

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, <i>et al.</i> ,	)	Civil Action No. 08-03535
	)	
Plaintiffs,	)	Sec. R
	)	JUDGE SARAH S. VANCE
v.	)	
	)	Mag. 3
JACKSON HEWITT TAX SERVICE	)	MAGISTRATE JUDGE DANIEL E.
INC., <i>et al.</i> ,	)	KNOWLES, III
	)	
Defendants.	)	

**FOURTH AMENDED CLASS ACTION COMPLAINT**

NOW INTO COURT, through undersigned counsel, come plaintiffs, Vicki L. Pinero and Erick G. Adkins (“Plaintiffs”), who, on behalf of themselves and all others similarly situated, file this Fourth Amended Class Action Complaint against defendants, Jackson Hewitt Tax Service Inc. (“JHTSI”); Jackson Hewitt Inc. (“JHI”); and, Crescent City Tax Service, Inc. d/b/a Jackson Hewitt Tax Service (“CCTSI”) (jointly referred to as “Defendants”).<sup>1</sup>

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<sup>1</sup> Plaintiffs are not re-filing the exhibits previously filed, although such exhibits are expressly incorporated herein.

## INTRODUCTION

1. Defendants are part of the second largest tax preparation organization in the world. JHTSI, the ultimate parent corporation, reported nearly \$300 million in total revenue for 2007. As part of their lucrative business, Defendants are provided the most sensitive personal and financial information about their customers—the keys to the financial vault. Such information includes, but is not limited to, social security numbers, dates of birth, driver's license numbers, names and social security numbers for dependents, and annual income. Defendants' customers entrust Defendants with this highly confidential information with the expectation that the information will not be improperly disclosed or placed in the public domain and based upon Defendants' representations as to their security protocols. This case partly relates to how Defendants violated that trust and made knowingly false representations as to their security protocols.

2. Defendants represented to Plaintiff Pinero and the class members that protecting the privacy of their customers' personal and financial information is a "core value" and that they have state-of-the-art policies, practices, and procedures to prevent improper disclosures of such information and sensitive documents. Further, at the time Plaintiff Pinero and the class members contracted with Defendants to obtain tax preparation services, Defendants represented that (a) they "maintain policies and procedures designed to restrict access to nonpublic personal information about you to those persons who need to know that information to fulfill your request for products or services" and that (b) "[t]hese policies and procedures include physical, electronic, and

procedural safeguards that comply with federal regulations to guard your information.” These representations were contained in, *inter alia*, Defendants’ “Privacy Policy” issued to Plaintiff Pinero and the class members. These representations were false *when made*.

3. Contrary to Defendants’ representations, and in spite of numerous federal and state laws, regulations, and rules requiring that Defendants safeguard their customers’ personal and financial information and documents, Defendants did *not* have in place *at the time they made their confidentiality representations* the promised policies and practices to maintain proper confidentiality and security of the highly confidential information and documents entrusted to them.

4. Further, despite Defendants’ status as “tax return preparers,” Defendants’ primary source of revenue is *not* derived from tax preparation services. Instead, Defendants make most of their money through brokering very expensive and suspect loans and other financial products.

5. Defendants are loan brokers per La. Rev. Stat. §§ 9:3572.1 *and* 51:1910. Yet Defendants are *not* licensed or bonded as Louisiana loan brokers, as required by La. Rev. Stat. § 9:3572.1, *et seq.*, and La. Rev. Stat. § 51:1910, *et seq.* Nor have Defendants provided the necessary disclosures required by these statutes. In light of these facts, Defendants are obligated to return all fees, sums, interest, and other charges they received related to the loans they improperly brokered, plus attorneys’ fees.

6. This action seeks class-wide redress for the following: Defendants’ misrepresentations and flagrant disregard of the personal and financial welfare and

privacy of their customers; Defendants' failure to be properly licensed and bonded as loan brokers under Louisiana law, and to provide the required disclosures; and, Defendants' improper receipt of fees, sums, interest, and other charges not owed. Defendants' actions violate numerous federal and state laws, regulations, and rules. Plaintiffs and the putative class seek monetary, declaratory, and injunctive relief to remedy Defendants' unlawful practices, plus attorneys' fees.

### **PARTIES**

7. Plaintiff Pinero is a Louisiana citizen, residing in Metairie, Louisiana.
8. Plaintiff Adkins is a Louisiana citizen, residing in River Ridge, Louisiana.
9. Defendants are tax return preparers.
10. Upon information and belief, Defendants are authorized IRS e-filers.
11. Upon information and belief, JHTSI is the second largest tax preparation company in the U.S. (behind H&R Block) with approximately 6,800 franchised and company-owned offices throughout the U.S. JHTSI represents that the company: specializes in electronic filing (IRS e-file); provides full service, individual federal and state income tax preparation; and, facilitates related financial products. JHTSI is a public company traded on the NYSE under the symbol "JTX." In its 2007 Annual Report, JHTSI reported \$293.2 million in total revenue for the fiscal year 2007. *See* Exhibit A, JHTSI 2007 Annual Report. Upon information and belief, JHTSI is a Delaware corporation with its principle place of business in Parsippany, New Jersey.
12. Upon information and belief, JHI is a wholly owned subsidiary of JHTSI and

is responsible for franchising the Jackson Hewitt Tax Service brand. JHI is also the owner of Tax Services of America, Inc., a Delaware corporation, which operates the company-owned offices. Upon information and belief, JHI is a Virginia corporation with its principle place of business in Parsippany, New Jersey.

13. Upon information and belief, CCTSI is the franchise owner of approximately 37 Jackson Hewitt Tax Service locations in the greater New Orleans area, including the location at 6601 Veterans Blvd., Metairie, LA 70003, and 3130 Loyola Drive, #5, Kenner, LA 70065. Upon information and belief, Max M. Hirsch, Anne Hirsch, and Barbara Hirsch Troncoso are the owners and operators of CCTSI.

### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this action and Defendants pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1367 (supplemental jurisdiction). Further, this Court has jurisdiction over this action and Defendants pursuant to 28 U.S.C. § 1332 because there is diversity of citizenship between Plaintiffs and at least 1 of the Defendants and the matter in controversy exceeds the sum or value of \$5 million, exclusive of interest and cost.

15. Venue is proper in this Court per 28 U.S.C. § 1391 because a substantial part of the events giving rise to Plaintiffs' claims occurred in this judicial district.

### **BACKGROUND**

16. **Confidentiality and Privacy.** The Social Security Administration ("SSA") reports "[i]dentity theft is one of the fastest growing crimes in America." Exhibit B, SSA

Pamphlet, at p. 1. In an October 24, 2004 story, The New York Times reported that identity theft is a national “epidemic.” *See* Exhibit C, 10/24/04 NYT Article. The Consumer Sentinel database, maintained by the Federal Trade Commission (“FTC”), indicates that the highest percentage of complaints received by the FTC since 2001 has concerned identity theft.

