

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) No.  
)  
KEVIN M. WALKER )  
6578 Esquire Lane )  
Hixson, Tennessee 37343 )  
)  
Defendant. )

**COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION**

The United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this suit to permanently enjoin Kevin M. Walker and all persons and entitles in active concert or participation with him, from directly or indirectly:

- (a) Preparing or filing, or assisting in the preparation or filing of any federal tax return for any other person or entity;
- (b) Engaging in any conduct or activity subject to penalty under section 6701 of the Internal Revenue Code, *i.e.*, preparing or assisting others in the preparation of any tax form or other document to be used in connection with a material matter arising under the internal revenue laws and which the defendant knows will (if so used) result in the understatement of tax liability;
- (c) Engaging in any conduct or activity subject to penalty under section 6694 of the Internal Revenue Code by understating taxpayers' liabilities;

- (d) Engaging in any conduct or activity subject to penalty under section 6695 of the Internal Revenue Code by failing to exercise due diligence in determining eligibility for the earned income credit; and
- (e) Engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

### **Jurisdiction and Venue**

1. Jurisdiction over this action is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and §§ 7402(a), 7407, and 7408 of the Internal Revenue Code. (26 U.S.C.) (“I.R.C.”)
2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendant, Kevin M. Walker, resides, is located in, or has his principal place of business in this district, and because a substantial part of the actions giving rise to this suit took place in this district.

### **Parties**

3. Plaintiff is the United States of America.
4. The defendant, Kevin M. Walker (“Walker”), is an individual residing at 6578 Esquire Lane, Hixson, Tennessee, within the jurisdiction of the Court
5. Walker has operated a tax return preparation business. The tax return preparation business has its place of business in and around Chattanooga, Tennessee, within the jurisdiction of this Court.

### **Defendant Kevin M. Walkers’s Business**

6. Walker is an income tax return preparer within the meaning of I.R.C. § 7701(a)(36). He prepares, facilitates, or assists in the preparation of other people’s tax returns for compensation.
7. Walker operates a tax return business in and around the Chattanooga area using

H & R Block, an “Electronic Return Originator” authorized to initiate the electronic submission of tax returns to the Internal Revenue Service (IRS). Walker uses either tax preparation software he purchases from H & R Block to e-file his customer’s returns or he files customer’s returns online. Walker prepares returns primarily from his home, but also from his customer’s homes. Walker buys off-the-shelf software from H & R Block that allows him to e-file up to five returns, then he buys more software. Each software package has its own e-file Identification Number (EFIN). Disbursements were found in Walker’s bank accounts to Block Financial Online Tax.

8. Walker prepared federal income tax returns for paying customers, charging fees that range from \$ 300 to \$ 1,200. He purchased H & R Block tax return preparation software and entered his customer’s tax return information. One of the aspects of using the H & R Block software is that when a tax return is electronically filed, it is filed using a H & R Block filer identification number (“EFIN”). Accordingly, the IRS was not initially aware that Walker was filing returns on behalf of his customers.

9. Walker arranged for a portion of each customer’s federal income tax refund to be deposited into his checking account. The amounts that Walker diverted to his own use ranged from \$ 395 to \$ 1,200. The balance of the tax refund would generally be electronically deposited directly into the account of the customer. When the customer did not have a bank account, Walker would direct the refund to be deposited into his checking account, and would transmit the refund to the customer in cash, less his fee.

### **Walker’s Fraudulent Return Preparation Schemes**

10. Walker’s scheme was discovered when the IRS initiated an examination (audit) of his income tax returns for the years 2008, 2009, and 2010. The agent conducting the examination (audit) summoned Walker’s bank records and ascertained that Walker had an inordinate amount

of tax refunds deposited into his checking account, typically ranging between \$ 500 and \$ 1,200. Using the unique electronic transaction numbers assigned to the refunds, the revenue agent was able to identify to which returns the refunds related. Accordingly, the IRS was able to identify which returns Walker filed.

11. From examining Walker's bank records and its internal records, the IRS derived the following information regarding the returns filed by Walker for the years 2007 through 2011:

Processing Year	Forms 1040 Filed
2007	11
2008	48
2009	142
2010	258
2011	179
Total	638

For the years 2007 through 2011, as referenced above, Walker prepared a total of 638 federal income tax returns.

