



## INTRODUCTION

Plaintiffs Canieva Hood (“Hood”) and Congress of California Seniors, by their attorneys, bring this action to challenge the Defendants’ unlawful and unfair practice of seizing consumers’ tax refunds to repay debts owed to other third-party lenders without prior consent, permission or authorization. In the alternative, Plaintiffs challenge the Defendants’ practice of misleading consumers into entering into loan agreements that permit the Defendants to seize tax refunds for debt collection purposes. Plaintiffs seek compensatory and punitive damages, injunctive relief, and attorneys’ fees, costs and expenses.

## JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this action pursuant to California Civil Code §§ 1780 and 1781, 1788.30 and Business and Professions Code §§17203 and 17204.

This court has personal jurisdiction over Defendant Pacific Capital Bank as it is a California corporation.

This court has personal jurisdiction over Defendant Jackson Hewitt as Jackson Hewitt does business throughout California, including San Francisco County. Jackson Hewitt has offices and/or franchises in California.

Venue is proper in the County of San Francisco pursuant to California Civil Code § 1780(c) because the Defendants are doing business in San Francisco.

## THE PARTIES

1. Plaintiff Canieva Hood, (“Hood”) is a natural person and a resident of Los Angeles, California. Hood is employed as an administrative assistant. She supports two children and her mother. She has received the Earned Income Tax Credit from the Internal Revenue Service

(“IRS”) during approximately the past 9 years.

2. The Congress of California Seniors (hereafter “CCS”), is located in Sacramento, California. Established in 1977, CCS is a statewide nonprofit education and advocacy organization dedicated to improving the life of seniors and their families. CCS is an affiliate of the Alliance for Retired Americans, which was established eighteen years ago for the purposes of representing the interests of the elderly throughout California.

3. Defendant Pacific Capital Bank, NA is a California bank with its principal place of business at 20 East Carrillo Street, Santa Barbara, California. Pacific Capital Bank, NA is chartered by the Office of the Comptroller of Currency. One of the names Pacific Capital Bank operates under is Santa Barbara Bank & Trust. (Pacific Capital Bank, NA and Santa Barbara Bank & Trust hereinafter will be jointly referred to as “SBBT”). Among other functions, SBBT is engaged in the business of making refund anticipation loans (“RALs”) to consumers.

4. Defendant Jackson Hewitt Inc., is Virginia corporation with its principal office in Parsippany, New Jersey. Jackson Hewitt is a subsidiary of Cendant Corporation, a Delaware corporation with its principal office in New York, NY. Jackson Hewitt is engaged in the business of tax preparation. It is, through its officers, agents, and employees, engaged in and sells tax preparation services, and is doing such business in California with offices and/or franchises located in San Francisco, California and many other California locations.

5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1-20, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes that each of the fictitiously named Defendants, including any such Defendants that may be the agents, representatives, or parent or subsidiary corporations of the named Defendants, is responsible in some manner for the occurrences, events, transactions, and injuries alleged

herein, and that the harm suffered by the persons Plaintiff represents and by the general public as hereinafter set forth were proximately caused by said Defendants. Plaintiff will amend this complaint to state the true names and capacities of said Doe Defendants when ascertained.

6. Plaintiff is informed and believes and thereon alleges that each of the Defendants, including the Doe Defendants, acted in concert with each and every other Defendant, intended to and did participate in the events, acts, practices and courses of conduct alleged herein, and was a proximate cause of damage and injury thereby to Plaintiff as alleged herein.

7. At all times herein mentioned, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

#### CLASS ALLEGATIONS

8. Pursuant to California Civil Code § 1781 and California Code of Civil Procedure § 382, Plaintiff Hood brings this action on behalf of herself and all other persons similarly situated. The class that Plaintiffs represent (hereinafter the "Plaintiff Class") is composed of all persons who have or have had at any time since March 18, 1999, had their refunds seized by SBBT as a result of the conduct challenged by this action.

9. The Plaintiff Class includes a subclass, referred to herein as the “No Contract Subclass” or the “Subclass,” which consist of all those members of the Plaintiff Class who had their RAL Application/Agreements rejected by the Defendants, did not receive an “Accelerated Check Refund” from the Defendants, and had their refunds seized by the Defendants.

10. Plaintiff Hood is informed and believes and on that basis alleges that the Plaintiff Class is so numerous that joinder of all members would be impracticable. The exact size of the Plaintiff Class, and the identity of the members of the class are ascertainable from the business records of Defendant.