17. “Identity theft is the intentional use or possession or transfer or attempted use with fraudulent intent by any person of any personal identifying information of another person to obtain, possess, or transfer, whether contemporaneously or not, credit, money, goods, services, or any thing else of value without the authorization or consent of the other person.” La. Rev. Stat. § 14:67.16(B). Identity theft usually leads to “identity fraud.” The Economic Crime Institute (“ECI”) notes:

Identity fraud, which encompasses identity theft, is the use of false identifiers, false or fraudulent documents, or a stolen identity in the commission of a crime. It often emanates from a breeder document created from fictitious or stolen identifiers. The breeder document, such as a driver’s license or birth certificate, is used to spawn other documents, resulting in the creation of a credible identity which allows a criminal or terrorist access to credit cards, employment, bank accounts, secure facilities, computer systems, and the like. Once a criminal or terrorist has an established identity, he can use it to facilitate a variety of economic crimes, drug trafficking, terrorism, and other crimes.

Exhibit D, 10/28/03 ECI Report, at p. 4. In its 2006 report, the ECI reported that identity fraud continues to be a growing problem. *See* Exhibit E, 06/06 ECI Report, at pp. 3-5.

18. In November 2007, the FTC released its 2006 Identity Theft Survey Report. *See* Exhibit F, 11/07 FTC Survey Report. The survey estimated that 8.3 million American

consumers, or 3.7 % of the adult population, were the victims of identity theft in 2005. *Id.* at pp. 3-4. The report noted that, in most cases, the victims were not legally responsible for the cost of the fraudulent transaction because of various federal and state laws limiting the liability of consumers for fraudulent transactions by identity thieves. *Id.* at p. 6, fn. 5. Notwithstanding these consumer laws, however, the report found that many victims still incurred some cost associated with the theft of their identity. *Id.* at pp. 5-7. The report found many victims incurred out-of-pocket expenses of \$40 to \$5,000. *Id.* The report also found many victims spent hundreds, and sometimes thousands, of hours in attempting to resolve the problems related to the identity theft. *Id.* The report determined that 56% of the victims did not know how their personal information was stolen, and 5% of the victims learned that their personal information was obtained or stolen from a company that had the information. *Id.* at pp. 30-31. The report noted that 37% of the victims experienced problems beyond the out-of-pocket expenses and the time they spent resolving the problem. *Id.* at pp. 41-42. These problems included: being harassed by debt collectors; being denied new credit; being unable to use existing credit cards; being unable to get loans; having their utilities cut off; being subject to a criminal investigation or civil suit; being arrested; and, having difficulties obtaining or accessing bank accounts. *Id.* The report concluded that many victims “said they were most affected by the emotional impact of the ID theft including the effects of stress on their lives and their health or the emotional toll resulting from the realization that they were vulnerable or had been betrayed.” *Id.* at p. 53.

19. As reported by The New York Times in a December 21, 2003 article, entitled

*Dumpster-Diving for Your Identity*, “[i]t’s a popular perception that most identity theft happens on the Internet, but . . . low-tech methods of getting people’s personal information are far more effective.” Exhibit G, 12/21/03 Identity Theft Article. The Federal Bureau of Investigation warns:

An individual or business that fails to dispose properly of personal identification information, by shredding or mutilating, could find themselves susceptible to a “dumpster diver”—an individual who retrieves discarded material looking for anything of value. Dumpster divers obtain account numbers, addresses, and dates of birth from financial, medical, and personal records—all of which they can use to assume an identity.

Exhibit H, FBI 08/00 Bulletin, at p. 9.

20. With this backdrop, and due to the increasing cost associated with identity theft and fraud, President George W. Bush issued Executive Order 13402 in 2006, establishing the President’s Task Force on Identity Theft, which is charged with developing a comprehensive national strategy to combat identity theft. The President directed the task force to make recommendations on ways to improve the effectiveness and efficiency of the federal government’s efforts in the areas of identity theft awareness, prevention, detection, and prosecution.

21. In 2007, the President’s task force issued a report. *See* Exhibit I, Task Force Report Vol. I. Not surprisingly, the task force noted that one of the “tools of the trade” for identity thieves is “dumpster diving.” *Id.* at pp. 13-15. Reports issued by other independent sources, including the Center for Identity Management and Information Protection, have likewise confirmed that “dumpster diving” is a common “tool” used by identity thieves. *See*

Exhibit J, CIMIP Report; *see also* Exhibit B, SSA Pamphlet, at p. 3 (“Identity thieves get your personal information by . . . [r]ummaging through your trash, the trash of businesses and public trash dumps for personal data[.]”).

22. As noted in the task force report, there is a voluminous amount of written guidance readily available for businesses on how to safeguard the personal information of consumers. *See* Exhibit K, Task Force Report Vol. II, at pp. 19-26. Much of this written guidance has been available for several years. Much of this guidance is “common sense.”

23. For example, the FTC has issued a guide for businesses, entitled *Protecting Personal Information*. *See* Exhibit L, FTC Guide for Businesses. In its guide, the FTC notes that 1 of the 5 “key principles” to a “sound data security plan” is proper disposal of documents containing confidential, financial or personal information. *Id.* at p. 3. The FTC notes that businesses handling such documents *must* ensure the documents are “unreadable” before throwing them away. *Id.* at pp. 20-21. Per the FTC, such documents must be burned, shredded, or pulverized to make sure that identity thieves cannot steal the documents from the trash. *Id.*

24. The FTC has also issued guidance to businesses on what they should do when an “information compromise” has occurred creating the possibility for identity theft. *See* Exhibit M, FTC Info. Comp. Guide.

25. In a press release relating to a settlement of an FTC lawsuit against a mortgage company that left loan documents with consumers’ sensitive financial and personal information in and around an unsecured dumpster, FTC Chairman Deborah Platt

Majoras stated, “Every business, whether large or small, must take reasonable and appropriate measures to protect sensitive consumer information, from acquisition to disposal.” Exhibit N, FTC 12/18/07 Press Release.

26. **Loan Brokering.** In addition to providing tax preparation services, Defendants have brokered and continue to broker various loan and financial products, including “Refund Anticipation Loans” or “RALs”; “Money Now Loans”; “Holiday” or “HELP” Loans; “Flex Loans”; and, “iPower” Loans. These loan products have been the source of much debate because of the exorbitant fees associated with the loans and the fact that they target low-income Americans. Based upon a fee agreement/contract, Defendants agree to broker these loans.

27. At least 4 financial institutions have offered various loan products through Defendants, including Santa Barbara Bank & Trust, a division of Pacific Capital Bank, N.A. (“SBB&T”); HSBC Taxpayer Financial Services, Inc. (“HSBC”); Republic Bank & Trust Company (“Republic”); and, MetaBank.

28. **RALs.** A RAL is generally a loan made by a third party financial institution to a customer, which is secured by a customer’s anticipated federal tax refund.

29. In its 2006 10-K, JHTSI defined a RAL as follows:

*Refund Anticipation Loans (“RALs”).* A RAL is a loan made by a third party financial institution to a customer and secured by a customer’s anticipated federal tax refund. The loan amount, less applicable fees and charges, including tax preparation fees, is generally disbursed to the customer within approximately one day from the time the tax return is electronically filed with the IRS.

JHTSI 2006 10-K, at p. 4.

