

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No.
	)	
YANKO RODRIGUEZ, MARLEN	)	
MONZON, and TRI STARS	)	
MULTISERVICES, CORPORATION,	)	
	)	
Defendants.	)	

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

Plaintiff, the United States of America, alleges against Defendants, Yanko Rodriguez, Marlen Monzon, and Tri Stars Multiservices, Corporation, as follows:

1. This is a civil action brought by the United States under sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) to enjoin Defendants Rodriguez, Monzon, and Tri Stars, and anyone in active concert or participation with them, from:
  - a. acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
  - b. preparing or assisting in preparing or filing federal tax returns that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refund(s) as prohibited by 26 U.S.C. § 6694;
  - c. engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other penalty provision in the Internal Revenue Code; and
  - d. engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

2. This action has been requested by 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 the provisions of 26 U.S.C. §§ 7401, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).

4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1396 because Defendants reside in Miami-Dade County, Florida, and a substantial part of the actions giving rise to this suit took place in this district.

### **Defendants**

5. Yanko Rodriguez and his mother, Marlen Monzon, reside within the Southern District of Florida. Rodriguez resides at 2911 SE 12<sup>th</sup> Road, Unit 206, Homestead, FL 33035, and Monzon resides at 11498 SW 57<sup>th</sup> Terrace, Miami, FL 33173.

6. Rodriguez and Monzon are paid federal tax return preparers who own and operate Tri Stars Multiservices, Corporation, which is located within the Southern District of Florida at 9712 Southwest 40 Street, Miami, FL 33165.

7. Tri Stars is a tax preparation business that Rodriguez and Monzon opened in 2009. Rodriguez and Monzon are the sole owners of Tri Stars. Rodriguez filed Articles of Dissolution with the Florida Secretary of State on behalf of Tri Stars on February 14, 2012, but it is not known whether Tri Stars actually ceased conducting business.

8. Rodriguez is a high school graduate with no apparent education in the area of taxation or tax return preparation.

9. Monzon has an accounting degree from the College of Julio Antonio Mella in Cuba. Monzon has prepared tax returns since at least 2002, working for H&R Block from 2002 to 2005, at which time she opened her own business, through which she prepared tax returns until it closed in 2010.

10. In 2008, the IRS assessed penalties against Monzon in the amount of \$43,000 for 43 violations of I.R.C. § 6701 based on her preparation of tax returns claiming bogus Fuel Tax Credits.

### **Defendants' Activities**

11. Defendants filed approximately 2,700 returns with the IRS for tax year 2009 and over 4,000 returns for tax year 2010 using Tri Stars' electronic filing number. Defendants are expanding their business by word-of-mouth, as customers tell other co-workers or friends about the large tax refunds they received.

12. Defendants prepare returns for customers with forms Schedule C attached reporting a sizeable loss for business expenses which are unsubstantiated by any documentation, typically because they are related to a business which does not even exist. These bogus expenses offset the customer's Form W-2 income and improperly lower the customer's taxable income, thereby generating (or increasing) a refund, and often qualifying the taxpayers for credits to which they are not otherwise entitled, including the earned income tax credit.

13. Audits of 299 customers covering 498 returns for tax years 2008 through 2011 show that nearly every return included a bogus Schedule C claiming that the customer operated a nonexistent business and reporting a business loss, which reduced the customers' tax by an average of \$7,031 per return, for a total of \$3,494,336 in lost revenue.

14. In nearly all of the audits, Defendants' customers stated that they did not own a business and did not know why Defendants reported a business on their tax returns.

**False, Improper, or Inflated Schedule C Deductions**

15. Defendants seek fraudulent tax refunds for customers or, at a minimum, to reduce their liability, by fabricating bogus deductions on Forms 1040, Schedule C, Profit or Loss from a Trade or Business. Section 162 of the Internal Revenue Code (26 U.S.C.) governs trade or business expenses, stating that ordinary and necessary expenses paid or incurred during a taxable year in carrying on a trade or business are allowed as a deduction.

16. Defendants prepare returns on which they report a nonexistent business and purported expenses incurred by the nonexistent business on their customers' Schedule C in order to create a phony business loss to offset their customers' wages and fraudulently reduce their customers' income tax liability.

17. For example, Monzon prepared the 2009 return of a customer identified herein by the initials "J.C.", a black jack dealer employed at a casino, and reported a bogus Schedule C loss of \$49,550 for a nonexistent business described on the return as "Casino Dealer." J.C. was a casino employee, had no business or source of income other than her job at the casino, and did not tell Monzon about any such business. Monzon also prepared J.C.'s 2010 return. J.C.'s 2010 return reported a bogus Schedule C loss of \$25,702 for a nonexistent business described on the return as "Handyman." The Schedule C falsely reported that J.C. had \$1,020 in business income and \$26,722 in business expenses. As a result, J.C.'s tax liabilities were under-reported by \$10,724 and \$6,933 for 2009 and 2010, respectively.

