

IMAGED

JUN 15 2009

FILED

Superior Court of California

County of San Francisco

JUN 15 2009

GORDON PARK-LI, Clerk

BY: [Signature]
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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

Plaintiff,

v.

**JTH TAX, INC. (D/B/A LIBERTY TAX
SERVICE),**

Defendant.

CGC-07-460778

JUDGMENT

AND

PERMANENT INJUNCTION

This equitable action pursuant to Business and Professions Code sections 17200 et seq. and 17500 et seq. was tried to the bench before the Honorable Curtis E.A. Karnow in Department 608 of the this Court on October 1-3, 6-10, and 14, 2008. Post-trial briefing was complete May 26, 2009 and the matter was then submitted.

Plaintiff People of the State of California (People) appeared and were represented by Paul Stein, Sheldon H. Jaffe, Amy C. Teng, Margaret Reiter, and Zuzana Ikels. Defendant JTH Tax, Inc. d/b/a Liberty Tax Service (Liberty) appeared and was represented by William L. Stern, Brian J. Martinez, and, appearing *pro hac vice*, Carl T. Khalil.

1 This Court considered the evidence, proposed statements of decision and objections to
2 those, briefing from the parties, and argument. The Court then issued its statement of decision
3 and found that Liberty violated the Unfair Competition Law, Business and Professions Code
4 section 17200 et seq., and the False Advertising Law, Business and Professions Code section
5 17500 et seq.

6
7 THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

- 8 1. Judgment is entered in favor of Plaintiff People of the State of California;
- 9 2. Liberty violated Business and Professions Code sections 17200 and 17500 as set forth
10 in the Statement of Decision;
- 11 3. Liberty shall pay, pursuant to Business and Professions Code sections 17206 and
12 17536, civil penalties to the Attorney General of California totaling \$1,161,699.
- 13 4. Pursuant to Business and Professions Code §§ 17203 and 17535, Liberty shall pay
14 restitution in the sum of \$135,886.

15
16 PERMANENT INJUNCTION

17
18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

- 19 A. The injunctive provisions of this Judgment apply to the California activities of
20 Defendant JTH Tax Inc. d/b/a Liberty Tax Service, its predecessors, agents,
21 employees, officers, representatives, successors, partners, assigns, and all
22 persons acting in concert or participating with any of them, all of whom are
23 referred to collectively as "Defendants" or "Liberty."
- 24 B. All injunctive relief under this Judgment is ordered pursuant to the Court's
25 equitable powers, including those remedial powers authorized by Business and
26 Professions Code §§ 17203 and 17535.
- 27 C. The term "Advertisement" refers to advertising in any medium, including but
28 not limited to television and radio; newspapers, magazines, and other

1 periodicals; the Internet; computer software; electronic mail; facsimile;
2 wireline and wireless telecommunications; direct mail; live on-street
3 solicitation; billboards and outdoor signs; outside-facing window displays; and
4 off-site flyers and placards; and advertising within Liberty offices or other
5 location of direct interaction with consumers, including but not limited to wall
6 posters, brochures, desk signs, flyers, charts, and computer screens.

7 D. Defendants are immediately and permanently enjoined and restrained from
8 doing any of the following:

9 Advertising and Marketing

- 10 1. Disseminating or causing to be disseminated any Advertisement that
11 directly or indirectly represents a refund anticipation loan as a client's
12 actual refund. This includes, but is not limited to, describing a refund
13 anticipation loan as "refund money" or "your money," or promising
14 "most refunds in one day."
- 15 2. In any Advertisement that mentions refund anticipation loans, failing to
16 state conspicuously that (1) the product being offered is a loan, (2) the
17 name of the lending institution, and (3) that a fee or interest will be
18 charged by the lending institution.
- 19 3. Failing to adopt and comply with policies and procedures that require
20 Liberty to (1) review any and all franchisee Advertisements prior to their
21 being disseminated in California, and (2) ensure such Advertisements
22 comply with the terms of Paragraphs D.1. and D.2. this Judgment.
- 23 4. Failing to Discipline Liberty employees and franchisees who violate the
24 policies and procedures cited in D.3 of this Judgment. "Discipline" in
25 this paragraph with respect to (i) employees means a written warning of
26 possible termination and other sanctions for the first violation,
27 suspension without pay for a period of three weeks for a second
28 violation, and termination for a third violation; (ii) franchisees means a

1 written warning of possible fines and termination for a first violation, a
2 fine payable to the Attorney General of California of \$15,000 for a
3 second violation, and termination as a franchisee for a third violation.
4 Nothing in this Paragraph bars, inhibits, or diminishes any punishment
5 this Court may impose on any person or entity for violation of this
6 Injunction.

- 7 5. Failing to audit at least 10 California franchise owners each year to
8 determine their compliance with Liberty's advertising approval policies
9 and procedures and the terms of this Judgment and, as part of these
10 audits, to require the franchise owner to provide copies of any
11 Advertisements run or to be run during the current tax season (January 1-
12 April 15), and to independently verify whether such Advertisements
13 comply with Liberty's advertising approval policies and procedures and
14 with the terms of Paragraphs D.1. and D.2. of this Judgment.
- 15 6. Failing, on a monthly basis during the tax season (January 1-April 15), to
16 obtain from the *Pennysaver* copies of any Advertisement which was
17 published in any California edition of the *Pennysaver* in the name of
18 Liberty Tax and/or Liberty Tax Service, and to determine whether such
19 Advertisements comply with Liberty's advertising approval policies and
20 procedures and with the terms of Paragraphs D.1. and D.2. of this
21 Judgment.
- 22 7. Failing, on a bi-weekly (every 14 days) basis during the tax season
23 (January 1-April 15), to inspect the *Pennysaver*'s website and check for
24 any Advertisement expressly or apparently directed to California
25 consumers in the name of Liberty Tax and/or Liberty Tax Service, and to
26 determine whether such Advertisements comply with Liberty's
27 advertising approval policies and procedures and with the terms of
28 Paragraphs D.1. and D.2. of this Judgment.

