

REG-136596-07

LEGAL PROCESSING DIVISION  
PUBLICATION & REGULATIONS  
BRANCH

APR 25 2008

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**From:** Ryan, Ellen  
**Sent:** Monday, April 07, 2008 2:52 PM  
**To:** 'notice.comments@irsounsel.treas.gov'  
**Subject:** Comment Letter re: REG 136596-07 and Notice IR-2008-2

Dear Commissioner Shulman:

Attached are comments signed by 34 State Attorneys General\* in response to the Advance Notice of Proposed Rulemaking regarding the marketing of Refund Anticipation Loans and certain other products in connection with the preparation of a tax return (Reg. 136596-07 and Notice IR-2008-2).

In addition to the attached comment letter, I will be sending thirteen attachments that are referenced in the letter.

\* Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Vermont, Washington, and West Virginia.

Sincerely,

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4/9/2008

A Communication From the Chief Legal Officers  
Of the Following States:

Alaska ▪ Arizona ▪ Arkansas ▪ California ▪ Colorado ▪ Connecticut ▪ Delaware ▪ Hawaii ▪ Idaho  
Illinois ▪ Iowa ▪ Kentucky ▪ Louisiana ▪ Maine ▪ Maryland ▪ Massachusetts ▪ Michigan  
Mississippi ▪ Missouri ▪ Nevada ▪ New Hampshire ▪ New Jersey ▪ New Mexico  
New York ▪ North Carolina ▪ North Dakota ▪ Ohio ▪ Oklahoma ▪ Oregon  
Rhode Island ▪ Tennessee ▪ Vermont ▪ Washington ▪ West Virginia

April 7, 2008

By Electronic Mail and Hand Delivery

Commissioner Douglas H. Shulman  
Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

RE: Advance Notice of Proposed Rulemaking Regarding the Marketing of Refund  
Anticipation Loans (RALs) and Certain Other Products in Connection with the  
Preparation of a Tax Return (Reg. 136596-07 and Notice IR-2008-2)

Dear Commissioner Shulman:

The undersigned Attorneys General appreciate the opportunity to offer comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) on the timely and important questions presented by that document. Specifically, we welcome the chance to comment on the proposal by the Internal Revenue Service (IRS) to remove the regulatory exception to the strict privacy requirements of 26 U.S.C §§ 6713 and 7216 that has allowed tax preparers and related parties to use taxpayers' confidential information to market Refund Anticipation Loans (RALs) and other financial products to their clients. State attorneys general and other state officials have uncovered serious problems with tax preparers' marketing of these ancillary products and their effect on taxpayers, and we have worked to address the abuses in the ways the products are advertised and offered.<sup>1</sup> Agencies at other levels of government have also investigated and

<sup>1</sup>See, e.g., *People v. H&R Block, Inc.* (San Francisco Superior Court, No. 06-449461) (filed Feb. 15, 2006) (California Attorney General), complaint available at [http://ag.ca.gov/newsalerts/cms06/06-013\\_0a.pdf](http://ag.ca.gov/newsalerts/cms06/06-013_0a.pdf), appended as Attachment 1; *People v. Jackson Hewitt Tax Service Inc.* (Alameda Superior Court, No.07-304558) (filed January 3, 2007) (California Attorney General), complaint and stipulated judgment available at [http://ag.ca.gov/cms\\_attachments/press/pdfs/2007-01-03\\_Jackson\\_Hewitt\\_Complaint.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/2007-01-03_Jackson_Hewitt_Complaint.pdf); [http://ag.ca.gov/cms\\_pdfs/press/2007-01-03\\_Jackson\\_Hewitt\\_Settlement\\_Judgment.pdf](http://ag.ca.gov/cms_pdfs/press/2007-01-03_Jackson_Hewitt_Settlement_Judgment.pdf), appended as Attachment 2; *People v. JTH Tax, Inc., dba Liberty Tax Service* (San Francisco Superior Court No. 07-460778 (filed February 26, 2007) (California Attorney General), available at [http://ag.ca.gov/cms\\_attachments/press/pdfs/n1531\\_liberty\\_complaint\\_022607\\_\(final\).pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1531_liberty_complaint_022607_(final).pdf), appended as Attachment 3; *People v. Malqui Corp.* (Hudson Cty. Superior Court, No. C-39-07) (filed March 5, 2007) (New Jersey Attorney General and Division of Consumer Affairs) complaint appended as Attachment 4; *State of Texas v. H&R Block, Inc.*, (Travis Cty. District Ct., No. 93-05737) (September 1993) (Texas Attorney General), agreed final judgment appended as Attachment 5; *In re H&R Block Eastern Tax Services, Inc.* (Office of the Attorney General, No. 93-410039) (filed January 28, 1994) (Florida Attorney General), assurance of voluntary compliance appended as Attachment 6; *In the Matter of H&R Block (Conn.), Inc. d/b/a H&R Block* (Office of the Comm'r of Consumer

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brought cases against tax preparers and RAL lenders. *See, e.g., Cerullo v. H&R Block, Inc.* (New York County Supreme Ct., No. 409497/95) (January 27, 1997) (New York City Department of Consumer Affairs), consent order and stipulation of settlement attaching as exhibits four previous assurances of compliance *appended as Attachment 11*; *Dykstra v. H&R Block, Inc.*, (New York County Supreme Ct., No. 02401201) (March 11, 2002) (complaint), *appended as Attachment 12*. *See also In re H&R Block, Inc.*, 80 F.T.C. 304 (1972) (consent), *modified*, 100 F.T.C. 523 (1982); *In re Beneficial Corp.* 86 F.T.C. 119 (1975), *modified sub. nom. Beneficial Corp. v. FTC*, 542 F.2d 611 (3d Cir. 1976) (Federal Trade Commission). Our conclusion after many years' experience with RALs, Refund Anticipation Checks (RACs), and audit insurance and similar guarantees is that a separation of tax preparation from marketing of these products is necessary to solve what has been and remains a remarkably persistent problem facing taxpayers.

## I. Introduction

Taxpayers trust their tax preparers to focus on the preparation of tax returns, not the purveying of financial products. They entrust their most private financial information to these professionals in the belief that the person preparing their tax return will act in the client's financial interest rather than the preparer's own. That is an expectation fully shared by tax professionals.<sup>2</sup> In our experience, however, tax preparers have become purveyors of loans and other financial products rather than the trusted providers of tax assistance that IRS – and their clients – expect them to be. The time has come, we believe, to bring tax preparers back to the business of tax preparation.

In 2006, state Attorneys General submitted comments to IRS urging that strong privacy protections remain on the use and disclosure of the confidential information contained in tax returns<sup>3</sup>; the concerns expressed in those comments were among those cited in the present ANPRM. We greatly appreciate the chance to comment further on the abuses that we have seen

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Protection, No. 93-198) (July 1993) (Connecticut Commissioner of Consumer Protection), agreement and consent order *appended as Attachment 7*; *New York State Division of Human Rights v. H&R Block Tax Services, Inc.* (Bronx Cty. Supreme Ct., No. 1726/2007) (March 6, 2008) (New York State Division of Human Rights), order compelling compliance with subpoena *available at* <http://www.dhr.state.ny.us/pdf/Court%20Orders/NYSDHR%20v.%20Tax%20Preparers.pdf>, *appended as Attachment 8*; *New York State Division of Human Rights v. Jackson Hewitt, Inc.* (New York State Division of Human Rights) (January 17, 2008), complaint *available at* [http://www.dhr.state.ny.us/pdf/Division%20vs.%20Jackson%20Hewitt\\_Complaint.pdf](http://www.dhr.state.ny.us/pdf/Division%20vs.%20Jackson%20Hewitt_Complaint.pdf), *appended as Attachment 9*; *New York State Division of Human Rights v. JTH Tax, Inc. and subsidiaries dba Liberty Tax Service* (New York State Division of Human Rights) (January 17, 2008), complaint *available at* [http://www.dhr.state.ny.us/pdf/Division%20vs.%20Liberty%20Financial\\_Complaint.pdf](http://www.dhr.state.ny.us/pdf/Division%20vs.%20Liberty%20Financial_Complaint.pdf), *appended as Attachment 10*.

<sup>2</sup>*See* National Association of Tax Professionals, Standards of Professional Conduct, *available at* [http://www.natptax.com/about\\_us.html](http://www.natptax.com/about_us.html) (“Our first responsibility is to our clients”). *See also* John R. Thompson, *H&R Block Helps Customers Build Assets*, Cascade (Federal Reserve Bank of Philadelphia), at 11, *available at* <http://www.philadelphiafed.org/ccs/spring06.html> (noting “[t]he role of the tax preparer as agent and advocate” for the consumer).

<sup>3</sup>*See* Tax Notes Today (April 5, 2006), *available at* 2006 TNT 65-17 (Lexis/Nexis).

among tax preparers and related parties, and to express our belief that the time has come for the Treasury Department and IRS to intervene to put an end to a decades-long saga of misleading and deceiving taxpayers and undermining the public fisc.

The Department of Defense recently determined that RALs are a type of predatory lending and placed restrictions on the methods and interest rates at which they may be offered to military personnel.<sup>4</sup> The Attorneys General applaud the fact that the men and women of our military now enjoy some measure of protection from the most predatory aspects of RALs. We believe, moreover, that this protection should not be limited to members of the military. Recipients of RALs are mostly members of the “working poor” who receive the Earned Income Tax Credit (EITC) through their tax refund. Just as “[t]he majority of recruits come to the military from high school, with little financial literacy education,”<sup>5</sup> so too the majority of EITC recipients who are less educated and less financially sophisticated than the general population.<sup>6</sup> We see no relevant distinction between the needs of military personnel and the needs of the civilian population when it comes to freedom from this sort of predatory lending and the financial stress it causes.

We recognize that IRS may be concerned that the incentives built into the offering of RALs, in addition to RACs and audit guarantees, may encourage the taking of improper tax positions that could result in increased fraud on the government. We believe IRS is correct to note that the marketing and provision of these products may have resulted in widespread exploitation of consumers who may have little or no financial expertise. It is very likely that many people who get RALs, for example, do not understand that the money they receive is a loan, with all the attendant costs and risks, not their tax refund. Improper marketing by tax preparers is part of the cause, and – even if later improved – can have lingering negative effects. For example, use of the phrase “Rapid Refund” has apparently spread so widely and deeply into the overall culture that customers and tax preparation personnel, and the media,<sup>7</sup> mistakenly

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<sup>4</sup>32 C.F.R. Part 232, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents* (August 31, 2007).

<sup>5</sup>32 C.F.R. Part 232, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents* (August 31, 2007), at 2.

<sup>6</sup>Bruce D. Meyer, *The U.S. Earned Income Tax Credit, Its Effects, and Possible Reforms* (University of Chicago, Aug. 2007), at 3 and Table 2, available at [http://harrisschool.uchicago.edu/About/publications/working-papers/pdf/wp\\_07\\_20.pdf](http://harrisschool.uchicago.edu/About/publications/working-papers/pdf/wp_07_20.pdf) (showing education attainment of EITC recipients compared with non-recipients); Leslie Book, *Preventing the Hybrid From Backfiring: Delivery of Benefits to the Working Poor Through the Tax System* (Villanova University, 2006), at 18, available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1055&context=villanovalwps> (noting “the generally low literacy and financial sophistication skills of lower-income taxpayers”). See also National Taxpayer Advocate 2007 Annual Report to Congress, Executive Summary, at I-3, available at [http://www.irs.gov/pub/irs-utl/arc\\_exec\\_summary\\_2007\\_final.pdf](http://www.irs.gov/pub/irs-utl/arc_exec_summary_2007_final.pdf) (noting RAL customers’ “lack of financial sophistication”).

<sup>7</sup>E.g., Alan Wang, *Latest Trend in Tax Fraud Hits Bay Area*, KGO-TV, San Francisco, CA (Feb. 21, 2007), available at <http://abclocal.go.com/kgo/story?section=news/local&id=5057908>; Anna Crowley, *Consumer Alert: Tax Refund Loans*, WCNC-TV, Charlotte, NC (Feb. 7, 2007), available at [http://www.wcnc.com/news/topstories/stories/wcnc-020607-jmn-tax\\_company.58807431.html](http://www.wcnc.com/news/topstories/stories/wcnc-020607-jmn-tax_company.58807431.html); Danny Barrett Jr., *Tax Preparers Getting Ready for After-First Wave*, Vicksburg Post (Dec. 27, 2006), available at <http://www.vicksburgpost.com/articles/2006/12/27/news/news01.txt>.

continue to use the term despite efforts by IRS and others to prevent advertisers from blurring the line between loans, on the one hand, and refunds, on the other.

The undersigned Attorneys General, as the chief law enforcement officers of their respective states, approach questions of potential exploitation of the public fisc and of consumers with particular concern. Especially in tight economic times, it is crucial that taxpayers and the businesses that serve them play by the rules and that scarce public revenue dollars go where they are meant to go. Incentives built into the current system undermine both of these goals. Tax preparation firms end up competing not on the quality of their completed tax returns, but rather on the claimed speed and purportedly larger refunds or loans they can provide their customers. And because of loan fees and related charges, government money that is intended to bolster working poor families in the form of the Earned Income Tax Credit – the federal government’s largest financial assistance program for low-income families – is instead diverted into the coffers of billion-dollar corporations.

It is the EITC – and therefore ultimately the American taxpayer – that is providing the money for these loans. The EITC is a program intended to help the working poor raise their families out of poverty. It is not intended to be a special-interest subsidy for tax preparers.

## **II. The Problems Posed By RALs Are Longstanding, They Are Current, And They Are Acute**

Tax preparers’ use of tax information to market RALs may pose a hazard not only to an orderly system of revenue collection, but also to taxpayers who look to tax preparers for return preparation and tax advice.

RALs are typically marketed and facilitated by tax preparers, though as a result of Treasury Department rules barring preparers from making RALs themselves, the actual lender is generally a bank. Typically, charges for a RAL include interest on the loan as well as an account set-up fee, along with all fees imposed by the tax preparer for tax preparation and ancillary services, and (until recently) an “administrative fee” for the arranging of the RAL. The taxpayer receives as a loan the amount of the refund less all charges and fees. The lending bank receives the taxpayer’s refund in a phantom “bank account” set up exclusively for the purpose, repays itself (and, if it has not already done so, the tax preparer) out of the refund, and closes the account. If for any reason – a mistake on the tax return, a hold on some portion of the taxpayer’s refund, identity theft – the amount of the refund received by the bank is not sufficient to cover the loan, the taxpayer is responsible for immediate full repayment. Considering that most RAL recipients are members of the working poor, the difficulty of that repayment can be insurmountable.

As the ANPRM recognizes, the economic incentive to sell RALs may cause tax preparers to take improper tax positions in order to increase the likelihood that a customer will purchase a RAL. From the point of view of the tax preparer, the higher the refund, the larger the RAL, and the more that a tax preparer with a percentage stake in that RAL will earn. This is a conflict that the Treasury and IRS have already identified, but one that has nonetheless continued: The

ANPRM points out that Circular 230 prohibits practitioners “charg[ing] contingent fees in certain circumstances where there are tax administration concerns.”<sup>8</sup> In addition, Publication 1345 contains a specific directive to all providers of electronic tax return filing services: “The Provider must not accept a fee that is contingent upon the amount of the refund or a RAL or other financial product from a financial institution for any service connected with a financial product.”<sup>9</sup>

Though various banks are the nominal lenders of RALs, each of the three largest commercial tax preparers directly or indirectly receives a substantial portion of the money that taxpayers have paid for these loans, and in some cases the revenue that flows to the company or its affiliates is clearly contingent on the amount of the RAL. An affiliate of one national tax preparation company, for example, purchases a one-half interest in each of the loans that the company’s customers receive. The transaction is structured so that the affiliate that purchases the loan is separate from the affiliate whose employees prepare and file the return. Whether or not this careful structuring takes the company outside the scope of the rule, it is plain that it frustrates the goal that IRS intended when it promulgated the contingency ban.

We believe that other preparers have, in the recent past at least, also received a percentage of the amount customers have paid for RALs (and other “financial products”). Whatever the specific method of compensation from the bank, however, large tax preparation companies make more money when more of their customers take out more and larger loans, and each such company competes for business by boasting that it can provide larger refunds and larger refund anticipation loans.

Further, improper incentives – that is, incentives that IRS should prohibit or curtail – are not limited to the *size* of the loans, but apply also to their *number*. Even tax preparers that receive a flat fee per RAL or RAC or audit guarantee make more money if they manage to convince more of their customers to purchase these products. This perverse incentive has ill served the companies’ customers, who have been (among other things) subjected to deceptive advertisements (characterizing loans as “refunds,” for example); lured with offers of loans for which they would not qualify (the same-day loans have had very low approval rates, we believe, particularly with respect to the full amount requested); and put through bait-and-switch illegal debt-collection procedures.<sup>10</sup>

And, of course, even absent the revenues derived from RALs, tax preparers have an incentive to advertise that they can get “fast money” into their clients’ hands. When advertising promises “Instant Money” or “Money Now” or “Fast Cash,” tax preparers gain revenue from the tax preparation fees of all who come to their offices looking for same-day cash – even those who do not in the end qualify for these loans. What is more, the larger the refund, the less likely that a RAL or RAC customer will notice the size of the tax preparation fee which is subtracted from

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<sup>8</sup>ANPRM at 5.

<sup>9</sup>*Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns (“E-File Handbook”)* (2004) at 45.

<sup>10</sup>See California complaints set forth in Footnote 1.

the proceeds.

Further, the powerful incentives to keep refunds as large as possible and to sell as many RALs as possible undercut any incentive preparers might have to inform EITC recipients about the Advance Earned Income Tax Credit, which allows taxpayers to receive a prorated amount of their EITC in their regular paycheck instead of having to wait until the end of the year. By providing taxpayers with more money on an ongoing basis, the AEITC could be a valuable tool for alleviating the pressure of paying bills – the most commonly cited reason for getting a RAL. But because advocating the AEITC runs directly counter to preparers’ interest in selling RALs, the AEITC plays a small role, if any, in preparers’ communications with their clients.

#### **A. The Negative Consequences of RALs Have Been Evident For Years, But Have Never Been Resolved**

Serious problems with the marketing of RALs became obvious long ago, but despite efforts by state regulators and public and private lawsuits these problems have stubbornly persisted. Indeed, just this year the New York State Division of Human Rights brought actions against all three major commercial tax preparers for targeting their marketing of high-cost, abusive loans and related products to minorities and military personnel.<sup>11</sup>

As early as three decades ago – even before RALs took their current form – the Federal Trade Commission had identified serious problems in the marketing of these products.<sup>12</sup> In the ensuing thirty years, numerous actions have been brought to address shortcomings, misrepresentations and deception in the marketing of these products.<sup>13</sup> The complaints have come not only from consumers and from regulators<sup>14</sup> but also from competitors.<sup>15</sup> IRS has acted to curtail abusive marketing practices.<sup>16</sup> And state legislatures have enacted statutes specifically targeting systemic abuses.<sup>17</sup> But remarkably, despite the span of decades, the spate of litigation,

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<sup>11</sup>See New York State Division of Human Rights cases cited in Footnote 1.

<sup>12</sup>*H&R Block, Inc.*, 80 F.T.C. 304 (1972) (consent), *modified*, 100 F.T.C. 523 (1982) (holding deceptive for tax preparer to fail to disclose use of tax information for purposes other than tax preparation); *Beneficial Corp.* 86 F.T.C. 119 (1975), *modified*, *Beneficial Corp. v. FTC*, 542 F.2d 611 (3d Cir. 1976) (restricting use of term “Instant Tax Refund,” prohibiting misrepresentation of the terms and conditions of guarantees, and barring misuse of confidential information obtained from taxpayer customers).

<sup>13</sup>For example, in the past two decades “more than twenty class actions were brought against [H&R Block and its RAL-lending banks] on behalf of the refund anticipation borrowers.” (*Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 280 (7th Cir. 2002)).

<sup>14</sup>See, e.g., cases cited in Footnote 1.

<sup>15</sup>See, e.g., *JTH Tax, Inc. v. H&R Block, Inc.*, 359 F.3d 699 (4<sup>th</sup> Cir. 2004); *JTH Tax, Inc. v. H&R Block, Inc.*, 128 F.Supp.2d 926 (E.D.Va. 2001) (injunction sought by Liberty Tax against H & R Block issued requiring, among other things, that H&R Block advertisements “clearly and prominently disclose whether an advertised product is actually a loan”).

<sup>16</sup>See, e.g., *E-File Handbook*, Publication 1345 (2004), at 44-46; see also Rev. Proc. 2005-35 § 6.

and the efforts of IRS as well as the States, even basic principles continue to be violated.

For example, IRS rules explicitly require that a tax preparer must in its marketing scrupulously distinguish between (1) a refund and (2) a loan against that refund.<sup>18</sup> Yet despite claims against tax preparers for their marketing of RALs stretching as far back as the 1970s,<sup>19</sup> certain problematic marketing practices have persisted – even in the face of settlements and judgments directing that, for instance, preparers cease calling loans “rapid refunds” and ensure that RALs are conspicuously identified as “loans” rather than just “Instant Money.”<sup>20</sup> IRS explicitly informed one preparer that the use of the term “your money” to describe a loan violated IRS’s marketing rules,<sup>21</sup> yet precisely that language has continued to appear in tax preparers’ advertisements and other marketing. Even in the past few years, advertisements have continued to tout “Money” in huge letters and to relegate the word “loan” to smaller font in the middle of a longer piece of text. Some tax preparer advertisements run in 2007 and 2008 have omitted mention of the word “loan” (and in Spanish “prestamo”) entirely. Indeed, a series of calls to a national tax preparer’s offices this year found that company personnel continue to fail to advise potential customers that the product available in one or two days is not their “refund” but in fact a loan.<sup>22</sup>

Given the obvious risk of litigation, why would such deceptive practices continue so stubbornly? The answer is the same today as it was a decade ago, and a decade before that: RALs are highly lucrative, and surveys by tax preparers have long established that customers are less interested in a RAL when the RAL is revealed to be a “loan” than when it is called something else.<sup>23</sup> In order to maintain (and increase) their customer base, tax preparers therefore continue to market RALs by diverting attention from the word “loan” and instead touting the speed and size of the “bank product.”

IRS has several times proposed speeding up the processing of refunds in order – among other things – to make RALs less attractive. Tax preparation companies’ response was first to

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<sup>17</sup>See, e.g., California Bus. & Prof. Code § 22253.1; Connecticut G.S.A. §§ 42-480; 815 Illinois CS 177/1 et seq.; Nevada R.S. 604B.010 et seq.; New Jersey S.A. 17:11D-3; North Carolina G.S.A. §§ 53-245 et seq.; Oregon R.S. §§ 673.615; Tennessee C.A. §§ 62-29-201 et seq.; Texas C.A., Finance Code §§ 351.001 et seq.; Virginia C.A. §§ 6.1-474 et seq.; Revised Code of Washington Ann. 19.265.010 et seq.; Wisconsin S.A. 422.310.

<sup>18</sup>See *E-File Handbook*, Publication 1345 (2004), at 45.

<sup>19</sup>See cases cited in Footnote 11.

<sup>20</sup>See cases cited in Footnote 1.

<sup>21</sup>Letter from IRS to H&R Block (September 30, 2001), cited in *Picking Taxpayers’ Pockets, Draining Tax Relief Dollars*, National Consumer Law Center (2005), available at [http://www.consumerlaw.org/issues/refund\\_anticipation/content/2005RALreport.pdf](http://www.consumerlaw.org/issues/refund_anticipation/content/2005RALreport.pdf).

<sup>22</sup>See <http://www.nbc11.com/news/15621027/detail.html#>;  
[http://www.courthousenews.com/2008/03/17/California\\_Says\\_H&R\\_Block\\_Disguises\\_Expensive\\_Loans\\_As\\_Tax\\_Refunds.htm](http://www.courthousenews.com/2008/03/17/California_Says_H&R_Block_Disguises_Expensive_Loans_As_Tax_Refunds.htm).

<sup>23</sup>See *Basile v. H&R Block*, 777 A.2d 95, 105 (Pa. Super. Ct. 2001).

make RALs available on the same day that they were applied for, and then to offer them on a “pre-file” basis before taxpayers had even received their W-2 forms. The companies maintained that they were simply trying to gain a competitive edge on – or keep up with – their competitors, and that they did not like the “paystub loan” products.<sup>24</sup> Although RAL-lending banks called a halt to the pre-file loans, at least one tax preparer that “applauded” the industry’s decision to cease offering “paystub” loans<sup>25</sup> has nonetheless continued to offer a pre-season loan, and at least one other national tax preparer is on record as stating that – in order to keep up with the competition – they will be offering a “preseason” product next year.<sup>26</sup> The race to the bottom continues.

From their remarkable persistence over time, it seems that the problems are inherent in RALs. The game as it now stands is out of control. The players need a referee to lay down and enforce a new set of rules.

### **B. Recent Efforts to Ameliorate the Harm of RALs Have Not Succeeded**

Just as some settlements and judgments in the past have ultimately proved less effective than they initially appeared in reducing harmful practices involving RALs, so too some tax preparers’ recent apparent reductions in the cost of RALs are much less consumer-friendly than they might seem. For example, one prominent tax preparer (and its lending bank) have reduced the finance charge which customers must pay for a RAL, but there has been no reduction in the associated so-called “bank account fee.” And the reduction in finance charge is available only to those who take the loan proceeds on a debit card, issued by an affiliate bank, which contains a variety of repeating fees and costs that can erase much of the apparent savings. To receive the loan proceeds in a paper check, as the preparer for years offered without additional charge to its customers, now costs an additional \$20 “check processing fee.”<sup>27</sup> The new ATM cards, marketed as a means of offering basic banking services to those without bank accounts, are apparently promoted even to those who already have their own bank accounts and so do not benefit from an expensive and very limited additional debit account.

### **C. Ending RALs Would Represent to Taxpayers a Return of Control Over Their Tax Return Information and Their Refund**

We believe that tax preparers generally do not ensure that their RAL customers are made fully and effectively aware that the “bank product” they receive is actually a loan, or that if their

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<sup>24</sup>See, e.g., *H&R Block Asks for End to Paystub Loans*, available at <http://ezinearticles.com/?HandR-Block-Asks-for-End-to-Pay-Stub-Loans&id=220490>; Annys Shin, *Anticipating Tax Refunds May Cost You*, available at [http://blog.washingtonpost.com/thecheckout/2007/01/pay\\_stub\\_loans.html](http://blog.washingtonpost.com/thecheckout/2007/01/pay_stub_loans.html).

<sup>25</sup>See <http://www.hrblock.com/press/Article.jsp?articleid=1336> (issued April 10, 2007).

<sup>26</sup>Jackson Hewitt Tax Service Inc., F3Q08 (Qtr End 1/31/08) Earnings Call Transcript, available at <http://seekingalpha.com/article/67157-jackson-hewitt-tax-service-inc-f3q08-qtr-end-1-31-08-earnings-call-transcript?page=1>.

<sup>27</sup>See [http://www.hrblock.com/taxes/pdf/2008\\_RAL\\_pricing\\_tool.pdf](http://www.hrblock.com/taxes/pdf/2008_RAL_pricing_tool.pdf).

tax preparer has prepared a return that contains an inaccurately large refund amount the taxpayer must pay back the difference, or that if they just wait a week or two they could save a substantial sum of money. These pieces of information may be present in disclosure forms, but the reading level necessary to understand the disclosures is likely well beyond that of most RAL customers.<sup>28</sup> And, in an industry where employees may be paid based in part on the number of returns they prepare, the chances that customers are scrupulously given sufficient time to read through the multi-page, fine-print disclosures – or any other disclosure documents – are at best slim.

The fact is that the harms of deceptive advertising linger on, and much of the public, including the media,<sup>29</sup> still mistakenly continues to use the phrase “rapid refunds” to refer to RALs – despite efforts by IRS, States, and others to prevent tax preparers from blurring the line between loans and refunds. Widespread and continuing consumer confusion about whether a RAL is a refund – confusion fostered by those tax preparers who are still generally unwilling to use the same font-size for the word “loan” that they use for “Get Money Fast” – makes clear that in this context concern about “potential exploitation of taxpayers”<sup>30</sup> must trump solicitude for “the ability to control the use or disclosure of their tax return information.”<sup>31</sup> It is not unreasonable to promulgate a rule aimed at increasing the likelihood that taxpayers will receive their tax refund, in full, free of deception and free of unnecessary costs.

Finally, a RAL in effect places a lien against a taxpayer’s refund. The RAL-lending bank has total control over the refund and pays itself back whatever it may believe it and the tax preparer are owed before releasing the remainder to the taxpayer. And the lending bank is free to use the taxpayer’s information in whatever way it may decide it wishes to, as set forth in fine print in the loan application. If the question is of retaining control over the use of one’s tax return information, or the disposition of one’s tax refund, then the RAL is a disaster. Retaining the RAL exception to the ban on use of confidential tax return information would thoroughly undermine IRS’s stated aims.

### **III. RACs And Audit Insurance Present Similar Problems, For Similar Reasons**

The ANPRM raises the additional question whether to ban the use of tax return information to market “refund anticipation checks” (RACs) which, for a hefty fee, allow taxpayers to defer payment of tax preparation fees for a week or two until their refund arrives. Taxpayers receive proceeds from a RAC essentially no faster than they would have received their refund as a direct deposit into their own bank account. Further, the RAC comes at a steep price. In order to cover, for example, a \$100 tax preparation fee, a taxpayer would typically have to pay an additional \$30 for the RAC – a huge percentage of the amount advanced, especially if considered as an annual percentage rate.

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<sup>28</sup> See sources cited in Footnote 6.

<sup>29</sup> See *supra* Footnote 7.

<sup>30</sup> ANPRM at 6.

<sup>31</sup> ANPRM at 6.

Our concerns about RALs apply in large measure to RACs as well. RACs may encourage the taking of improper tax positions because they, too, are significant sources of revenue for tax preparers. Preparers may receive a portion of the “RAC fee” or “bank account fee,” including from customers who are lured by the advertised promise of a RAL but discover they are unable to qualify for one. Further, the ability of the average taxpayer, much less the average EITC recipient who is the typical recipient of a RAC, to comprehend the details of the RAC disclosures is no greater than their ability to comprehend the RAL disclosures.

The ANPRM also addresses the issue whether the marketing of “audit insurance” should be prohibited. The Attorneys General have had experience with “audit insurance” and other guarantees peddled by tax preparers eager to convince their customers to purchase what are essentially insurance products of dubious value. A tax preparer is responsible for preparing the return correctly. Therefore, even without the paid guarantee the tax preparer would generally be responsible to the taxpayer for any penalties and interest resulting from the tax preparer’s error. The supplemental paid “guarantee” provides that for a sizable fee – now usually about \$30 – if the preparer has made a mistake the preparer will also pay any additional taxes the client is required to remit. The ANPRM identifies the “moral hazard” of the guarantee: that protection against audits (and penalties, interest and additional tax payments) might cause taxpayers to feel comfortable signing a return – for example, one taking a very aggressive stance on eligibility for the EITC – that they otherwise would not sign.

We have in the past found additional problems with these products. Forty-two State Attorneys General and other regulators investigated H&R Block’s practice of selling its “Peace of Mind” guarantee as a default – that is, automatically charging customers for the coverage unless they affirmatively declined it. In 2003, the AGs reached a settlement with H&R Block forbidding this sort of “opt-out” sale.<sup>32</sup> We continue to question the value (if any) of the guarantee. Given the probability of low audit rates, and the difficulties of proving to the preparer’s satisfaction that any error was the fault of the preparer rather than the taxpayer (a topic about which we have received consumer complaints), we believe that the percentage of claims filed and honored is very likely minuscule. IRS may be interested, indeed, in comparing the percentage of customers who make claims that are honored with the percentage who purchase the coverage; we suspect the difference will be very large. Given all of these factors – what we believe to be a very low actual claims rate, the preparer’s pre-existing responsibility for penalties and interest resulting from its own error, the cost of the product, and the difficulty in making a successful claim – we consider it very likely that removing the exemption from Section 7216 that allows for sharing of tax return information in order to market this sort of “audit insurance” or “guarantee” would have an overall beneficial effect on consumers.

