

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

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VICKI L. PINERO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

JACKSON HEWITT TAX SERVICE INC.;
JACKSON HEWITT INC.; and, CRESCENT
CITY TAX SERVICE, INC. d/b/a JACKSON
HEWITT TAX SERVICE,

Defendants.

CASE NO.: 08-353 RECEIVED

SECTION R

JUDGE
SARAH VANCE

MAGISTRATE JUDGE
DANIEL E. KNOWLES

**JACKSON HEWITT TAX SERVICE INC.'S AND JACKSON HEWITT INC.'S
COMBINED RESPONSE TO PLAINTIFF VICKI L. PINERO'S
FIFTH SET OF DISCOVERY REQUESTS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the Local Rules for the United States District Court for the Eastern District of Louisiana, Defendants Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. (collectively "Jackson Hewitt") hereby respond to Plaintiff Vicki L. Pinero's Fifth Set of Discovery (the "Requests"), as set forth below.¹

GENERAL OBJECTIONS

1. Jackson Hewitt's responses to any propounded discovery in this litigation may involve information of a confidential or proprietary nature, such that information must be produced pursuant to an appropriate stipulated confidentiality and protective order. The responses should be treated as confidential and not be shared with any third party or used in

¹ As the Fifth Set of Discovery served upon Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. appear to be almost identical, except with respect to Request for Production No. 2 which was only propounded on Jackson Hewitt Inc.; Jackson Hewitt is providing this combined response.

Exhibit

1

other litigation even prior to the entry of such an order. By responding to these Requests, Jackson Hewitt reserves and does not waive any objections to the admission of any documents at trial, or to the admission of the information contained therein, on grounds of privilege, relevance, hearsay, or other grounds of objection.

2. Jackson Hewitt objects to Plaintiff's "Instructions" and "Definitions" accompanying her Requests, to the extent they require Jackson Hewitt to respond to the Requests in a manner which deviates from the Federal Rules of Civil Procedure, and will only respond as those Rules require. Furthermore, Jackson Hewitt objects to those Instructions and Definitions which do not appear to apply to these Requests, as they define terms which are not used within the Requests.

3. Jackson Hewitt objects to these Requests to the extent they seek the production of documents or information subject to the attorney-client privilege, attorney work-product immunity, joint defense privilege, any confidentiality agreement or any other applicable confidentiality restriction, doctrine, privilege or immunity.

4. Jackson Hewitt objects to these Requests to the extent that they ask for "all documents" related to a particular request. A production of "all documents" related to a particular request would be unduly burdensome.

5. Jackson Hewitt objects to these Requests, Definitions, and Instructions to the extent they call for information readily available in the public domain or public record (including but not limited to published articles, court decisions, or public court filings), within Plaintiff's own files or knowledge, or otherwise accessible to Plaintiff. Jackson Hewitt's provision of such

information to Plaintiff would be unduly burdensome and would cause Jackson Hewitt to incur unnecessary expense.

6. Jackson Hewitt objects to these Requests, Definitions, and Instructions as overbroad and unduly burdensome to the extent that they would require Jackson Hewitt to incur substantial costs that are not justified by the likelihood of finding some admissible relevant evidence in the records that Jackson Hewitt may have to search to prepare a response.

7. Jackson Hewitt continues to search for and recover information that may be responsive to these Requests. Jackson Hewitt reserves the right to amend or further supplement its response to these Requests, pursuant to Federal Rule of Civil Procedure 26(e), should such amendments appear appropriate or necessary, and will seasonably supplement in accordance with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Eastern District of Louisiana.

8. The definitions of "Joint Marketing Agreement," "Cross Marketing Agreement," "Program Agreement," and "Technology Agreement" used in these Requests are further improper in that they are overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. Jackson Hewitt refers Plaintiff to the Motion for a Protective order, which is being filed concurrently, with regard to these and other improper Requests.

9. Jackson Hewitt objects to these Requests to the extent that they are compound in nature.

10. These General Objections shall be incorporated into the following individual response as if fully set forth therein.

RESPONSES TO INTERROGATORIES

INTERROGATORY NUMBER 1:

Please identify the person(s) most knowledgeable about your marketing practices, policies, procedures, strategies, and goals.

RESPONSE TO INTERROGATORY NO. 1:

Jackson Hewitt objects to this Interrogatory for all of the reasons listed in the General Objections, and in the Motion for a Protective Order which is being filed concurrently. Furthermore, Jackson Hewitt objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and seeks irrelevant information, including information that is beyond the substantive, temporal, and geographic scope of this case, and therefore is not reasonably calculated to lead to admissible evidence. Jackson Hewitt further objects to this Interrogatory to the extent that it is vague, and therefore overbroad and unduly burdensome, in its reference to "strategies" and "goals."

INTERROGATORY NUMBER 2:

Please state your policy for each year from 1998 to the present for requiring JH Franchisees to retain original or "hard copies" of the tax returns such franchisees filed for their JH Customers.

RESPONSE TO INTERROGATORY NO. 2:

Jackson Hewitt objects to this Interrogatory for all of the reasons listed in the General Objections. Furthermore, Jackson Hewitt objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and seeks irrelevant information including information that is beyond the temporal and geographic scope of this case. However, subject to the objections above, and the entry of an appropriate confidentiality and protective order, and reserving all

rights to supplement its response as the case progresses, Jackson Hewitt responds that it is prepared to make available relevant, non-privileged documents, to the extent any exist, in its possession, custody or control, sufficient to reflect the "policies" relevant to Plaintiff's claim, in response to Interrogatory No. 2, and refers Plaintiff thereto.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NUMBER 1:

Please produce a copy of all insurance policies issued to [Jackson Hewitt] or any of [Jackson Hewitt]'s officers or directors, and any policies issued to any other person or entity naming [Jackson Hewitt] and/or any [Jackson Hewitt] employee, officer, or director as an additional insured or named insured, and any policies that may provide coverage for the act or omissions alleged in the Complaint.

