

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS A. CABRERA,

Defendant.

Case No. 6:13-cv-61-DRL-19 TBS

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America seeks a permanent injunction against Carlos A. Cabrera, permanently barring him from preparing tax returns for others, and other relief, and states as follows:

1. This action has been requested by the Chief Counsel of the Internal Revenue Service ("IRS"), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General.
2. This is a civil action brought by the United States pursuant to 26 U.S.C. ("I.R.C.") §§ 7401, 7402, 7407, and 7408 to enjoin the defendant, and any other entity or persons in active concert or participation with him, from preparing or assisting in the preparation of federal tax returns for others, directly or indirectly engaging in conduct subject to penalty under I.R.C. §§ 6694, 6695, and 6701, and from engaging in conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Jurisdiction and Venue

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

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) and I.R.C. §§ 7407(a) and 7408(a) because the defendant resides in this judicial district and a substantial part of the conduct described in this complaint occurred in this judicial district.

Defendant

5. Carlos A. Cabrera is a paid federal tax return preparer who resides and conducts business in the Orlando, Florida area.

6. Cabrera is an un-enrolled tax return preparer and the owner/operator of Cabrera Financial Group (“CFG”), a tax return preparation business located at 1625 North John Young Parkway, Kissimmee, Florida.

7. Cabrera has been preparing tax returns since 1996.

8. Cabrera holds himself out to the public as a paid tax professional.

Overview of Cabrera’s Activities

9. CFG has been in business since 2006. The primary business function of CFG is the preparation of individual income tax returns.

10. CFG has a staff of approximately six persons; the employees are primarily Cabrera’s family members. Cabrera’s family members perform administrative and security functions for CFG.

11. Cabrera is the only person at CFG who prepares tax returns for customers.

12. For the past several years, Cabrera has continually, repeatedly, and knowingly prepared for his customers federal income tax returns which included improper deductions and credits, including false education credits and fabricated Schedule C losses.

13. Cabrera concocted these improper deductions and credits in a willful attempt to understate his customers' tax liabilities, resulting in improper and inflated refunds for his customers.

14. Cabrera also knew, or should have known, that the improper deductions and credits, which led to an understatement of his customers' federal income tax liabilities, were due to unreasonable positions.

15. Cabrera targeted financially unsophisticated individuals with the promise of quick cash in the form of a federal tax refund. Cabrera, or his agents, falsely told customers that they were eligible for special credits offered by the federal government. Cabrera, or his agents, targeted average to low-income taxpayers with vague promises about new legislation providing additional refunds and credits.

16. Cabrera prepared a federal income tax return, or amended return, for the customer that reported income, expense, and credit information that Cabrera knew to be false. This led to erroneous federal tax refunds issued by the IRS.

17. Cabrera has prepared federal income tax returns and amended federal income tax returns that he knew included fabricated business losses and false education credits and expenses.

18. On April 15, 2011, a search warrant was executed on CFG. Client lists were obtained from Cabrera's computer that indicated Cabrera prepared 7,745 and 9,301 tax returns for 2009 and 2010, respectively. According to internal records at the IRS, however, CFG identified itself as the paid return preparer on only 463 and 1,494 tax returns for 2009 and 2010, respectively.

19. According to the client lists and information obtained from Cabrera's computer at CFG, Cabrera's clients claimed over \$23 million in education credits for tax years 2009 and 2010 alone.

20. In April 2011, the IRS assessed penalties, pursuant to 26 U.S.C. § 6695(g), against Cabrera for failure to comply with the “due diligence” requirements imposed on federal income tax return preparers who claim the earned income tax credit for customers.

21. These “due diligence” requirements obligate a tax return preparer to obtain certain types of information from the customer and to ask the customer questions to ensure the customer is legitimately entitled to the earned income tax credit.

22. The IRS identified 98 tax returns for which Cabrera failed to comply with the “due diligence” requirements. Cabrera was required to pay \$9,800 in penalties for failure to comply with the “due diligence” requirements during tax year 2009.

