

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO \* Docket 08-CV-3535-R  
\*  
versus \* New Orleans, Louisiana  
\*  
JACKSON HEWITT TAX SERVICE, \* December 3, 2008  
INC., et al \*  
\* \* \* \* \*

ORAL ARGUMENT BEFORE THE  
HONORABLE SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS

(December 3, 2008)

**THE DEPUTY CLERK:** All rise.

Court is in session. Please be seated. First up on the Court's civil docket: Civil Action 08-3535, Pinero versus Jackson Hewitt. Counsel, please make your appearances for the record.

**MR. SHARTLE:** Bryan Shartle on behalf of the plaintiff, Vicki Pinero.

**MR. HOMES:** Justin Homes on behalf of the plaintiff.

**THE COURT:** Good morning.

**MR. FARNET:** Glenn Farnet on behalf of Jackson Hewitt, defendant.

**MS. WILSON:** Donna Wilson on behalf of defendant Jackson.

**MR. WEIN:** Andrew Wein on behalf of defendant Jackson.

**MR. BUCK:** Tom Buck on behalf of Crescent City Tax Service.

**THE COURT:** Good morning everyone. We are here on a motion to dismiss and class certification. Let's start with the motion to dismiss.

**MR. SHARTLE:** Your Honor, if I may, we have presented this argument in our briefs. We strenuously object to the Court hearing the motion to dismiss.

1 I'm sorry. We have briefed this ad nauseam in  
2 our papers. We strenuously object to the Court hearing the  
3 motion to dismiss now. We believe that it's very clear, under  
4 Fifth Circuit law and even this Court's rulings, that it's  
5 improper to rule on a motion to dismiss before ruling on the  
6 motion for class certification.

7 **THE COURT:** Have you read the Federal Rules of Civil  
8 Procedure lately on class certification?

9 **MR. SHARTLE:** Yes, Your Honor, and I know that there  
10 are a few decisions out there where courts have ruled on  
11 motions to dismiss before ruling on a motion for class  
12 certification, but that is a disfavored procedure. Generally,  
13 you want the --

14 **THE COURT:** The rule used to say that you had to do  
15 it at the earliest possible time or some practical time. It  
16 doesn't say that anymore. It was changed -- I know this -- to  
17 permit courts to take up issues like motions to dismiss before  
18 class certification so you can figure out what you're  
19 certifying. I don't think that that argument is correct. I  
20 hear you, but I don't think that that argument is correct, so  
21 let's not spend a lot of time on that. Let's go to the motion  
22 to dismiss.

23 **MR. SHARTLE:** Okay, Your Honor.

24 **MS. WILSON:** Good morning, Your Honor. Donna Wilson  
25 on behalf of defendants Jackson Hewitt Tax Service, Inc. and

1 Jackson Hewitt, Inc. With me is my colleague Andrew Wein, from  
2 my firm, as well as my co-counsel Glenn Farnet. In addition,  
3 counsel for CCTS, our independent franchisee, Tom Buck, is  
4 here. I'm going to be taking the lead in the argument,  
5 Your Honor, but Mr. Buck may at the end of the argument have  
6 some comments or is available for questions.

7 **THE COURT:** Okay. There's a lot of claims in this  
8 and we are not going to be here all morning. I'm going to give  
9 you about 15 minutes.

10 **MS. WILSON:** That's fine, Your Honor. I intend to be  
11 brief. I think we have adequately covered everything in the  
12 papers, but I would just like to highlight some issues.

13 First of all, Your Honor, this case, as  
14 presented and argued by plaintiff, invokes the famous line:  
15 "Full of sound and fury, signifying nothing." The fact of the  
16 matter is that plaintiff throws around a lot of terms and  
17 relies on a lot of loaded terms like *treachery* and *deceit*, but  
18 at the end of the day, when you strip out these sort of  
19 aspersions, what you are left with is the fact that plaintiff  
20 is relying on a legally unsupportable and attenuated damages  
21 theory; relying on facts that don't appear in the complaint  
22 and, indeed, which appear for the first time in her briefs, and  
23 which are inconsistent with allegations in the complaint; and  
24 basically urging this Court to disregard the plain language of  
25 statutes and to basically disregard an amount of case law that

1 cuts in our favor and supports our arguments. For these  
2 reasons, Your Honor, the complaint should be dismissed and our  
3 motion to dismiss should be granted.

4 The first one I want to look at is our  
5 overarching argument in our motion to dismiss that the  
6 plaintiff has failed to allege legally cognizable damages with  
7 respect to most of her claims or injury in fact.

8 First, as set forth in the brief, regardless of  
9 how the legal claim itself is styled -- whether it's  
10 negligence, breach of fiduciary duty, breach of complaint --  
11 courts across the country have held that the type of damages  
12 that plaintiff is alleging here -- that is, emotional damages  
13 based on a fear or a speculation that there might be some risk  
14 of identity theft in the future arising from an allegedly  
15 improper handling of documents or information -- simply is not  
16 injury in fact. It's too speculative. It doesn't constitute  
17 damages under any legal theory. Most importantly, Louisiana  
18 law is in accord with this.

19 I want to take the three categories of claims  
20 here, Your Honor. First is the negligence claim and the  
21 Louisiana database breach notification statute claim.

22 The first claim, negligence, damages have to be  
23 established as a matter of law with respect to a negligence  
24 claim. Again, courts across the country have said these very  
25 same damages that are alleged, these emotional damages, are not

1 sufficient to establish this required element. But more  
2 importantly, in Louisiana two federal courts have already ruled  
3 on this and have reached the same holding, and that is these  
4 kinds of damages are not cognizable under a negligence claim.

5 **THE COURT:** I'm all right with you on negligence with  
6 Louisiana law.

7 **MS. WILSON:** I'm on a roll, Your Honor. That's  
8 great.

9 Then with respect to the database breach  
10 notification act, *Ponder* speaks directly to this. It addressed  
11 that expressly on point. More importantly, plaintiff only  
12 raises two arguments with respect to *Ponder* and the database  
13 breach notification act. First is it's wrongly decided, and  
14 the basis for plaintiff's contention is that if you interpret  
15 it the way that the *Ponder* court has, to require damages for  
16 there to be an action under the statute, if you require that,  
17 then it frustrates the purposes of the statute because there's  
18 no penalty if you don't give notice.

