

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

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
)
SMART TAX OF GEORGIA, INC.,)
)
d/b/a Jackson Hewitt Tax Service,)
)
FARRUKH SOHAIL,)
)
STEVEN EVERLY,)
)
HILEAH BRAXTON, and)
)
TAMIKA DONALDSON,)
)
Defendants.)

APR 02 2007

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

Case No. _____

1:07-CV-0747

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.

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. Farrukh Sohail (“Sohail”) resides within this judicial district. Sohail is the sole owner of Smart Tax of Georgia, Inc. (“Smart Tax/Jackson Hewitt”), which 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. Sohail is one of the largest owners of Jackson Hewitt Tax Service franchises.

5. Sohail 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 Atlanta, Georgia; Chicago, Illinois; Birmingham, Alabama; 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. Smart Tax operates approximately 42 Jackson Hewitt franchise stores in the Atlanta area.

7. Steve Everly resides in this judicial district and has worked as a tax return preparer and/or manager at Smart Tax/Jackson Hewitt.

8. Smart Tax/Jackson Hewitt, Sohail, and Everly 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. Smart Tax/Jackson Hewitt preparers, including Braxton and Donaldson, have prepared many fraudulent federal income tax returns and engaged in conduct substantially interfering with the internal revenue laws.

Background Facts

9. In September 2003, Sohail and Smart Tax/Jackson Hewitt purchased Atlanta Jackson Hewitt franchise territory from the previous owner. After that sale, the prior owner worked for two years as Sohail and Smart Tax/Jackson Hewitt's Atlanta operations manager.

10. Since acquiring the Atlanta territory, Smart Tax/Jackson Hewitt, Sohail, and others acting with them have created, directed, fostered, and maintained a business environment at Smart Tax/Jackson Hewitt stores in which fraudulent tax return preparation is encouraged and flourishes.

11. Under Sohail's and other managers' direction and control, Smart 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 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/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. The previous owner, who witnessed first-hand Sohail's training policies and program, describes them as "polluting" the pool of Smart Tax/Jackson Hewitt tax return preparers.

12. As detailed below, return preparers employed by Smart 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. In this regard, Sohail often remarked to those who questioned his policies, "we are not the police" and "we are not the IRS," and Sohail said that it is not Smart Tax's responsibility to prevent customers from filing false or bogus returns.

13. Smart Tax/Jackson Hewitt pays low wages to their 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. Sohail and

others constantly push quotas and return volume at the expense of preparing honest, accurate tax returns.

14. After purchasing the Atlanta Jackson Hewitt territory, Sohail and Smart Tax/Jackson Hewitt instituted “cost-cutting” measures that markedly lowered the franchise’s standards for requesting and maintaining customers’ information, and thereby markedly lowered the likelihood of honest and accurate tax return preparation. For example, Sohail removed prominent signs outside stores and in store lobbies informing customers that Smart Tax/Jackson Hewitt would inspect and verify W-2s on the spot. Sohail and Smart Tax/Jackson Hewitt also removed the copy machines from the Smart Tax/Jackson Hewitt stores, reducing or eliminating the stores’ ability to maintain required proof of customers’ tax return information.

15. Further enhancing the potential for fraud, Sohail shifted fraud detection responsibility to the main office, away from the Smart Tax/Jackson Hewitt stores and the return preparers and managers who directly interacted with customers. Sohail and Smart Tax/Jackson Hewitt then virtually eliminated fraud detection at the Smart Tax/Jackson Hewitt main office by removing Veronica Madison, from the position in which she oversaw and monitored tax compliance and sought to

eliminate potential fraud. Following these and other measures, fraud at the Smart Tax/Jackson Hewitt stores was left virtually unchecked.

16. 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. Some customers are accompanied by people who "coach" them through the interview process by helping them answer questions to obtain a larger refund, to which they are not entitled.

17. 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, including Everly, are aware of this and have not only not acted to stop it but have in some instances encouraged it.

18. In 2006, a former regional manager, then a Smart Tax/Jackson Hewitt manager, conducted an internal audit of the Smart Tax/Jackson Hewitt store located at South Lake. Her audit revealed that 264 out of 280 returns were fraudulent or erroneous. Smart Tax/Jackson Hewitt employees Hialeah Braxton and Tamika Donaldson were involved in preparing these returns. That former regional manager had warned Everly that Braxton was untrustworthy and inexperienced. She also audited the “Austin” store and found similar problems. That manager left in December, 2006 because she believed Sohail and Smart Tax/Jackson Hewitt were failing to adequately detect and address fraudulent return preparation.

