

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

MOTION TO WITHDRAW MATTER FROM ADJUDICATION

Respondent Intuit Inc. respectfully moves pursuant to Rule 3.26(c), 16 C.F.R. § 3.26(c), to withdraw the above-captioned matter from adjudication to allow the Commission to consider whether further litigation is in the public interest following the denial in federal district court of the FTC’s motion for a temporary restraining order and preliminary injunction, as well as the consummation of a nationwide settlement agreement with the attorneys general of all 50 states and the District of Columbia. As explained below, the settlement affords the public all of the material relief the FTC seeks to obtain through this action.

INTRODUCTION

Intuit’s business strategy depends on developing life-long relationships with its customers by treating them fairly and providing them value. Last year, nearly 14 million people filed their taxes for free using TurboTax Free Edition—the product at issue in this proceeding. It is critical to brand loyalty that consumers understand the eligibility criteria for Free Edition and each of TurboTax’s paid products. For this reason, the qualifications are disclosed in Free Edition advertisements and made plain in innumerable ways on the TurboTax website. The data is clear that Intuit’s efforts are successful: Among its *paying* customers, over eighty percent return year over year, despite low switching costs and a highly competitive environment.

The FTC has, however, argued that past disclosures in Free Edition ads and on the TurboTax website were inadequate, such that consumers were deceived into thinking that *every* taxpayer is eligible to file for free using Free Edition. In advance of last year’s tax season, Intuit engaged with the FTC to ensure that its ads were beyond reproach. Relying on the FTC’s guidelines, Intuit produced video ads including clear text stating that Free Edition was for simple returns only, instructing consumers to “See if you qualify at turbotax.com,” and verbally inviting consumers to “see details at turbotax.com,” where Free Edition’s qualifications were again disclosed (repeatedly). When the FTC Chair first explained why these video ads nevertheless raised concerns, Intuit voluntarily pulled down the ads for the remainder of the tax season and has since legally committed to never run them—or any substantially similar advertisement—again in any format.

As further evidence of Intuit’s willingness to improve its advertising, Intuit has reached a settlement agreement with the attorneys general of all 50 states and the District of Columbia.¹ The chief law enforcement officers of every state in the country believe that, so long as Intuit’s marketing adheres to that settlement agreement, it will be in full compliance with the consumer-protection and false-advertising laws of their respective states—laws that are nearly identical to (or broader than) the FTC Act. And throughout the drafting process, Intuit was mindful of the concerns that were expressed by the FTC. Among other things, the agreement, which is enforceable in court by the California Attorney General, incorporates all material injunctive provisions the FTC itself proposed to Intuit last November and, as explained below, fully addresses the concerns raised by the FTC. Intuit accordingly submits that any relief the FTC could obtain in this action would merely reiterate Intuit’s preexisting obligations under that enforceable agreement. By withdrawing the matter from adjudication, Intuit looks forward to the opportunity to address any questions the Commissioners and Staff may have so that the Commission may

¹ Copies of (1) an executed Assurance of Voluntary Compliance and (2) a Stipulated Judgment filed in California state court, both of which memorialize the settlement, are attached hereto as Exhibits A and B. Substantively identical agreements have been filed in other state courts pursuant to those states’ laws.

consider whether continued litigation is in the public interest. Intuit respectfully submits that further investment of time and resources in this proceeding is not warranted by the public interest.

BACKGROUND

A. This Administrative Action

Following a roughly three-year investigation, the FTC filed the administrative complaint in this matter on March 28, 2022. The complaint alleges that “[m]uch of Intuit’s advertising for TurboTax conveys the message that consumers can file their taxes for free using TurboTax” when in fact “TurboTax is only free for some users.” Compl. ¶¶ 6-7. Although it seeks only *prospective* relief, *id.* at 26-27, the complaint devotes significant attention to Intuit’s *terminated* practices, including the design of the TurboTax website from 2019 and 2020, *see id.* ¶¶ 37-40, as well as Intuit’s participation in the IRS Free File program, which Intuit exited in October 2021, *see id.* ¶¶ 66-77. As for purportedly *ongoing* deception in connection with advertising for Tax Year 2021, the complaint alleges that the TurboTax website misleads consumers by failing to sufficiently disclose the eligibility criteria for Intuit’s Free Edition product. *See id.* ¶ 43. The complaint also focuses extensively on TurboTax’s “Free, Free, Free, Free” video ads, *see id.* ¶ 5—which humorously feature the repeated use of the word “free” in unexpected situations—despite Intuit’s having informed the FTC, four days before the administrative complaint was filed, that it was voluntarily discontinuing those ads, *see FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB (N.D. Cal.), ECF No. 45-3 ¶ 16. Intuit is now precluded from ever airing those ads—or similar ones—again. Ex. A at 21.

B. The District Court’s Denial Of Preliminary Relief

On the same day it filed its administrative complaint, the FTC also filed a substantially similar complaint and Emergency Motion for Temporary Restraining Order and Preliminary Injunction in the U.S. District Court for the Northern District of California. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF Nos. 1, 6. The motion for preliminary relief sought to enjoin allegedly deceptive marketing of Intuit’s Free Edition product pending the outcome of this administrative proceeding on the same subject. The FTC simultaneously filed an administrative

motion to relate its case to previously filed class actions consolidated before Judge Charles R. Breyer, who had ruled against Intuit in those class actions by declining to approve a class-wide settlement. That administrative motion was granted, so the FTC’s complaint and motion for preliminary relief were assigned to Judge Breyer (ECF No. 30). Intuit filed its opposition to the FTC’s motion for preliminary relief on April 4 (ECF No. 45), the FTC filed its reply on April 8 (ECF No. 48), and the district court held a hearing on April 21.

At the hearing, the court expressed skepticism regarding the FTC’s claims and entitlement to preliminary relief.² To begin with, the court questioned whether there was any prospective relief to be granted in light of the end of tax season and Intuit’s removal of many of the allegedly offending ads. In particular, the court stated that its “impression after reading hundreds of pages of argument on [the] subject” was that the FTC’s “request for emergency relief” was “basically mooted.” Ex. C at 7:18-23. As for the merits, the court repeatedly noted that the allegedly deceptive ads in fact disclose Free Edition’s eligibility qualifications. *See, e.g.*, Ex. C at 36:18-21 (“[L]ooking at this one as an example ... it says ‘TurboTax free edition, for simple tax returns only.’”); *id.* at 37:8-9 (“[T]his ad ... tells me that it is limited to simple tax returns.”); *id.* at 40:3-6 (“I mean, it is right there; isn’t it? I mean, it is right under the word ‘free, free, free’ or ‘zero, zero, zero,’ it says ‘TurboTax free edition, for simple returns only.’”).

The next day, the district court issued an order denying the FTC’s request for preliminary relief.³ The order explained that “[a]ny prospective harm [was] attenuated” because Tax Day had passed and “[m]ost tax payers [had] already filed their taxes.” Ex. D at 2. And “even before Tax Day,” the court observed, “Intuit had removed several of the most plausibly deceptive advertisements.” *Id.*

C. The Nationwide Settlement

While the FTC’s investigation was ongoing, Intuit was engaged in negotiations with both the FTC and 34 state attorneys general regarding potential claims under the FTC Act and state

² A transcript of the April 21 hearing is attached hereto as Exhibit C.

³ The district court’s order is attached hereto as Exhibit D.

consumer-protection and false-advertising laws based on the same advertising at issue in this proceeding. Shortly after the FTC exited those negotiations and filed its administrative complaint and federal-court action, the negotiations resulted in a settlement not only with the 34 state attorneys general, but with the state attorneys general of *all 50* states and the District of Columbia.⁴ Intuit did not admit liability in the settlement and, if necessary, will continue to defend its practices in this administrative proceeding. Nonetheless, the settlement provides for a \$141 million payment from Intuit to compensate consumers for any allegedly deceptive conduct.⁵ The settlement also includes injunctive terms governing the marketing of Intuit’s Free Edition product—terms that, as explained in detail below, closely mirror the relief sought by the FTC in this proceeding and also are close to terms that the FTC itself proposed in earlier settlement negotiations.

Relevant provisions of the settlement include:

- “Intuit must not publish, or cause to be published, in any medium ... its ‘free, free, free’ Video Advertisements” or “Video Advertisements that are substantially similar in their repetition of the word free.” Ex. A at 21.
- Non-Space-Constrained⁶ ads for free tax-preparation products “must disclose, Clearly and Conspicuously, and in Close Proximity to the representation that the product is free: (1) the existence and category of material limitations on a consumer’s ability to use that free product; and (2) that not all taxpayers qualify for the free product.” *Id.* at 20.

⁴ Intuit reached an agreement in principle with the states *before Tax Day*, contrary to the mistaken belief that FTC staff shared with Commissioner Wilson and further undermining one of the bases for this action.

⁵ The FTC does not seek monetary relief in this administrative action and is precluded from doing so. *See AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341, 1346 (2021) (FTC “administrative proceedings” may result only in “an order requiring the party to cease and desist from engaging in the unlawful conduct”). Nevertheless, in discussions with the FTC, it was made clear to Intuit that the FTC believed any settlement should include a substantial payment. The FTC has thus achieved through the nationwide settlement something that it cannot obtain through this administrative action.

⁶ “Space-Constrained Advertisement” is defined as “any online Advertisement ... or any Video Advertisement that has space, time, format, size, or technological restrictions that limit Intuit from being able to make the disclosures required by this [agreement]. ... Space-Constrained Advertisements do not include Advertisements on a TurboTax Website.” Ex. A at 5-6.

- Space-Constrained ads “must disclose that eligibility requirements apply,” and “[i]f made online, Intuit must also (1) Clearly and Conspicuously include a hyperlink to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously contains full disclosure of all material eligibility restrictions or (2) link by clicking on the Advertisement itself to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously sets forth full disclosure of all material eligibility restrictions.” *Id.*
- Space-Constrained Video ads “must visually disclose, Clearly and Conspicuously, and in Close Proximity to the representation that the product is free: (1) the existence and category of material limitations on a consumer’s ability to use that free product; and (2) that not all taxpayers qualify for the free product,” and for ads longer than 8 seconds, “Intuit must verbally disclose, Clearly and Conspicuously and in Close Proximity to the representation that the product is free, that not all taxpayers qualify.” *Id.*
- The TurboTax website must “disclose (1) Clearly and Conspicuously and very near to the representation all material limitations on a consumer’s ability to use [Free Edition], including, but not limited to, eligibility criteria for that free product, or (2) through a hyperlink (i) that is very near to the representation, (ii) that indicates that there are material limitations on a consumer’s ability to use that free product, and (iii) that links to a landing page or webpage that Clearly and Conspicuously sets forth all material limitations on a consumer’s ability to use that free product, including, but not limited to, eligibility criteria for that free product.” *Id.* at 21.
- Intuit must not misrepresent “[t]hat consumers must upgrade to a TurboTax Paid Product to file their taxes online if they are eligible to use the TurboTax Free Edition Product” or “[t]hat consumers can continue using and file their taxes for free with the TurboTax Free Edition Product when that is not the case.” *Id.* at 19.
- Intuit must not misrepresent “[a]ny other fact material to consumers concerning any tax preparation product or service, such as the price; total cost; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.” *Id.*
- One year after the effective date of the agreement, “Intuit must submit ... a compliance report, sworn under penalty of perjury, in which Intuit must ... describe in detail whether and how Intuit is in compliance with each Section of” the agreement. *Id.* at 29. Moreover, for the following five years, “Intuit must submit ... a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in ... the structure of Intuit that may affect compliance obligations.” *Id.*

ARGUMENT

I. The Conditions For Withdrawal Are Satisfied

Rule 3.26 of the Commission’s Rules of Practice provides that if “[a] district court has denied the Commission’s request for a preliminary injunction” sought in aid of a pending

administrative adjudication and “the Commission has not filed a motion for relief pending appeal with the court of appeals within 7 days following” such denial, “respondents may,” “within 14 days after” the denial, “move that the adjudicative proceeding be withdrawn from adjudication in order to consider whether the public interest warrants further litigation.” 16 C.F.R. § 3.26(b), (c). Under those circumstances, “[t]he Secretary *shall* issue an order withdrawing the matter from adjudication 2 days after such a motion is filed,” unless “complaint counsel file an objection asserting that the conditions of [Rule 3.26(b)] have not been met.” *Id.* § 3.26(c) (emphasis added).

The conditions of Rule 3.26(b) are satisfied here. The district court denied the FTC’s request for both a TRO and a preliminary injunction on April 22, 2022, *see* Ex. D, and the FTC did not file a motion for relief pending appeal within seven days of that ruling. This motion, filed within 14 days after the district court’s denial, is therefore timely. Accordingly, pursuant to Rule 3.26(c), it “will result, two days after filing, in automatic withdrawal from adjudication.” Administrative Litigation Following the Denial of a Preliminary Injunction, 60 Fed. Reg. 39,640, 39,640 (Aug. 3, 1995).