11. Questions of law and fact common to the Plaintiff Class exist that predominate over questions affecting only individual members, including, *inter alia*, the following:

(a) the Defendants violated Civil Code §1770(n) by representing that they have rights and remedies that are prohibited by law, specifically that they have the right to collect the third party debt without providing notices required by law; and

(b) whether Defendants violated Civil Code §1770(s) by including a provision authorizing cross-lender debt collection in their RAL Application/Agreements and whether without discussion or negotiation Defendants standardized the form contracts, drafted solely by them.

12. The claims asserted by Plaintiff Hood in this action are typical of the claims of the members of the Plaintiff Class as described above, the claims arise from the same course of conduct by Defendants, and the relief sought is common.

13. Plaintiff Hood will fairly and adequately represent and protect the interests of the members of the Plaintiff Class. Plaintiff Hood has retained counsel competent and experienced in both consumer protection and class action litigation.

14. For class claims alleged under California Code of Civil Procedure § 382, a class action is superior to other methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, because the economic damages suffered by the individual class members may be relatively modest, albeit significant, compared to the expense and burden of individual litigation, it would be impracticable for members of the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. There will be no undue difficulty in the management of this litigation as a class action.

#### PRIVATE ATTORNEY GENERAL ALLEGATIONS

15. This action is brought by Plaintiffs acting as private attorneys general pursuant to the Unfair Competition Law, Business and Professions Code §17200, *et seq.* Pursuant to Business and Professions Code §§17203 and 17204, a private attorney general action is appropriate and necessary because SBBT has engaged in the acts described herein as a general business practice. Plaintiffs request that this Court decide that SBBT's practice of seizing tax refunds for debt collection purposes without the voluntary and knowing consent of consumers is unlawful, unfair, deceptive and unenforceable, and enjoin SBBT from engaging in this practice. Plaintiffs also request that this Court decide that SBBT's imposition of a contract provision permitting this debt collection practice is unlawful, unfair, deceptive and unenforceable, and enjoin SBBT from engaging in this practice.

#### FACTUAL ALLEGATIONS

16. On January 31, 2002, Hood went to the Trotwood, Ohio office of Jackson Hewitt ("JH") to have her taxes prepared. Hood inquired into the option of getting her refund quickly.

17. A JH employee informed Hood about two options for getting her refund quickly, either the next day or in 48 hours. The JH employee did not inform Hood that both the next day

and the 48 hour options actually were loans. Instead, the JH employee characterized these options using the words “rapid refund.” The employee also did not inform Hood that the loan agreement contained a provision allowing SBBT to seize her refund if she had any prior RAL debts outstanding, including debts owed to other RAL lenders.

18. Hood chose the RAL that would be received in 48 hours. Hood did not realize that she was taking out a loan or that in seeking a “rapid refund,” she might be agreeing to let SBBT take her refund to repay any outstanding RAL debts.

19. After preparing her tax returns, the JH employee instructed Hood to sign and initial a set of documents. Hood did not have an opportunity to read the documents.

20. In the stack of documents signed by Hood, there was a loan application and agreement for a RAL. In paragraph 6.a. of the RAL Application/Agreement, it stated:

COLLECTION OF DELINQUENT RAL You authorize JH and SBBT to exchange information about your current and prior RALs with other RAL lenders including Bank One, N.A., Beneficial National Bank/Household Bank, First Security Bank, River City Bank, County Bank of Rehoboth Beach, DE and Republic Bank & Trust Company/Refunds Now. If you have delinquent RALs from prior years with SBBT or any or one more of these lenders that have not been discharged in bankruptcy, you will not be eligible for a RAL but will instead receive an ACR. Upon receipt of your tax refund, you authorize SBBT to deduct from the Account, after deducting the applicable fees as set forth in Section 2 above, the total amount due on the prior year RALs and forward such amount to the appropriate RAL lender(s) prior to disbursing the balance of the Account to you.

A copy of the loan agreement is attached as Exhibit 1.21. On Saturday, February 9, Hood received a letter from Defendant SBBT stating that her RAL was denied because SBBT had been informed of an outstanding RAL debt with Household Bank. The letter also stated that if the IRS sent Hood’s refund to SBBT, those funds would be used to satisfy the outstanding RAL debt. A copy of this letter is attached as Exhibit 2.

22. Hood never received her tax refund. Upon information and belief, Hood's refund was seized by SBBT and paid to Household Bank to satisfy an outstanding RAL debt. Hood also never received or was offered an "Accelerated Check Refund" ("ACR"). Upon information and belief, the ACR is a non-RAL product that represents a consumer's tax refund minus the tax preparation and ACR fees.