Finally, the ANPRM asks whether other ancillary products cause similar concerns. We believe that IRS should consider removing the exemption from Section 7216 that permits the use of taxpayer information to market or use ATM/debit cards for the proceeds of RALs, RACs and refunds. In recent years, tax preparers have vigorously promoted proprietary debit cards to their

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<sup>32</sup>See *In re H&R Block Services, Inc.* (multi-State action) (April 2003), assurance of voluntary compliance or discontinuance available at <http://ag.ca.gov/newsalerts/cms03/03-045.pdf>, appended as Attachment 13.

customers. In practice, however, these cards have required taxpayers to pay fees and unannounced costs just to access their own money – payment which could have been avoided entirely if the taxpayer were simply permitted to use her own bank. We recommend that IRS scrutinize whether the use of tax return information to establish an extremely limited “bank account” is a practice that should be permitted.

#### **IV. Remedies Short Of A Prohibition Or Severe Restriction**

The most logical and effective way of addressing the problems endemic to tax preparers’ marketing RALs by use of confidential taxpayer information is that which IRS has initially proposed: to prohibit the practice altogether. Because the ANPRM also calls for consideration of other alternatives, however, we set forth several options that, although they may not achieve a complete solution, may at least ameliorate the worst excesses of the current system.

##### **A. Cap the Allowable Fee on RALs.**

We urge IRS to consider what may be the most effective way – short of barring the use of tax return information for RALs entirely – of reducing the “exploitation” of taxpayers cited in the ANPRM: forbidding the use of such information in regard to a RAL whose costs amount to an annual rate of interest that exceeds a reasonable rate. Although we endorse no particular rate, we note that whatever annual percentage rate cap is selected would need to comprise all charges including the bank account fee, as does the APR cap recently imposed by the Department of Defense on RALs made to military personnel.<sup>33</sup> The rate cap should, in addition, effectively curb fees relating to the method of receiving or holding the proceeds – for example, ATM card fees or supplemental paper-check fees. Although it is higher than some might prefer, even the rate cap adopted by the Department of Defense would ameliorate RAL-lending across the board by removing the powerful temptation to charge whatever rate a vulnerable and poorly educated population might be willing to pay. The cap would also address RALs’ major drain on EITC revenues, which are meant as a direct benefit to the working poor but are being siphoned off to tax preparers and their partner lending banks.

##### **B. Ensure Effective Operation of the Prohibition on Tax Preparers and Related Entities Receiving Revenue From a Loan That Varies With the Loan’s Amount**

Electronic return originators, including tax preparers who provide electronic filing services, are barred from receiving any “fee that is contingent upon the amount of the refund or a RAL or other financial product revenue from a loan that varies with the amount of that loan.”<sup>34</sup>

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<sup>33</sup>See 32 CFR Part 232, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents* (August 31, 2007).

<sup>34</sup>*E-File Handbook*, Publication 1345 (2004) at 45. (“When assisting a taxpayer in applying for a RAL or other financial product, the Provider may charge a flat fee for that assistance. The fee must be identical for all customers and must not be related to the amount of the refund or the financial product. The Provider must not accept a fee that is contingent upon the amount of the refund or a RAL or other financial product from a financial institution for any service connected with a financial product.”)

IRS can and should underscore and enforce this rule by stating explicitly that tax preparers and other providers may not use tax return information as part of any arrangement through which the tax preparer or any related company would receive an amount that varies with the size of the loan or other financial product.

This prohibition should address the practice of a tax preparer or affiliate sharing a percentage of the fees from, or purchasing a percentage interest in, the RALs the firm arranges. The prohibition would need to be broadly enough stated to stanch payments that flow initially from the consumer to the bank before being distributed to the tax preparer or its affiliate. No tax preparer, whether directly or through third parties, should have an economic incentive to produce a larger tax refund for its client.

**C. Streamline the Eligibility Requirements for the Earned Income Tax Credit**

The perceived and actual complexity of proving eligibility for the EITC may drive many taxpayers to paid preparers and therefore reduce the amount of aid provided to those taxpayers. The ambiguities and complexities also result in a disproportionate number of errors on the part of taxpayer applicants, increasing what amounts to an ongoing drain on the fisc. We believe that were it not for the complexity of requesting the payment, particularly with respect to the definition of a qualifying child, fewer EITC recipients would feel the need to use paid tax preparers. If it were about as easy to apply for the EITC as to file a 1040EZ form, the problems now caused by RALs would be much ameliorated.

**D. Eliminate Use of the IRS “Debt Indicator” and Move the Federal Government Out of the Business of Supporting RALs**

Without use of the debt indicator, by which IRS provides potential lenders with advance information about taxpayers’ eligibility for a refund, lenders would in many cases lack sufficient information about the many possible governmental claims on a taxpayer’s refund – child support, government liens, and so on – to responsibly make loans. Eliminating use of the debt indicator would therefore cause a decline in the number of RALs made. The chief rationale for allowing reinstatement of the debt indicator in 1999 – that provider fraud would be reported and therefore decrease – has not been realized. Moreover, use of the debt indicator continues to raise privacy concerns about the provision of taxpayer information to third parties. In addition, electronic filing has apparently increased at a significantly higher rate than the growth rate for RALs, thereby debunking the idea that it is access to RALs that has brought about the increase in electronic filing – an idea further discredited by the growth in “free file” returns, where RALs are no longer available.<sup>35</sup>

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<sup>35</sup>See, e.g., Minutes of the IRS Taxpayer Advocacy Panel, Area 4 Committee, *available at* <http://www.improveirs.org/minutes/area4/2005/20050908.shtml>; Statement of Sen. Daniel Akaka on the introduction of the Taxpayer Abuse Prevention Act of 2004 (S.2947) (Cong. Rcd., 108<sup>th</sup> Congress, 2d sess., S10848-10849) (Oct. 8, 2004), *available at* <http://thomas.loc.gov/cgi-bin/query/F?r108:2:./temp/~r108yNLhMQ:e1300>:

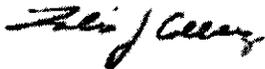
**V. Conclusion**

The undersigned Attorneys General seek by our submission in this proceeding to support the efforts of the Treasury and IRS to bolster confidence in the efficient and effective operation of the national system of revenue collection. We make our comments in the hope and belief that taking the measures we have recommended will restrict a practice which, on an ongoing basis, may undermine taxpayer confidence in the integrity of the voluntary tax filing system. The proliferation of RALs, RACs and other products may also undermine taxpayer confidence in the EITC system – for few taxpayers want to believe that their tax dollars designated to help lift working families out of poverty are instead heading into the coffers of large corporations.

The leaders of the major commercial tax preparation companies have individually stated in the press that they do not like refund anticipation loans, that their business is tax preparation rather than lending, and that they make RALs available to their customers only because their competitors do. We propose that IRS address the companies' stated concerns directly. The way to level the playing field so that each of these companies can feel comfortable abandoning its RAL program is to ensure that *no* company has a RAL program based on the use or disclosure of private taxpayer information. IRS should, that is, take these businesses at their word.

In the days following the announcement of the ANPRM, several tax preparers expressed confidence that IRS was not serious about putting an end to RALs as they are and have been configured. The Attorneys General would like IRS to know that the troubles caused by these products are real, not imagined; that they are current, not past; and that they are soluble, not inevitable. If IRS follows through on its plans to modify the regulatory exception to sections 7216 and 6713 to prohibit the marketing of these products, it will have done an important service to the Treasury and to the taxpayers of this nation.

Sincerely,



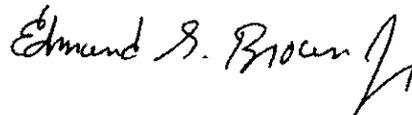
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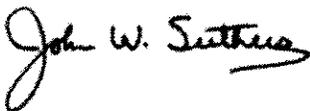
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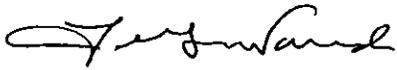
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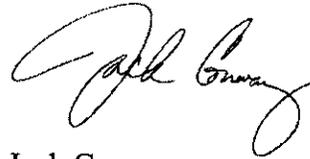
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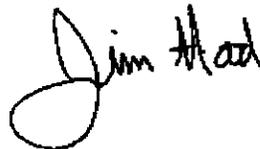
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## ATTACHMENTS

### TO THE COMMENTS OF THE STATE ATTORNEYS GENERAL

Advance Notice of Proposed Rulemaking Regarding the Marketing of Refund Anticipation Loans and (RALs) and Certain Other Products in Connection with the Preparation of a Tax Return (Reg. 136596-07 and Notice IR-2008-2)

April 7, 2008

1.	<i>People v. H&amp;R Block, Inc.</i> (San Francisco Superior Court, No. 06-449461) (filed Feb. 15, 2006) (California Attorney General) (complaint)
2.	<i>People v. Jackson Hewitt Tax Service Inc.</i> (Alameda Superior Court, No.07-304558) (filed January 3, 2007) (California Attorney General) (complaint and stipulated final judgment)
3.	<i>People v. JTH Tax, Inc., dba Liberty Tax Service</i> (San Francisco Superior Court No. 07-460778) (filed February 26, 2007) (California Attorney General) (complaint)
4.	<i>People v. Malqui Corp.</i> (Hudson Cty. Superior Court, No. C-39-07) (filed March 5, 2007) (New Jersey Attorney General and Division of Consumer Affairs action) (complaint)
5.	<i>State of Texas v. H&amp;R Block, Inc.</i> (Travis Cty. District Ct., No. 93-05737) (September 1993) (Texas Attorney General) (agreed final judgment)
6.	<i>In re H&amp;R Block Eastern Tax Services, Inc.</i> (Office of the Attorney General, No. 93-410039) (filed January 28, 1994) (Florida Attorney General) (assurance of voluntary compliance)
7.	<i>In re H&amp;R Block (Conn.), Inc. d/b/a H&amp;R Block</i> , (before Comm'r of Consumer Protection, No. 93-198) (July 1993) (Connecticut Comm'r of Consumer Protection) (agreement and consent order)
8.	<i>New York State Division of Human Rights v. H&amp;R Block Tax Services, Inc.</i> (Bronx Cty. Supreme Ct., No. 1726/2007) (March 6, 2008) (New York State Division of Human Rights) (order compelling compliance with subpoena)
9.	<i>New York State Division of Human Rights v. Jackson Hewitt, Inc.</i> (before Division of Human Rights) (filed January 17, 2008) (New York State Division of Human Rights) (complaint)
10.	<i>New York State Division of Human Rights v. JTH Tax, Inc. and subsidiaries d/b/a Liberty Tax Service</i> (before Division of Human Rights) (filed January 17, 2008) (New York State Division of Human Rights) (complaint)

11.	<i>Cerullo v. H&amp;R Block, Inc.</i> (New York County Supreme Ct., No. 409497/95) (January 27, 1997) (New York City Department of Consumer Affairs) (consent order and stipulation of settlement attaching as exhibits four previous assurances of compliance)
12.	<i>Dykstra v. H&amp;R Block, Inc.</i> , (New York County Supreme Ct., No. 02401201) (March 11, 2002) (New York City Department of Consumer Affairs) (complaint)
13.	<i>In re H&amp;R Block Services, Inc.</i> (Multi-State action re Peace of Mind audit insurance) (April 2003) (assurance of voluntary compliance or discontinuance)

**ATTACHMENT 1**

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8 Attorneys for the People of the State of California

9 DEPARTMENT 212  
10 SUPERIOR COURT OF CALIFORNIA  
11 CITY AND COUNTY OF SAN FRANCISCO

ENDORSED  
FILED  
San Francisco County Superior Court  
FEB 15 2006  
GORDON PARK-LI, Clerk  
BY: ~~CHRISTINA E. RAHITIETA~~  
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

JUL 27 2006 09 06 AM

12 THE PEOPLE OF THE STATE OF CALIFORNIA,  
13 Plaintiff,  
14 v.  
15 H&R BLOCK, INC., a foreign corporation; H&R  
16 BLOCK SERVICES, INC., a foreign corporation;  
17 H&R BLOCK ENTERPRISES, INC., a foreign  
18 corporation; H&R BLOCK TAX SERVICES, INC., a  
19 foreign corporation; BLOCK FINANCIAL  
CORPORATION, a foreign corporation; HRB  
20 ROYALTY, INC., a foreign corporation; and DOES 1  
through 50, inclusive,  
21 Defendants.

Case No. 06 419461

COMPLAINT FOR  
INJUNCTION, CIVIL  
PENALTIES AND OTHER  
RELIEF

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

24 DEFENDANTS

25 1. Defendant H&R Block, Inc., is a publicly traded company that owns a number  
26 of subsidiary companies involved in tax preparation services throughout the country. H&R  
27 Block, Inc., sets corporate policy for its subsidiaries, including their financial arrangements, their  
28 advertising campaigns, their training materials, and the scripts to be used by the employees and

1 operators at the various offices. It is a Missouri corporation with its principal place of business  
2 in Kansas City, Missouri, and does business in California, including in the City and County of  
3 San Francisco.

4           2. Defendant H&R Block Services, Inc., is a subsidiary of H&R Block, Inc. H&R  
5 Block Services, Inc., has been and remains party, on behalf of itself and its subsidiaries, to  
6 agreements with lending institutions regarding the operation of H&R Block, Inc., and its  
7 subsidiaries, particularly with respect to the provision of "refund anticipation loans" and related  
8 products. It is a Missouri corporation with its principal place of business in Kansas City,  
9 Missouri, and does business in California, including in the City and County of San Francisco.

10           3. Defendant H&R Block Enterprises, Inc., is a subsidiary of H&R Block, Inc.  
11 H&R Block Enterprises, Inc., oversees the operations of the H&R Block company-owned offices  
12 in California. It is a Missouri corporation with its principal place of business in Kansas City,  
13 Missouri, and does business in California, including in the City and County of San Francisco.

14           4. Defendant H&R Block Tax Services, Inc., is a subsidiary of H&R Block, Inc.  
15 H&R Block Tax Services, Inc., oversees the operations of the H&R Block franchise offices in  
16 California. It is a Missouri corporation with its principal place of business in Kansas City,  
17 Missouri, and does business in California, including in the City and County of San Francisco.

18           5. Defendant Block Financial Corporation is a subsidiary of H&R Block, Inc. Block  
19 Financial Corporation has been and remains party to agreements with lending institutions,  
20 particularly with respect to the purchase of a "participation" interest in "refund anticipation  
21 loans" made to customers of H&R Block, Inc., and its subsidiaries. Block Financial Corporation  
22 is a Delaware corporation with its principal place of business in Kansas City, Missouri, and does  
23 business in California, including in the City and County of San Francisco.

24           6. Defendant HRB Royalty, Inc., is a subsidiary of H&R Block, Inc. HRB Royalty,  
25 Inc., has been and remains party to agreements with lending institutions regarding the operation  
26 of H&R Block, Inc., and its subsidiaries, particularly with respect to the provision of "refund  
27 anticipation loans" and related products. HRB Royalty, Inc., is a Delaware corporation with its  
28

1 principal place of business in Kansas City, Missouri and does business in California, including  
2 in the City and County of San Francisco.

3 7. The above-named defendants are engaged, through their officers, agents,  
4 representatives and employees, in the business of tax preparation, the marketing and facilitation  
5 of "refund anticipation loans" and related items, and the provision of tax and related advice.

6 8. The true names and capacities, whether individual, corporate, or otherwise, of  
7 defendants named as Does 1 through 50 are unknown to Plaintiff who therefore sues these  
8 defendants by these fictitious names. Plaintiff will amend this complaint to show the true names  
9 of these defendants when their names and capacities have been ascertained.

10 9. All the defendants described in paragraphs 1 through 8 may collectively be  
11 referred to as "Defendants," "H&R Block," "Block" or "the company" in this complaint.

12 10. At all relevant times, Defendants have transacted business in the City and  
13 County of San Francisco and elsewhere in California. The violations of law herein alleged have  
14 been carried out in the City and County of San Francisco and elsewhere in the State of  
15 California.

16 11. At all relevant times, each of Doe defendants 1 through 50 has acted as an agent,  
17 representative, or employee of the other defendants, and has acted within the course and scope  
18 of that agency, representation or employment; and has participated in, has conspired with, and/or  
19 has aided and abetted others, including the other defendants in committing the violations alleged  
20 in this complaint.

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

23 13. Whenever reference in this complaint is made to any act or transaction of any  
24 corporation, partnership, business or other organization, that allegation shall be deemed to mean  
25 that the corporation, partnership, business or other organization did or authorized the acts alleged  
26 in this complaint through its principals, officers, directors, employees, members, agents and  
27 representatives while they were acting within the actual or ostensible scope of their authority.  
28



1           **A. H&R Block Aggressively Markets “Refund Anticipation Loans”**

2           18. The loans offered to H&R Block’s customers (refund anticipation loans, which  
3 the company refers to as “RALs”) are secured by the taxpayer’s anticipated tax refund and based  
4 on the anticipated amount of the refund. Block is barred by the Internal Revenue Service from  
5 directly making such loans itself. Consequently, the loans are technically provided by a bank  
6 with which H&R Block contracts via Defendants Block Financial Corp., H&R Block, Inc., H&R  
7 Block Services, Inc., H&R Block Enterprises, Inc., H&R Block Tax Services, Inc., and other  
8 Block affiliates. It is primarily H&R Block, however, not the bank, that advertises and promotes  
9 the loans. It is also H&R Block, through its “tax professionals,” that in the course of providing  
10 its tax advice and preparation service (after most of the “tax interview” is over and after  
11 determination that a client is entitled to a refund) offers the loans to its clients, provides its  
12 clients the multi-page loan applications, fills out the applications, and obtains the signed loan  
13 applications. Block also delivers the loan applications to the lending bank, and subsequently  
14 distributes the loan proceeds to its taxpayer clients. All loan fees and any tax preparation fees  
15 that the client has not already paid are deducted from the loan amount before the remainder of  
16 the loan proceeds are made available, generally at the Block office in the form of a paper check  
17 printed by Block that the client must pick up.

18           19. H&R Block receives substantial revenue from the loans, the extent of which is  
19 not disclosed with any specificity to the Block client, including up to 49.99% of the interest paid  
20 on these loans. Block also receives through “license fees” a substantial portion of the associated  
21 fees its taxpayer clients are required to pay.

22           20. Since 2001, Block customers in California have entered into more than 1.5  
23 million RALs, generating tens of millions of dollars in income for Block.

24           21. The loan application which H&R Block personnel have the client sign  
25 authorizes the lender to set up a temporary “account” in the client’s name for the sole purpose  
26 of receiving the taxpayer’s refund directly from the IRS – the client may not deposit to or  
27 withdraw any amount from the collection account. When the client’s tax return is sent to the  
28 IRS, Block designates the collection account as the destination to which the refund should be

1 directed. Once the IRS is notified, the destination for the tax refund cannot be changed. When  
2 the refund arrives from the IRS, the lender repays itself out of the refund and forwards to H&R  
3 Block the amount of any tax preparation or other fees owed H&R Block.

4 22. H&R Block offers both "standard" RALs and "instant" RALs (IRALs). The  
5 company represents that a customer will receive a standard RAL within one to two days. The  
6 company represents that "instant" RAL proceeds are generally available the same day H&R  
7 Block prepares the taxpayer's tax return. Unlike a standard RAL, eligibility for which is  
8 determined in significant part through checking the IRS "Debt Indicator" and requires 24 hours  
9 or more to process, eligibility for an H&R Block instant RAL – which it has promoted as  
10 "Instant Money" – is based primarily on the applicant's credit score and is often determined  
11 while the applicant is in the H&R Block office where the tax return is prepared.

12 23. When a client's tax return is filed electronically, as H&R Block does for the vast  
13 majority of its clients, the IRS provides the refund within approximately 8-15 days by direct  
14 deposit to a taxpayer's own bank account or in about 21-28 days if sent by U.S. mail.

15 24. Because H&R Block clients with bank accounts may receive their RAL  
16 proceeds no more than a week before they would have received their refund from the IRS, RALs  
17 are very short-term, very expensive loans. Since the lender is repaid by the receipt of the  
18 borrower's tax refund from the IRS in an average of about 10 days, Block's RAL clients  
19 typically pay interest, depending on the size of the loan, at an Annual Percentage Rate (APR)  
20 of from 40% to well over 100% APR. If all administrative and application fees required to be  
21 paid to receive the loan were included, the rate could be in excess of 500%.

22 **B. H&R Block's RAL Program Targets the Working Poor**

23 25. The Earned Income Tax Credit (EITC) is a tax credit paid by the federal  
24 government to low-income taxpayers. Although EITC recipients make up less than twenty  
25 percent of all taxpayers, they constitute some seventy percent of all customers for H&R Block's  
26 RALs and related products. Because the EITC is a tax credit rather than a deduction, receipt of  
27 the EITC, which averages several thousand dollars, often sharply increases or provides the  
28 entirety of a taxpayer's refund.

1           26. Persons eligible for the credit can elect to have much of their EITC distributed  
2 in their paychecks throughout the year rather than having to wait for a lump sum refund at tax  
3 time (a program known as the "Advance EITC"). Similarly, even those who are not eligible for  
4 an EITC may keep more of their income during the year, rather than having to wait for it after  
5 filing their year-end tax returns, simply by adjusting their W-4 withholding amounts. H&R  
6 Block has not effectively provided information about adjusted withholding or the Advance EITC  
7 to those who – because of the size of their refunds and as recipients of RALs – are eligible for  
8 them.

9           27. The consequences of entering into a RAL may be severe. Submitting the  
10 application documents transfers clients' entitlement to their tax refund to the lender and  
11 Defendants. If for any reason a client's refund is not deposited into the temporary "account" or  
12 is less than expected because other debts have been deducted from the refund amount, the  
13 consumer is still held liable for the full amount of the RAL.

14           28. If an H&R Block client's application for a RAL is denied for any reason, the  
15 client receives no money until the IRS sends the client's refund to the temporary "account."  
16 Nevertheless, certain RAL-related fees are still charged. In other words, such clients receive no  
17 loan, and obtain the remaining portion of their refund (less additional fees) no faster than they  
18 would have had they simply elected to receive their refund by direct deposit from the IRS.

19           **C. Defendants Offer Deferral of Tax Preparation Fees Through Purportedly**  
20           **Rapid "Refund Anticipation Checks"**

21           29. Generally, the fees for H&R Block's tax preparation and related services are due  
22 at the time a client's taxes are prepared. Defendants offer their clients the option of deferring  
23 payment of those fees until after their tax refund has been received from the IRS – but only if  
24 the clients agree to pay a fee to get a RAL or another refund-based product that Defendants call  
25 a "refund anticipation check" or "RAC." No form H&R Block provides its clients discloses the  
26 cost of the deferral of tax preparation fees as an Annual Percentage Rate or Finance Charge, or  
27 contains any other disclosures required by Truth-in-Lending laws for deferral of amounts owed.

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1           30. In offering a RAC to its clients, H&R Block – as it does with a RAL – obtains  
2 its clients' signatures on a multi-page application form which transfers the clients' rights to  
3 receive their tax refunds to H&R Block's chosen bank. The bank sets up a temporary collection  
4 account to secure the deferred fees due Block as well as the fees charged to get a RAC (called  
5 a "RAC fee" or "account fee"), and the IRS is directed to send the client's tax refund directly  
6 to the bank. Unlike a RAL, where customers get the money while in the Block office or a day  
7 or two later, with a RAC customers do not receive any money until after the IRS has delivered  
8 their refund to the collection account at the bank. When the tax refund arrives, the bank deducts  
9 both the fees charged for allowing the deferral through the "account," and all tax preparation  
10 fees and other charges owed to H&R Block, before forwarding whatever remains for the client.  
11 H&R Block clients receive this remaining amount of their refund, either in the form of a paper  
12 check they must pick up at the H&R Block office (if, for example, they do not have a bank  
13 account of their own), or by direct deposit into the clients' own bank account, approximately 8-  
14 15 days after Block electronically files their returns – or in precisely the same amount of time  
15 that the clients would have received their refunds (without cost) straight from the IRS by direct  
16 deposit.

17           **D. Defendants' RALs and RACs Bind Clients to Automatic Debt Collection**

18           31. Defendants participate in a mutual debt-collection scheme through a debt-pool  
19 participation agreement with their partner lenders, other commercial tax preparers, and the  
20 partner lenders of those tax preparers. RAL-related charges can become delinquent debts if, for  
21 any reason, the IRS does not send all or part of the anticipated refund securing the RAL. The  
22 applications which Defendants have their clients sign (for a RAL or RAC) purport also to bind  
23 the clients to the automatic collection of any debt from a prior year's RAL- or RAC-type  
24 products that any debt-pool participant believes the client may owe. Only through a RAL or a  
25 RAC – and the accompanying "agreement" to have alleged past debts to Defendants and other  
26 entities collected – can clients defer paying their tax preparation fees at the time that their taxes  
27 are prepared, which may be a financial necessity.

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1           32. The RAL or RAC forms do not specify that the partner bank *is* a debt collector,  
2 but do state that the partner bank *may* be acting as a debt collector. Neither the application  
3 forms Defendants provide for a RAL or RAC nor any other document or information they  
4 provide before the client is committed to purchasing the RAL or RAC, however, give notice to  
5 the client of any specific debt or any specific creditor to whom a debt is owed.

6           33. Defendants know that an application for a RAL will be denied if it is made by  
7 an H&R Block client who is considered by H&R Block, or H&R Block's partner lender, or by  
8 *another* participating tax preparer or RAL lender, to owe a RAL-related debt from a previous  
9 year. Defendants, nevertheless, continue to offer such loans to their clients. Defendants also  
10 know that once the RAL or RAC application is signed and the tax return sent, the refund will  
11 inexorably be sent to the partner bank/debt collector, not the client. Consequently, Defendants  
12 also know their client will not receive written notice of the amount of the alleged debt, or of the  
13 identity of the creditor, or of their right to dispute the validity of a purported specific debt, until  
14 the after the client has already lost control over the anticipated refund. Moreover, although the  
15 client is entitled by law to 30 days from notice to contest the validity of the specified debt, the  
16 debt collector bank has control over the refund from the date the client signs and submits the  
17 loan application, and has generally transferred the purported debt owed to the purported creditor  
18 even before the thirty-day period ends.

19           34. The RAL application documents provide that client who signs up for a RAL,  
20 and is denied the loan, will automatically be switched to a RAC instead. Therefore, in any case  
21 where an H&R Block client who owes an alleged prior debt to any debt pool participant applies  
22 for a RAL, the client will within a day or so be denied a RAL (money within 1-2 days), given  
23 a RAC (money in 8-15 days, no faster than direct deposit from the IRS), and assessed a fee for  
24 the RAC. If the amount of the alleged debt and the current year's fees is greater than the amount  
25 of the client's tax refund, then the client receives nothing from the refund sent by the IRS.

26           35. Therefore, Block clients who are claimed to owe debt from a prior year are led  
27 to expect a loan of the amount the IRS is to refund, but instead find themselves in a collection  
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1 proceeding. The loan documents describe the “consideration” the alleged debtors receive from  
2 this arrangement as “the ease and convenience” of paying off that debt.

3 36. H&R Block has benefitted and continues to benefit directly from this program  
4 through collection of debts that Block alleges clients owe the company from previous years for  
5 tax preparation and related fees, and through recovery of clients’ RAL fees and outstanding  
6 balances for loans in which Block has purchased an interest in prior years.

7 **E. Defendants Have Made Misleading and Deceptive Statements to Consumers**

8 37. To market and sell their tax preparation services and advice, as well as RALs  
9 and other products, Defendants have used a variety of media and in-store statements that offer  
10 to get money back fast for customers.

11 38. Defendants have portrayed RALs as a “refund” or “Instant Money” rather than  
12 as a loan. They have minimized or omitted words and phrases that would have indicated to  
13 clients and potential clients that a RAL is a loan rather than a faster way of getting a tax refund.  
14 They have run advertisements that misidentify loans as refunds, including (as an example) one  
15 that stated, with respect to a loan, “I got a check for my refund that day.”

16 39. Defendants have made misleading statements to lure customers, including  
17 advertisements that refer to loans as “your money” or getting clients “their money” (e.g.,  
18 “There’s no faster way to get your money”) when in fact the advertisement is referring not to a  
19 refund, but to a loan (that is, the lender’s money) that must be repaid with interest and fees.

20 40. Defendants have used advertisements for loans concurrently with confusingly  
21 similar advertisements for refund processing, including (as an example) simultaneous  
22 advertisements that announced “There’s no faster way to get your money” (referring to a 24-  
23 hour loan product) and “There’s no way to get your refund any faster” (referring to an 8-to-28-  
24 day direct payment from the IRS). Defendants have even touted loans and refund processing  
25 in the *same* advertisement.

26 41. Defendants have attempted to steer their clients to costly RALs or RACs by  
27 misstating or omitting to state, in communications with their clients and potential clients, the  
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1 amount of time it takes to receive a refund directly from the IRS, as compared with the time to  
2 receive money through a RAL or RAC.

3 42. Defendants have advertised that clients who receive a RAL or RAC are  
4 receiving "cash, cold, green, in your hand, out the door." In fact, these clients receive a check  
5 which, if they do not have a bank account of their own, will have to be cashed at considerable  
6 expense (and, in the case of on-site check-cashing, at considerable profit to H&R Block).

7 43. Defendants have touted the maximum "Instant Money" loan amount (seeking  
8 thereby to attract tax preparation clients on the basis of the availability of large amounts of such  
9 "instant money"). Defendants have failed to disclose or to disclose adequately, however, (1) that  
10 no client receives the maximum amount advertised in hand because the loan includes fees that  
11 are deducted before the client receives the proceeds, (2) that almost no one receives an amount  
12 anywhere near that high because clients cannot receive more than the amount of their tax refund  
13 less fees, (3) that only a small percentage of consumers even qualify for the "Instant Money"  
14 loan in the full amount of their tax refund (and even those must subtract fees), and (4) that a  
15 substantial percentage of those who apply for the Instant Money loan are denied entirely.

16 44. In advertisements and other statements regarding RACs, Defendants have failed  
17 to disclose or to disclose adequately the RAC (1) is an expensive product with substantial fees  
18 that may be avoided by paying for one's tax preparation services up front and (2) does not arrive  
19 any faster than would a refund directly deposited from the IRS into the client's own bank  
20 account.

21 45. The debt collection program included in RALs and RACs has not been disclosed  
22 or adequately disclosed in Defendants' promotion of those products.

23 **F. Defendants Have Shared Taxpayer Information, Without Consent, For**  
24 **Purposes Not Related To Tax Preparation**

25 46. Federal and state laws strictly limit tax preparers' use of information derived  
26 from individuals' tax returns. Defendants have not obtained their clients' consent to share such  
27 information in the manner required by law.

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1           47. Defendants have disclosed their clients' tax return information to their partner  
2 RAL-lending banks, for purposes of providing RALs and RACs, without first obtaining the  
3 clients' separate written consent.

4           48. Defendants have used and disclosed their clients' tax return information for  
5 marketing RALs and other items, including home mortgages, IRAs, and other financial products,  
6 without first obtaining a separate written consent for each of those uses and disclosures.

7           49. Defendants have used and disclosed their clients' tax return information for  
8 purposes of collecting debts or permitting others to collect debts, without first obtaining a  
9 separate written consent for each of those uses and disclosures.

10           **G. Defendants Have Profited From Undisclosed Check Cashing Fees  
11 and an Improper Lottery**

12           50. Many of H&R Block's clients obtain their RAL or RAC proceeds in the form  
13 of a paper check that they must pick up at an H&R Block office. Block has directed its clients  
14 to institutions that charge consumers fees to cash these checks that exceed the maximum amount  
15 allowed to cash a check issued by the IRS. Block has also established check-cashing  
16 arrangements with various institutions, some of which have paid Block 20% to 50% of the gross  
17 check-cashing fees for checks issued to Block's clients. Block has failed to disclose or to  
18 adequately disclose to consumers that a portion of the check cashing fee the institution charges  
19 them is kicked back to Defendants.

20           51. In 2004, H&R Block ran a promotion through which each client would receive  
21 a scratch card which might entitle the client to double the amount of his or her tax refund. Under  
22 California law, this promotion was a lottery and therefore required clear and conspicuous  
23 disclosure that no purchase of tax preparation services was necessary in order to receive a game  
24 card and participate. H&R Block's advertisements and other statements about the "Double Your  
25 Refund" promotion did not clearly or adequately convey that no purchase was necessary.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500**  
3 **(MISLEADING OR DECEPTIVE STATEMENTS)**

4 52. The People incorporate by reference paragraphs 1 through 51 of this  
5 Complaint as though they were set forth fully in this cause of action.

