

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.)	

THIRD AMENDED CLASS ACTION COMPLAINT

NOW INTO COURT, through undersigned counsel, comes plaintiff, Vicki L. Pinero (“Plaintiff”), who, on behalf of herself and all others similarly situated, files this Third 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”).¹

¹ Plaintiff is not re-filing the exhibits previously filed, although such exhibits are expressly incorporated herein. All new exhibits are attached hereto and correspond to previously-filed and labeled exhibits.

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.

2. 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.

3. Upon information and belief, Defendants are *not* licensed as Louisiana loan brokers per La. Rev. Stat. § 9:3572.1, *et seq.* (the "LA Loan Broker Statute"). In light of this fact, Defendants are obligated to return all fees, interest, and other charges they received related to the loans they improperly brokered, plus damages in the amount of twice the total fees received. *See* La. Rev. Stat. § 9:3572.12(D).

4. Further, 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. This case partly relates to how Defendants violated that trust.

5. Defendants represent 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. This is simply not true.

6. 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 do *not* maintain proper confidentiality and security of the highly confidential information and documents entrusted to them.

7. This action seeks class-wide redress for Defendants’ failure to be properly licensed as loan brokers under Louisiana law and for Defendants’ flagrant disregard of the personal and financial welfare and privacy of their customers. Defendants’ actions violate numerous federal and state laws, regulations, and rules. Plaintiff and the putative class seek monetary, declaratory, and injunction relief to remedy Defendants’ unlawful practices.

PARTIES

8. Plaintiff is a Louisiana citizen, residing in Metairie, Louisiana.

9. Upon information and belief, Defendants are authorized IRS e-filers.

10. 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.

11. 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.

12. 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. Upon information and belief, Max M. Hirsch, Anne Hirsch, and Barbara Hirsch Troncoso are the owners and operators of CCTSI.

JURISDICTION AND VENUE

13. 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 Plaintiff 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.

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

BACKGROUND

15. **Loan Brokering.** In addition to providing tax preparation services, Defendants have brokered and continue to broker various loan 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.

16. 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.

17. **RALs.** A RAL is generally a loan made by a third party financial institution to a customer and secured by a customer's anticipated federal tax refund.

18. 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.

Exhibit T, JHTSI 2006 10-K, at p. 4.

19. **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.

20. 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 as the customer applies for such a loan.

21. 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.

Exhibit U, HSBC 2006 Program Agreement, at p. 3.

22. **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.

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

HELP[®] Loan

The Holiday Express Loan Program[®] 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.*

Exhibit V, HELP Loan Summary.

24. **Flex Loans.** Upon information and belief, 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.

25. 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

Exhibit W, Flex Loan Summary.

26. **iPower Loans**. Upon information and belief, 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.

27. 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* Exhibit X, SBB&T 2006 Program Agreement, at pp. 1-4; Exhibit U, HSBC 2006 Program Agreement, at pp. 2-5; Exhibit Y, 2006 HELP Advertising Materials; Exhibit Z, SBB&T 2006 HELP Loan Agreement.

28. In its 2007 10-K, JHTSI stated Defendants would stop brokering its Pre-Season Loan Products. *See* Exhibit AA, JHTSI 2007 10-K, at p. 4. JHTSI stated:

Over the past several tax seasons, our financial product providers have provided customers with various loan products, both during the pre-season (defined as November through early January) and tax season. In April 2007, we announced that we supported our financial product partners' decisions to discontinue the pre-season loan products that were available in connection with the 2007 tax filing season and that we intended to discontinue the availability of such products. We expect our financial product providers to

continue to offer instant loan products in connection with RALs during the tax season.

Id.

29. On September 21, 2007, JHI entered into an “Amended and Restated Program Agreement” with SBB&T. *See* Exhibit BB, SBB&T 2007 Program Agreement. On October 8, 2007, JHI entered into an “Amended and Restated Program Agreement” with HSBC. *See* Exhibit CC, HSBC 2007 Program Agreement. On September 19, 2007, JHI entered into its first “Program Agreement” with Republic. *See* Exhibit DD, Republic 2007 Program Agreement. Upon information and belief, none of these agreements provide for the facilitation of HELP Loans, but may provide for the facilitation of Pre-File Money Now Loans or similar “pay stub” loans, or Flex Loans.

30. Despite the pronouncements made by JHI in its 2007 10-K regarding the company supporting the decision to discontinue the questionable Pre-Season Loan Products, 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* Exhibit EE, MetaBank 2008 Amended and Restated Agreement; Exhibit FF, 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.

31. Under Louisiana law, Defendants are *not* required to be licensed as loan brokers, provided their “*only* brokering activity is facilitating refund anticipation loans.” La. Rev. Stat. § 9:3572.2(B)(9) (emphasis added). The LA Loan Broker Statute defines 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.” *Id.* (emphasis added).

32. Under Louisiana law, Defendants are required to be licensed as loan brokers for facilitating at least the Pre-File Money Now Loans; Holiday or HELP Loans; Flex Loans; and, iPower Loans. None of these loans are “refund anticipation loans” under La. Rev. Stat. § 9:3572.2(B)(9) 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.