30. **Money Now Loans.** There are 2 types of Money Now Loans, including the Pre-File Money Now Loan and Standard Money Now Loan. The Pre-File Money Now Loan (sometimes referred to as a “Pay Stub Loan”) is generally an unsecured loan made by a third party financial institution based on, among other things, the customer’s anticipated federal income tax refund, with proceeds of such loan available on the same day the loan is approved by the financial institution, offered in the month of January based upon a pay stub and without a final tax return being prepared and filed with the IRS at the time.

31. In contrast, the Standard Money Now Loan is generally an unsecured loan made by a third party financial institution based on, among other things, the customer’s anticipated federal income tax refund, with proceeds of such loan available on the same day the loan is approved by the financial institution, with a final tax return being prepared and filed with the IRS in the same office visit at which the customer applies for such a loan.

32. In its 2006 “Program Agreement” with HSBC, JHI defined a Money Now Loan as follows:

1.10 “Money Now Loan” shall mean a Money Now Loan (pf) and Money Now Loan (std) collectively.

1.11 “Money Now Loan (pf)” shall mean a loan by the Originator to an Applicant based on, among other things, the Applicant’s anticipated Federal income tax refund, with proceeds of such loan available on the same day the loan is approved by the Originator, offered in the month of January and without a final tax return being prepared and filed with the IRS at the time.

1.12 “Money Now Loan (std)” shall mean a loan by the Originator to an Applicant based on, among other things, the Applicant’s anticipated Federal income tax refund, with proceeds of such loan available on the same day the

loan is approved by the Originator, with a final tax return being prepared and filed with the IRS in the same office visit as the Applicant applies for such a loan, or if the Applicant applies prior to the first day of electronic filing, the final tax return being filed on the first day of electronic filing.

HSBC 2006 Program Agreement, at p. 3.

33. **Holiday or HELP Loans.** A HELP loan is generally an unsecured loan made by a third party financial institution based on, among other things, the customer's anticipated federal income tax refund, with proceeds of such loan available on the same day the loan is approved by the financial institution, offered from November through December based upon a pay stub and without a final tax return being prepared and filed with the IRS at the time.

34. In their training materials, Defendants define a HELP loan as follows:

**HELP<sup>®</sup> Loan**

The Holiday Express Loan Program<sup>®</sup> is offered for a limited time in November and December. It provides qualified individuals with a loan of up to \$500 with no out-of-pocket expenses\*. It's available to pre-approved, prior-year customers as well as to non-customers who come in to apply for the loan.

Customers who choose to come back to Jackson Hewitt Tax Service at tax time and who qualify for a RAL or ACR can use those proceeds to pay off their HELP loan.

*\*Subject to qualification. Maximum loan amount is \$575 for pre-approved, prior-year customers; \$375 for all other applicants. All fees deducted from loan proceeds. Purchase of tax preparation is not required.*

HELP Loan Summary.

35. **Flex Loans.** A Flex Loan is an unsecured short term loan made by a third

party financial institution to assist a customer in paying his or her taxes.

36. In their training materials, Defendants describe a Flex Loan as follows:

### **Flex Loan**

- The Flex Loan program allows customers with balances due on their federal tax returns to receive a loan from the bank. This loan will allow the customer to pay off the outstanding balances and any associated preparation fees.
- The Flex Loan program begins on February 7 and will end on April 15.
- Customers are required to sign the Flex Loan application at the time the product is requested (prior to transmission to the bank). The applications will be pre-printed and provided to the processing centers for distribution to the individual offices. As a back up, these applications will also print from FOP. However it is imperative that the pre-printed form be used.
- Results of Flex Loan applications will be available in ProFiler software in three minutes or less.
- The Flex Loan program will include a counter offer process. For example, a customer has a balance due of \$1,000. The request is processed by our banking partner who determines the customer is eligible for a \$500 loan. The customer will have the option to either accept this revised amount or decline the loan. If the customer accepts the counter offer, they are still obligated for the federal balance not covered by the Flex Loan. The benefit of this change is rather than receiving a denial based on the original balance due amount and creating a poor customer service experience, the customer is approved for having at least a portion of their balance due covered by our loan product.
- The Flex Loan product will allow loans for the amount of the federal tax balance due plus associated fees up to \$7,750.
- The Flex Loan product will not be offered on any combination of federal tax balance due and associated fees exceeding \$7,750.
- The customer must have a minimum balance due of \$200. The minimum loan amount is \$300, which includes the balance due amount plus associated fees.
- Offers payment support for the Farmer and Fisherman deadline on March 1.
- Tax Prep Fees are included in the loan.
- Tax Prep Fees are paid to franchisee when the loan is approved (like RAL).
- Application is sent from within ProFiler (like Money Now.)
- Pre-printed Loan Agreements supplied by the bank. Back up

agreements will print in FOP.

- Networked environment with an Internet connection is required.
- 90 days same as cash offering.
- Configurable

Flex Loan Summary.

37. **iPower Loans**. An iPower Loan is an unsecured loan made by a third party financial institution based on, among other things, the customer's anticipated federal income tax refund, with proceeds of such loan available on a pre-paid debit card on the same day the loan is approved by the financial institution, offered from at least November to early January based upon a pay stub and without a final tax return being prepared and filed with the IRS at the time.

38. **Defendants' Loan Brokering Activity**. Defendants brokered Pre-File Money Now Loans and HELP Loans (sometimes jointly referred to as the "Pre-Season Loan Products") in 2005 and 2006 through agreements with SBB&T and HSBC. *See* SBB&T 2006 Program Agreement, at pp. 1-4; HSBC 2006 Program Agreement, at pp. 2-5; 2006 HELP Advertising Materials; SBB&T 2006 HELP Loan Agreement.

39. Upon information and belief, as of this filing, Defendants continue to broker Pre-File Money Now Loans and similar Pre-Season Loan Products, "pay stub" loans, and Flex Loans. *See, e.g.*, SBB&T 2007 Program Agreement; HSBC 2007 Program Agreement; Republic 2007 Program Agreement.

40. On November 17, 2008, JHI entered into an agreement with MetaBank for Defendants to broker iPower Loans during the "pre-season" (*i.e.*, November through early

January). *See* MetaBank 2008 Amended and Restated Agreement; MetaBank 2008 First Addendum to Amended and Restated Agreement. The iPower Loan is simply a “repackaged” and “renamed” Pre-File Money Now Loan or HELP Loan and constitutes a Pre-Season Loan Product. The only meaningful difference between an iPower Loan obtained during the pre-season and a Pre-File Money Now Loan or HELP Loan is the consumer receiving a pre-season iPower Loan receives his loan proceeds on a pre-paid debit card, rather than by check.

41. Under both Louisiana loan broker statutes (*i.e.*, La. Rev. Stat. § 9:3572.1, *et seq.*, and La. Rev. Stat. § 51:1910, *et seq.*), an income tax preparer who is an authorized Internal Revenue Service e-file provider and who brokers loans is considered a loan broker and subject to the restrictions set forth in the statutes, unless the income tax preparer’s “only brokering activity is facilitating refund anticipation loans[.]” La. Rev. Stat. § 9:3572.2(B)(9) (emphasis added); La. Rev. Stat. § 51:1910(1)(b)(xi) (emphasis added). Defendants are not exempt under either statute because their brokering activity is not limited to brokering or facilitating only refund anticipation loans.