23. On May 20, 2011, Cabrera agreed to the penalty assessment made against him.

24. The electronic filing identification number, or EFIN, that was assigned to Cabrera and CFG was revoked on June 28, 2011 because the IRS determined that fraudulent returns had been filed using that identifying number.

25. After the EFIN that Cabrera used at CFG was revoked by the IRS on June 28, 2011, a new company – CFG Tax, LLC – was formed. CFG Tax, LLC was formed on August 10, 2011. Cabrera is not listed as the owner of this new company.

26. Instead, Cabrera’s daughter is listed as the new company’s registered agent and Cabrera’s sister-in-law is listed as the new company’s manager. Neither of these individuals has any tax preparation experience.

27. Cabrera has been soliciting business for CFG Tax, LLC from CFG’s previous clients.

False Business Losses Reported on Schedule C

28. The "Schedule C" is a tax form used by individuals to report income or loss from a business or a profession practiced as a sole proprietor. The profit or loss shown on the Schedule C is reported on line 12 of the individual's Form 1040.
29. Cabrera repeatedly reports non-existent businesses and false expenses on his customers' Schedules C. These fabricated businesses and phony deductions generate bogus business losses, decreased tax liability, and improper and inflated refunds for his customers.
30. Without any input whatsoever from his customers, Cabrera lists false businesses on the customers' returns, and reports fabricated and fictitious income and expense items on the returns.
31. Cabrera manipulates or creates phony Schedule C net income to generate or maximize the earned income tax credit for his customers.
32. Due to Cabrera's reporting of bogus Schedule C businesses, Cabrera has repeatedly and fraudulently understated his customers' tax liabilities, resulting in improper and inflated refunds for his customers

False Education Credits and Expenses

33. Cabrera also repeatedly prepares tax returns that claim false education credits and fraudulent refunds for educational expenses.
34. An education credit (such as the American Opportunity Credit or the Hope Credit) may be taken by individuals with a certain income level who incurred tuition or other postsecondary education fees.
35. Cabrera prepared tax returns that falsely claim, for example, American Opportunity Credits, a partially refundable credit for certain education expenses. Among the conditions for claiming the American Opportunity Credit, a taxpayer can claim only qualified expenses, and

can seek the credit only if the student is the taxpayer, the taxpayer's spouse, or a dependent who is properly claimed on the tax return.

36. Typically, Cabrera claims improper education credits on returns he prepares for customers with little or no substantiation and/or consultation with the clients. In many cases, Cabrera claims education credits on returns he prepares without any basis. Cabrera also regularly fails to attach Form 8863 to the returns he prepares that claim the education credit. Form 8863 is used to report and calculate the amounts of education credits reported on the Form 1040.

37. Cabrera willfully and/or recklessly fails to ascertain whether the customer paid any qualifying payments or if the customer qualifies for an education credit or has any substantiation that such payments were made.

38. Cabrera also repeatedly deducts improper tuition and fees on returns he prepares for customers, frequently with little or no substantiation and/or no consultation with the customer. Cabrera willfully and/or recklessly fails to ascertain whether the customer paid any tuition or fees, the amount of such fees if any tuition or fees were paid, or that the tuition or fees paid qualify for a tuition and fee deduction.

39. Cabrera repeatedly fabricates education credits and expenses on tax returns he prepares, in a knowing effort to reduce his customer's tax liability, resulting in improper and inflated refunds.

Additional Misconduct by Cabrera

40. In an apparent attempt to hide his improper and illegal tax return preparation – or at least to impede the efforts of the IRS to trace fraudulent tax returns to Cabrera – Cabrera continually and repeatedly fails to sign many of the returns he prepares for his customers. Cabrera's failures

in this regard are subject to penalty under I.R.C. § 6695(b), which penalizes a return preparer who fails to sign a return.

41. Likewise, Cabrera continually and repeatedly fails to accurately disclose his name and social security number or, alternatively, a unique preparer identification number, called a Preparer Tax Identification Number (“PTIN”), on many of the returns that he prepares. As an income tax return preparer, Cabrera is required to disclose his name and social security number or, alternatively, a PTIN, on each return he prepares to accurately identify himself as the preparer of the return.

