

Mallon

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

**SHARON HAWA and
KEVIN and DEBORAH JOHNS,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

SUMMONS

Index No.

-against-

Date Filed:

**H&R BLOCK TAX AND BUSINESS
SERVICES, INC.,**

Defendants.

10 APR 09 PM 12:32
CLERK
COUNTY CLERK
BRONX COUNTY

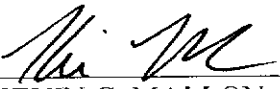
RECEIVED

Venue is designated in County of The Bronx

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
April 7, 2010



KEVIN C. MALLON
JAMES B. FISHMAN
FISHMAN & MALLON, LLP
305 Broadway, Suite 900
New York, New York 10007
(212) 897-5840
Attorneys for the Plaintiffs

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

10 APR 19 11:12:32
BRONX COUNTY
CLERK

RECEIVED

**SHARON HAWA and
KEVIN and DEBORAH JOHNS,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

-against-

**VERIFIED
COMPLAINT**

**H&R BLOCK TAX AND BUSINESS
SERVICES, INC.,**

Defendants.

The plaintiffs, **SHARON HAWA** (hereafter, "Ms. Hawa") and **KEVIN** and **DEBORAH JOHNS** (hereafter "Mr. and Mrs. Johns")(collectively, the "plaintiffs") individually, as well as on behalf of all other persons similarly situated, by their attorneys Fishman & Mallon, LLP, as and for their complaint against the defendant **H&R BLOCK TAX AND BUSINESS SERVICES, INC.** (hereafter "H&R Block" or "defendant"), allege as follows, upon information and belief, except as those allegations which directly relate to the plaintiffs themselves, which are alleged upon personal knowledge, as follows:

PRELIMINARY STATEMENT

1. This case is brought as a class action for actual and punitive damages based on common law claims for negligence and gross negligence.
2. The plaintiffs' were customers of H&R Bock, the self-proclaimed "world's largest tax preparation company". Plaintiffs are informed and believe that

employees of H&R Block obtained their personal information and prior year's tax returns from H&R Block's files and used that information to file fraudulent tax returns employing the plaintiffs' names and personal identifying information in order to obtain substantial tax refunds due to the plaintiffs.

3. H&R Block has long known that some of its employees have improperly accessed its customers tax returns and personal identifying information and used that information to file fraudulent tax returns in the name of those customers in order to steal tax refunds due from federal and state governments. Despite its knowledge of this ongoing problem, H&R Block has failed to enact measures to adequately ensure the safety of its customers' confidential information.

4. Additionally, after the plaintiffs' identities were stolen by H&R Block's employees it has, at all times, refused to offer any meaningful relief to them or cooperate with the plaintiffs' attempts to mitigate their losses.

5. Accordingly, as a direct and proximate result of H&R Block's negligence and/or gross negligence, its employees were able to access the plaintiffs' prior tax returns and use that information to file false returns and unlawfully obtain tax refunds due from the Federal and New York State Governments in the names of the plaintiffs.

///

///

///

///

PARTIES

6. The plaintiff SHARON HAWA is a person over the age of eighteen who, at all relevant times, has resided in Bronx County, New York.

7. The plaintiffs KEVIN AND DEBORAH JOHNS are husband and wife each of whom is over the age of eighteen and at all relevant times have resided in Bronx County, New York.

8. The defendant H&R BLOCK TAX AND BUSINESS SERVICES, INC. ("H&R Block") is a Delaware corporation engaged in the business of a tax preparation company with a principal place of business in Kansas City, Missouri. H&R Block claims to be the world's largest tax preparation company.

9. H&R Block maintains offices throughout the United States including at 3736 Riverdale Avenue, Bronx, New York. (The "Riverdale Avenue Office")

FACTS PERTAINING TO SHARON HAWA

9. Ms. Hawa has hired Block to prepare her Federal and New York State tax returns every year from approximately 2002 through 2009. Her taxes were prepared at the H&R Block office located at 3736 Riverdale Avenue Bronx, NY.