6 53. In violation of Business and Professions Code section 17500, Defendants,  
7 and each of them, with the intent to induce California consumers to purchase the products or  
8 services Defendants offer, have made, disseminated or caused to be made or disseminated,  
9 and continue to make, disseminate or cause to be disseminated, before the public in the city  
10 and county of San Francisco, and elsewhere in the State of California, untrue or misleading  
11 statements, which they knew or reasonably should have known were untrue or misleading at  
12 the time the statements were made.

13 54. These untrue, misleading or deceptive statements include, but are not limited  
14 to, the following:

- 15 a. Defendants have portrayed their RAL product as the client's tax refund or as  
16 "Instant Money" rather than as a loan. They have minimized or omitted  
17 words and phrases that would have indicated that a RAL is a loan. They have  
18 run advertisements that misidentify loans as refunds. They have promulgated  
19 advertisements that refer to loans as "your money" or getting clients "their  
20 money." These statements are untrue or misleading because a RAL is not the  
21 taxpayer's refund or the taxpayer's money but, instead, a high-cost, short-term  
22 loan.
- 23 b. Defendants have run advertisements related to "rapid" refund processing  
24 concurrently with confusingly similar advertisements related to quickly  
25 available or "instant" loans, and have even advertised refund processing and  
26 loans in the same advertisement. These statements are untrue or misleading  
27 because they imply that the money being offered is a tax refund, not a very  
28 short-term, high-cost loan.

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- c. Defendants have stated, directly or by implication, that their (high-cost) RALs and RACs are a faster way to receive money at tax time than waiting to receive a refund directly from the IRS. These statements are untrue or misleading because taxpayers can receive a direct deposit refund from the IRS on a return filed electronically as fast as they can receive a direct-deposited RAC or a RAC check, and the difference between the time to receive a costly RAL or RAC and the time needed for delivery of an IRS check by mail is less than that represented.
- d. Defendants have misleadingly represented that clients who receive a RAL or RAC are receiving "cash" when, in fact, such clients receive a check which must be cashed, often at considerable expense.
- e. Defendants have misleadingly made statements touting the amount available in an "Instant Money" loan. These statements are untrue or misleading because few Instant Money loans are made at or near the maximum amounts stated, and a substantial proportion of applicants are rejected entirely for an Instant Money loan.
- f. In advertisements and other statements Defendants have misleadingly described RALs and RACs as ways of receiving money faster at tax time or avoiding up-front payment of tax preparation fees. These statements are untrue or misleading because they fail to disclose that, by applying for these products, Defendants' clients also purportedly authorize automatic collection of unspecified debts in unspecified amounts from prior years which may be claimed to be owed to any of a number of RAL-lenders who are participants in a debt-pooling arrangement.

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1 SECOND CAUSE OF ACTION

2 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE**  
3 **SECTION 17200 (UNFAIR COMPETITION)**

4 55. The People incorporate by reference paragraphs 1 through 51 and 53 through  
5 54 of this Complaint as though they were set forth fully in this cause of action.

6 56. Defendants, and each of them, have engaged in and remain engaged in unfair  
7 competition, as defined in California Business and Professions Code section 17200. These  
8 acts of unfair competition include, but are not limited to, the following:

9 a. Defendants have violated Business and Professions Code section 17500 as  
10 alleged in the First Cause of Action.

11 b. Defendants have participated with, aided and abetted, acted as agents of, or  
12 conspired with persons acting as debt collectors in the following violations of  
13 the Fair Debt Collection Practices Act (governing third-party debt-collectors):

14 (1) Failing to give alleged debtors information, including the amount of the  
15 purported debt and the creditor to whom it is owed as well as the debtors'  
16 30-day right to dispute the debt, within 5 days of the initial contact,  
17 without overshadowing or contradicting this "validation" notice, as  
18 required by 15 U.S.C. section 1692g;

19 (2) Engaging in debt-collection activities that are misleading or deceptive, in  
20 violation of 15 U.S.C. section 1692e;

21 (3) Engaging in debt-collection activities that are unfair or unconscionable,  
22 in violation of 15 U.S.C. section 1692f.

23 c. Defendants have participated with, aided and abetted, acted as agents of, or  
24 conspired with persons acting as debt collectors in the following violations of  
25 the California Rosenthal Fair Debt Collection Practices Act (governing both  
26 creditors and third-party debt-collectors):

27 (1) Engaging in debt-collection activities that are misleading or deceptive, in  
28 violation of Civil Code section 1788.17;

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- (2) Engaging in debt-collection activities that are unfair or unconscionable, in violation of Civil Code section 1788.17;
- (3) Engaging in the practice of falsely representing the true nature of the business or services being rendered by a debt collector, in violation of Civil Code section 1788.13(i).

d. In connection with RALs and related products, Defendants have engaged in the following violations of the Consumer Legal Remedies Act:

- (1) Advertising goods or services with intent not to sell them as advertised, in violation of Civil Code section 1770(a)(9);
- (2) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Civil Code section 1770(a)(14);
- (3) Inserting an unconscionable provision in a contract, in violation of Civil Code section 1770(a)(19).

e. Defendants have used or disclosed information from their clients' tax returns for purposes other than preparing the return, without first obtaining a separate written consent for each such use or disclosure, in the following ways:

- (1) Disclosing their clients' tax return information to their partner RAL-lending banks, for purposes of providing RALs and RACs, without first obtaining the clients' separate written consent, in violation of 26 U.S.C. section 7216 and 26 C.F.R. sections 301.7216-1 and 301.7216-3;
- (2) Using and disclosing their clients' tax return information for marketing RALs and other items, including home mortgages, IRAs, and other financial products, without first obtaining a separate written consent for each of these uses and disclosures, in violation of 26 U.S.C. section 7216 and 26 C.F.R. sections 301.7216-1 and 301.7216-3;
- (3) Using and disclosing their clients' tax return information for purposes of collecting debts, without first obtaining a separate written consent for

1 each of these uses and disclosures, in violation of 26 U.S.C. section 7216  
2 and 26 C.F.R. sections 301.7216-1 and 301.7216-3.

3 f. Defendants have disclosed information obtained in the business of preparing  
4 federal or state income tax returns without obtaining the taxpayer's consent in  
5 a separate written document that states to whom the disclosure will be made  
6 and how the information will be used, in the following ways:

- 7 (1) Disclosing their clients' tax return information to their partner RAL-  
8 lending banks, for purposes of selling RALs and RACs, without first  
9 obtaining the clients' consent in a separate document, in violation of  
10 Business and Professions Code sections 17530.5 and 22553;  
11 (2) Disclosing their clients' tax return information to their partner banks and  
12 other RAL lenders for purposes of collecting debts or allowing others to  
13 collect debts, without first obtaining the clients' consent in a separate  
14 document, in violation of Business and Professions Code sections  
15 17530.5 and 22553.

16 g. In offering RACs to their clients, Defendants have regularly extended or  
17 offered to extend credit (in the form of deferral) on which a charge is or may  
18 be imposed. Defendants have therefore acted as creditors within the meaning  
19 of the Truth-in-Lending law and have violated that law by

20 failing to timely make the disclosures required by the Truth-in-Lending  
21 Act and Regulation Z on RAC-related documents, including the  
22 disclosures required by 15 U.S.C. sections 1631 and 1632; and 12 C.F.R.  
23 sections 226.17 and 226.18.

24 h. Defendants hold themselves out to their clients and to the public as "trusted"  
25 experts on tax preparation and tax advice. They have sought to gain and have  
26 gained the confidence of their clients, and have purported to act or advise  
27 their clients with the clients' interests in mind. Despite this confidential  
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1 relationship, however, Defendants have acted in their own financial interest  
2 rather than their clients' in the following ways:

- 3 (1) They have served simultaneously as the agent of their clients and of their  
4 partner lending banks, aggressively marketing and steering their clients  
5 to purchase RALs and RACs that profit the bank and Defendants  
6 whether or not these products are in the clients' financial best interest;
- 7 (2) They have failed to disclose clearly and accurately to their clients the  
8 expense of each refund option and the amount of time it takes to receive  
9 money under each option;
- 10 (3) They have failed to disclose to their clients the extent of their own  
11 financial interests in RALs and RACs, and in the recovery of prior years'  
12 RAL debt;
- 13 (4) They have failed affirmatively to raise with their RAL and RAC clients  
14 the option of adjusting their withholding of taxes so that they receive  
15 more of their income each month during the year rather than having to  
16 wait until the end of the year to receive it in a refund or high-cost RAL or  
17 RAC;
- 18 (5) They have failed affirmatively to raise with their RAL and RAC clients  
19 who receive the EITC the option of saving RAL- and RAC-related fees  
20 and getting more money for ongoing living expenses by adjusting their  
21 withholding or receiving part of their EITC in their paychecks every  
22 month during the year as part of the "Advance EITC" program, rather  
23 than having to wait until the end of the year to receive it in a refund or  
24 high-cost RAL or RAC;
- 25 (6) They have held out the promise of "Instant Money" with a high loan  
26 amount despite the fact that few of their clients qualify for a loan  
27 anywhere near the maximum; and  
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1 (7) They have, in "bait-and-switch fashion," held out the promise of a RAL  
2 even to those clients whom Defendants or other debt-collection pool  
3 participants believe owe delinquent debt, and who will as a result have a  
4 RAL application denied and instead find themselves placed into a RAC  
5 and in the midst of a debt collection proceeding.  
6

7 WHEREFORE, plaintiff prays for judgment as follows:

- 8 1. Pursuant to Business and Professions Codes sections 17535 and 17203, that  
9 Defendants, their successors, agents, representatives, employees, and any and  
10 all other persons who act in concert or participation with Defendants be  
11 permanently restrained and enjoined from:
- 12 a. Doing any of the acts set forth in this complaint or any other act in  
13 violation of Business and Professions Code section 17200 *et seq.*;
  - 14 b. Making or disseminating any of the untrue or misleading statements  
15 described in this complaint or any other statement in violation of  
16 Business and Professions Code section 17500 *et seq.*;
- 17 2. Pursuant to Business and Professions Code section 17536, that Defendants be  
18 assessed a civil penalty of \$2500.00 for each violation of Business and  
19 Professions Code section 17500 as proven at trial, but in an amount not less  
20 than \$10 million;
- 21 3. Pursuant to Business and Professions Code section 17206, that defendants be  
22 assessed a civil penalty of \$2500.00 for each violation of Business and  
23 Professions Code section 17200 as proven at trial, but in an amount of not less  
24 than \$10 million;
- 25 4. Pursuant to Business and Professions Code sections 17203 and 17535, that  
26 Defendants be ordered to make full restitution of any money or other property  
27 that may have been acquired by Defendants' violations of Business and  
28 Professions Code sections 17200 and 17500, as proven at trial;

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- 5. That plaintiff recover its costs of suit;
- 6. The Court order other and further relief as the nature of the case may require and the court may deem appropriate and just.

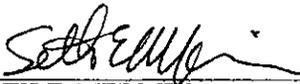
Dated: February 14, 2006

Respectfully submitted,

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Attorney General of the State of California

ALBERT NORMAN SHELDEN  
Senior Assistant Attorney General

MARGARET REITER  
Supervising Deputy Attorney General

  
\_\_\_\_\_  
SETH E. MERMIN  
Deputy Attorney General

Attorneys for the People of the State of California

**THIS COMPLAINT IS SUBJECT TO C.C.P. § 446(a)  
GOVERNING VERIFICATION OF PLEADINGS**

**ATTACHMENT 2**

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*Endorsed*  
~~FILED~~  
ALAMEDA COUNTY

JAN 03 2007  
CLERK OF THE SUPERIOR COURT  
By: *[Signature]* Deputy

8 Attorneys for the People of the State of California

9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 **THE PEOPLE OF THE STATE OF CALIFORNIA,**  
13 **Plaintiff,**  
14 **v.**  
15 **JACKSON HEWITT INC.; JACKSON HEWITT**  
16 **TAX SERVICE INC.; and TAX SERVICES OF**  
17 **AMERICA, INC.,**  
18 **Defendants.**

Case No. 070304558

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

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

21 **DEFENDANTS**

- 22
- 23 1. Defendant Jackson Hewitt Inc., a Virginia corporation, does business in  
24 California, including in the County of Alameda.
  - 25 2. Defendant Jackson Hewitt Tax Service Inc., a Delaware corporation, does  
26 business in California, including in the County of Alameda.
  - 27 3. Defendant Tax Services of America, Inc., a Delaware corporation, does business  
28 in California, including in the County of Alameda.



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

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

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

9 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

3  
4 **SECOND CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           WHEREFORE, Plaintiff prays for judgment as follows:

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

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

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

23           4. That the Court grant such other and further relief as it may deem just and proper.  
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Dated: January 2, 2007

Respectfully submitted,

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\_\_\_\_\_  
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**ATTACHMENT 3**

FEB 26 2007

GORDON PARK-LI, Clerk  
BY: JUN E. PANELO  
Deputy Clerk

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**CASE MANAGEMENT CONFERENCE SET**

**JUL 27 2007 - 9:00 AM**

**DEPARTMENT 212**

9 Attorneys for the People of the State of California

10 SUPERIOR COURT OF CALIFORNIA

11 CITY AND COUNTY OF SAN FRANCISCO

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

13 Plaintiff,

14 v.

15 **JTH TAX, INC. (D/B/A LIBERTY TAX SERVICE),**  
16 **EMPLOYEESPLUS, INC., and DOES 1 THROUGH**  
17 **150, INCLUSIVE,**

18 Defendants.

Case No. **CGC-07-460778**

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

19  
20 The People of the State of California, by Edmund G. Brown Jr., Attorney General for  
21 the State of California, are informed and believe and on such information and belief, allege as  
22 follows:

23 **DEFENDANTS**

24 1. Defendant JTH Tax, Inc. is a privately held Delaware corporation which  
25 franchises and operates a network of offices in the United States that engage in the preparation  
26 of personal income tax returns. This network currently comprises more than 100 offices located  
27 in California, and more than 2,000 offices nationwide, all of which do business under the name  
28 Liberty Tax Service.

1           2. Defendant EmployeesPlus, Inc. is a Virginia corporation and a wholly owned  
2 subsidiary of JTH Tax, Inc. Defendant EmployeesPlus, Inc. operates tax preparation stores  
3 owned by JTH Tax, Inc. and/or its subsidiaries.

4           3. JTH Tax, Inc. and EmployeesPlus, Inc. are engaged, through their officers, agents,  
5 representatives and employees, in the business of tax preparation, the marketing and facilitation  
6 of tax "refund anticipation loans" and related products and services.

7           4. The true names and capacities, whether individual, corporate, or otherwise, of  
8 defendants named as Does 1 through 150 are unknown to Plaintiff who therefore sues these  
9 defendants by these fictitious names. Plaintiff will amend this complaint to show the true names  
10 of these defendants when their names and capacities have been ascertained.

11           5. All the defendants described in paragraphs 1 through 4 may collectively be  
12 referred to as "Defendants" or "Liberty" in this complaint.

13           6. At all relevant times, Defendants have transacted business in the City and County  
14 of San Francisco and elsewhere in California. The violations of law herein alleged have been  
15 carried out in the City and County of San Francisco and elsewhere in the State of California.

16           7. At all relevant times, each of Doe defendants 1 through 150 has acted as an agent,  
17 representative, or employee of the other defendants, and has acted within the course and scope  
18 of that agency, representation or employment; and has participated in, has conspired with, and/or  
19 has aided and abetted others, including the other defendants in committing the violations alleged  
20 in this complaint.

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

23           9. Whenever reference in this complaint is made to any act or transaction of any  
24 corporation, partnership, business or other organization, that allegation shall be deemed to mean  
25 that the corporation, partnership, business or other organization did or authorized the acts alleged  
26 in this complaint through its principals, officers, directors, employees, members, agents and  
27 representatives while they were acting within the actual or ostensible scope of their authority.  
28



1 loans itself. Consequently, the loans are technically provided by lenders with which Liberty  
2 contracts. It is primarily Liberty, however, not the lenders, that has advertised and promoted the  
3 loans. It is also Liberty that in the course of providing its tax preparation service has offered the  
4 loans to its clients, provided its clients the multi-page loan applications, filled out the  
5 applications, and obtained the signed loan applications. Liberty also has delivered the loan  
6 applications to the lender, and subsequently distributed the loan proceeds to most of its taxpayer  
7 clients. All loan fees and any tax preparation fees that the client has not already paid have been  
8 deducted from the loan amount before the remainder of the loan proceeds are made available,  
9 generally at the Liberty office in the form of a paper check printed by Liberty that the client must  
10 pick up.

11 15. Liberty has received substantial revenue from the loans, the extent of which has  
12 not been disclosed with any specificity to Liberty's clients.

13 16. Since 2002, Liberty customers in California have entered into tens of thousands  
14 of RALs and Electronic Refund Checks ("ERCs"), generating significant income for Liberty.

15 17. The loan application which Liberty personnel have had their clients sign  
16 authorizes the lender to set up a temporary "account" in the client's name for the sole purpose  
17 of receiving the taxpayer's refund directly from the IRS. The client may not deposit to or  
18 withdraw any amount from the collection account. When the client's tax return is sent to the  
19 IRS, Liberty designates the collection account as the destination to which the refund should be  
20 directed. Once the IRS is notified, the destination for the tax refund cannot be changed. When  
21 the refund arrives from the IRS, the lender repays itself out of the refund and forwards to Liberty  
22 the amount of any tax preparation or other fees owed Liberty.

23 18. Liberty has represented that a customer will receive a RAL within one to two  
24 days.

25 19. When a client's tax return is filed electronically, as Liberty does for the vast  
26 majority of its clients, the IRS provides the refund within approximately 8-15 days by direct  
27 deposit to a taxpayer's own bank account or in about 21-28 days if sent by U.S. mail.  
28

1           20. Because Liberty clients with bank accounts may receive their RAL proceeds no  
2 more than a week before they would have received their refund from the IRS, RALs are very  
3 short-term, very expensive loans. Since the lender is repaid by the receipt of the borrower's tax  
4 refund from the IRS in an average of about 10 days, Liberty's RAL clients have typically paid  
5 interest, depending on the size of the loan, at an Annual Percentage Rate (APR) of from 40% to  
6 well over 100% APR. If all administrative and application fees required to be paid to receive  
7 the loan were included, the rate could be in excess of 500%.

8           **B. Liberty's RAL Program Has Targeted the Working Poor**

9           21. The Earned Income Tax Credit (EITC) is a tax credit paid by the federal  
10 government to low-income taxpayers. Although EITC recipients make up less than twenty  
11 percent of all taxpayers, they constitute a significant percentage of all customers for Liberty's  
12 RALs and related products. Because the EITC is a tax credit rather than a deduction, receipt of  
13 the EITC, which averages several thousand dollars, often sharply increases or provides the  
14 entirety of a taxpayer's refund.

15           22. Persons eligible for the credit can elect to have much of their EITC distributed  
16 in their paychecks throughout the year rather than having to wait for a lump sum refund at tax  
17 time (a program known as the "Advance EITC"). Similarly, even those who are not eligible for  
18 an EITC may keep more of their income during the year, rather than having to wait for it after  
19 filing their year-end tax returns, simply by adjusting their W-4 withholding amounts. Liberty  
20 has not effectively provided information about adjusted withholding or the Advance EITC to  
21 those who – because of the size of their refunds and as recipients of RALs – are eligible for them.

22           23. The consequences of entering into a RAL may be severe. Submitting the  
23 application documents transfers clients' entitlement to their tax refund to the lender and  
24 Defendants. If for any reason a client's refund is not deposited into the temporary "account" or  
25 is less than expected because other debts have been deducted from the refund amount, the  
26 consumer is still held liable for the full amount of the RAL.

27           24. If a Liberty client's application for a RAL is denied for any reason, the client  
28 receives no money until the IRS sends the client's refund to the temporary "account."

1 Nevertheless, certain fees are still charged. In other words, such clients receive no loan, and  
2 obtain the remaining portion of their refund (less additional fees) no faster than they would have  
3 had they simply elected to receive their refund by direct deposit from the IRS.

4 **C. Defendants Have Offered Deferral of Tax Preparation Fees Through**  
5 **Purportedly Rapid "Electronic Refund Checks."**

6 25. Generally, the fees for Liberty's tax preparation and related services are due at  
7 the time a client's taxes are prepared. Defendants offer their clients the option of deferring  
8 payment of those fees until after their tax refund has been received from the IRS – but only if the  
9 clients agree to pay a fee to get a RAL or another refund-based product that Defendants call an  
10 "Electronic Refund Check" or "ERC."

11 26. In offering an ERC to its clients, Liberty – as it does with a RAL – obtains its  
12 clients' signatures on a multi-page application form which transfers the clients' rights to receive  
13 their tax refunds to Liberty's chosen bank. The bank sets up a temporary collection account to  
14 secure the deferred tax preparation fees due Liberty as well as the fees charged to get an ERC,  
15 and the IRS is directed to send the client's tax refund directly to the bank. Unlike a RAL, where  
16 customers get the money while in the Liberty office or a day or two later, with an ERC customers  
17 do not receive any money until after the IRS has delivered their refund to the collection account  
18 at the bank. When the tax refund arrives, the bank deducts both the fees charged for allowing  
19 the deferral through the "account," and all tax preparation fees and other charges owed to  
20 Liberty, before forwarding whatever remains for the client. Liberty clients receive this remaining  
21 amount of their refund, either in the form of a paper check they must pick up at the Liberty office  
22 (if, for example, they do not have a bank account of their own), or by direct deposit into the  
23 clients' own bank account, approximately 8-15 days after Liberty electronically files their returns  
24 – or in precisely the same amount of time that the clients would have received their refunds  
25 (without cost) straight from the IRS by direct deposit.

1           **D. Defendants' RALs and ERCs Have Bound Clients to Automatic Debt**  
2           **Collection**

3           27. Defendants have participated in a mutual debt-collection scheme through a debt-  
4 pool participation agreement with their partner lenders, other commercial tax preparers, and the  
5 partner lenders of those tax preparers. RAL-related charges can become delinquent debts if, for  
6 any reason, the IRS does not send all or part of the anticipated refund securing the RAL. The  
7 applications which Defendants have had their clients sign (for a RAL or ERC) purport also to  
8 bind the clients to the automatic collection of any debt from a prior year's RAL- or ERC-type  
9 products that any debt-pool participant believes the client may owe. Only through a RAL or an  
10 ERC – and the accompanying “agreement” to have alleged past debts to Defendants and other  
11 entities collected – can clients defer paying their tax preparation fees at the time that their taxes  
12 are prepared, which may be a financial necessity.

13           28. The RAL or ERC forms have not specified that the partner bank *is* a debt  
14 collector, but rather have stated that the partner bank *may* be acting as a debt collector. Neither  
15 the application forms Defendants have provided for a RAL or ERC nor any other document or  
16 information they have provided before the client was committed to purchasing the RAL or ERC,  
17 however, has given notice to the client of any specific debt or any specific creditor to whom a  
18 debt is owed. Nor have Defendants given their clients an opportunity to dispute the existence  
19 and amount of any alleged debt.

20           29. Defendants have known that an application for a RAL would be denied if it was  
21 made by a Liberty client who was considered by Liberty, or Liberty's partner lender, or by  
22 *another* participating tax preparer or RAL lender, to owe a RAL-related debt to a bank from a  
23 previous year. Defendants have nevertheless continued to offer such loans to their clients.  
24 Defendants have also known that once the RAL or RAC application is signed and the tax return  
25 sent, the refund would be sent to the partner bank/debt collector, not the client. Consequently,  
26 Defendants have also known that their client would not receive written notice of the amount of  
27 the alleged debt, or of the identity of the creditor, or of their right to dispute the validity of a  
28 purported specific debt, until after the client had already lost control over the anticipated refund.

1 Moreover, although the client is entitled by law to 30 days from notice to contest the validity of  
2 the specified debt, the debt collector bank has had control over the refund from the date the client  
3 signs and submits the loan application, and has generally transferred the purported debt owed to  
4 the purported creditor even before the thirty-day period ends.

5           30. The RAL application documents have provided that a client who signs up for  
6 a RAL, and is denied the loan, will automatically be switched to an ERC instead. Therefore, in  
7 any case where a Liberty client who has owed an alleged prior debt to any debt pool participant  
8 has applied for an ERC, the client has been within a day or so denied a RAL (money within 1-2  
9 days), given an ERC (money in 8-15 days, no faster than direct deposit from the IRS), and  
10 assessed a fee for the ERC. If the amount of the alleged debt and the current year's fees has been  
11 greater than the amount of the client's tax refund, then the client has received nothing from the  
12 refund sent by the IRS.

13           31. Therefore, Liberty clients who are claimed to owe a debt from a prior year have  
14 been led to expect a loan of the amount the IRS is to refund, but instead find themselves in a  
15 collection proceeding.

16  
17           **E. Defendants Have Made Misleading and Deceptive Statements to Consumers**

18           32. To market and sell their tax preparation services, as well as RALs and other  
19 products, Defendants have used a variety of media and in-store statements that offer to get money  
20 back fast for customers. Defendants' advertising and other statements to consumers have blurred  
21 the distinctions between a "refund" and a "loan" in an effort to steer consumers toward bank  
22 products rather than getting their refunds directly from the IRS.

23           33. Defendants have made misleading statements to lure customers, including but not  
24 limited to portraying RALs provided by Liberty as "refund money" rather than as a loan, and  
25 characterizing loan proceeds as "America's fastest refunds." Defendants have minimized or  
26 omitted words and phrases that would have indicated to clients and potential clients that a RAL

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1 is in fact a loan that must be repaid with interest and fees rather than a faster way of getting a tax  
2 refund.

3 34. Defendants have attempted to steer their clients to costly RALs or ERCs by  
4 misstating or omitting to state, in communications with their clients and potential clients, the  
5 amount of time it takes to receive a refund directly from the IRS, as compared with the time to  
6 receive money through a RAL or ERC.

7 35. In advertisements and other statements regarding RALs/ERCs, Defendants have  
8 failed to disclose or to disclose adequately that the ERC (1) is an expensive product that includes  
9 substantial fees that may be avoided by paying for one's tax preparation services up front and (2)  
10 does not arrive any faster than would a refund directly deposited from the IRS into the client's  
11 own bank account.

12 36. The debt collection program included in RALs and ERCs has not been disclosed  
13 or adequately disclosed in Defendants' promotion of those products.

14  
15 **F. Defendants Have Shared Taxpayer Information, Without Consent, For**  
16 **Purposes Not Related To Tax Preparation**

17 37. The law strictly limits tax preparers' use of information derived from individuals'  
18 tax returns. Defendants have not obtained their clients' consent to share such information in the  
19 manner required by law.

20 38. Defendants have disclosed their clients' tax return information to their partner  
21 RAL-lenders and banks, for purposes of providing RALs and ERCs, without first obtaining the  
22 clients' separate written consent.

23 39. Defendants have used and disclosed their clients' tax return information for  
24 marketing RALs and other items, without first obtaining a separate written consent for each of  
25 those uses and disclosures.

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1 Defendants offer, have made, disseminated or caused to be made or disseminated, before the  
2 public in the city and county of San Francisco, and elsewhere in the State of California, untrue  
3 or misleading statements, which they knew or reasonably should have known were untrue or  
4 misleading at the time the statements were made.

5 46. These untrue, misleading or deceptive statements include, but are not limited to,  
6 the following:

- 7 a. Defendants have portrayed their RAL product as the client's tax refund or as  
8 "refund money" rather than as a loan. They have minimized or omitted words  
9 and phrases that would have indicated that a RAL is a loan. They have run  
10 advertisements that misidentify loans as refunds and blur the distinction between  
11 the two. These statements are untrue or misleading because a RAL is not the  
12 taxpayer's refund or the taxpayer's money but, instead, a high-cost, short-term  
13 loan.
- 14 b. Defendants have stated, directly or by implication, that their (high-cost) RALs  
15 and ERCs are a faster way to receive money at tax time than waiting to receive  
16 a refund directly from the IRS. These statements are untrue or misleading  
17 because taxpayers can receive a direct deposit refund from the IRS on a return  
18 filed electronically as fast as they can receive a direct-deposited ERC or a ERC  
19 check, and the difference between the time to receive a costly RAL or ERC and  
20 the time needed for delivery of an IRS check by mail is less than that represented.
- 21 c. In advertisements and other statements Defendants have misleadingly described  
22 RALs and ERCs as ways of receiving money faster at tax time or avoiding up-  
23 front payment of tax preparation fees. These statements are untrue or  
24 misleading because they fail to disclose that, by applying for these products,  
25 Defendants' clients also purportedly authorize automatic collection of unspecified  
26 debts in unspecified amounts from prior years which may be claimed to be owed  
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1 to any of a number of RAL-lenders who are participants in a debt-pooling  
2 arrangement.

3 **SECOND CAUSE OF ACTION**

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

6 47. The People incorporate by reference paragraphs 1 through 43 and 45 through 46  
7 of this Complaint as though they were set forth fully in this cause of action.

8 48. Defendants, and each of them, have engaged in and remain engaged in unfair  
9 competition, as defined in California Business and Professions Code section 17200. These acts  
10 of unfair competition include, but are not limited to, the following:

11 a. Defendants have violated Business and Professions Code section 17500 as  
12 alleged in the First Cause of Action.

13 b. Defendants have participated with, aided and abetted, acted as agents of, or  
14 conspired with persons acting as debt collectors in the following violations of fair  
15 debt collection principles governing third-party debt-collectors:

16 (1) Failing promptly to give alleged debtors information, including the amount  
17 of the purported debt and the creditor to whom it is owed as well as the  
18 debtors' right to dispute the debt, without overshadowing or contradicting  
19 this notice;

20 (2) Engaging in debt-collection activities that are misleading or deceptive;

21 (3) Engaging in debt-collection activities that are unfair or unconscionable.

22 c. Defendants have participated with, aided and abetted, acted as agents of, or  
23 conspired with persons acting as debt collectors in the following violations of the  
24 California Rosenthal Fair Debt Collection Practices Act (governing both creditors  
25 and third-party debt-collectors):

26 (1) Engaging in debt-collection activities that are misleading or deceptive, in  
27 violation of Civil Code section 1788.17;  
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- (2) Engaging in debt-collection activities that are unfair or unconscionable, in violation of Civil Code section 1788.17;
  - (3) Engaging in the practice of falsely representing the true nature of the business or services being rendered by a debt collector, in violation of Civil Code section 1788.13(i).
- d. In connection with RALs and related products, Defendants have engaged in the following violations of the Consumer Legal Remedies Act:
- (1) Advertising goods or services with intent not to sell them as advertised, in violation of Civil Code section 1770(a)(9);
  - (2) Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law, in violation of Civil Code section 1770(a)(14).
- e. Defendants have used or disclosed information from their clients' tax returns for purposes other than preparing the return, without first obtaining a separate written consent for each such use or disclosure, in the following ways:
- (1) Disclosing their clients' tax return information to their partner RAL-lenders and banks, for purposes of providing RALs and ERCs, without first obtaining the clients' separate written consent;
  - (2) Using and disclosing their clients' tax return information for marketing RALs and other items, without first obtaining a separate written consent for each of these uses and disclosures;
  - (3) Using and disclosing their clients' tax return information for purposes of collecting debts, without first obtaining a separate written consent for each of these uses and disclosures.
- f. Defendants have disclosed information obtained in the business of preparing federal or state income tax returns without obtaining the taxpayer's consent in a

1 separate written document that states to whom the disclosure will be made and  
2 how the information will be used, in the following ways:

3 (1) Disclosing their clients' tax return information to their partner RAL-lenders  
4 and banks, for purposes of selling RALs and ERCs, without first obtaining  
5 the clients' consent in a separate document, in violation of Business and  
6 Professions Code sections 17530.5 and 22253;

7 (2) Disclosing their clients' tax return information to their partner lenders and  
8 banks and other RAL lenders for purposes of collecting debts or allowing  
9 others to collect debts, without first obtaining the clients' consent in a  
10 separate document, in violation of Business and Professions Code sections  
11 17530.5 and 22253.

