

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

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.: 08-3535

SECTION R

**JUDGE
SARAH VANCE**

**MAGISTRATE JUDGE
DANIEL E. KNOWLES**

**JACKSON HEWITT TAX SERVICE INC.'S AND JACKSON HEWITT INC.'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTIONS TO COMPEL
PLAINTIFF'S DEPOSITION, OR IN THE ALTERNATIVE, STAY DISCOVERY**

Pursuant to Federal Rules of Civil Procedure 26 and 30, and Local Rule 37, Defendants Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. (collectively "Jackson Hewitt"), through their undersigned counsel, submit this memorandum of law in support of their Motion to Compel or in the alternative, stay discovery.

Despite pressing forward with her own irrelevant, overbroad, and unduly burdensome requests for discovery (*see, e.g.*, Jackson Hewitt's Memorandum in Support of its Motion for a Protective Order), Plaintiff is attempting to improperly delay her own deposition.

As set forth in the accompanying Rule 37.1 Certificate, Jackson Hewitt properly served Plaintiff with a notice of deposition almost three weeks ago, but when it sought to confirm Plaintiff's deposition, Plaintiff took the position that the deposition must await resolution of her pending Motion for Leave to File her *Fourth* Amended Complaint, which Plaintiff filed *after*

Jackson Hewitt served its deposition notice. *See* Rule 37.1 Certificate, filed concurrently with this Motion.

Not until four business days before the deposition was scheduled to be held, and only after Jackson Hewitt contacted Plaintiff to confirm the deposition, did Plaintiff inform Jackson Hewitt that she did not intend to appear. *Id.* Plaintiff also rejected several attempts by Jackson Hewitt to reschedule the deposition to a date later this week, so as to address Plaintiff's claims that the deposition purportedly created a scheduling conflict with the hearing (despite the multiple counsel who are representing Plaintiff and could have defended Plaintiff during her deposition). *Id.* Plaintiff neither suggested an alternative date for the deposition, nor filed a motion seeking to stay discovery, but rather simply took the position that the scheduling of the deposition be tabled pending the September 9, 2009 hearing. *Id.* Subsequently, Plaintiff's counsel stated that Plaintiff's deposition should be stayed pending resolution of the motions before this Court but repeatedly dodged Jackson Hewitt's attempts to confirm Plaintiff's position. Significantly, Plaintiff has failed to respond with her availability to the numerous alternative dates proposed by Jackson Hewitt.

Plaintiff's attempts to stay her own discovery obligations, while pressing ahead with her own irrelevant, overbroad, and unduly burdensome discovery and paradoxically accusing Jackson Hewitt of delay, contradicts the Federal Rules of Civil Procedure. Indeed, just yesterday Plaintiff filed a motion to compel against Jackson Hewitt, notwithstanding her refusal to appear at her deposition. Plaintiff should be required to submit to a deposition without delay, and accordingly Jackson Hewitt requests an order directing that Plaintiff submit to a deposition prior to September 11, 2009 to avoid further delay and the necessity of Jackson Hewitt traveling back to New Orleans at a later date. Alternatively, Jackson Hewitt requests a stay of discovery

pending resolution of Plaintiff's Motion for Leave to File a Fourth Amended Complaint and Jackson Hewitt's Motion for Protective Order.

WHEREFORE, for the reasons set forth above, Jackson Hewitt requests that the Court issue the attached proposed Order compelling Plaintiff to submit to a deposition, or alternatively, to stay discovery until the resolution of Plaintiff's pending Motion for Leave to File a Fourth Amended Complaint and Jackson Hewitt's pending Motion for Protective Order.

Date: September 9, 2009

By Attorneys:

/s/ **Veronica D. Jackson**

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