# FILED

STATE OF NORTH CAROLINA 2012 NOV -2 PM	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF WAKE WAKE COUNTY,	12 CVS 004017
STATE OF NORTH CAROLINA ex rel. ROY COOPER, Attorney General,	)
Plaintiff,	)
٧.	)
INSTANT TAX SERVICE, a North Carolina franchise doing business at 2712 Freedom Drive, Charlotte, North Carolina 28208; and	) ) ) )
INSTANT TAX SERVICE, a North Carolina franchise doing business at 1520 West Boulevard, Suite J, Charlotte, North Carolina 28208; and	CONSENT JUDGMENT ) ) )
INSTANT TAX SERVICE, a North Carolina franchise doing business at 316 E. Franklin Boulevard, Suite A, Gastonia, North Carolina 28054; and	) ) ) )
EDEN KIDANE, individually and in her capacity as owner of the above-named defendants,	) ) ) )
Defendants.	)

THIS CAUSE came on before the undersigned Judge for entry of a Consent Judgment between Plaintiff, the State of North Carolina, by and through its Attorney General (hereinafter the "State"), and the following Defendants: Instant Tax Service, a North Carolina franchise doing business at 2712 Freedom Drive in Charlotte North Carolina; Instant Tax Service, a North Carolina franchise doing business at 1520 West Boulevard in Charlotte, North Carolina; Instant Tax Service, a North Carolina franchise doing business at 316 East Franklin Boulevard in

Gastonia, North Carolina; and Eden Kidane, individually and in her capacity as owner of said franchises (hereinafter "Defendants").

Plaintiff has filed a complaint for a permanent injunction and other relief in this matter.

Plaintiff and Defendants wish to resolve this action, and recognize and affirm that this Consent Judgment has been negotiated in good faith, and that this Consent Judgment is fair, reasonable, and in the public interest.

Plaintiff and Defendants have agreed to entry of this Consent Judgment by the Court without trial or adjudication of any issue of fact or law, and without admission of any of the violations alleged in the complaint.

THEREFORE, based upon the facts and matters before this Court, and with the consent of the parties to this Consent Judgment, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

# **FINDINGS**

- 1. The Plaintiff in this case is the State of North Carolina.
- The Defendants in this case are the above-named Instant Tax Service franchises and Eden Kidane, individually and in her capacity as owner of these franchises.
- 3. This Court has jurisdiction over the subject matter and the parties.
- 4. The State filed this action seeking a permanent injunction, civil damages, restitution, civil penalties, and other equitable relief against Defendants, contending, *inter alia*, that they violated the North Carolina Refund Anticipation Loan Act, N.C. Gen. Stat. § 53-245 et seq., and engaged in misleading and deceptive practices in violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 et seq..
- 5. Defendants deny the factual allegations and legal contentions contained in the complaint.

- 6. The parties have consented to the entry of this Consent Judgment for the purposes of settlement only and this Consent Judgment does not constitute evidence against or admission by any party.
- 7. Good cause exists for entry of this Consent Judgment, as set forth herein.
- 8. By consenting to this Consent Judgment as evidenced by their signatures below,

  Defendants waive any right to appeal, petition for certiorari, or move to reargue or rehear
  this judgment and order. Entry of this Consent Judgment is in the public interest.
- 9. The parties have agreed to resolve their differences and the agreement of the parties is just and reasonable with respect to all parties. The Court approves the terms of the parties' agreement and adopts them as its own determination of the parties' respective rights and obligations.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

#### **DEFINITIONS**

- 1. The following definitions shall apply to this Consent Judgment:
  - a. "Defendants" or any reference to a defendant includes Eden Kidane and the above-named Instant Tax Service franchises, and its/her successors, assigns, officers, agents, servants, and employees. "Defendants" or any reference to a defendant shall specifically include any successor entity engaged in tax preparation and owned or operated by Eden Kidane.
  - b. "Consumer" means any natural person, individual, entity, corporation, business, partnership, limited partnership, limited liability company, trust, estate, nonprofit organization, religious institution, or other legal or commercial entity, however organized, that engaged or engages Defendants for tax preparation services.

c. "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a statement or document created by Defendants, shall mean that the substance disclosed is in such size, contrast, location, and duration that it is readily noticeable, readable and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. The statement shall be in a type, size, font, appearance and location sufficiently noticeable for a consumer to read and comprehend, in a print that contrasts with the background against which it appears.

