UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, individually and on behalf of all others similarly situated,	]	CIVIL ACTION 08-3535
	]	
	]	SECTION R
Plaintiffs	]	JUDGE SARAH S. VANCE
	]	
VERSUS	]	MAG. 3
	]	
JACKSON HEWITT TAX SERVICE INC.; JACKSON HEWITT INC.; and CRESCENT CITY TAX SERVICE, INC. D/B/A JACKSON HEWITT TAX SERVICE,	]	
	]	
Defendants	]	
	]	

MEMORANDUM IN SUPPORT OF
CRESCENT CITY TAX SERVICE, INC., D/B/A JACKSON HEWITT TAX SERVICE'S
MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

MAY IT PLEASE THE COURT:

Crescent City Tax Service, Inc., d/b/a Jackson Hewitt Tax Service, (hereinafter "CCTSI"), joins its co-defendant in moving for a dismissal of plaintiff's Second Amended Complaint, pursuant to F.R.C.P. 12(b)(6) and 9(b), and further moves to strike the class allegations contained therein.

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CCTSI adopts the motion and memorandum in support filed by its co-defendants, Jackson Hewitt Tax Service, Inc. and Jackson Hewitt, Inc.

The present complaint suffers from a fatal lack of facts, and contains little other than conclusions. The bare facts are that plaintiff's tax returns, from a prior year, were inadvertently placed in a dumpster.

There is not one single fact, other than the simple presence of the document in the dumpster, to support plaintiff's allegations regarding improper storage, lack of alarms at offices, the existence of a "corporate culture of disregard," intentional fraudulent inducement, or any of the other of plaintiff's vague conclusory allegations.

Plaintiff's conclusions do not seem to have anything to do with the actual incident that gave rise to the suit. Plaintiff has failed to explain how this incident, years after the tax returns were prepared, could possibly be considered a fraudulent inducement to enter into a contract earlier. Plaintiff implies that defendants should have known that this one isolated incident was likely to occur years before it actually happened.

As noted by Jackson Hewitt, since the invasion of privacy claim has been amended, it is not sufficient to state a claim. There is no basis for a claim relying on the fourth part of the invasion of privacy tort which the Court spoke of in its original ruling, one based on "unreasonable public disclosure of private facts." As noted in the Court's original order, "invasion of privacy is an intentional tort." If plaintiff has actually dropped the intentional act allegations, then the claim obviously fails.

Louisiana law provides that it is not just the disclosure of <u>any</u> private fact that gives rise to a cause of action. Instead, it has to be an unreasonable public disclosure of "embarrassing"

private facts in order to give rise to the cause of action. This is the way it is described in Louisiana cases, including *Jaubert*.

Further, the case law requires an actual publication which is not present here, and it requires the publication to have actually been made by the defendant. Again, since whatever happened to the records happened through the agencies of a person who was no longer emplyed with the defendant, it cannot be said that this defendant is the one that put the tax returns into the dumpster, even if putting them in the dumpster constituted a publication in the first place, and even if there was something "embarrassing" contained therein.

Jaubert involved a publication of an embarrassing photograph of plaintiff's home in the newspaper. One of the cases the *Jaubert* court cited with approval as an example of public disclosure of embarrassing facts involved an employer who used medical photographs of an employee's work related injury in a safety campaign, without obtaining the employee's consent, and without withholding his name. More recently, our courts have dealt with actual publication of embarrassing facts such as the existence of an employee's mental and emotional problems. *Groff v. Southwest Beverage,* 08-625 (La. App. 3d Cir. 11/5/008) 997 So. 2d 782.

Defendant submits that throwing something in the trash is not a publication. The only persons who have publicized any of this are the TV reporter and the plaintiff herself. Defendant is not responsible for the actions of either of them, and the tax return is not "embarrassing.

CCTSI also joins in the request to strike the class allegations for the reasons set forth in co-defendant's memorandum.

DATED: March 24, 2009

Respectfully submitted:

BLUE WILLIAMS, L.L.P.

/s/ THOMAS G. BUCK

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CERTIFICATE OF SERVICE

I do hereby certify that I have on March 24, 2009, electronically filed the foregoing with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to the following.

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM.ECF participants.

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