**Walker's Continued and Repeated Preparation of False Returns  
To Maximize a Refund Based on the Earned Income Tax Credit**

12. The primary method used by Walker to obtain false Earned Income Tax Credit ("EITC") refunds for his customers is to show profits or losses from a business to maximize the refund based on the EITC. Individuals report their profits from a sole proprietorship business for income tax purposes on Schedule C, Profit or Loss from a Business (Sole Proprietorship). Schedule C is attached to the Form 1040, U.S. Individual Income Tax Return. Walker reports false expenses from businesses or losses from fictitious businesses on the return that he prepares in order to maximize his customer's refunds based on the EITC. Section 32 of the Internal

Revenue Code (26 U.S.C.) (the “Code”) allows a refundable credit known as the “earned income credit” for persons who have “earned income” and “qualified children.” The EITC is a refundable credit that can generate a refund even when the taxpayer has not paid any income tax during the year. The EITC is determined by a person’s filing status, number of qualifying children, and earned income. The “earned income credit” rules are set forth in IRS Publication 596, Earned Income Credit, which is readily available to the public at IRS offices and on-line at the IRS website ([www.IRS.gov](http://www.IRS.gov)). Questions to guide a return preparer to determine whether a taxpayer is entitled to claim the EITC are addressed on Form 8867, Paid Preparers Earned Income Credit Checklist. This form, or similar documentation, is required to be used by paid preparers so that they meet their Earned Income Credit due diligence requirements mandated by the pertinent Treasury regulations. (see Final Regulation § 1.6695-2).

**The IRS Investigation of Walker’s Preparation of Returns  
Falsely Claiming The Earned Income Tax Credit**

13. Internal Revenue Service revenue agent Mark T. DeJournett identified 204 false returns prepared by Walker with the following characteristics known to be associated with false Schedule C items:

a. Schedule Cs with Gross Receipts and little or no routine expenses so that EITC could be generated (or Non-employee Compensation was reported to increase the individual’s earned income because the reported wages were not sufficient to generate the maximum EITC). It is a common rule that a business usually cannot generate income without incurring operating expenses;

b. Schedule Cs with questionable business expenses that exceeded the small

amounts, if any, of reported Gross Receipts by a large amount. These losses were shown so that the individual's tax due could be reduced or eliminated and EITC could be generated (i.e. the individual's earned income was too much for the maximum EITC to be allowable); and

c. There was no business income reported to the IRS on Forms 1099 that would routinely be reported for legitimate businesses. IRS data reviewed for certain individuals verified that such individuals did not receive any Forms 1099-MISC reporting Non-employee compensation that would indicate that they had a business.

14. Revenue agent DeJournett reviewed 84 income tax returns prepared by Walker through tax year 2010. On 20 returns, profits from fictitious Schedule C "sole-proprietorship" businesses appeared to have been claimed to maximize the EITC refunds. Four examples are discussed in paragraphs 17 - 20, below.

15. Revenue agent DeJournett reviewed IRS audit results and interviews with customers relating to income tax returns that contained a fictitious Schedule C business which were prepared by Walker. The preparation of such returns was the primary method used by Walker to generate artificially inflated refunds for his customers.

16. Individuals report their profits from a sole-proprietorship business for Federal income tax purposes on Schedule C, which is attached to their Form 1040. Walker shows false expenses from businesses or losses from fictitious businesses in order to maximize a customer's tax refunds based on the EITC. Where a customer's income was less than the amount of earned income that would generate the maximum earned income credit, Walker would report false Schedule C gross receipts and little or no expenses so the customer could receive the maximum earned income credit. Conversely, where the customer's income exceeded the amount of earned income that would generate the maximum earned income credit, he would fabricate a Schedule C

business in which the expenses exceeded revenue. This had the dual effect of (1) reducing income tax owed by the customer; and (2) generating an earned income credit (or a larger earned income credit).