18. Similarly, on the 2009 tax return of married taxpayers identified herein as "C.L." and "G.L.", employed as a police officer and a nurse, respectively, Monzon attached two

Schedule C's reporting losses totaling \$124,122, which resulted in an improper refund to the C.L. and G.L. of \$24,689. The first Schedule C falsely claimed that C.L. operated a "Police Officer" business and claimed \$58,177 in losses, based on expenses including \$9,560 for "miscellaneous," \$2,880 for "training ammunition," \$3,480 for "dry cleaner," and \$1,300 for "hair stylist." The second Schedule C falsely claimed that G.L. operated a "Nurse Register" business and claimed \$65,945 in losses, based on expenses including \$14,476 for car and truck expenses, \$11,440 for "gasoline," and \$9,980 for "miscellaneous." C.L. and G.L. did not operate any such businesses in 2009, and Monzon did not review the return with C.L. and G.L. before filing. C.L. and G.L. believe that the fee they paid to Monzon for preparing the return was based on a percentage of the refund.

19. Monzon also prepared the 2009 tax return of a taxpayer identified herein as "I.R.", an employed electrician. I.R.'s only source of income in 2009 was \$41,610 in wages received from his employer. However, Monzon falsely claimed on the Schedule C attached to the return that I.R. had an "electricista" business and reported only \$900 in income but \$29,902 in expenses, for a bogus business loss of \$29,002. I.R. did not own such a business and received no income outside of his employment. The bogus business loss that Monzon reported resulted in I.R. under-reporting his 2009 tax liability by \$6,342.

20. Yanko Rodriguez prepared I.R.'s 2010 tax return. As in 2009, I.R.'s only source of income in 2010 was \$43,200 in wages received from his employer. However, Rodriguez falsely reported on the Schedule C that I.R. had \$1,405 in business income and \$28,740 in business expenses, for a bogus business loss of \$27,335. Again, I.R. did not own a business and received no income outside of his employment. The bogus business loss that Rodriguez reported resulted in I.R. under-reporting his 2010 tax liability by \$6,565.

21. Monzon and Rodriguez did not even bother to alter the amount of bogus business expenses from year to year on I.R.'s returns. On the Schedule C's attached to I.R.'s 2009 and 2010 returns, Monzon and Rodriguez reported several identical bogus expenses for each year, including \$1,260 for "insurance," \$2,158 for "other interest," \$1,856 for "utilities," \$1,200 for "business telephone," \$3,820 for "gasoline," and \$125 for "work shoes."

22. Manufacturing bogus business expenses causes Defendants' customers to under-report their tax liability and obtain refunds to which they are not entitled.

### **Monzon's Fraudulent Claims of the Fuel Tax Credit**

23. Monzon prepared numerous blatantly fraudulent federal income tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms, Monzon misapplied 26 U.S.C. § 6421(a), which allows certain taxpayers to claim a fuel tax credit on their tax return. The fuel tax credit is available only to taxpayers who operate farm equipment or other off-highway business vehicles. Moreover, the equipment or vehicles using the fuel must not be registered for highway uses.

24. Fraudulently claiming the fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, Monzon improperly claimed the fuel tax credit for her customers based upon their purported purchase of motor fuels for use in their purported businesses.

25. Section 6421(a) of the Internal Revenue Code provides a tax credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines

such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2011), Farmer's Tax Guide, Chapter 14 (2011) (available online at: [www.irs.gov/pub/irs-pdf/p225.pdf](http://www.irs.gov/pub/irs-pdf/p225.pdf)).

26. In short, the fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

27. Monzon prepared federal income tax returns for customers and improperly reduced customers' reported tax liabilities by claiming bogus fuel tax credits under 26 U.S.C. § 6421.

28. For example, Monzon prepared the 2005 tax return of married taxpayers identified herein as "O.G." and "G.M.", on which she reported a bogus fuel tax credit for the purchase of 63,534 gallons of fuel, claiming a credit of \$15,471. To use that much fuel, O.G. would have had to have drive 1,700 miles each day in 2005, all on an off-highway machine. To purchase that much fuel, O.G. would have had to spend at least \$126,000 in 2005, but his reported gross receipts as a "Driver Owner Operator" on his Schedule C totaled only \$98,575.