19 What plaintiff doesn't point out to the Court,  
20 although plaintiff cites to this regulation in her brief, is  
21 that the attorney general, pursuant to regulations promulgated  
22 by the attorney general's office, has the authority to issue  
23 and is to issue substantial fines if there's no notice given.  
24 So that argument is gone.

25 **THE COURT:** But clearly the allegation is there was



1 no notice here; right?

2 MS. WILSON: Well, actually, she was notified, and  
3 there is no allegation that she wasn't given notice. That  
4 assertion is made in the briefs, Your Honor, but not in the  
5 complaint. As we understand it from the complaint, she knew  
6 about this before we did because the TV reporter had given the  
7 material back to her.

8 THE COURT: Yes, but the notice had to come from you,  
9 not from somebody on the street.

10 MS. WILSON: Yes, Your Honor, but we didn't know  
11 about it. In fact, we have just filed a supplemental brief, I  
12 believe, on Monday setting forth the notice that we sent out.  
13 So notice has been sent, but she has not alleged in her  
14 complaint that it wasn't timely. She hasn't alleged that there  
15 was no notice given.

16 THE COURT: Some of these statutes are starting to  
17 merge in my mind.

18 MS. WILSON: I understand, Your Honor.

19 THE COURT: Is this the one that involves computers  
20 too?

21 MS. WILSON: Yes. Your Honor, not only did she fail  
22 to plead and allege actual damages, as required by the statute  
23 and as required by *Ponder*, but the whole purpose of the statute  
24 and the entire statute speaks in terms of data on a data  
25 system, not paper documents. The only thing that the complaint

1 alleges is a disposal of paper documents. It doesn't mention  
2 anything about a loss of computerized data. So for that  
3 reason, too, Your Honor, that claim should not stand.

4 **THE COURT:** All right.

5 **MS. WILSON:** Then, with respect to the breach of  
6 contract, fraudulent inducement, and LUTPA claims, all of those  
7 claims basically rest on, one, emotional damages and, two, on  
8 the circular argument --

9 **THE COURT:** The contract claim does.

10 **MS. WILSON:** Pardon me?

11 **THE COURT:** The contract claim is alleging a  
12 pecuniary loss. They're alleging fraud in the inducement and  
13 they get their money back or, alternatively, a breach of  
14 contract because the policy was -- the allegation is was part  
15 of the contract and that you didn't perform that portion of the  
16 contract, therefore, a breach of contract entitles them to  
17 damages, which they contend is fees and other things. They are  
18 also claiming emotional distress under 1998, in addition. I  
19 don't think this is just a purely emotional claim.

20 **MS. WILSON:** No. I was actually about to say that,  
21 Your Honor. There were two issues. One was based on emotional  
22 damages and two was based on, basically, the circular damages  
23 argument, which is that rescission equals damages equals  
24 rescission; that is, if damages always would constitute the  
25 amount you paid for the contract, well, then the damages

1 requirement of a breach of contract claim would be written out.

2           **THE COURT:** Rescission, you put the parties back to  
3 where they were and you give them their money back. So that's  
4 monetary loss, which is not emotional loss; it's a financial  
5 loss.

6           **MS. WILSON:** Your Honor, we would argue that the  
7 rescission part of this is the remedy, but you have to prove  
8 they actually were damaged by the breach, and here there is no  
9 damage caused by the breach.

10           **THE COURT:** If they prove that they were fraudulently  
11 induced to enter a contract and they allege fraud and  
12 misrepresentation they relied on in the contract and that this  
13 was a material term and it wasn't performed, then I think that  
14 they would get their money back. When you rescind a contract,  
15 you put the parties back to where they were.

16           **MS. WILSON:** Right. Even under the fraudulent  
17 inducement claim, Your Honor, there was a requirement that you  
18 show actual damages or a probability of damages. What are the  
19 damages here? Again, how was she injured by the breach?

20           **THE COURT:** Where are you getting that?

21           **MS. WILSON:** That would be 1953.

22           **THE COURT:** Which says what?

23           **MS. WILSON:** I believe it's actual -- I can find the  
24 cases, Your Honor, but basically you have -- it's cited also in  
25 the plaintiff's briefs, I believe -- actual or probability of

1 damages.

2 THE COURT: Wait a minute. That's completely out of  
3 context. What are you talking about?

4 MS. WILSON: You have to establish --

5 THE COURT: I understand that, but tell me what  
6 you're citing and what does it say.

7 MS. WILSON: With the Court's indulgence.

8 As cited in the plaintiff's brief actually on  
9 pages 26 and 27, "...the plaintiff need only show the *strong*  
10 *possibility* of damages, or damages are *probable*," and it's  
11 citing *Golden Rule Ins. Co. v. Strauss*, 1997 WL 119854, \*3  
12 (5th Cir. 1997). The parenthetical there is "actual loss or  
13 damage or strong possibility thereof."

14 THE COURT: For what? In what context is that being  
15 cited?

16 MS. WILSON: The fact that they have got to show that  
17 there's damages is an element of the claim. For there to be a  
18 breach of contract -- if I breach a contract and you're not  
19 injured, you have suffered no injury. For example, Your Honor,  
20 if this was an identity theft case, if she came in and said,  
21 "My identity was stolen," absolutely was stolen -- I'm not  
22 speculating about a risk of identity theft, it was actually  
23 stolen -- well, then they have established a breach of contract  
24 claim, perhaps. I don't want to concede that.

25 THE COURT: If you promise to marry me and tell me

1 that you have never been married before or you are not  
2 currently married and that's not true and we rescind that  
3 contract, then I don't have a financial loss by virtue of the  
4 fact that you lied to me and induced me to enter a marriage on  
5 the grounds that you're married to somebody else, but you can  
6 rescind the contract.

7 My point is, on a rescissionary basis, I think  
8 that getting your money back is your damages because you did  
9 not get what you bargained for. I think this is on a motion to  
10 dismiss. Let's just move on to the 1998 portion of this.

11 MS. WILSON: Sure, Your Honor. Then under LUTPA,  
12 Your Honor --

13 THE COURT: No. Let's talk about Civil Code Article  
14 1998 because they're arguing two things: They are arguing  
15 fraudulent inducement, contract fraud, 1958; and they are  
16 arguing breach of contract, which would entitle them to  
17 compensatory damages -- I think they want their fees -- and  
18 then they say emotional distress under 1998.

19 MS. WILSON: Actually, Your Honor, if you look at the  
20 complaint and you look at their brief, with respect to  
21 Article 1998, in the complaint they don't argue, as they are  
22 required to, that the nonpecuniary interest here was a  
23 significant component of the contract to prepare tax returns.  
24 That's the first thing.