42. Nevertheless, on many of the returns prepared by Cabrera, there is no information identifying Cabrera as the preparer.

43. According to client lists obtained via search warrant, Cabrera prepared over 17,000 tax returns for 2009 and 2010. According to internal records at the IRS, however, CFG identified itself as the paid return preparer on only 463 and 1,494 tax returns for 2009 and 2010, respectively.

44. Cabrera’s conduct in this regard is subject to penalty under I.R.C. § 6695(c), which penalizes a return preparer who fails to disclose his or her social security number or other identifying number on a return, as required by I.R.C. § 6109(a)(4).

Examples of False and Fraudulent Tax Returns Prepared By Cabrera

45. Cabrera prepared the 2008 federal income tax return for Emilio Carranza. To prepare his 2008 return, Carranza provided Cabrera with his Form W-2, his individual taxpayer identification number (“ITIN”), and the ITINs of his dependents. The 2008 tax return prepared by Cabrera reported on line 12 that Carranza had a business loss of \$10,225.

46. But Carranza did not have any income or loss from a business in 2008, did not tell Cabrera that he had any income or loss from a business in 2008, and did not provide Cabrera with any documentation or records that would indicate he had income or loss from a business in 2008. Indeed, neither Cabrera nor any of his employees at CFG asked Carranza if he was self-employed in 2008.

47. Upon completion of the return, Cabrera did not explain the entries on the Form 1040 to Carranza; he merely informed Carranza of the amount of his refund and indicated where Carranza was required to sign the form. Cabrera completely fabricated the Schedule C business – a construction business – and did so without the knowledge or consent of Carranza.

48. The IRS examined Carranza's 2008 return and determined that he was not due a refund; rather, he owed an additional \$993 in taxes for 2008.

49. Cabrera prepared the 2009 federal income tax return for Francisco Climaco. To prepare his 2009 return, Climaco provided Cabrera with his Form W-2, his social security card, his dependents' social security cards, and his dependents' birth certificates. The 2009 tax return prepared by Cabrera reported on line 12 that Climaco had a business loss of \$17,148. Once the return was prepared, no one at CFG reviewed the entries on the Form 1040 with Climaco.

50. When interviewed by the IRS, Climaco stated that he has never been self-employed, that he has worked for the same company for 10 years, and that Cabrera never asked Climaco if he had income or loss from a business he operates. Climaco stated that the business loss was false.

51. Cabrera completely fabricated the Schedule C business – and did so without the knowledge or consent of Climaco. Cabrera then reported the contrived loss on the Form 1040, in order to offset falsely Climaco's wage income.

52. According to the return prepared by Cabrera, Climaco was due a refund of \$9,028. After an examination by the IRS, Climaco was not due a refund; rather, he owed \$2,573 in taxes.

53. Cabrera prepared the 2008 and 2009 federal income tax returns for Paula Coble, who is employed as a dealer at a casino. Cabrera reported that Coble had a business loss of \$13,194 and \$8,478, from a "cards dealer" business, for the 2008 and 2009 tax years, respectively.

54. But Coble did not have any income or loss from a business in 2008 or 2009, did not tell Cabrera that she had any income or loss from a business in 2008 or 2009, and did not provide Cabrera with any documentation or records that would indicate she had income or loss from a business in 2008 or 2009. Indeed, neither Cabrera himself nor any of his employees asked Coble if she was self-employed in 2008 or 2009.

55. Upon completion of the return, Cabrera did not explain the entries on the Form 1040 to Coble; he merely informed Coble of the amount of her refund and indicated where Coble was required to sign the form.

56. In addition, on Coble's individual income tax return for 2009, Cabrera claimed two education credits of \$1,460 and \$973. Coble, however, did not attend college during 2009, did not pay tuition during 2009, and never told Cabrera or anyone else at CFG that she was entitled to education credits in 2009.

57. On the returns prepared for Coble, Cabrera claimed \$8,715 in refunds for tax years 2008 and 2009. After an examination of those returns by the IRS, however, it was determined that Coble actually owed \$7,858 in taxes.

