed 90%. Certain types of customers receive automatic denials of their loan applications, but those customers are still encouraged to apply to increase defendants' profits.

44. As discussed above, Instant Tax Service charges customers bogus fees for "service bureau," "document preparation," "technology/software," "account set up," "check printing," and "Efile/electronic transmission." Even customers whose loan applications are denied are still charged the following four junk fees by ITS Financial and Tax Tree: "electronic transmission," "technology," "account set up," and "check-print."

45. Apart from being profitable in their own right, the false and deceptive loan products principally serve as an inducement for people to have their tax returns prepared and filed by defendants' Instant Tax Service stores. This enables defendants to charge them unconscionably high tax preparation fees and junk fees, which are paid directly from the customer's refund only after the return has been electronically filed.

46. For example, one customer (Customer 12), who applied for the ICL at the 3547



South Maryland Parkway Instant Tax Service store on or around January 6, 2011, told government investigators that Instant Tax Service denied her a loan. She told government investigators that after she was denied the ICL she did not want to use Instant Tax Service to prepare her tax return, but they refused to return her documentation and paperwork so that she could have her taxes prepared elsewhere. Instant Tax Service prepared and filed her return using the information she provided when she applied for the ICL.

**f. Fraudulently Filing Without Consent and Omitting Income**

47. Another widespread practice at defendants' Instant Tax Service stores is filing estimated income tax returns without the customer's permission, as well as omitting income from customers' tax returns.

48. Instant Tax Service customers who apply for the company's various—but deceptive and misleading—loan products (discussed above), are required by defendants to have their preparer complete an estimated income tax return. Instant Tax Service says the basic information is needed to determine whether the customer qualifies for the loan. Defendants routinely and illegally file those estimated income tax returns without customer authorization.

49. Defendants file estimated tax returns without the customer's consent to “lock-in” those prospective customers. This effectively prevents the customer from later filing with a competitor, because each taxpayer can only file one electronic return with the IRS per year. Most importantly, it also generates an unauthorized refund and guarantees Instant Tax Service that it will receive its unconscionably high tax preparation and junk fees, which are paid directly from the customer's refund only after the return has been electronically filed.

50. For example, Instant Tax Service prepared estimated returns for a resident of

North Las Vegas (Customer 13) whose tax return, which was randomly selected for review by the IRS, indicates that it was prepared by Tewolde at the 6820 West Cheyenne Avenue location of the business. During an interview with IRS investigators, the customer stated that she went to Instant Tax Service in late December 2010 or early January 2011 to secure an ICL because she needed extra cash. Instant Tax Service prepared her tax return, which claimed childcare expenses and identified the name of the customer's babysitter. According to the customer, she subsequently called Instant Tax Service to provide the social security number for the babysitter because she did not have this information with her when she applied for the ICL. At this point, the customer learned that her tax return had already been filed without her authorization. IRS records reveal that the social security number listed on the filed tax return for the babysitter belongs to a woman with a different name who resides in New York State. The customer recalled that she was charged approximately \$700 in fees by Instant Tax Service.

51. Another aspect of Instant Tax Service's practice of filing unauthorized tax returns is the deliberate failure to ask customers about or simply ignoring additional sources of income that cannot increase a refund. Defendants and their employees consciously fail to ask about or deliberately omit unemployment benefits, for example, which are taxable but are not treated as "income" for purposes of calculating the EITC. And they purposely prepare returns with customers' paystubs – before employers and payors are required to issue W-2s and 1099s showing the full amount of income and taxable benefits paid to Instant Tax Service's customers. *See infra* ¶¶ 54-58.

52. The IRS randomly selected a couple (Customer 14), for instance, who had their 2010 tax return prepared at the 4255 East Charleston Boulevard location of Instant Tax Service

on or before January 5, 2011. The couple told government investigators during an interview that they provided their preparer with records showing receipt of over \$3,000 of unemployment compensation, but the preparer falsely told them that these records were not needed. The filed tax return fails to report the unemployment compensation, was prepared using a paystub, and fails to report all income from W-2s issued for the couple for 2010.