II. Further Litigation Is Not In The Public Interest

Intuit further submits that continued proceedings in this administrative litigation would not be in the public interest.⁷

Most significantly, the state attorneys general settlement, which incorporates the FTC’s own proposal for injunctive relief, provides all of the material relief the FTC seeks to obtain through this action. To the extent there are differences between the injunctive terms of the

⁷ The FTC has enumerated five factors that it considers in assessing “whether to pursue administrative litigation of a *merger* case following the denial of a preliminary injunction in federal court.” 74 Fed. Reg. 1,804, 1,811 (Jan. 13, 2009) (emphasis added). Those factors are: “(i) the factual findings and legal conclusions of the district court or any appellate court, (ii) any new evidence developed during the course of the preliminary injunction proceeding, (iii) whether the [challenge] raises important issues of fact, law, or ... policy that need resolution in administrative litigation, (iv) an overall assessment of the costs and benefits of further proceedings, and (v) any other matter that bears on whether it would be in the public interest to proceed with the ... challenge.” 60 Fed. Reg. at 39,741. Intuit submits that if applied in this context these factors would weigh uniformly against continuation of this proceeding, for all the reasons discussed herein.

settlement and the relief sought here, those differences are immaterial and certainly do not leave room for conduct that would violate any laws. The FTC’s administrative complaint, for instance, requests prohibitions “against misrepresenting that a good or service is ‘free’” and “against misrepresenting any material fact, in connection with the advertising ... of any goods or services, including ... the cost of any of Respondent’s goods or services.” Compl. at 26. The settlement already prohibits such misrepresentations and imposes additional specific requirements to avoid them, including by prohibiting the “Free, Free, Free, Free” video ads that are a primary focus of the complaint’s allegations. *See* Compl. ¶¶ 5, 21-35; *see also* Ex. A at 21. The complaint also alleges that the TurboTax website misleads consumers by failing to disclose the eligibility limitations of Intuit’s Free Edition product. *See* Compl. ¶¶ 36-44. The settlement addresses that concern by requiring Intuit to disclose on the TurboTax website, in close proximity to representations that Free Edition is free, that there are material limitations on a consumer’s ability to use the product. *See* Ex. A at 21. Because the relief achieved by the legally enforceable nationwide settlement materially mirrors the relief sought here, further investment of time and labor in this proceeding would be a poor use of the FTC’s resources.⁸

Other aspects of the relief sought predate the nationwide settlement. On June 29, 2021, the FTC shared with Intuit a proposed complaint alleging misconduct with regard to Intuit’s participation in the IRS Free File program. Just two weeks later, Intuit announced that it would exit the Free File program, thereby necessarily ceasing that alleged misconduct. *See* Intuit, *Accelerating Technology Innovation to Better Help Consumers Solve Their Most Pressing Financial Problems* (July 15, 2021), <https://www.intuit.com/blog/news-social/accelerating-technology-innovation-to-better-help-consumers-solve-their-most-pressing-financial-problems/>.

⁸ The complaint’s remaining allegations concern supposed “Hard Stops,” *see* Compl. ¶¶ 45-58, and the IRS Free File program, to which Intuit donated tax-preparation software until October 2021, *see id.* ¶¶ 59-118. Neither of those allegations is relevant to the sole count included in the complaint, which concerns only the marketing of Intuit’s Free Edition product. *See id.* ¶¶ 119-121. In any event, the settlement addresses those concerns by prohibiting Intuit from making misrepresentations on its upgrade screens, *see* Ex. A at 19, and prohibiting Intuit from rejoining the IRS Free File program, *see id.* at 22.

(As noted, Intuit formally left the program in October 2021 and is now prohibited by the settlement from rejoining.) The FTC had also secured significant relief with respect to the marketing of Intuit’s Free Edition product even before the settlement. On March 24, 2022, counsel for Intuit met with Chair Khan to discuss the FTC’s concerns about that marketing. That evening, in response to Chair Khan’s feedback, Intuit decided to discontinue its video-ad campaign for Free Edition and immediately began the process of removing those ads from all media it controls. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 45-3 ¶ 16. Accordingly, the district court’s order denying the FTC’s motion for preliminary relief noted that “the most plausibly deceptive advertisements” described in the FTC’s complaint had, by the date of the hearing, already been “removed.” Ex. D at 2. (The settlement now prohibits Intuit from re-running those or materially similar ads in the future.) These achievements by the FTC, now cemented by a legally enforceable nationwide settlement, leave little if anything additional to be accomplished in this proceeding.

Even if there were any further prospective relief to be gained in this proceeding, the FTC would face considerable difficulty in obtaining it. In the federal district court proceedings, the FTC was unable to meet its burden to establish a likelihood of success on the merits:

- Judge Breyer observed that the allegedly deceptive ads for Tax Year 2021 do in fact disclose eligibility limitations for Free Edition (“I mean, it is right there; isn’t it?” Ex. C at 40:3-4).
- The district court noted the absence of consumer complaints or other evidence of deception, such as consumer declarations (“[W]here are those declarations?” *Id.* 31:19-20).
- The FTC relied on a survey that did not show anyone the challenged ads, meaning it cannot be used to draw any conclusions about those ads. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 45 at 15. The survey was also flawed in many other respects.⁹

⁹ For example, the survey employed a transparently biased methodology; specifically, participants were informed that the survey was intended to support the FTC’s deceptive-advertising claims against Intuit and were allowed to withdraw once they learned of that purpose. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 45 at 15. The survey also failed to control for factors that might affect the results, and the survey questions themselves were misleading, encouraged speculation, or otherwise failed to test consumer deception accurately. *Id.*

The order denying the FTC’s motion for preliminary relief reflected the court’s skepticism, noting that “the *most plausibly* deceptive advertisements” had already been removed. Ex. D at 2 (emphasis added).

The complaint in this proceeding, moreover, raises no important issues of fact, law, or policy in need of administrative resolution. It challenges specific ads, many of which no longer exist. Future ads will comply with the nationwide settlement agreement. And the FTC has already published guidelines (with which Intuit complies) on the adequacy of disclosures in digital advertising, *see* FTC, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (Mar. 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>, as well as on the use of the word “free,” *see Guide Concerning Use of the Word “Free” And Similar Representations*, 16 C.F.R. § 251 *et seq.* Far from breaking new legal or policy ground, the FTC conceded that the relief it sought in court “tracks the Commission’s [existing] guidance.” *FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 48 at 12.

Finally, it bears repeating that the subject of this proceeding—Intuit’s Free Edition product—is a legitimately free product that provides obvious benefits to consumers. Roughly 47 million taxpayers are eligible to use the product to file their taxes completely for free. *See FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB, ECF No. 45-1 ¶ 12. Approximately 14 million taxpayers do so every year. *See id.*, ECF No. 45-3 ¶ 3. Between Tax Years 2016 and 2020, nearly 70 million taxpayers did so. *See id.*, ECF No. 45-3 ¶ 2. Remarkably, approximately *one in five* taxpayers who file using any online service do so for free using Free Edition. *See id.*, ECF No. 45-1 ¶ 13. Intuit is proud to offer this valuable free product, and it does so with the goal of developing life-long relationships with the millions of consumers who use it. That is why Intuit takes the FTC’s concerns so seriously, and why Intuit has worked so thoroughly to address them.

For all these reasons, Intuit respectfully submits that continuing this administrative proceeding is not in the public interest. “Once a matter is withdrawn from adjudication, complaint counsel and respondents (and even third parties) can communicate informally with Commissioners

to discuss the matter.” 60 Fed. Reg. at 39,640. Intuit looks forward to the opportunity to further discuss this matter with the Commissioners and staff.

Dated: May 4, 2022

Respectfully submitted,

By: /s/ David Z. Gringer

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[PROPOSED] ORDER WITHDRAWING MATTER FROM ADJUDICATION

On May 4, 2022, Respondent Intuit Inc. filed a motion to withdraw this matter from adjudication pursuant to Commission Rule 3.26(c), 16 C.F.R. § 3.26(c). Upon consideration of Respondent's motion, any opposition thereto, and the Commission being full informed,

IT IS ORDERED, pursuant to Rule 3.26(c) of the Commission Rules of Practice, that this matter in its entirety be, and hereby is, withdrawn from adjudication.

By the Commission.

Date: _____

April Tabor
Acting Secretary

EXHIBIT A

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance¹ (the “Assurance”) is entered into by the Attorneys General of the States and Commonwealths of Alaska, Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey,

¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance. The Attorneys General have authority to execute this Assurance. *See generally* N.Y. EXEC. LAW § 63(15); TENN. CODE ANN. § 47-18-107; FLORIDA STATUTES SECTION 501.207(6); ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/6.1; N.J.S.A. 56:8-1 to -227; P.A. UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW 73 P.S. § 201-5; TEX. BUS. & COM. CODE § 17.58; RCW 19.86.100; ALASKA STAT. § 45.50.511; ALA. CODE § 8-19-4; ARKANSAS CODE ANNOTATED § 4-88-114; ARIZ. REV. STAT. § 44-1530; C.R.S. § 6-1-110(2); CONN. GEN. STAT. § 42-110j; D.C. CODE 28-3909(c)(6); 29 DEL. C. § 2525(a) (authorizing cease and desist orders by agreement); O.C.G.A. § 10-1-402; HAW. REV. STAT. SECT. 487-12; IOWA CODE § 714.16 ; IOWA ADMIN. CODE R. 61-38.1; IDAHO CODE § 48-610; IND. CODE § 24-5-0.5-7; KENTUCKY REVISED STATUTES 367.230; UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, LA. R.S. § LA. R.S. 51:1410; M.G.L. C. 93A, SEC. 5.; MD. CODE ANN., COM. LAW § 13-402; 5 M.R.S.A. § 210; MICH. COMP. LAWS § 445.906; MINN. STAT. § 8.31, SUBD. 2B; §407.030 RSMo; MISSISSIPPI CONSUMER PROTECTION ACT, MS CODE ANN. §75-24-27(1)(g) ; MONT. CODE ANN. § 30-14-112; N.D.C.C. 51-15-06.1; NEB. REV. STAT. § 59-1610 AND NEB. REV. STAT. § 87-202.05(2); N.H. REV. STAT. ANN. § 358-A:1-7; NEW MEXICO UNFAIR PRACTICES ACT NMSA 1978, §57-12-9 (1971); NEV. REV. STAT. 598.0995; OHIO REVISED CODE 1345.06(F); 15 O.S. § 756.1; ORS 646.632; R.I. GEN. LAWS § 6-13.1-6 ; SOUTH CAROLINA CODE § 39-5-60; SDCL 37-24-19; UTAH CODE § 13-2-1, *et seq.*; VA. CODE ANN. § 59.1-202; 9 V.S.A. § 2459; WIS. STAT. § 100.18(11)(e); W. VA. CODE § 46A-7-107; and WYO. STAT. ANN. § 40-12-107.

This Assurance of Voluntary Compliance is a Settlement Agreement for the purposes of the North Carolina Unfair and Deceptive Practices Act, N.C. GEN. STAT. § 75-1.1 *et seq.*

The State of California is simultaneously entering into a settlement in a form consistent with the requirements of California law. That settlement incorporates the substantive terms of this Assurance and any differences between California’s settlement and this Assurance arise from the differences as to form.

The State of Connecticut is represented by the Connecticut Attorney General, acting at the request of the Commissioner of Consumer Protection. CONN. GEN. STAT. §§ 42-110j and 42-110m.

Hawaii is represented on this matter by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. For simplicity purposes, the entire group will be referred to as the “Attorneys General” or individually as “Attorney General” and the designations, as they pertain to Hawaii, refer to the Executive Director of the State of Hawaii’s Office of Consumer Protection.

Maryland is represented by the Consumer Protection Division of the Office of the Attorney General of Maryland. For simplicity purposes, the entire group will be referred to as the “Attorneys General” or individually as “Attorney General” and the designations, as they pertain to Maryland, refer to the Consumer Protection Division of the Office of the Attorney General of Maryland. The Consumer Protection Division has authority to enter into this Assurance pursuant to MD. CODE ANN., COM. LAW § 13-402.

Herein, no state-specific language or provision included in a footnote or appendix, or any state-specific portion thereof, shall affect the interpretation, construction, or enforcement of the Assurance with respect to any signatory State not referenced in such footnote or appendix, or any state-specific portion thereof.

Intuit understands each State may conform the form of the Assurance in accordance with statute, rule, or practice and may add a cover page, caption, or appendix to the document.

New Mexico, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Washington, Wisconsin, West Virginia, and Wyoming, the District of Columbia, and the Executive Director of the State of Hawaii Office of Consumer Protection (the “Attorneys General” or the “States”) and Intuit Inc. (“Intuit”; together with the “Attorneys General,” the “Parties”) to resolve an investigation of the Attorneys General into Intuit’s marketing, advertising, promotion, and sale of certain online tax preparation products and whether Intuit’s conduct constituted deceptive or unfair business acts or practices in violation of the States’ consumer protection laws.² In consideration of their mutual agreements to the terms of this Assurance, and such other consideration as described herein, the sufficiency of which is hereby acknowledged, the Parties hereby enter into this Assurance and agree as follows:

DEFINITIONS

For the purpose of this Assurance, the following definitions apply:

² See generally N.Y. EXEC. LAW § 63(12); N.Y. GEN. BUS. LAW §§ 349-50; TENN. CODE ANN. §§ 47-18-104; FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, CHAPTER 501, PART II, FLORIDA STATUTES; ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 ILCS 505/1, *et seq.*; N.C.G.S. § 75-1.1; N.J.S.A. 56:8-2; P.A. UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, 73 P.S. §§ 201-1 – 201-9.2; TEX. BUS. & COM. CODE ANN. §§ 17.41 through 17.63; RCW 19.86.020; ALASKA STAT. § 45.50.471; ALA. CODE § 8-19-1 *et seq.*; ARKANSAS CODE ANNOTATED § 4-88-107(A); ARIZ. REV. STAT. §§ 44-1521 TO 1534; CAL. BUS. & PROF. CODE § 17200 *et seq.*, § 17500 *et seq.*; C.R.S. § 6-1-101 *et seq.*; C.R.S. § 6-1-105(1); CONN. GEN. STAT. § 42-110b (a); D.C. CODE 28-3904; 6 DEL. C. § 2513; O.C.G.A. § 10-1-390 *et seq.*; HAW. REV. STAT. CHPTS. 480 AND 481A; IOWA CODE § 714.16; IDAHO CONSUMER PROTECTION ACT, TITLE 48, CHAPTER 6, IDAHO CODE; IND. CODE § 24-5-0.5-0.1, *et seq.*; K.S.A. § 50-623 *et seq.*; KENTUCKY REVISED STATUTES 367.170; UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, LA. R.S. §§ 51:1401 *et seq.*; M.G.L. C. 93A, SECS 2 & 4.; MD. CODE ANN., COM. LAW §§ 13-101 through 13-501; 5 M.R.S.A. § 205-A *ET SEQ.*; MICH. COMP. LAWS § 445.903; MICH. COMP. LAWS § 445.901 *et seq.*; MINN. STAT. §§ 325D.44; 325F.69, SUBD. 1; §407.020 RSMO; MISSISSIPPI CONSUMER PROTECTION ACT, MS CODE ANN. § 75-24-1 *et seq.*; MONT. CODE ANN. § 30-14-103; N.D. CENT. CODE § 51-15-01 *et seq.*; NEB. REV. STAT. §§ 59-1601 to 59-1622 AND NEB. REV. STAT. §§ 87-301 to 87-306.; N.H. REV. STAT. ANN. § 358-A:1-7; NEW MEXICO UNFAIR PRACTICES ACT NMSA 1978, §57-12-1 *et seq.* (1967); NRS 598.0903 *et al.*; OHIO CONSUMER SALES PRACTICES ACT (“CSPA”), OHIO REVISED CODE 1345.01 *et seq.*, AND ITS SUBSTANTIVE RULES, 109-4-3-01, *et seq.*; OKLAHOMA CONSUMER PROTECTION ACT, 15 O.S. §§ 751 *et seq.*; OREGON’S UNLAWFUL TRADE PRACTICES ACT, ORS 646.605 to 646.652; ORS 646.608(1)(b), (c), (e), and (s); R.I. GEN. LAWS § 6–13.1–1 *et seq.*; SOUTH CAROLINA CODE § 39-5-10 *et seq.*; SDCL CHAPTER 37-24; UTAH CODE § 13-11-4; VA. CODE ANN. §§ 59.1-196 to 59.1-207; 9 V.S.A. § 2453; FRAUDULENT REPRESENTATIONS. WIS. STAT. § 100.18(1); W. VA. CODE §§ 46A-1-101, *et seq.*; WYO. STAT. ANN. § 40-12-101 through -114 (the “Consumer Protection Acts”).