58. Cabrera prepared the 2009 and 2010 federal income tax returns for Epifanio Colon and Nilda Questell Mercado. Colon is employed as a disk jockey at a radio station and his wife is a dental assistant. The returns prepared by Cabrera claimed that the couple had business losses of

\$44,363 and \$19,782, from a business described as “entertainer,” for the 2009 and 2010 tax years, respectively. Colon never provided Cabrera with a list of any business-related expenses, and Cabrera never asked about any such expenses. The business losses were false, fabricated by Cabrera.

59. Cabrera also claimed education credits on the returns he prepared for Colon and Questell Mercado for tax years 2009 and 2010. On both returns, Cabrera claimed over \$4,500 in education credits and indicated that the couple were students. Cabrera did not review the completed returns with the couple.

60. But Cabrera never asked the couple about continuing education expenses and the couple never indicated to Cabrera that they had incurred such expenses. The couple did not attend college in 2009 or 2010 and did not pay college tuition for themselves or their children in 2009 or 2010. Cabrera claimed losses and credits that were completely fabricated and were deliberately designed to produce fraudulent refunds for Cabrera’s customers.

61. On the returns prepared by Cabrera, he reported that the couple was due \$40,000 in refunds for tax years 2009 and 2010. After an examination of those returns by the IRS, however, the couple was found to owe over \$32,000 in taxes.

62. Cabrera prepared the 2007, 2008, and 2009 federal income tax returns for Judith Garcia. Garcia met with Cabrera to discuss the preparation of each tax return – but she was never asked if she was self-employed. She never indicated that she was self-employed. Garcia never attended college from 2007 to 2009. Garcia was never asked about continuing education expenses and never incurred any such expenses.

63. Nevertheless, Cabrera claimed false losses for a “drywall” business ranging from \$8,295 to \$12,359 on each of the returns he prepared for Garcia. In addition, on the 2009 tax return

Cabrera claimed over \$1,000 in education credits on Garcia's behalf. The business losses and credits were completely fabricated.

64. Upon completion of the return, Cabrera did not explain the entries on the Form 1040 to Garcia; he merely informed Garcia of the amount of her refund and indicated where Garcia was required to sign the form.

65. Cabrera prepared the 2008 federal income tax return for Ivan Gonzalez. On that return, Cabrera claimed on line 12 that Gonzalez had a \$15,816 loss from the operation of a "construction" business. But Gonzalez informed IRS investigators that he did not operate a business in 2008 and he never indicated to Cabrera that he operated a business in 2008. Again, Cabrera fabricated the business and the associated loss to offset Gonzalez' wage income and falsely generate a \$7,521 refund. After an audit, Gonzalez was found to owe the IRS over \$5,000.

66. Cabrera prepared the 2008 federal income tax return for Mbarek Salhi. Salhi is a nurse. On the 2008 return, Cabrera claimed on line 12 that Salhi had a \$25,807 loss from the operation of a business. Salhi, however, did not operate a business in 2008, he did not have any non-wage income in 2008, and he never told Cabrera that he operated a business in 2008. Cabrera fabricated the business and the associated loss to offset Salhi's wage income and falsely generate a refund. After an audit, Salhi was found to owe the IRS over \$3,800.

67. Upon completion of the return, Cabrera did not explain the entries on the Form 1040 to Salhi; he merely informed Salhi of the amount of his refund and indicated where Salhi was required to sign the form.

68. Cabrera prepared the 2009 and 2010 federal income tax returns for Luis Sandoval. When Sandoval met with Cabrera to prepare the 2009 return, he told Cabrera that he had a daughter in

college, and they discussed the expenses she incurred that were not covered by her scholarship such as rent, car insurance, and text books.

69. Cabrera never asked Sandoval for any details about his daughter's scholarship and did not ask about the amount of tuition that Sandoval paid. In fact, the scholarship covered the daughter's tuition in full. Sandoval never told Cabrera that he paid qualified tuition expenses for his daughter. Cabrera simply fabricated expenses and put them on the return.

