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Attorneys for Plaintiff
IBRAHIM SHAH

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

IBRAHIM SHAH

Plaintiff,

v.

JACKSON HEWITT, INC. A VIRGINIA
CORPORATION

Defendant.

CASE NO.:

COMPLAINT FOR:

- (1) DECLARATORY RELIEF
- (2) UNFAIR COMPETITION
- (3) BREACH OF CONTRACT

JURY TRIAL DEMANDED

INTRODUCTION

1. The case arises out a franchise relationship between Plaintiff former franchisee Ibrahim Shah (Shah) and Defendant franchisor Jackson Hewitt, Inc. (Jackson Hewitt).

2. Shah brings this action to challenge Jackson Hewitt's unlawful and unfair practice of including (and enforcing) illegal non-competition and other illegal and unconscionable provisions in their form franchise agreements. Such non-competition agreements violate California Business and Professions Code section 16600.

3. Plaintiff seeks a declaration voiding the illegal provisions and an injunction against

1 Defendant from enforcing and threatening to enforce such provisions.

2 4. Shah further seeks a remedy for breach of contract in that Jackson Hewitt committed
3 a first material breach of contract and such breach prohibits it from enforcing non-competition
4 provisions in the agreement as well as any other provisions.

5
6 **THE PARTIES**

7 5. Plaintiff Ibrahim Shah, ("Shah") is a natural person and a resident of Alameda
8 County, California. Shah is self-employed as an accountant and is a former franchisee of
9 Defendant.

10 6. Defendant Jackson Hewitt is Virginia corporation with its principal office in New
11 Jersey. Jackson Hewitt is engaged in the business of selling tax preparation franchises under the
12 name Jackson Hewitt name.

13
14 **JURISDICTION AND VENUE**

15 7. This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of
16 different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of
17 interests and costs.

18 8. Venue in this case is based on 28 U.S.C. § 1391 in that part of the conduct of the
19 Defendant occurred in Alameda County and the Plaintiff has its principal place of business in
20 Alameda County.

21 9. This Court has personal jurisdiction over defendant Jackson Hewitt because it
22 conducts business regularly in California, has sold franchises to California residents including
23 Plaintiff, and has entered into a jurisdictional consent as a condition to selling franchises in
24 California. Defendant has also committed acts within and without the State of California causing
25 injury to Plaintiff.

26 10. Intradistrict Assignment. The basis for assignment to the San Francisco Division or
27 the Oakland Division of the Northern District of California is that plaintiff Shah has his principal
28

place of business in Alameda County.

GENERAL ALLEGATIONS

11. On or about May of 2002, Plaintiff Shah entered into a franchise agreement for the operation of a Jackson Hewitt franchise. The agreement was for a period of ten-years and it expired, by its terms, without renewal in May 2012. Despite the expiration, the parties carried on the relationship month to month until January of 2016.

12. In about May 2002, Jackson Hewitt provided a Uniform Franchise Offering Circular and Addenda to Shah. The addenda provided in pertinent part that:

- The following provisions supersede the Offering Circular and apply to all franchises offered and sold in California: California Business and Professions Code, Sections 20000 to 20043 provide rights to the franchisee concerning termination or nonrenewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will prevail.
- The Franchise Agreement requires application on the laws of New Jersey. This provision may not be enforceable under California Law.

13. As a consequence of these representations, Mr. Shah is (and at all material times understood that he would be) entitled to the protections of California law and to a California forum to hear any disputes (notwithstanding the New Jersey forum selection provision) pursuant to California Business and Professions Section 20040.5: "A provision in a franchise agreement restricting venue to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state."

14. The franchise agreement also contains various non-competition provision in paragraph 18. Such provision are void under California Business and Professions Code section 16600.

FIRST CLAIM FOR RELIEF
(Declaratory Relief)

15. Plaintiff realleges and incorporates by reference Paragraphs 1-14 as though fully set forth herein.

16. An actual controversy has arisen and now exists between Shah and Jackson Hewitt regarding their respective rights and duties under the franchise agreement.

17. Shah contends that the non-competition provision is unenforceable under California Business and Professions Code section 16600. Jackson Hewitt contends that the provision is enforceable and has threatened to enforce it as recently as January 2016. In addition, the franchise agreement includes other unconscionable provisions contrary to California law including choice of law, forum, and arbitration provisions. Shah contends these provisions are unenforceable while Jackson Hewitt contends they are enforceable.