12 g. Defendants hold themselves out to their clients and to the public as experts on  
13 tax preparation. They have sought to gain and have gained the confidence of their  
14 clients, and have purported to act or advise their clients with the clients' interests  
15 in mind. Despite this confidential relationship, however, Defendants have acted  
16 in their own financial interest rather than their clients' in the following ways:

17 (1) They have served simultaneously as the agent of their clients and of their  
18 partner lenders and banks, aggressively marketing and steering their clients  
19 to purchase RALs and ERCs that profit the lenders and banks and  
20 Defendants whether or not these products are in the clients' financial best  
21 interest;

22 (2) They have failed to disclose clearly and accurately to their clients the  
23 expense of each refund option by, including but not limited to, failing to  
24 disclose as interest the cost associated with deferring payment of  
25 Defendants' tax preparation fees;

26 (3) They have failed to clearly and accurately disclose the amount of time it  
27 takes to receive money under each refund option;  
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- (4) They have failed to disclose to their clients the extent of their own financial interests in RALs and ERCs;
- (5) They have failed disclose to their RAL and ERC clients the option of saving RAL- and ERC-related fees and getting more money for ongoing living expenses by adjusting their withholding of taxes so that they receive more of their income each month during the year rather than having to wait until the end of the year to receive it in a refund or high-cost RAL or ERC;
- (6) They have failed to disclose to their RAL and ERC clients who receive the EITC the option of saving RAL- and ERC-related fees and getting more money for ongoing living expenses by adjusting their withholding or receiving part of their EITC in their paychecks every month during the year as part of the "Advance EITC" program, rather than having to wait until the end of the year to receive it in a refund or high-cost RAL or RAC/ERC; and
- (7) They have, in "bait-and-switch fashion," held out the promise of a RAL even to those clients whom Defendants or other debt-collection pool participants believe owe delinquent debt, and who will as a result have a RAL application denied and instead find themselves placed into an ERC and in the midst of a debt collection proceeding.

- h. In offering ERCs to their clients, Defendants have misrepresented the cost of Defendants' extension of credit (deferral of payment of tax preparation fees) as a service fee instead of interest on the extension of credit.
- i. By obtaining refund anticipation loans for its clients, and/or assisting or advising its clients about obtaining refund anticipation loans, Defendants have performed the services of a "credit services organization" within the meaning of the Credit Services Act of 1984. (Civil Code, § 1789.10 et seq.) Defendants, however, have violated the Credit Services Act by:

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- (1) failing to register with the Department of Justice, in violation of Civil Code section 1789.25(a);
- (2) failing to post a surety bond, in violation of Civil Code section 1789.18;
- (3) making or using untrue or misleading representations in the offer or sale of refund anticipation loans provided by third-party lenders, in violation of Civil Code section 1789.13(b);
- (4) engaging, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception upon consumers in connection with the offer or sale of refund anticipation loans provided by third-party lenders, in violation of Civil Code section 1789.13(h);
- (5) advertising, or causing to be advertised, refund anticipation loans provided by third-party lenders without first being registered as a credit services organization with the Department of Justice, in violation of Civil Code section 1789.13(i);
- (6) failing, prior to executing contracts for refund anticipation loans provided by third-party lenders, to provide consumers a written statement containing all of the information contained in Civil Code section 1789.15, in violation of Civil Code section 1789.14; and
- (7) failing to provide consumers written contracts that conspicuously disclose the buyer's right to cancel the transaction within five business days, in violation of Civil Code section 1789.16;

WHEREFORE, plaintiff prays for judgment as follows:

- 1. Pursuant to Business and Professions Codes sections 17535 and 17203, that Defendants, their successors, agents, representatives, employees, and any and all other persons who act in concert or participation with Defendants be permanently restrained and enjoined from:

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- a. Doing any of the acts alleged in this complaint to be a violation of law, or any other act or practice in violation of Business and Professions Code section 17200 *et seq.*;
  - b. Making or disseminating any of the untrue or misleading statements alleged in this complaint or any other statement in violation of Business and Professions Code section 17500 *et seq.*;
2. Pursuant to Business and Professions Code section 17536, that Defendants be assessed a civil penalty of \$2500.00 for each violation of Business and Professions Code section 17500 as proven at trial, in a total amount not less than \$1.5 million;
  3. Pursuant to Business and Professions Code section 17206, that defendants be assessed a civil penalty of \$2500.00 for each violation of Business and Professions Code section 17200 as proven at trial, in a total amount not less than \$1.5 million;
  4. Pursuant to Business and Professions Code sections 17203 and 17535, that Defendants be ordered to make full restitution of any money or other property that may have been acquired by Defendants' violations of Business and Professions Code sections 17200 and 17500, as proven at trial;
  5. That Plaintiff recover its costs of suit;
  6. That the Court order such other relief as the nature of the case may require and the court may deem appropriate and just.

1 Dated: February 26, 2007

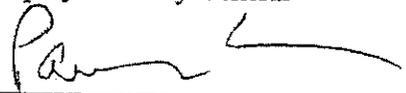
2 Respectfully submitted,

3 EDMUND G. BROWN JR.  
4 Attorney General of the State of California

5 ALBERT NORMAN SHELDEN  
6 Senior Assistant Attorney General

7 MARGARET REITER  
8 Supervising Deputy Attorney General

9 SETH E. MERMIN  
10 Deputy Attorney General

11   
12 \_\_\_\_\_  
13 PAUL STEIN  
14 Deputy Attorney General

15 Attorneys for the People of the State of California

16 **THIS COMPLAINT IS SUBJECT TO C.C.P. § 446(a)**  
17 **GOVERNING VERIFICATION OF PLEADINGS**

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**ATTACHMENT 4**

STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  
Attorney for Plaintiffs

**FILED**

MAR 5 - 2007

THOMAS P. OLIVERI, P.J.C.

By: Jody A. Carbone  
Deputy Attorney General  
(973) 877-1399

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
HUDSON COUNTY  
DOCKET NO. C-39-07

STUART RABNER, Attorney General of the  
State of New Jersey, and STEPHEN B. NOLAN,  
Acting-Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

THE MALQUI CORPORATION, MALQUI  
FINANCIAL SERVICES CORPORATION,  
MALQUI FINANCIAL GROUP, INC., and JANE  
and JOHN DOES 1-20, individually and as  
owners, officers, directors, shareholders, founders,  
managers, agents, servants, employees,  
*representatives and/or independent contractors of*  
THE MALQUI CORPORATION, MALQUI  
FINANCIAL SERVICES CORPORATION,  
MALQUI FINANCIAL GROUP, INC., and XYZ  
CORPORATIONS 1-20,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Stuart Rabner, Attorney General of the State of New Jersey ("Attorney General"),  
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Stephen B. Nolan,

Acting Director of the New Jersey Division of Consumer Affairs ("Acting Director"), with offices located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of this Complaint state:

### INTRODUCTION

1. As set forth more fully below, The Malqui Corporation, Malqui Financial Services Corporation, Malqui Financial Group, Inc. ("Defendants" or "Malqui"), sell tax return preparation services to New Jersey consumers. In conducting this business, the Attorney General and the Acting Director hereby allege that Defendants mislead New Jersey consumers into believing that they will receive fast tax refunds through Defendant's services, when Defendants are actually selling high cost, refund anticipation loans ("RALs"). Defendants also advertise their services through a telemarketing operation that violates applicable regulations. These practices violate the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and the Attorney General and the Division of Consumer Affairs bring this action to protect New Jersey consumers against these violations.

### JURISDICTION AND PARTIES

2. The Attorney General is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, (the "Regulations"), N.J.A.C. 13:45A-1.1 et seq. The Acting Director is charged with the responsibility of administering the CFA and the Regulations promulgated thereunder on behalf of the Attorney General.

3. By this action, the Attorney General and the Acting Director (collectively, "Plaintiffs") seek injunctive and other relief for violations of the CFA. Plaintiffs bring this action

pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and 56:8-19, and the New Jersey Rules Governing Civil Practice, specifically R. 4:52. Venue is proper in Hudson County, pursuant to R. 4:3-2(b), because it is the county in which Defendants have conducted business and have advertised their services.

4. Defendant, The Malqui Corporation is a New Jersey corporation with a principal business address of 295 Park Avenue, Paterson, New Jersey 07513. Defendant Malqui Financial Group, Inc. is a New Jersey corporation with a principal business address of 295 Park Avenue, Paterson, New Jersey 07513. Defendant Malqui Financial Services Corporation, Inc. is a New Jersey corporation with a principal business address 291 Park Avenue, Paterson, New Jersey 07513. Defendants shall be referred to collectively herein as "Malqui" or Defendants.

5. Upon information and belief, at all relevant times, Malqui owned, operated, and/or conducted businesses through twenty-four (24) retail locations in the State of New Jersey (the "State" or "New Jersey") as follows:

134 Washington Street, Belleville, New Jersey 07501  
1051 Main Street, Clifton, New Jersey 07011  
128 Elmora Avenue, Elizabeth, New Jersey 07202  
305 Main Street, Hackensack, New Jersey 07601  
512 Frank E. Rodgers Boulevard, Harrison, New Jersey 07029  
329 Central Avenue, Jersey City, New Jersey 07307  
277 Newark Avenue, Jersey City, New Jersey 07302  
383 Summit Avenue, Jersey City, New Jersey 07306  
954 Westside Avenue, Jersey City, New Jersey 07306  
572 Westside Avenue, Jersey City, New Jersey 07306  
666 Mt. Prospect Avenue, Newark, New Jersey 07104  
140 Stone Street, Newark New Jersey 07114  
2508 Bergenline Avenue, North Bergen, New Jersey 07047  
38 Monroe Street, Passaic New Jersey 07055  
24 Broadway Avenue, Passaic, New Jersey 07055  
311 Union Avenue, Paterson, New Jersey 07502  
103 Belmont Avenue, Paterson, New Jersey 07522

596 River Street, Paterson, New Jersey 07524  
291 Park Avenue, Paterson New Jersey 07513  
612 State Street, Perth Amboy, New Jersey 08861  
390 State Street, Perth Amboy, New Jersey 08861  
4609 Park Avenue, Union City, New Jersey 07087  
2508 Bergenline Avenue, Union City, New Jersey 07087  
1119 Summit Avenue, Union City, New Jersey 07087

6. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of Malqui who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Verified Complaint to include them.

7. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

8. At all relevant times, Malqui has engaged in the advertisement and sale of income tax return preparation services to consumers of New Jersey.

9. Although Malqui markets certain services as a way for consumers to obtain quick tax refunds, Malqui actually has carried out a scheme to get consumers to purchase extremely high interest refund anticipation loans ("RALs") and similar financial products.

10. RALs are high cost loans secured by and repaid directly from the proceeds of taxpayer's income tax refund.
11. Upon information and belief, at all relevant times, Malqui received revenue from selling RALs and similar financial products to consumers. Such revenue was in addition to fees charged to consumers for tax return preparation.
12. Upon information and belief, Malqui has advertised its services through a variety of media, including point of sale advertising at Malqui's retail locations through placards, signs, posters, flyers and through sales pitches of Malqui employees. Malqui also advertises on a website located at [www.malqui.com](http://www.malqui.com) ("Malqui website").
13. Malqui's advertisements have stated that taxpayers could get their refund back in one day. Malqui's website touted that taxpayers could get "your money right away." Moreover, Malqui has verbally described and promoted RALs and related products as tax refunds.
14. Malqui's deceptive advertisements are particularly aimed at Spanish speaking consumers. In bilingual advertisements, Malqui has described products as loans in the English text while simultaneously describing products as "Reembolso Instante", which translates to "Instant Refunds" in English.
15. Upon information and belief, Malqui has failed to disclose that a RAL, or similar products, may subject consumers to the collection of other outstanding debts by third party lenders through so-called "cross-collection agreements".
16. Moreover, while emphasizing the speed of RALs and related financial products, Malqui has repeatedly failed to give taxpayers a point of reference with which to judge how much faster consumers can obtain RAL loan proceeds as opposed to obtaining their tax refund directly

from the United States Internal Revenue Service ("IRS") through the mail or direct deposit. In sales pitches, Malqui employees have also exaggerated the amount of time a consumer could expect to wait to obtain a refund from the IRS.

17. On certain other outdoor placards and signs, posters, flyers, posters on buses, television commercials, radio broadcasts as well on the Malqui Website Malqui has advertised "GET LOANS IN ONE DAY" "LOANS IN 24 HOURS."

18. The Malqui advertisements do not disclose the fees and interest rates associated with the advertised loan as well as the bank or lending institution providing and/or servicing the loan.

19. Upon information and belief, Malqui also solicits consumers through telemarketing calls.

20. Malqui has not registered with the New Jersey Division of Consumer Affairs to engage in telemarketing campaigns.

#### COUNT I

#### **VIOLATIONS OF THE CFA BY MALQUI UNCONSCIONABLE COMMERCIAL PRACTICES, MISREPRESENTATIONS AND OMISSIONS**

21. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 20 as if more fully set forth herein.

22. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . . .

23. In advertising and conducting income tax return preparation services, Defendants, by themselves and through their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors, have engaged in the use of unconscionable commercial practices, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

24. Defendants' conduct in violation of the CFA includes, but is not limited to, the following unconscionable commercial practices:

- a. Marketing and brokering RALs and similar financial products in a manner that suggests such products are a way to quickly receive tax refunds from the IRS;
- b. Marketing and brokering RALs and similar financial products as providing income tax refunds quickly without providing consumers any point of reference with which to judge the relative speed of such products;
- c. Using their position of trust with consumers established in connection with preparing tax returns, Defendants deceptively market and sell RALs and similar financial products which are contrary to the best financial interest of consumers; and
- d. Describing products as "loans" in the English text of advertisements, while simultaneously describing products as "refunds" in the advertisements' Spanish text.

25. Defendants' conduct in violation of the CFA includes, but is not limited to, the following misrepresentations:

- a. Misrepresenting RALs and similar financial products as income tax refunds, when such is not the case;

- b. Misrepresenting RALs and similar financial products to consumers as “your money”;  
and
  - c. Misrepresenting the amount of time a consumer could expect to wait for their refund  
from the IRS.
26. On information and belief Defendants’ conduct in violation of the CFA includes, but  
is not limited to, the following knowing omission of material fact:
- a. Failing to disclose to consumers that RALs and similar financial products were in  
fact extremely high interest bearing loans;
  - b. Failing to disclose to consumers the fees associated with RALs and similar financial  
products;
  - c. Failing to disclose that consumers would be liable for fees and interest on RALs and  
similar financial products regardless of whether a consumer received his or her tax  
refund in the time and/or amount the consumer expected the refund;
  - d. Failing to disclose to consumers that Malqui earned fees on the brokerage of RALs  
and similar financial products in addition to fees paid for tax return preparation  
services;
  - e. Failing to disclose to consumers that all fees associated with RALs and similar  
financial products are deducted from a consumer’s tax refund;
  - f. Failing to disclose all of the material terms and conditions associated with the  
purchase of an RAL or similar financial product;
  - g. Failing to disclose to consumers that RALs and similar financial products contain  
cross-collection agreements whereby a consumer’s debts to certain creditors are paid

- to those creditors directly from the consumer's tax refund regardless of whether such payments leave the consumer with any remaining refund; and
- h. Failing to disclose to consumers the comparative costs and waiting times of obtaining their tax refunds directly from the IRS through the mail or direct deposit as opposed to an RAL or similar product.
27. Each unconscionable commercial practice, misrepresentation and/or knowing omission of material fact constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

## COUNT II

### VIOLATION OF THE ADVERTISING REGULATIONS BY DEFENDANTS

28. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 above as if more fully set forth herein.
29. The Regulations Governing General Advertising, N.J.A.C. 13:45A-9.1 et seq., (the "Advertising Regulations"), promulgated pursuant to the CFA, address, among other issues, general advertising practices.
30. Specifically, the Advertising Regulations provide, in relevant part:
- (a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:
- .....
9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.
- [N.J.A.C. 13:45A-9.2(a)(9).]

31. In their advertisement of income tax preparation services, Defendants have misled consumers into believing that they will receive a quick income tax refund, when Malqui is actually selling high cost RALs.

32. Defendants have violated the Advertising Regulations by engaging in certain conduct including, but not limited to:

- a. Advertising on outdoor placards and/or sidewalk stands, "Reembolso Instante", which translates to "Instant Refunds" in English;
- b. Advertising, "GET LOANS IN ONE DAY" "LOANS IN 24 HOURS," yet failing to disclose material terms and conditions.
- c. Advertising RALs, yet failing to disclose cross-collection agreements with third parties that may reduce the amount of the consumer's tax refund and conversely the amount they will be required to pay under the terms of their loan.
- d. Advertising RALs and similar financial products, yet failing to disclose that they were in fact interest bearing loans;
- e. Advertising RALs and other similar financial products, yet failing to disclose the fees associated with them;
- f. Advertising RALs and other similar financial products, yet failing to disclose that consumers would be liable for fees and interest regardless of whether a consumer received his or her tax refund in the time and/or amount the consumer expected the refund; and
- g. Advertising RALs and other similar financial products, yet failing to disclose that all associated fees are deducted from a consumer's tax refund.

33. Each violation of the Advertising Regulations by Defendants constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

### COUNT III

#### VIOLATION OF THE CFA BY DEFENDANTS TELEMARKETING DO NOT CALL LAW

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 above as if set forth at length herein.

35. The Telemarketing Do Not Call Law, N.J.S.A. 56:8-119 et seq. ("Do Not Call Law"), addresses, among other things, telemarketer registration requirements and prohibited telephone solicitation practices.

36. Specifically, the Do Not Call Law defines a telemarketer as follows:

Telemarketer means any entity, whether an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, whether on behalf of itself or others, who makes residential telemarketing sales calls to a customer when the customer is in this State or any person who directly controls or supervises the conduct of a telemarketer.

[N.J.S.A. 56:8-120.]

37. The Do Not Call Law further requires a telemarketer to register with the Division as follows:

- (a) A person shall not make or cause to be made, or attempt to make or cause to be made, an unsolicited telemarketing sales call to a customer in the State of New Jersey unless that person is registered with or employed by a person who is registered with the Division of Consumer Affairs in the Department of Law and Public Safety in accordance with the provisions of this act.
- (b) Every telemarketer, including telemarketers whose residence or principal place of business is located outside of this State, shall

annually register with the director. . . . The application shall be accompanied by a reasonable fee. . .

[N.J.S.A. 56:8-121(a),(b).]

38. Additionally, the Do Not Call Law provides, in pertinent part:

- (a) No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of this act, except for a call made within three months of the date the customer's telephone number was first included on the no call list but only if the telemarketer had at the time of the call not yet obtained a no call list which included the customer's telephone number and the no call list used by the telemarketer was issued less than three months prior to the time the call was made.

[N.J.S.A. 56:8-128(a).]

39. Defendants are "telemarketers" within the definition of N.J.S.A. 56:8-120.

40. Defendants have violated the Do Not Call Law by engaging in certain conduct including, but not limited to:

- a. Making or causing to be made unsolicited residential telemarketing sales calls to consumers in this State without being registered with or employed by a person who is registered with the Division; and
- b. Failing to pay the telemarketer registration fee, pursuant to the formula specified in N.J.A.C. 13:45D-1.4(a); and
- c. Making or causing to be made at least one unsolicited residential telemarketing sales call to consumers in the State whose telephone numbers are included on the Federal Do Not Call Registry.

41. Defendants' conduct constitutes multiple violations of the Do Not Call Law, N.J.S.A. 56:8-119 et seq.

COUNT IV

VIOLATIONS OF THE  
DO NOT CALL REGULATIONS BY DEFENDANTS

42. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 above as if set forth at length herein.

43. The Telemarketing: Do Not Call Regulations, N.J.A.C. 13:45D-1.1 et seq. (“Telemarketing Regulations”), promulgated pursuant to the Do Not Call Law, addresses, among other things, registration requirements and prohibited telephone solicitation practices.

44. The Telemarketing Regulations define a telemarketer as follows:

Telemarketer means any entity who makes residential telemarketing sales calls to a customer when the customer is in New Jersey, whether the entity is an individual proprietor, corporation, partnership, limited liability corporation or any other form of business organization, or if not formally organized, any person who directly controls or supervises the making of residential telemarketing sales calls whether on behalf of itself or others.

[N.J.A.C. 13:45D-1.3.]

45. The Telemarketing Regulations further require that a telemarketer be registered with the Division as follows:

A telemarketer shall not engage in telemarketing to a customer unless the telemarketer is registered with the Division pursuant to the requirements of this chapter.

[N.J.A.C. 13:45D-3.1.]

46. Additionally, the Telemarketing Regulations provide that “[e]ach telemarketer shall annually register with the Division.” (13:45D-3.2(a)).

47. The Telemarketing Regulations also provide that “[a] telemarketer shall submit with its annual registration application the fee specified in N.J.A.C. 13:45D-1.4(a).” (N.J.A.C. 13:45D-3.5.)

48. Additionally, the Telemarketing Regulations provide, in pertinent part:

- (a) No telemarketer shall make or cause to be made any unsolicited telemarketing sales call to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of this act [Federal Do Not Call Registry], except for a call made within three months of the date the customer's telephone number was first included on the no call list but only if the telemarketer had at the time of the call not yet obtained a no call list which included the customer's telephone number and the no call list used by the telemarketer was issued less than three months prior to the time the call was made.

[N.J.S.A. 56:8-128(a).]

49. Defendants are “telemarketers” within the definition of the Telemarketing Regulations, N.J.A.C. 13:45D-1.3.

50. Defendants have violated the Telemarketing Regulations by engaging in certain conduct including, but not limited to:

- a. Making residential telemarketing sales calls to consumers in this State without registering as a telemarketer with the Division;
- b. Failing to submit with their annual telemarketer registration application the fee specified in N.J.A.C. 13:45D-1.4(a);
- c. Making or causing to be made, at least one unsolicited residential telemarketing sales call to consumers in the State whose telephone numbers are included on the Federal Do Not Call Registry.

51. Defendants' conduct violates of the Telemarketing Regulations, N.J.A.C. 13:45D-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

### **PRAYER FOR RELIEF**

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment:

- (a) Finding that the acts and omissions of the Defendant constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1, the Do Not Call Law, N.J.S.A. 56:8-119 et seq., and the Telemarketing Regulations, N.J.A.C. 13:45D-1.1 et seq.;
- (b) Permanently enjoining the Defendants and their owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., the Advertising Regulations, N.J.A.C. 13:45A-9.1, the Do Not Call Law, N.J.S.A. 56:8-119 et seq., and the Telemarketing Regulations, N.J.A.C. 13:45D-1.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Assessing the maximum statutory civil penalties against the Defendants, jointly and severally, for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (d) Assessing the maximum statutory civil penalties against the Defendants, jointly and severally, for each and every violation of the Do Not Call Law, in accordance with N.J.S.A. 56:8-132;
- (e) Directing the assessment of restitution amounts against Defendants, jointly and severally, to restore to any affected person, whether or not named in this Complaint, any money acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;

- (f) Directing the assessment of costs and fees, including attorneys' fees, against the Defendants, jointly and severally, for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Jody A. Carbone  
Deputy Attorney General

Dated: March 5, 2007  
Newark, New Jersey

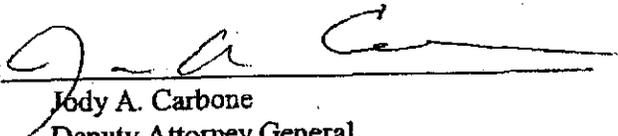
**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State.

I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated.

I certify that there is no other party who should be joined in this action at this time.

STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: 

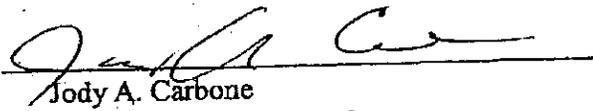
Jody A. Carbone  
Deputy Attorney General

Dated: March 5, 2007  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Jody A. Carbone, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs.

STUART RABNER  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By:   
Jody A. Carbone  
Deputy Attorney General

Dated: March 5, 2007  
Newark, New Jersey

**ATTACHMENT 5**

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	TRAVIS COUNTY, TEXAS
	§	
H&R BLOCK, INC. and	§	
H&R BLOCK OF SOUTH TEXAS,	§	
	§	
Defendants.	§	261ST JUDICIAL DISTRICT

AGREED FINAL JUDGMENT WITH PERMANENT INJUNCTION

On this day came on for hearing on the above-entitled and numbered cause in which the STATE OF TEXAS, is Plaintiff, and H&R BLOCK, AND ASSOCIATES, L.P., identified in this lawsuit as H&R BLOCK, INC. (herein called "Block") AND H&R BLOCK OF SOUTH TEXAS, INC. (herein called "South Texas Block"), are Defendants. The parties agree and respectfully request the Court to enter this Agreed Final Judgment with Permanent Injunction.

It is stipulated that the parties have compromised and settled plaintiff's claims for civil penalties, investigative costs, court costs and attorneys' fees.

It is further stipulated that the plaintiff and defendants agree to and do not contest the entry of this judgment, and that by so agreeing the defendant do not admit, and expressly deny any violation of the Texas Deceptive Trade Practices Act, TEX. BUS & COM. CODE Section 17.41 et seq. ("DTPA") the Texas Credit Services Organization Act, Tex. Bus. & Com. Code, Section 18.01 et seq.

("TCSO") or any other law, regulation, or order, nor do the defendants admit any wrongdoing. This stipulation is entered into solely for the purpose of settlement of Plaintiff's claims pursuant to the DTPA and TCSO.

It is further stipulated that Defendants shall discontinue its Rapid Refund advertising campaign as it presently exists in Texas, no later than September 30, 1993. All Rapid Refund advertising in the State of Texas after September 30, 1993 shall conform to the terms of the Agreed Permanent Injunction set forth below.

The Court then proceeded to read the pleadings and stipulations of the parties. It appears to the Court that all parties agree to and approve the entry of this judgment.

It is agreed that for purposes of this Agreed Permanent Injunction, the following definitions will apply:

- (a) Creditor. A person who makes a refund anticipation loan.
- (b) Debtor. A person who receives the proceeds of a refund anticipation loan.
- (c) Facilitator. A person who individually or in conjunction or cooperation with another person processes, receives, or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner facilitates the making of a refund anticipation loan.
- (d) Person. An individual, a firm, a partnership, an association, a corporation, or another entity.

- (e) Refund anticipation loan. A loan that the creditor arranges to be repaid directly from the proceeds of the debtor's income tax refund.
- (f) Refund anticipation loan fee. The charges, fees, or other consideration charged or imposed by the creditor or facilitator for the making of a refund anticipation loan. This terms does not include any charge, fee, or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services, such as fees for tax return preparation and fees for electronic filing of tax returns.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall issue a writ of permanent injunction restraining Defendants, BLOCK AND SOUTH TEXAS BLOCK their officers, agents, servants, representatives, affiliates, employees, assignees, franchisees, licensees and any other persons or entities acting in concert or participation with or under its direction who receive notice of this injunction by personal service or otherwise from engaging in the following acts or practices, to wit:

- a. Making false representations in its advertising that a person can be convicted of crime under federal law and receive a jail sentence by merely making unintentional mistakes in the preparation of their federal income tax return;

- b. Failing to disclose to taxpayers that refund anticipation loans are, in fact, loans and not a substitute for a quicker way of receiving an income tax refund;
- c. Using the phrase "Rapid Refund" to describe a refund anticipation loan or any other program unless such program actually provides the consumer with his or her federal income tax refund; and
- d. Intentionally misrepresenting a material factor or condition of a refund anticipation loan.

FURTHER IT BE ORDERED, ADJUDGED AND DECREED that:

- (a) BLOCK AND SOUTH TEXAS BLOCK shall advise each of its officers, agents, servants, representatives, affiliates, employees, assignees, franchisees, licensees and any other persons or entities acting in concert or participation with or under its directions, who are directly involved with the Refund Anticipation Loan program, of the terms of this injunction as it may relate to them.
- (b) BLOCK AND SOUTH TEXAS BLOCK will post a schedule at each of its offices, where applications for the Refund Anticipation Loans are taken, showing the current refund anticipation loan fee charged by the creditor for refund anticipation loan, the current electronic filing fees charged by BLOCK or SOUTH TEXAS BLOCK for the electronic filing of the taxpayer's tax return and prominently

display on the schedule a statement to the effect that the taxpayer may have the tax return filed without also obtaining a refund anticipation loan. The schedule may also contain anticipated time it will take for the taxpayer to receive a refund if the return is electronically filed as compared to the funding of the loan proceeds after loan approval under the Refund Anticipation Loan.

(c) Disclosures. At the time a debtor applies for a refund anticipation loan, the facilitator shall disclose to the debtor on a form separate from the application:

- (1) The fee for the loan to be charged debtor by the creditor.
- (2) The fee for the electronic filing of the tax return charged debtor by BLOCK or SOUTH TEXAS BLOCK
- (3) The average time announced by the creditor within which a debtor can expect to receive the proceeds of the loan if the loan is approved.
- (4) That the debtor is responsible for repayment of the loan and the fees described under (1) and (2) above in the event the tax refund is not paid or is not paid in full.
- (5) The availability of electronic filing of the taxpayer's tax return, along with the average time announced by the appropriate taxing authority,

within which a taxpayer can expect to receive a refund if the taxpayer's return is filed electronically and the taxpayer does not obtain a refund anticipation loan.

(6) Examples of the annual percentage rates, as defined by the Truth in Lending Act, 15 U.S.C. § 1607 and 12 C.F.R. § 226.22 for refund anticipation loans of five hundred dollars (\$500.00), seven hundred fifty dollars (\$750.00), one thousand dollars (\$1,000), one thousand five hundred dollars (\$1,500), two thousand dollars (\$2,000), and three thousand dollars (\$3,000).

(d) The form attached as Exhibit "A" is stipulated by the parties to contain the disclosures required by this Agreed Final Judgment with Permanent Injunction when posted conspicuously at the offices where applications for refund anticipation loans are taken.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Attorney General of the State of Texas shall have and recover of and from BLOCK AND SOUTH TEXAS BLOCK the sum of Twelve Thousand Dollars (\$12,000) for investigative costs and attorney's fees.

IT IS FURTHER ORDERED THAT all costs of Court expended or incurred in the cause are adjudged against Defendant.

All other relief not granted herein is DENIED.

SIGNED this \_\_\_\_\_ day of September, 1993.

---

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE  
ATTORNEY GENERAL OF TEXAS

BY: \_\_\_\_\_

JOSEPH N. VELASQUEZ  
Assistant Attorney General  
Consumer Protection Division  
P. O. Box 12548  
Austin, TX 78711-2548  
State Bar No. A006283  
Attorney for Plaintiff

BY: \_\_\_\_\_

STEVEN A. CHRISTIANSEN  
H&R Block & Associates, L.P.  
Senior Corporate Counsel  
4410 Main Street  
Kansas City MO 64111

BY: \_\_\_\_\_

FRANK E. McLAIN  
State Bar No. 13735000

Regency Plaza  
3710 Rawlins, Suite 1305  
Dallas, TX 75219  
(214) 526-1771  
(214) 526-1681 (fax)

ATTORNEY FOR  
H&R Block of South Texas, Inc.

REFUND ANTICIPATION LOAN INFORMATION

(Please read prior to signing a loan application.)

1. The fee charged by the lender for making a refund anticipation loan ("RAL") is \$ \_\_\_\_\_
2. A separate variable fee is charged by H&R Block for the preparation of your tax return.
3. You may have your tax return electronically filed without also obtaining a RAL. A fee of \$ \_\_\_\_\_ (if H&R Block prepares your return) or \$ \_\_\_\_\_ (if your return is prepared by someone other than H&R Block) is charged for electronically filing your tax return with the IRS.
4. All fees will be withheld from the loan amount.
5. The proceeds of the loan (after deduction of all fees) will be made available within approximately \_\_\_\_\_ days of your loan approval by the lender.
6. YOU ARE RESPONSIBLE FOR THE REPAYMENT OF THE LOAN AND RELATED FEES IN THE EVENT THE TAX REFUND IS NOT PAID OR IS NOT PAID IN FULL.
7. Your tax return can be electronically filed without obtaining an RAL in which case you can expect to receive a refund in approximately \_\_\_\_\_ days, that being the average time announced by the appropriate taxing authority.
8. \_\_\_\_\_ days is the usual time in which a RAL is paid by direct IRS deposit of your tax refund into your account at the lending bank.
9. The following are examples of the annual percentage rates for a hypothetical RAL of varying amounts with 14 day maturity periods and a finance charge of \$ \_\_\_\_\_.

<u>LOAN AMOUNT</u>	<u>ANNUAL PERCENTAGE RATE</u>
\$ 500.00	_____ %
\$ 750.00	_____ %
\$1,000.00	_____ %
\$1,500.00	_____ %
\$2,000.00	_____ %
\$3,000.00	_____ %

**ATTACHMENT 6**

Filed 01/28/94 W. Hunt

Consumer Protection and  
Fair Trade Practices Unit

DEPARTMENT OF LEGAL AFFAIRS

STATE OF FLORIDA

BEFORE THE OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

Case No. 93-410039

H & R BLOCK EASTERN TAX SERVICES, INC.