25 The second thing is, in their opposition brief,

1 they don't address the cases and they don't address the  
2 argument on nonpecuniary loss. All they address is the  
3 pecuniary portion of it, and they appear to have abandoned that  
4 argument, Your Honor.

5           **THE COURT:** No. What they are arguing and what you  
6 misread in this article is that it has two parts. The first  
7 part of it is that the contract has to be of a nature that  
8 addresses a nonpecuniary interest. I would agree with you that  
9 a contract to get your tax returns is not a contract like that.  
10 The second part says, regardless of the nature of the contract,  
11 these damages may be recovered also when the obligor intended,  
12 through his failure, to aggrieve the feelings of the obligee.

13           This is a motion to dismiss a complaint. The  
14 argument is that you intentionally breached this privacy  
15 provision, which has the natural effect of aggrieving the  
16 feelings of the obligee. They are arguing the second part and  
17 you haven't addressed that, so tell me what's wrong with that  
18 argument.

19           **MS. WILSON:** I think, Your Honor, that with any  
20 breach of contract -- when I contract with someone, I usually  
21 contract with someone to make sure I don't have to worry about  
22 X and I don't have to worry about Y and I don't have to worry  
23 about Z. If the standard is mere worry about whether a  
24 contract has been complied with satisfies this, then every  
25 contract would fall under that category.

1           Your Honor, frankly, the reason we didn't look  
2 at that section, we weren't trying to misread it, but we  
3 actually -- plaintiff had made no attempt to fit the claim into  
4 that, and we just thought facially it didn't apply here. They  
5 haven't really pled facts that say this is something different.

6           **THE COURT:** They said you intended to put the stuff  
7 in the garbage can, that that was a breach of contract, an  
8 intentional breach, and that that amounted to the obligor  
9 intending to aggrieve the feelings of the obligee by virtue of  
10 that contract.

11           **MS. WILSON:** One, I don't think the complaint  
12 actually alleges that. They don't make that causation  
13 argument. It doesn't make that causation tie.

14           Secondly, I think that -- again, I think it  
15 converts every contract -- it shoehorns everything into this  
16 exception, this narrow exception.

17           **THE COURT:** Okay. I understand your argument on  
18 that. What else?

19           **MS. WILSON:** Your Honor, then we have the LUTPA  
20 claim, which again is based on -- it's brought only  
21 individually, not on a class-wide basis. The LUTPA claim,  
22 again, is based on an emotional damages argument.

23           **THE COURT:** I think they are arguing that they get  
24 their money back under LUTPA too. I think the LUTPA claim  
25 looks okay. LUTPA let's you get emotional distress. I just

1 don't know if the claim for emotional distress is concrete  
2 enough, but the Louisiana cases let people get emotional  
3 distress under LUTPA. It's not a prohibited form of damages.

4 **MS. WILSON:** Right, but it's a very narrow exception.  
5 I think, too, that under those cases you always have a  
6 situation where -- for example, the *Bank of New Orleans* case,  
7 the court emphasizes this is about harm, not speculation.

8 **THE COURT:** I agree with you that the cases that  
9 awarded emotional damages had a much more immediate cause of  
10 emotional damages. I would agree with you on that. All I'm  
11 saying is that, as construed by the Louisiana courts, it  
12 doesn't forbid the recovery of emotional distress if you have  
13 got it and you can show it, A; and that, B, under the claim as  
14 pled, they're claiming a monetary relief.

15 **MS. WILSON:** Again, Your Honor, just to get back on  
16 it, with respect to those three claims, all of those elements  
17 require an injury that's not talking about the relief. At the  
18 end of the day, what is the damage here? The damage here is a  
19 speculative risk of identity theft and because of that  
20 speculative risk of identity theft I want my money back, but  
21 the speculative risk of identity theft, that's where this claim  
22 fails.

23 **THE COURT:** Regardless of how the claim is styled,  
24 Your Honor, you have to have it. Otherwise, what you would  
25 have is any time there is a speculative risk of damage arising



1 from a breach of contract and I say, "I get rescission," you  
2 know, "I get my money back. I was damaged because I paid money  
3 for the contract," every breach of contract claim would  
4 withstand a motion to dismiss. It's a necessary predicate,  
5 Your Honor.

6 **THE COURT:** Talk about the privacy claim.

7 **MS. WILSON:** Well, the privacy claim, Your Honor --

8 **THE COURT:** Let me ask you this. Where was this  
9 dumpster? How big was it?

10 **MS. WILSON:** The office which the plaintiff alleges  
11 she went to was in Kenner. She alleges that, as a matter of  
12 practice across the country, I guess, Jackson Hewitt has a  
13 practice of dumping this information into public dumpsters. It  
14 was in a dumpster behind an apartment complex is my  
15 understanding. It was a construction dumpster. I don't know.

16 **MR. BUCK:** According to Mr. Angelico's report and our  
17 finding of the dumpster, it was located at a set of duplexes on  
18 the West Bank. It was a construction dumpster for a duplex  
19 that was under construction and all the material -- which  
20 included a lot more than just tax returns. It included  
21 promotional materials, some of our proprietary tax manuals, and  
22 things like that. It was all in a construction dumpster on the  
23 West Bank.

24 **THE COURT:** I was just wondering, for a privacy  
25 claim, the issue -- go ahead.

1           **MS. WILSON:** Sure. The issue is that Jackson Hewitt  
2 must have publicized this information to the public generally,  
3 for example, a newspaper ad, let's say, which is so many  
4 people -- I will read that, Your Honor, because it's important.  
5 I think the wording alone takes care of this claim.

6           **THE COURT:** The wording of what?

7           **MS. WILSON:** Of the restatement with respect to this,  
8 Your Honor.

9           **THE COURT:** Restatements in Louisiana are not the  
10 strongest authority in the world.

11           **MS. WILSON:** Okay, Your Honor. I will note that the  
12 plaintiff agreed that this applied.

13           **THE COURT:** Agreeing on the wrong law doesn't help  
14 you.

15           **MS. WILSON:** Okay, Your Honor. With respect to the  
16 breach of privacy claim, it's required that it be publicized,  
17 and that is defined as communicating it to the public at large  
18 or communicating it to so many persons that the matter must be  
19 regarded as substantially certain to become one of public  
20 knowledge.