70. Cabrera never asked if Sandoval paid qualified tuition expense for anyone else in his household, and Sandoval never indicated that he did. In fact, in 2009, Sandoval's other daughter was in high school and he and his wife did not attend college.

71. The next year, Sandoval again met with Cabrera to prepare his 2010 return. In 2010, Sandoval's older daughter was still on scholarship and his younger daughter was still in high school. Once again, Cabrera never asked if Sandoval paid tuition expenses in 2010 and Sandoval never indicated to Cabrera that he paid tuition expenses in 2010.

72. Nevertheless, on both the 2009 and 2010 returns, Cabrera claimed nearly \$4,000 in education credits on Sandoval's behalf. The credits were false. After an audit, it was determined that Sandoval owed the IRS nearly \$4,000.

73. Cabrera did not review the completed returns with Sandoval. Sandoval never noticed or questioned the false credits and expenses.

74. Cabrera prepared the 2009 and 2010 federal income tax returns for Karen Torrejon. Torrejon is employed as a nurse. Torrejon did not attend college in 2009 or 2010.

75. Cabrera reported on Torrejon's return that she had a business loss of \$13,347 and \$11,742, for the 2009 and 2010 tax years, respectively. Torrejon has never been self-employed

and never told Cabrera that she was self-employed. Cabrera simply fabricated the business losses.

76. Cabrera also claimed a total of over \$4,000 in education credits on the two returns he prepared for Torrejon. But Torrejon never incurred any qualified education expenses during either of these years, and she never told Cabrera that she incurred any such expenses. Cabrera simply fabricated the credits to generate false refunds for Torrejon.

77. Cabrera did not review the completed returns with Torrejon. Torrejon never noticed or questioned the false business losses and false education expenses.

78. Cabrera prepared the 2008 and 2009 federal income tax returns for Oscar and Rocio Viecco. Rocio Viecco has an associate's degree in child development and her husband, Oscar, is a banquet server. Neither of the Vieccos have ever been self-employed, and they provided no indication to Cabrera that they were ever self-employed.

79. Cabrera claimed on line 12 of both returns that the couple had over \$26,000 in losses from the operation of a business for tax years 2008 and 2009. Cabrera simply fabricated the business losses.

80. While meeting with Cabrera to prepare the 2009 return, Rocio Viecco told Cabrera that her daughter received a scholarship that covered tuition expenses. Viecco did not provide Cabrera with a Form 1098-T, which reflects tuition expenses paid by the taxpayer. Viecco did not tell Cabrera that anyone else in her household attended college or incurred college tuition expenses that year. But Cabrera falsely claimed a \$1,950 education credit on Viecco's 2009 return.

81. Cabrera prepared the 2008, 2009, and 2010 federal income tax returns for Valeriano Vazquez. During the three years for which Cabrera prepared Vazquez's tax returns, neither

Cabrera nor any of his employees ever asked Vazquez if he was self-employed or attended college, and Vazquez never told anyone at CFG that he was self-employed or a college student. Nevertheless, each of the three tax returns that Cabrera prepared for Vazquez falsely reported a Schedule C business loss and two of those tax returns contained claims for education credits.

82. In 2008, Cabrera reported that Vazquez had a \$16,883 loss from the operation of a business. In 2009, Cabrera reported that Vazquez had a \$10,411 loss from the operation of a business. In 2010, Cabrera reported that Vazquez had a \$10,455 loss from the operation of a business. Each of the reported business losses was false, fabricated by Cabrera.

83. On Vazquez's 2009 and 2010 tax returns, Cabrera also claimed education credits totaling \$4,799.

84. Cabrera simply fabricated the business losses and credits to generate false refunds for Vazquez.

85. Cabrera did not review the completed returns with Vazquez; he merely informed Vazquez of the amount of his refund and indicated where Vazquez was required to sign the form. Vazquez never noticed or questioned the false business losses and false credits.

86. Cabrera prepared the 2008 and 2009 federal income tax returns for Nancy and Francisco Villalta. Both of the Villaltas work at a local high school; Ms. Villalta as a guidance counselor and Mr. Villata as a groundskeeper.

