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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

Case No. **07C 1802**

SMART TAX, INC., )

d/b/a Jackson Hewitt Tax Service, )

ASK TAX, INC., )

d/b/a Jackson Hewitt Tax Service, )

FARRUKH SOHAIL, )

SAHER SOHAIL, )

REHAN BADR, )

TLEASS GAYLES, )

TIFFANY GEE, )

SHEWANA ISSAC, )

FRANCHESTA TYSON, )

SHYEATTA JACKSON, )

FRANK BELLMON, )

ANGELA STEPHENS, )

YVONNE AMILL, )

JEANEEN HATTER, )

ASLEAN BARNES, and )

LATRICE HUSTON, )

Defendants. )

JUDGE MANNING

MAGISTRATE JUDGE MASON

**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF**

The plaintiff, the United States of America, alleges against defendants as follows:

1. This is a civil action brought by the United States under Sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("IRC") to stop the defendants from engaging in and facilitating a pervasive and massive series of tax-fraud schemes. The

Government seeks to enjoin the defendants and all those in active concert or participation with them, from:

- a. acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. preparing or assisting in the preparation or filing of tax returns for others that defendants know will result in the understatement of any tax liability;
- c. asserting unrealistic, frivolous, or reckless positions or otherwise understating customers' tax liabilities as subject to penalty under IRC § 6694;
- d. instructing, advising, or assisting customers to understate their federal tax liabilities;
- e. engaging in any other activity subject to penalty under IRC § 6694;
- f. engaging in any activity subject to penalty under IRC § 6695, including failing to exercise due diligence in determining customers' eligibility for the earned income tax credit;
- g. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;
- h. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to evade the assessment or collection of their correct federal tax; and
- i. instructing, advising, or assisting customers to claim a Fuel Tax Credit where the customers are not eligible for the credit.

### **Jurisdiction and Venue**

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and IRC §§ 7402(a), 7407, and 7408.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because defendants reside or conduct business within this judicial district, and a substantial part of the actions giving rise to this suit took place and are taking place in this district.

### **Defendants**

4. Smart Tax, Inc., d/b/a Jackson Hewitt Tax Service (“Smart Tax/Jackson Hewitt”) operates at least 27 Jackson Hewitt franchise stores in the Chicago area.

5. Ask Tax, Inc., d/b/a Jackson Hewitt Tax Service (“Ask Tax/Jackson Hewitt”) operates an additional eight Jackson Hewitt franchise stores in the Chicago area.

6. Farrukh Sohail (“Sohail”) and his wife, Saher Sohail, are the sole shareholders of Smart Tax/Jackson Hewitt. Sohail is a shareholder of Ask Tax/Jackson Hewitt. Sohail is one of the largest owners of Jackson Hewitt Tax Service franchises. He purchased his first franchise store in 1998, and now owns interests in corporations (including Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt) that operate more than 125 Jackson Hewitt franchise stores in and around Chicago, Illinois; Birmingham, Alabama; Atlanta, Georgia; Detroit, Michigan; and Raleigh, North Carolina. He or his corporations have the exclusive rights to open stores in at least 30 franchise territories within these cities. Sohail-owned Jackson Hewitt stores prepared over 105,000 federal income tax returns in 2006.

7. Rehan Badr (“Badr”), a close associate of Sohail, resides in this judicial district and is the general manager of Smart Tax/Jackson Hewitt’s franchise stores in the Chicago area.

8. Tleass Gayles, Tiffany Gee, Shewana Isaac, Latrice Huston, Aslean Barnes, Jeaneen Hatter and Franchesta Tyson reside in this judicial district and have worked as tax preparers at Smart Tax/Jackson Hewitt.

9. Angela Stephens, Shyeatta Jackson, and Frank Bellmon reside in this judicial district and have worked as managers at Smart Tax/Jackson Hewitt.

10. Smart Tax/Jackson Hewitt, Ask Tax/Jackson Hewitt, Sohail, Badr, Stephens, Jackson, Yvonne Amill, and Bellmon have hired, trained, supervised, directed, and managed Jackson Hewitt tax return preparers who have prepared or assisted in preparing large numbers of fraudulent federal income tax returns, and otherwise engaged in conduct substantially interfering with the internal revenue laws. Gayles, Gee, Isaac, Huston, Barnes, Tyson, Stephens, and Jackson have prepared many fraudulent federal income tax returns and engaged in conduct substantially interfering with the internal revenue laws.

#### **Background Facts**

11. Smart Tax/Jackson Hewitt, Ask Tax/Jackson Hewitt, Sohail, Badr, and others (including Amill, Bellmon, and Stephens) acting with them have created, directed, fostered, and maintained a business environment at Sohail's Jackson Hewitt stores in which fraudulent tax return preparation is encouraged and flourishes.

