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

UNITED STATES OF AMERICA, Plaintiff, v. ABDOU NDIAYE and NDIAYE'S LLC, DBA PRO TAX SERVICES, Defendants.	Case No. 21-102214

COMPLAINT

Plaintiff, United States of America, at the request of a delegate of the Secretary of the Treasury and at the direction of a delegate of the Attorney General, brings this action seeking an injunction barring Abdou Ndiaye ("Ndiaye") and Ndiaye's LLC, dba Pro Tax Services (the "Company"), (collectively, "Defendants"), from engaging in the business of preparing federal tax returns and employing any person acting as a federal tax return preparer. In support of this action, the United States alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction exists under 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. ("Internal Revenue Code" or "I.R.C.") §§ 7402 and 7407.

2. Venue lies in this district pursuant to 28 U.S.C. § 1391(b), as Ndiaye resides in Warren, Michigan, which is within this judicial district, and the Company conducts business in Oak Park, Michigan, which is within this judicial district.

THE DEFENDANTS

1. The Company is incorporated under Michigan law as Ndiaye's LLC.

2. The Company primarily operates from 21700 Greenfield Road, Oak Park, Michigan.

3. Ndiaye is the sole owner of the Company.

4. Ndiaye is a high school graduate.

5. In addition to other jobs, Ndiaye has worked as a taxi and limousine driver from 2000 to the present.

6. Ndiaye completed an H&R Block tax preparation course in 2003. He has been the owner operator of a tax preparation business from 2005 until the present.

7. Through the Company, Ndiaye prepares federal income tax returns for others.

8. Ndiaye usually charges tax preparation customers a fee between $200 and $300.

9. Since the 2016 tax year, Ndiaye has prepared over 900 federal income

tax returns for individuals and businesses.

10. For the 2016 tax year, Ndiaye prepared over 350 federal tax returns.

11. For the 2017 tax year, Ndiaye prepared over 300 federal tax returns.

12. For the 2018 tax year, Ndiaye prepared over 250 federal tax returns.

NDIAYE'S SCHEMES

13. Employers are required to complete and send to the IRS and to their employees a Form W-2 for each employee to whom they pay compensation. The Form W-2 reports wages paid and taxes withheld.

14. Businesses that pay a person $600 or more in a year for performing services are required to complete and send to the IRS and to the person a Form 1099 that reports the amount paid.

15. The Form Schedule C is a form used to report an individual taxpayer's sole proprietorship income (or loss) and is attached to the taxpayer's income tax return (Form 1040). The net income (or loss) reported on the Schedule C is reported as a line item on the Form 1040.

16. The sole proprietorship income that a taxpayer reports on the Schedule C may have been independently reported to the IRS by a third-party business using the Form 1099, or it may have been cash income, which would not have been independently reported to the IRS.

17. The Earned Income Tax Credit ("EITC") is a refundable tax credit

available to certain low-income workers. The amount of the credit is based on the taxpayer's earned income, filing status, and claimed number of dependents. The requirements for claiming the EITC are set forth in 26 U.S.C. § 32 and the accompanying Treasury Regulations. Because the EITC is a refundable credit, claiming an EITC can reduce a taxpayer's federal tax liability below zero, entitling the taxpayer to a refund from the U.S. Treasury.

18. Due to the method used to calculate the EITC, an individual can claim a larger EITC by claiming multiple dependents and, for certain income ranges, individuals with higher annual incomes are entitled to a larger credit than those with lower annual incomes. For eligible individuals with three children, for example, the amount of the credit increases as income increases between $1 and $14,300, and decreases as income increases beyond $18,700. Some tax return preparers refer to this range of earned income corresponding to a maximum EITC as the "sweet spot." For tax year 2018, the maximum EITC was $6,431 and was available to eligible individuals who earned income between $14,250 and $18,700 and who had three dependent children.

19. The earned income that is used to calculate the EITC may be either W-2 wage income or sole proprietorship income reported on the Schedule C, or some combination of both.

20. Ndiaye properly reports his customers' income that is independently

reported to the IRS on Forms W-2 or 1099.

21. Ndiaye fraudulently manipulates his customers' taxable income by reporting false income or expense figures on the Form Schedule C, in order to generate a larger earned income credit ("Schedule C scheme").