A. “**Advertisement**” or “**Advertising**” means any written or verbal statement, illustration, or depiction that promotes the sale or use of a consumer good or service, or is designed to increase consumer interest in a brand, good, or service. Advertising media includes, but is not limited to promotional materials; print; television; radio; and Internet, Paid Display Advertisements, Paid Search Advertisements, display, social media, and other digital content.

B. “**Clearly and Conspicuously**” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:

- 1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television Advertisement, the disclosure must be presented in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means (the disclosures in the visual and audible portions of the communication in Space-Constrained Video Advertisements are not required to be identical).
- 2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

- 3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- 4) In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
- 5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires disclosure appears.
- 6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
- 7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
- 8) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

C. “**Close Proximity**” means that the disclosure is very near the triggering representation and that the disclosure is made simultaneously with the triggering representation and remains or is repeated throughout the duration of the Advertisement. For example, a disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close Proximity to the triggering representation.

D. “**Effective Date**” means the date on which all of the Parties have signed this Assurance.

E. **“Intuit IRS Free File Product”** means Intuit’s TurboTax Free File Program, TurboTax Freedom Edition, IRS Free File Program delivered by TurboTax or any other Intuit product or service that was or in the future may be provided pursuant to a memorandum of understanding or an agreement between Free File, Inc. (or any successor entity) and the IRS for the provision of free online tax preparation and e-filing services.

F. **“Oversight Committee”** shall mean the following Attorneys General: Florida, Illinois, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and Washington.

G. **“Paid Display Advertisement”** means an online Advertisement in which Intuit pays, or causes another to pay, to have an Advertisement displayed on a website and pays for the Advertisement, regardless of whether consumers click on the Advertisement.

H. **“Paid Search Advertisement”** means an online Advertisement in which Intuit pays, or causes another to pay, to have an Advertisement displayed with search engine results for a particular search term and pays for the Advertisement only when consumers click on the Advertisement.

I. **“Covered Consumer”** means any individual, or individuals if a joint return was filed, who in Tax Years 2016, 2017, or 2018 was (1) eligible to use an Intuit IRS Free File Product; (2) began his or her tax returns using a TurboTax Free Edition Product; (3) was informed that he or she was ineligible to use a TurboTax Free Edition Product; (4) subsequently paid to use a TurboTax Paid Product, and (5) had not used the Intuit IRS Free File Product in a previous tax year.

J. **“Space-Constrained Advertisement”** means any online Advertisement (including but not limited to Paid Display Advertisements and Paid Search Advertisements) or

any Video Advertisement that has space, time, format, size, or technological restrictions that limit Intuit from being able to make the disclosures required by this Assurance. Intuit bears the burden of showing that there is a constraint or insufficient space and time to make a required disclosure that is Clear and Conspicuous and in Close Proximity to the triggering term. Space-Constrained Advertisements do not include Advertisements on a TurboTax Website.

K. **“TurboTax Free Edition Product”** means any online software product offered by Intuit that allows consumers, without paying a fee, to prepare and file federal tax returns, state tax returns, or both, including but not limited to “TurboTax Free Edition” and “Federal Free Edition.” “TurboTax Free Edition Product” does not include any Intuit IRS Free File Product, any TurboTax Paid Product, TurboTax Live, or any products sold or offered within the TurboTax Free Edition Product, such as Audit Defense.

L. **“TurboTax Paid Product”** means the online tax preparation software products offered by Intuit that allow consumers, for a fee, to prepare and file federal tax returns, state tax returns, or both, for themselves. “TurboTax Paid Product” does not include products sold or offered in addition to a TurboTax Paid Product.

M. **“TurboTax Website”** means turbotax.intuit.com, any subdomain of turbotax.intuit.com, and any other website owned, operated, or controlled partially or wholly by Intuit that provides or offers TurboTax Paid Products or TurboTax Free Edition Products.

N. **“Upgrade Screen”** means any display within the product flow of the TurboTax Free Edition Product that appears when consumers using that product indicate they have income, credits, deductions, or other tax situations not covered by the TurboTax Free Edition Product, and offers consumers the option of using a TurboTax Paid Product to prepare and file their federal and/or state tax returns.

O. **“Video Advertisement”** means any Advertisement made via television or made online using video.

FINDINGS

1. Intuit is a Delaware corporation with its principal place of business in Mountain View, California.

2. Intuit transacts or has transacted business in each State and throughout the United States. At all times relevant to this Assurance, acting alone or in concert with others, Intuit has advertised, marketed, distributed, or sold TurboTax, a tax preparation software that enables users to prepare and file their taxes through the internet, to consumers throughout the United States.

I. **Intuit’s Free TurboTax Products**

3. From at least 2016 to October 2021, Intuit offered two TurboTax online tax filing products that were available for free to consumers who met certain eligibility requirements. Each of these products had different eligibility requirements.

A. **TurboTax’s “Freemium” Product: TurboTax Free Edition**

4. Since at least 2016, Intuit has engaged in what it calls a “freemium” business strategy that monetizes free products.

5. This “freemium” business strategy involves, in part, growing Intuit’s customer base by offering free products to consumers to whom Intuit sells separate add-on products and inducing customers to upgrade to paid versions of TurboTax.

6. Since at least 2017, Intuit has called its “freemium” product “TurboTax Free Edition.” In 2016, Intuit called its “freemium” product “Federal Free Edition.”

7. This TurboTax “freemium” product is only available to consumers with “simple” tax returns, as defined by Intuit; other consumers are required to upgrade to paid products to file through Intuit.

8. For consumers filing their 2016 and 2017 taxes, Intuit defined a “simple” tax return as a return that could be filed using a 1040A or 1040EZ tax form.

9. Since 2019, when consumers filed tax returns for Tax Year (“TY”) 2018 income, Intuit has defined a “simple” tax return as a return that could be filed on a Form 1040, with no attached schedules, regardless of the consumer’s income.

B. Intuit’s Free File Product

10. From 2003 to October 2021, Intuit offered a free version of its online tax preparation products through its participation in the United States Internal Revenue Service (“IRS”) Free File Program, a public-private partnership formed in 2002 between a consortium of tax preparation software companies and the IRS pursuant to a Memorandum of Understanding (“MOU”). Under the MOU, participating companies offer free online tax preparation products to low- and middle-income Americans. In exchange, the IRS agreed not to compete with the participating companies in providing free, online tax return preparation and filing services to American consumers.

11. Historically, consumer participation in the IRS Free File Program has been low.

12. The IRS has set eligibility thresholds for participation in the Free File Program based on consumers’ adjusted gross income (“AGI”). Consumers with an AGI equal to or less than 70% of the U.S. consumer population are meant to be eligible for the program. The MOU, however, requires that no company offer its Free File product to more than 50%, or less than 10%, of eligible consumers. Each company is free to set its own eligibility requirements to stay within that range.

13. From 2017 (filings on TY 2016 income) to 2021 (filings on TY 2020 income), Intuit made its Free File product available to all consumers who were eligible for the earned income tax credit.

14. From 2017 to 2021, Intuit also made its Free File product available to all consumers with an AGI that does not exceed specified AGI thresholds:

Tax Year	Maximum AGI
2016 (returns filed in 2017)	\$33,000
2017 (returns filed in 2018)	\$33,000
2018 (returns filed in 2019)	\$34,000
2019 (returns filed in 2020)	\$36,000
2020 (returns filed in 2021)	\$39,000

15. From 2017 to 2021, Intuit also made its Free File product available to all active duty military service members with an AGI that does not exceed specified AGI thresholds:

Tax Year	Maximum AGI
2016 (returns filed in 2017)	\$64,000
2017 (returns filed in 2018)	\$66,000
2018 (returns filed in 2019)	\$66,000
2019 (returns filed in 2020)	\$69,000
2020 (returns filed in 2021)	\$72,000

16. Although consumers primarily accessed Intuit’s Free File product via IRS.gov, they have also accessed it directly via Intuit’s internet landing page for the product, which is different from the landing page for its “freemium” and paid products.

17. Intuit changed the name of its Free File product several times. Intuit also used different names for its Free File product at the same time, depending on where the product was being marketed.

18. Prior to TY 2018, Intuit called its Free File product “TurboTax Freedom Edition.”

19. For TY 2018, Intuit changed the name of its Free File product to “TurboTax Free File Program.”

20. From at least TY 2016 through and including TY 2018, Intuit used a different name to market its Free File product on the IRS.gov website. On the IRS.gov website, Intuit marketed its Free File product as “TurboTax All Free SM.”

21. For TY 2019 and 2020, Intuit changed the name of its Free File product to “IRS Free File Program Delivered by TurboTax.” This change was required by an amendment to the MOU between the IRS and the participating tax preparation companies that required uniform naming of all IRS Free File Program products.

C. The Tension Between Intuit’s Free File and “Freemium” Products and Related Consumer Confusion

22. Intuit’s Free File product yielded benefits to the company as part of its efforts to avoid government “encroachment” into the tax preparation industry.

23. Indeed, Intuit has acknowledged publicly the competitive threat of a government-run free e-filing system, including in Securities and Exchange Commission filings.

24. Intuit has recognized that high participation in the IRS Free File Program would dent its bottom line, but that, at the same time, it had to keep Free File enrollments above a certain level to prevent government “encroachment.”

25. For several years prior to TY 2018, Intuit employees tasked with overseeing the marketing strategy for both Intuit’s Free File and “freemium” products considered changing the name of Intuit’s Free File product.

26. Intuit knew that consumers were confused by the similarity of the names of these products. Intuit chose to name its commercial freemium product TurboTax “Free Edition,” even though it is only free for approximately one-third of taxpayers, while it named its Free File product “Freedom Edition,” which does not indicate that it is free despite being part of a program that is free for 70 percent of taxpayers.

27. In 2018, Intuit knew that consumers were still confused about the differences between its Free File and “freemium” products.

28. Although Intuit changed the name of its Free File product to TurboTax Free File Program for TY 2018, it continued to market its Free File product on the IRS.gov website using the trademarked name TurboTax All Free. Moreover, Intuit was aware that changing the name to TurboTax Free File Program would not create any additional clarity for its customers and that consumers would be confused between the Free File Program and TurboTax Free Edition, especially due to the company’s focus on the use of “free” in marketing its products.

29. In 2019, this time pursuant to the MOU with the IRS, Intuit again changed the name of its Free File product, renaming it to IRS Free File Program Delivered by TurboTax.

II. Online Search Practices

A. For TY 2018, Intuit Hid Its Free File Landing Page from Search Engines for Approximately Five Months During the Peak of Tax Season

30. In 2018, Intuit employees responsible for marketing strategy feared the name change of Intuit’s Free File product could negatively impact the ranking of the company’s “freemium” product in online search engine results, leading to a loss in revenue.

31. For TY 2018, Intuit blocked the landing page for its newly named Free File product so that it would not be indexed (listed) by internet search engines. That block was in place from November 13, 2018, to April 26, 2019. This timeframe covered the vast majority of Intuit’s 2019 tax filing season, which is the time it received revenue from consumers using TurboTax products to file tax returns for TY 2018.

32. For TY 2019, Intuit stopped blocking its Free File product landing page from online search engines, and 2,070,778 consumers filed their federal tax returns using Intuit’s Free File product, representing growth of 73% over TY 2018.

B. Intuit Used Paid Search Terms to Direct Consumers Searching for the IRS Free File Program to Intuit’s “Freemium” and Paid Products

33. As part of its advertising and marketing practices, Intuit has bid on paid search terms with search engines such as Google and Bing. When a consumer queried a search engine for a search term and Intuit won the search engine’s instant auction for that paid search term, the consumer would be served an ad selected by Intuit that included a hyperlink directing the consumer to a specific website.

34. For many years, including TY 2018 while Intuit had blocked the landing page for its Free File product from appearing in online search results, Intuit bid on search terms relevant to the IRS Free File Program.

35. In many instances, these search terms indicated consumers were likely searching for information about, or links to reach the website for, the IRS Free File Program. For example, Intuit bid on the following 13 search terms:

- free file
- free file irs
- free file taxes
- free file taxes online
- free file turbotax
- free file turbo tax
- irs free file
- irs.gov/freefile
- irs.gov/freefile.
- irs.gov free file
- irs.gov/free file
- turbo tax free file
- turbotax free file program

36. For each of the 13 search terms referenced in paragraph 35, during TY 2018—while Intuit had blocked the landing page for its Free File product from appearing in search results—Intuit’s online ads directed consumers to Intuit’s commercial website with its “freemium” product, rather than the IRS.gov website for the IRS Free File Program or the landing page for Intuit’s Free File product.

