

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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

**MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS  
SECOND AMENDED COMPLAINT**

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

**I. INTRODUCTION**

Jackson Hewitt seeks dismissal of plaintiff’s Second Amended Class Action Complaint asserting claims for fraud, unfair trade practices, and invasion of privacy. The

Court should deny Jackson Hewitt's motion for 5 reasons.

**First**, Jackson Hewitt misleads the Court when arguing plaintiff has withdrawn her allegation that Jackson Hewitt acted intentionally. The truth is that plaintiff has amended her complaint to include additional facts regarding the intentional disclosure of the documents and information. By admission, defendants have conceded that the disclosure was intentionally made by their employee(s)/agent(s)—intentional conduct is clearly at issue.

**Second**, plaintiff states fraud and unfair trade practices claims. Plaintiff has complied with Fed. R. Civ. P. 9(b) by pleading her fraud allegations with particularity. Contrary to Jackson Hewitt's argument, the Court has already ruled that plaintiff has sufficiently plead the "who" element of her fraud claim. *See* Docket No. 54, at pp. 18-19 ("Here, plaintiff has sufficiently alleged the 'who, what, when, and where' elements necessary to support a claim of fraud."). Moreover, plaintiff has *not* violated any "group pleading" rule. To the extent such a rule exists, plaintiff has complied with the rule because the complaint details the relationship between each defendant and the representations made. Further, plaintiff alleges the "how" element in her second amended complaint by alleging facts which show that defendants' representations were knowingly false when made.

**Third**, plaintiff states an invasion of privacy claim. Plaintiff has asserted an intentional invasion of privacy by defendants' employee(s)/agent(s) for which defendants are liable.

**Fourth**, the Court should deny Jackson Hewitt's motion to strike class allegations. The arguments presented by Jackson Hewitt were previously rejected by the Court. Further, as explained in previously filed memoranda, the representations and conduct at issue were uniform as to all of the class members.

**Fifth**, the Court should deny Jackson Hewitt's motion to dismiss in light of the pending motion for leave to file a Third Amended Class Action Complaint and assert claims based upon defendants' unlawful loan brokering activity.

## **II. PROCEDURAL HISTORY**

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

On May 22, 2008, plaintiff filed her original Class Action Complaint against the corporate Jackson Hewitt defendants and Crescent City Tax Service, Inc. d/b/a Jackson Hewitt Tax Service ("CCTSI"), the local franchise owner. *See* Docket No. 1. On July 15, 2008, plaintiff filed her First Amended Class Action Complaint. *See* Docket No. 9. In her amended complaint, plaintiff asserted 9 Counts. *Id.* Specifically, plaintiff alleged: unauthorized disclosure of tax returns per 26 U.S.C. §§ 6103 and 7431 (Count 1); fraud (Count 2); breach of contract (Count 3); negligence (Count 4); invasion of privacy (Count 5); violation of the Louisiana Database Security Breach Notification Law ("LA Security Breach Statute"), La. Rev. Stat. § 51:3071, *et seq.* (Count 6); declaratory judgment (Count 7); injunction (Count 8); and, violation of the Louisiana Unfair Trade Practices and Consumer Protection Law ("LA Unfair Trade Practices Statute"), La. Rev. Stat. § 51:1401, *et seq.* (Count 9). *Id.*

**B. Jackson Hewitt's First Motion to Dismiss and the Court's January 7, 2009 Order**

On August 4, 2008, Jackson Hewitt filed a motion to dismiss plaintiff's first amended complaint. *See* Docket No. 20.

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

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

The Court also granted plaintiff leave to amend her complaint with respect to Count 2 for fraudulent inducement under La. Civ. Code art. 1953 and Count 9 for violation of the LA Unfair Trade Practices Statute to allege "how" or "why" defendants' statements were misleading. *Id.* at pp. 19-22.

The Court denied Jackson Hewitt's motion to dismiss Count 5 for invasion of privacy; Count 7 for declaratory judgment; and, Count 8 for injunction. *Id.* The Court also ordered as follows:

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

*Id.* at p. 29.

