

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SMART TAX OF NORTH CAROLINA,)
 INC.,)
 d/b/a Jackson Hewitt Tax Services,)
 FARRUKH SOHAIL,)
 ADEEL ALI, and)
 JOHN WIZNER,)
)
 Defendants.)

Case No. _____

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; and
- 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.

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 of North Carolina, Inc., d/b/a Jackson Hewitt Tax Service ("Smart Tax/Jackson Hewitt") operates at least 34 Jackson Hewitt franchise stores in the Raleigh–Durham area. Smart Tax/Jackson Hewitt operates under a franchise agreement with Jackson Hewitt Tax Services Inc., based in Parsippany, New Jersey. Jackson Hewitt Tax Services, Inc. is the second largest tax return preparation firm in the United States. Jackson Hewitt Tax Services, Inc. franchisees and their employees prepare 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.

5. Farrukh Sohail (“Sohail”) is a shareholder in Smart Tax/Jackson Hewitt. Sohail is one of the largest owners of Jackson Hewitt Tax Service franchises. He purchased his first Jackson Hewitt franchise in 1998, and now owns interests in corporations (including Smart 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.

6. Adeel Ali (“Ali”) is part owner of Smart Tax/Jackson Hewitt and resides in this judicial district. Ali is the general manager of the Smart Tax/Jackson Hewitt franchise operation in the Raleigh–Durham area.

7. John Wizner (“Wizner”) is a regional manager at Smart Tax/Jackson Hewitt and resides in this judicial district.

8. Smart Tax/Jackson Hewitt, Sohail, Ali, and Wizner 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. Defendants’ return preparers have prepared many fraudulent federal income tax returns and engaged in conduct substantially interfering with the internal revenue laws.

Background Facts

9. Smart Tax/Jackson Hewitt, Sohail, Ali, Wizner, and others acting with them have created, directed, fostered, and maintained a business environment at Smart Tax's Jackson Hewitt stores in which fraudulent tax return preparation is encouraged and flourishes.

10. Under Sohail's, Ali's, Wizner's, and other managers' direction and control, Smart Tax/Jackson Hewitt hires 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." What is more, Wizner refrains from teaching fraud detection techniques to the return preparers he supervises because he fears that the preparers will use that knowledge to commit tax fraud themselves. Prospective Smart 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 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/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.

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

12. Smart Tax/Jackson Hewitt pays low wages to its preparers and directly ties 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.

13. 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.

False W-2s

14. In 2005 and 2006, individual Smart Tax/Jackson Hewitt preparers used hundreds of phony W-2s to prepare income tax returns based on fraudulent, frivolous, and unrealistic positions, which they knew would result in understatements of tax.

15. Smart Tax/Jackson Hewitt also 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 W-2s.

16. John Wizner, a regional manager at Smart Tax/Jackson Hewitt, specifically trains and instructs his office managers and return preparers to prepare and file returns for all customers, even when the customers provide false or suspicious W-2s.

17. Sohail has told Smart Tax/Jackson Hewitt employees that they are “not the police,” and that they should prepare all returns without regard to whether they are based on false or suspicious W-2s.

Phony Filing Status

18. 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.

19. While Smart Tax/Jackson Hewitt customers openly and blatantly provide false filing status to maximize their EITC, managers instruct preparers to ignore suspicious information provided by customers and to prepare all returns. Sohail often reminds employees that “we are not the police” and “we are not the IRS.”

Illegal sale and use of dependents

20. Many Smart Tax/Jackson Hewitt customers illegally claim purported dependents whose social security numbers they have purchased or “borrowed” from friends or other customers.

21. Smart Tax/Jackson Hewitt customers openly and blatantly provide sham social security numbers to preparers when claiming dependents on their tax returns to inflate their Earned Income Tax Credit (EITC). 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)

22. 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.

23. 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).

24. Smart Tax/Jackson Hewitt employees have continually and repeatedly ignored the implications of suspicious, fraudulent, and bogus information (like that identified in paragraphs 13 through 21 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.

25. Instead, Smart Tax/Jackson Hewitt and its employees, including Sohail and Wizner, have knowingly prepared or supervised the preparation of 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.

26. Smart Tax/Jackson Hewitt management, including Wizner, knows about the EITC and W-2 fraud. Still, Wizner specifically trains and instructs his office managers and return preparers to prepare and file all returns, even when they are based on false or suspicious W-2s. Although Wizner claims he reports fraud to the IRS after Smart Tax/Jackson Hewitt prepares and files the fraudulent returns, Wizner's "fraud reporting," even if true, does not excuse the fact that he and Smart Tax/Jackson Hewitt knowingly prepare and file tax returns based on false information.