10. On or about March 10, 2009 Ms. Hawa attempted to file her 2008 federal tax return at H&R Block's Riverdale Avenue Office.

11. On or about March 11, 2009 Ms. Hawa received a telephone call from an H&R Block employee advising that her federal tax return had been rejected because someone had already filed a 2008 return in her name.

12. Approximately two weeks later the Internal Revenue Service ("IRS") notified Ms.Hawa that a return had been filed on her behalf on February 24, 2009 by an unknown person(s) and that a refund had already been electronically issued in the amount of \$8,499.00. The perpetrator had filed a tax return in Ms. Hawa's name electronically, which necessitated that they possess Ms. Hawa's 2007 Adjusted Gross Income, a figure known only to her, her employer and employees of H&R Block.

13. Ms. Hawa had no prior knowledge of the filing of that tax return, nor had she authorized anyone else to file it for her.

14. Ms. Hawa filed a report with the New York City Police Department ("NYPD") regarding the fraudulently filed tax return on or about March 15, 2009. She was subsequently informed by the police that her identity had been stolen by an H&R Block temporary employee and that there were dozens of victims in addition to her whose identity had also been stolen by either this individual or group of individuals working at H&R Block.

15. As a result of the fraudulent tax return filed in her name Ms. Hawa was unable to timely receive the substantial tax refund to which she was otherwise entitled.

16. As a result of her inability to timely obtain her 2008 federal tax refund Ms. Hawa has suffered actual damages, including both economic and emotional distress damages.

///

////

FACTS PERTAINING TO KEVIN AND DEBORAH JOHNS

17. Mr. and Mrs. Johns have hired H&R Block to prepare their Federal and New York State tax returns every year for approximately the past 20 years. The Johns' tax returns were prepared at H&R Block's Riverdale Avenue office.

18. On or about February 23, 2009 Mr. Johns attempted to file their 2008 federal and New York State personal tax return the Riverdale Avenue office.

19. The following day Mr. Johns received a call from H&R Block advising that his family's federal and state tax returns had been rejected because someone had already filed a 2008 returns in their name.

20. On February 27, 2009 Mr. Johns filed a report with the NYPD regarding the federal tax return that had been fraudulently filed in his name.

21. The IRS subsequently notified Mr. Johns that a tax return had been filed on behalf himself and his family and that a refund had already been electronically issued in the amount of \$6,145.00 The perpetrator had filed a return in Mr. Johns name electronically, which necessitated that he/she possess his family's 2007 Adjusted Gross Income – a figure known only to Mr. and Mrs. Johns, their employers and employees of H&R Block.

22. On or about March 9, 2009 Mr. Johns received a letter from the IRS stating that (as a result of the fraudulent return filed on behalf of his family) that his 2008 adjusted gross income was substantially lower than his actual income.

23. Sometime in March 2009 Mr. Johns received a letter from the New York State Department of Taxation and Finance informing him that he owed \$1,100.00 because someone had filed a return in his name and received a refund of almost \$3,000.00.

24. As a result of the fraudulent return filed in their name Mr. and Mrs. Johns were unable to timely receive their substantial Federal and New York State tax refunds which they were otherwise entitled to.

25. As a result of their inability to timely obtain their 2008 state and federal tax refunds Mr. and Mrs. Johns have suffered actual damages, including both economic and emotional distress damages.

CLASS ALLEGATIONS

23. This action is brought as, and may properly be maintained as, a class action. The plaintiffs bring this action on behalf of themselves and all members of a class (the "Class"), consisting of all persons who had previously filed tax returns using H&R Block's services and had fraudulent Federal and or State tax returns filed on their behalf in the three years prior to the commencement of this lawsuit.

24. This proposed class definition is provisional and may be adapted, as appropriate, upon discovery.

25. The class is so numerous that joinder of all members is impractical. The plaintiffs reasonably believe that during the statute of limitations period fraudulent tax returns were filed on behalf of dozens, if not hundreds, of H&R Block customers.