22. To bring a customer's reported earned income within the "sweet spot" for the EITC, and depending on a customer's actual earned income (as reported on a Form W-2), Ndiaye either inflates or fabricates self-employment (Schedule C) income, resulting in either fraudulently increasing a customer's reported earned income or understating self-employment income to fraudulently reduce a customer's earned income.

23. The Internal Revenue Code provides certain advantages for taxpayers deemed to be the head of a household. A taxpayer who is classified as head of a household benefits from a larger standard deduction and a lower tax rate than a taxpayer who is classified as single or married filing separately. Generally, a taxpayer is entitled to a filing status as head of a household if the taxpayer is unmarried, pays the majority of the cost of the household, and lives with one or more qualifying persons. Because a person must pay the majority of household expenses to qualify as head of a household, there can be only one head of a given household in any single tax period.

24. Ndiaye falsifies Head of Household filing status for customers who

should file under other filing statuses (such as married filing jointly, married filing separately, or single) ("Head of Household" scheme).

EXAMPLES OF FALSE OR FRAUDULENT RETURN PREPARATION

25. The IRS assigned a Revenue Agent to investigate Ndiaye's return preparation practices.

26. Of the approximately 250 returns Ndiaye prepared and filed in 2018, 98 contained Schedule Cs that reported losses. Of those returns, Ndiaye claimed an earned income tax credit on 60. The average wage income of Ndiaye's customers for whom he filed Schedule Cs reporting losses was $40,930.

27. Of the approximately 250 returns Ndiaye prepared and filed in 2018, 103 contained Schedule Cs that reported profits. Of those returns, Ndiaye claimed an earned income tax credit on 100. The average wage income of Ndiaye's customers for whom he filed Schedule Cs reported profit was $1,912.

28. Ndiaye uses the Schedule C scheme to reduce the taxable income of high wage earners by reporting a false or fraudulent loss on the Schedule C in order to hit the "sweet spot" to maximize the earned income tax credit.

29. The Revenue Agent interviewed 23 of Ndiaye's customers with respect to returns Ndiaye prepared for them for tax year 2018.

30. Of the 23 interviewed customers, all stated that Ndiaye had reported incorrect and false information on their returns.

31. The federal income tax returns of each interviewed customer underreported the customer's correct tax liability, due to Ndiaye's use of one or more of the schemes described in paragraphs 13 through 24, above, as follows:

Scheme	**Number of False or Fraudulent Statements on the 23 Interviewed Customers' Tax Returns**
Schedule C Scheme	82
Filing Status	6
Total False or Fraudulent Statements:	88

32. The IRS contacted Ndiaye as early as 2014, warning him that he had failed to comply with the rules and regulations governing federal income tax return preparers.

33. On August 18, 2014, the IRS assessed a $20,500 fine against Ndiaye because he failed to comply with I.R.C. § 6695(g), which requires a return preparer to exercise due diligence in determining a taxpayer's eligibility for certain credits, for returns he prepared in 2012.

34. On June 12, 2016, the IRS assessed a $14,140 fine against Ndiaye because he failed to comply with I.R.C. § 6695(g) for returns he prepared in 2015.

35. On April 9, 2018, the IRS assessed a $55,080 fine against Ndiaye because he failed to comply with I.R.C. § 6695(g) for returns he prepared in 2016.

36. Despite these warnings and fines, Ndiaye continued his pattern of

preparing returns using the schemes described in paragraphs 13 through 24, above.

37. The fraudulent returns that Ndiaye has prepared and filed have caused—and continue to cause—substantial harm to the Government by falsely reducing his customers' reported tax liabilities, assisting taxpayers in avoiding paying their fair share of tax or obtaining refunds to which they were not entitled.

38. Some specific examples of Ndiaye's fraudulent tax preparation activities are as follows:

Customer 1

39. Customer 1, of Detroit, Michigan, was employed in 2018 and earned wages of just over $5,000. She made additional income by providing childcare in her home. Customer 1 was married during 2018 and lived with her spouse and three children. Customer 1 paid Ndiaye $350 to prepare her 2018 tax return.

40. Ndiaye fraudulently increased Customer 1's tax refund by employing the Head of Household scheme and the Schedule C scheme.

41. Customer 1 told Ndiaye that she was married and lived with her spouse in 2018 and that she wanted to file separately from her spouse.