# **INJUNCTION**

#### Tax Returns

- 1. IT IS HEREBY STIPULATED, AGREED AND ORDERED that Defendants are PERMANENTLY ENJOINED from directly or indirectly, by use of any means or instrumentalities, from:
  - a. making any false or misleading statements to Consumers in connection with the preparation of tax returns;
  - making verbal representations to Consumers which are in contradiction to written representations made to such Consumers;
  - c. filing tax returns for Consumers without the Consumer's authorization.
  - d. filing a tax return using a Consumer's paystub in lieu of a genuine Form W-2 issued by the Consumer's employer or the employer's payroll processing service.
  - e. obtaining executed forms from Consumers authorizing the electronic filing of a

    Consumer's tax return until Defendants have first obtained all documentation

- required for preparation of the tax return, including all Forms W-2, and have prepared the return and had the Consumer review the return;
- f. causing or permitting any document, including tax forms, to bear a signature date other than the date that the signatory actually signed the document;
- g. creating false or purported Forms W-2 from Consumer paystubs or other information.

Nothing contained herein shall prohibit Defendants, with the Consumer's consent, from obtaining copies of a Consumer's Form W-2 from any payroll processing service or the like used by the Consumer's employer.

#### Fees Charged to Consumers

- 2. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants shall, prior to filing a Consumer's tax return, disclose to the Consumer, both orally and in writing, via a fee statement, all fees to be charged. The fee statement shall clearly and conspicuously itemize all fees to be charged and shall clearly and conspicuously state the total fee amount. Prior to Defendants filing a tax return, the fee statement must be signed by the Consumer signifying that all fees are agreed to by the Consumer. Defendants are prohibited from charging fees for items and services that do not exist, and from charging unconscionable fees as defined in I.R.S Circular 230 § 10.27. Defendants are prohibited from filing tax returns in the event the Consumer does not agree with the fees as reflected in the fee statement.
- 3. Defendants shall also post within each Instant Tax Service office, in an area accessed by and visible to all customers and potential customers of Instant Tax Service, signage

which prominently displays and identifies all fees associated with tax return preparation and Refund Anticipation Loans, if applicable. The fees posted shall be consistent with the fees contained in the fee statements provided to and signed by Consumers.

#### Instant Cash Loans/Advances and Refund Anticipation Loans (RALs)

- 4. IT IS FURTHER STIPULATED, AGREED AND ORDERED that Defendants are permanently enjoined from:
  - misleading Consumers as to whether Defendants (either directly or through a thirdparty) offer a loan or refund advance product, if in fact they do not;
  - b misrepresenting the terms, loan amounts, eligibility, timing, and fees or costs associated with any loan or advance to any Consumer;
  - c. offering any refund loan or advance product that is not a Refund Anticipation Loan (RAL) as that product is defined in N.C. Gen. Stat. § 53-246. Non-RAL products include paystub, holiday, or Instant Cash loans or advance products, which are offered to Consumers in connection with or using information obtained from the Consumer's paystub and not a genuine W-2 issued by the Consumer's employer or the employer's payroll processing service.
- 5. Defendants may offer RALs as that product is defined in N.C. Gen. Stat. § 53-246, provided that:
  - a. Defendants comply with all requirements contained in the Refund Anticipation Loan Act, N.C. Gen, Stat. § 53-245 et seq.;

- b. the RAL is offered using information from genuine W-2s and not paystubs, and complies with all federal laws, including but not limited to the Equal Credit Opportunity Act, and the Truth in Lending Act ("TILA"), as applicable;
- d. Defendants, in order to ensure that the RAL product does not create an environment that allows or promotes unauthorized tax return filings, undisclosed fees, or paystub return filings, shall have the Consumer's W-2 in hand at the time the RAL application is completed;
- e. the RAL application clearly and conspicuously contains the disclosures required in N.C. Gen. Stat. § 53-249. Defendants are enjoined from processing applications for loan or refund advance products from Consumers that Defendants know will be automatically denied for such products;
- f. Defendants ensure that all Consumers who apply for a RAL and whose tax return is prepared by and will be filed by Defendants sign a form that clearly indicates that such Consumer is granting Defendants permission to file the return;
- g. Defendants disclose to the Consumer, both orally and in writing, via a fee statement, all RAL fees to be charged. The fee statement for the RAL shall clearly and conspicuously itemize all fees to be charged, and the fees charged shall comply with N.C. Gen. Stat. § 53-245 et. seq.. Prior to submission of the RAL application, the fee statement must be signed by the Consumer signifying that all fees are agreed to by the Consumer.

# **Documents to Consumers**

6. IT IS FURTHER STIPULATED, AGREED AND ORDERED that, at the time of the

filing of a Consumer's tax return, Defendants shall provide to the Consumer copies of all documents pertaining to the return, including, but not limited to, the signed Form 8879; signed fee statement; signed Form 1040 and any related Schedule forms. If a Consumer has made application for a Refund Anticipation Loan, copies of all signed RAL documents shall also be provided to the Consumer. Defendants shall also return to Consumers copies of all documents provided by the Consumer to Defendants for purposes of preparing the tax return.

# Compliance and Recordkeeping

7. For a period of three (3) years from the date hereof, Defendants shall retain customer files containing copies of all the documents described in paragraph 6 of this Consent Judgment.

