

Filed 1/14/13
Clerk, U. S. District Court
Western District of Texas
By [Signature]
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 5:12-cv-00482
)	
FCRE, INC., FAST CASH REFUND)	
EXPRESS ELECTRONIC TAX SERVICES,)	
LLC, PETE ESCALANTE GUTIERREZ)	
and JEANETTE GUTIERREZ,)	
individually, and doing business as)	
FAST CASH REFUND EXPRESS)	
ELECTRONIC TAX SERVICES, LLC,)	
FAST CASH REFUND EXPRESS and)	
FAST CASH REFUND EXPRESS)	
ELECTRONIC SERVICES,)	
)	
Defendants.)	

STIPULATED ORDER OF PERMANENT INJUNCTION

Plaintiff, the United States of America, and defendants, FCRE, Inc., Fast Cash Refund Express Electronic Tax Services, Pete Escalante Gutierrez and Jeanette Gutierrez, stipulate as follows:

1. The United States filed a complaint alleging that defendants, FCRE, Inc., Fast Cash Refund Express Electronic Tax Services, Pete Escalante Gutierrez and Jeanette Gutierrez ("Defendants"), prepared tax returns which understated their customers' tax liabilities by claiming, *inter alia*, false and exaggerated business and personal deductions, false or exaggerated education and energy tax credits, and improper miscellaneous itemized deductions to which his customers are not entitled.
2. Defendants admit that this Court has jurisdiction over them and over the subject matter of this

action.

3. Defendants waive the entry of findings of fact and conclusions of law under Federal Rule of Civil Procedure 52 and 26 U.S.C. §§ 7402, 7407 and 7408.

4. Defendants enter into this Stipulated Order of Permanent Injunction voluntarily. However, Defendants are not admitting the allegations contained in the complaint filed by the United States.

5. Defendants waive any right they may have to appeal from the Stipulated Order of Permanent Injunction.

6. Defendants acknowledge that entry of this Stipulated Order of Permanent Injunction neither precludes liability (e.g. the assessment of taxes, interest, or penalties) against them for asserted violations of the Internal Revenue Code, nor precludes defendants from contesting any such liability.

7. Defendants consent to the entry of this Stipulated Order of Permanent Injunction without further notice and agree that this Court shall retain jurisdiction over them for the purpose of implementing and enforcing this Stipulated Order of Permanent Injunction. Defendants further understand that if they violate this Stipulated Order of Permanent Injunction, they may be found to be in contempt of court and may be sanctioned for that.

WHEREFORE, the Court hereby FINDS, ORDERS, and DECREES:

A. The Court has jurisdiction over this action under 28 U.S.C. §§ 1340 and 1345 and under 26 U.S.C. §§ 7402, 7407 and 7408.

B. Defendants consent to the entry of this injunction and agree to be bound by its terms.

C. Pete Escalate Gutierrez and Jeanette Gutierrez, in his and or her own capacity and doing business under any other name, including defendant FCRE, Inc. or Fast Cash Refund Express Electronic Tax Services, or using any other entity, and all persons in active concert or participation with him, are permanently enjoined under 26 U.S.C. §§ 7402, 7407 and 7408 from, directly or indirectly:

i. Acting as federal tax return preparers by preparing or filing, or assisting in the preparation or filing of any federal tax returns for any other person or entity, either individually or through an entity, inclusive of FCRE, Inc. or Fast Cash Refund Express Electronic Tax Services;

ii. Assisting or advising anyone in connection with any tax matter;

iii. Having an ownership interest in or working for (either as an employee or independent contractor) any entity that prepares tax returns or represents clients before the Internal Revenue Service, except as follows:

a. Unless as otherwise agreed to in writing, Pete Gutierrez and Jeanette Gutierrez have until January 31, 2014, to sell any interest they have in the tax preparation business currently operating as Defendants FCRE, Inc. or Fast Cash Refund Express Electronic Tax Services (hereafter jointly referred to as "Fast Cash");

b. If Defendants Pete Escalate Gutierrez and Jeanette Gutierrez have not sold any interest they have in Fast Cash by January 14, 2014, or as otherwise agreed by the parties or ordered by the Court, Fast Cash must cease operating immediately.

d. During the time period in which Pete Gutierrez and Jeanette Gutierrez own Fast

Cash they may only control the administrative functions. All decisions regarding the preparation of taxpayer returns (or business decisions related thereto) shall not be made (directly or indirectly) by Pete Gutierrez or Jeanette Gutierrez. Neither Pete Gutierrez nor Jeanette Gutierrez will office in a building that shares an entrance with Fast Cash or has a connecting door to where federal tax returns are being prepared. Neither shall have a desk in a Fast Cash office where federal tax returns are being prepared.