29. In 2008, the IRS assessed \$43,000 in penalties against Monzon for her preparation of tax returns falsely claiming fuel tax credits.

30. After being penalized for bogus fuel tax credit claims, Monzon ceased claiming the fuel tax credit on her clients' tax returns and began to improperly claim gasoline expenses on her clients' tax returns by claiming bogus gasoline expenses on Schedule C's for nonexistent businesses.

31. For example, on the Schedule C attached to the 2009 tax return of C.L. and G.L. on which Monzon falsely reported that G.L. had business income and expenses, Monzon included a bogus expense of \$11,440 for "gasoline."

32. On the Schedule C attached to J.C.'s 2009 tax return, Monzon falsely reported that J.C. had \$5,200 in "gasoline" expenses related to her nonexistent business.

33. On the Schedule C attached to I.R.'s 2009 tax return, Monzon falsely reported that I.R. had \$3,820 in "gasoline" expenses related to his nonexistent business. Following his mother's lead, Yanko Rodriguez falsely reported that I.R. had \$3,820 in "gasoline" expenses related to his nonexistent business on the Schedule C attached to I.R.'s 2010 tax return.

### **Harm Caused by Defendants**

34. Defendants' customers have been harmed because they paid Defendants fees to prepare proper tax returns, but Defendants prepared returns that substantially understated their customers' correct tax liabilities or created or inflated improper refunds. Many customers now face large income tax deficiencies and may be liable for sizeable penalties and interest.

35. Defendants' conduct harms the United States because their customers are under-reporting and under-paying their correct tax liabilities. The IRS has examined 498 federal income tax returns that Defendants prepared for customers for tax years 2008 through 2011, with a total of \$3,494,336 in lost revenue (an average of \$7,031 per return) based on false claims and deductions. The IRS estimates that Defendants' return preparation could have resulted in as much as \$37,000,000 or more in revenue lost to the United States.

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

37. Defendants further harm the United States because the Internal Revenue Service must devote its limited resources to identifying their customers, ascertaining their correct tax



liabilities, recovering any refunds erroneously issued, and collecting additional taxes and penalties.

**Count I: Injunction under 26 U.S.C. § 7407**

38. The United States incorporates by reference the allegations in paragraphs 1 through 37.

39. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin a tax return preparer from engaging in conduct subject to penalty under 26 U.S.C. § 6694, which penalizes a return preparer who prepares a return that contains an understatement of tax liability or overstatement of a refund that is due to an unreasonable position which the return preparer knew or should have known was unreasonable, or engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

40. In order for a court to issue such an injunction, the court must find (1) that the preparer has engaged in such conduct, and (2) that injunctive relief is appropriate to prevent the recurrence of the conduct.

41. The court may permanently enjoin the person from further acting as a federal tax preparer if it 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.

42. Defendants have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 by preparing federal income tax returns that understate their customers' liabilities or overstate their refunds based on unrealistic, frivolous, and reckless positions.

43. Defendants' continual and repeated violations of section 6694 fall within 26 U.S.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under section 7407.

44. If they are not enjoined, Defendants are likely to continue to prepare and file false and fraudulent tax returns, causing economic loss to the United States, causing the United States to commit finite, scarce, and unrecoverable resources to the examination of Defendants and their customers, and exposing their customers to large liabilities that include penalties and interest.

45. Defendants' continual and repeated conduct subject to an injunction under I.R.C. § 7407, including their audacious and repeated bogus claims of expenses and deductions, including fictitious businesses, even after the IRS penalized Monzon for bogus claims, demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws. Thus, they should be permanently barred from acting as tax return preparers.

**Count II: Injunction under 26 U.S.C. § 7408**

46. The United States incorporates by reference the allegations in paragraphs 1 through 45.

47. Section 7408 of the Internal Revenue Code authorizes a district court to enjoin any person from engaging in conduct subject to penalty under 26 U.S.C. § 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

48. Section 6701 of the Internal Revenue Code penalizes any person who aids or assists the preparation or presentation of any portion of a federal tax return when the person knows or has reason to believe that such portion will be used in connection with a material

matter arising under the internal revenue laws and knows that if it is so used it will result in an understatement of another person's tax liability.

49. Defendants prepare federal tax returns for customers that they know will understate their correct tax liabilities, because they knowingly prepare returns claiming improper expenses and deductions. Defendants' conduct is thus subject to a penalty under section 6701.

50. If the Court does not enjoin Defendants, they are likely to continue to engage in conduct subject to penalty under section 6701. Defendants' preparation of returns claiming improper expenses and deductions is widespread over many customers and tax years. Injunctive relief is therefore appropriate under 26 U.S.C. § 7408.

