IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAVID RAY FRANKLIN, RACHEL WIGGINS, WILLIAM BROWN, AND INSTANT REFUND TAX SERVICE INC., (d/b/a Instant Tax Service), Defendants.	)	Civil No. 1:12-cv-394-SEB-DKL

STIPULATED ORDER FOR PERMANENT INJUNCTION AGAINST RACHEL WIGGINS

Plaintiff, the United States of America, and defendant, Rachel Wiggins, stipulate and agree as follows:

1. The United States of America filed a complaint ("Complaint") under 26 U.S.C. §§ 7402, 7407 and 7408 of the Internal Revenue Code ("I.R.C.") against Wiggins. Wiggins, without admitting any of the allegations in the complaint, waives the entry of findings of fact and conclusions of law and voluntarily consents to the entry of this permanent injunction without further notice and agrees to be bound by its terms.
2. Wiggins admits that the Court has personal jurisdiction over her pursuant to 28 U.S.C. §§ 1340 and 1345, and subject matter jurisdiction pursuant to 26 U.S.C. §§ 7402(a), 7407(a) and 7408(a).
3. The parties further understand and agree that:

9497620.1

a. The Stipulated Order For Permanent Injunction will be entered under Fed. R. Civ. P. 65 and will result in the entry, without further notice, of a Final Judgment in this matter against Wiggins;

b. The parties waive the right to appeal from the Stipulated Order For Permanent Injunction;

c. The Parties will bear their own costs, including any attorneys' fees or other expenses of this litigation;

d. The Court will retain jurisdiction over this matter for the purpose of implementing and enforcing the Stipulated Order For Permanent Injunction;

e. If Wiggins violates the Injunction, she may be subject to civil and criminal sanctions for contempt of court as may be available by law;

f. The United States may conduct full post judgment discovery to monitor compliance with the Injunction;

g. Entry of this Stipulated Order for Permanent Injunction does not resolve nor preclude the government from pursuing any other civil matters or proceedings, including penalties, or any current or future criminal matters or proceedings, nor preclude Wiggins from contesting liability or asserting any defenses or claims that may be available to her in any other matter or proceeding;

h. The parties agree and stipulate that Wiggins' consent to entry of this Injunction, and consent to the specific terms and provisions hereof, shall not in any way be deemed, construed, or argued to constitute a waiver of her rights under the Fifth Amendment or any other rights in this or any other matter or proceeding.

I. **IT IS HEREBY STIPULATED, AGREED AND ORDERED**, pursuant to I.R.C. §§ 7402, 7407 and 7408, Wiggins, and any individual or entity acting in active concert or participation with her, including representatives, agents, servants, employees, are **PERMANENTLY ENJOINED** from directly or indirectly, by use of any means or instrumentalities from:

i. Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) with respect to the preparation or presentation of any portion of a tax return, claim, or other document, that Wiggins knows or has reason to know will be used as to a material matter arising under federal tax law, and will result in the understatement of the liability for tax of another person;

ii. Aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who aid, instruct, assist, encourage, enable, incite, or advise) customers to understate their federal tax liabilities or assert unreasonable, frivolous, or reckless positions, or preparing or assisting in the preparation or filing of tax returns for others that Wiggins knows (or has reason to know) will result in the understatement of any tax liability as subject to penalty under 26 U.S.C. § 6694;

iii. Knowingly and improperly aiding, instructing, assisting, encouraging, enabling, inciting, or advising (or supervising or managing others who improperly aid, instruct, assist, encourage, enable, incite, or advise) customers to avoid the assessment or collection of their federal tax liabilities or to claim improper tax refunds;

iv. Engaging in any activity subject to penalty under 26 U.S.C. § 6695, including failing to (or supervising or managing others who fail to) exercise due diligence in determining customers' eligibility for the Earned Income Tax Credit;

v. Knowingly organizing, promoting, providing, advising, or selling (or supervising or managing others who organize, promote, provide, advise or sell) business or tax services that facilitate or promote noncompliance with federal tax laws;

vi. Knowingly, directly or indirectly, accepting assistance from, or assisting any person who is enjoined from preparing tax returns or providing tax advice, or who is under disbarment of suspension from practice before the Internal

Revenue Service, if the assistance relates to a matter constituting practice before the Internal Revenue Service;

vii. Knowingly, directly or indirectly, electronically filing any tax return on behalf of any person or entity that does not have a valid, active Electronic Filing Identification Number ("EFIN"), or providing or loaning an EFIN to another person or entity; and

viii. Knowingly engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

II. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Wiggins shall, in her preparation of tax returns, in accordance with applicable IRS rules and regulations:

i. Prepare and file tax returns reporting Schedule C income and expenses only in instances when the customer substantiates with proper documentation, the reported income and expenses prior to the filing of the tax return;

ii. Retain in customer files a copy of all customer records and documentation for at least five years that substantiate reported Schedule C income and expenses in tax returns she prepares for her customers;

iii. Retain in customer files all records and documentation for at least five years that substantiate deductions claimed in tax returns she prepares.