53. Similarly, Customer 15, who had his 2010 tax return prepared at the 1021 West Owens Avenue location of Instant Tax Service on or before January 15, 2011, was chosen at random for an interview by the IRS. The customer told government investigators that Instant Tax Service used his paystub to prepare his tax return, and that he informed his preparer that he also received unemployment compensation in 2010. No unemployment compensation is reported on the tax return, which also claims various tax credits, including over \$3,000 for the earned income credit.

**g. Fabricated Forms W-2 and Filing Returns with Paystubs**

54. Defendants prepare and file federal income tax returns using customers' end-of-year paystubs, create fabricated electronic Forms W-2 (W-2s) with those paystubs using false Employer Identification Numbers ("EIN"), and then file the customers' tax returns without valid W-2s.

55. Using paystubs to prepare and file tax returns is improper and violates IRS rules. Moreover, end-of-year paystubs frequently omit income and distributions that are shown on employer-issued W-2s. Thus, preparing and filing federal income tax returns based on information from end-of-year paystubs inevitably results in errors and omissions on federal tax returns, which necessarily interferes with the administration and enforcement of the internal

revenue laws. Using paystubs, which typically do not disclose EINs, to create bogus electronic W-2s that report false EINs constitutes outright fraud.

56. On or about January 7, 2011, for instance, a preparer working from the 6820 West Cheyenne Avenue location of Instant Tax Service prepared and filed a tax return for a customer (Customer 16) using the customer's end-of-year paystub. The customer, who was randomly selected for an interview with IRS investigators, admitted that she wanted to file her 2010 tax return before she received her W-2 and chose Instant Tax Service only after she failed to locate an Instant Tax Service competitor in the Las Vegas area willing to file a tax return without a W-2. According to the customer, Instant Tax Service charged her \$800 to prepare her tax return. She was not aware of this fee until she visited Instant Tax Service to pick up her tax refund check, and she received a \$150 reduction of the fee only after complaining to Instant Tax Service.

57. Similarly, because Instant Tax Service did not require customers to provide their W-2s when preparing their tax returns, the tax returns of Customer 12 (*see supra* ¶ 46) and Customer 14 (*see supra* ¶ 52), for example, fail to disclose income reported on their W-2s.

58. Preparing fake electronic W-2s for the purpose of deceiving the IRS is obviously illegal. Defendants also had reason to know that using paystubs to prepare and file returns violates the law because in order to participate in the IRS's electronic filing program, all tax preparation company owners must acknowledge that they will comply with the IRS's documentation and due diligence requirements, which expressly prohibit filing returns prepared with paycheck stubs and without genuine W-2s. Also, in 2009, the Instant Tax Service franchisor, ITS Financial, entered into a settlement involving a lawsuit filed by H&R Block,

whereby ITS Financial admitted that filing tax returns based on paystub information violates the law and agreed that it would not engage in that practice in the future. ITS Financial then disseminated information about that settlement to all franchisees, including in its 2009 Franchise Disclosure Document. Nevertheless, defendants continued to prepare and file returns with paystubs and to create forged W-2s to deceive the IRS and evade penalties or fines.

**h. Other Violations of the Internal Revenue Laws**

59. In addition to the violations discussed above, other illegal conduct at Instant Tax Service includes but is not limited to preparing tax returns that claim bogus deductions in order to improperly reduce customers' tax liability. For example, the tax return of Customer 5 (*see supra* ¶ 28) reported over \$50,000 in W-2 wages from his job working for a soft-drink company. His tax return reports over \$22,000 in deductible losses purportedly incurred as a self-employed "contractor." During his interview with the IRS, the customer denied that he works as a contractor or has any construction business, and he confirmed that his only employment was work for the soft-drink company.

60. The IRS also identified tax returns prepared at Instant Tax Service that fail to accurately disclose the individual who prepared the tax return by providing an accurate Preparer Tax Identification Number ("PTIN")—a statutory violation of I.R.C. 6695(c).

**Harm to the Public and Necessity of Injunction**

61. Defendants' fraudulent and predatory practices harm the public and the United States Treasury.

62. Defendants' fraudulent and predatory practices harm the public by illegally causing their customers to incorrectly report their federal tax liabilities and underpay their taxes.