42. Ndiaye classified Customer 1 as Head of Household, which falsely increased Customer 1's tax refund for 2018.

43. The Internal Revenue Code specifies that an individual may use the head of household filing status only if, among other things, the individual is not

married at the close of the tax year.

44. The Internal Revenue Code specifies that an individual who files a return using the married filing separately status cannot claim the earned income tax credit.

45. Ndiaye prepared a false Schedule C, which overstated Customer 1's income from childcare services. Customer 1 told Ndiaye that she watched four children per week and that she received $25 per week per child (or an annual total of $5,200). Customer 1 did not provide the preparer with any expenses related to childcare services she provided. Ndiaye falsely reported gross receipts in the amount of $13,150 from childcare services on Customer 1's Schedule C. Ndiaye falsely deducted $255 for taxes. By overstating Customer 1's Schedule C income, Ndiaye fraudulently increased Customer 1's earned income tax credit (and thus, her refund).

46. Ndiaye incorrectly classified Customer 1 as Head of Household and reported false amounts of income and expenses on Schedule C to fraudulently increase Customer 1's tax refund for tax year 2018

47. Customer 1's 2018 return claimed an earned income tax credit of $6,431 and a refund of $6,794, which was largely based on the fraudulent Head of Household and Schedule C schemes.

48. The tax loss to the United States with respect to Customer 1's 2018

tax return was $6,417.

Customer 2

49. Customer 2, of Oak Park, Michigan, lived with her spouse and two children in 2018. Customer 2 had a hair-braiding business that she conducted in her home, which was her sole reported source of income. Customer 2 paid Ndiaye $200 cash to prepare her 2018 tax return.

50. Ndiaye fraudulently increased Customer 2's tax refund by employing the Head of Household scheme and the Schedule C scheme.

51. Customer 2 told Ndiaye that she made $200 to $250 per week from hair braiding and that her expenses were $30-40 every two months. Ndiaye prepared a false Schedule C that overstated Customer 2's income from her hair-braiding business by approximately $3,000 in order to fraudulently increase the earned income tax credit. Customer 2 never provided Ndiaye records to support the income or expenses that Ndiaye reported on her Schedule C.

52. Ndiaye incorrectly classified Customer 2 as Head of Household and reported false amounts of income and expenses on Schedule C so that Customer 2 would receive the earned income tax credit, which fraudulently increased Customer 2's tax refund for tax year 2018.

53. Customer 2's 2018 tax return requested an earned income tax credit of $5,716 and a refund of $5,311, which was largely based on the Head of Household

and Schedule C schemes.

54. The tax loss to the United States with respect to Customer 2's 2018 tax return was $5,710.

Customer 3

55. Customer 3, of Taylor, Michigan, was employed as a cook at two restaurants and provided in-home care to a family member in 2018. Customer 3 received two W-2s, one from each of her employers, which together reflected that Customer 3 received $48,781 in wages in 2018. Customer 3 was unmarried and had dependents who lived with her in 2018.

56. Ndiaye correctly reported that Customer 3 received $48,781 in wages in 2018; however, Ndiaye falsely reported a loss on Schedule C in the amount of $19,830.

57. Customer 3 told Ndiaye that she received $250 to $300 per month ($3,600 maximum, annually) to provide in-home care to a family member and that she spent $1,500 to $2,000 annually on food and household expenses related to care of her family member.

58. On the Schedule C that Ndiaye created and filed with Customer 3's 2018 tax return, Ndiaye reported gross receipts of $7,520, advertising expenses of $75, insurance of $1,605, repairs and maintenance of $2,745, supplies of $2,738, taxes and licenses of $253, gas expenses of $4,206, and MISC expenses of $4,377

for a net loss of $19,830. Customer 3 did not discuss with Ndiaye any expenses other than the food and household items totaling $1,500 to $2,000.

59. Ndiaye reported false amounts of income and expenses on Customer 3's federal income tax return in order to fraudulently increase Customer 3's earned income tax credit and thereby falsely increase Customer 3's tax refund for tax year 2018.

60. Customer 3's 2018 income tax return claimed an earned income tax credit of $3,544 and a refund of $6,879, based in large part on Ndiaye's use of the Schedule C scheme.

61. The tax loss to the United States with respect to Customer 3's 2018 income tax return was $5,795.

Customer 4 and Customer 5

62. Customer 4 and Customer 5, of Wixom, Michigan, were married in 2018 and had four children.

63. Customer 4 worked in a factory and as a driver in 2018. Customer 5 was employed as a cleaner in 2018. Additionally, customer 5 performed cleaning services as a contractor in 2018.