iv. Retain in customer files all records and documentation for at least five years that verify that claimed dependents and child care credits on tax returns prepared for her customers meet all qualifications for dependent status;

v. Verify and document the marital status of all customers for whom she prepares a tax return that claims head-of-household status, as well as retain in customer files all records for at least five years showing that these customers meet all requirements for claiming head-of-household status;

vi. Retain in customer files all records and documentation for at least five years that both substantiate all incurred education expenses reported on customer tax returns in connection with any claim for education tax credits and confirm that the customer qualifies for the education tax credit;

vii. The terms "preparation" or "prepare" in this Order do not include preparing a draft tax return for training purposes or marketing purposes, such as giving a potential customer a general idea as to the amount of his or her federal tax refund, or to estimate the cost of preparing a tax return. If a draft tax return is signed by a taxpayer, it shall be deemed to not be for training or marketing purposes.

III. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins or any entity she owns or operates shall, among the procedures for hiring tax preparers who work for her or any entity she owns or operates, conduct background checks of all such individuals, including for criminal convictions, and refrain from hiring anyone convicted of a felony relating to fraud, theft or similar conduct, to act as a tax return preparer. In addition, Wiggins shall verify that all tax preparers hired by her shall, pursuant to I.R.S. Circular 230 § 10.3 and § 10.4, meet the requisite standards prescribed by the I.R.S. to be designated a registered tax return preparer and possess a current and valid preparer tax identification number.

IV. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that if Wiggins owns or operates a tax preparation business or prepares more than one-hundred (100) tax returns during a calendar year, she and any entity she owns or operates, as well as their employees, are permanently enjoined from offering any loan or refund advance product that is not a RAL product as defined herein. Non-RAL products include paystub, holiday, or Instant Cash loans or advance products, which are offered to customers in connection with or using information obtained from the customer's paystub and not a genuine W-2 issued by the customer's employer. They also are enjoined from misleading customers into thinking they offer a loan or refund advance product, if in fact they do not.

A. In the event that a third-party lender provides a refund loan product ("RAL product") and that RAL product otherwise fully complies with **all federal laws**, including but not limited to the Equal Credit Opportunity Act and Truth in Lending Act, and fully complies with **all state laws**, including but not limited to all consumer protection, disclosure, finance, lending and usury laws, and that RAL product is offered using information from genuine W-2s and not paystubs, then Wiggins also may offer that RAL product if the lender providing the product is not undercapitalized, is a genuine third-party lender, and is not affiliated with or owned, controlled, or operated by Defendants, ITS Financial LLC, TCA Financial LLC, Tax Tree LLC, or any individual who is an owner, an executive, officer, or employee of ITS Financial LLC, TCA Financial LLC, or Tax Tree LLC.

B. Moreover, Wiggins may offer a RAL product only if they provide accurate TILA disclosures to all program applicants and written Notification of Adverse Action to all applicants who are denied a RAL, whether or not TILA or ECOA is applicable to the program.

C. Wiggins, however, must disclose all costs associated with such products, must provide a comparison of the time in which a refund related to such a product will be received versus when a refund will be received directly from the US Treasury and, are enjoined from misrepresenting the terms, loan amounts, eligibility, and fees or costs associated with such RAL product to any customer, and from charging unconscionable fees as described in I.R.S. Circular 230 § 10.27, in connection with either the RAL product or Defendants' tax preparation services.

V. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins is enjoined from misleading customers into thinking she, or any business that she works for, offers a loan or refund advance product, if in fact she, or any business she works for, does not. Wiggins is also enjoined from misrepresenting the terms, loan amounts, eligibility, and fees or costs associated with any refund loan product to any customer, and from charging unconscionable fees as indicated in I.R.S. Circular 230 § 10.27, in connection with either a refund loan product or tax preparation services.

VI. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins is permanently enjoined from filing a tax return using a customer paystub in lieu of a genuine Form W-2 issued by the customer's employer. Wiggins is authorized and required to retain a copy of all Forms W-2 used to prepare or file a tax return in each applicable customer's file. Wiggins is enjoined from: (1) obtaining executed forms from her customers authorizing the electronic filing of a customer's tax return until Wiggins has first obtained all documentation legally required for preparation of the tax return, including all Forms W-2, and has prepared the return and had the customer review the return; (2) causing or permitting any document, including tax forms, to bear a signature date other than the date that the signatory actually signed the document; or (3) creating false or purported Forms W-2 using customer paystubs or other information.

VII. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that if either: (1) Wiggins knowingly files or knowingly causes any other person to file tax returns during any tax year based upon information obtained solely from customer paystubs and not from a Form W-2 obtained from the taxpayer's employer; or (2) if any employees or agents of Wiggins or any tax preparation business she owns or operates files more than a de minimus number of tax returns during any tax year based upon information obtained solely from customer paystubs and not from a Form W-2 obtained from the taxpayer's employer, then Wiggins shall be permanently enjoined from acting as federal tax return preparer, supervising or managing federal tax return preparers, or assisting with, or directing the preparation or filing of federal tax returns, amended returns, claims for refund, or other related documents, for any person or entity other than herself, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service.