# **Complaint Handling**

8. Defendants shall maintain all Consumer complaints they receive for a period of three (3) years. For the purposes of this Consent Judgment, Consumer complaints shall include written or electronic messages received from a Consumer indicating a specific problem or dissatisfaction with Defendants' tax preparation and/or RAL services to the extent the services/conduct complained of are of the type alleged in Plaintiff's complaint. In the event a Consumer makes an oral complaint to Defendants about services/conduct of the type alleged in Plaintiff's complaint, Defendants shall make available to that Consumer a written complaint form allowing the Consumer to file such complaint. Defendants shall engage in a timely and reasonable investigation of such Consumer complaints before providing a response to the Consumer. Defendants shall attempt to

resolve all Consumer complaints in good faith and in a manner consistent with the injunctive provisions contained in this Consent Judgment.

# Restitution and Payment to the State

9. Upon execution of this Consent Judgment, Defendants shall pay Plaintiff, via the Attorney General, the sum of sixty thousand dollars (\$60,000.00), for attorneys' fees, investigative costs and for consumer restitution, consumer education, enforcement or other consumer protection purposes at the discretion of the Attorney General. Defendants shall be jointly and severally liable for payment of the sixty thousand dollars (\$60,000.00). Defendants shall pay the amount set forth above via two certified checks payable to the "North Carolina Department of Justice." The first check, in the amount of thirty thousand dollars (\$30,000.00), shall be tendered the date this Consent Judgment is entered by the Court, and shall be forwarded to Stuart M. Saunders, Assistant Attorney General, 114 W. Edenton Street, Raleigh, North Carolina 27602. The second check, in the amount of thirty thousand dollars (\$30,000.00), shall be made payable and forwarded in the same fashion on February 25, 2013.

# **General Provisions**

- 10. Nothing contained in this Consent Judgment shall be construed to deprive any Consumer or other person or entity of any private right under the law.
- 11. Nothing contained in this Consent Judgment shall be construed as approval, sanction or authorization of any act, practice, or conduct of Defendants, nor shall this Consent Judgment be construed to create any private right of action for any person or entity not a signatory hereto. Further, the parties understand and agree that the payment made by

Defendants is not to be construed as an admission of liability on the part of the Defendants; that the Defendants deny liability for all claims and causes of action asserted against them in this litigation and have entered into this compromise settlement for the purpose of avoiding litigation; and that this Consent Judgment shall never be treated as an admission of liability or as an admission of any facts by the Defendants.

- 12. This Consent Judgment resolves, settles, and releases all civil claims, causes of action, or other matters of dispute between the parties arising from any actions and omissions alleged in the Complaint with respect to conduct occurring up to the date of entry of this Consent Judgment. Nothing in this Consent Judgment shall be construed to limit the authority of Plaintiff to prospectively enforce laws, regulations or rules against Defendants, their successors and assigns.
- 13. The Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Judgment to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Judgment, for the enforcement of compliance therewith, or for the punishment of violations thereof. The provisions of this Consent Judgment shall be enforceable by contempt proceedings.

So ordered, this the \_\_\_\_\_ day of November, 2012

Hon. Donald Stephens Superior Court Judge The parties hereby consent to the terms and conditions of the Consent Judgment as set forth above, and consent to the entry thereof.

Plaint	iff, STATE OF NORTH CAP	COLINA rel. ROY COOPER, ATTORNEY GENERAL
Assist NC B N,C, I Const P,O, E Raleig Tel, 9 ssaunce	M. (Jeb) Saunders tant Attorney General ar No. 19614 Department of Justice mer Protection Division Box 629 gh, NC 27602 19-716-6000 ders@ncdoj.gov 19-716-6050	Date: 1/2/12
INSTA	ANT TAX SERVICE/EDEN I	KIDANE, Defendants
Ву:	Eden Kidane	Date: 11/1 /12
Ву:	INSTANT TAX SERVICE 2712 Freedom Drive Charlotte, North Carolina 28	Date: 11/1/2
Ву:	INSTANT TAX SERVICE 1520 West Boulevard Charlotte, North Carolina 28	Date: 1/1/12 208
Ву:	INSTANT TAX SERVICE 316 E. Franklin Boulevard Gastonia, North Carolina 280	Date: 11/1 //2

Kay

Attorney at Law

Attorney for Defendants

Morris, Manning & Martin, LLP

1000 Park Forty Plaza, Suite 350

Durham, NC 27713

Tel. 919-806-2969

Fax 919-806-2057

csharkey@mmmlaw.com

# G.S. § 10B-41. NOTARIAL CERTIFICATE FOR AN ACKNOWLEDGMENT.

Meduling Country North Carolina	
he or she signed the foregoing document:	onally appeared before me this day, each acknowledging to me that
Eden	kidane
	Name(s) of principal(s).
Date: 1.1.12	Buye an D
(Official Seal)	My commission expires: 8 12 17