64. Customer 4 and Customer 5 went together to Ndiaye and asked him to file separate returns for each of them.

65. Ndiaye prepared returns for both Customer 4 and Customer 5 and

classified both of them as head of household, with two dependents each.

66. A married person may file a return jointly with her spouse, or may elect to file as married filing separately. A married person is not eligible to file using head of household status. A person filing a tax return using head of household status is taxed at a lower rate than a person filing a return using married filing separately status.

67. Ndiaye falsely classified both Customer 4 and Customer 5 as Head of Household on each of their returns in order to fraudulently reduce Customer 4 and Customer 5's tax liabilities and to falsely increase their tax refund for tax year 2018.

68. Customer 4 provided Ndiaye a Form 1099 that showed his income from driving, and Customer 4 provided Ndiaye the amount he paid for gas. Customer 4 did not tell Ndiaye about any other expenses. Ndiaye created and filed with Customer 4's tax return a false Schedule C claiming car and truck expenses of $12,290, insurance expenses of $1,520, repairs and maintenance expenses of $1,742, utilities expenses of $1,035, and Uber fees expenses of $11,200. Customer 4 did not tell Ndiaye that he had incurred any of these expenses and he did not provide any documentation of any of these expenses.

69. Ndiaye reported false and inflated Schedule C expenses on Customer 4's federal income tax return in order to fraudulently reduce Customer 4's federal

income tax liabilities and to falsely increase Customer 4’s tax refund for the 2018 year.

70. Customer 5 performed cleaning services for a school and received a Form 1099 reporting the amount she was paid. The school provided everything that Customer 5 needed to perform the cleaning services. Ndiaye created and filed with Customer 5’s tax return a false Schedule C claiming expenses related to Customer 5’s cleaning services for advertising in the amount of $35, supplies in the amount of $1,024, and utilities in the amount of $865. Customer 5 did not tell Ndiaye that she had incurred any of these expenses and she did not provide any documentation of any of these expenses.

71. Ndiaye reported false and inflated Schedule C expenses on Customer 5’s federal income tax return in order to fraudulently reduce Customer 5’s federal income tax liabilities and to falsely increase Customer 5’s tax refund for the 2018 year.

72. Customer 4’s tax return claimed an earned income tax credit of $5,490 and a refund of $5,323 based in large part on the Head of Household and Schedule C schemes.

73. The tax loss to the United States with respect to Customer 4’s 2018 tax return was $7,779.

74. Customer 5’s tax return claimed an earned income tax credit of $5,716

and a refund of $6,434 based in large part on the Head of Household and Schedule C schemes.

75. The tax loss to the United States with respect to Customer 5's 2018 tax return was $5,720.

Customer 6

76. Customer 6, of Harper Woods, Michigan, received income in 2018 from working as a driver and owning and operating a salon as a sole proprietor. Customer 6 paid Ndiaye $250 to $300 to prepare his 2018 tax return.

77. Ndiaye created two false Schedule Cs for Customer 6, one for each business. Both Schedule Cs underreported Customer 6's business income from the businesses.

78. Ndiaye created and filed a false Schedule C (Schedule C1) with Customer 6's 2018 tax return claiming inflated expenses related to Customer 6's work as a driver. Customer 6 and Ndiaye retrieved Customer 6's income statements from Uber and Lyft online, which showed that Customer 6 had gross receipts of $57,681 from driving.

79. Customer 6 provided Ndiaye with an estimate of the number of miles he drove for his business. Customer 6 did not provide Ndiaye with the amount he paid for gas; nor did he provide any gas receipts. Ndiaye claimed on Customer 6's Schedule C1 a deduction for "car and truck expenses" in the amount of $22,900,

which represents a deduction for the standard mileage rate for the miles Customer 6 drove in 2018. Ndiaye improperly deducted expenses for repairs and maintenance in the amount of $4,288, and gas in the amount of $8,950. A taxpayer is entitled to deduct the standard mileage rate or the actual expenses incurred in operating a vehicle for business—not both. Additionally, Ndiaye claimed on Customer 6's Schedule C1, a false deduction for insurance in the amount of $4,800.