False W-2s

19. Beginning in or around 2003, Sohail and Smart Tax/Jackson Hewitt removed from all stores prominent signs that had been posted to warn customers that all W-2 forms would be inspected and verified on the spot. At the same time Sohail and Smart Tax/Jackson Hewitt implemented a new policy under which Smart Tax/Jackson Hewitt preparers ceased attempting to verify customers’ W-2 wages and employment before or during return preparation.

20. Under Sohail's direction Smart Tax/Jackson Hewitt fails to 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. Rather, Sohail has instructed managers and return preparers *not* to detect W-2 fraud. Indeed, he directs Smart Tax/Jackson Hewitt return preparers to prepare all tax returns, regardless of the validity of the supporting information, and to send the tax returns to the Smart Tax/Jackson Hewitt main office for processing and filing.

21. Sohail and Smart Tax/Jackson Hewitt removed Veronica Madison from her position in which she attempted to combat the use of false W-2s.

22. As a result, in 2004, 2005, and 2006, Smart Tax preparers used phony W-2s to prepare frivolous and fraudulent income tax returns based on unrealistic positions, which they knew would result in understatements of tax.

23. Veronica Madison repeatedly told Sohail that Smart Tax/Jackson Hewitt should not file returns based on fraudulent W-2s, but Sohail insisted that Smart Tax/Jackson Hewitt file the returns with the IRS without Smart Tax/Jackson Hewitt examination, let alone intervention. He told Madison, "we are not the police," and "fraud detection is the job of the police and Santa Barbara Bank &

Trust” (which provides “Money Now” and refund anticipation loans to Jackson Hewitt customers).

24. The prior owner also warned Sohail that his policies regarding W-2s were dangerous. In 2005, the prior owner quit his position with Smart Tax/Jackson Hewitt due to what he perceived as rampant fraud there.

25. Sohail was further aware that his measures had caused fraudulent returns to be filed with false W-2s, since in 2005 he was visited by a Jackson Hewitt Tax Services, Inc. employee, who informed Sohail that Santa Barbara Bank had told Jackson Hewitt corporate headquarters that Sohail’s Smart Tax/Jackson Hewitt stores were filing too many fraudulent returns.

Phony Filing Status

26. 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.

27. 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

28. 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 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)

29. 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.

30. 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).

31. Defendants have continually and repeatedly ignored the implications of suspicious, fraudulent, and bogus information (like that identified in paragraphs 19 through 28 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.

32. Under prior ownership SmartTax/Jackson Hewitt return preparers were required to ask for identification cards or social security cards for dependents. But, under Sohail and Smart Tax/Jackson Hewitt return preparers were not required to request identification cards, and copies of any cards that may have been voluntarily provided were not made because Sohail removed copy machines from SmartTax/Jackson Hewitt stores. Some customers presented social security numbers written on paper bags, and return preparers were told to accept them.

33. Many SmartTax/Jackson Hewitt customers know how to answer questions or provide information to SmartTax/Jackson Hewitt return preparers in order to illegally maximize the EITC. For example, some customers create phony jobs, bogus income, and illegally use others' dependents to claim the EITC. SmartTax/Jackson Hewitt are advised by management not to question customers who provide such information, and are also advised to prepare (and send for filing) the tax return based on such information.

34. Instead, Smart Tax/Jackson Hewitt employees have knowingly prepared federal income tax returns containing false claims for the EITC, based on erroneous and fraudulent information, including false W-2 forms, improper filing status, and bogus dependent information.

35. SmartTax/Jackson Hewitt management, including Sohail and Everly, knew about the fraudulent EITC and W-2 schemes.

36. Despite knowledge of these schemes, Sohail repeatedly instructed SmartTax/Jackson Hewitt employees to ignore information provided by customers that appeared to be false or suspicious, including apparently suspicious W-2 forms, and to prepare and file the tax returns based on that information. Likewise, SmartTax/Jackson Hewitt managers instructed employees to accept customer information and forms without question and to prepare and file returns based on that information.

37. In fact, Sohail consistently and repeatedly invoked several catch phrases when discussing these problems with Smart Tax/Jackson Hewitt managers and employees, stating “we are not the police” and “we are not the IRS,” insisting it was not SmartTax/Jackson Hewitt’s responsibility to prevent customers from filing bogus returns. In short, Sohail advised SmartTax/Jackson Hewitt employees

to always accept the customers' information without question, and prepare and file all returns.