26. There are questions of law and fact common to the class, which predominate over any questions affecting only the plaintiffs. The principal question is whether the defendant is legally culpable for the fraudulently filed tax returns on behalf of their customers.

27. There are no individual questions, other than whether a class member had a fraudulent return filed on their behalf, which can be determined by ministerial inspection of the defendants' records.

28. The plaintiffs will fairly and adequately protect the interests of the class. They are committed to vigorously litigate this matter. To that end, they have retained competent counsel who is experienced in handling claims of identity theft and consumer class actions in general. Neither the plaintiffs nor their counsel have any interests which might deter them from vigorously prosecuting this case.

29. The plaintiffs' claims are typical of the claims of the class, which all arise from the same operative facts and are based on the same legal theories.

30. A class action is a superior method for the fair and efficient adjudication of this controversy. The theft of the plaintiffs' prior years tax returns which enabled the imposter to file fraudulent returns occurred in the same manner for each of the class members.

31. Management of this class claim is likely to present significantly fewer difficulties than those presented in many other more complex class actions.

AS AND FOR A FIRST CAUSE OF ACTION
NEGLIGENCE AND GROSS NEGLIGENCE

32. Plaintiffs repeat the foregoing paragraphs as if fully restated herein.

32. The actions and omissions of H&R Block as described herein constitute negligence in that H&R Block owed Plaintiffs a duty and a special duty: to properly secure and manage Plaintiffs' personal identification and financial information; and to prevent any unauthorized use of Plaintiffs' accounts and/or information. Said duties were breached, and said breach was the proximate cause of damages suffered by Plaintiffs.

33. The actions and omissions of H&R Block as described herein constitute gross negligence in that H&R Block owed Plaintiffs a duty and a special duty: to properly secure and manage Plaintiffs' personal identification and financial information; and to prevent any unauthorized use of Plaintiffs' accounts and/or information. Said duties were breached, and said breach was the proximate cause of damages suffered by Plaintiffs. Additionally, H&R Block's actions and omissions as described herein demonstrate a lack of care and an indifference to the rights of Plaintiffs.

AS AND FOR A SECOND CAUSE OF ACTION
**NEGLIGENCE AND GROSS NEGLIGENCE IN THE HIRING, RETENTION,
TRAINING AND/OR SUPERVISION OF EMPLOYEES**

34. Plaintiffs repeat the foregoing paragraphs as if fully restated herein.

35. Defendant H&R Block was negligent in the hiring, retention, training, and/or supervision of its employees. H&R Block's actions and omissions as described herein constitute negligence in that H&R Block owed Plaintiffs a duty and a special duty to hire, retain, train, and/or supervise its employees properly, said duties were breached, and said breaches were the proximate cause of damages

suffered by Plaintiffs.

36. Defendant H&R Block was negligent in the hiring, retention, training, and/or supervision of its employees. H&R Block's actions and omissions as described herein constitute negligence in that H&R Block owed Plaintiffs a duty and a special duty to hire, retain, train, and/or supervise its employees properly, said duties were breached, and said breaches were the proximate cause of damages suffered by Plaintiffs. Additionally, the actions and omissions of H&R Block demonstrate a want of scant care and an indifference to the rights of Plaintiffs. The actions of Defendants were willful, malicious, and wanton. The actions of Defendants were highly unreasonable and demonstrate an extreme departure from ordinary care.

AS AND FOR A THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

37. Plaintiffs repeat the foregoing paragraphs as if fully restated herein.

38. The actions and omissions of H&R Block as described herein constitute a breach of H&R Block's fiduciary duty to the Plaintiffs.

39. Plaintiffs reposed trust and confidence in H&R Block by disclosing to H&R Block personal identifying information. H&R Block assured Plaintiffs of the security of Plaintiffs' personal information and financial information, and Plaintiffs relied upon such representations. H&R Block was specifically aware of the threat to Plaintiffs' personal and financial information and failed to safeguard such. Plaintiffs relied on such representations, and Plaintiffs were damaged due to H&R Block's actions and omissions.