37. During TY 2018, Intuit directed consumers towards the website for “freemium” and paid products when consumers searched for its Free File product by its exact name: Turbo Tax Free File Program.

38. If a taxpayer knew to type “TurboTax Freedom” in a search engine, she would receive a paid advertisement which, during the 2019 filing season, would direct her to a landing page with a button link that said “See If You Qualify” that eventually lead to the Freedom Edition website. However, the landing page also included a prominent link that said “Start for Free,” which directed the user to TurboTax’s commercial and paid products.

39. Intuit knew that some of its customers were misled by these practices.

III. Advertising Practices: Intuit’s Advertisements Misrepresented that Consumers Were Eligible for a Free Version of Its Products

40. Since at least 2016, Intuit has extensively promoted its TurboTax products through advertising in a variety of mediums touting that it offers a free service.

41. Among its “do-it-yourself” online software products, Intuit used ads, including television and social media ads, to promote its “freemium” TurboTax product.

42. Intuit also has engaged in an ad campaign it calls “Free, Free, Free” in which “free” is essentially the only word spoken by the actors in the commercials, until the voice over at the end of the advertisement. Intuit used at least six different advertisements in this campaign.

43. Many of Intuit’s ads contain a fine print disclaimer at the end of the commercial informing consumers that the offer is limited to consumers with “simple tax returns” or “simple U.S. returns only.” This fine print disclaimer was not conveyed audibly.

44. The disclaimers are inadequate to cure the express representation that the advertised products are free.

45. A reasonable consumer could believe that the products Intuit advertises as free are free for them, given that online products in many industries, including in online tax preparation, are routinely offered to consumers completely free of any charge.

46. Intuit's false statements or representations that TurboTax is free, without adequately disclosing the limitations of its free offer, have induced consumers to begin using TurboTax and, after discovering they are not eligible for Intuit's "freemium" product (as described below), to pay for paid TurboTax products.

IV. Website Practices

A. Intuit's TurboTax Home Page Mised Consumers into Believing They Were Eligible for Its "Freemium" Product

47. When consumers who saw Intuit's advertisements visited the TurboTax website, the website's home page failed to adequately disclose the limitations on eligibility for Intuit's "freemium" product.

48. For example, for TY 2018, the TurboTax home page contained a screen that mimicked the "free, free free free" ad campaign.

49. The screen failed to disclose adequately the limitations on eligibility.

50. Consumers who proceeded with the "freemium" product would be brought to a login screen and then start an online, automated "interview" to begin entering information to file their taxes. Consumers who were not eligible for Intuit's "freemium" TurboTax product would not learn they were ineligible until they had already invested significant time and effort creating an account and inputting their personal tax information into the TurboTax product.

51. For TY 2019, the TurboTax home page used a similar screen, with an even greater emphasis that consumers were "guaranteed" a free product. Again, consumers who were not eligible for Intuit's "freemium" TurboTax product would not learn they were ineligible until they

had already invested significant time and effort creating an account and inputting their personal tax information into the TurboTax product.

52. For TY 2020 and 2021, Intuit has continued to employ a customer interview model in which consumers who were not eligible for Intuit’s “freemium” TurboTax product would not learn they were ineligible until they had already invested significant time and effort creating an account and inputting their personal tax information into the TurboTax product.

B. Intuit’s TurboTax Products and Pricing Screen Failed to Disclose Intuit’s Free File Product, Further Impeding Consumers from Learning of Its Existence

53. Intuit’s TurboTax website has featured a screen Intuit calls its “Products and Pricing” screen. For TY 2018, the headline on this screen informed consumers: “Tell us about you – we’ll recommend the right tax solution.”

54. When consumers clicked on one of the options on this screen, the TurboTax website would then recommend one of four products: (1) its “freemium” product, marketed as Free Edition; (2) Deluxe; (3) Premier; or (4) Self-Employed—the latter three being Intuit’s paid do-it-yourself tax products. At the bottom of the screen, all four products were displayed, with the recommended product highlighted.

55. This screen never displayed or recommended the TurboTax Free File product to consumers, even when they were ineligible for the “freemium” product, TurboTax Free Edition.

56. In fact, in TY 2019, the TurboTax website had a site index at the bottom of the home page with a link to “All online tax preparation software.” That link brought consumers to the Products and Pricing screen, which did not disclose Intuit’s Free File product. Likewise, during TY 2020, the TurboTax app contained a similar list of “all products” that did not include Intuit’s Free File product.

57. For eligible consumers based on their AGI, Intuit's former Free File product covered all tax situations, forms, and deductions, thus providing coverage equal to Intuit's most expensive TurboTax online product, Self-Employed.

C. The TurboTax Interview Process Used "Hard Stops" to Induce Consumers to Upgrade from Free to Paid Products

58. Intuit represented to consumers who are not eligible for the "freemium" product that they must provide their payment information and pay Intuit in order to file their tax returns online with TurboTax, even if the consumer was eligible to file for free through Intuit's former Free File product. Intuit informed consumers of these required upgrades using screens its employees call "Hard Stops." Intuit still employs Hard Stops in its "freemium" product.

59. When consumers use the TurboTax "freemium" product, Intuit's software asks them a series of questions on successive webpages about their financial situation. These questions enable Intuit to determine whether consumers are eligible for the "freemium" product and include, among other things, whether the consumer paid student loan interest or was self-employed.

60. After supplying the information, consumers are prompted to input their income by category. When consumers indicate that they need to report income on a Form 1099-MISC (for example, because entities that paid them classified them as independent contractors), the TurboTax "freemium" product displays a Hard Stop informing them that they cannot proceed for free. For example, Intuit's TY 2019 "Business Income Upgrade" Hard Stop told consumers: "To accurately report this income, you'll need to upgrade."

61. Hard Stop screens then offer consumers the option to upgrade and pay for a paid TurboTax product, such as TurboTax Deluxe or TurboTax Self-Employed. At various times

during TY 2018 and 2017, Intuit charged \$59.99 for TurboTax Deluxe and \$119.99 for TurboTax Self-Employed.

62. The Business Income Hard Stop was likely to deceive or mislead consumers who were eligible for Intuit’s former Free File product.

63. The headline in the Business Income Hard Stop states that consumers must upgrade to a paid product to “accurately report this income.” That statement was false at the time for a large percentage of TurboTax customers—those who were eligible for Intuit’s Free File product.

64. The Business Income Hard Stop was also misleading because it included a button that says “keep free” below the column for TurboTax Free Edition, even though the consumer could not actually continue using TurboTax Free Edition and report all of her income to the IRS.

65. Upon clicking on the “keep free” button, consumers were put into a feedback loop that ended only if they upgraded to a paid product or chose not to report their 1099 income.

66. Intuit has used and is using many other Hard Stops to induce consumers to upgrade based on certain types of income, such as income from a farm, farm rental or farm equipment; selling a home; a prior year state tax refund; or investments. All of these Hard Stops misled consumers eligible for Intuit’s former Free File product to provide their payment information and buy paid TurboTax products.

67. Overall, for all Hard Stops from TY 2016 through TY 2018, millions of consumers started in “freemium,” encountered a Hard Stop, and then upgraded to and filed in a paid product. Many of those who were shown a Hard Stop were eligible at the time for Intuit’s Free File product. These Free File-eligible consumers who upgraded in response to a Hard Stop paid Intuit more than \$100 million to file their federal tax returns.

68. From at least 2017 to October 2021, when consumers encountered these Hard Stops, Intuit failed to disclose to consumers that they may have been or were eligible to use Intuit's Free File product to accurately report their income or claim certain tax deductions.

V. Conclusion

69. Based on these Findings, the Attorneys General have reason to believe that Intuit has engaged in deceptive and unfair acts and practices in violation of the States' Consumer Protection Acts, in the marketing, advertising, promotion, and sale of online tax preparation products.

70. Intuit voluntarily withdrew from the IRS Free File Program effective October 2021 and would be able to seek to rejoin the IRS Free File Program at any time but for the provisions of this Assurance. Intuit could not rejoin the IRS Free File Program without approval of the IRS and the Director of the Free File Alliance.

71. Solely for purposes of this Assurance, Intuit neither admits nor denies any of the Findings in paragraphs 3 through 70 of this Section.

INJUNCTIVE RELIEF

I. General Compliance

Intuit shall comply with the Consumer Protection Acts and any amendments to those laws, regulations, and rules that may be adopted by the States subsequent to the Effective Date of this Assurance.

II. Prohibition Against Misrepresentations

Intuit, Intuit's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Assurance, whether acting directly or indirectly, in connection with promoting or offering any online tax preparation products, must not misrepresent, expressly or by implication:

A. That consumers can only file their taxes online accurately if they use a TurboTax Paid Product or TurboTax Free Edition Product.

B. That consumers can only claim a tax credit or tax deduction if they use a TurboTax Paid Product or TurboTax Free Edition Product.

C. That consumers must upgrade to a TurboTax Paid Product to file their taxes online if they are eligible to use the TurboTax Free Edition Product.

D. That consumers can continue using and file their taxes for free with the TurboTax Free Edition Product when that is not the case, including by stating expressly or impliedly to consumers on an Upgrade Screen that they can continue using the TurboTax Free Edition Product through a “keep free” button or another button using similar language. Intuit may give consumers the option of continuing to use the TurboTax Free Edition Product on an Upgrade Screen, so long as a disclosure is made, Clearly and Conspicuously on the Upgrade Screen and in Close Proximity to any button, link, or option on the Upgrade Screen that permits the consumer to exercise the option of continuing to use the TurboTax Free Edition Product, that the current tax information entered by the consumer indicates that the consumer will need to upgrade to a TurboTax Paid Product to file his or her taxes.

E. Any other fact material to consumers concerning any tax preparation product or service, such as the price; total cost; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

III. Required Disclosures and Business Practices for Advertising and Marketing of Free Products

As soon as reasonably practicable, but no later than August 1, 2022, in connection with advertising, marketing, promoting, offering, naming, or describing, or assisting in the advertising, marketing, promotion, offering, naming, or describing of any tax preparation

products as free, whether directly or indirectly, Intuit must make the following disclosures about taxpayer eligibility for such free products and comply with the following terms:

A. In any non-Space-Constrained Advertisement of free tax preparation products other than on a TurboTax Website, Intuit must disclose, Clearly and Conspicuously, and in Close Proximity to the representation that the product is free: (1) the existence and category of material limitations on a consumer's ability to use that free product; and (2) that not all taxpayers qualify for the free product.

B. In any Space-Constrained Advertisement of free tax preparation products other than Space-Constrained Video Advertisements, Intuit must disclose that eligibility requirements apply. If made online, Intuit must also (1) Clearly and Conspicuously include a hyperlink to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously contains full disclosure of all material eligibility restrictions or (2) link by clicking on the Advertisement itself to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously sets forth full disclosure of all material eligibility restrictions.

C. For a period of ten (10) years, in any Space-Constrained Video Advertisements of free tax preparation products, Intuit must visually disclose, Clearly and Conspicuously, and in Close Proximity to the representation that the product is free: (1) the existence and category of material limitations on a consumer's ability to use that free product; and (2) that not all taxpayers qualify for the free product. In addition, for a period of ten (10) years, in any Space-Constrained Video Advertisements of free tax preparation products except for such Advertisements that are 8 seconds or shorter, Intuit must verbally disclose, Clearly and Conspicuously and in Close Proximity to the representation that the product is free, that not all taxpayers qualify.

D. In any Advertisement of free tax preparation products on a TurboTax Website, and any space on a TurboTax Website listing, describing, offering, or promoting such free products, Intuit must disclose (1) Clearly and Conspicuously and very near to the representation all material limitations on a consumer's ability to use that free product, including, but not limited to, eligibility criteria for that free product, or (2) through a hyperlink (i) that is very near to the representation, (ii) that indicates that there are material limitations on a consumer's ability to use that free product, and (iii) that links to a landing page or webpage that Clearly and Conspicuously sets forth all material limitations on a consumer's ability to use that free product, including, but not limited to, eligibility criteria for that free product.

E. Intuit must disclose Clearly and Conspicuously to consumers, at the earliest point at which it is reasonably possible to determine, that they do not qualify to file a tax return for free with the TurboTax Free Edition Product.

F. Intuit must take reasonable steps to design all TurboTax products to inform, at the earliest point it is reasonably possible, consumers using the TurboTax Free Edition Product whether they will or will not be able to file for free using that product.

G. Intuit must not publish, or cause to be published, in any medium (1) its "free, free, free" Video Advertisements (see Appendix A for a list of such advertisements) and (2) Video Advertisements that are substantially similar in their repetition of the word free. Intuit must comply with this Section III.G immediately upon the Effective Date, notwithstanding any contradictory language in the introduction to Section III above.

IV. Prohibition Against Data-Clearing Practices

Effective December 1, 2022, Intuit must permit consumers who enter a TurboTax Paid Product through an Upgrade Screen to return to the TurboTax Free Edition Product without being required to re-enter the data they provided when using the TurboTax Free Edition Product.

V. Voluntary Withdrawal From and Injunction Against Rejoining the IRS Free File Program

In recognition of Intuit’s voluntary withdrawal from the IRS Free File Program effective October 2021 and Intuit’s representation and commitment that it will not rejoin the IRS Free File Program, and in lieu of this Assurance containing specific injunctive provisions concerning Intuit’s potential future participation in the IRS Free File Program and conduct related thereto:

- A. Intuit must not seek to rejoin or participate in the IRS Free File Program.
- B. This term may only be modified by amending this Assurance pursuant to Section XII(H).