Defendants also harm their customers by charging them unconscionably high tax preparation and junk fees to prepare false or fraudulent tax returns that understate their correct income tax liabilities. Defendants further harm their customers by subjecting them to possible civil and criminal sanctions resulting from the false and fraudulent tax returns. Compounding defendants' harm, many of their customers are unsophisticated, low-income taxpayers, who have little or no ability to repay the illegal refunds (and accompanying penalties and interest) that defendants' fraud procures. Finally, defendants exploit and harm their customers by selling them deceptive and misleading loan products tied to anticipated tax refunds.

63. Defendants' fraudulent practices likewise harm the United States Treasury. The government estimates that defendants' misconduct resulted in a tax loss to the Treasury of approximately \$3.7 million for returns prepared in 2011 alone. This estimate was derived from a statistically random sample of the more than 5,000 tax returns prepared by the defendants. Based on an examination of information from over 100 taxpayers, the IRS determined that at least two-thirds of the tax returns prepared by defendants were non-compliant.

64. The defendants' 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. For the 2009 tax year alone, the IRS estimates that it spent as much as 1,300 hours auditing tax returns prepared by Instant Tax Service. Consequently, identifying and recovering all lost tax revenues resulting from defendants' fraud and illegal activities may be impossible.

65. In addition, defendants' misconduct harms their employees. Defendants knowingly expose their employees to possible civil and criminal liability.

66. The defendants' fraudulent tax return preparation also harms honest tax return preparers who refuse to engage in such illegal conduct. Honest tax return preparers unfairly lose business to defendants as a result of the defendants' willingness to break the law.

67. Finally, defendants' flagrant misconduct harms the public at large by undermining public confidence in the federal tax system and encouraging widespread violations of the internal revenue laws.

68. The harm to the government and the public will increase unless defendants are enjoined because – given the seriousness and pervasiveness of their illegal conduct – without an injunction defendants and their employees are likely to continue preparing false and fraudulent federal income tax returns for customers. An injunction will serve the public interest because it will put a stop to defendants' illegal conduct and the harm that such conduct causes the United States and its citizens.

**Count I: Injunction Under I.R.C. § 7408 for Engaging in  
Conduct Subject to Penalty Under I.R.C. §6701**

69. The United States incorporates by reference the allegations in paragraphs 1 through 68.

70. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin conduct subject to penalty under section 6701. Section 6701 imposes a penalty: (1) on any person who aids, assists, procures, or advises with respect to the preparation or presentation of any portion of a tax return, claim or other document (“portion”); (2) when that person knows or has reason to know that such portion will be used in connection with a material matter arising under federal tax law; and (3) that person knows that such portion (if used) would result in an understatement of the liability for the tax of another person. Procuring the preparation of tax

returns 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.

71. Defendants, through their actions detailed above, caused the presentation and preparation of false, fraudulent and abusive tax returns and other documents. In addition, defendants procured and assisted in the preparation of false and fraudulent tax returns by encouraging the filing of tax returns they knew were false or fraudulent, and by employing and supervising tax return preparers engaging in tax fraud.

72. Defendants' actions resulted in the understatement of many of their customers' tax liabilities. Given defendants' roles, defendants knew that their actions would lead to the understatement of their customers' tax liabilities.

73. Given their occupations, defendants are likely to continue violating the law absent an injunction. Tax return preparation is Instant Tax Service's principal source of revenue. To maximize that income, defendants or defendants' employees prepare fraudulent returns. That fraudulent conduct, in turn, gives Instant Tax Service a competitive edge over law-abiding preparers. It also provides a means for defendants to further exploit their unsophisticated customers by charging them unconscionably high fees, while defendants' fraud simultaneously and callously exposes their customers to possible civil and criminal liability. Consequently, if the Court does not enjoin defendants, they are likely to continue to engage in tax fraud and conduct subject to penalty under I.R.C. § 6701.

74. Accordingly, penalties under I.R.C. § 6701 are warranted and an injunction is necessary to prevent the recurrence of defendants' illegal conduct.