12. Under Sohail's, Badr's and other managers' direction and control, Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt intentionally hire inadequately educated and poorly trained individuals to become Jackson Hewitt tax return preparers. Sohail has said that his return preparers "are only short term. All they need is to be able to do data entry. A monkey can do this." Prospective Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt return

preparers with little or no previous return-preparation experience attend short classes focused on using “Profiler,” Jackson Hewitt’s nationwide tax preparation software. The Smart Tax/Jackson Hewitt instructors fail to teach all preparers critical elements related to tax return preparation, including Earned Income Tax Credit (EITC) due diligence requirements, procedures for detecting fraudulent W-2 forms, and methods to question customers who provide questionable, suspicious, or fraudulent information. In addition, the SmartTax/Ask Tax/Jackson Hewitt training fails to give return preparers the knowledge or experience to complete more complicated tax returns, including those requiring Schedules A and C. This lack of training directly contributes to the preparation of inaccurate, incomplete, and false tax returns.

13. As detailed below, return preparers employed by Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt are specifically trained and directed to accept without question, and use, customer-provided information that appears to be (or clearly is) suspicious or false.

14. Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt pay low wages to their preparers and directly tie preparers’ overall compensation to the number of tax returns prepared without regard to the honesty or quality (or lack thereof) of the return preparation. Similarly, Smart Tax/Jackson Hewitt pays bonuses to managers whose stores prepare the most tax returns, without regard to accuracy or quality. Sohail, Badr, and others constantly push quotas and return volume at the expense of preparing honest, accurate tax returns.

15. Many of Smart Tax/Jackson Hewitt’s stores cater to prospective customers who are not entitled to tax refunds but who seek to obtain fast money in the form of Jackson Hewitt “Holiday Express Loan Program” (HELP) loans, “Money Now” loans, or Refund Anticipation loans (RALs) secured by fabricated tax refunds fraudulently claimed on Jackson Hewitt-prepared

and filed tax returns. Repeat customers seek out individual Smart Tax/Jackson Hewitt return preparers who have fraudulently obtained refunds for them in the past. In addition, residents of neighborhoods where defendants' stores are located (including one 14 year old girl) often act as recruiters, bringing customers (including apparently homeless people who have no income and had no tax withheld) into the Smart Tax/Jackson Hewitt stores to have bogus returns prepared to obtain fraudulent refunds. Some recruiters are paid by the customers, and some are paid by individual Smart Tax/Jackson Hewitt preparers.

16. Many of Smart Tax/Jackson Hewitt's return preparers knowingly turn a blind eye to the customers' schemes, and to the customers' suspicious or fraudulent information. Some Smart Tax/Jackson Hewitt return preparers, as described in more detail below, willfully engage in fraudulent return preparation in coordination with the customers. Smart Tax/Jackson Hewitt managers are aware of this and have not only not acted to stop it but have in some instances encouraged it.

17. In 2007, a Smart Tax/Jackson Hewitt return preparer offered to fraudulently manipulate a customer's 2006 return information so the customer would qualify for a RAL. The preparer assured the customer that such changes were legal, and the customer consented to the changes. After the fraudulent return was filed with the IRS, the customer received the RAL and the IRS issued a refund. In 2005, Defendant Barnes failed to report income on the same customer's 2004 return, despite the fact this customer told Barnes about the income and gave Barnes a Form 1099 showing the income.

18. Jackson Hewitt Tax Services Inc., based in Parsippany, New Jersey, is the second largest tax return preparation firm in the United States. Most Jackson Hewitt retail stores are

owned and operated by franchisees of Jackson Hewitt Tax Services, Inc. Franchisees and their employees prepare the returns using Jackson Hewitt's Profiler software and then submit the returns electronically to Jackson Hewitt Tax Services, Inc., which files them with the IRS. Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt operate under franchise agreements with Jackson Hewitt Tax Services, Inc.

### **Fuel-Tax-Credit Fraud**

19. Smart Tax/Jackson Hewitt employees have prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms the Smart Tax/Jackson Hewitt return preparers misapplied IRC § 6421(a) ("Fuel Tax Credit"). The Fuel Tax Credit is a credit available only to taxpayers who operate farm equipment or other off-highway business vehicles, or burn kerosene in their homes. Moreover, the equipment or vehicles must not be registered for highway uses. These Smart Tax/Jackson Hewitt preparers fraudulently (and frivolously) claimed that this credit applies to driving cars on city streets for business purposes and prepared returns for Chicago-area customers accordingly. None of these customers used vehicles for farm or off-road purposes and on information and belief many of these customers did not use any vehicle for any business use.

### **Overview of IRC § 6421(a): Credit for Federal Tax Paid on Fuels**

20. Fraudulently claiming entitlement to the Fuel Tax Credit is an emerging widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, tax preparers improperly claim the Fuel Tax Credit for their customers purported personal or business motor fuel purchases. Indeed, tax preparers and their customers, including Smart

Tax/Jackson Hewitt and its customers, have claimed the credit in amounts drastically exceeding their actual personal or business fuel purchases.

21. IRC § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any use of fuel in a trade or business or in an income-producing activity. But the use must not be in a vehicle registered or required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2006), Farmer's Tax Guide, Chapter 14 (2006) (available online at: <http://www.irs.gov/publications/p225/ch14.html#d0e19048>).

22. IRS Publication 510 defines a highway vehicle as any "self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions." A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the Fuel Tax Credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the Fuel Tax Credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2006), Excise Taxes for 2006, Chapter 2 (2006) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3533>).