**Specific examples of defendant's malfeasance - earned income tax credit**

17. Revenue agent DeJournett learned that in one instance involving customer CV, Walker created Schedule C gross receipts from a business of \$ 8,000 for 2010 and \$ 8,700 for 2011, but no expenses. CV received EITC refunds of \$ 3,050 for 2010 and \$ 3,094 for 2011 on account of the business income reported on the Schedule C attached to her return. When interviewed, CV stated that she gave Walker the wage and self-employment amounts shown on her 2010 and 2011 returns and told him that her self-employment income was earned from the sales of her personal items and items she purchased for resale. The proceeds from sales of personal items should not have been reported on CV's 2010 and 2011 returns as income from self-employment because there was no profit motive, a fact Walker should have known. CV did not provide Walker documentation regarding a business, and the total amount of gross receipts from a business reflected on Schedule C for 2010 and 2011 was false. CV intends to file amended returns for 2010 and 2011 because she received refunds she was not entitled to for these years. CV paid Walker \$ 300 to prepare her 2010 return and \$ 500 to prepare her 2011 return. Walker took his fee out of CV's refunds (one year the fee was taken out of CV's bank account because she gave Walker authority to do so).

18. Revenue agent DeJournett learned that in one instance involving customers WT and PT, Walker created Schedule C expenses from a business of \$ 26,872 for 2010 and \$ 4,388 for 2011, but no gross receipts. The net losses of \$ 26,872 (2010) and \$ 4,388 (2011) reduced the tax liabilities of WT and PT from their wages for these years. When interviewed,

WT and PT stated that they did not have any business or self-employment activity in 2010 and 2011, did not tell Walker that they had such activity, and did not provide Walker with receipts of business expenses of \$ 26,872 for 2010 or \$ 4,388 for 2011 for a trucking business as shown on their tax returns. WT stated that she knew what a Schedule C was because she and her husband had a business in years prior to 2010 and 2011 and they filed schedule Cs for such business. Walker received a return preparation fee of \$ 500 for 2010 and 2011 for preparing the returns of WT and PT for these years and such amounts were taken out of their return amounts through refund splits. Walker never gave WT and PT a copy of their 2010 or 2011 returns.

19. Revenue agent DeJournett learned that in one instance involving customer ML, Walker reported wages of \$ 1,675 and self-employment income of \$ 12,500 from a child daycare business were reported on ML's return for 2010. On account of this income, ML received an EITC refund of \$ 5,036 for 2010. When interviewed, ML stated that she only knew Walker as a business partner of DAP (another tax return preparer) and did not know Walker prepared her 2010 return because she only discussed filing a return with DAP. She provided DAP with her personal identification information but did not tell DAP about any wages or self-employment income because she was a full time student in 2010 and did not work in that year. ML was not aware that self-employment income was shown on her return because she was never shown a copy of her tax return. ML did not know how much she paid to have her 2010 tax return prepared because it was not discussed and the fee was taken out of her refund. The Form 8888, Allocation of Refund, attached to ML's 2010 return shows that the return preparer fee of \$ 590 was directly deposited into Walker's SunTrust bank account.

20. Revenue agent DeJournett learned that in one instance involving customer TT,



Walker reported losses from self-employment income of \$ 9,226 and \$ 9,652 from sales on TT's 2010 and 2011 returns. TT received EITC refunds of \$ 1,847 for 2010 and \$ 2,010 for 2011. When interviewed, TT stated that she only knew Walker as DAP's business partner and did not know Walker prepared her 2010 and 2011 returns because she only discussed filing returns with DAP. TT gave her personal identification number and W-2s for 2010, and 2011 to DAP but did not tell him about any self-employment income or business because she did not earn any self-employment income and never had her own business. Her only income was the wages shown on her returns. TT was not aware that self-employment income was shown on her 2010 and 2011 returns because she was never shown copies of her returns for these years. TT did not know how much she paid to have her returns prepared because it was never discussed and the fees were taken out of her refunds. The Form 8888 (Direct Deposit of Refund To More Than One Account) attached to TT's 2010 return shows that the return preparer fee of \$ 525 was directly deposited to Walker's SunTrust bank account.