23. Subsequently, Hood contacted a legal services program in Ohio seeking assistance. In June 2002, an attorney from the Equal Justice Foundation in Ohio sent letters on Hood's behalf to Defendant SBBT and Household Bank requesting disclosure of the information upon which SBBT relied in denying Hood's application. Copies of the responses from SBBT and Household Bank are attached as Exhibits 3 and 4.

24. Because of the loss of her tax refund, Hood was unable to pay her rent and received an eviction notice. Hood is still experiencing financial difficulties because of the loss of her tax refund.

#### **SBBT's RAL program**

25. A refund anticipation loan is a short term loan secured by a consumer's expected tax refund. RALs loan are usually *not* made by the tax preparer, but by a separate lender, usually a bank such as SBBT.

26. PCB's filings with the Securities and Exchange Commission state that the company earned \$26.4 million in gross income from RAL fees in 2001.

27. Upon information and belief, when SBBT makes a RAL, it prepares to collect on the loan by opening a temporary bank account to receive electronic deposit of the refund. The documents signed by the consumer instruct the IRS to direct deposit the refund into that account. SBBT is repaid when the consumer's refund appears in the temporary bank account.

28. Upon information and belief, if the consumer's refund is not deposited into the temporary bank account or is less than expected, the bank will hold the consumer liable for the full amount of the RAL.

29. Upon information and belief, there are only a handful of banks that make refund anticipation loans. The three banks that control most of the RAL market are Household Bank, Bank One and Defendant SBBT. Other banks that make RALs include Republic Bank & Trust (d.b.a. Refunds Now) and River City Bank.

30. Upon information and belief, banks that make RALs, including SBBT and Household Bank, have entered into a cooperative agreement with each other to collect back debts from RAL customers. RAL lenders include a provision their RAL Application/Agreements to implement this cooperative agreement,

FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF AND DAMAGES  
(Violation of Consumer Legal Remedies Act, California Civil Code §§1750 *et seq.*, Brought by  
the Individual Plaintiff against SBBT)

31. Hood realleges and incorporates herein as though set forth in full, the allegations of paragraphs 1 through 30 above.

32. Hood brings this action seeking injunctive relief pursuant to the Consumer Legal Remedies Act (CLRA), California Civil Code §§ 1770 and 1780. Section 1770(n) of the CLRA specifically prohibits representations that a transaction confers or involves rights, remedies, or obligations which it does not have or involve or which are prohibited by law. Section 1770(s) of the CLRA prohibits insertion of an unconscionable provision in a contract.

33. The Defendants have violated § 1770(n) of the Act by representing that they have rights and remedies that are prohibited by law, specifically that they have the right to collect a third party debt without providing notices required by law.

34. The Defendants have violated § 1770(s) of the Act by including the SBBT Cross-Lender Debt Collection Provision in their RAL Application/Agreements. The Defendants possess bargaining strength and power far superior to that of Hood and other customers. Without discussion or negotiation, the Defendants offer standardized form contracts, drafted by the Defendants, which are contracts of adhesion because they are offered on a take-it-or-leave-it basis.

35. The SBBT Cross-Lender Debt Collection Provision is substantially one-sided in favor of the Defendants. There is no consideration for the SBBT Cross-Lender Debt Collection Provision. It is, therefore, unlawful, unfair, fraudulent and unconscionable.

36. The SBBT Cross-Lender Debt Collection Provision does not fall within the reasonable expectations of Hood or of the Defendants' other customers, and is unduly oppressive. It is, therefore, unlawful, unfair, fraudulent and unconscionable.

37. The SBBT's Cross-Lender Debt Collection Provision unlawfully, unfairly and fraudulently deprives Hood and the Defendants' other customers of their tax refunds without their voluntary, knowing and intelligent consent.

38. Pursuant to California Civil Code §§ 1770 and 1780, Hood is entitled to recover her actual damages sustained as a result of the Defendants' violations of the CLRA. Such damages include, without limitation, the amount of her federal tax refund seized by the Defendants, other resulting monetary losses and damages, and emotional distress suffered by Hood, which damages are in an amount to be proven at trial.

39. Pursuant to California Civil Code §§ 1770 and 1780, Hood is entitled to enjoin implementation of the SBBT Cross-Lender Debt Collection Provision and to recover her reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION FOR DAMAGES AND PENALTIES

(Violation of the Robbins-Rosenthal Fair Debt  
Collection Practices Act;  
Asserted on behalf of Hood Individually Against SBBT)

40. Hood realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 30 above.

41. The Robbins-Rosenthal Fair Debt Collection Practices Act (Robbins-Rosenthal Act), Civil Code § 1788, *et seq.*, prohibits unfair and deceptive acts and practices in the collection of consumer debts.