VI. Payment to the Settlement Fund and Administration Fund

A. Within thirty (30) days of the Effective Date, Intuit shall pay the total sum of One Hundred Forty-One Million Dollars (\$141,000,000)³ (the “Required Payment”) as described herein. The Required Payment shall be made in two installments: (1) the first payment, in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the “Administration Fund”), shall be made by Intuit to an account for the payment of costs and expenses incurred or charged by the Fund Administrator in administering the Settlement Fund; (2) the second payment, in the amount of One Hundred Thirty-Eight Million Two Hundred and Fifty Thousand Dollars (\$138,250,000) (the “Settlement Fund”), shall be made by Intuit to an account for the use of the fund administrator selected by the Oversight Committee (the “Fund Administrator”), for the purpose of providing restitution to Covered Consumers as described hereunder, who shall be responsible for the administration of the Settlement Fund. The Required Payment installments shall be made by wire transfer in accordance with instructions provided by the Oversight

³ From this amount, a total of Two Hundred and Fifty Thousand Dollars (\$250,000) will be allocated for fees and costs to a certain previously designated State. This Two Hundred and Fifty Thousand Dollars (\$250,000) will be paid into the Settlement Fund by Intuit and will distributed by the Oversight Committee.

Committee. After transfer of the Required Payment, Intuit shall have no right, title, interest or other legal claim in the transferred funds.

B. The Oversight Committee shall have sole discretion concerning the administration and distribution of the Settlement Fund, which may include determining the Covered Consumers who are entitled to payments from the Settlement Fund; the nature, timing, and amount of such payment; directing the Fund Administrator to make payments to these consumers; the timing and content of communications from the Fund Administrator to Covered Consumers concerning the Settlement Fund; directing the Fund Administrator to make payments of fees or costs from the Settlement Fund to one or more Attorneys General; and transferring funds from the Settlement Fund to the Administration Fund. Attached for informational purposes only as Appendix C is a preliminary calculation of each States' percentage of the total population of Covered Consumers; the Oversight Committee is not required to distribute the Settlement Fund according to these preliminary percentages. If the Oversight Committee directs the Fund Administrator to make a payment of fees or costs to a State, that payment shall be deducted from the share of the Settlement Fund that is allocated to that State. Individual States may, at their discretion, append a State-specific appendix to their copy of this Assurance that sets forth the payment from the Settlement Fund that has been allocated to the Covered Consumers in that State and any payment of fees or costs to that State.

C. All costs and expenses incurred or charged by the Fund Administrator in administering the Settlement Fund shall be paid out of the Administration Fund. The Oversight Committee shall have sole discretion concerning the administration and distribution of any money that remains in the Administration Fund after payment of all costs and expenses incurred or charged by the Fund Administrator in administering the Settlement Fund. In no event shall the

Attorneys General be liable for any costs associated with administering the Settlement Fund. The administration of the Settlement Fund shall, include, but not be limited to, the following:

1. Identifying the current mailing address of each Covered Consumer, which shall be provided by Intuit and/or through the use of publicly-available databases, commercially-available databases, and public records;
2. Preparing and sending, by mail and email, communications to Covered Consumers relating to the settlement, including notice of the settlement and reminder notices to all Covered Consumers who had been sent a check but not yet cashed it;
3. Distributing restitution to each Covered Consumer by check, and reissuing checks as necessary, including for checks that have been returned;
4. Establishing a process by which Covered Consumers may elect to receive their payments through an electronic payment processor such as Venmo, PayPal, or Zelle instead of by check;
5. Maintaining a website that contain the terms and conditions of the settlement;
6. Providing and hosting a toll free number to provide information to Covered Consumers relating to the settlement during distribution of the restitution;
7. Contacting, by mail, email, or phone, Covered Consumers regarding uncashed checks;
8. Reporting to the Oversight Committee on the status of the administration of the Settlement Fund and responding to requests by the Oversight Committee for documentation and information necessary to confirm the proper administration of the Settlement Fund; and

9. Providing all other services necessary for the proper administration of the Settlement Fund.

D. Within sixty (60) days of the Effective Date, Intuit must submit to the Oversight Committee for review and non-objection its proposed contract with the Fund Administrator that includes a comprehensive Statement of Work consistent with Section VI.C and all other terms of this Assurance. The Oversight Committee will have the discretion to make a determination of non-objection to the Statement of Work or direct Intuit to revise it. If the Oversight Committee directs Intuit to revise the Statement of Work, Intuit must revise and resubmit the contract to the Oversight Committee within thirty (30) days. After receiving notification that the Oversight Committee has made a determination of non-objection to the Statement of Work, Intuit and the Settlement Administrator must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Statement of Work.

E. Intuit shall promptly provide the Fund Administrator (and the Oversight Committee, if requested by the Oversight Committee) with all information the Oversight Committee deems necessary to permit the Fund Administrator to distribute funds to Covered Consumers as directed by the Oversight Committee, including, but not limited to, the following for each consumer: full name; last known and prior mailing addresses, email addresses, and telephone numbers; and for each of Tax Years 2016, 2017, and 2018, the TurboTax Paid Product used by the consumer, if any, the amount the consumer paid to Intuit for said TurboTax Paid Product, and the amount of any credits, chargebacks, or settlement amounts already paid by Intuit or received by such consumer for the TurboTax Paid Product. In carrying out the foregoing, Intuit agrees to provide such information as soon as possible but in no event more than thirty (30) calendar days of the Oversight Committee's request.

F. Intuit shall warrant to the Oversight Committee at the time of supplying information to the Fund Administrator that the information is complete and accurate to the best of its knowledge and capability. Intuit's duty to provide complete and accurate information regarding Covered Consumers shall continue throughout the administration process.

G. After the Fund Administrator has completed the administration of the Settlement Fund (including making reasonable attempts to contact payees of uncashed checks and waiting a reasonable period of time not less than ninety (90) calendar days), all uncashed checks may be voided. Once such uncashed checks have been voided, these funds shall be distributed to state unclaimed property funds, to any other fund or agency if so required by law, or to any other fund or agency as lawfully directed by the Attorney General of the respective state,⁴ based on the last

⁴ For Arizona: Any funds distributed to the Arizona Attorney General's Office shall be deposited into the Consumer Restitution and Remediation Revolving Fund, pursuant to A.R.S. § 44-1531.02(B). The Arizona Attorney General's Office will have sole discretion as to how and when restitution funds are distributed to consumers. In the event that any portion of those funds is not distributed to eligible consumers, such portion will be deposited by the Arizona Attorney General's Office into the Consumer Protection-Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.02(B), and used for the purposes specified in A.R.S. § 44-1531.01.

For Colorado: Intuit shall pay to the Colorado Attorney General the total amount of any and all refund amounts that remain outstanding, whether because they were returned as undeliverable, unclaimed, uncashed, undeposited, or otherwise. For any such payments to the Colorado Attorney General, they shall be in the form of a certified check, cashier's check, or money order made payable to the "Colorado Department of Law," shall reference "Intuit-TurboTax" and shall be delivered to: Emily Lujan, Program Assistant, Consumer Protection Section, Colorado Department of Law, 1300 Broadway, 7th Floor, Denver, Colorado 80203. Such payments shall be held, along with any interest thereon, in trust by the Colorado Attorney General to be used in the Colorado Attorney General's sole discretion for reimbursement of attorneys' fees and costs, the payment of consumer restitution, if any, and for consumer or creditor educational purposes, for future consumer credit or consumer protection enforcement, or public welfare purposes.

For Delaware: All payments to the Delaware Attorney General pursuant to this Assurance shall be made to the Consumer Protection Unit of the Delaware Department of Justice ("CPU"). The CPU shall place all funds received in the State of Delaware's Consumer Protection Fund, and such funds may be utilized for any lawful purpose.

For New Mexico: For those funds allocated to New Mexico, such funds shall be directed to the New Mexico Office of the Attorney General's ("NMOAG's") consumer settlement fund. The funds shall be expended, at the sole discretion of the NMOAG, (i) to enhance the NMOAG's law enforcement efforts to prevent and prosecute elder fraud, consumer fraud, and/or other unfair or deceptive acts or practices, (ii) to investigate, enforce, and prosecute other illegal conduct related to deceptive online advertising, deceptive use of "dark patterns," and/or violations of other consumer protection laws, and/or (iii) for any other lawful purpose, at the sole discretion of the NMOAG.

For Ohio: After the Fund Administrator has completed the administration of the Settlement Fund (including making reasonable attempts to contact payees of uncashed checks and waiting a reasonable period of time not less than ninety (90) calendar days), all uncashed checks may be voided. Once such uncashed checks have been voided, these funds shall be distributed and delivered to the office of the Ohio Attorney General. The money received by the

known state residence of the payee. The Fund Administrator must distribute uncashed funds, or any other remaining funds in the Settlement Fund, pursuant to instructions provided by the Oversight Committee.

H. Covered Consumers who receive a payment from the Settlement Fund shall not be required to return or discontinue the use of any Intuit goods or services, and receipt of any such payment shall not be tied to any other commitment.

I. To the extent not already provided elsewhere, Intuit shall, upon request by the Oversight Committee, provide all documentation and information necessary for the Oversight Committee to confirm compliance with the Assurance. To the extent not already provided elsewhere, Intuit shall ensure that all communications with the Fund Administrator regarding the administration of the Settlement Fund shall include at least one representative of the Oversight Committee.

J. The Attorneys General shall have no liability whatsoever to Intuit, the Fund Administrator, or any Covered Consumer in connection with the administration of the Settlement Fund or for any action by Intuit or the Claims Administrator with respect to the monies deposited.

office of the Ohio Attorney General pursuant to this paragraph may be used by the office of the Ohio Attorney General for purposes that may include, but are not limited to, attorney's fees and other costs of investigation and litigation, or may be placed in, or applied to, any consumer protection law enforcement fund, consumer education, litigation or local consumer aid fund, or for such other uses permitted by Ohio law, at the sole discretion of the Ohio Attorney General.

For Washington: The total amount of any and all uncashed checks that had been direct to a payee whose last known residence was in the State of Washington that remain outstanding shall be paid to the Washington Attorney General's Office. For any such payments to the Washington Attorney General, they shall be made in good funds by wire transfer or valid check payable to "State of Washington Attorney General's Office," delivered to the Office of the Attorney General, Attention: Margaret Farmer, Litigation Support Manager, 800 Fifth Avenue, Suite 2000, Seattle, WA 981104. Such payments shall be used for recovery of the state's fees and costs in investigating this matter, monitoring compliance with this Assurance of Discontinuance, future enforcement of the Consumer Protection Act, or for any lawful purpose in the discharge of the state's Attorney General's duties at the sole discretion of the Attorney General.

K. The Attorney General of the State of New York shall satisfy the reporting obligations of the States under Section 6050X of the Internal Revenue Code of 1986, as amended, with respect to Intuit's payments hereunder. Intuit is fully responsible for the payment of its taxes, including in the event any deductions for amounts paid under this settlement agreement are disallowed, as well as any fines or penalties imposed by the Internal Revenue Service with respect to such taxes.

VII. Assurance Acknowledgements

A. Intuit, within seven (7) days of the Effective Date, (1) must submit to the Oversight Committee an acknowledgment of receipt of this Assurance sworn under penalty of perjury; and (2) must identify to the Oversight Committee the primary physical, postal, and email address and telephone number, as designated points of contact, that the Oversight Committee may use to communicate with Intuit.

B. For five (5) years after the Effective Date, Intuit must deliver a copy of this Assurance to (1) all principals, officers, and directors; (2) all employees having managerial responsibilities for Advertisements for any TurboTax Free Edition Product; the online search and search engine optimization strategies and practices for any TurboTax Free Edition Product and any TurboTax Paid Product; the representations made on the TurboTax Website regarding any TurboTax Free Edition Product; and customer service inquiries regarding any TurboTax Free Edition Product; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of the Effective Date for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Intuit delivered a copy of this Assurance, Intuit must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Assurance.

VIII. Compliance Reporting

A. One (1) year after the Effective Date, Intuit must submit to the Oversight Committee a compliance report, sworn under penalty of perjury, in which Intuit must identify all of Intuit's tax preparation businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses and describe in detail whether and how Intuit is in compliance with each Section of this Assurance.

B. For five (5) years after the Effective Date, Intuit must submit to the Oversight Committee a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following: (a) any designated point of contact; or (b) the structure of Intuit that may affect compliance obligations arising under this Assurance, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Assurance.

C. Intuit must submit to the Oversight Committee notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Intuit within fourteen (14) days of its filing.

D. Any submission to the Oversight Committee required by this Assurance to be sworn under penalty of perjury must be true and accurate, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

E. Unless otherwise directed by a representative of the Oversight Committee in writing, all submissions to the Oversight Committee pursuant to this Assurance must be made in accordance with the terms in Sections XII(L) and (M). All submissions shall have a subject line that must begin: Attorneys General v. Intuit Inc.

IX. Recordkeeping

Intuit must create certain records for ten (10) years after the Effective Date, and retain each such record for five (5) years. Specifically, Intuit must create and retain the following records:

A. Accounting records showing: (1) the revenues from all TurboTax Paid Products and any add-on products such as Audit Defense; and (2) the revenues from all TurboTax Paid Products and any add-on products such as Audit Defense that were received from consumers who began the process of preparing their returns in any TurboTax Free Edition Product;

B. Records of all consumer complaints and refund requests concerning the subject matter of this Assurance, whether received directly or indirectly, such as through a third party, and any response;

C. All records necessary to demonstrate full compliance with each provision of this Assurance, including all submissions to the Oversight Committee; and

D. To the fullest extent possible, a copy of each unique Advertisement or other marketing material relating to any TurboTax Free Edition Product.

X. Compliance Monitoring

A. For a period of five (5) years, and for the purpose of monitoring Intuit's compliance with this Assurance: Within thirty (30) days of receipt of a written request from the Oversight Committee, Intuit must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury.

B. Nothing in this Assurance limits any State's lawful use of compulsory process, pursuant to applicable state law.

XI. Releases

A. By execution of this Assurance, and upon Intuit's compliance with its terms including the payments required in Section VI, the States release and forever discharge Intuit and its past and present officers, directors, employees, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns, and successors from all civil consumer-protection or unfair-trade-practices claims each Attorneys General is authorized by law to bring that arise from or relate to the findings contained herein.

B. Nothing contained in this Assurance shall be construed to limit the ability of any Attorney General to enforce the obligations that Intuit has under this Assurance. Further, nothing in this Assurance shall be construed to waive or limit any private rights of action.