### **Walker's Preparation of Returns Falsely Claiming Education Tax Credits**

21. The IRS investigation also revealed that Walker prepared returns for customers falsely claiming education tax credits. The Hope Scholarship Credit and the Lifetime Learning Credit are non-refundable tax credits that may not exceed a taxpayer's income tax liability. The education credits provide taxpayers with a means to recover some of the costs of post-secondary and adult education. The education credits are only available to taxpayers below a certain income level. The credits apply to qualified expenses paid after June 30, 1998, for education in academic periods beginning after that date. The IRS has announced that taxpayers may elect the Hope Scholarship Credit and the Lifetime Learning Credit by attaching the Form 8863 to their amended or original returns for tax years beginning after 1997. Qualified tuition and related

expenses include fees required for enrollment or attendance for courses of instruction. An eligible educational institution is a college, university, vocational school or other post-secondary educational institution. Generally, this includes all accredited public, nonprofit, and proprietary post secondary institutions.

22. The American Opportunity Tax Credit (AOC) is a partially refundable tax credit for eligible educational expenses incurred during the taxable year for students who are enrolled in an undergraduate degree program or pursuing an educational certificate. The AOC can provide up to \$ 2,500 in refundable credits to individuals who qualify, \$ 1,000 of which are refundable.

23. Revenue agent DeJournett reviewed 74 federal income tax returns prepared by Walker through tax year 2010 on which education credits were claimed and the customers did not receive any Forms 1098-T. Eligible educational institutions use Form 1098-T to report to the IRS the amounts of qualified tuition and related expense payments they received from individuals enrolled at their institution. The returns claiming false education credits include only customers with no dependents who claimed education credits so that a review of IRS records for Forms 1098-T could be reasonably limited and individuals who clearly did not incur education expenses could be easily determined. IRS data verified that none of the individuals shown on this list received Forms 1098-T reflecting that they paid or incurred qualified education expenses. Five examples are discussed in paragraphs 24 - 28, below.

**Specific examples of defendant's malfeasance - education tax credits**

24. Revenue agent DeJournett learned that in one instance involving customer DS, a \$ 1,500 education credit and \$ 1,000 AOC were claimed on his 2010 return. IRS records verified that a Form 1098-T was not issued to him for qualifying education expenses for the year

2010. When interviewed, DS stated that it may have been Walker who prepared his 2010 return but he was not sure as he gave all his information to a friend who was to take the information to a preparer. DS stated that he had been examined by IRS for 2010 and the \$ 1,500 education credit claimed on his return was disallowed because he did not go to school and did not incur any education expenses. DS stated that he did not give any information to the preparer or his friend that he went to school or incurred education expenses and does not know why the education credit and AOC were claimed on his 2010 return.

25. Revenue agent DeJournett learned that in one instance involving customer SW, a \$ 1,500 education credit and \$ 1,000 AOC were claimed on her 2010 return. IRS records verified that she did not receive Form 1098-T for qualifying education expenses for the year 2010. When interviewed, SW stated that Walker prepared her 2010 return based on information she gave him about her filing status and wages, but she did not tell him that she went to school because she did not. SW was not aware that a \$ 1,500 education credit and \$ 1,000 AOC were claimed on her return because she never saw the return. SW did not know the fee Walker charged to prepare her return because the fee was taken out of her refund and she trusted Walker to charge a reasonable fee because he was a friend.

26. Revenue agent DeJournett learned that in one instance involving customer JB, a \$ 1,250 education credit and \$ 850 AOC were claimed on his 2010 return. IRS records verified that a Form 1098-T was not issued to JB for qualifying education expenses for the year 2010. When interviewed, JB stated that his cousin Walker prepared his return based on information he gave him about his filing status and wages, but he did not tell him that he went to school because he did not. JB was not aware that a \$ 1,250 education credit and \$ 1,000 AOC were claimed on

his return because he never saw the return. JB paid Walker \$ 500 - 600 to prepare his return and the fee was taken out of his refund.

27. Revenue agent DeJournett learned that in one instance involving customer DM, a \$ 1,300 education credit was claimed on her 2010 return. IRS records verified that a Form 1098-T was not issued to DM for qualifying education expenses for the year 2010. When interviewed, DM stated that Walker prepared her return based on information she gave him about her filing status and wages, but she did not tell him that he went to school because he did not. DM was not aware that a \$ 1,300 education credit was claimed on her 2010 return. DM paid Walker \$ 50 - 80 to prepare his return and the fee was taken out of her refund.