21                       So here, Your Honor, yes, it was placed in a  
22 dumpster, but the only allegation here is that someone might  
23 have been able to jump in the dumpster and look at the  
24 documents. With respect to the complaint itself, the only  
25 allegation as to who viewed the documents was Mr. Angelico and

1 Ms. Walker, who discovered the documents.

2           **THE COURT:** I thought under Louisiana law that one of  
3 the elements was unreasonable public disclosure of private  
4 facts. I know, also, there are Supreme Court cases in the  
5 context of lawyers or people ferreting around and whether or  
6 not there's an expectation of privacy in the garbage. The  
7 Supreme Court has used all this language that this stuff is  
8 public. If you put something in a garbage can, you have no  
9 expectation of privacy because everybody knows this is public.  
10 Well, by analogy, that could apply to a dumpster.

11           **MS. WILSON:** Sure, but it also could apply to turn  
12 virtually any disclosure of information into a breach of  
13 privacy claim. For example, if I have documents on a desk and  
14 members of the public go by, have I breached someone's privacy  
15 by the fact that someone may have looked at it?

16           **THE COURT:** Putting them on your desk and putting  
17 them outside in a place that anybody has access to are two  
18 different things.

19           **MS. WILSON:** Your Honor, I would contend that you  
20 still have to show that it was likely or substantially certain  
21 that people would see the materials, and in this case that just  
22 wasn't the case.

23           **THE COURT:** Did the dumpster have a top?

24           **MR. BUCK:** No, ma'am.

25           **THE COURT:** It was just an open dumpster?

1           **MR. BUCK:** It's big. It's six, seven feet tall and  
2 20 feet long.

3           **THE COURT:** How did this woman get this stuff out of  
4 there?

5           **MS. WILSON:** As I understand it, Your Honor --  
6                   And, Tom, correct me if I'm wrong.

7           **THE COURT:** This is not all in the complaint.

8           **MS. WILSON:** As I understand it, again, second or  
9 thirdhand, basically, Ms. Walker was in her apartment building  
10 or duplex and could see it; looked down and said, "Well, this  
11 looks sort of funny because all the rest of it is construction  
12 debris," I assume, but then basically people had to jump in --

13           **MR. SHARTLE:** She jumped in and retrieved the  
14 documents, some of the documents, and turned them over to  
15 Channel 6.

16           **THE COURT:** Okay. I think I've got your argument.  
17 Let me hear from your opponent.

18           **MR. BUCK:** Could I add just very briefly --

19           **THE COURT:** Okay.

20           **MR. BUCK:** -- I think the last discussion that we  
21 have been having has to do with the whole issue that was  
22 brought up first as to whether or not there's a potential for  
23 disclosure as opposed to a real, actual disclosure to the  
24 public. We do know for a fact that the documents were  
25 collected and appear to be in the same form that they were

1 taken from our facility. If somebody was really going to  
2 gather that information, it doesn't make a lot of sense they  
3 would take it from the dumpster, make copies, put it back in  
4 the dumpster. It would have been gone. So the fact it was  
5 still there I think indicates there hasn't been an actual  
6 disclosure.

7 I also wanted to address your 1998 question  
8 regarding paragraph 2. If you go to the revision comments  
9 under 1998, talking about the nature of the contract being  
10 irrelevant, Comment D goes on to say that you can get  
11 nonpecuniary loss which the obligee sustains -- so there has to  
12 be an actual nonpecuniary loss sustained -- when the obligor  
13 fails to perform in circumstances that give rise to the  
14 presumption that the obligee's embarrassment or humiliation was  
15 intended by the obligor.

16 I don't think you have those circumstances that  
17 would give rise to that presumption. It references Section C,  
18 if the nature of the contract itself is one that is intended to  
19 satisfy an interest of a spiritual order such as to create a  
20 work of art or --

21 **THE COURT:** Wait. That goes back to the first part  
22 of A.

23 **MR. BUCK:** That's A, if it's intended, or if it's  
24 done under circumstances where you have to assume that it was  
25 done intentionally, with the intent, and I don't think that

1 assumption is reasonable under the circumstances, even as pled,  
2 no matter how unlikely the facts are that this stuff was  
3 intentionally dumped. Then you go to Comment E and it goes on  
4 to say that the jurisprudence has held that mere worry or  
5 vexation is not a compensable nonpecuniary loss. So they have  
6 a big hurdle there, too, if they are just worried.

7 I think you may realize already that Richard  
8 Angelico calling my client and saying, "I have a bunch of your  
9 tax returns," was the first notice that we had that this was  
10 even there. If you look at the TV report, it's obvious this  
11 woman was shocked that her things had been stolen from her. I  
12 truly believe that her status as a victim here --

13 **THE COURT:** Who is she?

14 **MR. BUCK:** Barbara Hirsch. She's the local  
15 franchisee doing business as Crescent City Tax Service, Inc.  
16 She had no idea that any of this stuff had been thrown in the  
17 dumpster by her former employee. It was the first notice she  
18 had.

19 As far as notice, you will note from the record  
20 that we had to get a court order to allow Jefferson Parish --  
21 Mr. Angelico told me he was going to shred the material, and I  
22 told him I would get an order preventing him from that or he  
23 could turn it over to the sheriff.

24 He turned it over to the sheriff. It took us a  
25 while to get. We finally ended up getting a joint court order

1 to get it. We got it last week. We mailed notices to the  
2 people. The number of inquiries we had after he  
3 sensationalized this three times on television -- three  
4 different reports -- we got three phone calls from the  
5 thousands of Jackson Hewitt customers.

6 For her to be victimized by the former employee  
7 that stole the things, three times with this sensational  
8 journalism, and now by one single person who claims to be a  
9 class representative of a group of people who haven't even  
10 suffered any damages I don't think is fair to Crescent City Tax  
11 Service.

12 **THE COURT:** Thank you. Let me hear from your  
13 opponent.

14 **MR. SHARTLE:** Your Honor, a few points here. First,  
15 as you have correctly noted, we are dealing with a motion to  
16 dismiss, and the Court is well aware of the standard. I want  
17 to advise the Court of some facts that are not in the record,  
18 that are not in the pleadings I have only recently learned.

19 They continue to allege that they are the  
20 victims of some kind of theft. It's simply not true. They are  
21 not the victims of any theft or crime. No office was  
22 burglarized here. What happened is one of their own high-level  
23 employees, who is known around the office as "the file  
24 cabinet," was responsible for intentionally throwing these  
25 documents in the dumpster. Why was she known around the office

1 as "the file cabinet"? Because if anything was missing from  
2 the office, any file or any tax return, it was always in this  
3 lady's car. So they are not the victims of any theft.