33. Defendants are well aware of their obligation to be licensed as loan brokers for facilitating non-RAL loans. 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.” Exhibit T, 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* Exhibit AA, JHTSI 2007 10-K, at pp. 8 & 11;

Exhibit GG, JHTSI 2008 10-K, at pp. 8 & 11.

34. Defendants charge and receive various fees, interest, and charges for brokering Pre-File Money Now Loans, Holiday or HELP Loans, Flex Loans, iPower Loans, and other non-RAL loans subject to the LA Loan Broker Statute. For example, upon information and belief, Defendants charge a \$62 fee for a \$550 Pre-File Money Now Loan, which represents 3% of the total loan amount plus \$45. In addition, customers receiving a Pre-File Money Now Loan are also obligated to pay a non-refundable \$50 “tax preparation fee.”

35. Similarly, upon information and belief, Defendants charge a \$50 fee for a Holiday or HELP Loan. In addition, customers receiving a Holiday or HELP Loan are also obligated to pay a non-refundable \$25 “year-end tax planner fee.” Pursuant to La. Rev. Stat. § 9:3572.12(D), an unlicensed loan broker is subject to forfeiture of all fees, interest, and charges received, plus damages in the amount of twice the total fee received.

36. **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.

37. “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.

38. 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.

39. 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.

40. 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.

41. 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[.]”).

42. 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.”

43. 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.*

44. 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.

45. 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.

FACTS

46. **Improper Loan Brokering**. On or about January 6, 2006, Plaintiff visited the Jackson Hewitt office located at 6601 Veterans Blvd., Metairie, LA 70003 and

obtained a Pre-File Money Now Loan. *See* Exhibit HH, Pinero Pre-File Money Now Loan.

47. In addition to Plaintiff, many others obtained a Pre-File Money Now Loan through Defendants. *See* Exhibit II, Riley Pre-File Money Now Loan.

48. Plaintiff 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.

Exhibit HH, Pinero Pre-File Money Now Loan.

49. 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.

50. Plaintiff signed the Agreement and received a \$438 check, with her \$550 Pre-File Money Now Loan being due on February 17, 2006.

51. None of the non-RAL loan products, including the Pre-File Money Now Loan, are set up to be paid directly by the IRS.

52. **Fraudulent Representations.** On or about January 31, 2006, Plaintiff returned to 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.

53. Plaintiff 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 also provided her W-2s.

54. During her visit, Plaintiff 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.

55. 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.

56. Defendants' confidentiality representations were made to fraudulently induce customers to obtain tax preparation services through Jackson Hewitt. Contrary to their representations, Defendants have a corporate culture of disregard for confidential, private and financial customer information and documents. From the moment of receipt through disposal, Defendants' actual practices bare no resemblance to their represented practices.

57. Contrary to their representations, Defendants do *not* properly monitor their employees to ensure necessary confidentiality and/or security protocols are followed. Further, upon information and belief, Defendants' employees are *not* properly disciplined or reprimanded for violations of confidentiality and/or security protocols. It is also not uncommon for Defendants' employees to be suspected of committing fraud or a crime. *See* Exhibit R, *in globo*, Police Reports.

58. Contrary to their representations, Defendants do *not* store confidential customer information and documents in safe or secured locales. Defendants' buildings, warehouses, and offices are *not* properly monitored by alarm or otherwise. *Id.* Ingress and egress into these spaces are *not* properly limited.

59. Contrary to their representations, Defendants do *not* store confidential customer documents in locked or secured file cabinets or other secure locations. Defendants do *not* maintain a proper chain-of-custody of such documents, which documents move in and out of Defendants' spaces freely. Defendants do *not* prohibit employees from taking confidential customer documents home, or to other non-secure private and public places.

Defendants do *not* maintain a proper log of where such documents are located or maintained.

60. Contrary to their representations, Defendants do *not* properly dispose of confidential customer documents. Rather than burn, shred, or pulverize such documents, Defendants dispose of such documents in a manner inconsistent with applicable federal laws, regulations, and standards. Simply put, Defendants are reckless with the keys to their customers' financial vaults.

61. When hiring Defendants to complete her 2005 tax returns, Defendants told Plaintiff, 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.

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

63. Contrary to their representations, Defendants threw Plaintiff'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 as promised.

64. The documents were found by Wilhemina Walker. In addition to Plaintiff'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.

65. After discovering the documents, Ms. Walker contacted WDSU, Channel 6, which contacted Plaintiff and others to advise of the discovery. Richard Angelico, of WDSU 6 on Your Side, returned to Plaintiff 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.

66. 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.

67. 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.

68. 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).

69. As a result of Defendants' unlawful actions or inactions, Plaintiff 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 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 seeks and is entitled to reimbursement of all fees paid to Defendants.

APPLICABLE LAW

70. **Loan Brokers.** 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.

71. “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.* (emphasis added).

72. “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). “A loan made in violation of [the statute] shall not be invalid solely for that reason.” La. Rev. Stat. § 9:3572.12(A). However, “[t]he 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).

73. **Confidentiality and Privacy.** 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.*

74. 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).