Respondent.

\_\_\_\_\_ /

ASSURANCE OF VOLUNTARY COMPLIANCE

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes (1992), the Florida Deceptive and Unfair Trade Practices Act, the Office of the Attorney General caused an inquiry to be made into the advertising, solicitation and business practices of H & R BLOCK EASTERN TAX SERVICES, INC., doing business throughout the State of Florida, hereinafter referred to as Respondent.

I

IT APPEARS that Respondent is willing to enter into this Assurance of Voluntary Compliance for the purpose of settlement of this matter, and the Office of the Attorney General, State of Florida, by and through the undersigned Assistant Attorney General, accepts this Assurance in termination of this matter pursuant to Section 501.207(6), Florida Statutes (1992),

\_\_\_\_\_  
Initials







IN WITNESS WHEREOF, the Respondent named below has caused this Assurance of Voluntary Compliance to be executed by a duly authorized representative as a true act and deed this 6 day of JANUARY, 1994.

H & R BLOCK EASTERN TAX SERVICES, INC.

By: Michael D. Lister  
MICHAEL D. LISTER  
SENIOR VICE PRESIDENT

STATE OF MISSOURI )  
                          ) SS  
COUNTY OF JACKSON )

BEFORE ME, an officer duly authorized to take acknowledgments is the State of MISSOURI, personally appeared MICHAEL D. LISTER who acknowledged before me that he executed the foregoing instrument for the purpose therein stated on this 6 day of JANUARY, 1994.

My Commission Expires:

LYN HANDLEY  
Notary Public - State of Missouri  
Commissioned in Jackson County  
My Commission Expires Dec. 23, 1996

Lyn Handley  
\_\_\_\_\_  
(Print Name)  
Notary Public  
State of Missouri

Rhonda G. Lapin  
\_\_\_\_\_  
Rhonda G. Lapin  
Assistant Attorney General

ACCEPTED THIS 20th day of January, 1994

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

By: Peter Antonacci  
\_\_\_\_\_  
Peter Antonacci  
Deputy Attorney General

**ATTACHMENT 7**

STATE OF CONNECTICUT

BEFORE THE COMMISSIONER OF CONSUMER PROTECTION

In the Matter of

H & R BLOCK (CONN.), INC.

d/b/a H & R BLOCK

Docket No. 93-198

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

This agreement, by and between H & R Block (Conn.), Inc. d/b/a H & R Block, hereinafter referred to as the Respondent, and the authorized representative of the Commissioner of Consumer Protection, is entered into in accordance with Section 42-110n of the Connecticut General Statutes. In accordance herewith, the parties agree that:

1.) Respondent is a domestic corporation which engages in the business of offering tax-preparation services to the general public at various locations throughout Connecticut, whose successor corporation is H & R Block Eastern Tax Services, Inc., a foreign corporation.

2.) Pursuant to Connecticut General Statutes, Section 42-110a et seq., as amended, Commissioner Schaffer issued her Complaint in this proceeding against the Respondent on March 31, 1993.

3.) Respondent admits that the Commissioner has jurisdiction over the subject matter of this proceeding and over its person, and agrees, before the taking of any testimony and without trial, adjudication or admission of any issue of law or fact, that the Consent Order set forth below may be entered and shall have the same force and effect as an order entered after a full hearing and shall become final when issued.

4.) Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commissioner's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5.) The Respondent shall pay to the Department of Consumer Protection the total sum of thirteen thousand seven hundred fifty dollars (\$13,750.00) for the sole purpose of future investigation and necessary equipment for the Department of Consumer Protection in the enforcement of the Unfair Trade Practices Act concerning advertising for the fiscal years 1993-1995. Any money received pursuant to this Paragraph which has not been expended by June 30, 1995 shall be placed in the General Fund.

6.) Respondent agrees that:

a.) it shall disclose to taxpayers that Refund Anticipation Loans are, in fact, loans and not a substitute for or a quicker way of receiving an income tax refund;

b.) signs advertising "Refund Anticipation Loans" shall not be placed in close proximity to signs using the phrase or mark "Rapid Refund" in circumstances likely to be understood by consumers as indicating that "Refund Anticipation Loans" are a substitute for or a quicker way of receiving an income tax refund; and

c.) whenever it advertises a Refund Anticipation Loan, it may not directly or indirectly represent such loan as a refund.

7.) The record on which the decision and order of the Commissioner shall be based shall consist solely of the Complaint and this Agreement.

8.) This Agreement shall not become part of the official record unless and until it is accepted and approved by the Commissioner.

9.) The following Consent Order to Cease and Desist shall become final upon acceptance and approval by the Commissioner without further notice to the Respondent. When so entered it shall have the same force and effect as if entered after a full hearing. The Complaint may be used in construing the terms of the Order.

CONSENT ORDER TO CEASE AND DESIST

IT IS ORDERED that Respondent, H & R Block (Conn.), Inc. d/b/a H & R Block, its successors, and assigns, shall cease and desist from engaging in violations of the Unfair Trade Practices Act, Chapter 735a, Connecticut General Statutes, in the future and shall in particular:

1.) cease and desist from using the phrase "Rapid Refund" to describe a "Refund Anticipation Loan," or any other program, unless such program actually provides the consumer with his or her federal income tax refund;

2.) cease and desist from advertising or making any representations that its "Refund Anticipation Loans" are available within "48 hours" or any other specific time frame, if such is not the case;

3.) cease and desist from failing to disclose that a fee, finance charge or interest will be charged for its "Refund Anticipation Loan" program.

STATE OF CONNECTICUT  
DEPT. OF CONSUMER PROTECTION

Dated: \_\_\_\_\_

\_\_\_\_\_  
Elisa A. Nahas, Esq.  
Admin. Hearings Attorney II

ATTORNEY FOR THE RESPONDENT

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven Christiansen, Esq.  
H & R Block

Accepted and approved an Order to Cease and Desist  
entered this        day of        , 1993.

\_\_\_\_\_  
Gloria Schaffer, Commissioner  
Consumer Protection

**ATTACHMENT 8**

NEW YORK SUPREME COURT - COUNTY OF BRONX  
IAS PART 08

-----X  
THE NEW YORK STATE DIVISION OF HUMAN  
RIGHTS,

Petitioner,

INDEX No. 1726/2007

-against-

H&R BLOCK TAX SERVICES, INC.; H&R BLOCK  
BUSINESS AND TAX SERVICE, INC., and H&R  
BLOCK MORTGAGE CORPORATION,

Respondents.

Present:

HON. BETTY OWEN STINSON  
J.S.C.

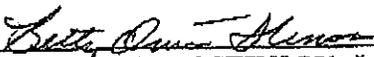
-----X  
The following papers numbered 1 to 11 read on this petition for order to compel and cross-motion to quash subpoena, Noticed on 02-20-08 and submitted as No. 3 on the Calendar of 02-20-08

PAPERS NUMBERED

Notice of Motion - Exhibits and Affidavits Annexed.....	
Order to Show Cause - Exhibits and Affidavits Annexed.....	1-2, 3-8
Answering Affidavits and Exhibits.....	
Replying Affidavits and Exhibits.....	12
Sur-reply Affidavits and Exhibits.....	
Stipulations - Referee's Report - Minutes.....	
Memorandum of Law.....	9, 10, 11

Upon the foregoing papers this petition and cross-motion are decided per annexed memorandum decision.

Dated: March 6, 2008  
Bronx, New York

  
BETTY OWEN STINSON, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: IAS PART 8

-----X  
NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Petitioner,

INDEX № 1726/2007

-against-

DECISION/ORDER

H&R BLOCK TAX SERVICES, INC.; H&R BLOCK  
BUSINESS AND TAX SERVICE, INC., and H&R  
BLOCK MORTGAGE CORPORATION,

Respondents.

-----X  
HON. BETTY OWEN STINSON:

This petition by the New York State Division of Human Rights ("Division") for an order compelling respondents H&R Block Tax Services, Inc.; H&R Block Business and Tax Service, Inc., and H&R Block Mortgage Corporation (collectively, "H&R Block") to comply with a subpoena duces tecum, dated April 9, 2008 and issued by the Division, and to produce the documents specified therein, is granted to the extent that the respondents are directed to comply with said subpoena and produce said documents no later than fifteen (15) days after service of a copy of this order with notice of entry. Respondents' cross-motion for an order quashing the subpoena duces tecum is denied.

The following facts are not in dispute. Individuals visiting H&R Block tax preparation offices often receive short-term "Pay Stub", "Holiday" or "Refund Anticipation Loans" (collectively, "RAL's") collateralized by an imminent pay check or an anticipated tax refund. The costs and fees associated with these loans can reach annualized rates of up to 400% or more. The loans are processed through HSBC Bank USA, National Association ("HSBC" or "Bank"),

pursuant to an agreement between H&R Block and the Bank, referring to H&R Block as an "agent" of the Bank for purposes of making these loans. It is H&R Block, however, that advertises and promotes the loans, offers them to its clients, provides clients with the loan applications, completes the loan applications and obtains signatures, delivers the applications to the bank and delivers the loan proceeds to the client, usually in the form of a check printed by H&R Block with costs and fees deducted. Independent entities conducting recent studies have released findings indicating that the vast majority of RALs were issued in communities of color between 2002 and 2005 (see *Predatory Tax-Time Loans Strip \$324 Million from New York City's Poorest Communities*, Neighborhood Economic Development Advocacy Project, January 2007). In 2004, one study concluded that almost twice as many African-American taxpayers were sold RALs as were White taxpayers (*All Drain No Gain: Refund Anticipation Loans Continue to Sap the Hard-Earned Tax Dollars of Low-Income Americans*, National Consumer Law Center, January 2004). An August 2006 report by the U.S. Department of Defense found that these high cost loans were marketed to and targeted at military families (*Payday Lenders Target the Military*, Center for Responsible Lending [September 2005]; *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, Department of Defense [August 9, 2006]; see also *Down But Not Gone: Quick Tax Refund Loans Continue to Gouge Taxpayers and Military*, Consumer Federation of America [February 5, 2007]).

Given this and other information, the Division decided, pursuant to its statutory authority, to investigate whether these products were being disproportionately targeted toward people of color and military families in New York and whether they disproportionately impact these protected classes in an unlawful manner. On March 15, 2007, the Division initiated an

investigation into the marketing practices of the three largest tax preparation companies offering these products: H&R Block, Jackson Hewitt and Liberty Tax. The companies were asked to provide (1) a list of the branches and franchises in New York issuing or promoting RALs for the last three years, (2) the number issued from each location, (3) a list of the outlets for advertisements (such as newspapers and billboards) and (4) the marketing plans for these loans. After subpoenas were issued, Jackson Hewitt and Liberty Tax provided the requested material to the Division. H&R Block did not. In response to the instant petition for an order compelling H&R Block to comply with the subpoena, H&R Block cross-moved for an order quashing the subpoena.

In support of its cross-motion, H&R Block made the following arguments: the subpoena does not assert facts showing a jurisdictional basis to issue the subpoena; the Division has no authority to investigate without having filed a formal complaint; and the subject loan products are offered by a federally-chartered bank, meaning that the Division, as a state agency, is barred by federal preemption from regulating these loans in any way or even investigating them.

The New York State Legislature has given the Division the power to "inquire into incidents of and conditions which may lead to tension and conflict among racial, religious and nationality groups and to take such action within the authority granted by law to the division, as may be designed to alleviate such conditions, tension and conflict" (Law Against Discrimination, Executive Law § 295.11). The commissioner may investigate unlawful discriminatory practices in relation to credit, among other things, such as, but not limited to, the extending of credit, or the fixing of rates, terms or conditions of any form of credit on the basis of race, color, national origin or military status (Executive Law § 296-a[1][b]). The statute is to be "construed liberally for the

accomplishment of the purposes thereof" (Executive Law § 300). Wide powers have been vested in the commissioner to allow him to effectively eliminate specified unlawful discriminatory practices because "discrimination is rarely so obvious or its practices so overt that recognition of it is instant and conclusive, it being accomplished usually by devious and subtle means" (*New York State Division of Human Rights v. Nationwide Mutual Insurance Company*, 74 AD2d 16 [1<sup>st</sup> Dept 1980]).

In addition to investigating complaints filed by private citizens with the Division, the Division has the statutory power, "[u]pon its own motion, to test and investigate and to make, sign and file complaints alleging violations of this article and to initiate investigations and studies to carry out the purposes of this article" (Executive Law § 295[6][b]). The Division "may make rules as to the issuance of subpoenas which may be issued by the division at any stage of any investigation or proceeding before it" (Executive Law § 295.7). The State Commissioner for Human Rights has subpoena power for use in a general informal investigation and its subpoena powers are not limited to the particular procedures outlined for use in proceedings instituted in the case of complaints filed by private citizens, such as those outlined in Executive Law § 297 (*Broido v. State Commissioner of Human Rights*, 40 Misc2d 419 [Sup Ct, NY Cty 1963]).

H&R Block claims there is no minimum factual basis for the issuance of a subpoena because it is not a "creditor" within the meaning of Executive Law § 296-a, applicable to creditors who discriminate in the granting, withholding, extending or renewing of credit. That statute, however, is not limited only to creditors, but includes any "officer, agent or employee" of a creditor as well. H&R Block has specifically identified itself as an "agent" of HSBC for the purpose of offering RALs and is therefore covered by § 296-a. Furthermore, the Division is not

merely on a fishing expedition. The reports noted above provide extensive and detailed information about the demographics involved in the sale of RALs. H&R Block does not deny that at least one of its corporate partners derives substantial revenue from RALs, that its customers are offered those loan products in H&R Block tax preparation offices, that H&R Block advertises and markets the products and that the associated costs and fees make the products extremely high cost loans by any measure. Given statistics tending to show that the New York customers most likely to make use of these loans are in the military or located in minority neighborhoods and less likely to have a bank account, it is clearly within the purview of the Division to ascertain whether that customer base is due to marketing practices by H&R Block that specifically target these protected groups with loan products which would be rejected out of hand by experienced borrowers.

In support of its argument that the Division has no authority to issue a subpoena duces tecum without first having filed a complaint, respondents offered *Matter of Parnassa Realities v. NYSDHR*, 65 Misc2d 136 (Sup Ct, NY Cty 1970) *aff'd without op* 35 AD2d 1085 (1<sup>st</sup> Dept 1970). In *Parnassa*, a complaint against a realty company was dismissed by the Commissioner who found no substantial evidence on the record to support it. Nevertheless, one month later, the Division served a subpoena on the realty company for the production of voluminous records. The Court considered this conduct by the Division to amount to harassment, since it could have compelled the material earlier, quashed the subpoena and held there should be a finality in the decisions of an administrative agency. The Court also observed, in dicta, that it could not find an indication in the statute that an individual may be investigated in the absence of a complaint. The First Department affirmed the Court's result without issuing an opinion.

Viewing the Human Rights statutes as a whole, it is clear the Division's powers to

investigate do indeed include the authority to issue a subpoena without first filing a formal complaint, the Court's failure in *Parnassa* to find that authority notwithstanding (*see also* *NYS DHR v. Liberty Mutual Ins. Co.*, 74 AD2d 16 [1<sup>st</sup> Dept 1980])[assuming, without deciding, division's power to issue subpoena without complaint, but finding no factual basis to support the issuance of subpoena in that case]). As noted above, the Division may *both* sign and file a complaint *and* initiate investigations and studies in the pursuance of its duties under the statute (Executive Law § 295[6][b]). This court, in agreement with *Broido* (40 Misc2d 419), finds no procedural limitation in the statute on the Division's ability to investigate and study potentially discriminatory practices using its subpoena powers.

The Division is not preempted by federal law from investigating marketing of the above referenced loan products. HSBC is a national Bank chartered by the U.S. Office of the Comptroller of the Currency ("OCC"). The National Bank Act provides that chartered banks have the power to exercise, by their board of directors or duly authorized officers or agents, all such incidental powers as necessary to carry on the business of banking (12 USC § 24). With regard to the business of banking, the Bank is subject to exclusive regulation and examination by the OCC. The Supreme Court of the United States has held that federal oversight of banking operations by the OCC extends even to state-chartered, wholly owned, mortgage lending subsidiaries of federal banks (*Watters v. Wachovia Bank N.A.*, \_\_\_ US \_\_\_, 127 S Ct 1559 [2007]). To decide whether a state may regulate any third-party entity selling federal bank products, the relevant inquiry is not *whom* the state may regulate, but rather *what activity* is being regulated (*SPGCC v. Ayotte*, 488 F2d 525 [1<sup>st</sup> Cir 2007])[federal law did not allow State of New Hampshire to prohibit mall owner from selling gift cards as bank's agent, because mall owner played no role in defining relationship

between gift-card purchaser and bank, and had no role in managing it); see also *SPGGC v. Blumenthal*, 505 F3d 183 [2d Cir 2007][Connecticut gift-card law not preempted by federal law by its prohibition of seller's in-state sales of gift cards since enforcement did not interfere with bank's ability to develop and market gift cards, but interfered only with conduct of seller who bore costs of administering program, collected fees and established terms and conditions of gift-cards]; *Carson v. H&R Block*, 250 F. Supp.2d 669 [SD Miss 2003][court rejected non-bank defendant's preemption argument because statute at issue did not prohibit banking activity, but rather prohibited third-party agent from misrepresenting bank products it was selling]). A close agency or business relationship with a federal bank is not sufficient by itself under the National Bank Act to entitle the agent to protection from investigation or regulation by a state authority (*Blumenthal*, 505 F3d 183).

H&R Block is admittedly an agent of HSBC and not a wholly-owned subsidiary of a federal bank, as was the mortgage lender in *Watters*. Furthermore, the Division is not investigating the Bank's ability to extend loans of the type relevant here, rather it is investigating H&R Block's marketing practices with respect to those loans, an activity properly within the State's and particularly the Division's purview and not preempted by federal banking law (see *Carson*, 250 F.Supp.2d 669; *Blumenthal*, 505 F3d 183). Other cases cited by H&R Block in support of its argument to the contrary are either inapplicable or actually support the Division's position.

This constitutes the decision and order of the court.  
Dated: March 6, 2008  
Bronx, New York

  
BETTY OWEN STINSON, J.S.C.

**ATTACHMENT 9**

STATE OF NEW YORK  
NEW YORK STATE DIVISION OF HUMAN RIGHTS

NEW YORK STATE, DIVISION OF HUMAN  
RIGHTS,

Complainant,

v.

JACKSON HEWITT, INC. and JACKSON HEWITT  
TAX SERVICE, INC.,

Respondents.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.

The New York State Division of Human Rights ("Division"), with offices at One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458, by Spencer Freedman, charges, on information and belief, pursuant to its authority under the Human Rights Law, Article 15 of the New York Executive Law, that the above-named Respondents violated and continue to violate Human Rights Law § 296 by marketing to, targeting, and selling abusive, high-interest loan products to individuals based on their race and military status. The discriminatory acts alleged are continuing and ongoing.

**BACKGROUND**

1. It has long been recognized that access to credit is a cornerstone of economic investment, savings, security, and upward mobility. Conversely, as the recent subprime mortgage crisis reveals, abusive credit practices can strip individuals of equity, trigger cycles of debt and economic instability, and devastate whole communities. Such abusive practices are particularly odious and harmful when they target people and communities on discriminatory bases, including their race and military status. Unfortunately, Respondents, Jackson Hewitt Inc. and Jackson Hewitt Tax Service, Inc. (collectively, "Jackson Hewitt") have engaged, and continue to engage, in such practices.

2. In the past several years, numerous tax preparation companies, including Jackson Hewitt, began to expand their services and offer different types of short-term, high-cost loan products to customers. Although different companies refer to these loan products by different names, they are commonly referred to as "pay stub loans," "holiday loans," and "Refund Anticipation Loans" (or "RALs").

3. RALs are offered at the time an individual seeks to utilize a company's tax preparation services. These products provide short-term loans backed by an individual's anticipated tax refund and are marketed as a way for customers to secure quick cash, typically based on a review of their W-2 forms. The loans often include exorbitant fees and costs, and rates of up to 700% annualized, stripping New Yorkers of millions of dollars each year, even though tax payers can receive their refunds from the IRS, at no cost, usually within a week to ten days of filing. According to New Yorkers for Responsible Lending, \$1.8 million was drained from New York families every day of the 2004 tax season through high-cost RALs.

4. Pre-File Loans, which include "pay stub" loans and "holiday" loans, typically involve smaller, "quick cash" loans based on an individual's paycheck or prior tax return and include high fees and interest rates, which can hover at an annual percentage rate of as high as 400%. They generally are marketed and issued before tax season and often are designed to tie customers into using the companies' tax preparation services. Because the documentation required to obtain these loans often does not accurately reflect the customer's ultimate tax refund, the fees and repayment owed on these loans can exceed the tax refund itself, sending customers into a cycle of debt and often resulting in loan defaults.

5. By usurping tax refunds through fees, costs, and exorbitant interest on these loans, these products also undermine vital tax credits designed by Congress to support families and the

working poor, including Child Tax Credit benefits and the Earned Income Tax Credit. It is estimated that in 2005 alone, these products stripped \$649 million in fees from New York residents eligible to receive the Earned Income Tax Credit, a program designed to reduce or eliminate taxes for low-income working people to lessen the risk that they will spiral into poverty.

6. The abusiveness of these products is well-documented, and these lending practices have faced other legal challenges and government enforcement actions for consumer protection and deceptive practices violations. For example, New York City Consumer Affairs Department settled an action with Jackson Hewitt regarding its RALs practices, as did the California Attorney General just this past year.

7. Recent studies also strongly suggest that these products are specifically targeted toward and have a discriminatory impact on military families and people of color, both of which are protected classes under the Human Rights Law. *See* N.Y. Executive Law § 296.

8. For instance, the Neighborhood Economic Development Advocacy Project ("NEDAP") found that from 2002-2005, the vast majority of RALs were issued in communities of color, and that New York City residents lost \$324 million of their tax refunds and credits to RALs-related fees and costs. And a 2004 study conducted by the National Consumer Law Center found that almost twice as many African-American taxpayers were sold RALs compared to White taxpayers.

9. In addition, other recent studies, including an extensive report by the Department of Defense and studies by the Center for Responsible Lending and the Consumer Federation of America, have documented that these abusive, high cost loans are being marketed to and targeted at vulnerable military families.

10. Based on these studies, the Division initiated an investigation into the marketing and sales practices of Jackson Hewitt, among other tax preparation companies.

11. An analysis of the sales and marketing practices of Jackson Hewitt demonstrates that Jackson Hewitt disproportionately targets and sells these abusive products to communities of color and communities with a high concentration of military families, in violation of the Human Rights Law.

### **Jackson Hewitt**

12. Jackson Hewitt, Inc., a Virginia corporation, does business in the State of New York.

13. Jackson Hewitt Tax Service, Inc., a Delaware corporation, does business in the State of New York.

14. Jackson Hewitt Tax Service, Inc. is the second-largest tax preparation company in the country, with 6,501 stores locations nationwide and approximately 360 store locations in New York State.

15. In connection with the business of tax preparation and the provision of products and services, including loan products, Respondents, through their officers, agents, and employees, have engaged in the unlawful actions alleged.

16. Jackson Hewitt markets, promotes, and offers a number of loan products, including Refund Anticipation Loans, promising money secured against a borrower's anticipated tax refund as quickly as within a day.

17. Prior to this tax season, Jackson Hewitt marketed Pre-File Loans (including both Money Now Loans ("MNLs") and Holiday Express Loan Program ("HELP") Loans), offering money in as little as one hour. The amount and terms of these loans were determined by

reviewing a pay check or prior year's tax return to estimate the anticipated refund for the coming tax season.

18. Upon information and belief, in marketing and providing these services, Jackson Hewitt has contemplated that a significant number of these loans would result in a default. The revenue Jackson Hewitt derived from marketing and facilitating these loans was tied in part to the number of loans and loan amounts that ultimately defaulted (obtaining some revenue based on a percentage of the difference between revenue generated and loan amounts in default).

19. And, in fact, on information and belief, the repayment amounts owed on these loans, including the fees, have approached and even exceeded the amount of customers' tax refunds, resulting in increasing debt for the customer and/or a default on the loan. In part, as a result, Jackson Hewitt recently ceased offering these Pre-File Loans moving forward.

20. Beginning this tax season, Jackson Hewitt is marketing and offering MNLs *during* tax season (instead of as a Pre-File product), based on a review of the customer's W-2 forms, continuing to promise money secured against the customer's anticipated tax refund as quickly as within an hour.

21. Its marketing and sale of these products is extraordinarily profitable for Jackson Hewitt. According to its 2007 SEC filing, Jackson Hewitt generated over \$80 million in revenue in 2007 from fees related to the facilitation of these loan products -- over 27% of its total revenue.

### **Jackson Hewitt's Practices in New York**

22. Jackson Hewitt markets its loan products throughout New York in numerous ways, including through signage and brochures at its 360 store locations (which exist in approximately 20% of the zip codes in New York State), and through outdoor marketing, including billboards and bus depots, and television and radio advertisements.

23. Although a number of Jackson Hewitt stores are franchises, decisions regarding store locations are determined and approved by the corporate entities, and product development and marketing efforts at the national, regional, and local levels are also directed by corporate. These include brand development, targeted network and local television advertising, outdoor marketing, direct mail marketing, and sponsorship of sports organizations whose fan base reflects what the company views as its the core customer demographic group (including promotion of a NASCAR team called the "#16 National Guard Ford Fusion," and sponsorships of a "National Guard Heroes of the Year" award in connection with its NASCAR affiliation).

24. From 2005 through 2007, Jackson Hewitt facilitated 198,626 RALs and 62,509 Pre-File Loans in New York State.

25. Its sales of loan products in New York increased dramatically between 2005-2007. Specifically, the number of RALs it sold during this period increased approximately 10%, and the number of Pre-File loans jumped almost 500%.

26. Jackson Hewitt has received substantial revenue from both RALs and MNLs, including a significant amount of revenue from fees attached to these loans.

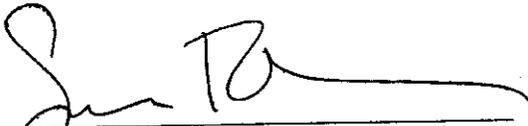
27. An analysis of the Jackson Hewitt's advertising, marketing, and sales of these products demonstrates that Jackson Hewitt disproportionately targets Blacks and Latinos and

military families for abusive, high cost loans, in violation of the New York State Human Rights Law § 296.

Based on the foregoing, Complainant, the New York State Division of Human Rights, charges Respondents with engaging in an unlawful discriminatory practice, in violation of Human Rights Law, and seeks an Order:

1. Requiring Respondents to cease and desist immediately in the engaging of the unlawful conduct described above;
2. Requiring Respondents to comply fully with the provisions of the Human Rights Law in the marketing and sale of its products; and
3. Awarding such other and further relief as may be just and appropriate.

Dated: Bronx, New York  
January 17, 2008

  
SPENCER FREEDMAN

**ATTACHMENT 10**

STATE OF NEW YORK  
NEW YORK STATE DIVISION OF HUMAN RIGHTS

NEW YORK STATE, DIVISION OF HUMAN  
RIGHTS,

Complainant,

v.

JTH TAX, INC. AND SUBSIDIARIES, d/b/a LIBERTY  
TAX SERVICE,

Respondent.

VERIFIED COMPLAINT  
Pursuant to Executive Law,  
Article 15

Case No.

The New York State Division of Human Rights ("Division"), with offices at One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458, by Spencer Freedman, charges, on information and belief, pursuant to its authority under the Human Rights Law, Article 15 of the New York Executive Law, that the above-named Respondent violated and continues to violate Human Rights Law § 296 by marketing to, targeting, and selling abusive, high-interest loan products to individuals based on their race and military status. The discriminatory acts alleged are continuing and ongoing.

**BACKGROUND**

1. It has long been recognized that access to credit is a cornerstone of economic investment, savings, security, and upward mobility. Conversely, as the recent subprime mortgage crisis reveals, abusive credit practices can strip individuals of equity, trigger cycles of debt and economic instability, and devastate whole communities. Such abusive practices are particularly odious and harmful when they target people and communities on discriminatory bases, including their race and military status. Unfortunately, Respondent, JTH Tax, Inc. and Subsidiaries, d/b/a Liberty Tax Service ("Liberty Tax Service" or "Liberty") has engaged, and continues to engage, in such practices.

2. In the past several years, numerous tax preparation companies, including Liberty, began to expand their services and offer different types of short-term, high-cost loan products to customers. Although different companies refer to these loan products by different names, they are commonly referred to as "pay stub loans," "holiday loans," and "Refund Anticipation Loans" (or "RALs").

3. RALs are offered at the time an individual seeks to utilize a company's tax preparation services. These products provide short-term loans backed by an individual's anticipated tax refund and are marketed as a way for customers to secure quick cash, typically based on a review of their W-2 forms. The loans often include exorbitant fees and costs, and rates of up to 700% annualized, stripping New Yorkers of millions of dollars each year, even though tax payers can receive their refunds from the IRS, at no cost, usually within a week to ten days of filing. According to New Yorkers for Responsible Lending, \$1.8 million was drained from New York families every day of the 2004 tax season through high-cost RALs.

4. Pre-File Loans, which include "pay stub" loans and "holiday" loans, typically involve smaller, "quick cash" loans based on an individual's paycheck or prior tax return and include high fees and interest rates, which can hover at an annual percentage rate of as high as 400%. They generally are marketed and issued before tax season and often are designed to tie customers into using the companies' tax preparation services. Because the documentation required to obtain these loans often does not accurately reflect the customer's ultimate tax refund, the fees and repayment owed on these loans can exceed the tax refund itself, sending customers into a cycle of debt and often resulting in loan defaults.

5. By usurping tax refunds through fees, costs, and exorbitant interest on these loans, these products also undermine vital tax credits designed by Congress to support families and the

working poor, including Child Tax Credit benefits and the Earned Income Tax Credit. It is estimated that in 2005 alone, these products stripped \$649 million in fees from New York residents eligible to receive the Earned Income Tax Credit, a program designed to reduce or eliminate taxes for low-income working people to lessen the risk that they will spiral into poverty.

6. The abusiveness of these products is well-documented, and these lending practices have faced other legal challenges and government enforcement actions for consumer protection and deceptive practices violations.

7. Recent studies also strongly suggest that these products are specifically targeted toward and have a discriminatory impact on military families and people of color, both of which are protected classes under the Human Rights Law. *See* N.Y. Executive Law § 296.

8. For instance, the Neighborhood Economic Development Advocacy Project ("NEDAP") found that from 2002-2005, the vast majority of RALs were issued in communities of color, and that New York City residents lost \$324 million of their tax refunds and credits to RALs-related fees and costs. And a 2004 study conducted by the National Consumer Law Center found that almost twice as many African-American taxpayers were sold RALs compared to White taxpayers.

9. In addition, other recent studies, including an extensive report by the Department of Defense and studies by the Center for Responsible Lending and the Consumer Federation of America, have documented that these abusive, high cost loans are being marketed to and targeted at vulnerable military families.

10. Based on these studies, the Division initiated an investigation into the marketing and sales practices of Liberty Tax Service, among other tax preparation companies.

11. An analysis of the sales and marketing practices of Liberty demonstrates that Liberty disproportionately targets and sells these abusive products to communities of color and communities with high concentration of military families, in violation of the Human Rights Law.

**Liberty Tax Service**

12. JTH Tax, Inc., d/b/a Liberty Tax Service, a Delaware corporation, does business in the State of New York.

13. Liberty Tax Service is the third-largest tax preparation company in the country, with 2135 store locations nationwide and 102 store locations in New York State in 2007.

14. In connection with the business of tax preparation and the provision of products and services, including loan products, Liberty, through its officers, agents, and employees, has engaged in the unlawful actions alleged.

15. Liberty markets, promotes, and offers a number of loan products, including Refund Anticipation Loans, promising money secured against a borrower's anticipated tax refund as quickly as within a day.

16. In 2007, Liberty marketed and offered Pre-File Pay Stub loans. The amount and terms of these loans were determined by reviewing a pay check or prior year's tax return to estimate the anticipated refund for the coming tax season.

17. Upon information and belief, the repayment amounts owed on these loans, including the fees, have approached and even exceeded the amount of customers' tax refunds, resulting in increasing debt for the customer and/or a default on the loan.