28. Revenue agent DeJournett learned that in one instance involving customer TT, education credits of \$ 2,000 for 2009, \$ 828 for 2010, and \$ 758 for 2011 were claimed on her returns. A \$ 1,000 AOC was claimed on her 2010 return. When interviewed, TT stated that she did not go to school or incur any educational expenses in 2009, 2010, and 2011. As with regard to the false Schedule C returns on the fictitious businesses shown on her 2010 and 2011 returns, she was not aware that education credits or AOC were claimed on her returns for 2009, 2010, and 2011 because she was never shown copies of her returns. Similarly, she did not know how much she paid Walker to prepare her 2009 return because a fee was not discussed and it was taken out of her refund.

29. The IRS investigation revealed that the returns filed by Walker for the years 2007 through 2010 falsely claiming non-refundable tax credits, as described in paragraphs 24 - 28, above, also falsely claimed refundable tax credits for the years 2007 through 2011. IRS data on Walker's customers verified that for the years 2008 - 2010, Walker falsely claimed refundable education tax credits in the amount of \$ 44,272. The IRS reviewed 179 returns to search for

refundable education tax credits claimed on the tax returns for the year 2011. Of the 179 returns, 56 customers were identified as claiming refundable education tax credits. The IRS researched Forms 1098-T received by either the student if such person was the taxpayer's dependent and the taxpayer if the tax credit was claimed for the taxpayer. The research verified that 22 customers claimed refundable education tax credits for which there was no indication of education expenses incurred or paid.

### **Walker's Preparation of Returns Claiming False Employee Business Expenses**

30. Section 212 of the Code allows individuals a deduction for ordinary and necessary expenses paid or incurred (1) for the production or collection of income; (2) for the management, conservation, or maintenance of income-producing property; or (3) in connection with the determination, collection, or refund of any tax. The deductions may be taken only as itemized deductions, i.e., deductible from adjusted gross income and are generally subject to the two-percent floor on miscellaneous itemized deductions provided by Code § 67. An individual who earns wages as someone's employee are entitled to deduct ordinary and necessary expenses paid or incurred to perform their job duties that are not reimbursed by their employer.

### **Specific examples of defendant's malfeasance - false employee business expenses**

31. To verify that returns prepared by Walker included false employee business expenses, JN was interviewed to determine whether he paid or incurred expenses to perform his job duties and that such expenses were not reimbursed by his employer. JN stated that Walker prepared his 2011 return for about \$ 500 and the fee was determined based on the refund amount. JN was a W-2 employee who incurred less than \$ 500 of unreimbursed employee business expenses in 2011 for such items as uniforms, but not \$ 13,233 as shown on his return. JN did not know how Walker determined such amount and he did not tell Walker that he

incurred \$ 13,233 in expenses. The false employee business expenses increased JN's tax refund for 2011.

### **Walker's Scheme to Deposit Customers' Refunds into His Bank Account**

32. The IRS conducted an audit of Walker due to his failure to file Federal income tax returns for the years 2008, 2009, and 2010. During the audit, the IRS obtained and examined Walker's bank records, including copies of his monthly account statements, copies of his client's refund checks, and documentation of all account disbursements. The bank records and internal research enabled the IRS to identify the returns prepared by Walker and verify that he is a paid income tax return preparer, does not sign the returns he prepares, does not show any identifying numbers belonging to him on the returns he prepares, and sometimes directly receives the full amounts of his client's income tax refunds that he deposits into his personal bank accounts at Sun Trust Bank (accounts # xxxxxxxxx2874 and # xxxxxxxxx7740).

33. Preparers are prohibited by IRS regulations from negotiating a taxpayer's refund check because such practice unfairly puts the preparer in control of the taxpayer's money so excessive fees may not be charged. IRS Circular 230 § 10.31 provides that a practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the Government in respect to a tax liability. Code § 6695(f) imposes a penalty of \$ 500 for each violation when a preparer endorses or otherwise negotiates (directly or through an agent) a refund check issued to a taxpayer (other than the preparer). This Code does not provide a "reasonable cause" exception to imposition of the penalty, and there is no maximum amount of penalty that can be imposed.