C. Notwithstanding the releases in Subsection A of this Section, or any other term of this Assurance, the following claims are specifically reserved and not released by this Assurance: (1) claims based on violations of securities laws, including claims based on the offer, sale, or purchase of securities; (2) claims of regulatory agencies having specific regulatory jurisdiction that are separate and independent from the regulatory enforcement of the Attorneys General; and (3) claims that arise from Intuit's actions that take place after the Effective Date.

XII. General Provisions

A. The Parties understand and agree that the Attorneys General have defined jurisdiction under the laws, or assert jurisdiction under the common law, of their respective States for the enforcement of state Consumer Protection Acts.

B. The Parties understand and agree that this Assurance shall not be construed as an approval or sanction by the Attorneys General of Intuit's business practices, nor shall Intuit

represent that this Assurance constitutes an approval or sanction of its business practices. The Parties further understand and agree that any failure by the Attorneys General to take any action in response to information submitted pursuant to this Assurance shall not be construed as an approval or sanction of any representations, acts, or practices indicated by such information, nor shall it preclude action thereon at a later date.

C. Nothing in this Assurance shall be construed as relieving Intuit of the obligation to comply with all applicable state and federal laws, regulations, and rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, and rules.

D. To the extent that there are any, Intuit agrees to pay all court costs associated with the filing (if legally required) of this Assurance by any State. No court costs, if any, shall be taxed against any State.

E. This Assurance may be executed by any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart thereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart thereof.

F. This Assurance contains the complete agreement between the Parties. The Parties have made no promises, representations, or warranties other than what is contained in this Assurance. This Assurance supersedes any prior oral or written communications, discussions, or understandings.

G. For the purposes of construing the Assurance, this Assurance shall be deemed to have been drafted by all Parties.

H. This Assurance may not be amended except by an instrument in writing signed on behalf of all Parties to this Assurance.

I. This Assurance is entered into voluntarily and solely for the purpose of resolving the claims and causes of action against Intuit. Each Party and signatory to this Assurance represents that it freely and voluntarily enters into this Assurance without any degree of duress or compulsion.

J. Any failure by any Party to this Assurance to insist upon the strict performance by any other Party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance.

K. If any clause, provision, or section of this Assurance shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Assurance, which shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or provision had not been contained herein.

L. Whenever Intuit shall provide notice to any Attorneys General under this Assurance, that requirement shall be satisfied by sending notice to the email and postal address for each respective Attorneys General identified in Appendix B in accordance with the following paragraph.

M. All notices or other documents to be provided under this Assurance shall be sent by U.S. mail, certified mail return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the notice


or document, and shall have been deemed to be sent upon mailing. Additionally, any notices or documents to be provided under this Assurance shall also be sent by electronic mail if an email address has been provided for notice. Any party may update its address by sending written notice to the other party.

N. If a court of competent jurisdiction determines that Intuit has breached this Assurance, Intuit shall pay to the Attorneys General the cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

IN WITNESS WHEREOF, this Assurance is executed by the Parties hereto on the dates set forth below:


[Parties' signature pages continued in the following pages]


For Intuit Inc.

By: 
Date: 28 April, 2022
Gregory N. Johnson
Executive Vice President and General Manager

For New York State Attorney General Letitia James

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Date: May 4, 2022
Clark P. Russell
Deputy Bureau Chief
Bureau of Internet and Technology

By: 
Date: May 4, 2022
Joseph P. Mueller
Assistant Attorney General
Bureau of Consumer Frauds and Protection

APPENDIX A – “FREE, FREE, FREE” ADVERTISEMENTS⁵

- “Big Kick”
 - The “Big Kick” advertisement depicts a high school football placekicker and his supportive father. In the moments before an important kick, the son flashes back to a memory from his youth of his father encouraging him; returning to the present, the son converts the field goal attempt while his father looks on. However, instead of featuring conventional dialogue, the characters in “Big Kick” repeat only the word “free” throughout the ad.



- “Credits”
 - In the “Credits” advertisement, a John McClane-type action hero utters a wisecrack (here, the word “free” several times) as he drops a lighter onto a streak of gasoline, which triggers the explosion of a batter white van. As flames explode into the air, the action hero strides towards the camera in slow motion, prompting the credits to

⁵ This Appendix addresses all versions of the listed advertisements, *i.e.*, 15-second, 30-second, and 60-second versions of the advertisements, to the extent they exist.

roll on screen, with every actor and role consisting of one or more uses of the word “free.”



- “Crossword”
 - In “Crossword,” a white-haired couple completes a crossword puzzle in which every clue and every answer is one or more uses of the word “free.”



- “Game Show”
 - The “Game Show” advertisement depicts a 70s-era game show in which a woman must guess what activity or concept her male partner is miming. Every one of the woman’s answers is correct and consists of one or more uses of the word “free.”



- “Lawyer”
 - In “Lawyer,” an attorney delivers an impassioned closing argument to the jury as dramatic music swells, with every word of the attorney’s argument being “free.”

After he finishes, a member of the jury leads a standing ovation, as various jurors repeat the word “free” several times.



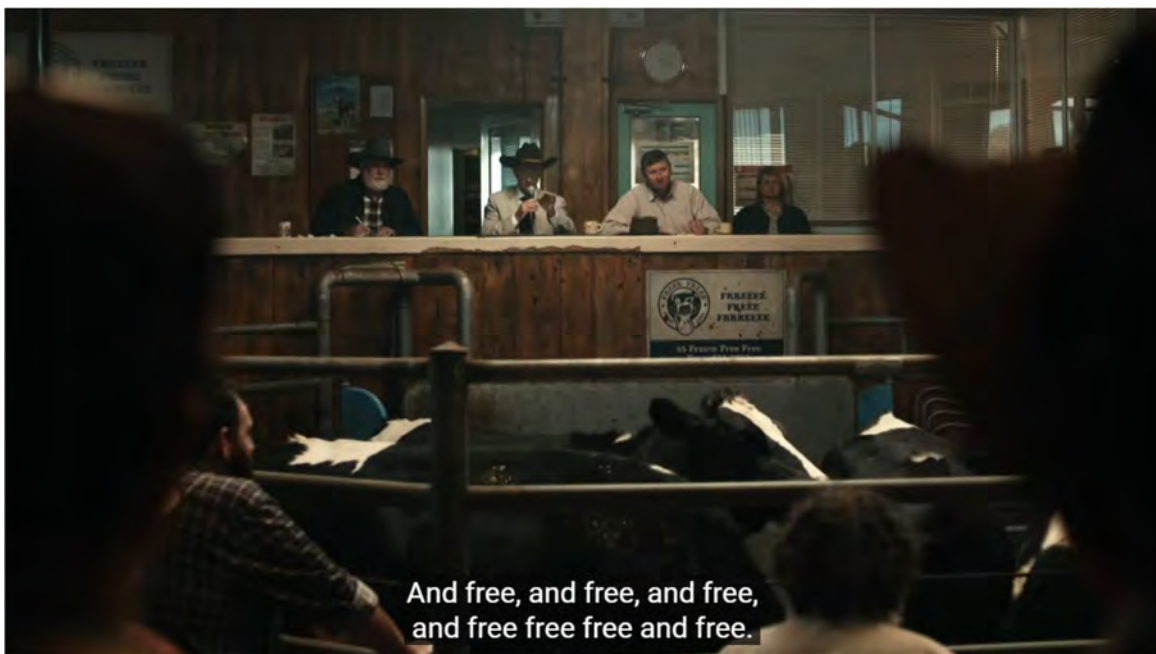
- “Spelling Bee”
 - The “Spelling Bee” advertisement shows a middle school-aged boy correctly spelling the word “free” in a spelling bee. Aside from the boy’s spelling out the letters “F-R-E-E,” every line dialogue spoken by the boy and by the judge of the spelling bee consists entirely of the word “free.”



- “Echo”
 - In “Echo,” a hiker shouts “free” from the top of a mountain, with the word “free” reverberating back to her as a result.



- “Auctioneer”
 - In “Auctioneer,” a fleet-tongued auctioneer rattles off prices and bids to a collection of ranchers and cowboys. Instead of conventional dialogue, the auctioneer repeatedly utters the word “free.”



- “Dance Workout”
 - The “Dance Workout” advertisement depicts an instructor leading an enthusiastic dance workout class. Instead of conventional words of encouragement and instruction, the instructor repeats the word “free.”



APPENDIX B – STATE NOTICES

Alaska	1031 West 4th, Ave., Suite 200 Anchorage, AK 99501 consumerprotection@alsaka.gov
Alabama	501 Washington Avenue Montgomery, AL 36130 Olivia.Martin@AlabamaAG.gov
Arkansas	323 Center Street, Suite 200 Little Rock, AR 72201
Arizona	Alyse Meislik Consumer Protection & Advocacy Section 2005 N. Central Ave. Phoenix, AZ 85004 Alyse.Meislik@azag.gov consumer@azag.gov
California	300 South Spring Street, Suite 1702 Los Angeles, CA 90013 bernard.eskandari@doj.ca.gov
Colorado	1300 Broadway Denver, CO 80203 abigail.hinchcliff@coag.gov
Connecticut	Brendan T. Flynn, AAG Office of the Connecticut Attorney General 165 Capital Ave. Hartford, CT 06106 Brendan.Flynn@ct.gov
District of Columbia	Office of Consumer Protection Public Advocacy Division ATTN: Tim Shirey, Investigator D.C. Office of the Attorney General 400 6th Street NW Washington D.C. 20001 Timothy.Shirey@dc.gov
Delaware	820 N. French St., 5th Floor Wilmington, DE 19801 katherine.devaney@delaware.gov
Florida	Edward Moffitt

	<p>Chief Investigator, MSPB & Cyber Fraud Bureau Office of the Florida Attorney General 135 West Central Boulevard, Suite 670 Orlando, FL 32801 Edward.Moffitt@myfloridalegal.com</p>
Georgia	<p>2 Martin Luther King, Jr. Drive, Suite 356E Atlanta, GA 30334 dzisook@law.ga.gov</p>
Hawaii	<p>235 S. Beretania Street #801 Honolulu, Hawaii 96813 ltong@dcca.hawaii.gov rtolenti@dcca.hawaii.gov</p>
Illinois	<p>100 W. Randolph St., 12th Fl. Chicago, IL 60601 Daniel.edelstein@ilag.gov</p>
Iowa	<p>William Pearson Iowa Department of Justice 1305 E. Walnut, 2nd Floor Des Moines, IA 50319 William.pearson@ag.Iowa.gov</p>
Idaho	<p>P.O. Box 83720 Boise, ID 83720-0010 stephanie.guyon@ag.idaho.gov</p>
Indiana	<p>302 W. Washington St. IGCS, 5th Floor Indianapolis, IN 46204 Michelle.Alyea@atg.in.gov</p>
Kansas	<p>120 SW 10th Avenue, 2nd floor Topeka, KS 66612 sarah.dietz@ag.ks.gov</p>
Kentucky	<p>1024 Capital Center Drive, Suite 200 Frankfort, KY 40601 Christian.Lewis@ky.gov</p>
Louisiana	<p>1885 N 3rd Street Baton Rouge, LA 70802 MughalA@ag.louisiana.gov</p>
Massachusetts	<p>One Ashburton Place, 18th Floor</p>

	<p>Boston, MA 02108 Glenn.kaplan@mass.gov</p>
Maryland	<p>Consumer Protection Division of the Office of the Attorney General of Maryland Elizabeth Stern Assistant Attorney General 200 Saint Paul Place Baltimore, MD 21202 estern@oag.state.md.us</p> <p>With a copy to:</p> <p>Chief, Consumer Protection Division 200 Saint Paul Place Baltimore, MD 21202 consumer@oag.state.md.us</p>
Maine	<p>6 State House Station Augusta, Maine 04333-0006 christina.moylan@maine.gov</p>
Michigan	<p>525 W. Ottawa St. PO Box 30736 Lansing, MI 48909 Levina@michigan.gov</p>
Minnesota	<p>445 Minnesota Street, Suite 1200 Saint Paul, MN 55101 alex.baldwin@ag.state.mn.us</p>
Missouri	<p>815 Olive Street, Suite 200 St. Louis, MO 63101 Michael.Schwalbert@ago.mo.gov</p> <p>with an additional hard copy to: 207 W. High St. P.O. Box 899 Jefferson City, MO 65102</p>
Mississippi	<p>Post Office Box 220 Jackson, MS 39205 caleb.pracht@ago.ms.gov consumer@ago.ms.gov</p>
Montana	<p>215 N Sanders Street Helena, MT 59601</p>

	ocpinvestigations@mt.gov
North Carolina	PO Box 629 Raleigh, NC 27602
North Dakota	1720 Burlington Drive, Suite C Bismarck, ND 58504-7736 pgrossman@nd.gov
Nebraska	2115 State Capitol Building Lincoln, NE 68509 michaela.hohwieler@nebraska.gov
New Hampshire	33 Capitol St. Concord, NH 03301
New Jersey	124 Halsey St. - 5th Floor P.O. Box 45029 Newark, NJ 07102 monica.finke@law.njoag.gov zeyad.assaf@law.njoag.gov
New Mexico	Lawrence Otero Brian McMath Assistant Attorneys General Consumer & Environmental Protection Division New Mexico Office of the Attorney General P.O. Box 1508 Santa Fe, New Mexico 87504 lotero@nmag.gov bmcmath@nmag.gov
Nevada	100 North Carson Street Carson City, NV 89701 MNewman@ag.nv.gov and 8945 W. Russell Road, Suite 204 Las Vegas NV 89148 Sforbes@ag.nv.gov
New York	28 Liberty St. New York, NY 10005 joseph.mueller@ag.ny.gov clark.russell@ag.ny.gov
Ohio	1 Government Center 640 Jackson St., Suite 1340