23. In addition, IRS Publication 510 provides the following example of an appropriate application of the Fuel Tax Credit:



Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify. *See Id.*

24. In short, the Fuel Tax Credit does not apply to passenger cars or trucks registered to drive on public highways. It is not, as defendants fraudulently and frivolously claimed, a credit for individuals who drive on local roads for their business.

#### **Defendants' Fraudulent Claims of the Fuel Tax Credit**

25. Defendants have prepared federal income tax returns for individuals claiming bogus Fuel Tax Credits under IRC § 6421.

26. Defendants prepared Forms 4136 for customers falsely stating that the customer used gasoline for off-highway business purposes. Defendants claimed the credit for city residents in purported occupations such as barbers, hair stylists, tattoo designers, warehouse workers, and babysitters, none of whom are eligible for the Fuel Tax Credit.

27. Worse yet, defendants claimed absurdly large credits by falsely reporting purchases of outrageously large amounts of gasoline.

28. For example, defendant Tiffany Gee, a Smart Tax/Jackson Hewitt employee, fraudulently prepared a return with a reported Fuel Tax Credit for a customer claiming to be a barber. On the return Smart Tax/Jackson Hewitt and Gee claimed that in 2004 the customer purchased 25,000 gallons of gasoline for off-highway business use. This customer, whose total income in 2004 was around \$14,000, would have had to spend approximately \$50,000 —more

than three times his total income—to consume that volume of gasoline. Moreover, to use that volume of gasoline, assuming mileage of 20 miles per gallon, this Smart Tax/Jackson Hewitt customer would have to have driven 500,000 business miles during the year—which comes to 1,370 miles each day, seven days a week, leaving little if any time to cut any hair. This example shows the blatantly fraudulent nature of defendants’ use of the Fuel Tax Credit. Neither Smart Tax/Jackson Hewitt nor Jackson Hewitt Tax Services, Inc. did anything to stop this obviously fraudulent tax return from being filed with the IRS.

29. Sohail has admitted to the IRS that the Fuel Tax Credits “should never have been claimed,” but seemingly attempted to excuse the claimed credits as “mistakes” made by his preparers.

30. The following chart shows four more examples of defendants’ fraudulent preparation of federal income tax returns using the Fuel Tax Credit:

<b>Tax Year</b>	<b>Business or profession, city and state</b>	<b>Amount of off-highway business use of gasoline claimed on Form 4136 (Estimated total gasoline cost at \$2.00 a gallon) [Estimated total yearly/daily mileage based on 20 miles per gallon]</b>	<b>Total Income</b>	<b>Amount of gasoline credit</b>	<b>Refund Requested</b>
2004	Painter; Bellwood, Illinois	22,954 gallons (\$45,908) [459,080 miles per year /1,258 per day]	\$8,153	\$4,224	\$2,798
2004	Plumber; Chicago, Illinois	21,873 gallons (\$43,746) [437,460 miles per year/1,199 per day]	\$7,823	\$4,025	\$2,705

2004	Beautician; Chicago, Illinois	31,975 gallons (\$63,950) [639,500 miles per year/1,752 per day]	\$9,257	\$6,102	\$4,728
2004	Babysitter; Chicago, Illinois	37,506 gallons (\$75,012) [750,120 miles per year/2,055 per day]	\$10,320	\$6,901	\$5,425

### **IRS Investigations, Inspections and Examinations**

31. The IRS has identified hundreds of federal income tax returns with false W-2s prepared by Smart Tax/Jackson Hewitt and filed by Jackson Hewitt over the past several years. For tax years 2004 and 2005 (prepared in 2005 and 2006), the IRS has thus far identified over 300 Smart Tax/Jackson Hewitt returns prepared with false W-2s. These returns were prepared by approximately 69 different individual Smart Tax/Jackson Hewitt return preparers. In the current 2007 filing season (for 2006 tax year returns), the IRS has already identified nine Smart Tax/Jackson Hewitt 2006 income tax returns filed with false W-2s. There are likely many more that have not yet been detected.

32. In 2006, Smart Tax/Jackson Hewitt prepared 14,343 federal income tax returns. In that year Ask Tax/Jackson Hewitt prepared 2,919 federal income tax returns. The IRS recently reviewed a random sample of 1,200 of those returns (600 prepared by each entity). A preliminary IRS investigation indicated that nearly one-half (approximately 45%) of the 600 Smart Tax/Jackson Hewitt-prepared returns, and 36% of the Ask Tax/Jackson Hewitt-prepared returns contained: false head-of-household filing status; phony Schedule A and C deductions; fraudulent Earned Income Tax Credit (EITC) claims; questionable W-2s; and other questionable

itemized deductions. At least two former Smart Tax/Jackson Hewitt office managers have confirmed the accuracy of these estimated high error rates, stating that they believe between 45 and 80 percent of all returns prepared by Smart Tax's Jackson Hewitt franchise are erroneous.

33. The IRS preliminary investigation of the 600 returns prepared by Smart Tax/Jackson Hewitt indicated that 268 of the returns (45%) contain:

- a. 251 false EITC claims.
- b. 88 bogus Schedule C deductions.
- c. 24 fraudulent W-2 forms.
- d. 17 bogus itemized deductions.