87. The Villaltas have never been self-employed and they never indicated to Cabrera or any employee of CFG that they had income or loss from the operation of a business. Each of the tax returns prepared by Cabrera, however, falsely reported Schedule C business losses totaling more than \$25,000.

88. Cabrera did not review the completed returns with the Villaltas; he merely informed the Villaltas of the amount of their refund and indicated where the Villaltas were required to sign the form. The Villaltas never noticed or questioned the false business losses.

89. Cabrera prepared the 2008 federal income tax return for Juan Carlos Cisneros. When Cisneros met with Cabrera to prepare his tax return, he provided Cabrera with his Form W-2, a bank statement showing his annual interest income, and receipts for real estate taxes and insurance premiums.

90. Cabrera never asked Cisneros if he operated a business and Cisneros never made any such indication to Cabrera. Despite this, Cabrera falsely reported on the 2008 tax return that Cisneros had a loss of \$20,117 from the operation of a “construction” business. The false return prepared by Cabrera resulted in a tax refund of \$4,759 for Cisneros. After an audit, Cisneros owed over \$3,000 in taxes for tax year 2008.

91. Cabrera did not review the completed returns with Cisneros; he merely informed Cisneros of the amount of his refund and indicated where Cisneros was required to sign the form.

92. In sum, Cabrera has repeatedly and fraudulently reported bogus Schedule C businesses and bogus education credits and expenses – all in a deliberate effort to create contrived losses, understated tax liabilities, and improper and inflated refunds for his customers.

Harm to the Public Caused by Cabrera’s Misconduct

93. Cabrera’s continual, willful, and/or reckless understatement of his customers’ federal income tax liabilities has caused substantial revenue losses to the United States. The magnitude of lost tax revenue caused by Cabrera’s schemes is enormous.

94. Cabrera’s conduct harms the United States because his customers are under-reporting and under-paying their correct tax liabilities. On all of the returns prepared by Cabrera and examined

by the IRS, the IRS has identified numerous problems, including continual and repeated claims of false business losses and false education credits and expenses.

95. The extent of this loss can be estimated from returns Cabrera prepared as derived from three different data points: client lists obtained via search warrant from CFG's offices, internal IRS records of returns prepared by Cabrera, and interviews with 26 of Cabrera's customers.

96. Client lists obtained via search warrant indicate that Cabrera prepared 7,745 and 9,301 tax returns for the 2009 and 2010 tax years, respectively.

97. Analysis of those returns indicates that, for the 2009 tax year, Cabrera prepared returns containing a total of \$8,519,241 in claimed education credits.

98. Analysis of those returns also indicates that, for the 2010 tax year, Cabrera prepared returns containing a total of \$15,344,955 in claimed education credits.

99. According to internal IRS records, Cabrera prepared 3,023 tax returns that were processed by the IRS between 2008 and 2011. With respect to those 3,023 tax returns, Cabrera claimed refunds for his customers on 2,995 returns, or 99% of the returns he prepared.

100. In connection with its investigation of Cabrera's fraudulent return preparation practices, the IRS interviewed 26 of Cabrera's customers. These interviews resulted in adjustments to one or more of each of the customers' returns – encompassing a total of 66 different returns. The total tax due (before interest and penalties) resulting from the examination of these 66 returns – which represent a fraction of the total number of returns prepared by Cabrera – was \$278,653, for an average of \$4,222 per return. Considering that Cabrera's own records, as obtained via search warrant by the IRS, demonstrate that he prepared over 17,000 tax returns for the 2009 and 2010 tax years, the total harm to the government for these two years alone could be tens of millions of dollars.

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

102. Cabrera's conduct further harms the United States because the IRS must devote its limited resources to identifying his customers, ascertaining their correct tax liabilities, recovering any refunds erroneously issued, and collecting any additional taxes and penalties assessed.

Count I: Injunction Under § 7407

103. The United States incorporates by reference the allegations in paragraphs 1 through 102.

104. Pursuant to I.R.C. § 7407, the United States is authorized to seek an injunction against any tax return preparer who has engaged in any "fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws," or who has "engaged in any conduct subject to penalty under section 6694 or 6695."