42. By their acts and practices as hereinabove described, the Defendants have violated the Robbins-Rosenthal Act as follows, without limitation:

a) In failing to inform consumers that SBBT would engage in debt collection practices during the loan application and approval process, the Defendants have violated § 1788.13(i), which prohibits the false representation of the true nature of the business or services being rendered by the debt collector. SBBT has represented itself as a lender but failed to disclose the material fact that it is acting as a debt collector with respect to the same transaction.

b) By failing to include certain debt collection notices required by law.

43. Pursuant to § 1788.30 of the Robbins-Rosenthal Act, Hood is entitled to recover her actual damages sustained as a result of the Defendants' violations of the Robbins-Rosenthal Act. Such damages include, without limitation, the amount of her federal tax refund seized by SBBT, other resulting monetary losses and damages, and emotional distress suffered by Hood, which damages are in an amount to be proven at trial.

44. In addition, because the Defendants' violations of the Robbins-Rosenthal Act were committed willingly and knowingly, Hood is entitled to recover, in addition to her actual damages, penalties of at least \$1,000 per violation as provided for in the Act.

45. Pursuant to § 1788.30(c) Robbins-Rosenthal Act, Hood is entitled to recover all attorneys' fees, costs and expenses incurred in the bringing of this action.

THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF AND RESTITUTION  
(Violation of the Unfair Competition Law, California Business and Professions Code §§ 17200,  
*et seq.*, Brought by All Plaintiffs Against SBBT)

46. Plaintiffs reallege and incorporate herein by this reference each and every allegation set forth in paragraphs 1 through 30 above.

47. Plaintiffs, as private attorneys general, challenge the Defendants' practice of cross-lender debt collection and inclusion of the SBBT Cross-Lender Debt Collection Provision in the RAL Application/Agreement.

48. The Unfair Trade Practices Act defines unfair competition to include any "unlawful," "unfair" or "fraudulent" business act or practice. Business and Professions Code § 17200.

49. The Defendants' practices are unlawful, unfair and fraudulent business practices for the reasons set forth below, without limitation:

- a) The practice of cross-lender debt collection and the inclusion of the Cross-Lender Debt Collection Provision in RAL Agreements violate the Consumer Legal Remedies Act, §§ 1770 (n) and (s);
- b) The practice of cross-lender debt collection violates the Robbins-Rosenthal Act;
- c) The practice of cross-lender debt collection and the inclusion of the Cross-Lender Debt Collection Provision in RAL Agreements offends public policy, is oppressive and unscrupulous, and causes substantial injury to consumers; and

d) The Defendants' deceive and mislead consumers when they inducing consumers to sign RAL Agreements containing the Cross-Lender Debt Collection Provision, because consumers are not clearly and effectively informed about the existence and effect of the SBBT Cross-Lender Debt Collection Provision.

50. Pursuant to Business and Professions Code § 17200, *et seq.*, Plaintiffs are entitled to enjoin the practice of cross-lender debt collection and to obtain restitution of all funds obtained by the Defendants by reason of and through the use of these unlawful, unfair and fraudulent acts and practices.

51. Pursuant to Business and Professions Code § 17203, Plaintiffs, individually, and on behalf of all members of the general public who are, have been or may be, subjected to the unlawful, unfair, and fraudulent practices of the Defendants, hereby request injunctive relief prohibiting these practices in the future, and such other orders as may be necessary to restore to any person in interest, any money or property, real or personal, which may have been acquired by Defendant by means of this unlawful, unfair and fraudulent business practice, or to disgorge profits the Defendants have earned thereby.

52. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover their reasonable attorney's fees, costs and expenses incurred in bringing this action.

FOURTH CAUSE OF ACTION FOR DAMAGES  
(Conversion, Asserted on behalf of the No Contract Subclass Against SBBT)

53. Plaintiffs reallege and incorporate herein by this reference each and every allegation set forth in paragraphs 1 through 30 above.

54. The Defendants did not have a valid contract with Subclass members because they rejected the Subclass member's applications for a RAL and did not give them ACRs. No contract was formed.

55. In the alternative, there was no consideration for the SBBT Cross-Lender Debt Collection Provision. It is, therefore, unlawful, unfair, fraudulent and unconscionable, and of no legal effect.