80. Ndiaye created and filed with Customer 6's 2018 tax return a second false Schedule C ("Schedule C2"), which understated Customer 6's income from his beauty salon.

81. Customer 6 provided Ndiaye with a 1099-K that reported credit card receipts of $50,833 from his salon. Ndiaye asked Customer 6 whether he received cash payments. Customer 6 told Ndiaye that he received approximately $80,000 in gross receipts from cash and credit card payments at the salon.

82. Ndiaye properly reported on Schedule C2 Customer 6's receipts from credit card sales in the amount of $50,833 that were reported to the IRS on Form 1099-K. However, Ndiaye omitted Customer 6's cash receipts from Schedule C2, which falsely understated Customer 6's income by approximately $30,000.

83. Customer 6 told Ndiaye that he paid monthly rent of $2,000 ($24,000 per year) and paid about $300 per week for supplies ($15,600 per year). Customer

6 told Ndiaye that he paid an employee $14,000 in 2018 for work at the salon. Ndiaye incorrectly reported on Customer 6's Schedule C2 $10,395 of supplies expenses. Even though Ndiaye did not deduct the wages paid to the employee and understated the deduction for supplies, Ndiaye understated Customer 6's income by omitting from Schedule C2 Customer 6's cash receipts.

84. Ndiaye reported false Schedule C income and expenses on Customer 6's federal income tax return in order to fraudulently reduce Customer 6's tax liabilities and to falsely increase Customer 6's tax refund for tax year 2018.

85. Customer 6's 2018 tax return claimed an earned income tax credit in the amount of $5,716 and a refund of $5,310, largely based on the Schedule C scheme.

86. The tax loss to the United States with respect to Customer 6's 2018 tax return was $9,541.

Customer 7

87. Customer 7, of Eastpointe, Michigan, worked as a driver during 2018. Customer 7 paid Ndiaye $300 to prepare his 2018 tax return.

88. Ndiaye created and filed a false Schedule C with Customer 7's 2018 tax return, on which Ndiaye reported falsified expenses, which reduced Customer 7's taxable income for 2018.

89. Ndiaye created a Schedule C that stated that Customer 7's business

was “clothing and accessories.” Customer 7 told Ndiaye that his business was driving, and he provided Ndiaye Forms 1099 showing his gross receipts from Uber and Lyft. Ndiaye properly reported those gross receipts of $83,665 on Schedule C.

90. Customer 7 did not keep track of his mileage and did not provide Ndiaye any estimate of his mileage. Customer 7 recorded his expenses related to driving in a notebook. He informed Ndiaye he had expenses for gas and repairs totaling approximately $10,000. Ndiaye deducted car and truck expenses of $23,121 and deducted $2,162 for maintenance and $7,327 for gas. Ndiaye overstated Customer 7’s car and truck expenses by $23,121. Additionally, Ndiaye deducted advertising expenses of $255 and taxes and licenses of $243. Customer 7 did not have any advertising expenses and told Ndiaye that the cost of his taxes and licenses in 2018 was $125.

91. Ndiaye reported false Schedule C expenses on Customer 7’s federal income tax return in order to fraudulently reduce Customer 7’s federal income tax liabilities and to falsely increase Customer 5’s tax refund for the 2018 year.

92. Customer 7’s 2018 return claimed an earned income tax credit of $5,716 and a refund of $5,308, based in large part on Ndiaye’s use of the Schedule C scheme.

93. The tax loss to the United States with respect to Customer 7’s 2018 federal income tax return was $8,541.

Customer 8

94. Customer 8, of Oak Park, Michigan, was married in 2018 and lived with her spouse and children. Customer 8's spouse had his return prepared by a different return preparer.

95. Customer 8 told Ndiaye that she was married in 2018 and lived with her spouse.

96. Ndiaye falsely classified Customer 8 as Head of Household on her 2018 tax return in order to fraudulently reduce Customer 8's tax liability and to falsely increase Customer 8's tax refund for tax year 2018.

97. Customer 8 claimed a refund of $5,310, based largely on the Head of Household scheme.

98. The tax loss to the United States with respect to Customer 8's 2018 federal income tax return was $5,716.

Customer 9

99. Customer 9, of Detroit, Michigan, worked for two different companies in 2018 and earned income from rental properties. Customer 9 was married during 2018 and lived with his spouse and children. Customer 9's spouse had her return prepared by a different preparer. Customer 9 paid Ndiaye less than $100 cash to prepare his 2018 tax return.