38. Sohail also falsely told SmartTax/Jackson Hewitt employees that they are not legally responsible for returns containing false or incorrect information, and that such responsibility falls solely on the customer/taxpayer.

39. 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.

40. Smart Tax/Jackson Hewitt employees follow Sohail's and other managers' instructions by preparing and filing tax returns based on information that appears to be false or suspicious, including W-2 forms that appear to be fraudulent, and dependent information that appears false.

41. 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.

42. The percentage of Smart Tax prepared returns claiming EITC (67%) is more than twice the National (33%) and State of Georgia (32%) averages for returns claiming the EITC. Similarly, Smart Tax prepared returns claiming EITC greatly exceed the percentage of similar returns prepared by Smart Tax competitors located within the same vicinity/ZIP code.

Schedule C Problems

43. 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.

44. Smart Tax/Jackson Hewitt employees 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.

45. 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 that 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 make appropriate inquiries to determine the existence of facts and circumstances as required by the Internal Revenue Code and regulations. Instead, as instructed by management, Smart Tax/Jackson Hewitt preparers accept customers' information without question and knowingly prepare returns with erroneous and fraudulent Schedule C forms. Even when a manager flags a return with a suspicious Schedule C for main office review, the main office does not review the return, but transmits it for filing.

46. 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.

47. Smart Tax/Jackson Hewitt management knows about the Schedule C fraud and problems described above. Despite that knowledge, Sohail instructed employees to use 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.

48. When discussing such fraudulent actions, Sohail 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.

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

RESIGNATIONS

50. The previous owner, along with Veronica Madison, a former regional manager and others told Sohail that they were uncomfortable with his practices and policies regarding fraud detection and return preparation, and warned him of potential trouble that could stem from them. Sohail ignored their calls for reform, saying, "*that's how I do it in Chicago, and it works.*" (Sohail owns two Jackson Hewitt franchises in Chicago.) Sohail's main focus is volume, quotas, and profit,

all at the expense of preparing honest, accurate tax returns. The prior owner, a former regional manager, and Madison all left Smart Tax/Jackson Hewitt because of what they perceived as mismanagement and return preparation fraud.

IRS Investigations, Inspections and Examinations

51. 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 two years. For tax years 2004 and 2005 (prepared in 2005 and 2006), the IRS has thus far identified over 1000 Smart Tax/Jackson Hewitt returns prepared with false W-2s. There are likely many more that have not yet been detected.

52. In 2006, Smart Tax/Jackson Hewitt prepared 24,562 federal income tax returns. The IRS recently reviewed a random sample of 600 of those returns. A preliminary IRS investigation indicated that approximately 37% of returns prepared by Smart Tax/Jackson Hewitt contained: false head of household filing status; phony Schedule C deductions; fraudulent Earned Income Tax Credit claims; questionable W-2s; and other questionable itemized deductions.

53. The IRS preliminary investigation of the 600 returns prepared by Smart Tax/Jackson Hewitt indicated that 220 of the returns (37%) contain:

- a. 186 false EITC claims.
- b. 9 bogus Schedule C deductions.

- c. 20 fraudulent W-2 forms.
- d. 34 bogus itemized deductions.

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

55. 96% of the 24,562 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

56. 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 more than \$20 million. That amount is based on the 24,562 tax returns prepared by Smart Tax for tax year 2006, using the Smart Tax's projected error rate of 37% at an average loss of \$2,372 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.

57. 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.

58. 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.

59. 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.

60. 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

61. The United States incorporates by reference the allegations in paragraphs 1 through 60.

62. 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.

63. 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).

64. 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.

65. 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.

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

67. 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, and (4) encouraging and/or soliciting

customers to provide false and fraudulent information to file false tax refund claims.

68. 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

69. The United States incorporates by reference the allegations in paragraphs 1 through 68.

70. 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.

71. 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.

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

73. 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.

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

75. 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.

76. 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

77. The United States incorporates by reference the allegations in paragraphs 1 through 76.

78. 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.

79. 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.

80. Smart Tax/Jackson Hewitt and its managers, including Sohail and Everly 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.

81. 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 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).

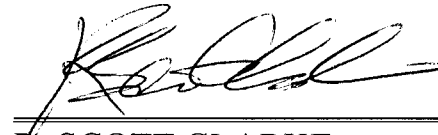
J. That the Court retain jurisdiction over the defendants, and this action for the purpose of enforcing any permanent injunction entered against defendant;

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.

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