42. Both loan broker statutes define a “refund anticipation loan” as “a loan whereby the creditor arranges to ***be repaid directly by the Internal Revenue Service*** from the anticipated proceeds of the debtor’s income tax refund.” La. Rev. Stat. § 9:3572.2(B)(9) (emphasis added); La. Rev. Stat. § 51:1910(1)(b)(xi).

43. The Pre-File Money Now Loans; Holiday or HELP Loans; Flex Loans; and, iPower Loans Defendants have brokered and facilitated and continue to broker and facilitate

are *not* “refund anticipation loans” under La. Rev. Stat. § 9:3572.2(B)(9) or La. Rev. Stat. § 51:1910(1)(b)(xi) because none of the creditors providing these loans arrange to be repaid directly from the IRS from the anticipated proceeds of the customer’s income tax return. Instead, all of these short-term loans are due on a certain date and are arranged to be repaid directly by the customer.

44. Defendants are *not* licensed as loan brokers per La. Rev. Stat. § 9:3572.3, even though they are subject to the statute. Defendants have been well aware of their obligation to be licensed as loan brokers. In its 2006 10-K, JHTSI acknowledged “many states . . . have statutes regulating, through licensing and other requirements, the activities of brokering loans and offering credit repair services to consumers as well as local usury laws which could be applicable in certain circumstances.” JHTSI 2006 10-K, at p. 7; *see also* p. 9. In its 2007 and 2008 10-Ks, JHTSI once again acknowledged that it may be subject to state loan broker statutes. *See* JHTSI 2007 10-K, at pp. 8 & 11; JHTSI 2008 10-K, at pp. 8 & 11.

45. Defendants charge and receive from their customers various fees, sums, interest, and charges for brokering RALs; Pre-File Money Now Loans; Holiday or HELP Loans; Flex Loans; iPower Loans; and, other non-RAL loans. These fees and sums are *not* wholly contingent on the successful procurement of the loan.

46. A loan broker who fails to comply with the requirements set forth in § 9:3572.1, *et seq.*, including the licensing, bonding or disclosure requirements, must return all fees contracted for or received. *See* La. Rev. Stat. § 9:3572.12(D). Similarly, a loan

broker who fails to comply with the requirements set forth in § 51:1910, *et seq.*, including the bonding or disclosure requirements, must return all sums received. *See* La. Rev. Stat. § 51:1915. In other words, both loan broker statutes contain a private right of action against a non-compliant loan broker for disgorgement of fees or sums received by the loan broker.

### **FACTS**

47. **Fraudulent Representations.** On or about January 31, 2006, Plaintiff Pinero visited the Jackson Hewitt office located at 6601 Veterans Blvd., Metairie, LA 70003 to have her 2005 federal and state tax returns prepared and e-filed. Upon information and belief, this Jackson Hewitt office is owned and managed by CCTSI.

48. During her visit, Plaintiff Pinero met with Kimberly Vazquez and provided highly confidential, private and financial information about herself and her family, including, but not limited to, the following: social security number; date of birth; driver's license number; daughter's name, social security number, and date of birth; home address; home phone number; work phone number; annual income; employer name and address; and, occupation. Plaintiff Pinero also provided her W-2s.

49. During her visit, Plaintiff Pinero was given a copy of Jackson Hewitt's "Privacy Policy." *See* Exhibit O, JH Privacy Policy. In pertinent part, the "Privacy Policy" states:

At Jackson Hewitt®, protecting your privacy is a core value of our relationship with our customers. Please read this policy carefully. It gives you important information about how we\* handle your personally identifiable information, which is nonpublic information about you that we

obtain, use, or disclose to provide you with our services.

....

**Our Approach to Data Security**

We maintain policies and procedures designed to restrict access to nonpublic personal information about you to those persons who need to know that information to fulfill your request for products or services. These policies and procedures include physical, electronic, and procedural safeguards that comply with federal regulations to guard your information.

50. The “Privacy Policy” further states:

This privacy policy is being provided by Jackson Hewitt Tax Service Inc., and its subsidiaries and affiliates, and/or by our independently owned and operated third-party franchisees (collectively referred to as “Jackson Hewitt,” “we,” “us,” or “our”), and applies to our current and former customers.

51. In shortest summary, Plaintiff Pinero and the class members were drawn to Jackson Hewitt based upon brand recognition. When they entered the door, they were promised *by all of the Defendants* that certain policies and procedures were in-place to protect the personal and financial information and documents they would be providing to Defendants. Defendants knew their confidentiality representations were false when made. Defendants knew at the time the representations were made to Plaintiff Pinero and the class members that they did *not* have in-place the represented policies and procedures that complied with applicable laws and regulations. Defendants’ confidentiality representations, that Defendants knew were false at the time they were made, were made to fraudulently induce Plaintiff Pinero and the class members to obtain tax preparation services through Jackson Hewitt.

52. As noted, Defendants represented that (a) they “maintain policies and procedures designed to restrict access to nonpublic personal information about you to those persons who need to know that information to fulfill your request for products or services” and that (b) “[t]hese policies and procedures include physical, electronic, and procedural safeguards that comply with federal regulations to guard your information.” *Id.*

53. The contract to provide tax services is between the customer and *all of the Defendants*. Like the contract to provide services, the confidentiality representations at issue here were from *all of the Defendants*. At the very least, by the language contained in the “Privacy Policy” presented to Plaintiff Pinero and the class members, all of the Defendants participated in and facilitated the misrepresentation. Contrary to Defendants’ confidentiality representations, *at the time such representations were made*, Defendants *did not*:

A. Properly monitor their employees/agents to ensure necessary confidentiality and/or security protocols are followed.

B. Properly discipline or reprimand for violations of confidentiality and/or security protocols. *See Exhibit R, in globo, Police Reports.*

C. Properly store confidential customer information and documents in safe or secured locales.

D. Properly monitor by alarm or otherwise their buildings, warehouses, and offices.

E. Properly limit ingress and egress into company buildings, warehouses, and

offices.

F. Properly store confidential customer documents in locked or secured file cabinets or other secure locations.

G. Properly maintain a chain-of-custody of confidential customer documents.

H. Properly prohibit employees/agents from taking confidential customer documents home, or to other non-secure private and public places.

I. Properly maintain a log of where confidential customer documents are located or maintained; and

J. Properly dispose of confidential customer documents.

54. At the time Plaintiff Pinero was deciding to hire Defendants to complete her 2005 tax returns, Defendants told Plaintiff Pinero, as Defendants always tell their customers, that her confidential, private and financial information and documents would not be placed in the public domain for access by anyone.

55. The maintenance of strict confidentiality regarding Plaintiff Pinero's private and financial information was a condition precedent to the hiring of Defendants to complete her tax returns.

56. Contrary to their representations, Defendants threw Plaintiff Pinero's original and signed 2005 federal and state tax returns and other confidential documents in a public dumpster located in Gretna, Louisiana. The tax returns were in original, readable form and were *not* burned, shredded, or pulverized, as required by federal and state law and regulations and as promised.

57. The documents were found by Wilhemina Walker.

58. In addition to Plaintiff Pinero's documents, Ms. Walker also found in the same dumpster the tax returns of over 100 other individuals, with some tax returns dating back to 2003, and numerous other Jackson Hewitt materials, including banners, brochures, office supplies, and employee instruction books.