- D. Defendant Pete Escalate Gutierrez, Defendant Jeanette Gutierrez, Defendant FCRE, Inc. and Defendant Fast Cash Refund Express Electronic Tax Services, acting in any capacity, and doing business under any other name, including FCRE, Inc. or Fast Cash Refund Express Electronic Tax Services, or using any other entity, and all persons in active concert or participation with him, are permanently enjoined under 26 U.S.C. §§ 7402, 7407 and 7408 from, directly or indirectly:
- i. Organizing or selling plans, or arrangements that advise or encourage taxpayers to attempt to evade the assessment or collection of their correct federal tax;
 - ii. Engaging in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701;
 - iii. Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws and from promoting any false tax scheme; and
 - iv. Representing anyone before the IRS except as allowed by statute or otherwise.

E. IT IS FURTHER ORDERED that Defendants FCRE, Inc., Fast Cash Refund Express Electronic Tax Services (hereafter jointly referred to as ("Fast Cash")), acting in any capacity, and doing business under any other name, or using any other entity, and all persons in active concert or participation with him, shall

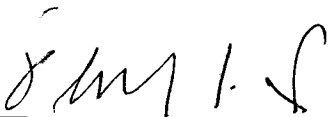
- a. Abide by the conditions of the attached Exhibit A.
- b. Post a executed copy of this Stipulated Order of Permanent Injunction, including Attachment A, on the front door or other prominent place agreed to by the United States in writing of each store or office in which federal tax returns are prepared.

F. IT IS FURTHER ORDERED that defendants, to the extent possible, produce to counsel for the United States within ¹⁵~~20~~ days of the date of this order a list that identifies by name, social security number, address, e mail address, telephone number, and tax period(s) all persons from for whom they prepared federal tax returns, forms, or claims for refund since January 1, 2012.

G. IT IS FURTHER ORDERED that the Court shall retain jurisdiction to enforce this injunction and the United States is permitted to engage in post judgment discovery in accordance with the Federal Rules of Civil Procedure to ensure compliance with this permanent injunction.

IT IS SO ORDERED

Signed this 14 day of January, 2013.

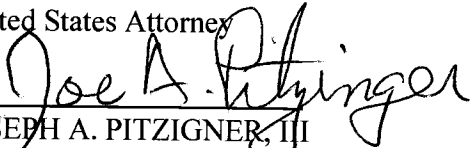


United States District Judge

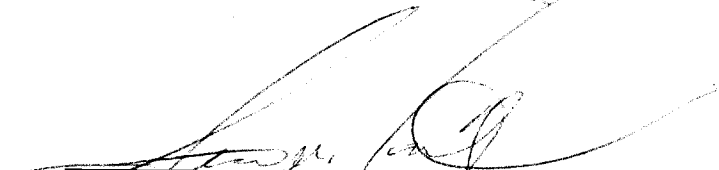
AGREED IN SUBSTANCE AND FORM BY:


Respectfully submitted,

JOHN E. MURPHY
United States Attorney


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PETE ESCALANTE GUTIERREZ individually


JEANETTE GUTIERREZ, individually


PETE GUTIERREZ, as an officer and owner of
Defendant FCRE, Inc. and Defendant Fast Cash
Refund Express Electronic Tax Services