**Count II: Injunction Under I.R.C. § 7407**

75. The United States incorporates by reference the allegations in paragraphs 1 through 74.

76. I.R.C. § 7407 authorizes a district court to enjoin a person who is a tax return preparer from engaging in certain prohibited conduct or 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 tax return or claim for refund that contains an unreasonable position and the tax 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 tax return preparer who recklessly or intentionally disregards IRS rules or regulations;
- c. Engaging in conduct subject to penalty under I.R.C. § 6695(c), which penalizes tax return preparers who fail to furnish their identifying numbers on tax returns that they prepare;
- d. Engaging in conduct subject to penalty under I.R.C. § 6695(g), which penalizes a tax return preparer who fails to comply with the statutory due diligence requirements;
- e. Guaranteeing a tax refund or allowance of a tax credit; or
- f. Engaging in any other fraudulent or deceptive conduct that substantially

interferes with the proper administration of the internal revenue laws.

77. In order for a court to issue an injunction under I.R.C. § 6694, the court must find: (1) that the tax return preparer engaged in the prohibited conduct; and (2) that injunctive relief is appropriate to prevent the recurrence of such conduct.

78. 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 federal tax preparer.

79. Defendants, as shown above, are tax return preparers who have repeatedly and continually prepared or submitted tax returns or portions of tax returns (or employed or managed others who prepared or submitted tax returns or portions of tax returns) that contain unreasonable positions and substantially understate the liability for tax on the return by, *inter alia*, claiming improper tax refunds. Defendants established a working environment that encouraged preparation of tax returns that assert unreasonable, unrealistic, frivolous and fraudulent positions. Accordingly, defendants knew (or reasonably should have known) of the unreasonable, unrealistic, frivolous and fraudulent positions. This conduct is subject to penalty under I.R.C. § 6694.

80. Defendants, as also detailed above, continually and repeatedly engage in conduct subject to penalty under I.R.C. § 6694(b) by: (1) willfully attempting to understate their customers' tax liabilities or directing others to do so; and by (2) intentionally or recklessly disregarding pertinent rules and regulations. This conduct is subject to penalty under I.R.C. §

6694.

81. Furthermore, defendants, as addressed above, have engaged in conduct subject to penalty under I.R.C. §§ 6695(c) and 6695(g). Defendants have failed to: (1) furnish their identifying numbers on tax returns that they prepare; and (2) satisfy the mandatory due diligence requirements of I.R.C. § 6695(g) and Treas. Reg. § 1.6695-2(b).

82. In addition, defendants continually and repeatedly engage in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws. Examples of such misconduct include: (1) knowingly preparing, assisting in preparing, and encouraging the preparation of tax returns containing false and fraudulent information; (2) preparing tax returns with end-of-year paystubs that omit income and distributions and necessarily result in errors and omissions on the returns; and (3) encouraging and soliciting customers to provide false and fraudulent information for the purpose of filing false tax refund claims. All of this constitutes conduct that may and should be enjoined under I.R.C. § 7407(b).

83. Defendants repeatedly and continuously engaged in illegal conduct subject to injunction under I.R.C. § 7407.

84. Defendants' and their employees' actions are so egregious they demonstrate that a narrow injunction prohibiting only specific conduct would be insufficient. Accordingly, defendants should be permanently barred from acting as federal tax preparers, and from owning, managing, controlling, working for, or volunteering for a tax return preparation business.

**Count III: Injunction Under I.R.C. § 7402(a) as Necessary to Enforce the Internal Revenue Laws**

85. The United States incorporates by reference the allegations in paragraphs 1

through 84.

86. Section 7402(a) of the Internal Revenue Code authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

87. Defendants' activities described above substantially interfere with the enforcement of the internal revenue laws by promoting abusive tax schemes that result in customers not paying their true federal income tax liabilities.

88. Defendants, through their actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined, defendants are likely to continue to engage in such conduct.

89. The tax returns defendants prepare improperly and illegally reduce their customers' federal income tax liabilities. In addition, defendants' actions directing the preparation of tax returns containing false and fraudulent information, filing tax returns without taxpayers' permission, and allowing employees to evade statutory due diligence requirements, directly results in, as defendants know, the filing of false, fraudulent and incorrect tax returns.