### C. Subsequent Activity

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

On February 9, 2009, Jackson Hewitt filed its second motion to stay discovery. *See* Docket No. 58. That same day Jackson Hewitt also filed its second motion to dismiss, seeking dismissal of plaintiff's Second Amended Class Action Complaint. *See* Docket No. 59.

On February 10, 2009, plaintiff filed a Motion for Reconsideration, seeking reconsideration of the Court's dismissal of Count 1 for unauthorized disclosure of tax returns. *See* Docket No. 66. That same day plaintiff also filed a motion to seal certain private and confidential documents related to the reconsideration motion. *See* Docket No. 65.

On February 26, 2009, plaintiff filed a motion for leave to file a Third Amended Class Action Complaint. *See* Docket No. 77. Pursuant to her proposed amended complaint, plaintiff seeks leave to amend to assert a new claim and related facts for defendants' violations of La. Rev. Stat. § 9:3572.1, *et seq.* (the "LA Loan Broker Statute").<sup>1</sup> As set forth in plaintiff's proposed amended complaint, defendants are required to be licensed as loan brokers under the LA Loan Broker Statute when

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<sup>1</sup> 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).

facilitating or brokering non-refund anticipation loan products. Despite the LA Loan Broker Statute, and defendants' knowledge of said statute, defendants have brokered non-refund anticipation loan products to plaintiff and many others.<sup>2</sup> 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.

Plaintiff's reconsideration motion and Jackson Hewitt's motion to dismiss are both set for hearing on April 1, 2009, at 10:00 A.M., with oral argument having been granted on only the motion to dismiss. *See* Docket No. 79.

Plaintiff's motion for leave to amend and Jackson Hewitt's stay motion are both set for hearing and oral argument before Magistrate Judge Knowles on April 1, 2009, at 11:00 A.M. *See* Docket Nos. 76 & 78.

### **III. LAW AND ARGUMENT**

“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.” Fed. R. Civ. P. 9(b). “Rule 9(b) requires that plaintiffs plead enough facts to illustrate ‘the ‘who, what, when, where,

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<sup>2</sup> Loans improperly brokered by defendants include: 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.***

and how' of the alleged fraud.” *Carroll v. Fort James Corp.*, 470 F.3d 1171, 1174 (5th Cir. 2006). However, “when the facts relating to the alleged fraud are peculiarly within the perpetrator’s knowledge, the Rule 9(b) standard is relaxed, and fraud may be pled on information and belief[.]” *U.S. ex rel. Russell v. Epic Healthcare Management Group*, 93 F.3d 304, 308 (5th Cir. 1999).

“What constitutes ‘particularity’ will necessarily differ with the facts of each case[.]” *Shushany v. Allwaste, Inc.*, 992 F.2d 517, 521 (5th Cir. 1993) (internal quotation marks omitted). “Courts have required less specificity to meet Rule 9(b)’s pleading requirements in cases involving complex and numerous allegations of fraud occurring over an extended period of time.” *U.S. ex rel. LaCorte v. SmithKline Beecham Clinical Laboratories, Inc.*, 2000 WL 17838, \*3 (E.D. La. 2000). “[A] pleading is [considered] sufficient under Rule 9(b) if it identifies ‘the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.’” *Gottreich v. San Francisco Inv. Corp.*, 552 F.2d 866, 866 (9th Cir. 1977); *see also Deutsch v. Flannery*, 823 F.2d 1361, 1365 (9th Cir. 1987) (same). “Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). “A motion to dismiss for failure to plead fraud with the particularity required by Rule 9(b) is treated as a motion for failure to state a claim under Rule 12(b)(6).” *Tarica v. McDermott Intern., Inc.*, 2000 WL 1346895, \*3 (E.D. La. 2000).