	Toledo, Ohio 43604 Timothy.Effler@OhioAGO.gov
Oklahoma	313 NE 21st St. Oklahoma City, OK 73105 Malisa.McPherson@oag.ok.gov
Oregon	Oregon Department of Justice Attn: Althea Cullen, AAG 100 SE Market Street Portland, OR 97201 Althea.d.cullen@doj.state.or.us
Pennsylvania	John Abel Assistant Director for Multistate and Special Litigation Pennsylvania Office of Attorney General 15th Floor, Strawberry Square Harrisburg, PA 17120 jabel@attorneygeneral.gov
Rhode Island	150 South Main St. Providence RI 02903 sprovazza@riag.ri.gov
South Carolina	P.O. Box 11549 Columbia, SC 29211 rhartner@scag.gov
South Dakota	1302 E. Hwy 14, Suite 1 Pierre, SD 57501 Consumerhelp@state.sd.us
Tennessee	PO Box 20207 Nashville, TN 37202-0207 Kelley.groover@ag.tn.gov
Texas	PO Box 12548 (MC-010) Austin, Texas 78711 patrick.abernethy@oag.texas.gov
Utah	160 East 300 South, 5th Floor PO Box 140872 Salt Lake City, UT 84114-0872 kmclean@agutah.gov
Virginia	202 N. 9th St. Richmond, VA 23219

	jscott@oag.state.va.us
Vermont	109 State St. Montpelier, VT 05609 james.layman@vermont.gov
Washington	Mina Shahin Washington State Attorney General’s Office 800 Fifth Ave, Suite 200 Seattle, WA 98104 mina.shahin@atg.wa.gov
Wisconsin	17 West Main Street, PO Box 7857 Madison WI 53707 myszkowskiga@doj.state.wi.us
West Virginia	PO Box 1789 Charleston, WV 25326 Ann.L.Haight@wvago.gov
Wyoming	2320 Capitol Avenue Cheyenne, WY 82002 william.young@wyo.gov and 109 State Capitol Cheyenne, WY 82002 misha.westby@wyo.gov

APPENDIX C – PRELIMINARY STATE PERCENTAGES OF COVERED CONSUMERS

State	Number of Covered Consumers	Percentage of Covered Consumers
AK	14,135	0.32
AL	53,656	1.20
AR	34,487	0.77
AZ	100,213	2.24
CA	371,403	8.30
CO	82,967	1.85
CT	39,078	0.87
DC	9,356	0.21
DE	13,247	0.30
FL	335,246	7.50
GA	134,480	3.01
HI	14,521	0.32
IA	33,167	0.74
ID	27,237	0.61
IL	133,990	3.00
IN	94,163	2.11
KS	38,075	0.85
KY	54,406	1.22
LA	55,578	1.24
MA	75,091	1.68
MD	66,669	1.49
ME	22,650	0.51
MI	115,565	2.58
MN	60,322	1.35
MO	81,427	1.82
MS	35,053	0.78
MT	16,072	0.36
NC	139,028	3.11
ND	9,270	0.21
NE	25,780	0.58
NH	22,074	0.49
NJ	70,164	1.57
NM	28,535	0.64
NV	49,883	1.12
NY	176,712	3.95
OH	163,367	3.65
OK	52,399	1.17

OR	68,253	1.53
PA	158,779	3.55
RI	13,577	0.30
SC	67,238	1.50
SD	13,455	0.30
TN	111,658	2.50
TX	465,793	10.41
UT	44,289	0.99
VA	111,613	2.50
VT	9,361	0.21
WA	121,102	2.71
WI	76,682	1.71
WV	23,533	0.53
WY	8,790	0.20
Other*	329,199	7.36
Totals	4,472,788	100.00

* The “Other” category includes Covered Consumers for whom there currently is no information available on their state affiliation and consumers in U.S. territories and foreign countries, including U.S. military mail codes.

EXHIBIT B

1 ROB BONTA
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 2 NICKLAS A. AKERS
 Senior Assistant Attorney General
 3 BERNARD A. ESKANDARI (SBN 244395)
 Supervising Deputy Attorney General
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 5 Telephone: (213) 269-6348
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[EXEMPT FROM FILING FEES
 UNDER GOV. CODE, § 6103]

7 MICHAEL N. FEUER (SBN 111529)
 Los Angeles City Attorney
 8 MICHAEL J. BOSTROM (SBN 211778)
 Assistant City Attorney
 9 YOSEF MAHMOOD (SBN 295976)
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 County of Santa Clara County Counsel
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 Deputy County Counsel
 SUSAN P. GREENBERG (SBN 318055)
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14 *Attorneys for the People of the State of*
 15 *California*

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF LOS ANGELES

19 TURBOTAX FREE FILING CASES

JCCP No. 5067

20 Included Actions:

Included Action Case No. 19STCV15644

21 THE PEOPLE OF THE STATE OF
 22 CALIFORNIA,

23 Plaintiff,

**STIPULATION FOR ENTRY
 OF FINAL JUDGMENT AND
 PERMANENT INJUNCTION**

24 v.

25 INTUIT INC., a Delaware Corporation; and
 26 DOES 1-50, inclusive,

Assigned for All Purposes to
 The Hon. Maren Nelson
 Dept.: 17

27 Defendants.

Complaints filed: May 6, 2019; Sept. 5, 2019
 Trial Date: None Set

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PEOPLE OF THE STATE OF CALIFORNIA,
acting by and through Santa Clara County
Counsel James R. Williams,

Plaintiff,

v.

INTUIT INC., and DOES 1-50, inclusive,

Defendants.

Included Action Case No. 19CV354178

STIPULATION

1
2 The People of the State of California (“People”), acting by and through, Rob Bonta,
3 Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney;
4 and James R. Williams, the County of Santa Clara County Counsel; and Intuit Inc. (“Intuit” or
5 “Defendant”), appearing through its attorney, David Z. Gringer of Wilmer Cutler Pickering Hale
6 and Dorr LLP, stipulate as follows:

7 1. On May 6, 2019, the People, acting by and through Michael N. Feuer, City
8 Attorney, filed a complaint against Defendant and Does 1-50, inclusive, and on September 6,
9 2019, the People, acting by and through James R. Williams, County Counsel, filed a complaint
10 against Defendant and Does 1-50, inclusive (together, “Complaints”). The two cases were ordered
11 coordinated on December 19, 2019.

12 2. The Final Judgment and Permanent Injunction (“Judgment”), a copy of which is
13 filed concurrently with this Stipulation, may be entered in these coordinated cases.

14 3. Defendant denies wrongdoing or liability of any kind but has agreed to resolve the
15 allegations contained in the People’s Complaints by entering into this Judgment.

16 4. The Court has jurisdiction over the subject matter of these cases, jurisdiction over
17 the Parties to these cases, and venue is proper in this Court.

18 5. The People and Defendant (collectively, “Parties”) waive their right to move to
19 set aside the Judgment through any collateral attack and further waive their right to appeal from
20 the Judgment. Nothing herein shall waive any right to appeal from any decision in connection
21 with a future effort to enforce the Judgment.

22 6. The People and Defendant are represented by counsel and have agreed on a basis
23 for settlement of the matters alleged in the Complaints. The Parties agree to entry of the Judgment
24 without the need for trial, further discovery in this action, or adjudication of any issue of law or
25 fact. Defendant enters into this Judgment freely and without coercion.

26 7. Defendant acknowledges that it is able to abide by the provisions of the Judgment.
27 Defendant further acknowledges that a violation of this Judgment may result in additional relief
28 under section 17207 of the Business and Professions Code.

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8. Defendant will accept service of any Notice of Entry of Judgment entered in this action by delivery of such notice to its counsel of record and agrees that service of the Notice of Entry of Judgment will be deemed personal service upon Defendant for all purposes.

9. The Judgment and this Stipulation contain the complete agreement between the Parties. The Parties have made no promises, representations, or warranties other than what is contained in these documents. The Judgment and this Stipulation supersede any prior oral or written communications, discussions, or understandings.

10. The individuals signing below represent that they have been authorized by the Parties that they represent to sign this Stipulation.

11. This Stipulation may be executed in counterparts, and the Parties agree that a facsimile or scanned PDF signature shall have the same force and effect as an original signature.

IT IS SO STIPULATED.

Dated: May 3, 2022

ROB BONTA, Attorney General of the State of California



By: Bernard A. Eskandari
Supervising Deputy Attorney General

Dated: 5/3/22

MICHAEL N. FEUER, Los Angeles City Attorney



By: Michael J. Bostrom
Assistant City Attorney

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Dated: May 3, 2022

JAMES R. WILLIAMS, County of Santa Clara
County Counsel



By: Aaron Bloom
Deputy County Counsel

Dated: _____

WILMER CUTLER PICKERING HALE AND
DORR LLP

By: David Z. Gringer
Counsel to Intuit Inc.

Dated: _____

INTUIT INC.

By: Gregory N. Johnson
Executive Vice President and
General Manager

PUBLIC

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Dated: April 28, 2022

WILMER CUTLER PICKERING HALE AND
DORR LLP

David Gringer

By: David Z. Gringer
Counsel to Intuit Inc.

Dated: 28 April, 2022

INTUIT INC.

Gregory N. Johnson

By: Gregory N. Johnson
Executive Vice President and
General Manager

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TURBOTAX FREE FILING CASES

JCCP No. 5067

Included Actions:

Included Action Case No. 19STCV15644

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

INTUIT INC., a Delaware Corporation; and
DOES 1-50, inclusive,

Defendants.

PEOPLE OF THE STATE OF CALIFORNIA,
acting by and through Santa Clara County
Counsel James R. Williams,

Included Action Case No. 19CV354178

Plaintiff,

**[PROPOSED] FINAL JUDGMENT AND
PERMANENT INJUNCTION**

v.

INTUIT INC., and DOES 1-50, inclusive,

Assigned for All Purposes to
The Hon. Maren Nelson
Dept.: 17

Defendants.

Complaints filed: May 6, 2019; Sept. 5, 2019
Trial Date: None Set

1 The People of the State of California (“People”), acting by and through, Rob Bonta,
2 Attorney General of the State of California; Michael N. Feuer, the Los Angeles City Attorney;
3 and James R. Williams, the County of Santa Clara County Counsel; and Intuit Inc. (“Intuit” or
4 “Defendant”), appearing through its attorney, David Z. Gringer of Wilmer Cutler Pickering Hale
5 and Dorr LLP, having stipulated to the entry of this Judgment by the Court without the taking of
6 proof and without trial or adjudication of any fact or law, without this Judgment constituting
7 evidence of or an admission by Defendant regarding any issue of law or fact alleged in the
8 People’s Complaints, without Defendant admitting any liability regarding allegations of
9 violations that occurred prior to entry of this Judgment, and with all parties having waived their
10 right to appeal, and the Court having considered the matter and good cause appearing:

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

12 1. This Court has jurisdiction over the allegations and subject matter of the People’s
13 Complaints filed in these coordinated cases and the parties to these cases; venue is proper in this
14 County; and this Court has jurisdiction to enter this Judgment.

15 2. Nothing in this Judgment alters the requirements of federal or state law to the
16 extent they offer greater protection to consumers.

17 **DEFINITIONS**

18 3. For the purpose of this Judgment, the following definitions apply:

19 A. “**Advertisement**” or “**Advertising**” means any written or verbal statement,
20 illustration, or depiction that promotes the sale or use of a consumer good or service, or is
21 designed to increase consumer interest in a brand, good, or service. Advertising media includes,
22 but is not limited to promotional materials; print; television; radio; and Internet, Paid Display
23 Advertisements, Paid Search Advertisements, display, social media, and other digital content.

24 B. “**Clearly and Conspicuously**” means that a required disclosure is difficult
25 to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all
26 of the following ways.

27 1) In any communication that is solely visual or solely audible, the disclosure
28 must be made through the same means through which the communication

1 is presented. In any communication made through both visual and audible
2 means, such as a television Advertisement, the disclosure must be
3 presented in both the visual and audible portions of the communication
4 even if the representation requiring the disclosure is made in only one
5 means (the disclosures in the visual and audible portions of the
6 communication in Space-Constrained Video Advertisements are not
7 required to be identical).

8 2) A visual disclosure, by its size, contrast, location, the length of time it
9 appears, and other characteristics, must stand out from any accompanying
10 text or other visual elements so that it is easily noticed, read, and
11 understood.

12 3) An audible disclosure, including by telephone or streaming video, must be
13 delivered in a volume, speed, and cadence sufficient for ordinary
14 consumers to easily hear and understand it.

15 4) In any communication using an interactive electronic medium, such as the
16 Internet or software, the disclosure must be unavoidable.

17 5) The disclosure must use diction and syntax understandable to ordinary
18 consumers and must appear in each language in which the representation
19 that requires disclosure appears.

20 6) The disclosure must comply with these requirements in each medium
21 through which it is received, including all electronic devices and face-to-
22 face communications.

23 7) The disclosure must not be contradicted or mitigated by, or inconsistent
24 with, anything else in the communication.

25 8) When the representation or sales practice targets a specific audience, such
26 as children, the elderly, or the terminally ill, “ordinary consumers” includes
27 reasonable members of that group.

28 C. “**Close Proximity**” means that the disclosure is very near the triggering

1 representation and that the disclosure is made simultaneously with the triggering representation
2 and remains or is repeated throughout the duration of the Advertisement. For example, a
3 disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in Close
4 Proximity to the triggering representation.

5 D. **“Effective Date”** means the date on which the Court enters this Judgment.

6 E. **“Intuit IRS Free File Product”** means Intuit’s TurboTax Free File
7 Program, TurboTax Freedom Edition, IRS Free File Program delivered by TurboTax or any other
8 Intuit product or service that was or in the future may be provided pursuant to a memorandum of
9 understanding or an agreement between Free File, Inc. (or any successor entity) and the IRS for
10 the provision of free online tax preparation and e-filing services.

11 F. **“Oversight Committee”** shall mean the following Attorneys General:
12 Florida, Illinois, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, and
13 Washington.

14 G. **“Paid Display Advertisement”** means an online Advertisement in which
15 Intuit pays, or causes another to pay, to have an Advertisement displayed on a website and pays
16 for the Advertisement, regardless of whether consumers click on the Advertisement.