- 1 8. Failing, on a monthly basis during the tax season (January 1-April 15), to
2 monitor any advertising outlet, other than the *Pennysaver*, that Liberty
3 knows is being used by, or has within the last twelve months been used
4 by, California franchisees to check for any Advertisement in the name of
5 Liberty Tax and/or Liberty Tax Service, and to determine whether such
6 Advertisements comply with Liberty's advertising approval policies and
7 procedures and the terms of Paragraphs D.1. and D.2. of this Judgment.
- 8 9. Failing, on a monthly basis during tax season (January 1-April 15), to
9 send an e-mail or other bulletin to all of its California franchisees
10 reminding them of Liberty's advertising approval policies and procedures
11 and of the potential Discipline stated in Paragraph D.4.
- 12 10. Failing, upon discovering any Advertisement by a California franchisee
13 that fails to comply with the terms of Paragraphs D.1. and D.2. of this
14 judgment, to notify the California Attorney General's Office, Consumer
15 Law Section, within one week of discovering the Advertisement.
- 16 11. Imposing on consumers, directly or indirectly, any fee incident to an
17 extension of credit in connection with the sale of tax preparation services
18 without first disclosing in writing that (1) the fee is a finance charge, and
19 (2) the cost of the fee stated as an annual percentage rate, and in the
20 manner and form required by 15 U.S.C. § 1601 et seq. and its
21 implementing regulations.

22 Debt Collection

- 23 12. Participating in or facilitating any program to collect refund anticipation
24 loan debts that involves any of the following practices:
 - 25 a. Failing to inform alleged debtors, before the alleged debtors take
26 any step that would commit them to having the amount of the debt
27 deducted or withheld, even temporarily, from their refund, that they
28

1 purportedly owe a debt, and the name of the creditor to whom the
2 alleged debt is owed; or

- 3 b. Attempting to obtain or obtaining a customer's authorization to
4 collect stale debts - that is, debts as to which the limitations period
5 has expired - as part of the process of offering refund anticipation
6 loans or electronic refund checks, unless the customer revives the
7 debt in the manner required by law.

8 Distribution of Injunctive Terms

- 9 13. Failing to provide to the managers of all California corporate-owned
10 Liberty offices, all California Liberty franchisees (with instructions to
11 provide the materials to the manager of each office), and all of Liberty's
12 lending partner banks a copy of (1) the first page, (2) the
13 "INJUNCTION" portion, and (3) the signature page of this Judgment.

14 Conduct Inconsistent With the Judgment

- 15 14. Providing information, materials or training that is inconsistent with the
16 terms of this Judgment to any Liberty corporate-owned or franchised
17 offices in California or their personnel; or permitting conduct that is
18 inconsistent with the terms of this Judgment by any Liberty corporate-
19 owned or franchised offices in California or their personnel.

20 Retention of Jurisdiction

- 21 E. This Court shall retain jurisdiction over this matter for purposes, among others,
22 of enabling any party to this Judgment to apply to the Court at any time, after
23 serving notice on the other party, for such further orders and directions as may
24 be necessary or appropriate for the construction or carrying out of this
25 Judgment, for modification or termination of any injunctive provision of this
26 Judgment, and for punishment for any violation of this Judgment.

27 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Liberty shall take
28 nothing from the People;

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the People, as the
2 prevailing party, shall recover from Liberty, pursuant to Code of Civil Procedure section 1032 et
3 seq., its costs of suit from Liberty; and

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any filing fee or other
5 fee for any official service rendered by the clerk of the court that was not paid by the People as a
6 result of Government Section 6103 shall be paid by Liberty as provided for in Government
7 Section 6103.5 in the amount of \$ _____ [to be entered by clerk of the court].

8
9 DATED: June 15, 2009



Curtis E. A. Karnow
Judge Of The Superior Court

**SUPERIOR COURT OF CALIFORNIA
County of San Francisco**

THE PEOPLE OF THE STATE OF CALIFORNIA

PLAINTIFF

VS.

JTH TAX, INC. (DBA LIBERTY TAX SERVICE) et al

DEFENDANT

Case Number: CGC - 07 - 460778

**CERTIFICATE OF MAILING
(CCP 1013a (4))**

I, Dennis D. Vegas, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On 6-15-09 I served the attached Judgment And Permanent Injunction by placing a copy thereof in a sealed envelope, addressed as follows:

PAUL STEIN
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

SHELDON H. JAFFE
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

WILLIAM LEWIS STERN
425 MARKET ST
SAN FRANCISCO, CA 94105-2482

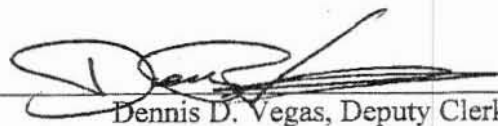
BRIAN J. MARTINEZ
425 MARKET ST
SAN FRANCISCO, CA 94105-2482

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: 6/15/09

GORDON PARK-LI, Clerk

By:



Dennis D. Vegas, Deputy Clerk