4 This lady also, very interestingly, was the  
5 director of compliance for the local franchise and was also the  
6 general manager. So this isn't some low-level employee we are  
7 dealing with. We are dealing with a high-level employee who  
8 Crescent City reported to the police department -- and I'm  
9 going to quote this --

10 MS. WILSON: Your Honor, I can --

11 THE COURT: Wait.

12 MR. SHARTLE: -- "had a position of authority with  
13 access." So this isn't a situation where there was some  
14 accident or some breach. This was an intentional act by a  
15 senior-level member of management who threw the documents in  
16 the trash.

17 THE COURT: As we all know, none of this is germane  
18 to the motion to dismiss.

19 MR. BUCK: It's a former employee.

20 THE COURT: I am just considering what is alleged  
21 right now.

22 MR. SHARTLE: Right, but I thought it was important  
23 for me to raise those issues.

24 THE COURT: I understand.

25 MR. SHARTLE: I'm not going to bore the Court anymore



1 with details, but there are five police reports that we have  
2 obtained over the past few years. They have had numerous  
3 security issues involving their own employees.

4 **THE COURT:** Okay. I hear you.

5 **MR. SHARTLE:** To respond to some of the arguments  
6 that they have raised, they say, "Well, with respect to the  
7 security breach statute, the AG has the power to impose some  
8 kind of civil penalty." Well, if the AG doesn't know about the  
9 disclosure, how can they impose a penalty?

10 Again -- and we have briefed this issue -- the  
11 *Ponder* decision is backwards. If you don't permit the claim to  
12 be brought until after there has been some use of the  
13 information to the detriment of the consumer, then you haven't  
14 furthered the purpose of the statute in any way. The purpose  
15 should be to require the defendant to give notice so that the  
16 consumer can take necessary measures to protect himself or  
17 herself. If the notice is given timely, there's no cause of  
18 action. So the decision is just backwards, in my mind, and I  
19 respectfully request that the Court not follow that decision.

20 As to the *Melancon* decision regarding the  
21 negligence claim and whether or not emotional distress damages  
22 is sufficient, that case is distinguishable for a number of  
23 reasons. First, the Supreme Court has been very clear that  
24 when you have a special relationship -- and here we are dealing  
25 with a fiduciary relationship.

1           **THE COURT:** How does it get to be a fiduciary --

2           **MR. SHARTLE:** Well, because, remember, these  
3 individuals are responsible for handling the most sensitive  
4 information. The IRS and a tax return preparer has more  
5 information about you than any other government entity or any  
6 other entity that I could possibly think of, any employer.  
7 They have Social Security numbers, dates of birth, driver's  
8 licenses, bank accounts, employer tax ID numbers, the most  
9 confidential information about your life. Here, they put that  
10 information on the street, so it's just mind-boggling to me.

11                       We are dealing with a special relationship where  
12 these individuals entrusted Jackson Hewitt to protect that  
13 information and they did not. So that rule that generally you  
14 can't recover emotional distress damages absent some type of  
15 physical trauma simply doesn't apply according to the Louisiana  
16 precedent.

17           **THE COURT:** I haven't seen any cases that are close  
18 to this one.

19           **MR. SHARTLE:** Well, I would generally agree, but they  
20 have on numerous occasions said that that exception does exist,  
21 and the court has repeatedly reminded the courts that Louisiana  
22 law is very unique. There are no clear lines. Judges are  
23 required to take into consideration the principles in the  
24 Civil Code and apply those in each case. So we are dealing  
25 with a situation here where these individuals entrusted Jackson

1 Hewitt and that trust was violated.

2           The *Melancon* decision is also distinguishable --  
3 and we have briefed this, Your Honor -- because in that case  
4 the disclosure was accidental. They really were the victims.  
5 Here, this isn't a situation where Jackson Hewitt's office was  
6 broken into and someone stole their materials and they're the  
7 victims. They created this problem through their employee. So  
8 you have an intentional act, not just negligence. So I think  
9 that is an important factor for the Court to consider.

10           **THE COURT:** You pled negligence.

11           **MR. SHARTLE:** We have pled both. We have pled a  
12 negligence claim, but the conduct is intentional. I don't know  
13 how that works out, Your Honor. I haven't figured out  
14 conceptually where that gets me, but I agree with the Court. I  
15 agree with you, Your Honor, that it's a negligence claim, but  
16 the conduct was intentional here.

17           **THE COURT:** A lot of negligence claims involve  
18 intentional conduct. I intentionally put my foot on the  
19 accelerator that hits another car, but I'm not deciding to  
20 crash into them. It's an accident.

21           **MR. SHARTLE:** Well, every act begins with a intent to  
22 commit some -- but here we are dealing with something more than  
23 just the initial act of opening the business and inviting  
24 individuals --

25           **THE COURT:** Tell me how your client was harmed by all

1 of this.

2 MR. SHARTLE: Interestingly, Your Honor -- and I'm  
3 going to answer that question, but I want to tell you --

4 THE COURT: No, "interestingly" answer my question.

5 MR. SHARTLE: She has been harmed in numerous ways.  
6 First of all, she has had to take necessary measures to protect  
7 herself and make sure that she is not going to be the victim,  
8 but she suffered emotional distress. This lady is worried  
9 about the fact her identity is going to be stolen and used by  
10 someone.

11 I think anyone, when they hear what happened  
12 here -- many individuals only recently learned about this.  
13 Opposing counsel has represented that these individuals  
14 recently got notice. I will talk about that in a second. But  
15 when you get that letter and you learn that your information  
16 was put in the dumpster, I think everyone's natural reaction is  
17 going to be, "Gosh. That concerns me. I'm very alarmed."

18 THE COURT: How long ago did it happen?

19 MR. SHARTLE: I'm sorry?

20 THE COURT: How long ago did it happen?

21 MR. SHARTLE: How long ago did what happen?

22 THE COURT: Did they put it in the dumpster.

23 MR. SHARTLE: About six months ago, but no one knew  
24 whose information was put in the dumpster until about a week  
25 ago, when they sent the letter.

1           **THE COURT:** Usually, when you have identity fraud,  
2 they start using your stuff right away.

