

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, individually and on	)	Civil Action No. 08-03535
behalf of all others similarly situated,	)	
	)	Sec. R
Plaintiffs,	)	JUDGE SARAH S. VANCE
	)	
v.	)	Mag. 3
	)	MAGISTRATE JUDGE DANIEL E.
JACKSON HEWITT TAX SERVICE	)	KNOWLES, III
INC.; JACKSON HEWITT INC.; and,	)	
CRESCENT CITY TAX SERVICE,	)	
INC. d/b/a JACKSON HEWITT TAX	)	
SERVICE,	)	
	)	
Defendants.	)	

**MEMORANDUM IN OPPOSITION TO MOTION TO STAY DISCOVERY**

Plaintiff, Vicki L. Pinero, submits this memorandum in opposition to the Motion to Stay Discovery filed by defendants Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. (jointly referred to as “Jackson Hewitt”).

**I. INTRODUCTION**

Jackson Hewitt is going to great extremes to stop discovery and conceal its wrongdoing. In flagrant disregard of this Court’s January 7, 2009 order, Jackson Hewitt is

refusing to permit any discovery. In her January 7, 2009 order, Chief Judge Sarah S. Vance ordered as follows:

The parties are ordered to present the Court a schedule for refileing the motion for class certification which incorporates a period for discovery on the class issues.

Docket No. 54, at p. 29.

In addition to the Court's January 7, 2009 order, on December 9, 2008, the parties *stipulated* that discovery would be due 30 days after the Court's ruling on Jackson Hewitt's motion to dismiss. *See* Exhibit A, 12/09/08 Stipulation. Yet Jackson Hewitt ignores the Court's order and its stipulation. The Court should deny Jackson Hewitt's Motion to Stay Discovery.

## **II. PROCEDURAL HISTORY**

### **A. Original and First Amended Class Action Complaints**

On May 22, 2008, plaintiff filed her original Class Action Complaint. *See* Docket No. 1. On July 15, 2008, plaintiff filed her First Amended Class Action Complaint. *See* Docket No. 9. In her amended complaint, plaintiff asserted 9 Counts. *Id.* Specifically, plaintiff alleged: unauthorized disclosure of tax returns per 26 U.S.C. §§ 6103 and 7431 (Count 1); fraud (Count 2); breach of contract (Count 3); negligence (Count 4); invasion of privacy (Count 5); violation of the Louisiana Database Security Breach Notification Law ("LA Security Breach Statute"), La. Rev. Stat. § 51:3071, *et seq.* (Count 6); declaratory judgment (Count 7); injunction (Count 8); and, violation of the Louisiana Unfair Trade Practices and

Consumer Protection Law (“LA Unfair Trade Practices Statute”), La. Rev. Stat. § 51:1401, *et seq.* (Count 9). *Id.*

**B. Jackson Hewitt’s Motion to Dismiss and Stipulation Regarding Discovery**

On August 4, 2008, Jackson Hewitt filed a motion to dismiss. *See* Docket No. 20.

On November 18, 2008, plaintiff served discovery on Jackson Hewitt and others. *See* Exhibit B, 11/18/08 Shartle Ltr.

In an effort to cooperate with Jackson Hewitt, on December 9, 2008, plaintiff entered into a stipulation with Jackson Hewitt, through its counsel Andrew S. Wein. *See* Exhibit A, 12/09/08 Stipulation. Per the stipulation, Jackson Hewitt agreed “[d]iscovery responses will not be due until 30 days after the Court rules on the pending Motions to Dismiss[.]” *Id.*

**C. The Court’s January 7, 2009 Order**

On January 7, 2009, the Court granted and denied in part Jackson Hewitt’s motion to dismiss. *See* Docket No. 54. The Court:

- Dismissed Count 1 for unauthorized disclosure of tax returns per 26 U.S.C. §§ 6103 and 7431. *Id.* at pp. 25-26.<sup>1</sup>
- Dismissed Count 3 for breach of contract. *Id.* at pp. 12-16.
- Dismissed Count 4 for negligence. *Id.* at pp. 8-9.
- Dismissed Count 6 for violation of the LA Security Breach Statute. *Id.* at pp. 10-11.

The Court also granted plaintiff leave to amend her complaint with respect to Count 2

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<sup>1</sup> On February 10, 2009, plaintiff filed a Motion for Reconsideration, seeking reconsideration of the Court’s dismissal of this claim. *See* Docket No. 66. The motion is set for hearing on March 4, 2009. *Id.*

for fraudulent inducement under La. Civ. Code art. 1953 and Count 9 for violation of the LA Unfair Trade Practices Statute to allege “how” or “why” defendants’ statements were misleading and to plead fraud with “particularity” per Fed. R. Civ. P. 9(b). *Id.* at pp. 19-22.

The Court denied Jackson Hewitt’s motion to dismiss Count 5 for invasion of privacy; Count 7 for declaratory judgment; and, Count 8 for injunction. *Id.* As noted, the Court also ordered the parties to file a proposed scheduling order, including “a period for discovery on the class issues.” *Id.* at p. 29.

#### **D. Subsequent Activity**

In compliance with the Court’s January 7, 2009 order, on January 27, 2009, plaintiff filed her Second Amended Class Action Complaint. *See* Docket No. 57.

On February 9, 2009, Jackson Hewitt filed its Motion to Stay Discovery. *See* Docket No. 58. That same day Jackson Hewitt filed its motion to dismiss plaintiff’s Second Amended Class Action Complaint. *See* Docket No. 59.

### **III. ARGUMENT**

What Jackson Hewitt wants is not efficiency, but instead delay. Jackson Hewitt wants to stall and once again make arguments dismissed by this Court. The Court has ordered the “parties,” *not* just the plaintiff, to submit a scheduling order that “incorporates a period for discovery on the class issues.” Docket No. 54, at p. 29. Jackson Hewitt is refusing to permit any discovery and is thus unwilling to submit the required order. Plaintiff is prepared to submit the order. It is Jackson Hewitt, not plaintiff, that is in violation of the Court’s order.

Jackson Hewitt misleads the Court by arguing the Court ordered that class discovery take place before merits discovery. The Court ordered nothing of the sort. Again, the Court simply ordered the “parties” to submit a scheduling order that “incorporates a period for discovery on the class issues”—something Jackson Hewitt is unwilling to do. Docket No. 54, at p. 29.

The Court should deny Jackson Hewitt’s Motion to Stay Discovery. The Court has ruled that discovery is appropriate and Jackson Hewitt has stipulated to permitting discovery.

#### **IV. CONCLUSION**

Considering the foregoing, the Court should deny Jackson Hewitt’s Motion to Stay Discovery.

Respectfully Submitted,

/s/ Bryan C. Shartle

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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 10th day of February 2009.

/s/ Bryan C. Shartle

Bryan C. Shartle

Attorneys for Plaintiff and the Class Members,  
Vicki L. Pinero