**Count III: Injunction under 26 U.S.C. § 7402(a)  
Necessary to Enforce the Internal Revenue Laws**

51. The United States hereby incorporates by reference the allegations in paragraphs 1 through 50.

52. Section 7402 of the Internal Revenue Code authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

53. Defendants, through the actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

54. Unless enjoined, Defendants are likely to continue to engage in such improper conduct and interfere with the enforcement of the internal revenue laws. If Defendants are not enjoined from engaging in fraudulent and deceptive conduct, the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them, much of which will never be discovered and recovered. The United States will

also suffer irreparable injury because it will have to devote substantial unrecoverable time and resources auditing Defendants' customers to detect future returns understating the customers' liability or overstating their refund.

55. While the United States will suffer irreparable injury if Defendants are not enjoined, Defendants will not be harmed by being compelled to obey the law.

56. Enjoining Defendants is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop their illegal conduct and the harm it causes the United States.

57. The Court should therefore impose injunctive relief under 26 U.S.C. § 7402(a).

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

A. That the Court find that Yanko Rodriguez, Marlen Monzon and Tri Stars Multiservices, Corporation have continually and repeatedly engaged in conduct subject to penalty under 26 U.S.C. § 6694 and have continually and repeatedly engaged in other fraudulent and deceptive conduct that substantially interferes with the administration of the tax laws, and that injunctive relief is appropriate under 26 U.S.C. § 7407 to bar Yanko Rodriguez, Marlen Monzon, and Tri Stars from acting as federal tax return preparers and from engaging in conduct subject to penalty under 26 U.S.C. § 6694;

B. That the Court find that Yanko Rodriguez, Marlen Monzon, and Tri Stars have engaged in conduct subject to penalty under 26 U.S.C. § 6701, and that injunctive relief is appropriate under 26 U.S.C. § 7408 to bar Yanko Rodriguez, Marlen Monzon, and Tri Stars from engaging in conduct subject to penalty under 26 U.S.C. § 6701;

C. That the Court find that Yanko Rodriguez, Marlen Monzon, and Tri Stars have engaged in conduct that substantially interferes with the enforcement of the internal revenue

laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and 26 U.S.C. § 7402(a);

D. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Yanko Rodriguez, Marlen Monzon, and Tri Stars and all those in active concert or participation with them from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns, amended returns, or other related documents or forms for any person or entity other than themselves;
- (2) preparing or assisting in preparing or filing federal tax returns that they know or reasonably should know will result in an understatement of tax liability or the overstatement of federal tax refund(s);
- (3) engaging in any other activity subject to penalty under 26 U.S.C. §§ 6694, 6701, or any other penalty provision in the Internal Revenue Code; and
- (4) engaging in any conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring that Yanko Rodriguez and Marlen Monzon, within 30 days of entry of the injunction, contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom they prepared a federal tax return since January 1, 2009, to inform such persons of the permanent injunction entered against them, including sending a copy of the order of permanent injunction but not enclosing any other documents or enclosures unless agreed to by counsel for the United States or approved by the Court, and file with the Court a sworn certificate stating that they have complied with this requirement;

F. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Yanko Rodriguez and Marlen Monzon to produce to counsel for the United

States within 30 days a list that identifies by name, social security number, address, e-mail address, telephone number and tax period(s) all persons for whom they prepared federal tax returns or claims for refund since January 1, 2009;

G. That the Court, pursuant to 26 U.S.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Yanko Rodriguez and Marlen Monzon to provide a copy of the Court's order to all of their or Tri Stars' principals, officers, managers, employees, and independent contractors within fifteen days of the Court's order, and provide to counsel for the United States within 30 days a signed and dated acknowledgment or receipt of the Court's order for each person to whom Defendants provided a copy of the Court's order;

H. That the United States be entitled to conduct discovery to monitor Yanko Rodriguez's, Marlen Monzon's, and Tri Stars' compliance with the terms of any permanent injunction entered against them;

I. That the Court retain jurisdiction over Yanko Rodriguez, Marlen Monzon and Tri Stars and over this action to enforce any permanent injunction entered against Defendants; and

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

DATED: February 5, 2013

Respectfully submitted,

KATHRYN KENEALLY  
Assistant Attorney General

/s/Thomas K. Vanaskie  
THOMAS K. VANASKIE  
Trial Attorney, Tax Division  
U.S. Department of Justice  
Post Office Box 14198  
Ben Franklin Station

Washington, D.C. 20044  
Telephone: (202) 305-7921  
Thomas.K.Vanaskie@usdoj.gov

Of Counsel  
WIFREDO A. FERRER  
United States Attorney