3           **MR. SHARTLE:** For all we know, there may be hundreds  
4 of individuals whose identities were stolen. I doubt that. I  
5 doubt that seriously, but we don't know that yet. I have not  
6 had the opportunity to speak with each one of these  
7 individuals, but their letter that they sent, they give a  
8 laundry list of things these individuals need to do -- which,  
9 by the way, several of the things they recommend the  
10 individuals do, it's going to cost them something.

11                   So you not only are dealing with the emotional  
12 distress and the anxiety, the sleeplessness of having to deal  
13 with this nonsense, but you are going to have to incur some  
14 hard costs to make sure you are protected.

15           **THE COURT:** Did she incur costs?

16           **MR. SHARTLE:** Did she incur costs?

17           **THE COURT:** Yes.

18           **MR. SHARTLE:** I have spoken with my client. My  
19 client has told me that she has undertaken these measures. I  
20 haven't specifically asked her, "How much, by way of dollar  
21 amount, have you spent in protecting yourself?" Clearly, she  
22 has emotional distress damages.

23                   We have other claims in the case. So when we  
24 are speaking about the damages issue, as Your Honor did, you  
25 have to analyze it with respect to each claim. So with respect

1 to the negligence claim, which it sounds like we are focusing  
2 on now, those damages are going to primarily relate to  
3 emotional distress damages and any costs or expenses that  
4 related to these actions they needed to take to protect  
5 themself. If any of the class members have been the victims of  
6 some kind of identity theft, then you're going to have costs  
7 associated with that also.

8           Going back to this notice issue, they have filed  
9 a motion to supplement the record and provided a copy of the  
10 letter. I am uncertain as to how they determined who to send  
11 this letter to. They don't explain it in their brief. They  
12 represent to the Court that they have given everyone notice. I  
13 am uncertain as to whether that's true.

14           I have concerns because if you look at these tax  
15 returns, we are not just talking about the individual who filed  
16 the return. We are talking about information relating to these  
17 individuals' children, their social security numbers, their  
18 dates of birth, their addresses. You really have to review the  
19 document to understand the scope of the information that is put  
20 in these documents. So there are a number of individuals that  
21 are just identified on the documents, which it's our belief  
22 they need to be notified that their personal information has  
23 been put on the street.

24           **THE COURT:** Let's get back to the discussion of  
25 whether or not you stated a claim.

1           **MR. SHARTLE:** Stated a claim for which cause of  
2 action, Your Honor?

3           **THE COURT:** They have moved on all of them, so take  
4 your pick.

5           **MR. SHARTLE:** Sure. Well, as to the security breach  
6 statute, again, I have addressed the fact that I think the  
7 *Ponder* decision is incorrect. We have stated a cause of  
8 action, brought a motion to dismiss. We have alleged they  
9 haven't given notice timely because they only gave it last week  
10 according to their testimony.

11           **THE COURT:** But you haven't alleged anything about a  
12 compromise of the computer system.

13           **MR. SHARTLE:** Their interpretation of the statute is  
14 incorrect on that point. You don't have to have any  
15 compromising of the system; all you have to have is  
16 computerized data which has been disclosed.

17           **THE COURT:** You haven't alleged that either.

18           **MR. SHARTLE:** Well, I disagree. To the extent we  
19 haven't, Your Honor, then I would ask for leave to --

20           **THE COURT:** How can you disagree and "to the extent"?  
21 Tell me where you allege --

22           **MR. SHARTLE:** Because these are documents which are  
23 generated from a computer. These returns, the information on  
24 there is typed into a computer and the data is spit out on  
25 these documents.

1           **THE COURT:** There's so many documents in this world  
2 that are on paper that at one time were printed by a computer.  
3 I'm not sure that that's what that statute is talking about.  
4 The statute is talking about getting into a computer and  
5 getting the information, not some generation of documents that  
6 came off of a computer.

7           **MR. SHARTLE:** Well, Your Honor, I understand your  
8 point and I agree there's got to be a line somewhere. You  
9 can't say that, for example, every Word document that any  
10 individual maintains that is printed could fall within the  
11 scope of this statute. We are dealing with something more  
12 complex than just some Word document. We are dealing with a  
13 program that they utilize where they input this information and  
14 it spits out data which creates a hard document.

15           It's other documents, Your Honor. It's not just  
16 tax returns either. They mentioned they had manuals in there.  
17 It is a host of materials. There are many other confidential  
18 documents in addition to the tax returns, lists of -- God, I  
19 don't know, Justin -- thousands of local businesses, tax ID  
20 numbers, and addresses. It's more than just tax returns. I  
21 understand there has to be a line somewhere. It's our position  
22 that these type of documents would fall within the framework of  
23 the statute.

24           **THE COURT:** Okay. I hear you.

25           **MR. SHARTLE:** I want to address an issue that



1 Your Honor raised regarding 1958, and this might clear up some  
2 of the discussion earlier. Your Honor is correct that under  
3 1958 you get rescission, and we are seeking rescission of the  
4 contract. But you also, in addition to getting rescission, can  
5 recover damages. So if the fraud vitiates the consent, you get  
6 back whatever you paid to enter into the contract, but you're  
7 also entitled to any damages that flow from the fraud.

8           So it's our position that they misrepresented  
9 what their policy and practice was, so we get our money back  
10 based upon rescission, and their actions have caused damages:  
11 Emotional distress; these other items that we discussed  
12 regarding how they have to take the protective measures; and to  
13 the extent there are any other proveable damages.

14           The unfair trade practice claim, the deceptive  
15 act that's at issue is the misrepresentation, so we are not  
16 dealing with just some fear. We are dealing with a  
17 misrepresentation, a deception, which resulted in them entering  
18 into the contract. So the contract gets undone under the  
19 unfair trade practice claim, we get our money back we paid for  
20 the contract, and also any resulting damages that, again, flow  
21 from the deceptive act, the misrepresentation.

22           The invasion of privacy -- and you touched on  
23 this, Your Honor. First of all, they are not relying upon just  
24 the restatement. They are relying upon a comment in the  
25 restatement, so I want to clarify that point. I don't know of

1 any Louisiana case -- they certainly didn't cite one, and I  
2 haven't been able to find one, whether federal or Louisiana  
3 state court decision -- that cites or relies upon this comment,  
4 but the Louisiana Supreme Court has been very clear on the  
5 scope of an invasion of privacy claim. The court has said the  
6 determination of whether a person's conduct constitutes the  
7 tort of invasion of privacy depends on the facts and  
8 circumstances of each case.