56. Because the contract and/or SBBT Cross-Lender Debt Collection Provision are null, void and of no legal effect, the Defendants unlawfully, wrongfully and fraudulently exercised dominion and control over the property of the Subclass.

57. The Defendants knowingly deprived the Subclass of the beneficial use of their property by these actions, the Defendants have committed the common law tort of conversion.

58. The Subclass is entitled to recover their actual damages sustained as a result of the Defendants' conversion. Such damages include, without limitation, the amount of the Subclass' federal tax refunds seized by the Defendants, and other resulting monetary losses and damages, which damages are in an amount to be proven at trial.

#### FIFTH CAUSE OF ACTION

(Aiding and Abetting, Brought By All Plaintiffs Against Jackson Hewitt)

58. The Defendants each knew or realized that the other Defendants were engaging in or planned to engage in the unlawful acts, as more particularly alleged above. Knowing or realizing that SBBT and other Defendants were engaged in the unlawful conduct, the other Defendants nevertheless facilitated and continued to facilitate the commission of those unlawful acts as alleged above. The Defendants intended to encourage and facilitate the commission of the unlawful acts, and did encourage, facilitate, aid, promote and/or instigate the commission of

unlawful acts, and thereby aided and abetted the other Defendants unlawful conduct. For these reasons, the other Defendants are liable for the violations committed by SBBT.

SIXTH CAUSE OF ACTION

(Declaratory Relief, Brought by All Plaintiffs Against SBBT and JH)

60. Plaintiffs reallege and incorporate herein as though set forth in full the allegations of paragraphs 1 through 30 above.

61. An actual controversy has arisen and now exists relating to the rights and duties of the parties herein. The Plaintiffs contend that:

a) the Defendants' practice of cross-lender debt collection is unlawful, unfair and fraudulent;

b) the Defendants' practice of inducing consumers into entering into RAL Application/Agreements containing the SBBT Cross-Lender Debt Collection Provision is misleading, deceptive, fraudulent, unfair and unlawful; and

c) the RAL Agreement/Application and/or SBBT Cross-Lender Debt Collection Provision are unconscionable, unlawful, unfair, unenforceable, oppressive, and are void and of no force or effect in all respects.

62. The Plaintiffs contend that the Defendants' practices have violated the Consumer Legal Remedies Act, the Robbins-Rosenthal Act, the Unfair Competition Law, Business and Professions Code §17200, *et seq.* The Subclass also contends that the Defendants have converted their property.

63. The Defendants dispute the Plaintiffs' contentions. They contend that its practice of cross-lender debt collection is lawful and that the SBBT Cross-Lender Debt Collection Provision is valid, creates binding contracts, and is enforceable in all respects.

64. Plaintiffs desire a declaration as to the lawfulness of the Defendants' practice of cross-lender debt collection, the validity and enforceability of the SBBT Cross-Lender Debt Collection Provision, and whether the Defendant's methods of inducing consumers to enter into the Provision is unlawful, unfair or fraudulent. A judicial declaration is necessary and appropriate at this time so that Plaintiffs may ascertain their rights and duties, and those of other affected persons.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray as follows:

1. That this Court certify this case as a class action and appoint Plaintiffs as class representatives;
2. That this Court find and declare the Defendants' acts and practices as described herein to be unlawful, unfair and fraudulent;
3. That Defendants be permanently enjoined from engaging in the unlawful, unfair and fraudulent acts and practices alleged herein;
4. That Defendants be ordered to disgorge all unjust enrichment obtained from the unlawful, unfair and fraudulent acts and practices alleged herein; and
5. That Plaintiffs and the Plaintiff Class be awarded compensatory damages according to proof at trial;
6. That Plaintiffs and the Plaintiff Class be awarded punitive damages according to proof at trial;
7. That Defendants be ordered to make restitution to all affected members of the general public;

8. That Plaintiffs be awarded attorneys' fees and expenses pursuant to California Civil Code § 1790(d), and California Civil Code § 1788.30(c), and California Code of Civil Procedure § 1021.5.

9. For costs of suit herein incurred; and

10. For such other and further relief as the court may deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all causes of action so triable.

DATED: March 18, 2003

Respectfully submitted,

THE STURDEVANT LAW FIRM  
A Professional Corporation  
James C. Sturdevant  
Monique Olivier

THE NATIONAL CONSUMER LAW CENTER  
Stuart Rossman  
Chi Chi Wu

By: \_\_\_\_\_  
James C. Sturdevant  
Attorneys for Plaintiffs