105. Additionally, I.R.C. § 7407 authorizes a district court to enjoin a person from further acting as a return preparer if the preparer has continually or repeatedly engaged in such conduct and a narrower injunction (*i.e.*, an injunction prohibiting specific, enumerated conduct) would not be sufficient to prevent the preparer from further interfering with the proper administration of the internal revenue laws.

106. Pursuant to I.R.C. § 6694, a tax return preparer is subject to penalty if he or she prepares a return or claim for refund understating the taxpayer's liability due to an unreasonable position (one for which there is no substantial authority), and the preparer knew or should have known of the position. A return preparer is subject to a larger penalty if the understatement of liability is due to the preparer's willful attempt to understate the liability or the reckless or intentional disregard of rules or regulations.

107. Cabrera has continually and repeatedly prepared and submitted federal tax returns that falsely state losses from businesses, falsely claim education credits, and contain unrealistic, unreasonable, and frivolous positions with no basis in fact. Cabrera has continually and repeatedly prepared returns that include fraudulent refund claims. Cabrera has willfully understated his customers' correct tax liabilities and has thus engaged in conduct subject to penalty under I.R.C. § 6694.

108. Cabrera has continually and repeatedly violated I.R.C. § 6695(b) by failing to sign the tax returns he prepares.

109. Cabrera has continually and repeatedly violated I.R.C. § 6695(c) by failing to disclose a social security number or other legitimate identifying number on the tax returns he prepares.

110. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, Cabrera is likely to continue to prepare false federal income tax returns and engage in other misconduct of the type described in this complaint.

111. Cabrera should be permanently enjoined under I.R.C. § 7407 from acting as a tax return preparer because a more limited injunction would be insufficient to stop his interference with the proper administration of the tax laws.

Count II: Injunction Under I.R.C. § 7408

112. The United States incorporates by reference the allegations contained in paragraphs 1 through 111.

113. Pursuant to I.R.C. § 7408, a district court is authorized to enjoin any person from, among other things, engaging in conduct subject to penalty under I.R.C. § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

114. Pursuant to I.R.C. § 6701, a penalty is imposed on any person who aids or assists in, procures, or advises with respect to, the preparation of any portion of a return, affidavit, claim, or other document, who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and who knows that such portion (if so used) would result in an understatement of the liability for tax of another person.

115. Cabrera prepared tax returns containing fraudulent deductions and credits, for which he obviously lacked support or any other reasoned basis to include in the tax returns he prepared. Cabrera prepared tax returns containing gross understatements of his customers' taxable income. Cabrera prepared and filed thousands of false tax returns, costing the U.S. Treasury millions of dollars in taxes.

116. Cabrera engaged in the above-described conduct with awareness of the falsity of the tax returns, forms, and other documents he prepared.

117. Cabrera prepared tax returns, and/or assisted in the preparation of such returns, forms, and other documents, that were intended to be used, and were used, in connection with material matters arising under the federal tax laws.

118. As a result, Cabrera has engaged in conduct subject to penalty under I.R.C. § 6701.

119. Unless enjoined by this Court, Cabrera is likely to continue to prepare tax returns containing false and fraudulent information and deductions, resulting in further understatements of his customers' tax liability.

120. Injunctive relief is thus appropriate to prevent recurrence of this misconduct.

Count III: Injunction Under I.R.C. § 7402

121. The United States incorporates by reference paragraphs 1 through 120.

122. Pursuant to I.R.C. § 7402(a), a district court is authorized to issue an injunction “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” I.R.C. § 7402(a).

123. Through the actions described above, Cabrera has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and he is likely to continue to engage in such conduct unless enjoined.

124. Cabrera’s conduct causes irreparable injury to the United States and an injunction under I.R.C. § 7402(a) is necessary and appropriate.

125. Unless Cabrera is enjoined, the IRS will have to devote substantial time and resources to examining his customers’ tax returns and liabilities.