59. After discovering the documents, Ms. Walker contacted WDSU, Channel 6, which contacted Plaintiff Pinero and others to advise of the discovery.

60. Richard Angelico, of WDSU 6 on Your Side, returned to Plaintiff Pinero her 2005 tax returns found in the Gretna dumpster. In May 2008, a report aired on Channel 6 regarding the discovery of the confidential tax returns.

61. In response to the Channel 6 report, CCTSI issued the attached public statement, claiming to be the "victim of a theft." Exhibit P, CCTSI Public Statement. Although claiming to be the "victim," CCTSI filed a police report alleging that Mary L. Hall, *CCTSI's Director of Compliance and in a "position of authority with access,"* threw the documents in the dumpster. Exhibit S, 05/06/08 Police Report. Ms. Hall was known around the office as the "*File Cabinet*" because, when documents were missing, commonly the documents were in Ms. Hall's car. It was a common practice for Ms. Hall and others to take documents home and out of the office to non-secure places, without logging where the documents were being taken, all in violation of federal and state laws and regulations regarding the security of tax documents.

62. As the employer/principal of Ms. Hall, Defendants are liable for Ms. Hall's

wrongful and intentional actions, including her invasion of privacy, conducted in the course and scope of her employment and agency.

63. Jackson Hewitt franchise owners, such as CCTSI, are required to sign a franchise agreement (the “JH Franchise Agreement”) with JHI. *See* Exhibit Q, JH Franchise Agreement. In pertinent part, the JH Franchise Agreement provides:

12.3.1 You agree that the following are *our trade secrets and confidential and proprietary information*: the identities of the customers served by the Franchised Business, (including their names, addresses, phone numbers, social security numbers and financial and tax information), tax return copies (whether on disk, in a database, in any other computer data storage media, or on paper), . . . W-2s, 1099s, 8453s, . . . Financial Products applications and other Financial Products related documents, and any other documents related to services performed on behalf of customers . . . . You must maintain, both during and after the term of this Agreement, absolute confidentiality of such items. You may give this information to your employees only to the extent necessary for the operation of the Franchised Business in accordance with this Agreement. You may not use this information in any other business or in any other way not authorized by us in advance in writing.

12.3.2 . . . . You promise that you will not at any time, without our prior written approval, disclose, use, permit the use of, copy, duplicate, record, transfer, transmit or otherwise reproduce *our . . . confidential or proprietary information*, in any form or by any means, in whole or in part, or otherwise make it available to any unauthorized person, entity or source.

*Id.* at ¶ 12.3, pp. 12-13 (emphasis added).

64. As a result of Defendants’ unlawful actions or inactions, Plaintiff Pinero has suffered, and continues to suffer, damages, including: fear; panic; anxiety; sleeplessness; nightmares; embarrassment; hassle; anger; loss time; loss of consortium; and, other emotional and physical distress, all in an amount to be determined at trial. In addition to all

general damages, Plaintiff Pinero seeks and is entitled to special damages related to: credit monitoring; credit insurance; reimbursement for all out-of-pocket expenses related to notifying creditors of the improper disclosure; reimbursement for all out-of-pocket expenses related to identity theft; and, other special damages. Further, Plaintiff Pinero seeks and is entitled to reimbursement of all fees paid to Defendants.

65. **Defendants' Improper Loan Brokering Activity.** On or about January 6, 2006, Plaintiff Pinero visited the Jackson Hewitt office located at 6601 Veterans Blvd., Metairie, LA 70003 and obtained a Pre-File Money Now Loan. *See* Pinero Pre-File Money Now Loan.

66. On or about January 12, 2006, Plaintiff Adkins visited the Jackson Hewitt office located at 3130 Loyola Drive, #5, Kenner, LA 70065 and obtained a Pre-File Money Now Loan. *See* Adkins Pre-File Money Now Loan.

67. Plaintiffs and many others were presented a "Santa Barbara Bank & Trust (SBBT) Money Now Loan Application and Agreement" (the "Agreement"). In relevant part, the Agreement states:

#### **Important Money Now Loan Information**

**Type of Loan:** The Money Now Loan is a short-term loan offered to customers of Jackson Hewitt Tax Service.

**Maximum Loan Amount and Finance Charge:** Depending on your estimated federal income tax refund amount, the maximum loan amount you may qualify for is \$550, \$1200 or \$1900. The maximum loan amount includes a Bank Fee (finance charge) which is 3% of the total loan amount plus \$45. The Bank Fee, a \$50 pre-paid non-refundable portion of your 2006 Jackson Hewitt (JH) tax preparation fees and any fees related to your ipower CashCard or ipower Payroll Card (if applicable) will be deducted

from your total loan amount before the balance of your loan is disbursed to you. A portion of the Bank Fee may be shared with Jackson Hewitt Inc. and/or the transmitter of this application.

**Loan Approval Process:** Money Now Loan applications will be evaluated through a credit-scoring model. A satisfactory credit history will be viewed favorably, but does not guarantee that the loan will be approved. A satisfactory credit history would include a minimum risk score from a credit report, no prior bankruptcies, liens, judgements, or charge-offs within the last 3 years, and no excessive 30, 60, or 90-day delinquencies on any loans or revolving charge accounts, etc. A Money Now Loan will be approved or denied within 24 hours after SBBT receives your loan application.

.....

**Repayment:** A Money Now Loan is due and payable in full on or before February 17, 2006. If your 2005 income tax return is prepared and filed by a Jackson Hewitt Tax Service office and if you apply for and are approved for an SBBT Accelerated Check Refund (“ACR”), Assisted Direct Deposit (“ADD”) or a Refund Anticipation Loan (“RAL”) and you are to receive the proceeds of your ACR, ADD or RAL prior to February 17, 2006, SBBT will deduct the outstanding balance of your Money Now Loan, if any, from your refund or your RAL prior to disbursing any remaining refund or RAL proceeds to you.

Pinero and Adkins Pre-File Money Now Loans.

68. The Agreement further provides:

**DEFAULT:** If my Loan is not paid in full by the due date, I promise to contact Lender on the due date at the address and phone number listed below and arrange to make monthly payments. If I fail to make a monthly payment, Lender will declare the entire outstanding principal balance immediately due and payable and Lender may notify a credit-reporting agency that I have failed to fulfill the terms of my credit obligation with Lender. The acceptance of partial or monthly payments from me by Lender does not preclude Lender’s right to demand full and immediate payment of the outstanding Loan at any time including the right to offset any refund processed by the Lender on my behalf after the due date. To contact Lender, write to SBBT Money Now Loan, P.O. Box 1270, Solana Beach, CA 92075 or call Lender at 1-668-353-7228.

*Id.*

69. Both Plaintiffs signed their respective Agreement and each received a \$438 check, with both \$550 Pre-File Money Now Loans being due on February 17, 2006. Based upon a fee agreement/contract, each of the Defendants charged *and* received a fee/sum from each Plaintiff for brokering her/his Pre-File Money Now Loan. Defendants did *not* provide any of the disclosures required by La. Rev. Stat. § 9:3572.11, or La. Rev. Stat. § 51:1914 to either Plaintiff. As noted above, these Pre-File Money Now Loans are *not* RALs.