18. Beginning this tax season, Liberty is also offering what it calls a "RAL Advance," the equivalent of an "instant money" loan which permits customer to obtain a portion of their

RAL immediately against their anticipated tax return when they also take out a RAL. On information and belief, a year-end income statement is sufficient to obtain a RAL Advance Loan.

19. Its marketing and sale of these products is extraordinarily profitable for Liberty. According to its Consolidated Financial Statement, Liberty's net profits from refund loan fees in 2007 was \$4,539,793 – almost 29% of its overall net income for that year.

### **Liberty's Practices in New York**

20. Liberty markets its loan products throughout New York in numerous ways, including through signage and brochures at its approximately 102 store locations, and through direct marketing, outdoor marketing, and radio advertisements.

21. Although a number of Liberty stores are franchises, decisions regarding store locations are determined and approved by the corporate entity, and product development and marketing efforts at the national, regional, and local levels are also directed by corporate. These include brand development, outdoor marketing, "Guerilla Marketing," and direct mail marketing.

22. From 2005 through 2007, Liberty facilitated a total of 19,404 RALs in New York State.

23. During this three year period, its RALs sales in New York increased dramatically. Specifically, the number of RALs it sold between 2005 and 2007 increased approximately 61%.

24. In 2007, the only year in which they offered Pre-File Pay Stub Loans, Liberty sold 606 of these products in New York State.

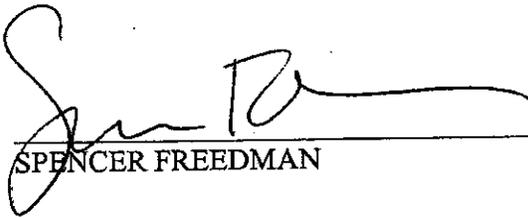
25. Liberty has received substantial revenue from RALs and, to a lesser extent, Pay Stub Loans, including a significant amount of revenue from fees attached to these loans.

26. An analysis of the Liberty's advertising, marketing, and sales of these products demonstrates that it disproportionately targets Blacks and Latinos and military families for abusive, high cost loans, in violation of the New York State Human Rights Law § 296.

Based on the foregoing, Complainant, the New York State Division of Human Rights, charges Respondent with engaging in an unlawful discriminatory practice, in violation of Human Rights Law, and seeks an Order:

1. Requiring Respondent to cease and desist immediately in the engaging of the unlawful conduct described above;
2. Requiring Respondent to comply fully with the provisions of the Human Rights Law in the marketing and sale of its products; and
3. Awarding such other and further relief as may be just and appropriate.

Dated: Bronx, New York  
January 17, 2008

  
SPENCER FREEDMAN

**ATTACHMENT 11**

At IAS Part 11 of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse, located at 60 Centre Street, Borough of Manhattan, City and State of New York, on the 27 day of January, 1997.

PRESENT: HON: Lewis R. Friedman

-----X  
ALFRED C. CERULLO III, Commissioner of the Department of Consumer Affairs of the City of New York, and the CITY OF NEW YORK

CONSENT ORDER

Index No. 409497/95

Plaintiffs

-against-

H & R Block, Inc. and H & R Block Eastern Tax Services, Inc. both d/b/a H & R Block

Defendants.  
-----X

WHEREAS the Plaintiffs instituted this action pursuant to Title 20, Chapter 5, Subchapter 1, Section 20-700 et. seq. of the Administrative Code of the City Of New York, (the "Consumer Protection Law") relating to the advertising and offering for sale of consumer goods and services and pursuant to Title 20, Chapter 5, Subchapter 8, Section 20-739 et. seq. of the Administrative Code of the City of New York (the "Income Tax Preparers Law") dealing with the advertising and offering for sale and sale of tax preparation services to consumers; and

WHEREAS the Plaintiffs having moved by an Order to Show Cause dated March 13, 1996, seeking a preliminary injunction against Defendants H & R Block Inc. and H & R Block Eastern Tax Services,

Inc., to enjoin Defendants from, among other things, responding to telephone callers who inquire about a "Rapid Refund" with information about Refund Anticipation Loans, unless it is clearly explained as a separate product and not a "Rapid Refund"; and

WHEREAS the court having granted Plaintiffs' motion for a preliminary injunction to the extent that Defendants are precluded from having their employees respond to telephone inquiries for their "Rapid Refund" services in such a way as to not clearly distinguish Refund Anticipation Loans from other types of filings by a memorandum decision dated April 8, 1996, an original Order to that effect dated June 5, 1996, and an Amended Order dated December 4, 1996 recasting the fifth decretal paragraph of the original Order following a motion by Defendants to "reargue"; and

WHEREAS the parties have entered into a Stipulation of Settlement on January 13, 1997 settling the instant lawsuit which contains a provision wherein Defendants consent to a permanent injunction to be in effect until December 31, 1999, incorporating the terms contained in the preliminary injunction order, as amended by the Order dated on December 4, 1996; it is hereby:

ORDERED that a permanent injunction is granted to Plaintiffs to the extent that Defendants are precluded from having their employees respond to telephone inquiries for their "Rapid Refund" services in such a way as to not clearly distinguish Refund Anticipation Loans from other types of filings; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan as a "Rapid Refund"

when responding to telephone inquiries for their "Rapid Refund" services; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for their "Rapid Refund" services unless they have their employees describe the Refund Anticipation Loan as a separate product; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for their "Rapid Refund" services, unless their employees describe their non-Refund Anticipation Loan electronic filing services including the specific names, costs and time frames for these products, before describing their Refund Anticipation Loan product; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for "Rapid Refund" services, unless they also have their employees disclose any limitations that could cause the consumer to be approved for a Refund Anticipation Loan for an amount less than the consumer's full anticipated refund (a "partial Refund Anticipation Loan") as well as all of the fees in connection with a "partial Refund Anticipation Loan", the full range of finance charges and interest rates which apply to the loan portion of the product and the expected time delay for the receipt by the consumer of the balance of the consumer's actual refund, so as not to confuse "partial Refund Anticipation Loans" with other electronic filing products which also result in monies being received in 14 or 21 days; and it is further

ORDERED that Defendants are precluded from having their employees, when responding to telephone inquiries for their "Rapid Refund" services and when describing Refund Anticipation Loans, describe what a consumer receives when applying for a Refund Anticipation Loan as getting a "refund", rather than explaining that with a Refund Anticipation Loan a consumer gets a bank loan based on the consumer's anticipated tax refund less the bank's finance charges and Defendants' fees for the electronic filing and the tax preparation; and it is further

ORDERED that Defendants are precluded from having their employees, when responding to telephone inquiries for their "Rapid Refund" services and when describing Refund Anticipation Loans, use terms which may confuse Refund Anticipation Loans with other types of filings, including but not limited to the term "Rapid", except that employees may refer to Refund Anticipation Loans by their abbreviation "RALs", after the full name of the product has been disclosed and the product has been described as involving finance charges; and it is further

ORDERED that this permanent injunction shall be in force and effect until December 31, 1999.

Enter:



A handwritten signature in black ink, appearing to read "Lewis R. Friedman", is written over a horizontal line.

J.S.C.

LEWIS R. FRIEDMAN

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ALFRED C. CERULLO III, Commissioner of  
the Department of Consumer Affairs of the  
City of New York, and THE CITY OF NEW  
YORK,

Plaintiffs,

-against-

H&R BLOCK, INC., and H&R BLOCK  
EASTERN TAX SERVICES, INC. both d/b/a  
H&R BLOCK,

Defendants  
-----X

INDEX No. 409497/95

STIPULATION OF  
SETTLEMENT

IT IS HEREBY STIPULATED AND AGREED by and between the parties  
that the above referenced action is settled as follows:

1. Defendants shall not make any future advertising claims which state or imply that their "Rapid Refund" products can deliver money to consumers without any waiting time or in as little as two to three days.

2. Defendants shall not again utilize the advertising claim "Why Wait? It's Your Money" in conjunction with their "Rapid Refund" logo, as appeared on the placards in New York City subway cars in 1995.

3. Defendants shall on or before January 15, 1997, institute a telephone answering system for all calls to its New York City offices which will play an audio of the enclosed script (attached hereto as Exhibit A). Defendants shall maintain this answering system throughout the 1997 tax filing season.

4. Defendants shall consent to a permanent injunction, to be in effect until December 31, 1999, incorporating the terms contained in the preliminary injunction order, as amended by the Order signed by Judge Lewis Friedman on December 4, 1996. In this regard, a Consent Order, a copy of which is attached hereto as Exhibit B, will be submitted to the court for signature and entry.

**FILED**  
JAN 29 1997  
CLERK'S OFFICE  
NEW YORK

△

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5. Defendants shall not blur the distinctions between their "Rapid Refund" products (i.e. Direct Deposit, IRS Check and Electronic Refund) and their Refund Anticipation Loan product in any future advertisements and in any future representations to consumers. To ensure the latter, defendants agree to provide increased instruction and supervision to their employees who deal directly with consumers, particularly their receptionists and tax preparers, regarding making a clear distinction between their "Rapid Refund" products and their Refund Anticipation Loan product so that the non-loan filing products and the loan product will not be confused.

6. Defendants shall comply with each of the four prior Assurances entered into by the defendants with the New York City Department of Consumer Affairs, in 1990, 1991, 1992, and 1993 (attached hereto respectively as Exhibits C, D, E and F).

7. Defendants agree to pay to the Department of Consumer Affairs of the City of New York a fine in the amount of \$200,000 as well as \$50,000 as and for its costs of investigation and litigation. This shall satisfy any and all claims in connection with this matter from both the Department of Consumer Affairs of the City of New York and The City of New York. Said fine and costs shall be paid upon execution of this Stipulation of Settlement.

8. With respect to the six outstanding consumers complaints filed with the Department of Consumer Affairs of the City of New York involving Refund Anticipation Loans, the defendants shall offer each of these six consumers a full refund of all H & R Block fees charged by defendants. Defendants shall make clear in a letter offering such restitution that the consumers have a right to refuse acceptance and instead pursue their remedies in any fashion they see fit.

9. The parties acknowledge and agree that the terms of this Stipulation do not apply beyond the five boroughs of New York City,

except that the prohibitions on future advertising claims do apply to all advertisements disseminated in New York City, whether national or originating in New York City. In addition, the parties agree that the terms of this Stipulation apply to the defendants alone and are not binding on any franchised H & R Block office. Defendants represent that of the approximately 115 H & R Block offices in New York City, only about six are franchised as opposed to company-owned.

10. The parties agree that this Stipulation of Settlement shall not be construed as an admission of any intentional violation of the City's Consumer Protection Law and rules or the City's Income Tax Preparers Law and rules.

11. The parties agree that this Stipulation may be "so ordered" by a justice of the Supreme Court of the State of New York along with the accompanying Consent Order. The parties intend to submit both to Judge Lewis Friedman.

AGREED TO FOR DEFENDANTS:

By: Peter D. Raymond  
 Peter D. Raymond, Esq.  
 Hall Dickler Kent  
 Friedman & Wood LLP  
 Attorney for Defendants  
 1/13/97  
 Date

By: Frank L. Salizzoni  
 Frank L. Salizzoni  
 President and CEO  
 of H & R Block, Inc.  
 1/10/97  
 Date

By: Thomas L. Zimmerman  
 Thomas L. Zimmerman  
 President  
 H & R Block Eastern  
 Tax Services, Inc.  
 1/10/97  
 Date

AGREED TO FOR PLAINTIFFS:

By: Susan Kassapian  
 Susan Kassapian, Esq.  
 Special Counsel of the  
 Dept. of Consumer Affairs  
 Of Counsel to:  
 Paul A. Crotty, Esq.  
 Corporation Counsel of the  
 City of New York  
 Attorney for Plaintiffs

1-13-97  
 Date

By: José Maldonado  
 José Maldonado, the current  
 Commissioner of Department  
 Consumer Affairs

1/13/97  
 Date

Ordered: [Signature]  
 J.S.C.

on: 1/27/97

**FILED**  
 JAN 29 1997  
 COUNTY CLERK'S OFFICE  
 NEW YORK

△



SCRIPT FOR RECORDED MESSAGE  
November 1, 1996

All calls to Block offices in NYC answered by central automated system which begins with the following recorded introductory message:

"{Good morning}, thanks for calling H&R Block. Your call is being answered by our automated answering system. Please listen for the options that will serve you best and use your touch tone pad to key in your selection.

Offices are open seven days a week from 9am to 9pm, Monday through Friday, and 9am to 5pm on Saturday and Sunday. If you want information about Rapid Refund electronic filing please press one. If you want information about our separate refund anticipation loan product, press two. If you want information about what to bring with you to our office for more efficient service, press three. If you want to hear a few tax tips for this year, press four. If you want to speak to a receptionist at the office for an appointment or for other information, press zero or stay on the line. We look forward to seeing you today."

FD  
TZ  
JK  
Jm

If option "1" is selected, the following recording will play:

"Thanks for inquiring about Rapid Refund electronic filing. There are three ways you can get your money fast using Rapid Refund:

Direct Deposit where your refund is deposited directly into your bank account in approximately three weeks. Tax preparation and electronic filing fees are paid up front.

IRS check where after paying our fees up front, you get your refund check in the mail from the IRS in approximately four weeks.

Electronic Refund where you pay us nothing up front and in approximately three three weeks you receive a check at our office for the amount of your refund, less our fees for tax preparation and electronic filing and an additional bank fee of \$19.95.

Tax preparation fees vary. The electronic filing fee for your federal and state return is \$35 when we prepare your return. If your return is prepared by you or someone else, the federal electronic filing fee is \$45 with an additional state electronic filing fee of \$15. There is no additional charge for either Direct Deposit or IRS check.



---

If you are interested in getting money in as little as two days with our separate refund anticipation loan product, press two.\*

End of message.

If no key is pressed within five seconds, a live operator will come on the line. If key two is pressed, the following recording will play:

\* With our refund anticipation loan product, you receive in as little as two days a loan check for your refund amount for as much as \$3,500 less the bank's finance charges and Block's fees. This year, the refund anticipation loan may include a portion of your earned income credit.

The loan check is from Beneficial National Bank based on your anticipated refund. All fees are withheld from the check. Fees include tax preparation, electronic filing and bank fees. The bank fee, which varies from \$39.95 to \$89.95, is a finance charge representing an annual percentage rate of between 72% and 701%, depending on your loan amount. In about 14 days, the IRS deposits your refund into your loan account to pay off the loan.

The minimum and maximum amount of your loan is \$200 and \$3,500 respectively, depending on the amount of your refund. If approved, your loan may be for the full or partial refund amount, depending on the bank's loan criteria. Most first time applicants will receive a loan of \$500 plus fees. The balance of the refund will be paid in a second check in approximately two weeks. You will know what you are approved for before you leave our office. Details about other terms and conditions are disclosed in the bank's loan application.

Tax preparation fees vary. The electronic filing fee for your federal and state return is \$35 if we prepare your return. If your return is prepared by you or someone else, the federal electronic filing fee is \$45 with an additional state electronic filing fee of \$15.\*

End of recording at which time a live operator comes on the line.





At IAS Part 11 of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse, located at 60 Centre Street, Borough of Manhattan, City and State of New York, on the day of January, 1997.

PRESENT: HON: Lewis R. Friedman

-----X  
ALFRED C. CERULLO III, Commissioner of  
the Department of Consumer Affairs of  
the City of New York, and the CITY OF  
NEW YORK

CONSENT  
ORDER

Index No. 409497/95

Plaintiffs

-against-

H & R Block, Inc. and H & R Block  
Eastern Tax Services, Inc. both d/b/a  
H & R Block

Defendants.  
-----X

WHEREAS the Plaintiffs instituted this action pursuant to Title 20, Chapter 5, Subchapter 1, Section 20-700 et. seq. of the Administrative Code of the City Of New York, (the "Consumer Protection Law") relating to the advertising and offering for sale of consumer goods and services and pursuant to Title 20, Chapter 5, Subchapter 8, Section 20-739 et. seq. of the Administrative Code of the City of New York (the "Income Tax Preparers Law") dealing with the advertising and offering for sale and sale of tax preparation services to consumers; and

WHEREAS the Plaintiffs having moved by an Order to Show Cause dated March 13, 1996, seeking a preliminary injunction against Defendants H & R Block Inc. and H & R Block Eastern Tax Services,



Inc., to enjoin Defendants from, among other things, responding to telephone callers who inquire about a "Rapid Refund" with information about Refund Anticipation Loans, unless it is clearly explained as a separate product and not a "Rapid Refund"; and

WHEREAS the court having granted Plaintiffs' motion for a preliminary injunction to the extent that Defendants are precluded from having their employees respond to telephone inquiries for their "Rapid Refund" services in such a way as to not clearly distinguish Refund Anticipation Loans from other types of filings by a memorandum decision dated April 8, 1996, an original Order to that effect dated June 5, 1996, and an Amended Order dated December 4, 1996 recasting the fifth decretal paragraph of the original Order following a motion by Defendants to "reargue"; and

WHEREAS the parties have entered into a Stipulation of Settlement on January 13, 1997 settling the instant lawsuit which contains a provision wherein Defendants consent to a permanent injunction to be in effect until December 31, 1999, incorporating the terms contained in the preliminary injunction order, as amended by the Order dated on December 4, 1996; it is hereby:

ORDERED that a permanent injunction is granted to Plaintiffs to the extent that Defendants are precluded from having their employees respond to telephone inquiries for their "Rapid Refund" services in such a way as to not clearly distinguish Refund Anticipation Loans from other types of filings; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan as a "Rapid Refund"

when responding to telephone inquiries for their "Rapid Refund" services; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for their "Rapid Refund" services unless they have their employees describe the Refund Anticipation Loan as a separate product; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for their "Rapid Refund" services, unless their employees describe their non-Refund Anticipation Loan electronic filing services including the specific names, costs and time frames for these products, before describing their Refund Anticipation Loan product; and it is further

ORDERED that Defendants are precluded from having their employees describe a Refund Anticipation Loan when responding to telephone inquiries for "Rapid Refund" services, unless they also have their employees disclose any limitations that could cause the consumer to be approved for a Refund Anticipation Loan for an amount less than the consumer's full anticipated refund (a "partial Refund Anticipation Loan") as well as all of the fees in connection with a "partial Refund Anticipation Loan", the full range of finance charges and interest rates which apply to the loan portion of the product and the expected time delay for the receipt by the consumer of the balance of the consumer's actual refund, so as not to confuse "partial Refund Anticipation Loans" with other electronic filing products which also result in monies being received in 14 or 21 days; and it is further



ORDERED that Defendants are precluded from having their employees, when responding to telephone inquiries for their "Rapid Refund" services and when describing Refund Anticipation Loans, describe what a consumer receives when applying for a Refund Anticipation Loan as getting a "refund", rather than explaining that with a Refund Anticipation Loan a consumer gets a bank loan based on the consumer's anticipated tax refund less the bank's finance charges and Defendants' fees for the electronic filing and the tax preparation; and it is further

ORDERED that Defendants are precluded from having their employees, when responding to telephone inquiries for their "Rapid Refund" services and when describing Refund Anticipation Loans, use terms which may confuse Refund Anticipation Loans with other types of filings, including but not limited to the term "Rapid", except that employees may refer to Refund Anticipation Loans by their abbreviation "RALs", after the full name of the product has been disclosed and the product has been described as involving finance charges; and it is further

ORDERED that this permanent injunction shall be in force and effect until December 31, 1999.

Enter:

---

J.S.C.





3. The Assurer specifically agrees:

a. That whenever it advertises an interest bearing loan, the Assurer may not directly or indirectly represent such loan as a refund. Any advertisement which mentions such a loan program must conspicuously state that a fee or interest will be charged and must disclose the name of the lending institution. In addition, the Assurer shall make all disclosures required by federal, state or city law directly to consumers in connection with the offering of such loans.

b. To clearly post exactly how fees are computed in compliance with CPL Reg. 521(c)(1)(A); and

c. To clearly post an identification and qualification statement in all your locations in compliance with Section 20-740 of the Tax Preparer's Law.

4. The Assurer agrees to pay to the Department of Consumer Affairs (hereafter, "the Department") the sum of \$12,500 in settlement of all the outstanding Notices of Violations referred to in the caption herein and for the Department's cost of investigation.

5. The Assurer understands that the matter shall not be considered settled until this Assurance has been executed. The Assurer further understands that the execution of this Assurance shall be complete only upon the receipt by the Department of the total sum specified in paragraph 4.



Agreed to by:

H & R Block, Inc., by:

Robert L. Coleman

Robert L. Coleman

Vice President and  
Corporate Counsel  
Position

October 26, 1990  
Date

Robert L. Coleman  
Signature

Accepted for Mark Green,  
Commissioner of the  
Department of Consumer  
Affairs for the City of  
New York, by:

Susan Kassabian  
Name of Person Signing  
Assurance (print or type)

Chief of Litigation  
Position

November 5, 1990  
Date

Susan Kassabian  
Signature





anticipation loan. The following is an example of acceptable language to be included on such signage:

"H & R Block offers electronic filing and refund anticipation loan services for the following prices at this office.

Rapid Refund Electronic filing - If H & R Block prepares your return... (applicable price).

If someone other than H & R Block prepares your return... (applicable price).

And also available...

Refund anticipation loans ----

There is a (insert applicable price) bank fee regardless of whether H & R Block prepares your return. Either Beneficial Bank or Mellon Bank will be the lending institution depending on your location. The lending institution will disclose the interest rate."

The above signage should be at least 12 inches by 18 inches in dimension with letters at least 1 inch high.

5. The Assurer further agrees to discontinue, within two months, the use of an application for refund anticipation loans which is entitled "Rapid Refund Application and Supplemental Loan Agreement".

6. The Assurer agrees to pay to the Department the sum of \$15,000 in settlement of all the outstanding Notices of Violations referred to in the caption herein and for the Department's cost of investigation.

△

7. The Assurer understands that the matter shall not be considered settled until this Assurance has been executed. The Assurer further understands that the execution of this Assurance shall be complete only upon the receipt by the Department of the total sum specified in paragraph 6.

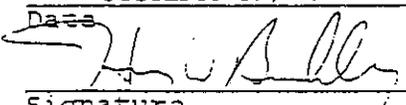
Agreed to by:

H & R Block, Inc., by:

Harry W. Buckley  
Name of Person Signing  
Assurance (print or type)

Vice President  
Position

December 19, 1991  
Date

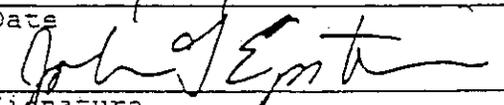
  
Signature

Accepted by Mark Green,  
Commissioner of the  
Department of Consumer  
Affairs for the City of  
New York, by:

John G. Epstein  
Name of Person Signing  
Assurance (print or type)

Assistant General Counsel  
Position

12/23/91  
Date

  
Signature



Department of Consumer Affairs  
City of New York

-----X  
Department of Consumer Affairs : ASSURANCE OF COMPLIANCE

-vs-

: CL Nos. 34525, 16990,  
: 11946, 11947  
: 11667, 11668  
: 11669, 11671

H & R Block, Inc.  
-----X

The following provisions shall constitute an Assurance of Compliance by H & R Block, Inc. (hereafter "Assurer") with the New York City Department of Consumer Affairs (hereafter, the Department).

1. H & R Block, Inc. (hereafter "Assurer") acknowledges receipt of a copy of the Consumer Protection Law (Chapter 5, Subchapter 1, Section 20-700 et. seq. of the Administrative Code of the City of New York), Consumer Protection Law Regulation 521, and the Income Tax Preparers Law (Section 20-739 et. seq. of the Administrative Code of the City of New York), as well as the Notices of Violation listed above.

2. The Assurer agrees to fully comply with the above laws and regulations and any future amendments thereto.

3. The Assurer agrees that its future television advertisements running on WWOR, Secaucus, New Jersey, which promote income tax refund anticipation loans will disclose the name of the lending institution underwriting such loans and will conspicuously state that a fee or interest will be charged by



said lending institution.

4. The Assurer further agrees to inform all H&R Block offices in New York City to discontinue the use of applications for refund anticipation loans (copies attached as Exhibit A) which are entitled "PRIORITY APPLICATION, CERTIFICATION AND AUTHORIZATION FOR RAPID REFUND."

5. The Assurer agrees that for the 1993 tax preparation season, all signs used to promote Assurer's W-4 preparation program which currently read "Do you want a tax refund next year? See us now?" will also include conspicuous language which makes reference to withholding or the preparation of W-4s.

6. The Assurer agrees to reimburse Margarita Garcia the sum of \$93.00 in full satisfaction of her consumer complaint. The Assurer further agrees to reimburse Irene Olsen the sum of \$50.00 in full satisfaction of her consumer complaint. The Assurer will forward these sums by check payable to the consumers to the Department which will in turn remit the payments to the consumers. Such sums are paid by the Assurer without admission of fault or liability with respect to such consumer complaints.

7. The Assurer agrees to pay to the Department the sum of \$1,750 in settlement of all the outstanding Notices of Violations referred to in the caption herein and for the Department's cost of investigation.

7. The Assurer understands that the matter shall not be considered settled until this Assurance has been executed. The Assurer further understands that the execution of this Assurance shall be complete only upon the receipt by the Department of the

total sums specified in paragraphs 6 and 7.

Agreed to by:

H & R Block, Inc., by:

STEWEN A. CHRISTIANSEN  
Name of Person Signing  
Assurance (print or type)  
ASSOCIATE CORPORATE COUNSEL  
Position

6-2-92  
Date

  
Signature

Accepted by Mark Green,  
Commissioner of the  
Department of Consumer  
Affairs for the City of  
New York, by:

  
~~Name of Person Signing~~ Signature  
Assurance (print or type)  
Assistant General Counsel  
Position

6/5/92  
Date

John G. Epstein  
Signature Name of Person signing

1

DEPARTMENT OF CONSUMER AFFAIRS  
CITY OF NEW YORK

-----X  
DEPARTMENT OF CONSUMER AFFAIRS

CL NOS.

38467  
38845  
38804  
38802  
38852  
38993  
38955  
38808  
38891

V.

H & R BLOCK EASTERN TAX SERVICES,  
INC.  
-----X

The following provisions shall constitute an Assurance of Compliance by H & R Block Eastern Tax Services, Inc. ("H & R Block") with the New York City Department of Consumer Affairs.

1. H & R Block (hereafter "Assurer") acknowledges receipt of a copy of the Consumer Protection Law (Chapter 5, Subchapter 1, Section 20-700 et. seq. of the Administrative Code of the City of New York), Consumer Protection Law Regulation 521, and the Income Tax Preparers Law (Section 20-739 et. seq. of the Administrative Code of the City of New York).

2. The Assurer agrees to fully comply with the above laws and regulations thereto.

3. The Assurer specifically agrees:

a. That whenever it advertises a refund anticipation loan, the Assurer may not directly or indirectly represent such loan as a refund. That it will disclose to taxpayers



that Refund Anticipation Loans in fact are loans and not a substitute for or a quicker way of receiving an income tax refund. The phrase or mark "Rapid Refund" shall not be used to describe "Refund Anticipation Loans." Signs advertising "Refund Anticipation Loans" shall not be placed in close proximity to signs using the phrase or mark "Rapid Refund" in circumstances likely to be understood by viewers as indicating that "Refund Anticipation Loans" are a substitute for or a quicker way of receiving an income tax refund.

b. That it will not advertise unqualified claims that it is able to secure Refund Anticipation Loans for taxpayers in a specific period of time unless it is able to accomplish this in all cases, absent a failure, error or other circumstance attributable to the taxpayer-applicant or other unforeseeable circumstances beyond its control.

c. That in any advertisement which mentions a refund anticipation loan it must state conspicuously that a fee or interest will be charged by the lending institution. The advertisement must also disclose the name of the lending institution.



d. To prominently and conspicuously post on all business premises an identification and qualification statement in compliance with Section 20-740 of the Income Tax Preparers Law.

e. To ensure that your tax preparers maintain records at each business premise and be able to supply to the Department of Consumer Affairs' investigators on demand, substantiation of all of the information contained in the posted identification and qualification statement, or an affidavit signed by the tax preparer indicating that the information contained in the statement is true.

4. The Assurer agrees to pay a fine to the Department of Consumer Affairs (hereinafter "the Department") in the sum of \$53,500 for violations of the Consumer Protection and Tax Preparers Laws and \$1,500 for the cost of investigation, in settlement of all claims and possible claims, including all outstanding Notices of Violations, for the 1992 tax season ending on April 15, 1993.

5. The Assurer understands that the matter shall not be considered settled until this Assurance has been executed. The



Assurer further understands that the execution of this Assurance shall be complete only upon receipt by the Department of the total sum specified in paragraph 4.

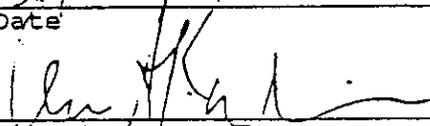
Agreed to by:  
H & R Block Eastern Tax  
Services, Inc. by:

Accepted by Richard Shrader  
Acting Commissioner of the  
Department of Consumer Affairs  
for the City of New York, by:

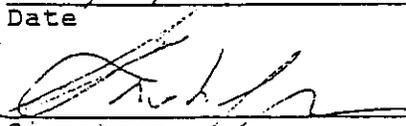
Lewis A. Kaplan  
Paul, Weiss, Rifkind, Wharton  
& Garrison  
Attorneys for H & R Block  
Eastern Tax Services, Inc.

Andrew J. Baer  
Assistant General Counsel

5/7/93  
Date

  
Signature

5/10/93  
Date

  
Signature



## Revenue Procedure 98-50

(2) **PAY BY CHECK.** Taxpayers may pay any balance due by sending a check, along with Form 1040-V, Payment Voucher, to the Service. The Authorized IRS *e-file* Provider must furnish Form 1040-V to any taxpayer paying a balance due by check; and

(3) **INSTALLMENT AGREEMENT.** Taxpayers who cannot pay the balance due with the return may request an installment payment arrangement by filing Form 9465, Installment Agreement Request, with their return.

### **SECTION 12. ADVERTISING STANDARDS FOR AUTHORIZED IRS *e-file* PROVIDERS AND FINANCIAL INSTITUTIONS**

.01 An Authorized IRS *e-file* Provider must comply with the advertising and solicitation provisions of 31 C.F.R. Part 10 (Treasury Department Circular No. 230). This circular prohibits the use or participation in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. Any claims concerning faster refunds by virtue of electronic filing must be consistent with the language in official Service publications.

.02 An Authorized IRS *e-file* Provider must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting.

.03 An Authorized IRS *e-file* Provider must not use the Service's name, "Internal Revenue Service" or "IRS", within a firm's name. However, once accepted into the Form 1040 IRS *e-file* Program, a participant may represent itself as an "Authorized IRS *e-file* Provider."

.04 An Authorized IRS *e-file* Provider must not use improper or misleading advertising in relation to the Form 1040 IRS *e-file* Program (including the time frames for refunds and RALs).

.05 An Authorized IRS *e-file* Provider using promotional materials or logos provided by the Service must comply with all Service instructions pertaining to the promotional materials or logos.

.06 An Authorized IRS *e-file* Provider using the Direct Deposit name and logo must comply with the following:

(1) The name "Direct Deposit" will be used with initial capital letters or all capital letters;

(2) The logo/graphic for Direct Deposit will be used whenever feasible in advertising copy; and

(3) The color or size of the Direct Deposit logo/graphic may be changed when used in advertising pieces.

.07 Advertising materials must not carry the FMS, IRS, or other Treasury Seals.

.08 Advertising for a cooperative electronic return filing project (public/private sector) must clearly state the names of all cooperating parties.

.09 In advertising the availability of a RAL, an Authorized IRS *e-file* Provider and a financial institution must clearly (and, if applicable, in easily readable print) refer to or describe the funds being advanced as a loan, not a refund; that is, it must be made clear in the advertising that the taxpayer is borrowing against the anticipated refund and not obtaining the refund itself from the financial institution.



**ATTACHMENT 12**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
GRETCHEN DYKSTRA, Commissioner of the  
Department of Consumer Affairs of the City  
Of New York, and the CITY OF NEW YORK

COMPLAINT

Index No. 0 2 Y 0; 2 U/

Plaintiffs,

--against--

H & R BLOCK, INC. and H & R BLOCK EASTERN  
TAX SERVICES, INC. both d/b/a H & R BLOCK

Defendants.