34. The IRS preliminary investigation of the 600 federal income tax returns prepared by Ask Tax/Jackson Hewitt indicated that 217 of the returns (36%) contain:

- a. 194 false EITC claims.
- b. 50 bogus Schedule C deductions.
- c. 21 fraudulent W-2 forms.
- d. 23 bogus itemized deductions.

35. Separate injunction suits against other Sohail-owned Jackson Hewitt franchises are being filed in other cities across the country.

36. 98% of the 17,262 federal income tax returns that Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt prepared in 2006 claimed tax overpayments and corresponding tax refunds. Smart Tax/Jackson Hewitt and other Sohail-owned franchises have the highest refund rates (in relation to competitors) in each location where they operate.

### **False W-2s**

37. Smart Tax/Jackson Hewitt does not adequately train its tax return preparers to identify false W-2s and does not instruct or require its employees to decline to prepare returns for customers who bring in false or suspicious W-2s.

38. In 2005 and 2006, individual Smart Tax/Jackson Hewitt preparers (including Huston, Barnes, Jackson, Stephens, Gee, Tyson, and Badr) used hundreds of phony W-2s to prepare income tax returns based on frivolous and unrealistic positions, which they knew would result in understatements of tax.

39. One scheme involved local residents and Smart Tax/Jackson Hewitt return preparers, including Huston. The residents fabricated and sold phony W-2s to people who, in turn, sought Huston or other Smart Tax/Jackson Hewitt return preparers known to be willing to prepare fraudulent federal income tax returns claiming tax refunds based on the bogus W-2s. The phony W-2 creator, Huston, and other Smart Tax/Jackson Hewitt preparers subsequently received cash kickbacks from a portion of each phony tax refund or corresponding Jackson Hewitt loan proceeds tied to a phony refund claim. In addition, Smart Tax/Jackson Hewitt itself received a return-preparation fee, any fees attributable to any loan product provided to the customer, and any bonuses or incentives offered by Jackson Hewitt Tax Services, Inc. for greater volume.

40. A woman named Vanessa Green volunteered to help prepare a 2005 federal income tax return for a Chicago woman who Green paid to provide elder care services for Green's mother in Green's home. Green's offer resulted in a tax preparer at Smart Tax/Jackson Hewitt named Latrice Huston preparing the Chicago woman's return, even though Green and Huston had not received income or other tax information from the Chicago woman. Instead, Huston and

Smart Tax/Jackson Hewitt prepared a return based on a bogus W-2, which listed a phony employer and fraudulently claimed a \$3,521 tax refund. Green gave the woman some forms to sign and took her to a Smart Tax/Jackson Hewitt store, where Green received the refund check. Then, Green took the woman and the check to a nearby currency exchange or money store at Cicero & Madison in Chicago, where the woman received, in exchange for the check, an envelope with \$2,000 in cash, while Green also received an envelope which, on information and belief, also contained cash as a kickback for Green and/or Huston for bringing in the Chicago woman as a new Smart Tax/Jackson Hewitt customer to claim a fraudulent refund. The Chicago woman never endorsed her refund check to be cashed, yet Green was able to cash it. The woman stopped working for Green shortly thereafter when the woman became suspicious of Green, due to the high volume of people coming in and out of Green's house during tax season, and due to stacks of W-2 forms that the woman saw in Green's basement.

41. Badr has told Smart Tax/Jackson Hewitt employees who have questioned the propriety and integrity of Smart Tax's return-preparation work that Smart Tax/Jackson Hewitt and its employees are "not the police," and that the employees should prepare all returns without regard to whether they are based on false or suspicious W-2s.

#### **Phony Filing Status**

42. Another rampant problem at Smart Tax/Jackson Hewitt involves the preparation of tax returns reporting false filing status. For example, married couples living together often attempt improperly to file separately using the head-of-household or single filing status. Usually, this ploy is related to an attempt to increase the claimed EITC. In some cases, couples who

would otherwise receive an EITC of only \$1,500 by properly filing jointly, improperly receive \$4,400 each, for a total of \$8,800 by falsely claiming head-of-household or single filing status.

43. Jackson, Barnes, Bellmon, and other Smart Tax preparers knowingly direct and/or prepare returns using false filing status in order to reduce reported tax liability or claim higher credits.

#### **Illegal sale and use of dependents**

44. Many Smart Tax customers illegally claim purported dependents whose social security numbers they have purchased or “borrowed” from friends or other customers or SmartTax/Jackson Hewitt. Some SmartTax/Jackson Hewitt return preparers (like Jackson) have sold or sell social security numbers to customers to use in this fraudulent manner. The fraudulent use (and attempted use) of phony dependents on tax returns at Smart Tax is pervasive.

#### **Lack of Due Diligence for Earned Income Tax Credits (EITC)**

45. The Internal Revenue Code and Treasury Regulations require tax return preparers to exercise “due diligence” in determining whether customers qualify for the Earned Income Tax Credit. Among the due diligence requirements, preparers must:

- based on information provided by the taxpayer or otherwise reasonably obtained, complete Form 8867, Paid Preparer’s Earned Income Credit Checklist (eligibility checklist) or otherwise record in the preparer’s files the information necessary to complete it;
- based on information provided by the taxpayer or otherwise reasonably obtained, complete the Earned Income Credit Worksheet in the Form 1040 instructions (or

such other prescribed form), or otherwise record in the preparer's files the EITC computation, including the method and information used to make it;

- not know or have reason to know that any information used in determining the taxpayer's eligibility for, or the amount of, the EITC is incorrect;
- not ignore the implications of information furnished to, or known, and must make reasonable inquiries if the information furnished to or known by the preparer appears to be incorrect, inconsistent, or incomplete; and
- retain the eligibility checklist, the computation worksheet, and a record of how and when the information used to complete them was obtained by the preparer, including the identity of the person furnishing the information.