70. On or about January 31, 2006, Plaintiff Pinero returned to the Jackson Hewitt office located at 6601 Veterans Blvd., Metairie, LA 70003 and obtained a RAL. *See* Pinero RAL. On or about January 22, 2007, Plaintiff Adkins visited the Jackson Hewitt office located at 819 W. Esplanade Avenue, Suite A8, Kenner, LA 70065 and obtained a RAL. *See* Adkins RAL. Once again, based upon a fee agreement/contract, each of the Defendants charged *and* received a fee/sum from each Plaintiff for brokering her/his loan. And once again, Defendants did *not* provide any of the disclosures required by La. Rev. Stat. § 9:3572.11, or La. Rev. Stat. § 51:1914 to either Plaintiff.

#### **APPLICABLE LAW**

71. **Confidentiality and Privacy Law.** There are numerous federal and state laws, regulations, and rules protecting the private and confidential information of consumers, including the Gramm-Leach Bliley Act (“GLBA”), 15 U.S.C. § 6801, *et seq.*; the FTC’s Privacy Rule, 16 C.F.R. § 313.1, *et seq.*; the FTC’s Safeguards Rule, 16 C.F.R. §

314.1, *et seq.*; 26 U.S.C. § 6103 (confidentiality of tax returns); 26 U.S.C. § 6713 (disclosure or use of information by tax return preparers); 26 U.S.C. § 7216 (same); the Louisiana Database Security Breach Notification Law (“LA Security Breach Statute”), La. Rev. Stat. § 51:3071, *et seq.*; and, the Louisiana Unfair Trade Practices and Consumer Protection Law (“LA Unfair Trade Practices Statute”), La. Rev. Stat. § 51:1401, *et seq.*

72. The GLBA states “[i]t is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers’ nonpublic personal information.” 15 U.S.C. § 6801(a).

73. The FTC’s Privacy Rule states that businesses “may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party,” unless the disclosure is permitted per one of the listed exceptions. 16 C.F.R. § 313.10(a)(1). None of the exceptions apply to the disclosures that occurred here.

74. The FTC’s Safeguards Rule states that businesses must “develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are . . . reasonably designed to . . . (1) [i]nsure the security and confidentiality of customer information; (2) [p]rotect against any anticipated threats or hazards to the security or integrity of such information; and (3) [p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.” 16

C.F.R. § 314.3.

75. Section 6713 provides:

(a) Imposition of penalty.—If any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall pay a penalty of \$250 for each such disclosure or use, but the total amount imposed under this subsection on such a person for any calendar year shall not exceed \$10,000.

26 U.S.C. § 6713(a).

76. Section 7216 provides:

(a) General rule.—Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

26 U.S.C. § 7216(a).

77. **Louisiana Loan Broker Statutes.** There are two loan broker statutes in

Louisiana, La. Rev. Stat. § 9:3572.1, *et seq.*, and La. Rev. Stat. § 51:1910, *et seq.*

78. **La. Rev. Stat. § 9:3572.1, et seq.** A “loan broker” is “any person who, for compensation or the expectation of compensation, obtains or offers to obtain a consumer loan from a third party either for another person domiciled in Louisiana, or for another person wherever domiciled, if the broker is operating in Louisiana.” La. Rev. Stat. § 9:3572.1.

79. “An income tax preparer who is an authorized Internal Revenue Service e-file provider and whose only brokering activity is facilitating refund anticipation loans” is *not* considered a “loan broker.” La. Rev. Stat. § 9:3572.2(B)(9). A “refund anticipation loan” is a “loan whereby the creditor arranges to be repaid directly by the Internal Revenue Service from the anticipated proceeds of the debtor’s income tax refund.” *Id.*

80. “Unless a person has first been licensed by the commissioner [of financial institutions] . . . , he shall not engage in the business of loan brokering[.]” La. Rev. Stat. § 9:3572.3(A)(1). Loan brokers must obtain a surety bond or establish a trust account. *See* La. Rev. Stat. § 9:3572.8(A). Loan brokers are also required to provide certain disclosures to consumers. *See* La. Rev. Stat. § 9:3572.11.

81. “The contracting to receive any fee, interest, or other charge in violation of [the statute] shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.” La. Rev. Stat. §

9:3572.12(D).

82. **La. Rev. Stat. § 51:1910, et seq.** A “loan broker” is “any person, firm, or corporation who, in return for any consideration from any person, promises to: (i) [p]rocure for such person, or assist such person in procuring a loan from any third party, or (ii) [c]onsider whether or not it will make a loan to such person.” La. Rev. Stat. § 51:1910(1)(a).

83. As under the first loan broker statute, per La. Rev. Stat. § 51:1910(1)(b)(xi), “[a]ny income tax preparer who is an authorized Internal Revenue Service e-file provider and whose only brokering activity is facilitating refund anticipation loans” is *not* considered a “loan broker.” Again, a “refund anticipation loan” is a “loan whereby the creditor arranges to be repaid directly by the Internal Revenue Service from the anticipated proceeds of the debtor’s income tax refund.” La. Rev. Stat. § 51:1910(1)(b)(xi); La. Rev. Stat. § 9:3572.2(B)(9).

84. Again, loan brokers must obtain a surety bond or establish a trust account. *See* La. Rev. Stat. § 51:1911. “It shall be unlawful for any loan broker or its agent or employee to collect or attempt to collect any deposit or payment toward a fee where a valid bond . . . is not posted[.]” La. Rev. Stat. § 51:1911(E). And again, loan brokers are required to provide certain disclosures to consumers. *See* La. Rev. Stat. § 51:1914.

85. A violation of any of the provisions set forth in La. Rev. Stat. § 51:1910, *et seq.*, constitutes a violation of the LA Unfair Trade Practices Statute. *See* La. Rev. Stat. § 51:1915(A). In relevant part, the statute further provides:

B. If a loan broker uses any untrue or misleading statements in connection with a loan brokerage contract, *fails to fully comply with the requirements of this Chapter*, fails to comply with the terms of the contract or any obligation arising therefrom, or fails to make diligent effort to obtain or procure a loan on behalf of the prospective borrower, then, upon written notice to the broker, the prospective borrower may void the contract, and *shall be entitled to receive from the broker all sums paid to the broker, and recover any additional damages including attorney's fees.*

....

D. The remedies provided herein shall be in addition to any other remedies provided for by law.

La. Rev. Stat. § 51:1915 (emphasis added).

### **CLASS DEFINITIONS**

86. Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action on behalf of persons similarly situated. Plaintiffs propose 3 classes.

87. **Class A—Louisiana Residents To Whom Defendants Provided A Copy Of Their “Privacy Policy” And To Whom Defendants Provided Tax Preparation Services.** The first class consists of all Louisiana residents to whom Defendants provided a copy of their “Privacy Policy” and to whom Defendants provided tax preparation services during the 10-year period prior to the filing of the complaint.

88. **Class B—Louisiana Residents Whose Tax Return Information, Tax Return, Or Other Personal Or Financial Information Was Disclosed Without Consent.** The second class consists of all Louisiana residents who received tax preparation services through Defendants and whose tax return information, tax return, or other personal or financial information was disclosed, without consent, or mishandled

during the 10-year period prior to the filing of the complaint.