----- X

Plaintiffs by their attorney, Michael A. Cardozo, Esq., Corporation Counsel of the City of New York, Robert Martin, Susan Kassapian and Regla Arenas, of Counsel, allege upon information and belief:

**PARTIES AND JURISDICTION**

1. Plaintiff Gretchen Dykstra is the Commissioner of the Department of Consumer Affairs ("DCA"), an agency of the City of New York.
2. Plaintiff City of New York is a municipal corporation chartered under the laws of the State of New York.
3. The within action is brought by the Commissioner of DCA to seek fines and penalties, consumer restitution, a permanent injunction and costs of investigation in connection with repeated and persistent misleading and deceptive practices in connection with the promotion, advertising, and delivery of tax preparation services by the

defendants which blur the distinction between "Rapid RefUnd" and Refund Anticipation Loans.

4. Pursuant to the New York City Charter, Section 2203, the Commissioner of DCA is authorized to enforce the Consumer Protection Law of 1969, Title 20, Chapter 5, Subchapter 1, Section 20-700 a. seq., of the Administrative Code of the City of New York (the "Consumer Protection Law") which prohibits deceptive trade practices in the offering of consumer goods and services.

5. The Commissioner is also empowered to enforce the Income Tax Preparers Law, Title 20, Chapter 5, Subchapter 8, Section 20-739 a. seq. of the Administrative Code of the City of New York (the "Income Tax Preparers Law") dealing with the advertising and offering for sale and sale of tax preparation services to consumers.

6. The Commissioner of DCA brings this action pursuant to Section 20-703 of the Consumer Protection Law, under which she is empowered to seek injunctive relief, civil penalties, restitution, and costs of investigation when any person or business entity has engaged in deceptive trade practices in the sale or offering for sale of consumer goods or services.

7. Pursuant to Section 20-702 of the Consumer Protection Law the Commissioner may adopt such rules and regulations as may be necessary to effectuate the purposes of the Consumer Protection Law. Such rules and regulations have been codified into Title 6 of the Rules of the City of New York ("6 RCNY"), Chapter 5, Unfair Trade Practices.

8. Defendant, H & R Block, Inc., d/b/a H & R Block (hereinafter also referred to as “defendant parent corporation”) is a publicly traded national company which owns a number of subsidiary companies involved in tax preparation services throughout the country. Its corporate headquarters are located at 4400 Main Street, Kansas City, Missouri.

9. Defendant, H & R Block Eastern Tax Services, Inc. d/b/a H & R Block (hereinafter also referred to as “defendant subsidiary corporation”) is one of H & R Block, Inc.’s subsidiary companies which oversees the operations of the H & R Block offices on the east coast, including those in New York City. Its corporate headquarters are also located at 4400 Main Street, Kansas City, Missouri

10. Defendant parent corporation, sets the corporate policy for its subsidiaries, including their advertising campaigns, training materials, and the corporate scripts to be used by the employees and operators at the various offices.

11. There are approximately 1.15 H & R Block offices in the five boroughs of New York. All but six, which are located in Staten Island, are company-owned offices. The six Staten Island offices are franchise-owned.

#### **BASIS FOR THIS ACTION**

12. A tax refund is a reimbursement from the Internal Revenue Service (hereinafter “IRS”) to the taxpayer of monies he/she has overpaid in taxes.

13. A tax refund can be obtained more quickly than usual when a tax return is electronically filed. When a consumer has his or her tax return electronically filed the refund can be received generally within 14 to 28 days. This is often referred to by tax preparers as a “fast” or “rapid” refund. H & R Block has trademarked the phrase “Rapid

RefLnd.” H & R Block is also an authorized e-file Provider pursuant to the Internal Revenue Service (“IRS”) Publication 1345 (Rev. I-200 1).

14. A refund anticipation loan, on the other hand, is a loan arranged by tax preparers like the defendants based on the amount of a tax consumer’s anticipated refund pursuant to IRS guidelines. A refund anticipation loan, otherwise known as a “ML,” also involves a tax return being electronically filed, but, in addition, it involves a bank willing to lend the taxpayer the amount of the anticipated refund in a matter of days.

15. Typically, RALs are obtained by low income consumers, a high percentage of whom may be unsophisticated or unfamiliar with financial terminology. Refund anticipations loans involve the payment of bank fees ranging from \$29 to \$86 with a finance charge representing an APR of 57% to 500% for the use of the money advanced in anticipation of income tax refunds ranging from \$500 to \$5,000.

16. Since electronically filed returns without R4Ls generally result in consumers receiving their refunds within two or three weeks, the vast majority of consumers pay a relatively substantial fee for the use of a very short term loan. Then the bank waits, usually 11 days, to be repaid by the IRS. RALs are only available on refunds of more than \$500 and less than \$5000 and entail estimated interest which, based on the 11 day anticipated time that it takes for the loan to be repaid, ranges from 59% to 211%. This does not include any other type of finance charges, such as document preparation and electronic filing fees, that can raise the estimated interest well in excess of 500%.

17. On or about January 1, 2001, the defendants embarked on an advertising campaign on New York City buses. The words on the bus placards read “No faster way to get your money.” Random calls were made to defendants’ operators. These operators

attempted to steer the callers to the Refund Anticipation Loan product. Defendants' ad campaign was an indirect advertisement for the defendants' Refund Anticipation Loan,

18. The bus advertisements which indirectly advertised the Refund Anticipation Loan, failed to disclose the name of the lending institution making the loan or the fact that there was interest to be paid in connection with the loan. The advertisement further implied that a tax payer could secure a tax refund without a wait when such is not the case. Defendants' failure to make these disclosures in its advertisements was a violation of the City's Consumer Protection Law and Income Tax Preparers Law, and constituted a breach of a 1997 Stipulation of Settlement (see para. 60, supra) as well as a breach of four prior Assurances entered into with DCA in 1990, 1991, 1992 and 1993 (see paras. 35,38,42 and 46, supra).

19. In February and March of 2001 DCA randomly made telephone calls to 82 of the defendants' New York City offices. There were a total of 142 calls where defendants' operators described H & R Block's "Rapid Refund" service. Of this total, the vast majority of the operators included in their responses a reference to H & R Block's Refund Anticipation Loan product without distinguishing it as separate from the "Rapid Refund" services. The vast majority also immediately steered consumers to the Refund Anticipation Loan by representing to consumers that they could get their money or refund in as little as one to three days. In response to the inquiries, nearly half of the operators only described the defendants' Refund Anticipation Loan, and failed to disclose that the RAL was in fact a loan.

20. The defendants blurring of the distinction between a "Rapid Refund" and a Refund Anticipation Loan is a deceptive and misleading practice in violation of the

City's Consumer Protection Law and a breach of the Stipulation of Settlement entered into by the defendants with DCA in January 1997, as well as a breach of the four prior Assurances entered into with DCA in 1990, 1991, 1992 and 1993.

21. On or about January 1, 2002, defendants commenced their "Instant Money" ad campaign on New York city buses, billboards, on television, and at defendants' storefronts. The principal advertising claim in this campaign was "Instant Money, No Waiting, Refund Loan."

22. Other versions of the "Instant Money" ads which appear on defendants' storefronts include: "Refund Loans Means Instant Money," "Instant Money, No Wait, Ask Us About Our Refund Loan Plan," and "Get Your Refund Loan Check Today, Ask About Instant Money." The type point of the word "Loan" in all the signs is smaller than the words "Instant Money," "No Wait," "Refund" and "Check Today." The advertisements do not conspicuously disclose that interest is charged, or the identity of the lending institution, or the fact that the product offered is an interest-bearing loan. Defendants also failed to conspicuously disclose that only a small percentage of consumers qualify for the "Instant" Refund Anticipation Loan that can be obtained in as little as one hour. In miniscule type point which was neither easily readable or conspicuous H & R Block did disclose "additional fee charged by Household Bank, f.s.b., the lender, disclosed as an interest rate. You may not qualify for Instant Money, refund loans also available in as little as one day. Loans subject to approval." Defendants' "Instant Money" ad campaign is in violation of the City's Consumer Protection Law and Income Tax Preparers Law, and constitutes a breach of the 1997 Stipulation, as well as the four prior Assurances entered into between the defendants and DCA.

23. In January 2002 DCA made random calls to defendants' New York City offices by telephone, and asked the operator to describe H & R Block's "Rapid Refund" service. The vast majority of the calls revealed that defendants' operators continue to blur the distinction between "Rapid Refund" and the Refund Anticipation Loan. The operators continue to steer consumers to defendants' bank products, describing to consumers first the "Instant Refund Anticipation Loan" (Instant RAL), a new refund loan product that operators state can be obtained the same day, in as little as one hour, and the "traditional" RAL.

APPLICABLE LAW

24. Consumer Protection Law Section 20-700 prohibits unfair trade practices:

No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental or loan of any consumer goods or services, or in the collection of consumer debts.

25. Consumer Protection Law Section 20-701 defines deceptive trade practices as:

Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with offering for sale, lease, rental or loan of consumer goods or services . . . which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to: . . . (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact or failure to state a material fact if such use deceives or tends to deceive . . .

26. Consumer Protection Law Section 20-703 authorizes DCA to institute proceedings for civil penalties:

a. The violation of any provision of this subchapter or of any rule or

of any rule or regulation promulgated thereunder, shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of fifty dollars to three hundred fifty dollars, to be recovered in a civil action.

b. The knowing violation of any provision of this subchapter thereunder, shall be punishable upon conviction thereof, by the payment of a civil penalty in the sum of five hundred dollars and as a violation for which a fine in the sum of five hundred dollars shall be imposed, or both.

27. In addition, Section 20-703(d) allows DCA to bring an action for injunctive relief

Whenever any person has engaged in any acts or practices which constitute violations of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may make application to the supreme court for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order, or other order enjoining such acts or practices.

28. Consumer Protection Law Section 20-704 provides for additional counts in calculating penalties if there has been a breach of a prior Assurance:

Violation of an Assurance entered into pursuant to this section shall be treated as a violation of this subchapter and shall be subject to all the penalties provided therefor.

29. Income Tax Preparers Law Section 20-741.1 deals specifically with advertising refund anticipation loans:

Any tax preparer who advertises the availability of a program by which a taxpayer may receive a loan against the taxpayer's anticipated refund may not directly or indirectly represent such a loan as a refund. Any advertisement which mentions such a loan program must state conspicuously that a fee or interest will be charged by the lending institution. The advertisement must also disclose the name of the lending institution.

30. Income Tax Preparers Law Section 20-743 provides additional penalties for violations of this subchapter:

Any person, partnership, corporation or other business entity who violates any provision of this subchapter or any of the regulations promulgated

hereunder shall be liable for a civil penalty of not less than twenty-five dollars nor more than one hundred dollars for each violation.

31. Title 6 of the Rules of the City of New York (6 RCNY Section 5-66, formerly Consumer Protection Law Regulation 521) prohibits certain practices of tax preparers. Specifically, tax preparers may not:

(b) (4) make any deceptive statement designed to persuade taxpayers to use, or not to use, a tax preparer; . . .

(d) (4) claim to give taxpayers an "instant tax refund" that is actually an interest bearing loan unless that fact is disclosed to the taxpayer in accordance with federal and state law.

32. IRS Publication 1345, requires e-filers (such as H & R Block) to make clear in advertising refund anticipation loan products that such are interest-bearing loans.

Publication 1345 in relevant part provides:

A Refund Anticipation Loan (RAL) is money borrowed by a taxpayer from a lender based on the taxpayer's anticipated income tax refund. . . . All parties to RAL agreements including [providers such as H & R Block] must ensure that taxpayers understand that RALs are interest bearing loans and not substitutes for or a faster way of receiving a refund.

If the availability of a RAL is being advertised, the Provider and financial institution must clearly refer to or describe the funds being advanced as a loan, not a refund. The advertisement on a RAL must be easy to identify and in readable print. That is, it must be made clear in the advertising that the taxpayer is borrowing against the anticipated refund and not obtaining a refund itself from the financial institution.

IRS Pub 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns, Ch. 3 & 6 (Rev. 1-2001).

33. In addition, Chapter 6, "Advertising Standards," requires e-filers to comply with federal, state and local consumer protection laws that regulate advertising and soliciting. Specifically:

A Provider must adhere to all relevant federal, state, and local consumer protection laws that relate to advertising and soliciting . . .

IRS Pub. 1345, Ch. 6 (Rev. 1-2001).

**FACTS**

**1990 DCA Notice of Violation**

34. During the 1990 tax season, DCA issued several Notices of Violation against defendant parent corporation. Many of the Notices specifically took issue with defendant's "Rapid Refund" advertisements.

35. In October 23, 1990, the defendant parent corporation signed an Assurance with DCA settling the outstanding charges in which it agreed to fully comply with all of the relevant rules and regulations and specifically agreed:

That whenever it advertises an interest-bearing loan, the Assurer may not directly or indirectly represent such loan as a refund. Any advertisement which mentions such a loan must conspicuously state that a fee of interest will be charged and must disclose the name of the lending institution. In addition, the Assurer shall make all disclosures required by federal, state or city law directly to consumers in connection with the offering of such loans.

(See paragraph 3a of 1990 Assurance, a copy of which is annexed in its entirety as Exhibit A).

36. As part of the 1990 Assurance, defendant parent corporation agreed to and did pay DCA the sum of \$12,500 in settlement of the charges.

**1991 DCA Notice of Violation**

37. In February and March of 1991, DCA issued several Notices of Violation against defendants' New York City offices for various violations of the Income Tax Preparers Law and issued defendant parent corporation a Notice of Violation for violations of the Consumer Protection Law and the Income Tax Preparers Law which, specifically, took issue with defendants' "Rapid Refund" advertisements and with the use

of promotional flyers and/or inserts which invited consumers to participate in defendants' "Rapid Refund Program." The flyer blurred the distinction between a tax refund and a refund anticipation loan and failed to comply with the disclosure required by Income Tax Preparers Law Section 20-741 .1. The 1991 flyer asked the question: Why wait for your tax refund when you can get your money FAST!

38. On December 19, 1991, the defendant parent corporation entered into a second Assurance with DCA which settled all of the outstanding charges. It specifically agreed to post signage on all of its premises within the five boroughs of New York City which clearly distinguished between the offering of a rapid refund and a refund anticipation loan. It represented to DCA that it would use the term "Rapid Refund" to apply to electronic filing of a return and would offer its refund anticipation loan as a separately available service. The Assurance provided an example of acceptable language to be included on such signage:

"H & R Block offers electronic filing and refund anticipation loan services for the following prices at this office."

Rapid Refund Electronic filing - If H & R Block prepares your return . . . (applicable price).

If someone other than H & R Block prepares your return . . . (applicable price).

And also available. . .

Refund anticipation loans ----

There is a (insert applicable price) bank fee regardless of whether H & R Block prepares your return. Either Beneficial Bank or Mellon Bank will be the lending institution depending on your location. The lending institution will disclose the interest rate."

(See paragraph 3 of the 1991 Assurance, a copy of which is annexed in its entirety as Exhibit B).

39. In a further effort to address the blurring of the distinction between a "Rapid Refund" and Refund Anticipation Loan the Assurance provided that:

The Assurer further agrees to discontinue, within two months, the use of an application for refund anticipation loans which is entitled "Rapid Refund Application and Supplemental Loan Agreement."

(See paragraph 5 of the 1991 Assurance, Exh. B.)

40. As part of the 1991 Assurance, defendant parent corporation agreed to and did pay DCA the sum of \$15,000 in settlement of the charges.

#### **1992 DCA Notice of Violation**

41. In January of 1992, DCA issued defendant parent corporation a Notice of Violation which, among other things, took issue with a television advertisement appearing on local New York City stations which advertised refund anticipation loans in a manner which violated Section 20-741.1 of the Income Tax Preparers Law. Subsequently, in May 1992, the defendant parent corporation was issued a second Notice of Violation which, among other things, took issue with a newspaper advertisement for a refund anticipation loan and the defendants' applications for refund anticipation loans which referred to these loans as refunds. Several other Notices of Violation were issued to a number of defendants' New York City offices for various violations of Consumer Protection Law Regulation 521 (subsequently recodified as 6 RCNY Section 5-66) and the Income Tax Preparers Law.

42. On June 2, 1992, the defendant parent corporation, signed a third Assurance with DCA which settled all of the outstanding charges and which provided in relevant part that:

The Assurer agrees that its future television advertisements running on WWOR, Secaucus, New Jersey, which promote income tax refund anticipation

loans will disclose the name of the lending institution underwriting such loans and will conspicuously state that a fee or interest will be charged by said lending institution.

(See paragraphs 3 and 4 of the 1992 Assurance which is annexed in its entirety as Exhibit C.)

43. As part of the 1992 Assurance, defendant parent corporation agreed to and did pay DCA the sum of \$1,750 to settle the charges.

**1993 DCA Notice of Violation**

44. In March of 1993, DCA issued defendant parent corporation a Notice of Violation dealing with its confusing advertisements for "Rapid Refunds" and Refund Anticipation Loans. The principal charges that year stemmed from window signs observed at 36 store-front locations in New York City where generally two signs, one for "Rapid Refund," and the other for "Refund Anticipation Loans" touted as being available "in two days" were juxtaposed in such a way as to mislead consumers into believing that defendant's "Rapid Refund" service would result in a tax refund in two days. Other Notices of Violations were issued against defendants' New York City offices for various violations of the Consumer Protection Law, Consumer Protection Law Rules and the Income Tax Preparers Law.

45. The "Refund Anticipation Loan" signs at the 36 store-fronts where these signs appeared failed to mention that there was a fee or interest charged for the -loan or the name of the lending institution as required by Section 20-74 1.1 of the Tax Preparers Law.

46. On May 7, 1993, DCA entered into a fourth Assurance relating to H & R Block to settle the outstanding charges brought against defendant parent corporation, and

the various New York City H & R Block offices cited in 1993. This Assurance was executed by defendant, subsidiary corporation, H & R Block Eastern Tax Services, Inc.

47. The defendant subsidiary corporation, in that fourth Assurance agreed in relevant part:

a. That whenever it advertises a refund anticipation loan, the Assurer may not directly or indirectly represent such loan as a refund. That it will disclose to taxpayers that Refund Anticipation Loans in fact are loans and not a substitute for or a quicker way of receiving an income tax refund. The phrase or mark "Rapid Refund" shall not be used to describe "Refund Anticipation Loans." Signs advertising "Refund Anticipation Loans" shall not be placed in close proximity to signs using the phrase or mark "Rapid Refund" in circumstances likely to be understood by viewers as indicating that "Refund Anticipation Loans" are a substitute for or a quicker way of receiving an income tax refund.

b. That it will not advertise unqualified claims that it is able to secure Refund Anticipation Loans for taxpayers in a specific period of time unless it is able to accomplish this in all cases, absent a failure, error or other circumstance attributable to the taxpayer-applicant or other unforeseeable circumstances beyond its control.

c. That in any advertisement which mentions a refund anticipation loan it must state conspicuously that a fee or interest will be charged by the lending institution. The advertisement must also disclose the name of the lending institution.

(See paragraph 3 of the 1993 Assurance which is annexed in its entirety as Exhibit D.)

**1995 DCA Notice of Violation, and Summons and Complaint**

48. In October 1995, DCA commenced an action against defendants by service of a Summons and Complaint on October 27, 1995, in State Supreme Court, County of New York, Index No. 409497/95.

49. The facts and causes of action for the complaint were based on a Notice of Violation that was issued against the parent corporation on March 21, 1995, in connection with the advertisements defendants placed in New York City subway cars, and the results of random calls made by DCA to defendants' New York City offices that

revealed defendants' continued pattern of blurring the distinction between "Rapid Refund" and the Refund Anticipation Loan.

50. In January 1995 defendants ran advertisements in subway cars that read "H & R Block. Rapid Refund. Why Wait? It's Your Money." These ads clearly implied that the defendant could secure taxpayers a refund with virtually no waiting time.

51. Random calls made in March 1995 by DCA to defendants' New York City offices, that specifically referenced the "Rapid Refund" subway advertisement, revealed that defendants' telephone operators blurred the distinction between a "Rapid Refund" and a refund anticipation loan, and steered consumers to the Refund Anticipation Loan. The operators simply described how consumers could get their check in as little as four days, and generally failed to mention that a bank was involved.

52. In none of the calls did the defendants' operators specifically mention that interest was involved. In not a single case did defendants' operators describe their "Rapid Refund" as referring only to electronic filing of a tax return. Nor did any of them make it clear that a consumer 'could get a refund rapidly by electronically filing alone.

53. Also, in random DCA undercover calls made to H & R Block offices after the March 1995 calls, the operators continued to blur the distinction between "Rapid Refund" and a Refund Anticipation Loan, and to steer consumers to the refund anticipation loan.

#### **1996 DCA Amended Complaint and Order to Show Cause**

54. An Amended Complaint was served on defendants' attorneys on February 28, 1996. The Amended Complaint contained new facts and causes of action regarding defendants' ongoing deceptive trade practices in 1996.

55. Specifically, in January and February 1996 DCA investigators made undercover calls to defendants' New York City offices, posing as consumers and inquired about "Rapid Refund." In every single call, a "Rapid Refund" was described by defendants' operators as referring to or including a Refund Anticipation Loan.

56. In approximately 65% of the calls made a "Rapid Refund" was only described as "Refund Anticipation Loan" or what could only be a Refund Anticipation Loan since it involved receiving a check in less than five days. In the other instances, when other electronic filing options were described, a Refund Anticipation Loan was often the first product described.

57. In the majority of the 1996 calls made, defendants' operators failed to clearly explain that a consumer could obtain a "Rapid Refund" by simply filing a return electronically without incurring any bank fee.

58. On March 11, 1996 DCA moved by Order to Show Cause to seek a preliminary injunction enjoining defendants from, among other things, responding to telephone callers who inquire about a "Rapid Refund" with information about Refund Anticipation Loans, unless it is clearly explained as a separate product and not a "Rapid Refund."

59. The Court granted the preliminary injunction and precluded the defendants from having their employees respond to telephone inquiries for their "Rapid Refund" services in such a way as to not clearly distinguish Refund Anticipation Loans from other types of filings. (See copy of Memorandum Decision dated April 8, 1996 annexed hereto as Exhibit E; and copy of Amended Order dated December 4, 1996, annexed hereto as Exhibit F.)

### 1997 DCA Stipulation of Settlement

60. On January 13, 1997, the parties entered into a Stipulation of Settlement of the action, The Stipulation contained a provision wherein defendants consented to a permanent injunction to be in effect until December 31, 1999, incorporating the terms contained in the preliminary injunction order, as amended by the Order dated December 4, 1996. (See paragraph 4 of the Stipulation of Settlement annexed hereto as Exhibit G, and the Consent Order, annexed to the Stipulation of Settlement, as Exhibit B). The Stipulation of Settlement was "So Ordered" by Judge Lewis Friedman on January 27, 1997.

61. The Stipulation provided in relevant part that:

Defendants shall not blur the distinction between their "Rapid Refund" products (i.e., Direct Deposit, IRS Check and Electronic Refund) and their Refund Anticipation Loan product in any future advertisements and in any future representations to consumers. To ensure the latter, defendants agree to provide increased instruction and supervision to their employees who deal directly with consumers, particularly their receptionists and tax preparers, regarding making a clear distinction between their "Rapid Refund" products and their Refund Anticipation Loan product so that non-loan filing products and the loan product will not be confused.

Defendants shall comply with each of the four prior Assurances entered into by the defendants with the New York City Department of Consumer Affairs, in 1990,1991,1992, and 1993.

(See paragraphs 5 and 6 of the Stipulation of Settlement Exhibit G.)

62. As part of the Stipulation of Settlement, defendants agreed to and did pay DCA a fine in the sum of \$200,000 as well as \$50,000 in costs of investigation and litigation.

### **2001 DCA Notice of Violation**

63. In 2001, defendants' "Rapid Refund" trademark appeared throughout its stores signs and handout materials as defendants engaged in an active promotion of their "Rapid Refund" services.

64. Defendant parent corporation's training materials for the 2001 tax season instructed its employees, from receptionist to office managers, to offer first its bank products, the RAL and the RAC, in a blatant promotion of its more expensive financial services at the expense of the consumer. H & R Block's training materials for the tax season 2001 included an Instructor's Guide Book and a Workbook for the following positions: Receptionist, Preparer Assistant, Tax Preparer, Office Coordinator, and Office Manager.

65. Specifically, defendants instructed its employees to represent that RALs were the very first of its "Rapid Refund" products and that they could be obtained in as little as two days. The least expensive "Rapid Refund" products, Direct Deposit and the IRS check, were described last to consumers.

66. In the "Common Phone Questions" section of H & R Block's training materials, defendants clearly instructed its receptionists in such a manner as would cause a blurring of the distinction between "Rapid Refund" and the Refund Anticipation Loan. When asked by a caller "Do you have Rapid Refund?" the receptionist was instructed to reply: "Yes, we do. We have products that give you money in as little as two, 14, or 21 days." The employees were instructed to promote and steer consumers to the two-day RAL product as the fastest way for a consumer to get their money. (See cover page and

relevant page of Receptionist Instructor's Guide Book, and cover page and relevant page of Receptionist Workbook, annexed hereto as Exhibit H.)

67. Likewise, in the "Overview of Rapid Refund" section of its training material for Receptionist, defendants listed the RAL as the first "Rapid Refund" option available to consumers. By its own training materials defendants insured that their receptionists would blur the distinction between what is a true "Rapid Refund" and the Refund Anticipation Loan. (See cover page and relevant page of Receptionist Workbook, annexed hereto as Exhibit I.)

68. In the "Rapid Refund Presentation" section on "Electronic Filing," defendants instructed its tax preparers to promote the Refund Anticipation Loan as the quickest way to get a refund. "The quickest service is the Refund Anticipation Loan. It will get your money to you in about 24 hours." The tax preparers were instructed to steer the consumer to the RAL without disclosing the least expensive "Rapid Refund" options, Direct Deposit, IRS check, available to the consumer. (See cover page and relevant page of Tax Preparer Instructor's Guide Book, Part 2; and cover page and relevant page of Tax Preparer Workbook, Part 2, annexed hereto as Exhibit J.)

69. In the "Overview of Block Products and Services" section of defendants' training manuals for Receptionist, Preparer Assistant, Tax Preparer, Office Coordinator, and Office Manager, the defendants listed first their bank products, the RAL and the Refund Anticipation Check or ("RAC"), followed by the least expensive "Rapid Refund" options of Direct Deposit and IRS check. In so doing, defendants insured that their employees would pitch its bank products to the consumer, and promoted the blurring of the distinction between a "Rapid Refund" and its Refund Anticipation Loan product.

(See cover page and relevant page of Receptionist Instructor's Guide and Receptionist Workbook; Preparer Assistant Workbook; Tax Preparer Instructor's Guide, Part 1, and Tax Preparer Workbook, Part 1; Office Coordinator Instructor's Guide, Part 1, and Office Coordinator, Workbook, Part 1; Office Manager Instructor's Guide, Part 1, and Office Manager Workbook, Part 1, annexed hereto as Exhibit K.)

70. On or about April 19, 2001, DCA issued defendant parent corporation a Notice of Violation in connection with over 150 calls made to 82 of the defendants' New York City offices, and a bus advertisement campaign that defendant ran on New York City Buses with the commencement of the 2001 tax season. (A copy of that Notice of Violation is annexed hereto as Exhibit L.)

71. In the months of February, March and April 2001 prior to issuing this Notice of Violation DCA randomly made telephone calls to 82 of the defendants' New York offices. There were a total of 142 calls where defendants' operators described H & R Block's "Rapid Refund" service. Of this total, the vast majority, 87% of the operators, included the Refund Anticipation Loan in their response without distinguishing it as separate from the "Rapid Refund" products.

72. In approximately 83% of the calls the operators immediately steered the callers to the Refund Anticipation Loan, and represented to them that they could get their money in as little as 24 to 48 hours.

73. In nearly half (50%) of these calls, the telephone operators described only the Refund Anticipation Loan.

74. In approximately 83% of the calls, the defendants' operators first described defendants' Refund Anticipation Loan product. The vast majority of times,

65%, the operators failed to describe to the consumer the least expensive "Rapid Refund" options available (Direct Deposit, IRS Check).

75. Typically, the operators steered the DCA inspectors to defendants' bank products, which in addition to the Refund Anticipation Loan includes the Refund Anticipation Check. The operators often failed to disclose that a bank was involved, or that bank fees would be incurred. In the instances where the RAL was disclosed as a loan, the operators either failed to disclose that bank fees were involved, or only mentioned bank fees in passing. In not one instance was the name of the bank making the loan disclosed.

76. In only a few instances did defendants' operators describe their "Rapid Refund" as referring only to electronic filing of a tax return. The vast majority of them failed to make clear to the callers that he or she could get a refund rapidly by electronically filing alone, without incurring any bank fees. Rather, the operators consistently misled the inspectors who were posing as consumers into believing that in order to get a "Rapid Refund"-they would have obtain one of defendants' bank products, either a RAL or a R4C.

77. The operators often explained "Rapid Refund" as if it only consisted of defendants' bank products; the RAL being the first product that was mentioned, followed by the RAC.

78. Most of defendants' operators made ambiguous, inconsistent, false or misleading statements about the RALs. For example, some operators failed to describe the product as a loan, several failed to describe the product as requiring the payment of interest and some referred to the RAL as "it's like a loan."

79. With respect to the defendants' 2001 bus ad campaign advertisements which read "No faster way to get your money," a DCA inspector specifically mentioned the bus advertisement in 27 of the calls and asked "how quickly can I get a tax refund?" The vast majority of the operators immediately steered the inspector to the Refund Anticipation Loan product. In their response the operators described first the Refund Anticipation Loan, and failed to distinguish the RAL from "Rapid Refund" services. The vast majority represented to the inspector that a refund could be obtained in as little as one to three days. Also, in nearly half of these 27 calls the operators failed to disclose that the RAL was a loan.

80. In actuality, consumers can obtain their refunds quickly by merely utilizing the electronic filing provided by the defendants and most other income tax preparers in New York City. They can have their tax returns electronically filed with the IRS and either have the IRS mail back their refund within two to three weeks, or have the IRS deposit the refund via Direct Deposit to the consumer's bank account, both options taking approximately two to three weeks.

81. During the months of January through March 2001, several undercover on-site investigations were undertaken by the Department at various of defendants' locations in New York City. Consistent with the results of the 2001 calls made to defendants' offices and the responses of their operators, the tax preparers that undercover DCA employees dealt with generally steered them into obtaining defendants' bank products, usually the RAL first, and failed to disclose to the consumers the non-bank "Rapid Refund" options available to them.

### **Other Relevant Actions in Other Jurisdictions**

82. In the 1990's several states sued H & R Block for engaging in deceptive advertising by concealing the fact that RALs were loans. In July 1993, for instance, H & R Block signed a consent decree with the state of Connecticut under which it agreed not to misrepresent loans as refunds or to use the term "Rapid Refund" to describe RALs. H & R Block entered into similar agreements with the state of Florida in 1994.

83. In a case brought during the 2000 tax season by an H & R Block competitor, Liberty Tax Service, Judge Raymond A. Jackson, of the U.S. District Court for the Eastern District of Virginia, found that H & R Block was using the "Rapid Refund" trademark in a way that violated the Lanham Act, 15 U.S.C. 0 11 1- 1127, and was deceptive to consumers. (See *JTH Tax, Inc. v. H & R Block Eastern Tax Services, Inc.*, 128 F.Supp.2d 926 (E.D. Va. 2001).) Specifically, Judge Jackson held that H & R Block violated IRS Publication 1345, \$12.09 of Revenue Procedure 98-50, when it offered a non-interest, no fees loan product (called a NACRAL) without clearly referring or describing it as a loan in its-advertisements.

84. Moreover, Judge Jackson found that H & R Block knowingly violated the Act, as it had prior notice about representing loans as "refunds," noting the multiple consent orders H & R Block had entered into with states regarding their deceptive use of "refund" in lieu of "loan" in advertisements. The court enjoined H & R Block from: (1) advertising any loan product as a "refund" in violation of IRS Publication 1345, (2) referring to a loan product disbursement as an "advance," or "refund amount," or checks "in the amount of your refund" unless it is disclosed as a "loan," and (3) using its trade

mark "Rapid Refund" in connection with its loan products, regardless of whether fees or interest are charged.