34. IRS return data shows H & R Block as the Electronic Return Originator (ERO)

because Walker uses either tax preparation software he purchases from H & R Block to e-file his customer's returns or he files customer's returns on-line. Walker prepares returns primarily from his home, but also from his customer's homes. Walker buys off-the-shelf software from H & R Block that allows him to e-file up to five returns, then he buys more software. Each software package has its own e-file Identification Number (EFIN). Disbursements were found in Walker's bank accounts to Block Financial Online Tax.

**Harm to the Government Resulting from  
Walker's Fraudulent Misconduct**

35. Deposits of customers' refund checks into Walker's bank accounts at Sun Trust Bank verified that Walker prepared at least 638 Federal income tax returns for the years 2007, 2008, 2009, 2010, and 2011, as set forth in paragraph 11, above. Walker's fraudulent practices have resulted in a tax loss resulting from the filing of returns showing fictitious Schedule C sole-proprietorship businesses for the years 2007 - 2010 (\$ 309,742) and the year 2011 (\$ 191,899), and false education tax credits (\$ 169,972) (consisting of non-refundable credits of \$ 125,400 and refundable credits of \$ 44,272), or a total tax loss of at least \$ 671,613, or approximately \$ 1,000 per return, in lost revenue to the Government.

36. In addition to the lost revenue, the Government has also incurred the expense of conducting the investigation of Walker's fraudulent return preparation.

37. The harm to the United States of America will increase if the defendant is not enjoined because he is likely to continue to prepare false federal income tax returns for his customers during the 2014 filing season, which will commence on January 31, 2015.

## COUNT I

### **Injunction Under 26 U.S.C. § 7407**

38. The United States incorporates by reference the allegations in paragraphs 1 through 37, above, as if fully set forth herein.

39. Under 26 U.S.C. § 7407, Congress has authorized the United States to seek an injunction against any tax preparer who, among other things, has engaged in any conduct subject to penalty under §§ 6694 or 6695, including, but not limited to, the following:

- (a) engaging in conduct subject to penalty under IRC § 6694 (which penalizes a return preparer who prepares or submits a return or claim that contains a frivolous or unrealistic position, or who willfully attempts to understate a customer's tax liability on a return or claim, or who makes an understatement on a return due to reckless or intentional disregard of rules or regulations);
- (b) engaging in conduct subject to penalty under IRC § 6695 (which penalizes a return preparer who fails, among other things, to be diligent in determining a customer's eligibility for, or amount of, the earned income tax credit, education tax credits, and employee business expenses - check this );
- (c) engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

If a return preparer's conduct is continual and/or repeated and the court finds that a narrower injunction (i.e., prohibiting specific enumerated conduct) would not be sufficient to prevent the preparer's interference with the proper administration of federal tax laws, the court may enjoin the person from acting as a return preparer.

40. Defendant has continually and repeatedly prepared and submitted federal tax



returns that contain unrealistic, unreasonable, and frivolous positions, and that willfully attempted to understate his customers' correct tax liabilities by fabricating the business income, expenses, and losses reported on his customers' federal income tax returns, and has thus engaged in conduct subject to penalty under IRC § 6694.

41. Defendant has continually and repeatedly failed to exercise diligence in determining his customers' eligibility for, or amounts of, the earned income credit, and thus has engaged in conduct subject to penalty under IRC § 6695(g).

42. Defendant has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

## **COUNT II**

### **Injunction Under 26 U.S.C. § 7408**

43. Plaintiff incorporates by reference the allegations in paragraphs 1 through 42, as if fully set forth herein.

44. 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.

43. Section 6701(a) of the Internal Revenue Code, in turn, imposes a penalty on any person who aids in the preparation of any portion of a return or other document, knowing that the return or other document will be used in connection with any material matter under the internal revenue laws, and who knows that the return or document, if so used, would result in understating another person's tax liability.

44. Defendant prepared and filed tax returns for his customers, and facilitated the

preparation and filing of tax returns and other documents that were intended to understate the customers' correct federal income tax liabilities. As the preparation and filing of those returns pertained to material matters arising under the internal revenue laws, Defendant's conduct is subject to penalty under § 6701.

### **COUNT III**

#### **Injunction Under 26 U.S.C § 7402(a)**

45. Plaintiff incorporates by reference the allegations in paragraphs 1 through 44, as if fully set forth herein.

46. Section 7402(a) of the Internal Revenue Code authorizes district courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." The remedies available to the United States under § 7402(a) "are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws." IRC § 7402(a).