100. Customer 9 told Ndiaye that he was married in 2018 and lived with

his spouse.

101. Ndiaye falsely classified Customer 9 as Head of Household on his 2018 tax return in order to fraudulently reduce Customer 9's tax liability and to falsely increase Customer 9's tax refund for tax year 2018.

102. Ndiaye created and filed a false Schedule C with Customer 9's 2018 tax return, on which Ndiaye reported income and expenses from Customer 9's rental properties and falsified expenses, which reduced Customer 9's taxable income for 2018. Ndiaye listed in "Other Expenses" deductions totaling $3,300 for repairs to the rental properties that Customer 9 paid for in 2018. However, Ndiaye also included in "Other Expenses" a deduction of $7,200 for mortgage interest payments. Customer 9 paid, at most, $4,200 in mortgage payments (principal and interest) for his rental properties in 2018 but does not know how much was principal and how much was interest. Payments of mortgage principal are not deductible.

103. Income and expenses from rental property should be reported on Schedule E.

104. Ndiaye reported false expenses on Customer 9's 2018 federal income tax return in order to fraudulently reduce Customer 9's tax liabilities and to falsely increase Customer 9's tax refund for tax year 2018.

105. Customer 9 claimed an earned income tax credit of $5,716 and a

refund of $6,237, due in large part to the Head of Household and Schedule C schemes.

106. The tax loss to the United States with respect to Customer 9's 2018 income tax return was $5,696.

Customer 10

107. Customer 10, of Detroit, Michigan, worked as a driver at a manufacturing company from which he received a W-2 that reported his wage income as $42,485. Additionally, Customer 10 earned a small amount of income in 2018 by giving haircuts to family and friends.

108. Customer 10 paid Ndiaye $150 to $200 to prepare his 2018 tax return and the fee came out of Customer 10's refund.

109. Ndiaye properly reported Customer 10's income from his job at the manufacturing company in the amount of $42,485.

110. Ndiaye created and filed with Customer 10's 2018 tax return a false Schedule C for Customer 10's hair cutting business on which Ndiaye reported inflated income and expenses that resulted in a loss of $15,976.

111. Ndiaye asked Customer 10 if he cut hair for a lot of people and Customer 10 told Ndiaye that he cut hair for only a few people. Customer 10 did not give Ndiaye any information about his income or expenses from cutting hair and Ndiaye did not ask for more information.

112. Ndiaye prepared a Schedule C for Customer 10 reporting a "Barber Shops" business. On that false schedule C, Ndiaye reported gross receipts of $6,429, advertising expenses of $250, car and truck expenses of $7,790, insurance of $3,826, supplies of $3,275, taxes and licenses of $253, utilities of $1,428, and equipment of $5,583 for a net loss of $15,976.

113. Customer 10's 2018 return claimed an earned income tax credit of $4,060 and a refund of $8,637, based in large part on Ndiaye's use of the Schedule C scheme.

114. The tax loss to the United States with respect to Customer 10's 2018 income tax return was $5,280.

Harm to the United States

115. Defendants' customers have been harmed because they paid Ndiaye fees to prepare proper tax returns, but instead Ndiaye prepared false and fraudulent returns that substantially underreported and underpaid the customers' correct tax liabilities, potentially exposing the customers to statutory penalties.

116. The United States has been harmed financially because it has not received, and may never be able to collect, the taxes lawfully due and owing from defendants' customers. During its investigation, the IRS interviewed 23 customers whose returns were not examined. From conducting customer interviews, the IRS determined that there was a likely deficiency of $94,000. It is likely that the total

underreporting and underpayments caused by Ndiaye are much greater, as the IRS lacks the resources to examine the returns Ndiaye prepared.

117. The United States is also harmed because the IRS must devote its limited resources to investigating Ndiaye's tax preparation, including ascertaining his customers' correct tax liabilities, recovering any refunds erroneously issued, and attempting to collect any additional taxes and penalties, some of which may not be collectible. The IRS investigation into defendants' activities has thus reduced the resources that would otherwise be available to assist honest taxpayers.

118. In addition to the direct harm Ndiaye has caused to the United States by preparing false and fraudulent tax returns, his activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

119. Defendants also cause intangible harm to honest tax return preparers, over whom defendants gain an unfair competitive advantage by preparing returns that falsely or fraudulently underreport their customers' tax liabilities.