40. H&R Block's breach of their fiduciary duty proximately caused damages to the Plaintiffs as further described herein. Plaintiffs request punitive damages for H&R Block's breach of fiduciary duty as described in this complaint.

AS AND FOR A FOURTH CAUSE OF ACTION
VIOLATION OF NY GBL SECTION 349

41. The plaintiffs repeat and re-allege each and every allegation set forth above as if reasserted and realleged herein.

42. As set forth above and herein, the defendant engaged in the following false, deceptive and misleading practices:

- a. Falsely stating that their customer's tax returns and private financial and identifying information would be kept secure;
- b. Allowing employees to unlawfully access and steal their customer's prior year's tax returns along with their personal financial and identifying information; and
- c. Failing to inform their customers that their prior tax returns and private financial and identifying information had been stolen by its employees;

43. The plaintiffs was consumers of the goods and services offered and provided by the defendant.

44. Upon information and belief, the false, deceptive and misleading representations made by the defendant, as described above, are the same or similar

to misrepresentations made by the defendant to other consumers who have utilized the defendant's tax preparation services.

45. The false, deceptive and misleading representations made by the defendant, as described above, are not part of a unique transaction between the plaintiff and the defendants but instead, upon information and belief, are uniformly, and repeatedly, directed to other consumers who have utilized the defendant's tax preparation services.

46. The false, deceptive and misleading representations made by the defendant, as described above, have the capacity to deceive, and, upon information and belief, in fact have deceived other consumers who have utilized the defendant's tax preparation services.

47. By engaging in such false, deceptive and misleading practices the defendants have caused harm to the consuming public who have utilized the defendant's tax preparation services.

48. The plaintiffs have also been harmed by such false, deceptive and misleading practices.

49. The defendant's conduct and practices, as described above, impacts upon such consumers.

50. The defendant's conduct and practices, as described above, are deceptive and misleading in a material respect.

51. The defendant's conduct and practices, as described above, constitute

deceptive acts and practices, in violation of GBL § 349.

52. By reason of the foregoing, plaintiff is entitled to an award of damages from the defendant in an amount not less than \$25,000.00, plus an award of statutory damages, in the amount of \$1,000.00 per violation of law, plus an award of attorney's fees, pursuant to New York GBL § 349(h).

THE PLAINTIFFS DEMAND A JURY TRIAL

WHEREFORE, the plaintiff demands judgment against the defendants, as set forth above, awarding relief as follows:

- a. On the First Cause of Action, an amount to be determined by the trier of fact but not less than \$25,000.00 in actual, consequential and punitive damages, plus interest, and an injunction requiring defendant to adequately safeguard it's customer's private information along with other appropriate injunctive relief;
- b. On the Second Cause of Action, an amount to be determined by the trier of fact but not less than \$25,000.00 in actual, consequential and punitive damages, plus interest, and an injunction requiring defendant to adequately safeguard it's customer's private information along with other appropriate injunctive relief;
- c. On the Third Cause of Action, an amount to be determined by the trier of fact but not less than \$25,000.00 in actual, consequential and

punitive damages, plus interest;

d. On the Fourth Cause of Action, an amount to be determined by the trier of fact but not less than \$25,000.00 in actual, consequential damages, plus an award of statutory damages, in the amount of \$1,000.00 per violation of law, plus an award of attorney's fees, pursuant to New York GBL § 349(h), and an injunction requiring defendant to adequately safeguard it's customer's private information along with other appropriate injunctive relief;

e. The attorney's fees, interest, costs and disbursements of this action; and

f. Such other relief as may be just.

Dated: New York, New York
April 7, 2010

Yours, etc.,



KEVIN C. MALLON
JAMES B. FISHMAN
FISHMAN & MALLON, LLP
305 Broadway, Suite 900
New York, New York 10007
(212) 897-5840
Attorneys for the Plaintiffs