89. **Class C—Louisiana Residents Obtaining A Loan Product From Defendants.** The third class consists of all Louisiana residents who received a loan product through Defendants during the 10-year period prior to the filing of the complaint.

### **CLASS ISSUES**

90. There are questions of law and fact common to each class member, which predominate over issues peculiar to the class members. The principal common questions include:

- A. Whether Defendants violated 26 U.S.C. § 6103;
- B. Whether Defendants' improper tax return disclosures were willful, or the result of gross negligence, entitling the class members to punitive damages;
- C. Whether Defendants breached their contracts with the class members by disclosing the class members' confidential, financial and private information;
- D. Whether Defendants fraudulently induced the class members;
- E. Whether Defendants' contract breaches were in bad faith per La. Civ. Code art. 1997, entitling the class members to all foreseeable and unforeseeable damages related to the contract breaches;
- F. Whether Defendants' actions or inactions constitute negligence *per se*;
- G. Whether Defendants' actions constitute invasion of privacy;
- H. Whether Defendants violated the LA Security Breach Statute;

- I. Whether the class members are entitled to damages under the LA Security Breach Statute;
- J. Whether the class members are entitled to declaratory and/or injunctive relief;
- K. Whether Defendants are loan brokers and required to be licensed and bonded;
- L. Whether Defendants are required to provide certain loan-broker disclosures to consumers;
- M. Whether the fee agreements/contracts Defendants entered as unlicensed loan brokers are absolutely null; and
- N. Whether Defendants are obligated to return all fees, sums, interest, and other charges they received related to the loans they brokered, plus pay attorneys' fees.

91. Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal basis.

92. Plaintiffs will fairly and adequately protect the interest of all class members in the prosecution of this action and in the administration of all matters related to the claims asserted. Plaintiffs are similarly situated with, and have suffered similar injuries as, the members of the class they seek to represent. Plaintiffs have retained counsel experienced in handling class action suits involving unfair business practices and consumer law. Neither Plaintiffs, nor their counsel, have any antagonistic interest that

would inhibit vigorously pursuing this action.

93. A class action is superior to any other available methods for the fair and efficient adjudication of this controversy, particularly considering:

- A. The losses suffered by the class members are such that prosecution of individual actions is impractical or economically infeasible;
- B. The form of proof required is such that prosecution of individual actions is impractical or economically infeasible;
- C. In the absence of the class action device, Plaintiffs and the class members will be left without a remedy for the wrongful acts alleged, and Defendants will be unjustly enriched;
- D. The prosecution of separate lawsuits by individual class members would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for the Defendants, making concentration of the litigation concerning this matter in this Court desirable;
- E. The claims of the representative Plaintiffs are typical of the claims of the class; and
- F. No unusual difficulties are likely to be encountered in the management of this action as a class action.

94. The class is so numerous as to make it impractical to join all members of the class as plaintiffs. Upon information and belief, there are more than 100 persons in

each class.

**COUNT 1: UNAUTHORIZED DISCLOSURE OF TAX RETURNS**

95. Per the Court’s January 7, 2009 order, Count 1 was dismissed. *See* Docket No. 54. Plaintiff Pinero reserves any and all rights she has or may have to appeal the dismissal of her claims under this Count.

**COUNT 2: FRAUD**

96. On behalf of the putative class, Plaintiff Pinero hereby incorporates, as if written *in extenso*, ¶¶ 1 – 95 in support of this count.

97. As described above, Defendants induced Plaintiff Pinero and the class members to enter into a contract for tax preparation services based upon false representations made at the time of entering the contract regarding the companies’ privacy policy and practices and policies regarding privacy and maintaining the confidentiality of sensitive information and documents. Defendants knew their confidentiality representations were false when made.

98. “A contract is an agreement by two or more parties whereby obligations are created, modified, or extinguished.” La. Civ. Code art. 1906. “Consent [to a contract] may be vitiated by error, *fraud*, or duress.” La. Civ. Code art. 1948 (emphasis added). “Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.” La. Civ. Code art. 1953.

99. “The party against whom rescission is granted because of fraud is liable for

damages and attorney fees.” La. Civ. Code art. 1958.

100. As a result of Defendants’ fraudulent inducement, the class members are entitled to return of all monies paid to Defendants, plus damages to be proven at trial and attorneys’ fees.

### **COUNT 3: BREACH OF CONTRACT**

101. Per the Court’s January 7, 2009 order, Count 3 was dismissed. *See* Docket No. 54. Plaintiff Pinero reserves any and all rights she has or may have to appeal the dismissal of her claims under this Count.

### **COUNT 4: NEGLIGENCE**

102. Per the Court’s January 7, 2009 order, Count 4 was dismissed. *See* Docket No. 54. Plaintiff Pinero reserves any and all rights she has or may have to appeal the dismissal of her claims under this Count.

### **COUNT 5: INVASION OF PRIVACY**

103. On behalf of the putative class, Plaintiff Pinero hereby incorporates, as if written *in extenso*, ¶¶ 1 – 102 in support of this count.

104. In Louisiana, the courts recognize four categories of the invasion of privacy tort: (1) misappropriation of a person’s name or likeness; (2) intrusion upon physical solitude or seclusion; (3) placing a person in a false light before the public; and, (4) unreasonable public disclosure of private facts.

105. Defendants, through their employee(s)/agent(s), invaded the privacy of Plaintiff. Defendants are liable for the intentional actions of their employee(s)/agent(s),

which caused an unreasonable public disclosure of private facts. Further, such conduct was unreasonable and seriously interfered with Plaintiff and the class members' privacy interest. Defendants publicized information concerning Plaintiff and the class members' private life by disposing of their confidential tax returns and other related documents in a public dumpster, with free access to any citizen. Such improper disclosure is highly offensive to the reasonable person and the improperly disclosed documents are not of legitimate public concern.

106. As a result of Defendants' unlawful and tortious conduct, the class members have suffered, and will continue to suffer, damages in an amount to be determined at trial.

#### **COUNT 6: VIOLATION OF LA SECURITY BREACH STATUTE**

107. Per the Court's January 7, 2009 order, Count 6 was dismissed. *See* Docket No. 54. Plaintiff Pinero reserves any and all rights she has or may have to appeal the dismissal of her claims under this Count.

#### **COUNT 7: DECLARATORY JUDGMENT**

108. On behalf of the putative class, Plaintiff Pinero hereby incorporates, as if written *in extenso*, ¶¶ 1 – 107 in support of this count.

109. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, the class members seek and are entitled to a declaratory judgment that Defendants are: (a) in violation of federal and state law due to their improper disposal of the class members' tax returns; (b) required to be licensed and bonded as loan brokers under Louisiana law; and, (c) required to return all fees, sums, interest, and other charges received related to the loans they brokered. The

class members also seek and are entitled to a declaratory judgment that the fee agreements/contracts entered with Defendants as unlicensed loan brokers are an absolute nullity.

### **COUNT 8: INJUNCTION**

110. On behalf of the putative class, Plaintiff Pinero hereby incorporates, as if written *in extenso*, ¶¶ 1 – 109 in support of this count.