46. In preparing federal income tax returns, defendants have continually and repeatedly failed to satisfy the EITC due diligence requirements imposed by 26 U.S.C. § 6695(g) and Treasury Regulation § 1.6695-2(b).

47. Defendants have continually and repeatedly ignored the implications of suspicious, fraudulent, and bogus information (like that identified in paragraphs 36 through 44 above) provided by customers seeking the EITC, and have failed to make reasonable inquiries when presented with fraudulent, bogus, suspicious, incomplete, inconsistent, and/or incorrect information.

48. Instead, Smart Tax/Jackson Hewitt and its employees, including Badr, Gee, Jackson, Tyson, Stephens, Barnes, Huston, and Bellmon, have knowingly prepared federal income tax returns containing false claims for the EITC, based on erroneous (and often fraudulent) information, including false W-2 forms, improper filing status, and bogus dependent information.



49. Jackson, Huston, Bellmon and others charged customers additional fees or kickbacks in cash (on top of the normal Smart Tax/Jackson Hewitt fee) to prepare such fraudulent returns and enlarge or fabricate customers' refunds.

50. Smart Tax/Jackson Hewitt management, including Badr, Stephens, and (on information and belief) Sohail, know about the fraudulent EITC and W-2 schemes. A Smart Tax/Jackson Hewitt office manager in Chicago, informed Smart Tax/Jackson Hewitt managers that Smart Tax/Jackson Hewitt employees were charging and collecting separate fees (on top of the normal Smart Tax/Jackson Hewitt fee) to prepare fraudulent returns containing false EITC claims. In addition, customers contacted the Smart Tax/Jackson Hewitt main office to complain about Smart Tax/Jackson Hewitt preparers charging additional fees, or to advise that their social security numbers had been stolen and were used by other Smart Tax/Jackson Hewitt customers.

51. Despite their knowledge of these schemes and problems at Smart Tax/Jackson Hewitt, Badr, Stephens, and Bellmon repeatedly instructed employees to ignore the fact that information provided by customers appeared to be false or suspicious (including apparently suspicious W-2 forms) and to prepare and file tax returns based on that information. Smart Tax/Jackson Hewitt managers instructed employees to accept customer information and forms without question and to prepare and file returns based on that information. This policy comes from the top and is designed to maximize Smart Tax/Jackson Hewitt's profit at the expense of the U.S. Treasury. Sohail owns a corporation with a Jackson Hewitt franchise in Atlanta that has a similar policy of encouraging fraud. Sohail told the Atlanta franchise's employees who expressed discomfort with practices encouraging fraud: "that's how I do it in Chicago, and it works."

52. Badr consistently and repeatedly invoked several catch phrases when discussing these problems with Smart Tax/Jackson Hewitt managers and other employees who expressed concerns. Badr said “we are not the police” and “we are not the IRS,” and said that it is not Smart Tax’s responsibility to prevent customers from filing false or bogus returns.

53. Badr also falsely told Smart Tax/Jackson Hewitt employees that they are not legally responsible for preparing returns containing false or incorrect information, and that such responsibility falls solely on the customer/taxpayer.

54. Consistent with their drive for volume and profit at the expense of accuracy and honesty, Smart Tax/Jackson Hewitt managers frequently explain to employees that Smart Tax/Jackson Hewitt will lose business if it turns away customers suspected of providing fraudulent information. The managers therefore directed Smart Tax/Jackson Hewitt employees to not question or turn away such customers, but instead prepare and file their tax returns.

55. Defendants and employees of Smart Tax/Jackson Hewitt followed Badr’s instructions by preparing and filing tax returns based on information that appeared to be false or suspicious, including W-2 forms that appeared to be fraudulent, and dependent information that appeared false.

56. A Smart Tax/Jackson Hewitt store manager decided to disregard Badr’s instructions to prepare fraudulent returns, and refused to prepare returns for customers who provided suspicious or fraudulent information. In response, Badr pressured her to prepare all returns, even suspicious ones. He told the manager “you’re doing a great job but you’re killing me,” “baby, you’re too hard,” “you can’t do that,” and “you’re not the police,” all signifying that he did not want the store manager to be honest or scrupulous in preparing returns.

57. The store manager disregarded Badr's pleas, and attempted to crack down on fraud, causing her Smart Tax/Jackson Hewitt store's revenues to drop 40%. As a result, Badr removed the manager from her store and "promoted" her to regional manager. This manager is no longer employed by Smart Tax/Jackson Hewitt.