**A. The Tax Documents Were Intentionally Thrown In a Dumpster**

Before addressing Jackson Hewitt's Rule 9(b) arguments, another issue must be addressed first. Jackson Hewitt argues plaintiff "withdrew her earlier allegations that Jackson Hewitt acted intentionally to disclose the documents, and instead cast her allegations in the form of negligence." Docket No. 59-4, at p. 2. This is false.

This is *not* a case where a company, employee, or agent mistakenly threw documents in a dumpster. Instead, this case involves *intentional acts* on the part of defendants' employee(s) or agent(s) for which defendants are liable. Indeed, it is undisputed that intentional (not negligent) conduct is at issue. CCTSI (the defendant local franchise owner) 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. *See* Docket No. 57, Exhibit S, 05/06/08 Police Report. CCTSI also reconfirmed in a letter purportedly sent to every individual potentially impacted by the wrongful disclosure that its employee was responsible for the disclosure. *See* Docket No. 50-4. Although defendants would like to distance themselves from what happened, they are liable for the *intentional actions* of their "Director of Compliance," *i.e.*, the person they placed in a "position of authority with access." *See* Docket No. 57, Exhibit S, 05/06/08 Police Report.

Further, Jackson Hewitt confuses negligence with vicarious liability for intentional acts. A negligence claim is commonly asserted along with a claim for intentional conduct. Often a defendant is sued for its own independent negligence and its vicarious liability for the actions of its employee/agent. Such is the case here. Plaintiff acknowledges that her negligence claim was dismissed, but Jackson Hewitt fails to recognize that plaintiff asserts



defendants are liable for the intentional actions of their employee(s)/agent(s).

**B. Plaintiff States a Fraud Claim**

With respect to plaintiff's fraud claim, Jackson Hewitt argues 2 points. First, Jackson Hewitt contends that plaintiff has not complied with Rule 9(b) because her complaint fails to identify "who made the alleged misrepresentations." Docket No. 59-4, at p. 4. Second, Jackson Hewitt maintains that plaintiff has not complied with Rule 9(b) because her complaint fails to allege "how the alleged misrepresentations were fraudulent." *Id.* Jackson Hewitt is wrong on both points.

**1. The "Who" Element**

Jackson Hewitt's first argument, *i.e.*, that plaintiff has not complied with Rule 9(b) because her complaint fails to identify "who made the alleged misrepresentations," requires little consideration. In its January 7, 2009 order, the Court found the complaint sufficiently alleged the "who" element of a fraud claim. *See* Docket No. 54, at pp. 18-19. The Court ruled:

Here, plaintiff has sufficiently alleged the "who, what, when, and where" elements necessary to support a claim of fraud. Plaintiff alleges that in 2006, she visited the Jackson Hewitt office in Metairie, Louisiana and met with defendants' employee Kimberly Vazquez. Plaintiff alleges that Vazquez gave her defendants' privacy policy and told her that her information would not be placed in the public domain. Plaintiff alleges that, by misrepresenting their privacy policy, defendants were able to induce her to contract with them to complete her tax returns.

*Id.* (citations omitted).

Jackson Hewitt also accuses plaintiff of "group pleading" and "blur[ring] the lines between the actions of Jackson Hewitt and those of CCTSI[.]" Docket No. 59-4, at p. 4.

Jackson Hewitt misunderstands the law and ignores the complaint.

First, the “group pleading” doctrine appears relevant to only securities litigation. As the Fifth Circuit has explained, the “doctrine allows plaintiffs to rely on a presumption that statements in prospectuses, registration statements, annual reports, press releases, or other group-published information, are the collective work of those individuals with direct involvement in the everyday business of the company.” *Southland Securities Corp. v. INSpire Ins. Solutions, Inc.*, 365 F.3d 353, 363 (5th Cir. 2004) (internal quotation marks omitted).

Moreover, at least one court in the Fifth Circuit has ruled that there is no “rule” against group pleading. *See Gammon v. J.W. Steel and Supply, Inc.*, 2006 WL 2505631, \*1 (S.D. Tex. 2006) (“There is no prohibition against group pleading. While group pleading is often disfavored in fraud claims, group pleading by itself does not require dismissal of a fraud claim.”) (citations omitted).