85. On appeal, the Fourth Circuit affirmed in a decision dated January 10, 2002, the district court's findings that H & R Block acted willfully in violating the Act, and that H & R Block's false and misleading advertisements were material to a reasonable consumer's purchasing decision. However, finding that the first two prongs of the injunctive relief awarded by the district court adequately addressed H & R Block's advertising practices, the Court vacated the portion of the relief that prohibited H & R Block from using the trademark "Rapid Refund" in connection with loan products, and remanded the case to the trial court.

86. Class action lawsuits involving H & R Block's refund anticipation loan products and its high interest rates were brought against the defendants by plaintiffs in Maryland, Texas, Illinois, and New York<sup>7</sup>.

#### **2002 DCA Investkation**

87. In January 2002, the Department undertook an investigation of defendants' tax preparation services for the tax year 2001 which revealed defendants continues their deceptive trade practices. Random calls were again made by DCA inspectors to defendants' New York City offices. In the calls where defendants' operators described H & R Block Services, it was revealed that H & R Block continues to blur the e-filing options available to consumers.

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<sup>7</sup> In the New York case the trial court certified the state class on a GBL §349 claim arising from H & R Block's consistent failure to disclose in uniform documents its numerous financial interests in steering its customers into short term high interest loans. On appeal, the First Department reversed the trial court's certification of the class. See *Carnegie v. H& R Block*, 269 A.D.2d 145 (1<sup>st</sup> Dep't 2000).

88. In approximately 86% of the calls defendants' operators continue to blur the distinction between "Rapid Refund" and Refund Anticipation Loan.

89. In 83% of the calls, the operators steered consumers to the bank products, with the "Instant RAL," a loan product available in as little as an hour, and the "traditional" RAL being the two products the operators described first to consumers approximately 84% of the time.

90. On or about January 1, 2002, defendants' embarked on its "Instant Money" ad campaign on New York City buses, billboards, storefronts and on television, in a promotion of its interest bearing loan products (the Instant R4L and the RAL). The principal advertising claim in this campaign was "Instant Money, No Waiting, Refund Loan."

91. Additional versions of the "Instant Money" ads appearing on defendants' storefronts read: "Refund Loans Mean Instant Money," "Instant Money, No Wait, Ask Us About Our Refund Loan Plan," and "Get Your Refund Loan Check Today, Ask About Instant Money." The type point of the word "Loan" in all the signs is smaller than the words "Instant Money," "No Wait," "Refund" and "Check Today." The advertisements do not conspicuously disclose that interest is charged, or the identity of the lending institution, or the fact that the product offered is an interest-bearing loan. Defendants' also failed to conspicuously disclose that only a small percentage of consumers qualify for the "Instant" Refund Anticipation Loan that can be obtained in as little as one hour. In miniscule type point H & R Block did disclose "additional fee charged by Household Bank, f.s.b., the lender, disclosed as an interest rate. You may not qualify for Instant Money, refund loans also available in as little as one day. Loans are subject to approval."

Defendants' "Instant Money" ad campaign constitutes a breach of the 1997 Stipulation, as well as the four prior Assurances entered into between the defendants and DCA.

92. In addition, defendants' 2002 "Instant Money" ad campaign is in violation of IRS Regulation 1345, in that defendants fail to make the affirmative disclosure that the "Instant RAL" and the "traditional" RAL, are interest bearing loans.

**AS AND FOR A FIRST CAUSE OF ACTION**

93. Plaintiffs repeat and reallege paragraphs 1 through 92 as if contained herein.

94. Each and every instance in 2001 and 2002 where defendants' employees blurred the distinction between a "Rapid Refund" and a Refund Anticipation Loan, is a deceptive trade practice in violation of the City's Consumer Protection Law Section 20-700 et. seq.

**AS AND FOR A SECOND CAUSE OF ACTION**

95. Plaintiffs repeat and reallege paragraphs 1 through 94 as if contained herein.

96. Each and every instance where defendants' 2001 training manuals instructed its employees to blur the distinction between a "Rapid Refund" and a Refund Anticipation Loan, is a breach of the 1997 Stipulation as well as each of the prior four Assurances entered into between defendants and DCA in violation of the City's Consumer Protection Law Section 20-704.

**AS AND FOR A THIRD CAUSE OF ACTION**

97. Plaintiffs repeat and reallege paragraphs 1 through 96 as if contained herein.

98. Each and every instance where defendants' phone operators in 2001 and 2002 blurred the distinction between what is "Rapid Refund" and a Refund Anticipation Loan, including but not limited to instances where they misled consumers into believing that they could receive their refund in a matter of a few days, advised consumers that a "Rapid Refund" could be obtained without incurring a bank fee, and steered consumers into their bank products (RAL and RAC), is a deceptive trade practice in violation of the City's Consumer Protection Law Section 20-700 et. seq.

**AS AND FOR A FOURTH CAUSE OF ACTION**

99. Plaintiffs repeat and reallege paragraphs 1 through 98 as if contained herein.

100. Defendants' 2001 bus advertisements which read: "No Faster Way to Get Your Money" were indirectly advertisements for Refund Anticipation Loans.

101. Defendant thereby blurred the distinction between a "Rapid Refund" and a Refund Anticipation Loan.

102. Each of the bus advertisements was therefore deceptive and misleading and in violation of the City's Consumer Protection Law Section 20-700 et. seq.

**AS AND FOR A FIFTH CAUSE OF ACTION**

103. Plaintiffs repeat and reallege paragraphs 1 through 102 as if contained herein.

104. Defendants' bus advertisements that ran during the 2001 tax season were indirectly advertisements for Refund Anticipation Loans.

105. Defendants failed to comply with the affirmative disclosures required by Section 20-74 1.1 of the Income Tax Preparers Law with the fact that interest is charged and the identity of the lending institution involved.

106. Each of the 118 bus poster advertisements appearing on New York city buses during the 2001 tax season was in violation of the City's Income Tax Preparers Law Section 20-74 1.1 for the failure to make these affirmative disclosures.

**AS AND FOR A SIXTH CAUSE OF ACTION**

107. Plaintiffs repeat and reallege paragraphs 1 through 106 as if contained herein.

108. Each of the 118 bus advertisements that ran during the 2001 tax season and each misrepresentation by defendants' operators in 2001 constitutes a breach of the 1997 Stipulation as well as each of the prior four Assurances entered into between defendants and DCA in violation of the City's Consumer Protection Law Section 20-704.

**AS AND FOR A SEVENTH CAUSE OF ACTION**

109. Plaintiffs repeat and reallege paragraphs 1 through 108 as if contained herein.

110. Defendants designed an ad campaign for the 2001 tax season which misled consumers into believing that a "Rapid Refund" could only be obtained by incurring a bank fee and steered many consumers into an electronic filing of their return that involved a bank fee (e.g. IUL or RAC) at substantially greater expense to them than if they had just had their returns simply electronically filed. Consumers were "baited" by defendants' "Rapid Refund" advertising and "switched" to a more expensive product

involving interest or other bank fee, in violation of the City's Consumer Protection Law Section 20-700 et. seq.

AS AND FOR A EIGHTH CAUSE OF ACTION

111. Plaintiffs repeat and reallege paragraphs 1 through 110 as if contained herein.

112. Defendants' "Instant Money" advertisements for the 2002 tax -season which appeared on New York city buses, billboards, H & R Block's storefronts, and on television promoted defendants' Refund Anticipation Loan products.

113. By virtue of the failure to conspicuously disclose that a fee or interest is charged along with the name of the lending institution, Defendants failed to comply with the affirmative disclosures required by Section 20-74 1.1 of the Income Tax Preparers Law.

114. Each of the advertisements appearing on New York city buses, billboards, H & R Block's storefronts, and on television for the 2002 tax season is in violation of the City's Income Tax Preparers Law Section 20-741.1 for the failure to make these affirmative disclosures.

AS AND FOR A NINTH CAUSE OF ACTION

115. Plaintiffs repeat and reallege paragraphs 1 through 114 as if contained herein.

116. Defendants' "Instant Money" advertisements for the 2002 tax season which appeared on New York city buses, billboards, H & R Block's storefronts, and on television promoted defendants' Refund Anticipation Loan products.

117. By virtue of the failure to conspicuously disclose that the RALs are interest bearing loans, Defendants' are in violation of 6 RCNY Section 5-66.

118. Each of the advertisements appearing on New York city buses, billboards, H & R Block's storefronts, and on television for the 2002 tax season failed to comply with the affirmative disclosure for interest-bearing loans required by federal advertising requirements IRS Regulation 1345, and are in violation of 6 RCNY Section 5-66, and as such constitute a violation of the City's Consumer Protection Law Section 20-700 et. seq.

AS AND FOR A TENTH 'CAUSE OF ACTION

119. Plaintiffs repeat and reallege paragraphs 1 through 118 as if contained herein.

120. Defendants "Instant Money" ad campaign claimed that consumers could obtain money instantly. Defendants failed to conspicuously disclose that only a small percentage of consumers qualify for the "Instant RAL" that can be obtained in as little as one hour.

121. Defendants lured consumers to their locations with this campaign but steered consumers who would not qualify for the "Instant RAL" to other of defendants' bank products, which did not result in the consumers obtaining "Instant Money." Many consumers, particularly those that qualified for the Earned Income Tax Credit, were "baited" by defendants' "Instant Money" ad campaign and "switched" to the defendants' other bank products, the "Traditional" RAL and the RAC, in violation of the City's Consumer Protection Law Section 20-700 et. seq.

**AS AND FOR A ELEVENTH CAUSE OF ACTION**

122. Plaintiffs repeat and reallege paragraphs 1 through 121 as if contained herein.

123. Defendants' "Instant Money" advertisements for the 2002 tax season which appeared on New York city buses, billboards, H & R Block's storefronts, and on television promoted defendants' Refund Anticipation Loan products.

124. To the extent that the "Instant Money" ad campaign implies that the "Traditional RAL" which can be obtained in two to three days is also "Instant Money," defendants' engaged in a deceptive ad campaign since a product that can be obtained in two to three days is not "Instant."

125. Each of the advertisements appearing on New York city buses, billboards, H & R Block's storefronts, and on television for the 2002 tax season blurred the "Instant RAL" and the "Traditional RAL" under the umbrella of "Instant Money," and constitute a deceptive trade practice in violation of the City's Consumer Protection Law Section 20-700 et. seq.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

1. With respect to the First and Third Causes of Action, an order permanently enjoining the defendants' employees from blurring the distinction between a "Rapid Refund" and the Refund Anticipation Loan products.

2. With respect to the Tenth and Eleventh Causes of Action, an order permanently enjoining the defendants from "Instant Money" advertising that "baits and switches" consumers to the defendants' bank products (Traditional RAL, RAC) involving interest or other bank fees, and blurs distinction between the "Instant IUL" (one hour product) and the "Traditional" R4L (two to three day product).

3. With respect to the First, Second, Third, Fourth, Sixth, Seventh, Ninth, Tenth and Eleventh Causes of Action, an order imposing civil fines and penalties against the defendants in the amount of Five Hundred Dollars (\$500) for each and every knowing violation of the Consumer Protection Law.

4. With respect to the Fifth and Eighth Causes of Action, an order imposing civil penalties in the amount of One Hundred Dollars for each and every violation of the Income Tax Preparers Law.

5. Directing the defendants to pay to the plaintiffs the costs and disbursements of this action and the costs of DCA's investigation leading to judgment.

Dated: New York, New York  
March 11, 2002

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**ATTACHMENT 13**

**In the Matter of:  
H&R Block Services, Inc.**

**Respondents.**

**ASSURANCE OF VOLUNTARY COMPLIANCE OR DISCONTINUANCE**

This Assurance of Voluntary Compliance or Discontinuance ("Assurance") is entered into by the Attorneys General of the States of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia,<sup>1</sup> Hawaii,<sup>2</sup> Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana,<sup>3</sup> Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the Corporation Counsel of the District of Columbia<sup>4</sup> ("Attorneys General"), acting pursuant

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<sup>1</sup>With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions, including acceptance of Assurances of Voluntary Compliance for the State of Georgia. Hereafter, when the entire group is referred to as the "States" or "Attorneys General," such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business and Practices Act.

<sup>2</sup>With regard to Hawaii, Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions. Hereafter, when the entire group is referred to as the "States" or "Attorneys General," such designation as it pertains to Hawaii, refers to the Executive Director of the State of Hawaii Office of Consumer Protection.

<sup>3</sup>With regard to Montana, Montana is represented by its Department of Commerce, an agency which is not part of the state Attorney General's Office but which is statutorily authorized to represent the State of Montana in consumer protection actions. Hereafter, when the entire group is referred to as the "States" or "Attorneys General," such designation as it pertains to Montana, refers to the Montana Department of Commerce.

<sup>4</sup>The District of Columbia is represented by its Corporation Counsel, who is statutorily authorized to represent the District of Columbia in consumer protection actions. D.C. Code § 28-3909. Hereafter, when the entire group is referred to as the "States" or "Attorneys General," such designation, as it pertains to the District of Columbia, refers to the District of Columbia Corporation Counsel.

to their respective consumer protection statutes<sup>5</sup>, and H&R Block Services, Inc. (“H&R Block”).

As used herein, H&R Block shall refer to H&R Block Services, Inc., its parent corporation, its employees, agents, directors, subsidiaries, affiliates, predecessors, successors or assigns.

### BACKGROUND

1. H&R Block is incorporated in Missouri, with its headquarters located at 4400 Main Street, Kansas City, Missouri, 64111. H&R Block is in the business of individual and business tax return preparation and advice, investment services, mortgage services and other financial activities.
2. H&R Block, through its affiliate offices and franchisees, among other things, provides tax return preparation services to consumers for a fee. In providing its tax return services, H&R Block also offers and provides other for-fee, optional services that are associated with its tax return preparation services. Among these for-fee, optional services is the “Peace of Mind guarantee” (“POM”).
3. For those consumers who purchase POM through H&R Block, H&R Block guarantees that if their preparer makes a mistake in the preparation of the consumer’s tax return, H&R Block will pay up to \$5,000 of any additional income tax that may be owed

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<sup>5</sup>ALABAMA - Deceptive Trade Practices Act, Ala. Code § 8-19-1 *et seq.*; ALASKA - Unfair Trade Practices and Consumer Protection Act, §§ 45.50.471 through 45.50.561; ARIZONA - Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*; ARKANSAS - Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.*; CALIFORNIA - Bus. & Prof. Code §§ 17200 *et seq.*, and 17500 *et seq.*; COLORADO - Colorado Consumer Protection Act, C.R.S. §§ 6-1-101 *et seq.*; DELAWARE - Consumer Fraud Act, 6 Del.C. Section 2511, *et seq.*; UDTPA, 6 Del.C. Section 2531, *et seq.*; DISTRICT OF COLUMBIA - Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.*; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; GEORGIA - Fair Business Practices Act of 1975, O.G.C.A. § 10-1-390 *et seq.*; HAWAII - Haw. Rev. Stat. § 480-2; IDAHO - Consumer Protection Act, Idaho Code § 48-601 *et seq.*; ILLINOIS - Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.* (1998); INDIANA - Deceptive Consumer Sales Act, Indiana Code 24-5-0.5-1 *et seq.*; IOWA - Iowa Consumer Fraud Act, Iowa Code Section 714.16; KANSAS - Kansas Consumer Protection Act, KSA 50-617, *et seq.*; KENTUCKY - Consumer Protection Statute, KRS 367.170; LOUISIANA - LSA R. S. 51:1410 and LSA R. S. 51:1401, *et seq.*; MARYLAND - Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; MASSACHUSETTS - Consumer Protection Act, M.G.L. c. 93A *et seq.*; MICHIGAN - Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418(1) *et seq.* (1994); MISSISSIPPI - Consumer Protection Act, Miss. Code Ann. § 75-24-1 *et seq.*; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEVADA - Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 *et seq.*; NEW JERSEY - Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; NEW MEXICO - Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.* (1978); NEW YORK - N.Y. Gen. Bus. Law §§ 349 & 350 and Executive Law § 63(12); NORTH CAROLINA - Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 *et seq.*; NORTH DAKOTA - Consumer Fraud and Unlawful Credit Practices N.D.C.C. § 51-15-01 *et seq.*; OHIO - Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; OREGON - Unlawful Trade Practices Act, ORS 646.605 to 646.656; PENNSYLVANIA - Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*; RHODE ISLAND - Unfair Trade Practice and Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*; SOUTH DAKOTA - SDCL § 37-24-1 through 35 *et seq.*; TENNESSEE - Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.* (1977); TEXAS - Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. And Com. Code § 17.41 *et seq.*, (Vernon 2002); VERMONT - Consumer Fraud Act, 9 V.S.A. § 2451 *et seq.*; VIRGINIA - Virginia Consumer Protection Act, 59.1-196 *et seq.*; WASHINGTON - Unfair Business Practices/Consumer Protection Act, R.C.W. 19.86; WEST VIRGINIA - Code Section 46A-1-101 *et seq.*; WISCONSIN - Wis. Stat. § 100.18 (Fraudulent Representations); WYOMING - W.S. §§ 40-12-102 *et seq.*

to a taxing authority due to the preparer's error. In addition, a representative from H&R Block will accompany the consumer to any meeting or proceeding a taxing authority has requested concerning errors in the preparation of the consumer's tax return.

#### **ATTORNEYS GENERAL'S POSITION**

4. Based upon an inquiry made by the Attorneys General, the Attorneys General contend that during Tax Season 2001 (the time frame during which income tax returns were prepared for income obtained in calendar year 2000) H&R Block automatically added a fee of \$22 for POM to all consumer tax return preparation invoices without first obtaining the consumer's affirmative acceptance of POM. The practices described in this paragraph violate the consumer protection statutes of the states as set forth in footnote 5 hereof.

#### **H&R BLOCK'S POSITION**

5. H&R Block denies that it violated any of the consumer protection statutes set forth in footnote 5 hereof. H&R Block contends that during Tax Season 2001, all consumers in its standard offices<sup>6</sup> were given a voluntary choice as to whether they wished to purchase POM for an additional \$22. H&R Block maintains that the computer prompt it used did not deprive its consumers of this voluntary choice. H&R Block asserts that it informed consumers that POM was an optional service, and that only approximately 22% of H&R Block's consumers purchased POM during Tax Season 2001.

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<sup>6</sup> In addition to standard offices, H&R Block has approximately 400 Premium® offices nationwide. In Premium® offices, POM is offered as part of the tax services provided to consumers and is not an optional charge. Therefore, H&R Block asserts that the Attorney's General contentions only apply to practices in H&R Block standard offices.

## **I. GENERAL AGREEMENTS**

6. The parties have agreed to resolve the issues raised during the Attorneys General inquiry by entering into this Assurance. H&R Block is entering into this Assurance solely for the purpose of settlement and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, or of any other matter of fact or law, or of any liability or wrongdoing, all of which H&R Block expressly denies. No part of this Assurance constitutes or shall constitute evidence against H&R Block in any action brought by any person(s) or entity or other party of any violation of any federal or state statute or regulation or the common law, except in an action brought by the Attorneys General, or one of them, to enforce the terms of this Assurance.

## **II. ASSURANCES**

7. The assurances set forth herein are applicable to H&R Block's standard offices and to H&R Block's Premium® offices where POM is not included as part of the tax services package provided to consumers and is an optional charge. H&R Block will make the assurances set forth herein part of the policies and procedures that must be followed by its franchisees in their standard offices and Premium® offices, where applicable. H&R Block will use its best efforts to ensure that its franchisees comply with these assurances.

8. H&R Block shall not automatically charge a consumer for POM, place the charge for POM on a consumer's bill or invoice, or generate a document that evidences a consumer's agreement to purchase POM unless the consumer has affirmatively assented to the purchase of POM and H&R Block has offered the consumer POM consistent with the terms of this Assurance.

9. In offering POM to consumers, H&R Block shall not initially state either orally, in writing, or in a presentation on a computer screen that it "recommends" (or words of similar import) POM.

10. H&R Block shall not automatically predetermine, through the use of a pre-selected "yes" on a computer screen or any other means, that a consumer has elected to purchase POM.

11. Concurrent with its initial offer of POM, and prior to making any recommendation

regarding POM, H&R Block shall describe the material terms and conditions of the POM guarantee program to the consumer by displaying them on the computer screen during the preparation of the consumer's tax return and shall orally review those terms and conditions with the consumer. Those terms and conditions shall include a clear and conspicuous statement that the consumer has a right to cancel POM for seven (7) days from the date POM is purchased and receive a full refund of the amount paid for POM.

12. For every sale of POM, H&R Block shall present the consumer with a written copy of the terms and conditions of the POM guarantee, including the seven (7) day right of cancellation. This written copy shall be signed and dated by the consumer and H&R Block, and shall indicate that the consumer has agreed to purchase POM. H&R Block shall give a copy of the signed terms and conditions to the consumer and maintain any signed copy of the terms and conditions for as long as the term of the guarantee.

13. H&R Block shall list separately and in a clear and conspicuous manner, whether printed or on a computer screen, the purchase of POM and separately set forth the itemized cost for POM on any invoice or bill.

### **III. CONSUMER REFUNDS**

14. H&R Block shall establish a fund of one million dollars (\$1,000,000.00) to be utilized to pay refunds to eligible consumers. An eligible consumer shall be a consumer who had his/her tax return prepared at an H&R Block office in Tax Season 2001, who was charged for POM as an additional component of his/her tax return preparation, never utilized POM for which he/she was charged in Tax Season 2001 and believes that he/she was never informed that POM was added for a fee to his/her tax return preparation service in Tax Season 2001.

15. In order to receive a refund, an eligible consumer must make a request, either by phone, in writing or by the website referenced in paragraph 16, for such refund within 120 calendar days from the Effective Date of this Assurance. The request must include the consumer's name, address, phone number, and social security number. Further, H&R Block shall take all measures available to ensure that the information provided by consumers is utilized solely for refund requests under this Assurance and that the

information is not utilized for marketing purposes by H&R Block and is not provided to any other individual, group, entity or business, whether an affiliate of H&R Block or not, for any other purpose. Requests for refunds forwarded to H&R Block from any of the offices of the Attorneys General shall be treated by H&R Block as consumer requests for refunds.

16. H&R Block shall establish by the Effective Date of this Assurance a toll free telephone number that consumers may call to request a refund as set forth in this Assurance. Further, H&R Block shall establish adequate and appropriate measures on the toll free telephone number to handle refund requests made by those consumers whose primary language is Spanish. H&R Block shall also establish a special website for consumer refund requests. To the extent practicable, the Attorneys General will inform consumers of the availability of the website to file refund requests. The H&R Block website home page shall provide, for the period of time in which consumers can make POM refund requests under this Assurance, a link to the POM refund request website. Further, the POM refund request website screens shall only contain the mechanisms necessary to complete a refund request and shall not contain any marketing materials, other than the H&R Block logo.

17. H&R Block shall not be responsible for any additional costs for any notice to consumers regarding the refund program set forth in this Assurance.

18. H&R Block shall establish a liaison to the Attorneys General who shall be the recipient of any requests for refunds that may be sent to the Attorneys General.

19. Any consumer who requests and receives a refund shall, upon the receipt of his/her refund payment, forego any claim he/she may have under POM for which he/she was charged in Tax Season 2001.

20. H&R Block shall, within forty-five (45) calendar days after the end of the 120-day refund claim period, send to all the eligible consumers who requested a refund, a check for the full amount that they paid for POM that they purchased from H&R Block in Tax Season 2001. If the total dollar amount of requests for refunds by eligible consumers exceeds one million dollars (\$1,000,000.00), H&R Block shall calculate refunds to eligible

consumers on a pro-rata basis and shall notify the Attorneys General who are signatories to this Assurance of the pro-rata refund amount that consumers will receive at least ten (10) calendar days prior to sending refund checks to consumers.

21. H&R Block shall, two hundred and seventy (270) calendar days after the end of the 120-day refund claim period, provide a final report outlining the total number of requests for refunds made from consumers nationally and in each state, the total number of requests for refunds that H&R Block approved nationally and in each state, the total amount of refunds paid out by H&R Block nationally and in each state and the total number of refund checks that were either returned or not deposited or cashed by consumers in each state as of the date of the report. The report shall be submitted to each state's signatory to this Assurance. Further, H&R Block shall maintain the ability to search and report on, at the request of any Attorney General, any individual consumer requests for refunds and the status of any approval of those requests from consumers of that Attorney General's state, provided, however, H&R Block's duty to report to the Attorneys General regarding the refund program shall end three hundred and ninety (390) calendar days after the Effective Date of this Assurance, and H&R Block shall only be required to retain records regarding the refund program for four hundred and twenty-five (425) calendar days after the Effective Date of this Assurance. At reaching the four hundred and twenty-sixth (426th) calendar day after the Effective Date of this Assurance, H&R Block will undertake those steps necessary to ensure that any information that was provided to H&R Block by consumers in order to request or obtain a refund check is disposed of so that it may not be utilized, in any fashion, by any individual, group, entity or business.

22. H&R Block shall, at the time that the final report is due, send to each signatory Attorney General to this Assurance a payment equal to the total amount of all refund checks that were written under this Assurance and were either returned to H&R Block or not deposited or cashed by eligible consumers in each Attorney General's respective state

as of the date of the report.<sup>7</sup> Further, H&R Block shall provide, at the time the final report is due, each signatory Attorney General to this Assurance with the last known name and address of any individual whose refund check was either returned to H&R Block or was not deposited or cashed by eligible consumers in each Attorney General's respective state as of the date of the report. If any consumer attempts to deposit or cash a refund check after the date of the report and complains to H&R Block when the check is not cashed, H&R Block will refer that consumer to the Attorney General to whom H&R Block forwarded the information and payment required by this paragraph.

#### **IV. CONSUMER EDUCATION**

23. H&R Block shall, within thirty (30) calendar days of the completion of the Consumer Refund program set forth in paragraphs 14-22 of this Assurance, remit to the states through the Attorney General of Ohio the funds not distributed pursuant to the Consumer Refund program which remains in the Consumer Refund Fund.<sup>8</sup> The Attorneys General shall use the funds remitted pursuant to this paragraph for the purpose of creating and implementing a Consumer Education Program. A committee of representatives from the Attorneys General, selected by the Attorneys General, shall develop or cause to be developed the Consumer Education Program, which shall take the form of a brochure or public service announcement concerning tax issues important to consumers. The Consumer Education Program shall not reference in any way H&R Block. The Attorneys General shall provide H&R Block with a description of the proposed program. Such notification shall set forth a description of the proposed program, including an identification of the tax issues addressed and the format of the program.

#### **V. PAYMENT TO THE ATTORNEYS GENERAL**

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<sup>7</sup> With respect to the State of West Virginia, said payment shall be used at the discretion of the Attorney General solely for consumer protection purposes, including but not limited to, restitution, consumer education, credit or bankruptcy counseling and education, conflict resolution programs, and costs associated with implementing restitution orders.

<sup>8</sup> The Attorney General of Kentucky has not agreed that any money shall be used for a consumer education program but does not object to such use. The funds earmarked for these purposes are the same amounts regardless of Kentucky's participation in this agreement. Therefore, the Commonwealth of Kentucky has no claim to or legal interest in the funds which might be used for the consumer education program.

24. H&R Block agrees to pay to the participating Attorneys General the sum of \$2,300,000. On or after the Effective Date, the Attorney General of Ohio shall notify H&R Block in writing as to the correct mailing addresses and respective amounts of the checks that will comprise the \$2,300,000. Within ten (10) calendar days after the receipt of this written notice, H&R Block will send the checks by mail directly to the respective Attorneys General. Subject to their respective state laws and policies, the Attorneys General may use such amount for any purpose provided by state law, including but not limited to, their attorneys' fees and other costs of the inquiry leading to this Assurance, placement in or application to a consumer education, litigation or local consumer aid fund or revolving fund or for other uses to defray the costs of the inquiry leading to this Assurance, as permitted by the laws of each State.<sup>9</sup>

## **VI. COMPLIANCE EFFORTS AND REPORTS**

25. H&R Block shall institute supervisory compliance procedures which are reasonably designed to insure compliance with this Assurance, including, without limitation, the training of relevant employees, revisions to and/or development of appropriate training materials and the development and implementation of internal procedures, including periodic monitoring to ensure compliance with the terms of this Assurance.

26. Within five (5) calendar days of the Effective Date of this Assurance, H&R Block shall send by written and/or electronic means, to all employees and managers involved in

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<sup>9</sup> With respect to the State of Colorado, said payment shall be utilized, first, for reimbursement of Colorado's actual costs and attorney fees and, second, to be held, along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement efforts. With respect to the State of Kentucky, said payment shall be held in an interest bearing trust and agency account and shall be deposited into the Consumer Protection Fund Division's Consumer and Education Fund for the purposes described herein. With respect to the State of Georgia, said payment shall be used for the reimbursement of costs, including monitoring of compliance, and any remainder, at the end of twelve months, shall be delivered to the Georgia Consumer Preventative Education Plan pursuant to O.G.C.A. § 10-1-381. With respect to the State of Alaska, said payment shall be utilized by the Attorney General for consumer protection and antitrust investigations, enforcement, and education. With respect to the State of Illinois, the payment made pursuant to this paragraph shall be deposited into the Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund, to be used for law enforcement activity, consumer and educational programs associated with the enforcement of the Illinois Consumer Fraud Act, 815 ILCS 505.1 et seq. With respect to the State of Arkansas, said payment shall be held in trust by the Attorney General for uses directly related to the Attorney General's consumer protection efforts and deposited in the Consumer Education and Enforcement Fund. With respect to the State of West Virginia, said payment shall be used at the discretion of the Attorney General solely for consumer protection purposes, including but not limited to, restitution, consumer education, credit or bankruptcy counseling and education, conflict resolution programs, and costs associated with implementing restitution orders.

POM, including, but not limited to regional, district and office managers, complete instructions as to how POM is to be presented and sold to any consumer in compliance with the terms of this Assurance. In addition, H&R Block shall in this same communication set forth the requirements and steps that are necessary for a consumer to request a refund under the terms of this Assurance.

27. H&R Block shall file with each of the Attorneys General two written Compliance reports, each signed by an officer with knowledge of H&R Block's obligations under this Assurance, as to H&R Block's compliance with the terms and provisions hereof, the first to be filed six months after the Effective Date of this Assurance, and the second six months thereafter.

#### **VII. GENERAL PROVISIONS**

28. This Assurance shall be governed by the laws of the States. Nothing in this Assurance shall be deemed to permit or authorize any violation of the laws of any state or otherwise be construed to relieve H&R Block of any duty to comply with the applicable laws, rules and regulations of any state, nor shall anything herein be deemed to constitute permission to engage in any acts or practices prohibited by such laws, rules or regulations. This Assurance constitutes the full and final resolution between the Attorneys General and H&R Block of all civil claims relating to the allegations and contentions by the Attorneys General regarding POM for Tax Season 2001 as set forth in paragraph 4 of this Assurance.

29. This Assurance does not constitute an approval by the Attorneys General of any of H&R Block's programs or practices and H&R Block shall not make any representation to the contrary.

30. Where allowed by applicable state law, the respective Attorneys General, without further notice, may make *ex parte* application to any appropriate state court for an order approving this Assurance, which shall be considered an Assurance of Voluntary Compliance or an Assurance of Discontinuance as provided by the States' respective laws, or otherwise file this Assurance in any appropriate state court.

31. This Assurance may be executed in counterparts.

32. The "Effective Date" of this Assurance shall be April 24, 2003 or the date on which a fully executed copy of this Assurance is delivered to H&R Block, whichever is later.

33. Nothing in this Assurance shall be construed as a waiver of any private rights of any person.

34. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by duly authorized representatives of the parties agreeing to such modification. Any modification of this Assurance shall be initiated by a written request from the party(s) seeking the modification to the other party(s), and a timely response by the other party(s) shall be given. A modification can only be made through a written agreement signed by the Attorney(s) General agreeing to the modification and H&R Block. To seek any modification from a single Attorney General, H&R Block shall send a written request for such modification to that Attorney General who shall respond to such request within 30 days of its receipt. To seek a modification from more than one Attorney General, H&R Block shall send written request for such modification to the Attorney General of Ohio who will coordinate the Attorneys General response to such request within 30 days of its receipt. All parties will consider in good faith any request for modification.

35. The undersigned representative for each party certifies that he/she is fully authorized by the party he/she represents to enter into the terms and conditions of this Assurance and to legally bind the party he/she represents to the Assurance.

#### **VIII. SIGNATURES**

We the undersigned, who have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Signed this \_\_\_\_ day of April 2003.

**H&R Block Services, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Counsel for H&R Block Services, Inc.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**For the States:**

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