47. Defendant, through his actions as described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws, namely, the preparation and filing of federal income tax returns that understates his customers' correct federal income tax liabilities.

48. Defendant's conduct is causing irreparable injury to the United States by depriving it of its lawful tax revenues through the understatement of the tax liabilities of his customers, as well as by overstating the correct amounts of the tax refunds to which they are entitled, if any.

49. Unless and until Defendant is enjoined, the defendant will likely continue to engage in conduct subject to penalty under §§ 6694, 6695(g), and 6701 of the Internal Revenue

Code, and the IRS will have to devote substantial time and resources to identify and locate his customers, and then examine his customers' tax returns and liabilities. Pursuing all of the defendant's customers may be impossible given the IRS's limited resources.

50. The entry of any injunction against defendant under IRC § 7402(a) is in the public interest because an injunction will stop the defendant's illegal conduct and the harm that it causes to the United States.

WHEREFORE, the plaintiff, the United States of America, respectfully prays as follows:

A. That the Court adjudge, determine and decree that the defendant has continually and repeatedly engaged in conduct subject to penalty under IRC §§ 6694 and 6695; that injunctive relief limited to prohibiting such conduct would not be sufficient to prevent the conduct from recurring; and that injunctive relief under IRC § 7407 prohibiting defendant from acting as a federal income tax preparer altogether is appropriate;

B. That the Court adjudge, determine and decree that the defendant has continually and repeatedly engaged in conduct subject to penalty under IRC § 6701, and that injunctive relief is appropriate under IRC § 7408 to prevent him from engaging in further such conduct;

C. That the Court adjudge, determine and decree that the defendant has continually and repeatedly engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against him is appropriate to prevent the recurrence of that conduct pursuant to the court's inherent equity powers and IRC § 7402(a);

D. That the Court enter preliminary and permanent injunctions prohibiting defendant from preparing and/or filing, or assisting or facilitating in the preparation or filing of federal income tax returns or other related documents and forms for other persons, or representing other persons before the Internal Revenue Service;

E. That the Court, under IRC §§ 7407, 7408, and 7402(a), enter preliminary and permanent injunctions prohibiting defendant and anyone acting in concert or participation with defendant, from directly or indirectly:

- (1) engaging in any conduct subject to penalty under IRC § 6694, including preparing any part of a return or claim for refund that includes an unrealistic position or a willful understatement of tax;
- (2) engaging in any conduct subject to penalty under IRC § 6695, including the failure to exercise due diligence in determining eligibility for the earned income credit;
- (3) engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws; and
- (4) engaging in conduct subject to penalty under IRC § 6701, *i.e.*, assisting others in the preparation of any tax returns, forms, or other documents to be used in connection with any material matter arising under the internal revenue laws and which they know will, if so used, result in the understatement of income tax liability;

F. That the Court, under IRC § 7402(a), enter an injunction requiring defendant to turn over to counsel for the United States a list of the names, addresses, phone numbers, and Social Security numbers of all individuals or entities for whom defendant prepared or helped to prepare any tax-related documents, including claims for refund or tax returns, since January 1, 2007;

G. That the Court, under IRC § 7402(a), enter an injunction requiring defendant to contact all persons and entities for whom he prepared any federal income tax returns or other

tax-related documents after January 1, 2007, and inform those persons of the entry of the Court's findings concerning the falsity of the representations that defendant made on his customers' tax returns, and that a permanent injunction has been entered against him;

H. That the Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

I. That the Court retain jurisdiction over this action for the purpose of enforcing any preliminary or permanent injunction entered against defendant;

J. That the United States recover its attorneys' fees and costs incurred in prosecuting this action and obtaining any permanent injunction entered against defendant; and

K. For such other and further relief as the Court may determine to be just and equitable.

DATED: September 30, 2014.

WILLIAM C. KILLIAN  
United States Attorney

/s/ Michael J. Martineau

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MICHAEL J. MARTINEAU  
Trial Attorney, Tax Division  
U. S. Department of Justice  
Post Office Box 227  
Washington, DC 20044  
Telephone/ Copier: (202) 307-6483/514-6866  
michael.j.martineau@usdoj.gov