9           So we think this is a case where there has  
10 certainly been damages. There certainly has been sufficient  
11 publicity and publication of this material. Not only did  
12 Ms. Walker, who retrieved the documents from the dumpster, see  
13 the documents, Channel 6 saw the documents, staff members at  
14 Channel 6 saw the documents, the Jefferson Parish Sheriff's  
15 Office saw the documents, opposing counsel has seen the  
16 documents --

17           **THE COURT:** How did Jefferson Parish get the  
18 documents?

19           **MR. SHARTLE:** What happened is there's a criminal  
20 investigation that's ongoing right now, so Channel 6 was  
21 approached by the Jefferson Parish Sheriff's Office and they  
22 requested that the documents be produced to the Jefferson  
23 Parish Sheriff's Office.

24           The one claim that you didn't discuss with  
25 opposing counsel that I think is due some discussion is the tax

1 claim. 26 U.S.C. §6103 generally prohibits the unauthorized  
2 disclosure of returns and return information, so there are two  
3 questions. Who is subject to the statute? The answer is in  
4 §6103(a)(3) and Subsection (n).

5 Subsection (n) extends the reach of the statute  
6 to persons beyond the IRS. Generally, the statute was passed  
7 to prohibit the IRS from disclosing tax returns and tax return  
8 information, but it's been extended to others beyond the IRS.  
9 It also applies to companies processing, storing, and  
10 transmitting returns or return information or providing other  
11 services for purposes of tax administration. Jackson Hewitt is  
12 not only a tax preparer; they are a government-contracted  
13 e-filer. They are transmitting tax returns to the IRS. They  
14 are a covered entity.

15 The next question is: What information and  
16 documents are subject to the statute? I mentioned that the  
17 statute regulates *returns* and *return information*. Those terms  
18 are defined in the statute. A *return* means any tax or  
19 information return, generally a tax return. These tax returns  
20 were thrown in the dumpster.

21 **THE COURT:** Doesn't Subsection (c) indicate that the  
22 statute only applies to persons who have been granted access to  
23 returns or return information by the IRS?

24 **MR. SHARTLE:** Subsection (c)?

25 **THE COURT:** Yes.

1           **MR. SHARTLE:** I don't have that in front of me,  
2 Your Honor. I don't have that in front of me. I can't respond  
3 to that now. I don't know of any limitations in any  
4 subsection. Subsection (n) is what extends the statute to  
5 other entities besides the IRS.

6           **THE COURT:** I think they have to get the information  
7 from the IRS.

8           **MR. SHARTLE:** That's their contention. I don't see  
9 that and, again, I don't have Subsection (c) in front of me  
10 right now. I don't know of any limitation in the statute --

11           **THE COURT:** The statute establishes a comprehensive  
12 scheme -- this is citing a Ninth Circuit case -- for  
13 controlling the release by the IRS of information received from  
14 taxpayers to discrete identified parties.

15           **MR. SHARTLE:** I acknowledge there is at least one  
16 case -- I think the *Hrubec* case -- which says that, but that's  
17 not stated anywhere in the statute. That is a summary as to  
18 what the Ninth Circuit believes the law is on this issue. Even  
19 if that is the law -- and I don't believe it is, Your Honor,  
20 because if you are dealing with a remedial statute here, which  
21 has to be applied very broadly, again you have two questions.  
22 Who is a covered entity? The question is answered by looking  
23 at the statute itself.

24           **THE COURT:** The statute was designed to get at the  
25 IRS and to stop the IRS from spreading tax information.

1           **MR. SHARTLE:** Or to stop government contractors or  
2 other covered entities from disclosing information that is  
3 provided to them --

4           **THE COURT:** From the IRS.

5           **MR. SHARTLE:** Well, I don't think so, Your Honor,  
6 because how, then, do you respond to the statute which says  
7 companies transmitting returns? Remember, these are IRS  
8 e-filers. A taxpayer goes to Jackson Hewitt to get his or her  
9 tax returns done. Jackson Hewitt takes that information as an  
10 IRS e-filer. They transmit that information to the IRS.

11                   To some extent they are acting on behalf of the  
12 IRS by facilitating the transfer of the information, so the  
13 question becomes: Where do you want to start the protection?  
14 Do you want to start it at where the IRS approved e-filer  
15 transmits the information to the IRS or only after the IRS  
16 receives the information and then transmits information back to  
17 the IRS approved e-filer?

18                   I think the statute is written in such a way  
19 that it requires that entities who transmit the information to  
20 the IRS -- again, the only entities that are going to be doing  
21 that are IRS approved e-filers. Even if that's the rule,  
22 Your Honor -- and I don't believe it is, and there's certainly  
23 no statutory authority which would support that position. I  
24 understand there's a case that mentions that.

25           **THE COURT:** Do you have any cases applying this to

1 commercial tax --

2           **MR. SHARTLE:** There are none. There are no cases at  
3 all except for one case that discuss Subsection (n) at all. So  
4 we are dealing with a new issue, and I understand that. But  
5 even if that interpretation is correct, Your Honor, many of  
6 these documents contain information -- when I get to the second  
7 definition, the definition of *return information*, many of these  
8 documents contain return information, information received from  
9 the IRS.

10                   Once the return is transmitted to the IRS for  
11 filing, then information is sent back to Jackson Hewitt and  
12 that information is contained on some of those documents. Now,  
13 we have just begun discovery and we have already had some  
14 issues with discovery, but we believe that there's going to be  
15 more on that during the discovery process.

16           **THE COURT:** Okay. I have your argument. Thank you.

17           **MR. SHARTLE:** Thank you, Your Honor.

18           **MS. WILSON:** Your Honor, if I can make three quick  
19 points?

20           **THE COURT:** Okay.

21           **MS. WILSON:** First, with respect to the §6103 claim,  
22 most of the facts that were just stated just don't appear in  
23 the complaint. In any event, had Congress wanted to mention or  
24 have the statute apply to tax preparers -- this is about a  
25 one-inch thick statute, 20, 25 different categories -- they

1 simply would have said so. It doesn't say that.

2 Also, in the *Hrubec* case in the Seventh Circuit,  
3 Judge Easterbrook did look at the situation and said, look, if  
4 your accountant at a cocktail party discloses some tax  
5 information of yours, it is inappropriate, but it doesn't  
6 constitute a violation of §6103.