VIII. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins shall disclose to each of her customers, both in writing and orally, the total amount of fees to be charged *prior* to filing the customer's tax return. Wiggins is also permanently barred from charging fees:

i. That are not disclosed to and agreed to by the client;

ii. For services that are not performed or for items that do not exist, including, for example, fees described as or substantially similar to non-existent Service Bureau fees;

iii. That, in total, exceed the sum disclosed to the customer and agreed to by the customer prior to the filing of each tax return; or

iv. That are unconscionable, as indicated in I.R.S. Circular 230 § 10.27.

IX. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that for the purpose of determining or securing compliance with this Order, if Wiggins owns or operates a tax preparation business, or prepares more than two-hundred-fifty (250) tax returns during a calendar year, for four years from the date of this order a neutral monitor shall be selected by Wiggins and shall be approved by a representative designated by the United States Department of Justice, to monitor Wiggins' and/or her company's tax preparation activities. Wiggins shall execute all necessary consent forms required under 26 U.S.C. § 6103 for the I.R.S. to communicate directly with the neutral monitor. The neutral monitor shall be an outside entity or person and shall:

i. Be an enrolled agent or certified public accountant who is compensated by Wiggins;

ii. Commence monitoring activities on the day Wiggins begins filing federal tax returns for others during each tax season and cease monitoring activities no earlier than April 15 of each year (the "Annual Monitoring Period"). Wiggins is enjoined from operating a tax return preparation business or preparing more than 250 tax returns each calendar year without a neutral monitor in place during the Annual Monitoring Period;

iii. Have access to all records, employees, and customers of Wiggins, including permission to observe customer interviews conducted by Wiggins or other individuals she employs as tax return preparers;

iv. Randomly select, inspect and review a minimum sample of five-percent of federal tax returns prepared by Wiggins or her employees during the first 14 days days of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of information reported on each tax return (including Schedule C substantiation, where applicable), in order to monitor compliance with this Order. At least twenty-five percent of the tax returns reviewed shall be schedule C returns or, if fewer than twenty-five percent of the tax returns are schedule C returns, the monitor shall inspect and review all schedule C returns;

v. Randomly select, inspect and review a minimum sample of five-percent of federal tax returns prepared by Wiggins or her employees for the remainder of each Annual Monitoring Period, along with the corresponding customer files to ensure substantiation of information reported on each tax return, in order to monitor compliance with this Order;

vi. Collectively, during the Annual Monitoring Period, include in the total sample of tax returns selected for review, tax returns prepared at each of Wiggins' different business locations, if applicable; and

vii. Provide a written report to the designated representative of the United States, within thirty days of completion of the Annual Monitoring Period, setting forth in detail the manner and form in which Wiggins has or has not complied with the terms of this Order, including the results of the review of tax returns, the identity of any customers whose tax returns fail to comply with the terms of this Order and the identity of those tax return preparers who prepared those non-compliant returns, as well as the amount of fees or other amounts charged to each customer, and any other findings.

X. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins mail or hand deliver an executed copy of this Stipulated Order of Permanent Injunction to all current employees and all employees hired by her to work in any tax preparation business she owns or operates for the next three years beginning on December 31, 2012. Wiggins must mail the copies or hand deliver the copies to all current employees, if any, within 45 days of the date of this Order. The mailings shall include a cover letter in a form agreed to by counsel for the United States or approved by the Court, and shall not include any other documents or enclosures except those specifically mentioned herein.

XI. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that Wiggins must, within 60 days of the date of this order, file with the Court a sworn certificate stating that she has complied with the requirements set forth in Paragraph XI of this Order, and provide to government counsel a list of the names and addresses of all persons who have been notified.

XII. **IT IS FURTHER STIPULATED, AGREED AND ORDERED** that the Court shall retain jurisdiction to enforce this injunction.

Consented to and submitted by,

KATHRYN KENEALLY
Assistant Attorney General
Tax Division, U.S. Department of Justice

NATHAN E. CLUKEY
(D.C. Bar No. 461535)
SEAN M. GREEN
(D.C. Bar. No. 978858)
RUSSELL J. EDELSTEIN
(MA Bar No. 663227)
JOSE A. OLIVERA
(CA Bar. No. 279741)
Trial Attorneys, Tax Division
U.S. Department of Justice
Post Office Box 7238
Washington, D.C. 20044
Telephone: (202) 616-9067
Facsimile: (202) 514-6770
nathan.e.clukey@usdoj.gov

Dated: 1-28-13

COUNSEL FOR PLAINTIFF

RACHEL WIGGINS
Defendant

Dated: 1/25/2013

JOSHUA T. ROBERTSON, #22859-49
COHEN GARELICK & GLAZIER
8888 Keystone Crossing, Suite 800
Indianapolis, Indiana 46240
Telephone: (317) 573-8888
Facsmile: (317) 574-3855
jrobertson@cgglawfirm.com

Dated: 1/25/2013

COUNSEL FOR DEFENDANT,
RACHEL WIGGINS

IT IS SO ORDERED

Date: 2/4/2013

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Copies to:

Electronically registered counsel of record

9497620.1