58. Smart Tax/Jackson Hewitt office procedures are not designed to ensure compliance with the EITC due diligence requirements under Treasury Regulation § 1.6695-2(b) and 26 U.S.C. § 6695(g). On the contrary, despite occasionally paying lip service to those requirements, Smart Tax/Jackson Hewitt policy *in practice* is to disregard EITC due diligence requirements. In this regard, defendants also fail to exercise due diligence by failing to complete the required EITC computation sheets, or their equivalent, and/or failing to maintain this computation information on file for each customer.

59. The percentage of Smart Tax/Jackson Hewitt-prepared returns claiming EITC (80%) is nearly three times both the national (33%) and State of Illinois (23%) averages for returns claiming the EITC. Similarly, Smart Tax/Jackson Hewitt-prepared returns claiming EITC greatly exceed the percentage of similar returns prepared by Smart Tax/Jackson Hewitt competitors located in the same vicinity/ZIP code.

## **Schedule C Problems**

60. Smart Tax/Jackson Hewitt Tax return preparers are ill-equipped to prepare basic tax returns, let alone more complicated income tax returns, including those requiring Schedule C to report business income and loss.

61. Smart Tax/Jackson Hewitt employees, including Jackson and Barnes, prepare and file federal income tax returns with Schedule C forms that they know or have reason to know contain false, suspicious, and unrealistic information.

62. Generally, Smart Tax/Jackson Hewitt customers claiming to be self-employed are required to prepare a customer data form or worksheet on which they simply enter numerical amounts in the categories which appear on a Schedule C. Using that worksheet, the Smart Tax/Jackson Hewitt preparer enters that information into Profiler (the Jackson Hewitt return-preparation software system). Smart Tax/Jackson Hewitt preparers do not question customers who provide suspicious or unrealistic information, and Smart Tax/Jackson Hewitt preparers ignore the implications of such information. Smart Tax/Jackson Hewitt preparers fail to make reasonable inquiries when customer-provided information appears to be incorrect or incomplete, or fail to make appropriate inquiries to determine the existence of facts and circumstances as required by the Internal Revenue Code and regulations. Instead, as instructed by Smart Tax/Jackson Hewitt management, including Bellman, Badr, and Amill, Smart Tax/Jackson Hewitt preparers accept customers' information without question and knowingly prepare returns with erroneous and fraudulent Schedule C forms.

63. Some Smart Tax/Jackson Hewitt managers and preparers have actively encouraged and assisted customers to engage in Schedule C fraud. For example, in order to maximize

refunds, Smart Tax/Jackson Hewitt employees direct customers who are not self-employed (including one customer who was only 14 years old) to fabricate businesses, falsify gross receipts, and provide bogus Schedule C business expenses.

64. In the case of the 14-year-old (the same recruiter identified in paragraph 15 above), Smart Tax/Jackson Hewitt prepared and filed her 2001 and 2002 federal income tax returns. The 2001 return falsely stated that her adjusted gross income was \$6,505 and claimed an EITC of \$2,219, which the IRS rejected because the return claimed a dependent who had already been claimed on another return. The 2002 return that Smart Tax/Jackson Hewitt prepared for the girl falsely stated that her adjusted gross income was \$7,293 and falsely claimed a tax refund of \$796.

65. Smart Tax/Jackson Hewitt employee Jeaneen Hatter prepared a federal income tax return for a Chicago Transit Authority employee based on information the employee provided to Hatter. The return showed taxes due of approximately \$150. After preparing the return Hatter said to the CTA employee, “give me a second, let me see what I can do for you.” Hatter then proceeded, with no input from the employee, to fabricate “business expenses” for the employee’s clothing, gasoline for his car, commuting mileage, natural gas used to heat the man’s apartment, his cell phone, laundry, and his car insurance. Hatter further falsely told the CTA employee that he did not have to report as income \$1,000 in gambling winnings, even though he had presented Hatter with a Form W-2G from the Illinois State Lottery, and thus removed that income from the return that Smart Tax/Jackson Hewitt prepared and filed for the CTA employee.

66. Smart Tax/Jackson Hewitt preparers sometimes file tax returns claiming self-employment income and Schedule C expenses, W-2 wages, and substantial EITC claims. On information and belief Smart Tax/Jackson Hewitt preparers combine this information in

fabricated amounts designed deceitfully to reach a specific income level in order to maximize claimed EITC.

67. To prepare returns with false self-employment information, Smart Tax/Jackson Hewitt managers and preparers, including Jackson and Barnes, charge customers additional “fees,” which are actually kickbacks that the managers and preparers keep for themselves for their role in carrying out the fraud on the government.

68. Smart Tax/Jackson Hewitt management knows about the Schedule C fraud and problems described above. For example, one Smart Tax office manager told management that employees were charging separate fees to prepare fraudulent returns claiming false self-employment information. A former store manager also reported similar Schedule C fraud to management, and some Smart Tax/Jackson Hewitt customers contacted the Smart Tax/Jackson Hewitt main office to complain that preparers tried to charge additional fees.

69. Despite their knowledge of the fraud and the kickbacks, Badr, Stephens, and Bellmon instructed Smart Tax/Jackson Hewitt employees to ignore information provided by customers that appeared to be false or suspicious, including Schedule C information, to accept customers’ information without question, and to prepare and file returns based on that information.