27. Smart Tax/Jackson Hewitt management also knows that the unlawful sale of dependent social security numbers is a problem in its offices, but has not taken steps to detect it or stop customers from engaging in such sales in Smart Tax/Jackson Hewitt stores.

28. Despite their knowledge of these schemes and problems at Smart Tax/Jackson Hewitt, Wizner and other managers 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.

29. When Sohail hears of such fraud, he has instructed employees to “keep it in the family” and “not tell the IRS” because “we need to get paid.”

30. Wizner and other Smart Tax/Jackson Hewitt managers 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.

31. 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 not to question or turn away such customers, but instead prepare and file their tax returns.

32. Smart Tax/Jackson Hewitt employees followed Wizner'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.

33. 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.

34. The percentage of Smart Tax/Jackson Hewitt-prepared returns claiming EITC (54%) is exceedingly more than the national (33%) and State of North Carolina (28%) 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 and Schedule A Problems

35. 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 Schedules A and C to report business income and loss.

36. Smart Tax/Jackson Hewitt employees, under the supervision of Wizner and other managers, prepare and file federal income tax returns with Schedule C and A forms that they know or have reason to know contain false, suspicious, and unrealistic information.

37. 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 or A form. 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 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 Wizner, Smart Tax/Jackson Hewitt preparers accept customers' information without question and knowingly prepare returns with erroneous and fraudulent Schedule C and A forms.

38. Smart Tax/Jackson Hewitt preparers sometimes file tax returns claiming self-employment income and Schedule C expenses, Schedule A deductions, 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 to maximize claimed EITC.

39. Smart Tax/Jackson Hewitt management knows about the Schedule C and A fraud and problems described above. Despite their knowledge, however, Wizner and other managers instructed Smart Tax/Jackson Hewitt employees to ignore information provided by customers that appeared to be false or suspicious, including Schedule C and A information, to accept

customers' information without question, and to prepare and file returns based on that information.

40. Wizner told Smart Tax/Jackson Hewitt employees that Smart Tax/Jackson Hewitt would lose business if it turned away customers who provided suspicious Schedule C and A information, and that Smart Tax/Jackson Hewitt employees therefore should not turn away customers, but should prepare all returns.

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

IRS Investigations, Inspections and Examinations

42. In 2006, Smart Tax/Jackson Hewitt prepared 21,668 federal income tax returns. The IRS recently reviewed a random sample of 600 of those returns. A preliminary IRS investigation indicated that nearly one-fourth (24%) of the 600 Smart Tax/Jackson Hewitt-prepared returns contained: false head-of-household filing status; phony Schedule A and C deductions; fraudulent Earned Income Tax Credit claims; questionable W-2s; and other questionable itemized deductions. Current managers and other Smart Tax/Jackson Hewitt employees have confirmed these estimated high error rates.

43. The IRS preliminary investigation of the 600 returns prepared by Smart Tax/Jackson Hewitt indicated that 146 of the returns (24%) contain:

- a. 122 false EITC claims.
- b. 4 bogus Schedule C deductions.
- c. 5 fraudulent W-2 forms.

d. 24 bogus itemized deductions.

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

45. 91% of the 21,668 federal income tax returns that Smart 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.

Harm to the Public

46. The United States is substantially harmed because Smart 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's misconduct thus far at nearly \$12 million. That estimate is based on the 21,668 tax returns prepared by Smart Tax/Jackson Hewitt for tax year 2006, using Smart Tax's projected error rate of 24%, at an average loss of \$2,253 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.

47. 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.

48. 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.

49. 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.

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

Count I

Injunction Under IRC § 7407

51. The United States incorporates by reference the allegations in paragraphs 1 through 50.

52. 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.

53. 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).

54. 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/or by (2) intentionally or recklessly disregarding pertinent rules and regulations.

55. 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.

56. Defendants actions described above, including their fraudulent W-2 schemes, is conduct which may be enjoined under IRC § 7407(b).

57. 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, and (3) knowingly preparing and assisting in preparing tax returns containing false and fraudulent information.

58. 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

59. The United States incorporates by reference the allegations in paragraphs 1 through 58.

60. 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.

61. 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.

62. The tax returns prepared for Smart Tax/Jackson Hewitt customers improperly and illegally reduced their federal income tax liabilities.

63. 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.

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

65. 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.

66. 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

67. The United States incorporates by reference the allegations in paragraphs 1 through 66.

68. 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.

69. 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.

70. Smart Tax/Jackson Hewitt and its managers, including Wizner and Ali, procured and/or 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.

71. 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; and
- (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 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/Jackson Hewitt 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 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 2nd day of April, 2007.

GEORGE E.B. HOLDING
United States Attorney

/s/ R. Scott Clarke

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