111. Pursuant to Fed. R. Civ. P. 65, the class members seek and are entitled to an injunction, ordering Defendants to: (a) cease making unauthorized disclosures of the class members' tax returns and confidential, financial and private information, and to comply with all federal and state laws, regulations, and rules regarding the proper maintenance and disposal of such documents; (b) cease fraudulently inducing potential customers by falsely promising that they maintain records in compliance with all federal and state laws and regulations; (c) cease brokering any further loan products until they obtain a loan broker license and bond; and, (d) return all fees, sums, interest, and other charges received related to the loan products they brokered.

### **COUNT 9: VIOLATION OF LA UNFAIR TRADE PRACTICES STATUTE** **(Brought by Plaintiff Pinero Individually)**

112. On behalf of herself only, Plaintiff Pinero hereby incorporates, as if written *in extenso*, ¶¶ 1 – 111 in support of this count.

113. La. Rev. Stat. § 51:1405 provides “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared

unlawful.”

114. In an attempt to convince Plaintiff Pinero to use the services of Jackson Hewitt, Defendants knowingly made false representations to Plaintiff regarding their confidentiality and security protocols. Also, through their employee(s)/agent(s), Defendants invaded Plaintiff’s privacy by improperly disclosing her highly confidential financial and private information and documents.

115. Defendants’ unfair and/or deceptive actions offend established public policy and are immoral, unethical, oppressive, unscrupulous, and substantially injurious to Plaintiff.

116. Pursuant to La. Rev. Stat. § 51:1409, Plaintiff Pinero has a private right of action against Defendants for the damages she has sustained due to Defendants’ unfair and/or deceptive trade practices.

**COUNT 10: VIOLATION OF LOAN BROKER STATUTE**  
**(LA. REV. STAT. § 51:1910, ET SEQ.)**

117. On behalf of the putative class, Plaintiff Pinero and Plaintiff Adkins hereby incorporate, as if written *in extenso*, ¶¶ 1 – 116 in support of this count.

118. Defendants are loan brokers per La. Rev. Stat. § 51:1910 because they, in return for consideration from customers, procure for customers loans from third parties. Further, Defendants are ***not*** exempt under the statute because their brokering activity is ***not*** limited to brokering or facilitating ***only*** RALs. See La. Rev. Stat. § 51:1910(1)(b)(xi).

119. Defendants have violated the statute by, *inter alia*, failing to: obtain a surety

bond or establish a trust account; and provide the required disclosures. *See* La. Rev. Stat. §§ 51:1911 and 1914. Further, Defendants violations are on-going and continuing because Defendants continue to violate the statute by failing to: obtain a surety bond or establish a trust account; and provide the required disclosures.

120. In violation of the statute, Defendants have brokered loans to Plaintiffs and many others. Defendants wrongfully received certain fees, sums, interest, and other charges from Plaintiffs and the class members for their loan brokering activity.

121. Pursuant to La. Rev. Stat. § 51:1915(A), Defendants' actions constitute a violation of the LA Unfair Trade Practices Statute, for which Plaintiffs and the class members have a private right of action against Defendants to recover all fees, sums, interest, and other charges Defendants received related to the loans they improperly brokered, plus damages and attorneys' fees.

122. Further, pursuant to La. Rev. Stat. § 51:1915(B), Plaintiffs and the class members have a private right of action against Defendants to recover all fees, sums, interest, and other charges Defendants received related to the loans they improperly brokered, plus damages and attorneys' fees.

#### **COUNT 11: RESCISSION OF UNLAWFUL FEE AGREEMENT/CONTRACT**

123. On behalf of the putative class, Plaintiff Pinero and Plaintiff Adkins hereby incorporate, as if written *in extenso*, ¶¶ 1 – 122 in support of this count.

124. La. Civ. Code art. 7 provides “[p]ersons may not by their juridical acts derogate from laws enacted for the protection of the public interest. Any act in

derogation of such laws is an absolute nullity.”

125. The Louisiana loan broker statutes (*i.e.*, La. Rev. Stat. § 9:3572.1, *et seq.*, and La. Rev. Stat. § 51:1910, *et seq.*) are prohibitory laws. These laws prohibit persons from engaging in unregulated loan brokering activity. As prohibitory laws, the licensing, bond, and disclosure requirements set forth in the loan broker statutes cannot be avoided by private agreement, or otherwise. Therefore, any fee agreement/contract with Defendants, which permits Defendants to receive a fee for brokering a loan even though Defendants are not in compliance with the loan broker statutes, is unlawful and subject to rescission as an absolutely null agreement/contract. *See, e.g.*, La. Rev. Stat. § 9:3572.12(D) (“The contracting to receive any fee, interest, or other charge in violation of [the statute] *shall* result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee.”) (emphasis added).

126. “An absolutely null contract, or a relatively null contract that has been declared null by the court, is deemed never to have existed. The parties must be restored to the situation that existed before the contract was made. If it is impossible or impracticable to make restoration in kind, it may be made through an award of damages.” La. Civ. Code art. 2033.

127. Pursuant to Article 2033, Defendants are obligated to return all fees, sums, interest, and charges they received from the class members for their loan brokering activity.

## **COUNT 12: PAYMENT OF A THING NOT OWED**

128. On behalf of the putative class, Plaintiff Pinero and Plaintiff Adkins hereby incorporate, as if written *in extenso*, ¶¶ 1 – 127 in support of this count.

129. La. Civ. Code art. 2299 provides “[a] person who has received a payment or a thing not owed to him is bound to restore it to the person from whom he received it.”

130. Defendants were prohibited from contracting to receive and from actually receiving any fee or sum for their loan brokering activity. *See* La. Rev. Stat. § 9:3572.12(D); La. Rev. Stat. § 51:1915(B). La. Rev. Stat. § 51:1911(E) provides “[i]t shall be unlawful for any loan broker or its agent or employee to collect or attempt to collect any deposit or payment toward a fee where a valid bond . . . is not posted[.]” In summary, Defendants are not owed any fee or sum for their loan brokering activity due to their non-compliance with the loan brokering laws.

131. Defendants received certain fees, sums, interest, and other charges they are not owed relating to their loan brokering activity. Pursuant to Article 2299, Defendants are obligated to return all such fees, sums, interest, and charges to the class members.

## **DEMAND FOR TRIAL BY JURY**

132. On behalf of themselves and the putative class, Plaintiffs demand a trial by jury as to all issues.

WHEREFORE, the premises considered, Plaintiffs, on behalf of themselves, and all others similarly situated, respectfully request that Defendants appear and respond as appropriate to this Fourth Amended Class Action Complaint, and that judgment be rendered

against Defendants, awarding Plaintiffs and the class members all damages to which they are entitled, including compensatory, exemplary, special, and punitive damages; all costs; interest from the date of judicial demand; attorneys' fees; and, any other relief, including declaratory and injunctive relief, to which they are entitled.

Respectfully Submitted,

/s/ Bryan C. Shartle

David Israel (LSBA No. 7174) (T.A.)

Bryan C. Shartle (LSBA No. 27640)

Justin H. Homes (LSBA No. 24460)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record  by ECF;  by email;  by hand;  by fax;  by FedEx;  by placing a copy of same in the U.S. Mail, postage prepaid this 24th day of August 2009.

/s/ Bryan C. Shartle

Bryan C. Shartle

Attorneys for Plaintiff,

Vicki L. Pinero