70. When discussing such fraudulent actions, Badr repeatedly told Smart Tax/Jackson Hewitt employees “we are not the police” and “we are not the IRS,” and that it was not the responsibility of Smart Tax/Jackson Hewitt tax preparers or managers to prevent customers from filing bogus returns.

71. Badr and Stephens told Smart Tax/Jackson Hewitt employees that Smart Tax/Jackson Hewitt would lose business if it turned away customers who provided suspicious

Schedule C information, and that Smart Tax/Jackson Hewitt employees therefore should not turn away customers, but should prepare all returns.

72. Defendants and other Smart Tax/Jackson Hewitt employees followed Badr's instructions by preparing and filing tax returns with false or suspicious self-employment data, including inflated gross receipts, and phony Schedule C expenses.

### **Harm to the Public**

73. The United States is substantially harmed because Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt and the other defendants are not accurately reporting their customers' correct tax liabilities. The IRS estimates the total tax loss to the Treasury from Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt's misconduct thus far at more than \$20 million. That estimate is based on the 17,262 tax returns prepared by Smart Tax and Ask Tax/Jackson Hewitt for tax year 2006, using Smart Tax's projected error rate of 45%, at an average loss of \$2,797 per return, combined with Ask Tax/Jackson Hewitt's projected error rate of 36%, at an average loss of \$2,360 per return. The estimated harm figure is likely to increase as the IRS investigation continues, and as more tax returns are prepared and filed this year.

74. The defendants' misconduct further harms the United States by requiring the IRS to devote scarce resources to detecting the fraud and assessing and collecting lost tax revenues from defendants' customers. Identifying and recovering all lost revenues may be impossible.

75. The harm to the Government will increase unless defendants are enjoined because they are likely to continue preparing false and fraudulent federal income tax returns for customers.

76. In addition, defendants' customers have been harmed because they have paid defendants' fees to prepare tax returns that understated their correct federal income tax liabilities, thereby subjecting them to interest charges and possible civil and criminal sanctions.

77. In addition, defendants' misconduct also undermines public confidence in the federal tax system, and encourages widespread violations of the internal revenue laws.

### **Count I**

#### **Injunction Under IRC § 7407**

78. The United States incorporates by reference the allegations in paragraphs 1 through 77.

79. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin an income tax preparer from:

- a. engaging in conduct subject to penalty under IRC § 6694;
- b. engaging in conduct subject to penalty under IRC § 6695;
- c. misrepresenting his or her experience or education as a tax return preparer;
- d. guaranteeing a tax refund or allowance of a tax credit; or
- e. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and injunctive relief is appropriate to prevent recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to



prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a federal income tax return preparer.

80. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6695(g) by failing to satisfy the due diligence requirements of IRC § 6695(g) and Treas. Reg. § 1.6695-2(b).

81. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694(b) by (1) willfully attempting to understate their customers' tax liabilities, and also by (2) intentionally or recklessly disregarding pertinent rules and regulations.

82. Defendants have continually and repeatedly engaged in conduct subject to penalty under IRC § 6694(a) by preparing federal income tax returns asserting unrealistic and frivolous positions of which defendants knew or reasonably should have known.

83. Defendants actions described above, including their recruitment of customers, fraudulent W-2 schemes, and promises of enlarged refunds, constitute the guaranteeing of refunds for customers, which may be enjoined under IRC § 7407(b).

84. Defendants also continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws. Examples of such misconduct include (1) failing to adequately train their preparers, knowing that such inadequate training would lead to inaccurate returns, (2) tying employees' and managers' compensation directly to the number of tax returns prepared without regard to honesty, accuracy or quality of preparation, (3) knowingly preparing and assisting in preparing tax returns containing false and fraudulent information, (4) encouraging and soliciting customers to provide false and fraudulent information to file false tax refund claims, and (5) accepting (or allowing

employees or subordinates to accept) kickbacks from customers seeking defendants' assistance in preparing false tax returns to fraudulently obtain tax refunds.

85. Because of their repeated and continual egregious conduct subject to injunction under IRC § 7407, defendants should be enjoined not merely from engaging in specified misconduct, but should be barred altogether from acting as federal income tax preparers.

## **Count II**

### **Injunction Under IRC § 7402(a) Necessary to Enforce the Internal Revenue Laws**

86. The United States incorporates by reference the allegations in paragraphs 1 through 85.

87. Section 7402 of the Internal Revenue Code authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

88. Defendants, through their actions described above, have engaged in conduct that substantially interferes with the enforcement of the internal revenue laws. Unless enjoined, they are likely to continue to engage in such conduct.

89. The tax returns defendants prepared for their customers improperly and illegally reduced their federal income tax liabilities.

90. In addition, defendants' policies of inadequate tax preparation training and low wages (combined with compensation tied to volume of returns without regard to quality or accuracy) directly results in, as defendants know and intend, the filing of many incorrect and fraudulent tax returns.

91. The enormous and irreparable injuries caused to the United States by defendants' egregious misconduct outweighs the harm to the defendants of being enjoined.

92. The public interest will be advanced if the Court enjoins defendants because an injunction will stop their illegal conduct and the harm the conduct is causing to the United States.

93. If defendants are not enjoined, they are likely to continue to engage in conduct subject to penalty under IRS §§ 6694, 6695, and 6701, and other conduct that substantially interferes with the enforcement of the internal revenue laws.

