

**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**

**RULE 12(b)(6) MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. (collectively "Jackson Hewitt"), pursuant to Fed. Rule of Civ. Proc. 12(b)(6), move to dismiss all of the claims asserted in Plaintiff's Second Amended Complaint.

Rule 12(b)(6) Motion to Dismiss

As discussed more fully in Jackson Hewitt's Memorandum of Points and Authorities, Plaintiff's claims should be dismissed as a matter of law because:

1. Plaintiff fails to plead the essential elements of her fraudulent inducement and Louisiana Unfair Trade Practices Act ("LUTPA") claims with particularity, and thus fails to cure the pleading deficiencies that this Court identified in its January 7, 2009 ruling and instead relies on "group pleading" and vague conclusory statements, all in contradiction of Rule 9(b).
2. Plaintiff fails to state a claim for invasion of privacy under Louisiana law because

the complaint does not allege intentional conduct, but rather only negligence.

For these reasons, Jackson Hewitt prays that its Motion be granted, and the Plaintiff's Complaint be dismissed or, in the alternative, that the class action allegations be stricken.

Dated: February 9, 2009

By Attorneys:

/s/Veronica D. Gray
Donna L. Wilson (Admitted *pro hac vice*)
Andrew S. Wein (Admitted *pro hac vice*)
Veronica D. Gray (Admitted *pro hac vice*)
KELLEY DRYE & WARREN LLP
3050 K Street, NW, Suite 400
Washington, DC 20007
Telephone: (202) 342-8400

AND

KEAN, MILLER, HAWTHORNE, D'ARMOND,
McCOWAN & JARMAN, L.L.P.
Glenn M. Farnet (#20185)
Gina D. Banks (#27440)
One American Place, 18th Floor
Post Office Box 3513
Baton Rouge, Louisiana 70825
Telephone: (225) 387-0999

Attorneys for Jackson Hewitt Tax Service Inc., and Jackson
Hewitt Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of February, 2009, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system and U.S. Mail to counsel of record for Plaintiffs. A copy of this filing will also be sent via electronic mail and U.S. mail to counsel for Crescent City Tax Service, Inc.

/s/Veronica D. Gray