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## BLOGS

Vicarious Liability

# California District Court Dismisses Fraud Complaint Against Franchisor for Failure to Meet Heightened Pleading Standards

The United States District Court for the Central District of California dismissed a putative class action complaint against franchisor Jackson Hewitt Tax Service on the grounds that the plaintiff had not sufficiently pled claims for fraud and vicarious liability against Jackson Hewitt for fraudulent conduct that was done by a rogue employee of the franchisee. *Lomeli vs. Jackson Hewitt, Inc.*, 2017 WL 4773099 (C.D. Cal. Oct. 19, 2017). The aggrieved customer of the franchisee alleged, in part, that the franchisee submitted returns to the IRS without the customer's permission that were manipulated to cause him to receive a refund that was deposited in an account he was unaware of, and that the franchisee used the refund money without the customer's knowledge.

In granting Jackson Hewitt's motion to dismiss, the court acknowledged that Jackson Hewitt exerted controls that are typical of a franchisee-franchisor relationship, including controls over the operational standards of the business, the products offered for sale, and the training of personnel. The court found, however, that control over certain aspects of a franchisee's operations is insufficient to create vicarious liability unless the control relates to the instrumentality of harm. In this case, the harm was caused by a rogue employee of the franchisee who prepared false tax returns without the consent of the customer. The court found that Jackson Hewitt's control over the franchisee did not include any control over the "hiring, direction, supervision, discipline, or discharge of franchise employees." Hence, Jackson Hewitt could not be responsible for the fraudulent activities of an employee it did not supervise.

As to the direct fraud claim, the court dismissed that claim under the heightened pleading standard for fraud claims, holding that the plaintiff's decision to "lump" multiple named defendants together for purposes of the fraud claim was improper. The court found that the plaintiff must provide additional details in the complaint regarding the specific fraudulent acts allegedly committed by Jackson Hewitt. The court did grant the plaintiff leave to amend to try and correct the deficiencies in the complaint.

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