7 THE COURT: Which case is that?

8 MS. WILSON: *Hrubec*.

9 MR. SHARTLE: I have to object. That case did not  
10 involve a tax return preparer. It involved a school. The  
11 school --

12 MS. WILSON: Your Honor --

13 THE COURT: Wait. Let her finish.

14 MS. WILSON: Let me get you the citation, Your Honor.  
15 I didn't actually say that the case involved that, but I did  
16 say that the court looked at specifically this example and  
17 spent a great deal of time saying this does not constitute a  
18 claim.

19 THE COURT: What if this stuff contains information  
20 from the IRS instead of just information that the tax preparer  
21 got from the customer?

22 MS. WILSON: We still don't fall within the narrow  
23 definition of the categories of people who are subject to  
24 §6103. In fact, Your Honor, we cited this in our briefs, but I  
25 want to pay special attention to this. Subsection (n) refers

1 to and is basically caveated with references to the IRS  
2 regulations. What the IRS regulation does -- let me give you  
3 this.

4           It's 26 C.F.R. §301.6103(n)-1. What it does  
5 is -- and, again, Subsection (n) is subject to this in this  
6 regulation and it's captioned: "Disclosure of returns and  
7 return information in connection with written contracts or  
8 agreements for the acquisition of property or taxes for tax  
9 administration purposes."

10           When you look at this regulation, Your Honor,  
11 it's clear. This is about --

12           **THE COURT:** Wait. Read that again.

13           **MS. WILSON:** It is captioned: "Disclosure of returns  
14 and return information in connection with written contracts or  
15 agreements for the acquisition of property or services for tax  
16 administration purposes."

17           When you look at the different categories,  
18 there's nothing about tax preparers in here. In fact, when you  
19 look at this, all it's really talking about is third-party  
20 vendors that IRS may use. In fact, Your Honor, Subsection (n)  
21 refers to reproductive services, copy services. Under their  
22 interpretation Kinko's could be subject to this. If I utilize  
23 Kinko's to copy my tax return, it's involved in --

24           **THE COURT:** Okay.

25           **MS. WILSON:** Then, with respect, Your Honor, to the



1 restatement with respect to the breach of privacy claim, we do  
2 have a citation -- let me back up.

3           With respect to 1958 and talking about the need  
4 to show damages apart from rescissionary damages, this is a  
5 case that was not in our briefs but we gave to opposing counsel  
6 before the hearing. It's called *C&B Sales & Services*. It's a  
7 Fifth Circuit case, 95 F.3d 1308. In that case it states:

8           "According to the Louisiana Supreme Court, 'Two  
9 elements are essential to constitute legal fraud'" -- and  
10 that's under 1958 -- "'the intention to defraud and loss or  
11 damage or a strong probability of loss or damage. It is well  
12 settled that one who alleges fraud has the burden of  
13 establishing it by legal and convincing evidence since fraud is  
14 never presumed, and that to establish fraud exceptionally  
15 strong proof must be adduced.' C&B is wrong that fraud follows  
16 merely from demonstrating a material omission and intent to  
17 obtain an unjust advantage. C&B still bears a heavy burden of  
18 showing actual damage: 'Because charges of fraud carry an  
19 almost criminal connotation in Louisiana, the jurisprudence has  
20 interpreted the language of 1953 with great strictness. There  
21 must be an intention to defraud causing damage to the victim.  
22 Both elements must be proved by clear and convincing  
23 evidence.'"

24           **THE COURT:** Okay.

25           **MS. WILSON:** That's all I have, Your Honor.

1           **THE COURT:** Thank you. Is there one thing you want  
2 to say?

3           **MR. SHARTLE:** I do, Your Honor. This scare tactic  
4 that if we apply the statute here to an IRS approved e-filer  
5 that it's going to apply to everyone is meritless. The statute  
6 very specifically says who it applies to. It's not going to  
7 apply to Kinko's because it only applies to companies  
8 processing, storing, and transmitting returns or return  
9 information. It's not going to apply to the Postal Service.  
10 They are not involved in storing, processing, or transmitting  
11 returns.

12                       This is the statute as to how you become an IRS  
13 approved e-filer, which by the way contains a provision  
14 regarding the obligation of all IRS approved e-filers to  
15 maintain the security of information they are transmitting  
16 during the e-filing process. There's only one decision out  
17 there that I know of which addresses Subsection (n) and it's  
18 the *Hrubec* case. I think I kept saying it was a Ninth Circuit  
19 case. It's a Seventh Circuit decision.

20                       That case involved an employer who disclosed --  
21 I think it was a tax return of an employee, and the court said  
22 the employer is not a covered entity. That makes sense because  
23 they're not involved in the transmitting, storing, or  
24 processing of a return or return information.

25                       So there's no question, from my view, that

1 Jackson Hewitt is a covered entity. The question becomes  
2 whether or not, as Your Honor has pointed out, the information  
3 that is disclosed has to come from the IRS or if the  
4 information can merely come from the taxpayer and be involved  
5 in the transmission. I think, if you read the statute, there's  
6 no requirement in the statute that that information come  
7 directly from the IRS, but I acknowledge there is a Seventh  
8 Circuit decision which suggests that it does have to come from  
9 the IRS.

10 Thank you, Your Honor. That's it.

11 **THE COURT:** All right. Thank you. I'm not going to  
12 hear argument on class certification because I think it is  
13 premature to take that up until we determine what the claims  
14 are going to be, if any, that are left in the case because some  
15 of them are going to get dismissed. I just haven't determined  
16 how many and which.

17 So I think rather than taking up class  
18 certification now, it is really premature. I will get an order  
19 out ruling on the motion to dismiss. Then, once that's out, we  
20 will issue an order to you to come up with a schedule for class  
21 certification, to brief that and do whatever discovery you need  
22 to do on that, and then we will take up class certification  
23 after that. Okay?

24 **MS. WILSON:** Thank you, Your Honor.

25 **MR. SHARTLE:** Thank you, Your Honor.

1 THE DEPUTY CLERK: All rise, please.

2 THE COURT: Very good job on your arguments.

3 (WHEREUPON the Court was in recess.)

4 \* \* \*

5 CERTIFICATE

6 I, Toni Doyle Tusa, CCR, FCRR, Official Court  
7 Reporter for the United States District Court, Eastern District  
8 of Louisiana, do hereby certify that the foregoing is a true  
9 and correct transcript, to the best of my ability and  
10 understanding, from the record of the proceedings in the  
11 above-entitled and numbered matter.

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s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter

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