RESPONSE:

Jackson Hewitt objects to this Request for Production for all of the reasons listed in the General Objections. Furthermore, Jackson Hewitt objects to this Request for Production on the grounds that it is overbroad, unduly burdensome, and seeks irrelevant information, including information that is beyond the substantive, temporal, and geographic scope of this case, including but not limited to its reference to "officers or directors," and "any employee, officer or director." However, subject to the objections above, and the entry of an appropriate confidentiality and protective order, and reserving all rights to supplement its response as the case progresses, Jackson Hewitt responds that it is prepared to make available relevant, non-privileged documents, to the extent any exist, in its possession, custody or control, sufficient to satisfy Rule 26(a)(1)(A)(iv).

REQUEST FOR PRODUCTION NUMBER 2: *(Only propounded on Jackson Hewitt, Inc.)*

Please produce a copy of your franchise agreement with CCTSI, including your current agreement and all prior agreements and amendments and supplements thereto.

RESPONSE:

Jackson Hewitt objects to this Request for Production for all of the reasons listed in the General Objections. Furthermore, Jackson Hewitt objects to this Request for Production on the grounds that it is overbroad, unduly burdensome, and seeks irrelevant information, including information that is beyond the geographic and temporal scope of this case. However, subject to the objections above, and the entry of an appropriate confidentiality and protective order, and reserving all rights to supplement its response as the case progresses, Jackson Hewitt responds that it is prepared to make available relevant, non-privileged documents, to the extent any exist, in its possession, custody or control, sufficient to reflect a response to the above request for production.

REQUEST FOR PRODUCTION NUMBER 3: *(No. 2 with regard to Jackson Hewitt Tax Service Inc.)*

Please produce a copy of all Joint Marketing Agreements, Cross Marketing Agreements, Program Agreements, and Technology Agreements effective any time during May 22, 1998 to the present, including all amendments, supplements, addendums, and modifications to such agreements.

RESPONSE:

Jackson Hewitt objects to this Request for all of the reasons listed in the General Objections and in the Motion for a Protective Order which is being filed concurrently. Jackson Hewitt objects to the usage of the terms "Joint Marketing Agreements," "Cross Marketing Agreements," "Program Agreements," and "Technology Agreements" for the reason that, as

defined by the Requests, those terms are overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. Furthermore, Jackson Hewitt objects to this Request as overbroad, unduly burdensome, and seeking irrelevant information, to the extent that it demands information that is beyond the temporal and geographic scope of this case, and therefore is not reasonably calculated to lead to admissible evidence. Jackson Hewitt further objects to this Request for Production on the grounds that it is not properly directed at issues of class discovery, and therefore contradicts the directive in District Judge Vance's order directing that class issues be resolved prior to merits issues.

REQUEST FOR PRODUCTION NUMBER 4: *(No. 3 with regard to Jackson Hewitt Tax Service Inc.)*

Please produce a copy of all documents explaining, describing, or summarizing any Joint Marketing Agreements, Cross Marketing Agreements, Program Agreements, and/or Technology Agreements effective any time during May 22, 1998 to the present. Please include in your response any documents explaining, describing, or summarizing the implementation of any Joint Marketing Agreement, Cross Marketing Agreement, Program Agreement, and/or Technology Agreement effective any time during May 22, 1998 to the present.

RESPONSE:

Jackson Hewitt objects to this Request for all of the reasons listed in the General Objections and in the Motion for a Protective Order which is being filed concurrently. Jackson Hewitt objects to the usage of the terms "Joint Marketing Agreements," "Cross Marketing Agreements," "Program Agreements," and "Technology Agreements" for the reason that, as defined by the Requests, those terms are overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. Jackson Hewitt further objects to this Request to the extent that it is vague, and therefore overbroad and unduly burdensome, in its reference to

“strategies” and “goals.” Furthermore, Jackson Hewitt objects to this Request as overbroad, unduly burdensome, and seeking irrelevant information, to the extent that it demands information that is beyond the temporal and geographic scope of this case, and therefore is not reasonably calculated to lead to admissible evidence. Jackson Hewitt further objects to this Request for Production on the grounds that it is not properly directed at issues of class discovery, and therefore contradicts the directive in District Judge Vance’s order directing that class issues be resolved prior to merits issues.

REQUEST FOR PRODUCTION NUMBER 5: *(No. 4 with regard to Jackson Hewitt Tax Service Inc.)*

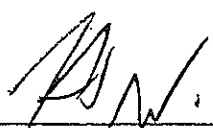
Please produce a copy of all documents setting forth the document retention policies you mandated to your JH Franchisees for each year from 1998 to the present.

RESPONSE:

Jackson Hewitt objects to this Request for all of the reasons listed in the General Objections. Furthermore, Jackson Hewitt objects to this Request for Production on the grounds that it is overbroad, unduly burdensome, and seeks irrelevant information, including information that is beyond the temporal and geographic scope of this case. Jackson Hewitt further objects to this Interrogatory to the extent that it is vague, and therefore overbroad and unduly burdensome, in its reference to “mandated.” However, subject to the objections above, and the entry of an appropriate confidentiality and protective order, and reserving all rights to supplement its response as the case progresses, Jackson Hewitt responds that it is prepared to make available relevant, non-privileged documents, to the extent any exist, in its possession, custody or control, sufficient to reflect Jackson Hewitt’s “policies” in response to the above request for production.

Dated: August 24, 2009

Respectfully submitted,



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Certificate of Service

I do hereby certify that on August 24, 2009, I mailed the foregoing to all counsel at the following:


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