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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 **THE PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 v.

15 **JACKSON HEWITT INC.; JACKSON HEWITT**
16 **TAX SERVICE INC.; and TAX SERVICES OF**
AMERICA, INC.,

17 Defendants.

Case No.

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES AND OTHER
RELIEF**

18
19 The People of the State of California, by Bill Lockyer, Attorney General for the State
20 of California, are informed and believe and on such information and belief allege as follows:

21 **DEFENDANTS**

22 1. Defendant Jackson Hewitt Inc., a Virginia corporation, does business in
23 California, including in the County of Alameda.

24 2. Defendant Jackson Hewitt Tax Service Inc., a Delaware corporation, does
25 business in California, including in the County of Alameda.

26 3. Defendant Tax Services of America, Inc., a Delaware corporation, does business
27 in California, including in the County of Alameda.
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1 4. In connection with the business of tax preparation and the provision of related
2 products and services, Defendants have engaged, through their officers, agents, representatives
3 and employees, in the unlawful acts alleged.

4 5. The violations of law herein alleged have been carried out in the County of
5 Alameda and elsewhere in the State of California.

6 6. Whenever reference in this complaint is made to any act of Defendant(s), that
7 allegation shall be deemed to mean the act of each defendant acting individually and jointly.

8 7. Whenever reference in this complaint is made to any act or transaction of any
9 defendant, that allegation shall be deemed to mean that the defendant did or authorized the acts
10 alleged in this complaint through its principals, officers, directors, employees, members, agents
11 and representatives while they were acting within the actual or ostensible scope of their
12 authority.

13 **DEFENDANTS' BUSINESS PRACTICES**

14 8. At all times relevant to this complaint, Jackson Hewitt has promoted its tax
15 preparation services through marketing campaigns that tout the company's ability to get money
16 to taxpayers quickly at tax time. Though the company has sometimes characterized its services
17 simply as a way for tax preparation customers to obtain their federal tax refunds more quickly,
18 Jackson Hewitt has in fact engaged in a campaign to get its customers to purchase loans and
19 other financial products rather than getting their refunds directly from the IRS. In recent years,
20 the vast majority of Jackson Hewitt customers have purchased not quick refund service but loans
21 and other financial products that have often cost hundreds of dollars in various fees and charges.

22 9. The majority of Jackson Hewitt tax preparation customers are members of the
23 "working poor" who are eligible for the Earned Income Tax Credit (EITC), a payment from the
24 federal government which may amount to several thousand dollars every year. Nevertheless,
25 Jackson Hewitt customers who receive the EITC have been charged an "extra" \$10 to receive a
26 loan.

27 10. The loans ("refund anticipation loans" or RALs) and other financial products
28 ("accelerated direct deposits" or "assisted direct deposits" (ADDs) and "accelerated check

1 refunds” (ACRs)) Jackson Hewitt has made available to its customers are secured by the
2 taxpayer’s anticipated tax refund and based on the anticipated amount of the refund.

3 11. Jackson Hewitt has received substantial revenue from the loans and other refund-
4 based products, including a substantial portion of the “fees” its customers are required to pay for
5 these items.

6 12. From 2001 through 2004, Jackson Hewitt customers in California entered into
7 more than 200,000 RAL and other financial product agreements, generating millions of dollars in
8 income for the company.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**
11 **(MISLEADING OR DECEPTIVE STATEMENTS)**

12 13. The People incorporate by reference paragraphs 1 through 12 of this Complaint as
13 though they were set forth fully in this cause of action.

14 14. In violation of Business and Professions Code section 17500, Defendants, and
15 each of them, with the intent to induce California consumers to purchase the products or services
16 Defendants offer, have made, disseminated or caused to be made or disseminated, before the
17 public in the county of Alameda and elsewhere in the State of California, the untrue or
18 misleading statements set forth in paragraphs 15 through 19, which statements they knew or
19 reasonably should have known were untrue or misleading at the time the statements were made.