75. 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.

76. 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.

77. 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).

78. 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).

CLASS DEFINITION

79. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this action on behalf of persons similarly situated. Plaintiff proposes 2 classes.

80. **Class A—Louisiana Residents Obtaining Non-RAL Loan Products From Defendants.** The first class consists of all Louisiana residents who received a non-RAL loan product through Defendants during the 10-year period prior to the filing of the complaint.

81. **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.

CLASS ISSUES

82. 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 violated the LA Security Breach Statute;
- H. Whether the class members are entitled to damages under the LA Security Breach Statute;
- I. Whether the class members are entitled to declaratory and/or injunctive relief;
- J. Whether Defendants are loan brokers and required to be licensed for facilitating non-RALs under the LA Loan Broker Statute; and
- K. Whether Defendants are obligated to return all fees, interest, and other charges they received related to the non-RAL loans they brokered, plus pay damages in the amount of twice the total fees received, per La. Rev. Stat. § 9:3572.12(D).

83. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal basis.

84. Plaintiff 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. Plaintiff is similarly situated with, and has suffered similar injuries as, the members of the class she seeks to represent. Plaintiff has retained counsel experienced in handling class action suits involving unfair business practices and consumer law. Neither Plaintiff, nor her counsel, has any antagonistic interest that would inhibit vigorously pursuing this action.

85. 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, Plaintiff 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 plaintiff 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.

86. 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 the class.

COUNT 1: UNAUTHORIZED DISCLOSURE OF TAX RETURNS

87. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 86 in support of this count.

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

COUNT 2: FRAUD

89. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 88 in support of this count.

90. As described above, Defendants induced Plaintiff and the class members to enter into a contract for tax preparation services based upon false representations regarding the companies’ privacy policy and practices and policies regarding privacy and maintaining the confidentiality of sensitive information and documents.

91. “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.

92. “The party against whom rescission is granted because of fraud is liable for damages and attorney fees.” La. Civ. Code art. 1958.

93. 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

94. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 93 in support of this count.

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

COUNT 4: NEGLIGENCE

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

97. Per the Court’s January 7, 2009 order, Count 4 was dismissed. *See* Docket No. 54. Plaintiff 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

98. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 97 in support of this count.

99. 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.

100. Defendants invaded the privacy of Plaintiff and the class members through an unreasonable public disclosure of private facts. Defendants’ 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.

101. 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

102. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 101 in support of this count.

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

COUNT 7: DECLARATORY JUDGMENT

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

105. 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) required to be licensed when brokering non-RALs per the LA Loan Broker Statute; (b) required to return all fees, interest, and other charges received related to the non-RAL loan products they brokered, plus damages in the amount of twice the total fees received, per La. Rev. Stat. § 9:3572.12(D); and, (c) in violation of federal and state law due to their improper disposal of the class members' tax returns.

COUNT 8: INJUNCTION

106. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 105 in support of this count.

107. Pursuant to Fed. R. Civ. P. 65, the class members seek and are entitled to an injunction, ordering Defendants to: (a) cease brokering any further non-RAL loan products until they obtain a loan broker license per the LA Loan Broker Statute; (b) return all fees, interest, and other charges received related to the non-RAL loan products they brokered, plus damages in the amount of twice the total fees received, per La. Rev.

Stat. § 9:3572.12(D); and, (c) 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.

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

108. On behalf of herself only, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 107 in support of this count.

109. 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.”

110. In an attempt to convince Plaintiff to use the services of Jackson Hewitt, Defendants falsely represented to her that they would maintain the confidentiality of her tax returns and financial and private information. Further, Defendants falsely advertised and represented that they would comply with their “Privacy Policy.”

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

112. Pursuant to La. Rev. Stat. § 51:1409, Plaintiff 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 LA LOAN BROKER STATUTE

113. On behalf of the putative class, Plaintiff hereby incorporates, as if written *in extenso*, ¶¶ 1 – 112 in support of this count.

114. Defendants are required to be licensed as loan brokers under the LA Loan Broker Statute when facilitating or brokering non-RAL loan products.

115. In violation of the LA Loan Broker Statute, Defendants have brokered non-RAL loan products to Plaintiff and many others.

116. Pursuant to La. Rev. Stat. § 9:3572.12(D), Plaintiff and the class members have a private right of action against Defendants to recover all fees, interest, and other charges Defendants received related to the loans they improperly brokered, plus damages in the amount of twice the total fees Defendants received.

DEMAND FOR TRIAL BY JURY

117. On behalf of themselves and the putative class, Plaintiff demands a trial by jury as to all issues.

WHEREFORE, the premises considered, Plaintiff, on behalf of herself and all others similarly situated, respectfully requests that Defendants appear and respond as appropriate to this Third Amended Class Action Complaint, and that judgment be rendered against Defendants, awarding Plaintiff 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; and, attorneys' fees.

Respectfully Submitted,

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 26th day of February 2009.

/s/ Bryan C. Shartle
Bryan C. Shartle

/s/ Bryan C. Shartle
David Israel (LSBA No. 7174) (T.A.)
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