To the extent the Court were to rule that some “group pleading” rule applies to this case, the complaint complies with the rule. The complaint details “the connection between [each] defendant and the allegedly fraudulent statement[s.]” *Southland Securities*, 365 F.3d at 365. As explained in the complaint, when consumers come to Jackson Hewitt to have their tax returns prepared, they are all presented with a Jackson Hewitt “Privacy Policy.” *See* Docket No. 57, at ¶ 23. The “Privacy Policy” is a representation *from all of the defendants* as to the policies and procedures allegedly in place to protect the personal and financial information and documents entrusted to them. In their “Privacy Policy,” defendants represent:

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.

*Id.* & Exhibit O. 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.

*Id.* at ¶ 24.

In shortest summary, plaintiff and the class members were drawn to Jackson Hewitt based upon brand recognition. When they entered the door, they were promised *by all of the defendants* that certain policies and procedures were in-place to protect the personal and financial information and documents they would be providing to defendants. As explained in detail in plaintiff’s second amended complaint, and as discussed below, defendants knew their confidentiality representations were false when made. Defendants knew they did *not* have in-place the represented policies and procedures that complied with applicable laws and regulations. Defendants’ confidentiality representations were made to fraudulently induce plaintiff and the class members to obtain tax preparation services through Jackson

Hewitt.

## 2. The “How” Element

As noted, Jackson Hewitt also argues plaintiff has not complied with Rule 9(b) because her complaint fails to explain “‘how’ the statements allegedly made were fraudulent.” Docket No. 59-4, at p. 6. Jackson Hewitt is again wrong.

Contrary to Jackson Hewitt’s argument, and in compliance with this Court’s January 7, 2009 order, plaintiff’s second amended complaint explains “how” defendants’ representations were fraudulent. However, before addressing the “how” issue, one point must be emphasized. Jackson Hewitt misunderstands the nature of plaintiff’s fraud claim. Contrary to Jackson Hewitt’s characterization, plaintiff’s fraud claim does *not* relate to an unfulfilled promise or statement as to future events. *See* Docket No. 59-4, at p. 6. Instead, plaintiff’s fraud claim relates to a fraudulent statement of fact made to induce plaintiff and the class members into obtaining tax services through Jackson Hewitt. *See* Docket No. 57, at ¶ 54 (“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.”). As noted above, defendants represented that (a) they “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” and that (b) “[t]hese policies and procedures include physical, electronic, and procedural safeguards that comply with federal regulations to guard your information.” *Id.* at ¶ 23. The following facts belie the truth of defendants’

“confidentiality representation” and explain “how” or “why” the representation was knowingly false when made:

- 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.
- 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. Ingress and egress into these spaces are *not* properly limited.
- 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.
- 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.

*Id.* at ¶¶ 26-29.

Jackson Hewitt also argues plaintiff’s second amended complaint makes her fraud claim “less viable” because the new allegations “amount to nothing more than a negligence claim, not a claim for fraud.” Docket No. 59-4, at p. 7. Again, Jackson Hewitt misunderstands plaintiff’s fraud claim. Plaintiff agrees that the new allegations establish Jackson Hewitt’s negligence. The allegations also support plaintiff’s fraud claim. For example, the allegation that defendants do not “burn, shred, or pulverize such documents” and that defendants “dispose of such documents in a manner inconsistent with applicable

federal laws, regulations, and standards,” is an allegation that establishes Jackson Hewitt’s negligence, and likewise supports plaintiff’s fraud claim because it establishes that Jackson Hewitt’s “confidentiality representation” was falsely made. The Court should deny Jackson Hewitt’s motion to dismiss plaintiff’s fraud claim.

**C. Plaintiff States an Unfair Trade Practices Claim**

Jackson Hewitt’s motion to dismiss should also be denied as to plaintiff’s unfair trade practices claim. That claim is predicated upon defendants’ fraud and invasion of privacy. Considering that the fraud and invasion of privacy claims are sufficiently plead, the unfair trade practices claim is also supported.