Count I: Injunction under I.R.C. § 7407 for violation of I.R.C. §§ 6694 and 6695 and for deceptive or fraudulent conduct that interferes with Internal Revenue Code Administration

120. The United States incorporates by reference the allegations in all preceding paragraphs as though fully set forth herein.

121. Pursuant to I.R.C. § 7407, a court is authorized to enjoin a tax return

preparer who, among other things, engages in conduct subject to penalty under I.R.C. § 6694 or I.R.C. § 6695, or who engages in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

122. I.R.C. § 7701(a)(36) defines a "tax return preparer" as a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or a substantial portion thereof.

123. Ndiaye and the Company are tax return preparers within the meaning of I.R.C. § 7701(a)(36).

124. I.R.C. § 6694(a) penalizes a tax return preparer if: (1) the preparer prepared a return or claim for refund that included an understatement of liability due to a position for which there was not a realistic possibility of being sustained on the merits; (2) the preparer knew (or reasonably should have known) of such position; and (3) the position was not properly disclosed or was frivolous.

125. I.R.C. § 6694(e) defines understatement of liability to include any understatement of tax due or "overstatement of the net amount creditable or refundable."

126. In violation of I.R.C. § 6694(a), Ndiaye prepared returns for customers that understated his customers' tax liabilities and that he knew or should have known contained positions for which there was no substantial authority or for

which there was no reasonable basis.

127. I.R.C. § 6694(b) penalizes a tax return preparer who prepares a return or claim with an understatement of liability: (1) in a willful attempt to understate the liability; or (2) with a reckless and intentional disregard of rules or regulations.

128. In violation of I.R.C. § 6694(b), Ndiaye prepared tax returns for customers that he knew or reasonably should have known contained incorrect filing statuses, false itemized deductions, false business income and expenses, false education expenses, and false energy credits in order to understate his customers' tax liabilities.

129. In violation of I.R.C. § 6694(b), Ndiaye recklessly or intentionally disregarded rules and/or regulations by manipulating his customers' filing statuses, business income and expenses, education expenses, and itemized deductions in order to understate his customers' tax liabilities.

130. I.R.C. § 6695(g) penalizes a tax return preparer who fails to comply with due diligence requirements imposed by the Secretary of the Treasury with respect to determining eligibility for certain credits, including education credits and the Earned Income Credit, or eligibility to file as a head of household.

131. In violation of I.R.C. § 6695(g), Ndiaye repeatedly failed to exercise due diligence by filing tax returns claiming a head of household filing status and earned income credits that he knew or had reason to know were incorrect.

132. An injunction against Ndiaye and the Company is necessary and appropriate to prevent the recurrence of Ndiaye's conduct subject to penalty under I.R.C. §§ 6694 and 6695.

133. Anything less than a permanent injunction and complete bar on the preparation of tax returns is unlikely to stop Ndiaye from preparing fraudulent tax returns.

Count II: Injunction under I.R.C. § 7402(a) for unlawful interference with enforcement of the Internal Revenue Laws and appropriateness of injunctive relief

134. The United States incorporates by reference the allegations in paragraphs 1 through 119, above, as though fully set forth herein.

135. Pursuant to I.R.C. § 7402(a), a court is authorized to issue orders of injunction as may be necessary or appropriate to enforce the internal revenue laws.

136. I.R.C. § 7402(a) expressly provides that its injunction remedy is "in addition to and not exclusive of" other remedies for enforcing the internal revenue laws.

137. Ndiaye's activities described above substantially interfere with the enforcement of the internal revenue laws because he prepares and files numerous fraudulent tax returns that resulted in customers not paying their true federal tax liabilities and receiving tax refunds to which they were not entitled.

138. Ndiaye has shown that he should not be allowed to continue to

prepare tax returns because he has deliberately played the audit lottery on behalf of his customers. By manipulating the income and expenses on Schedule C and improperly claiming head of household filing status, items for which there is no independent third-party reporting, Ndiaye has selected schemes that the IRS can detect only by auditing returns or interviewing his customers. Because Ndiaye knows that the IRS lacks the resources to audit every return that includes Schedule C or Head of Household filing status, Ndiaye is actively subverting the American tax system, which relies on taxpayers to self-report their income and expenses fully and accurately and relies on tax return preparers to prepare returns accurately.