Attachment A
Fast Cash
Conditions of Settlement

1. All tax return preparers employed by Fast Cash (“preparers”) are required to file personal and business tax returns timely.
2. All preparers are required to pass the exam requirements for Registered Tax Return Preparers administered by the IRS or to be an Enrolled Agent.
3. All preparers are required take at least 15 hours of continuing professional education annually, including 3 hours of ethics and 12 hours of federal tax law.
4. All preparers and Fast Cash are required to maintain adequate records for each client (copies of tax returns, workpapers used to prepare the tax return, Form W2s, 1099, etc.); including documents relating to the conditions of this settlement (ie.. copies of mileage logs, Forms 1098-T, 1099-SA, 5498-SA, etc).
5. All preparers hired by taxpayers are required to have PTINS.
6. All preparers are required to sign all returns in which that preparer significantly contributes to any part of the return.
7. All preparers are required to establish, and to apply, interview questions and procedures for each client, including:
 - A. Car Expense (whether in schedule C or Unreimbursed Employee Business Expense-
 - i. Request, copy and review mileage log (or other contemporaneously created record of miles driven);
 - ii. Determine business vs. personal use; including determining that mileage is not from home to job (i.e. not for commuting);
 - iii. determine an employers’ reimbursement policy; and whether reimbursement was requested and/or received;
 - iv. Request, review and copy receipts and substantiation related to the vehicle costs and expenses;
 - v. Identify owner of vehicle;
 - B. Other Employee Business Expense (whether in schedule C or Schedule A)
 - i. Request job description;
 - ii. Request, review and copy reimbursement policy from employer;
 - iii. Determine if reimbursement is included in Form W2;
 - iv. Identify business vs. personal use;
 - v. Verify that clothing that is of the type that can be worn for personal use is not included as a “uniform”; verify that the work clothing or uniform is a

condition of employment; and verify that the work clothing or uniform is not provided by employer;

- vi. Verify that cell phones are required by the employees' business, and that employee does not have a cell phone provided by the business;
 - vii. Verify business purpose of travel, meals and entertainment;
 - viii. Request names of business clients ;
 - ix. Request and review travel expenses (airline tickets, hotel receipts, meals and entertainment)
 - x. Request and review receipts and substantiation;
- C. Charitable Contributions-
- i. Verify non-profit organization;
 - ii. Request and verify payments to non-profit organization;
 - iii. Determine fair market value of non-cash donations.
- D. Education Credit
- i. Verify the name and age of student;
 - ii. Request and verify Form 1098-T and retain copy;
 - iii. Verify that student is a dependent and has not deducted the expenses themselves.
- E. Schedule C
- i. Identify the type of business;
 - ii. Ask questions pertaining to the type of business (service, manufacturing, etc);
 - iii. Identify method of accounting;
 - iv. Determine DBA;
 - v. Request and review bank records;
 - vi. Inquire and verify Gross Receipts/Sales;
 - vii. Request and review receipts/invoices to verify expenses;
 - viii. Determine business vs. personal expenses;
 - iv. Determine Office in the Home;
 - v. Determine Sources of payment (cash, credit, checks).
- F. Schedule E
- i. Rental-Request and verify ownership, cost/basis;
 - ii. Request lease agreements;
 - iii. Request and verify expenses;
 - iv. Request purchase agreement to determine cost/basis for depreciation.
- G. Schedule F
- i. Determine if taxpayer has a farm;
 - ii. Request business plan and determine profit motive;
 - iii. Determine hours spent on the farm;
 - iv. Determine years spent in business;

- v. Request and verify expenses;
 - vi. Determine business vs. personal use.
- H. Health Savings Account.
- i. Require client to produce Form 5498-SA to establish HSA contributions and retain copy;
 - ii. Request Forms 1099-SA to establish HSA distributions and retain copy.
- I. Energy Credits
- i. Require client to produce receipts and retain copy.
8. Preparers must confirm that the other requirements of the applicable Internal Revenue Code sections for the items above are applied. Compliance with the above-referenced procedures must be documented in the file.
9. Each preparer employed by Fast Cash will read and sign an acknowledgment agreeing to abide by, the terms of the Permanent Injunction entered in this matter against Pete Gutierrez, Jeannette Gutierrez, and Fast Cash.
10. For each tax return prepared by Fast Cash, each taxpayer and tax preparer will sign an acknowledgment that neither Pete Gutierrez, nor Jeannette Gutierrez assisted or was present during the preparation or completion of their tax return.