126. Unless Cabrera is enjoined, the customers relying on Cabrera’s federal tax return preparation services may be subject to additional tax liabilities along with interest and penalties as a result of Cabrera’s fraudulent tax return preparation.

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

- A) That the Court find that Cabrera has repeatedly and continually engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695, and that injunctive relief is appropriate under I.R.C. § 7407 to bar Cabrera from acting as a tax return preparer;
- B) That the Court find that Cabrera has repeatedly and continually engaged in conduct subject to penalty under I.R.C. § 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent recurrence of that conduct;
- C) That the Court find that Cabrera has engaged in conduct that interferes with the enforcement and proper administration of the internal revenue laws, and that injunctive

relief is appropriate to prevent recurrence of that conduct pursuant to I.R.C. §§ 7407 and 7402(a);

D) That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction forever barring Cabrera from acting as federal tax return preparer and from preparing or filing federal tax returns or forms for others, from representing others before the IRS, and from advising anyone concerning federal tax matters;

E) That the Court, under I.R.C. §§ 7402 and 7407, enter a permanent injunction prohibiting Cabrera from directly or indirectly:

- i. acting as a tax return preparer or otherwise preparing or filing, or assisting in the preparation or filing of any federal tax return(s) or other related documents and forms for any other person or entity;
- ii. engaging in any conduct subject to penalty under I.R.C. §§ 6694, 6695, including preparing any part of a return or claim for refund that includes an understatement due to an unreasonable position or a willful understatement of tax;
- iii. engaging in any other activity subject to penalty under the Internal Revenue Code; and
- iv. engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws;

F) That the Court, under I.R.C. § 7402, enter an injunction requiring Cabrera to contact by mail (and also by e-mail, if an e-mail address is known) all persons and entities for whom he prepared any federal tax return or other tax-related document after January 1, 2008 and inform those persons of the entry of the Court's findings concerning

the falsity of representations Cabrera made on his customers' tax returns, and that a permanent injunction has been entered against him. Cabrera must mail the copies within 30 days of the date the permanent injunction is entered and must file with the Court a sworn certificate stating that he has complied with this requirement, along with a list of the persons to whom he has provided such a copy. The mailings shall include a cover letter in a form either agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures;

G) That the Court, under I.R.C. § 7402, enter an injunction requiring Cabrera to contact by mail (and also by e-mail, if an e-mail address is known) any and all persons, including employees, independent contractors, or any other worker, who provided services to Cabrera in connection with his preparation of tax returns, whether for payment or otherwise, and inform those persons of the entry of the Court's findings concerning the falsity of representations Cabrera made on his customers' tax returns, and that a permanent injunction has been entered against him. Cabrera must mail the copies within 30 days of the date the permanent injunction is entered and must file with the Court a sworn certificate stating that he has complied with this requirement. The mailings shall include a cover letter in a form either agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures. Cabrera is further ordered to provide to counsel for the United States, within 45 days of the date the permanent injunction is entered, a signed and dated acknowledgment of receipt from each person to whom he has provided such a copy;

H) That the Court, under I.R.C. § 7402, further order that Cabrera is solely responsible for notifying all persons identified in paragraphs (F) and (G) above and, as such, Cabrera will be required to bear all costs associated with notifying such persons;

I) That the Court, under I.R.C. § 7402, enter an injunction prohibiting Cabrera from owning, controlling, or managing any business involved in the preparation of tax returns and/or the provision of tax advice, or maintaining a presence in any premises, whether a place of business or a residence, where tax returns are being prepared for a fee or professional tax services are being provided;

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

K) That the Court grant the United States such other relief, including costs, as is just and equitable; and

L) That the Court, pursuant to Fed. R. Civ. P. 65(d)(2), order that the injunction in this case binds the following who receive actual notice of it by personal service or otherwise:

- i. The defendant, Carlos A. Cabrera;
- ii. Carlos A. Cabrera's officers, agents, servants, employees, and attorneys;
and
- iii. other persons who are in active concert or participation with anyone described in (i) or (ii), above.

Dated: January 10, 2013

Respectfully submitted,



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