139. An injunction prohibiting Ndiaye and the Company from preparing or assisting in the preparation of tax returns is needed to stop him from preparing and filing fraudulent tax returns and to prohibit him from otherwise interfering with the proper administration and enforcement of the internal revenue laws now and in the future.

140. If Ndiaye and the Company are not enjoined, the United States will suffer irreparable harm from the underpayment of taxes and the exhaustion of resources to enforce the internal revenue laws.

141. The public interest would be advanced by enjoining Ndiaye and the Company because an injunction will stop his illegal conduct and the harm that conduct is causing the United States Treasury and the public.

142. An injunction under I.R.C. § 7402 is necessary and appropriate, because the United States has no adequate remedy at law.

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

A. That the Court find that Ndiaye and the Company have continually and repeatedly engaged in conduct subject to penalty under I.R.C. §§ 6694 and 6695; that, pursuant to I.R.C. § 7407, an injunction merely prohibiting conduct subject to penalty would be insufficient to prevent Ndiaye's interference with the proper administration of the tax laws; and that Ndiaye and the Company should be permanently enjoined from acting as tax return preparers;

B. That the Court find that Ndiaye and the Company have interfered with the enforcement of the internal revenue laws and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to I.R.C. § 7402(a) under the Court's inherent equity powers;

C. That this Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter a permanent injunction enjoining Ndiaye, individually and doing business as Ndiaye's LLC d/b/a Pro Tax Services, and Ndiaye's LLC, and their officers, agents, servants, and employees, and anyone in active concert or participation with him or them, from directly or indirectly:

1. Preparing or assisting in the preparation of federal tax returns, amended returns, and other related documents and forms for

anyone other than himself;

2. Advising, counseling, or instructing anyone about the preparation of a federal tax return;
3. Owning, managing, controlling, working for, or volunteering for an entity that is in the business of preparing federal tax returns or other federal tax documents or forms for other persons;
4. Providing office space, equipment, or services for, or in any other way facilitating, the work of any person or entity that is in the business of preparing or filing federal tax returns or other federal tax documents or forms for others or representing persons before the IRS;
5. Advertising tax return preparation services through any medium, including the print, online, and social media;
6. Maintaining, assigning, holding, using, or obtaining a Preparer Tax Identification Number (PTIN) or an Electronic Filing Identification Number (EFIN);
7. Representing any person in connection with any matter before the IRS;
8. Employing any person to work as a federal income tax return preparer;

9. Referring any person to a tax preparation firm or a tax return preparer, or otherwise suggesting that a person use any particular tax preparation firm or tax return preparer;
10. Selling, providing access, or otherwise transferring to any person some or all of the proprietary assets of Ndiaye or Ndiaye's LLC d/b/a Tax Pro Services generated by their tax return preparation activities, including but not limited to customer lists; and
11. Engaging in any conduct subject to penalty under 26 U.S.C. §§ 6694, 6695, and 6701 or engaging in any other conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

D. That this Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an order requiring Ndiaye to produce to counsel for the United States, within 30 days of the Court's order, a list that identifies by name, social security number, address, email address, and telephone number and tax period(s) all persons for whom Ndiaye or Ndiaye's LLC dba Tax Pro Services prepared federal tax returns or claims for refund, for tax years beginning in 2017 and continuing through this litigation;

E. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an order requiring Ndiaye, within 30 days of receiving the Court's order, to contact by email, if an email address is known, or otherwise by U.S. mail, all persons for whom he has prepared federal tax returns, amended tax returns, or claims for refund since January 2017, and to inform them of the permanent injunction entered against him by sending each of them a copy of the order of permanent injunction, with no other enclosures unless approved by the Department of Justice;

F. That the Court, pursuant to I.R.C. §§ 7402(a) and 7407, enter an order requiring Ndiaye, within 45 days of receiving the Court's order, to file a declaration, signed under penalty of perjury, confirming that Ndiaye has received a copy of the Court's order and is in compliance with the terms described in Paragraphs C through E of this complaint; and

G. That this Court permit the United States to conduct post-judgment discovery to ensure Ndiaye's and the Company's compliance with the permanent injunction;

H. That this Court retain jurisdiction over Ndiaye and the Company and over this action to enforce any injunction entered against them; and

I. That this Court grant the United States such other and further relief as the Court deems appropriate.

UNITED STATES OF AMERICA
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