### **Count III**

#### **Injunction Under § 7408 To Enjoin Specified Conduct**

94. The United States incorporates by reference the allegations in paragraphs 1 through 93.

95. Section 7408 of the Internal Revenue Code authorizes courts to enjoin specific conduct subject to penalty under §§ 6700 and 6701. Section 6701(a), in part, penalizes individuals who prepare, procure, or assist in the preparation of tax returns they know will result in an understatement of another person's tax liability if filed with the IRS. Procuring the preparation of tax returns includes ordering (or otherwise causing) a subordinate to do an act, as well as knowing of, and not attempting to prevent, participation by a subordinate in an act.

96. Defendants, through their actions detailed above, have prepared, procured, and assisted in the preparation of tax returns that they knew would result in the understatement of tax liability. Smart Tax/Jackson Hewitt managers and employees independently, at the direction of others, and with the knowledge or willful blindness of supervisors knowingly prepared federal income tax returns based on false information in order to understate the customers' tax liability, and/or generate fraudulent tax refunds.

97. Smart Tax/Jackson Hewitt and its managers, including Sohail, Badr, Stephens, Bellman, and Amill procured and assisted in this return preparation by employing and supervising preparers engaging in such schemes, refusing to fire or discipline such preparers even after learning about the schemes, and failing to stop the filing of tax returns they knew were false.

98. Defendants engaged in conduct subject to penalty under IRC § 6701.

WHEREFORE, the plaintiff, the United States of America, prays as follows:

A. That the Court find that defendants continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and § 6695, and that injunctive relief under IRC § 7407 is therefore necessary and appropriate to prevent the recurrence of that conduct;

B. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting defendants from acting as federal income tax return preparers, and specifically prohibiting Sohail and the other defendants from owning, managing, supervising or otherwise being involved in the tax return preparation business in any way;

C. That the Court find that defendants engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is therefore necessary and appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers under IRC § 7402(a);

D. That the Court find that defendants engaged in conduct subject to penalty under § 6701, and that injunctive relief under IRC § 7408 is therefore necessary and appropriate to prevent the recurrence of such conduct;

E. That the Court, pursuant to IRC § 7402(a) and § 7407, enter a permanent injunction prohibiting defendants from:

- (1) acting as federal tax return preparers or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- (2) preparing or assisting in the preparation or filing of tax returns for others that defendants know will result in the understatement of any tax liability;
- (3) understating customers' tax liabilities as subject to penalty under IRC § 6694;
- (4) instructing or advising taxpayers to understate their federal tax liabilities;
- (5) engaging in any other activity subject to penalty under IRC § 6694;
- (6) engaging in any activity subject to penalty under IRC § 6695, including failing to act with due diligence when claiming the Earned Income Tax Credit on returns;
- (7) engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws;

F. That the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring defendants to contact by mail all persons for whom they prepared a federal tax return since January 1, 2002, and inform them of the Court's findings concerning the falsity or fraudulent attributes of those tax returns and enclose a copy of the permanent injunction against defendants;

G. That the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring defendants to produce to counsel for the United States, within eleven days of the entry of an injunction against them, a list that identifies by name, social security number, address, email,

telephone number, and tax period(s) all persons for whom defendants prepared federal tax returns or claimed a tax refund since January 1, 2004;

H. Alternatively, if the Court does not enter the permanent injunction requested in paragraph A barring the defendants from all return preparation, that the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt to develop and enforce improved due diligence procedures and training for all return preparers, including but not limited to:

- (1) the design of improved procedures to detect and stop EITC fraud before returns are prepared, including but not limited to procedures to catch bogus W-2 forms, false dependent information, and incorrect filing status;
- (2) mandatory classroom training sessions prior to each tax season providing instruction to all return preparers on the EITC due diligence procedures in Treas. Reg. 1.6695-2(b), IRC § 6695(g), and the improved Smart Tax EITC procedures referenced above in paragraph (1);
- (3) administration and passage of mandatory examinations by all return preparers prior to each tax season testing their knowledge of the EITC due diligence procedures in Treas. Reg. 1.6695-2(b) and IRC § 6695(g); and
- (4) the design and application of a supervisory quality control enforcement mechanism to ensure all preparers are adhering to the EITC due diligence procedures in Treas. Reg. 1.6695-2(b) and IRC § 6695(g).

I. That the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring Smart Tax/Jackson Hewitt and Ask Tax/Jackson Hewitt to produce to counsel for the United

States, within thirty days of the entry of an injunction against them, documentation describing the new procedures outline above in paragraphs (1) through (4).

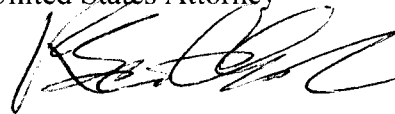
J. That the Court retain jurisdiction over the defendants, and this action for the purpose of enforcing any permanent injunction entered against defendant;

K. That the United States be entitled to conduct all discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring defendants' compliance with the terms of any permanent injunction entered against them; and

L. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

Dated this 2<sup>nd</sup> day of April, 2007.

PATRICK FITZGERALD  
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