18. Further, as part and parcel of the parties business relationship, Jackson Hewitt was responsible for providing Shah up to date tax software in order that he could perform the core function of the franchise, to wit, providing tax return services to clients.

19. In January 2016, Jackson Hewitt breached the agreement and the implied covenant of good faith by refusing to provide the software to Shah.

20. In January 2016, Jackson Hewitt further breached the agreement and the implied covenant of good faith by 1) demanding that Shah participate in an *optional* promotional program and 2) falsely and without contractual basis declaring to Shah that the program was mandatory and then declaring Shah in default of the franchise agreement for refusing to participate in this *optional* promotional program.

21. These breaches by Jackson Hewitt and Royalty were material and substantially defeated the purpose of the contract between the parties thereby entitling Shah to avoidance based on the doctrine of first material breach. Shah hereby seeks declaratory relief that Jackson Hewitt is not entitled to enforce any terms of the agreement on the grounds of first material breach.

22. Shah also desires a judicial determination and declaration of his rights and

obligations under the agreement including that the non-competition provision, choice of law, forum selection, arbitration, and other unlawful provisions in the franchise agreement are illegal and otherwise unenforceable.

23. Such a declaration is necessary and proper at this time so that Shah may ascertain his rights and obligations. A judicial declaration is therefore necessary and appropriate at this time, under state and federal law including 28 U.S.C. § 2201.

WHEREFORE Plaintiff prays for judgment as set forth below.

SECOND CLAIM FOR RELIEF

(Violation of California Business and Professions Code Section 17200)

24. Plaintiff realleges and incorporates by reference Paragraphs 1-14 above as though fully set forth herein.

25. Defendant owed Plaintiffs a duty to not engage in illegal, fraudulent or unfair trade practices prohibited under Sections 17200 of the California Business & Professions Code. The above actions of defendant, including the inclusion of a non-competition, choice of law, choice of forum, and arbitration provisions in the franchise agreement and the attempted enforcement of those provisions in violation of Sections 16600 and 20040.5 of the California Business & Professions Code, constitute unfair competition in violation of Section 17200 of the California Business & Professions Code.

26. The illegal, fraudulent and unfair business practices of defendant present a continuing threat to Shah and will do so unless and until a declaration of illegality and a permanent injunction is issued by this Court.

WHEREFORE Plaintiff prays for judgment as set forth below.

THIRD CLAIM FOR RELIEF

(Breach of Contract and Covenant of Good Faith and Fair Dealing)

27. Paragraphs 1-14 are incorporated herein by reference.

28. A month to month contract and course of dealing existed between Shah and Jackson

Hewitt on the other hand.

29. As part and parcel of the parties business relationship Jackson Hewitt was responsible for providing Shah up to date tax software in order that he could perform the core function of the franchise, to wit, providing tax return services to clients.

30. In January 2016, Jackson Hewitt breached the agreement and the implied covenant of good faith by refusing to provide the software to Shah.

31. In January 2016, Jackson Hewitt further breached the agreement and the implied covenant of good faith by 1) demanding that Shah participate in an optional promotional program and 2) falsely and without contractual basis declaring to Shah that the program was mandatory and then declaring Shah in default of the franchise agreement for refusing to participate in this optional promotional program.

32. These breaches by Jackson Hewitt and Royalty were material and substantially defeated the purpose of the contract between the parties thereby causing Shah injury and entitling damages and to avoidance based on the doctrine of first material breach.

WHEREFORE plaintiff prays for judgment as set forth below.

PRAYER FOR RELIEF - ALL COUNTS

WHEREFORE plaintiffs pray for judgment against all defendants on all causes of action as follows:

1. for declaratory relief that the non-competition provision is unenforceable;
2. for declaratory relief that the choice of forum provision is unenforceable;
3. for declaratory relief that the choice of law and arbitration provisions are unenforceable;
4. a permanent injunction enjoining defendants from illegal, fraudulent and unfair acts;
5. for all available remedies for breach of contract including damages, declaratory, and equitable relief;
6. for costs of suit;

7. for reasonable attorney's fees;
8. Shah hereby demands a trial by jury of the issues set forth in this Complaint which are triable by right by a jury; and
9. for such other and further relief as the court deems just and equitable.

DATED: January 13, 2016

By: /s Robert S. Boulter
Robert S. Boulter
Attorney for Ibrahim Shah