**D. Plaintiff States an Invasion of Privacy Claim**

Jackson Hewitt argues the Court should dismiss plaintiff’s invasion of privacy claim because plaintiff’s “amendment of her complaint withdrew her allegations of intentional conduct, and her Second Amended Complaint speaks exclusively in terms of recklessness or negligence[.]” Docket No. 59-4, at p. 7. As noted above, plaintiff is ignoring the allegations in the complaint and its liability for the admitted *intentional actions* of their “Director of Compliance.”

Plaintiff agrees that “invasion of privacy is an intentional tort.” *Id.* But Jackson Hewitt has forgotten that it is generally liable for the intentional acts and torts of its employees/agents. *See* La. Civ. Code art. 2320; *Baumeister v. Plunkett*, 673 So.2d 994 (La. 1996). Several courts have recognized that vicarious liability may attach for the invasion of privacy committed by an employee/agent. *See, e.g., Love v. Southern Bell Tel. & Tel. Co.*, 263 So.2d 460 (La.App. 1st Cir. 1972) (finding vicarious liability for employees’ invasion

of privacy); *Bordelon v. Stafford*, 08-272 (La.App. 3d Cir. 12/10/08), 1 So.3d 697 (genuine issues of material fact prohibited summary judgment regarding employer's vicarious liability for employee's invasion of privacy); *Fontaine v. Roman Catholic Church of Archdiocese of New Orleans*, 625 So.2d 548 (La.App. 4th Cir. 1993) (same). The Court should deny Jackson Hewitt's motion to dismiss plaintiff's invasion of privacy claim.

**E. The Court Should Deny Jackson Hewitt's Motion to Strike Class Allegations**

In a complete rehash of previously raised and rejected arguments, Jackson Hewitt argues in the alternative that the Court should strike plaintiff's class allegations. *See* Docket No. 59-4, at pp. 8-9. The Court should again deny Jackson Hewitt's request.

First, contrary to Jackson Hewitt's argument, individual issues will *not* predominate. As explained in previously filed memoranda, the representations and conduct at issue were uniform as to all of the class members.

Second, and again contrary to Jackson Hewitt's argument, fraud claims are often certified, particularly where the misrepresentation is in written communication. *See, e.g., Allapattah Services, Inc. v. Exxon Corp.*, 188 F.R.D. 667 (S.D. Fla. 1999) (discussing at length certification of fraud claims and gathering authorities).

Third, and once again contrary to Jackson Hewitt's argument, plaintiff's invasion of privacy claim is amenable to class certification. Jackson Hewitt disingenuously argues that (a) whether the disclosed information and documents were "private"; (b) whether the alleged disclosures "seriously interfered" with each class member's privacy interests; and (c) whether the disclosures constitute "publicity" "will require a highly individualized inquiry and analysis." *See* Docket No. 59-4, at p. 9. No individualized analysis is needed.

The disclosed documents are obviously “private,” as confirmed by Jackson Hewitt’s “Privacy Policy” and federal law. A simple review of the disclosed documents establishes this fact. Disclosure of the documents, which contain the most sensitive financial and personal information about a consumer, obviously seriously interferes with a consumer’s privacy interests. *See* Restatement (Second) of Torts, § 652D, cmt. b (1977) (“[I]f the record is one *not* open to public inspection, *as in the case of income tax returns*, it is *not* public, and *there is an invasion of privacy when it is made so.*”) (emphasis added). All of the documents were disclosed in the same manner, meaning there is commonality as to how the documents were made “public.” Finally, as to damages, the issue can be managed through various methods, including bifurcation of the issues if necessary. The Court should deny Jackson Hewitt’s strike motion.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court should deny Jackson Hewitt’s motions to dismiss and strike. It is time for this case to move forward to the discovery phase.



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 24th day of March 2009.

/s/ Bryan C. Shartle  
Bryan C. Shartle

Respectfully Submitted,

/s/ Bryan C. Shartle

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