

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

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

**MEMORANDUM IN OPPOSITION TO CRESCENT CITY TAX SERVICE, INC.’S
MOTION TO DISMISS SECOND AMENDED CLASS ACTION COMPLAINT**

Plaintiff, Vicki L. Pinero, submits this memorandum in opposition to the second motion to dismiss and strike filed by defendant, Crescent City Tax Service, Inc. d/b/a Jackson Hewitt Tax Service (referred to as “CCTSI”), Docket No. 87.

In its late-filed motion, CCTSI attempts to join in the arguments raised by its co-defendants, Jackson Hewitt Tax Service Inc. and Jackson Hewitt Inc. (jointly referred to as “Jackson Hewitt”), for dismissing plaintiff’s Second Amended Class Action

Complaint and striking the class allegations contained therein. To the extent CCTSI's motion merely adopts Jackson Hewitt's arguments, the motion is defective for the reasons explained in plaintiff's opposition to Jackson Hewitt's motion, which plaintiff adopts and incorporates herein. *See* Docket No. 84.

To the extent CCTSI argues it is not responsible for any disclosure or publication that "happened through the agencies of a person who was no longer employed with [CCTSI]," (see Docket No. 87-2, at p. 3) CCTSI improperly invokes a factual dispute not appropriately raised in a motion to dismiss. Further, CCTSI's contention that the person was not then CCTSI's agent or employee is belied by CCTSI's prior representations: 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. *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.

Whatever the true facts may be regarding CCTSI's relationship with the person(s) who actually disposed of and/or disclosed the tax and related documents at issue, plaintiff should be afforded the opportunity to investigate and discover them. In the meantime, plaintiff is entitled to the factual presumption that defendants or their agents were responsible for the disclosure. *See Guidry v. American Public Life Ins. Co.*, 512 F.3d 177, 180 (5th Cir. 2007); *Shields v. Allstate Ins. Co.*, 2008 WL 3884326, *1 (E.D. La. 2008).

CONCLUSION

For the foregoing reasons and those previously set forth in plaintiff's

memorandum in opposition to Jackson Hewitt's second motion to dismiss (Docket No. 84), the Court should deny CCTSI's motion to dismiss and strike.

Respectfully Submitted,

/s/ Bryan C. Shartle

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by ECF; by email; by hand; by fax; by FedEx; by placing a copy of same in the U.S. Mail, postage prepaid this 30th day of March 2009.

/s/ Bryan C. Shartle
Bryan C. Shartle

Attorneys for Plaintiff,
Vicki L. Pinero