20 15. Defendants have portrayed their Refund Anticipation Loan (RAL) product as the
21 customer’s tax refund or as “Money Now” rather than as a loan. They have minimized or
22 omitted words and phrases that would have indicated that a RAL is a loan. They have run
23 advertisements that misidentify loans as refunds, including a display on their website stating
24 “Our refunds can beat up their refunds” that, when clicked, led to a description of Defendants’
25 RAL (i.e., loan) product. They have run advertisements that referred to loans as “your money”
26 or “your tax money.” These statements are untrue or misleading because a RAL is not the
27 taxpayer’s refund or the taxpayer’s money but, instead, a high-cost, short-term loan.
28

1 16. Defendants have run advertisements related to “SuperFast” refund processing
2 (which takes approximately 8-15 days for direct deposit from the IRS) concurrently with
3 confusingly similar advertisements related to “Money Now” bank loans (which take as little as
4 an hour). The similarity in language and tone of the two purportedly separate ad campaigns has
5 resulted in the implication that customers who come to a Jackson Hewitt office will be able to
6 receive a “SuperFast Refund” that same day. Customers seeking a fast refund from the IRS have
7 instead been steered to expensive loans and other financial products. Ads for the SuperFast
8 Refund have stated that the product is “For when you want your refund in a hurry!” but Jackson
9 Hewitt provides the same speed of refund processing for all customers. In addition, the
10 company’s website has acknowledged that the SuperFast Refund is intended for “our customers
11 [who] are not in a hurry to receive their refunds.” The advertisements for the SuperFast Refund
12 are untrue or misleading because they imply that a free product – electronic filing of the
13 customer’s tax refund – brings the refund in a day or less when in fact a customer seeking money
14 in a day’s time would have to pay for an expensive loan.

15 17. Defendants have stated, directly or by implication, that their (high-cost) RALs,
16 Accelerated Check Refunds (ACRs) and Assisted Direct Deposits (ADDs) are a faster way to
17 receive money at tax time than waiting to receive a refund directly from the IRS. These
18 statements are untrue or misleading because taxpayers could receive a direct deposit refund from
19 the IRS on an electronically filed return as fast as they could receive an ADD or ACR. In
20 addition, the difference between the time it takes to receive a costly RAL or ACR and the time
21 needed for delivery of an IRS check by mail has been less than what Jackson Hewitt’s customers
22 have been told.

23 18. In advertisements and statements to customers, Defendants have described RALs,
24 ACRs and ADDs as ways of receiving money faster at tax time or avoiding up-front payment of
25 tax preparation fees. These statements are untrue or misleading because they fail to disclose
26 that, by applying for these products, Defendants’ customers also have purportedly authorized
27 automatic collection of unspecified debts in unspecified amounts from prior years which may be
28

1 claimed to be owed to any of a number of RAL-lenders who are participants in a debt-pooling
2 arrangement.

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4 **SECOND CAUSE OF ACTION**

5 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE**
6 **SECTION 17200 (UNFAIR COMPETITION)**

7 19. The People incorporate by reference paragraphs 1 through 12 and 14 through 18
8 of this Complaint as though they were set forth fully in this cause of action.

9 20. Defendants, and each of them, have engaged in the acts and practices of unfair
10 competition, as defined in California Business and Professions Code section 17200, set forth in
11 paragraphs 21 through 28 below.

12 21. Defendants have violated Business and Professions Code section 17500 as
13 specifically alleged in the First Cause of Action.

14 22. Defendants have participated in and facilitated a program of debt collection that
15 violates the California Rosenthal Fair Debt Collection Practices Act (Civil Code §§ 1788.13,
16 1788.17) and the federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692e, 1692f, 1692g)
17 by:

18 A. Failing to inform customers believed to owe RAL-related debt from a prior
19 year of the amount of the purported debt and the creditor to whom it is owed,
20 *before* those customers have completed an application for a loan or other
21 financial product which causes the debt to be automatically collected out of
22 the amount of their RAL, ACR or ADD. Defendants have not disclosed the
23 amount of the alleged debt, the identity of the creditor, or the customer's
24 right to dispute the validity of a purported specific debt, until after the
25 customer has already lost control over his or her anticipated refund.

26 B. Engaging in debt collection activities that are misleading or deceptive, in
27 that Jackson Hewitt customers believed to owe debt from a prior year have
28 been offered an application for a loan in the amount of their refund, but
instead have found themselves in the midst of a debt collection process.

1 C. Engaging in debt collection activities that are unfair or unconscionable, in
2 that the applications which Jackson Hewitt customers must sign for a RAL,
3 ACR or ADD have required those customers to allow collection of prior-
4 year “debts” claimed to be owed not only to Jackson Hewitt and its partner
5 bank(s), but also to any *other* RAL-lending bank with which the customers
6 may have dealt in the past. The applications have also purported to allow the
7 collection of “stale” debts – that is, debts so old that they could not be
8 collected through legal action.

9 D. Defendants have benefitted directly from this program through collection of
10 debts for tax preparation and related fees that Jackson Hewitt has claimed
11 customers owe the company from previous years, and through receipt of a
12 percentage of the amounts allegedly owed to and seized by the RAL-lending
13 banks through the debt collection scheme.