90. An injunction is necessary to stop defendants' tax fraud, and should prohibit defendants from, directly or indirectly, as detailed further below: (1) improperly instructing, advising, encouraging, enabling, inciting or assisting customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds; (2) organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising or managing, abusive plans or arrangements that violate the Internal Revenue laws; (3) organizing, promoting, providing, advising, or selling business or tax services that facilitate or promote noncompliance

with federal tax laws; and (4) otherwise engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

91. Unless enjoined by this Court, defendants are likely to continue to engage in illegal conduct, as described above. Defendants, if not enjoined, are likely not only to continue to engage in tax fraud subject to penalty under IRC §§ 6694, 6695 and 6701, but also to engage in other conduct that substantially interferes with the enforcement of the internal revenue laws. Such conduct includes: (1) preparing tax returns with end-of-year paystubs that omit income and distributions and necessarily result in errors and omissions on the returns; (2) illegally filing tax returns without the taxpayer's authorization; (3) selling deceptive and misleading loan products tied to anticipated tax refunds; and (4) allowing employees to deliberately circumvent the statutory due diligence requirements. Moreover, the United States will suffer irreparable harm from the underpayment of tax liability, the exhaustion of limited resources to enforce the internal revenue laws, and the tax losses caused by defendants' actions will continue to increase.

92. The substantial harm caused to the United States and the public by defendants' egregious misconduct outweighs the harm to the defendants of being enjoined.

93. Enjoining defendants is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop defendants' predatory practices and illegal conduct and the harm that such actions cause the United States and its citizens.

### **Relief Sought**

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

A. That this Court find defendants engaged in conduct subject to penalty under I.R.C. § 6701 and that injunctive relief under I.R.C. § 7408 is appropriate to prevent recurrence

of that conduct;

B. That the Court find that defendants continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and § 6695, and that injunctive relief under I.R.C. § 7407 is therefore necessary and appropriate to prevent the recurrence of that conduct;

C. That the Court, pursuant to I.R.C. § 7407, enter a permanent injunction prohibiting defendants from acting as federal tax return preparers, and expressly prohibiting defendants from owning, managing, supervising, working in, or otherwise being involved in any tax return preparation business in any way;

D. That the Court find defendants engaged in conduct substantially interfering with the administration and enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent recurrence of that conduct under 26 U.S.C. § 7402(a);

E. That this Court, pursuant to 26 U.S.C. §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting defendants (individually and through any other name or entity), and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

- a. Acting as federal tax return preparers, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. Engaging in conduct subject to penalty under I.R.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that defendants know or have reason to know will be used as to a material matter arising

under federal tax law, and will result in the understatement of the liability for tax of another person;

- c. Organizing, promoting, selling, advising, implementing, carrying out, assisting, supervising, or managing abusive plans or arrangements that violate the Internal Revenue laws;
- d. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) customers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that defendants know (or have reason to know) will result in the understatement of any tax liability as subject to penalty under I.R.C. § 6694;
- e. Improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;
- f. Engaging in any activity subject to penalty under I.R.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining customers' eligibility for the Earned Income Tax Credit;
- g. Organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax services that facilitate or promote noncompliance with federal tax laws; and
- h. Engaging in other 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), 7407 and 7408 enter an injunction requiring defendants, within thirty days of the entry of an injunction against them, to contact by mail all persons for whom they prepared a federal tax return since December 1, 2010, and inform them of the Court's findings concerning the falsity or fraudulent attributes of those tax returns, and enclose a copy of the permanent injunction against defendants, and file a certification with

the Court, under penalty of perjury, stating that they have complied with the provision;

G. That the Court, pursuant to I.R.C. §§ 7402(a), 7407 and 7408 enter an injunction requiring defendants to produce to counsel for the United States, within thirty days of the entry of an injunction against them, a list that identifies by name, social security number, address, e-mail, telephone number, and tax period(s) all persons for whom defendants prepared federal tax returns or claimed a tax refund since December 1, 2009, and file a certification with the Court, under penalty of perjury, stating that they have complied with the provision;

H. That the Court retain jurisdiction over the defendants, and this action for the purpose of enforcing any permanent injunction entered against defendants;

I. That the United States be entitled to conduct all discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring defendants' compliance with the terms of the permanent injunction entered against them; and



J. That the Court grant the United States such other and further relief, including costs, as the Court deems appropriate.

Dated: March 28, 2011.

Respectfully submitted,

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