14 23. In violation of California and federal law (Bus. & Prof. Code §§ 17530.5, 22253;
15 26 U.S.C. § 7216, 26 C.F.R. § 301.7216-1, -3), Defendants have used or disclosed information
16 from their customers’ tax returns for purposes other than preparing the returns, without first
17 obtaining – for each such use or disclosure – a separate written consent in a separate document,
18 by:

19 A. Without proper consent, disclosing customers’ tax return information to
20 Jackson Hewitt’s partner RAL-lending banks, for purposes of providing
21 RALs, ACRs and ADDs; and

22 B. Without proper consent, disclosing customers’ tax return information to their
23 partner banks and other RAL lenders for purposes of collecting debts or
24 allowing others to collect debts.

25 24. In offering ACRs and ADDs to their customers, Defendants have failed
26 adequately to disclose the cost of these products.

27 25. Defendants have held themselves out to their customers and to the public as
28 trusted “tax experts” on whom their customers could and did rely. In connection with the sale of

1 RALs, ACRs and ADDs, however, Defendants have acted in their own financial interest rather
2 than their customers', in that:

- 3 A. They have marketed and steered their customers to RALs, ACRs and ADDs
4 that profit Defendants, whether or not these products are in the customers'
5 financial best interest;
- 6 B. They have failed to disclose clearly and accurately to their customers the
7 cost of each refund option and the amount of time it takes to receive money
8 under each option;
- 9 C. They have failed to affirmatively disclose to their RAL, ACR and ADD
10 customers who receive the Earned Income Tax Credit the option of saving
11 RAL-, ACR- and ADD-related fees and getting more money for ongoing
12 living expenses by (1) applying to receive part of their EITC in their
13 paycheck every month during the next tax year as part of the "Advance
14 EITC" program and/or (2) reducing the amount of tax withheld every month,
15 rather than having to wait again until the end of that next year and pay for a
16 high-cost RAL, ACR or ADD in order to get money sooner;
- 17 D. They have marketed RALs even to those customers who Defendants or other
18 debt-collection pool participants believe owe delinquent RAL-related debt,
19 and who will as a result have the RAL application denied and instead find
20 themselves placed into an ACR or ADD and in the midst of a debt collection
21 process.

22 26. Defendants have participated in and facilitated a program under which Jackson
23 Hewitt customers who receive the Earned Income Tax Credit have been charged an additional
24 fee in order to obtain loans against their tax refunds, in violation of the Equal Credit Opportunity
25 Act (15 U.S.C. § 1691 *et seq.*).

26 27. Defendants have served as paid facilitators of loans made by their partner banks,
27 and therefore have acted as a credit services organization in charging their customers an
28 "administration fee," "application fee" or "handling fee" for obtaining a loan from those banks.

1 Defendants have failed, however, to register as a credit services organization or otherwise to
2 comply with the requirements of the Credit Services Organizations Act (Civil Code § 1789.10 *et*
3 *seq.*).

4 28. Defendants have failed adequately to disclose the cost of the “CashCards” offered
5 to their customers. Defendants have stated that the CashCard allows customers to avoid “high
6 fees” for check-cashing when in fact using the CashCard – with its separate charges for each
7 transaction, for each call to customer service, for closing the card account, for keeping the card
8 account open, and for a variety of other standard activities – could easily exceed the cost of
9 cashing a check for the same amount. The amount of the fees for “loading” and using the
10 CashCard has not been disclosed in oral communications with customers, and has been only
11 inconspicuously disclosed, if at all, in brochures and advertisements describing the CashCard.
12

13 WHEREFORE, Plaintiff prays for judgment as follows:

14 1. Pursuant to Business and Professions Code sections 17203 and 17535, that all
15 Defendants, their agents, employees, officers, representatives, successors, partners, assigns, and
16 all persons acting in concert or participating with them, be permanently enjoined from violating
17 Business and Professions Code sections 17200 and 17500, including but not limited to the
18 violations alleged in this Complaint;

19 2. Pursuant to Business and Professions Code sections 17206 and 17536, that the Court
20 assess a civil penalty against each Defendant for each violation of Business and Professions
21 Code section 17200 or 17500 alleged in the Complaint, as proved at trial;

22 3. That the People recover their costs of suit; and

23 4. That the Court grant such other and further relief as it may deem just and proper.
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Dated: _____, 2007

Respectfully submitted,

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