17 H. **“Paid Search Advertisement”** means an online Advertisement in which
18 Intuit pays, or causes another to pay, to have an Advertisement displayed with search engine
19 results for a particular search term and pays for the Advertisement only when consumers click on
20 the Advertisement.

21 I. **“Covered Consumer”** means any individual, or individuals if a joint return
22 was filed, who in Tax Years 2016, 2017, or 2018 was (1) eligible to use an Intuit IRS Free File
23 Product; (2) began his or her tax returns using a TurboTax Free Edition Product; (3) was
24 informed that he or she was ineligible to use a TurboTax Free Edition Product; (4) subsequently
25 paid to use a TurboTax Paid Product, and (5) had not used the Intuit IRS Free File Product in a
26 previous tax year.

27 J. **“Space-Constrained Advertisement”** means any online Advertisement
28 (including but not limited to Paid Display Advertisements and Paid Search Advertisements) or

1 any Video Advertisement that has space, time, format, size, or technological restrictions that limit
2 Intuit from being able to make the disclosures required by this Judgment. Intuit bears the burden
3 of showing that there is a constraint or insufficient space and time to make a required disclosure
4 that is Clear and Conspicuous and in Close Proximity to the triggering term. Space-Constrained
5 Advertisements do not include Advertisements on a TurboTax Website.

6 K. **“TurboTax Free Edition Product”** means any online software product
7 offered by Intuit that allows consumers, without paying a fee, to prepare and file federal tax
8 returns, state tax returns, or both, including but not limited to “TurboTax Free Edition” and
9 “Federal Free Edition.” “TurboTax Free Edition Product” does not include any Intuit IRS Free
10 File Product, any TurboTax Paid Product, TurboTax Live, or any products sold or offered within
11 the TurboTax Free Edition Product, such as Audit Defense.

12 L. **“TurboTax Paid Product”** means the online tax preparation software
13 products offered by Intuit that allow consumers, for a fee, to prepare and file federal tax returns,
14 state tax returns, or both, for themselves. “TurboTax Paid Product” does not include products sold
15 or offered in addition to a TurboTax Paid Product.

16 M. **“TurboTax Website”** means turbotax.intuit.com, any subdomain of
17 turbotax.intuit.com, and any other website owned, operated, or controlled partially or wholly by
18 Intuit that provides or offers TurboTax Paid Products or TurboTax Free Edition Products.

19 N. **“Upgrade Screen”** means any display within the product flow of the
20 TurboTax Free Edition Product that appears when consumers using that product indicate they
21 have income, credits, deductions, or other tax situations not covered by the TurboTax Free
22 Edition Product, and offers consumers the option of using a TurboTax Paid Product to prepare
23 and file their federal and/or state tax returns.

24 O. **“Video Advertisement”** means any Advertisement made via television or
25 made online using video.

26 INJUNCTION

27 4. The injunctive provisions of this Judgment are imposed under Business and
28 Professions Code section 17203 and shall apply to Defendant as well as its subsidiaries,

1 successors, and the assigns of all or substantially all of the assets of its business, and, their
2 directors, officers, employees, agents, independent contractors, partners, associates, and
3 representatives of each of them.

4 **I. GENERAL COMPLIANCE**

5 5. Intuit shall comply with California's consumer-protection laws, including the
6 Unfair Competition Law, Business and Professions Code section 17200 et seq., and the False
7 Advertising Law, Business and Professions Code section 17500.

8 **II. PROHIBITION AGAINST MISREPRESENTATIONS**

9 6. Intuit, Intuit's officers, agents, employees, and attorneys, and all other persons in
10 active concert or participation with any of them, who receive actual notice of this Judgment,
11 whether acting directly or indirectly, in connection with promoting or offering any online tax
12 preparation products, must not misrepresent, expressly or by implication:

13 A. That consumers can only file their taxes online accurately if they use a
14 TurboTax Paid Product or TurboTax Free Edition Product.

15 B. That consumers can only claim a tax credit or tax deduction if they use a
16 TurboTax Paid Product or TurboTax Free Edition Product.

17 C. That consumers must upgrade to a TurboTax Paid Product to file their
18 taxes online if they are eligible to use the TurboTax Free Edition Product.

19 D. That consumers can continue using and file their taxes for free with the
20 TurboTax Free Edition Product when that is not the case, including by stating expressly or
21 impliedly to consumers on an Upgrade Screen that they can continue using the TurboTax Free
22 Edition Product through a "keep free" button or another button using similar language. Intuit may
23 give consumers the option of continuing to use the TurboTax Free Edition Product on an Upgrade
24 Screen, so long as a disclosure is made, Clearly and Conspicuously on the Upgrade Screen and in
25 Close Proximity to any button, link, or option on the Upgrade Screen that permits the consumer to
26 exercise the option of continuing to use the TurboTax Free Edition Product, that the current tax
27 information entered by the consumer indicates that the consumer will need to upgrade to a
28 TurboTax Paid Product to file his or her taxes.

1 E. Any other fact material to consumers concerning any tax preparation
2 product or service, such as the price; total cost; any material restrictions, limitations, or
3 conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

4 **III. REQUIRED DISCLOSURES AND BUSINESS PRACTICES FOR ADVERTISING AND**
5 **MARKETING OF FREE PRODUCTS**

6 7. As soon as reasonably practicable, but no later than August 1, 2022, in connection
7 with advertising, marketing, promoting, offering, naming, or describing, or assisting in the
8 advertising, marketing, promotion, offering, naming, or describing of any tax preparation
9 products as free, whether directly or indirectly, Intuit must make the following disclosures about
10 taxpayer eligibility for such free products and comply with the following terms:

11 A. In any non-Space-Constrained Advertisement of free tax preparation
12 products other than on a TurboTax Website, Intuit must disclose, Clearly and Conspicuously, and
13 in Close Proximity to the representation that the product is free: (1) the existence and category of
14 material limitations on a consumer's ability to use that free product; and (2) that not all taxpayers
15 qualify for the free product.

16 B. In any Space-Constrained Advertisement of free tax preparation products
17 other than Space-Constrained Video Advertisements, Intuit must disclose that eligibility
18 requirements apply. If made online, Intuit must also (1) Clearly and Conspicuously include a
19 hyperlink to a landing page or webpage on a TurboTax Website that Clearly and Conspicuously
20 contains full disclosure of all material eligibility restrictions or (2) link by clicking on the
21 Advertisement itself to a landing page or webpage on a TurboTax Website that Clearly and
22 Conspicuously sets forth full disclosure of all material eligibility restrictions.

23 C. For a period of ten (10) years, in any Space-Constrained Video
24 Advertisements of free tax preparation products, Intuit must visually disclose, Clearly and
25 Conspicuously, and in Close Proximity to the representation that the product is free: (1) the
26 existence and category of material limitations on a consumer's ability to use that free product; and
27 (2) that not all taxpayers qualify for the free product. In addition, for a period of ten (10) years, in
28 any Space-Constrained Video Advertisements of free tax preparation products except for such

1 Advertisements that are 8 seconds or shorter, Intuit must verbally disclose, Clearly and
2 Conspicuously and in Close Proximity to the representation that the product is free, that not all
3 taxpayers qualify.

4 D. In any Advertisement of free tax preparation products on a TurboTax
5 Website, and any space on a TurboTax Website listing, describing, offering, or promoting such
6 free products, Intuit must disclose (1) Clearly and Conspicuously and very near to the
7 representation all material limitations on a consumer's ability to use that free product, including,
8 but not limited to, eligibility criteria for that free product, or (2) through a hyperlink (i) that is
9 very near to the representation, (ii) that indicates that there are material limitations on a
10 consumer's ability to use that free product, and (iii) that links to a landing page or webpage that
11 Clearly and Conspicuously sets forth all material limitations on a consumer's ability to use that
12 free product, including, but not limited to, eligibility criteria for that free product.

13 E. Intuit must disclose Clearly and Conspicuously to consumers, at the
14 earliest point at which it is reasonably possible to determine, that they do not qualify to file a tax
15 return for free with the TurboTax Free Edition Product.

16 F. Intuit must take reasonable steps to design all TurboTax products to
17 inform, at the earliest point it is reasonably possible, consumers using the TurboTax Free Edition
18 Product whether they will or will not be able to file for free using that product.

19 G. Intuit must not publish, or cause to be published, in any medium (1) its
20 "free, free, free" Video Advertisements (see Appendix A for a list of such advertisements) and (2)
21 Video Advertisements that are substantially similar in their repetition of the word free. Intuit must
22 comply with this Subparagraph immediately upon the Effective Date, notwithstanding any
23 contradictory language in the introduction to Section III above.

24 **IV. PROHIBITION AGAINST DATA-CLEARING PRACTICES**

25 8. Effective December 1, 2022, Intuit must permit consumers who enter a TurboTax
26 Paid Product through an Upgrade Screen to return to the TurboTax Free Edition Product without
27 being required to re-enter the data they provided when using the TurboTax Free Edition Product.

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1 **V. VOLUNTARY WITHDRAWAL FROM AND INJUNCTION AGAINST REJOINING THE IRS**
2 **FREE FILE PROGRAM**

3 9. In recognition of Intuit’s voluntary withdrawal from the IRS Free File Program
4 effective October 2021 and Intuit’s representation and commitment that it will not rejoin the IRS
5 Free File Program, and in lieu of this Judgment containing specific injunctive provisions
6 concerning Intuit’s potential future participation in the IRS Free File Program and conduct related
7 thereto:

- 8 A. Intuit must not seek to rejoin or participate in the IRS Free File Program.
9 B. This term may only be modified by amending this Judgment.

10 **VI. PAYMENT TO THE SETTLEMENT FUND AND ADMINISTRATION FUND**

11 10. Within thirty (30) days of the Effective Date, Intuit shall pay the total sum of One
12 Hundred Forty-One Million Dollars (\$141,000,000)¹ (the “Required Payment”) as described
13 herein. The Required Payment shall be made in two installments: (1) the first payment, in the
14 amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the “Administration
15 Fund”), shall be made by Intuit to an account for the payment of costs and expenses incurred or
16 charged by the Fund Administrator in administering the Settlement Fund; (2) the second payment,
17 in the amount of One Hundred Thirty-Eight Million Two Hundred and Fifty Thousand Dollars
18 (\$138,250,000) (the “Settlement Fund”), shall be made by Intuit to an account for the use of the
19 fund administrator selected by the Oversight Committee (the “Fund Administrator”), for the
20 purpose of providing restitution to Covered Consumers as described hereunder, who shall be
21 responsible for the administration of the Settlement Fund. The Required Payment installments
22 shall be made by wire transfer in accordance with instructions provided by the Oversight
23 Committee. After transfer of the Required Payment, Intuit shall have no right, title, interest, or
24 other legal claim in the transferred funds.

25 11. The Oversight Committee shall have sole discretion concerning the administration
26 and distribution of the Settlement Fund, which may include determining the Covered Consumers

27 ¹ From this amount, a total of Two Hundred and Fifty Thousand Dollars (\$250,000) will
28 be allocated for fees and costs to a certain previously designated State. This Two Hundred and
Fifty Thousand Dollars (\$250,000) will be paid into the Settlement Fund by Intuit and will
distributed by the Oversight Committee.

1 who are entitled to payments from the Settlement Fund; the nature, timing, and amount of such
2 payment; directing the Fund Administrator to make payments to these consumers; the timing and
3 content of communications from the Fund Administrator to Covered Consumers concerning the
4 Settlement Fund; directing the Fund Administrator to make payments of fees or costs from the
5 Settlement Fund to one or more Attorneys General; and transferring funds from the Settlement
6 Fund to the Administration Fund. Attached for informational purposes only as Appendix C is a
7 preliminary calculation of each States' percentage of the total population of Covered Consumers;
8 the Oversight Committee is not required to distribute the Settlement Fund according to these
9 preliminary percentages. If the Oversight Committee directs the Fund Administrator to make a
10 payment of fees or costs to a State, that payment shall be deducted from the share of the
11 Settlement Fund that is allocated to that State. Any payment of fees or costs to California shall be
12 deposited in the Attorney General's Litigation Deposit Fund and used at the sole discretion of the
13 Attorney General.

14 12. All costs and expenses incurred or charged by the Fund Administrator in
15 administering the Settlement Fund shall be paid out of the Administration Fund. The Oversight
16 Committee shall have sole discretion concerning the administration and distribution of any money
17 that remains in the Administration Fund after payment of all costs and expenses incurred or
18 charged by the Fund Administrator in administering the Settlement Fund. In no event shall the
19 Attorneys General be liable for any costs associated with administering the Settlement Fund. The
20 administration of the Settlement Fund shall, include, but not be limited to, the following:

21 A. Identifying the current mailing address of each Covered Consumer, which
22 shall be provided by Intuit and/or through the use of publicly-available databases, commercially-
23 available databases, and public records;

24 B. Preparing and sending, by mail and email, communications to Covered
25 Consumers relating to the settlement, including notice of the settlement and reminder notices to
26 all Covered Consumers who had been sent a check but not yet cashed it;

27 C. Distributing restitution to each Covered Consumer by check, and reissuing
28 checks as necessary, including for checks that have been returned;

1 D. Establishing a process by which Covered Consumers may elect to receive
2 their payments through an electronic payment processor such as Venmo, PayPal, or Zelle instead
3 of by check;

4 E. Maintaining a website that contain the terms and conditions of the
5 settlement;

6 F. Providing and hosting a toll free number to provide information to Covered
7 Consumers relating to the settlement during distribution of the restitution;

8 G. Contacting, by mail, email, or phone, Covered Consumers regarding
9 uncashed checks;

10 H. Reporting to the Oversight Committee on the status of the administration
11 of the Settlement Fund and responding to requests by the Oversight Committee for documentation
12 and information necessary to confirm the proper administration of the Settlement Fund; and

13 I. Providing all other services necessary for the proper administration of the
14 Settlement Fund.

15 13. Within sixty (60) days of the Effective Date, Intuit must submit to the Oversight
16 Committee for review and non-objection its proposed contract with the Fund Administrator that
17 includes a comprehensive Statement of Work consistent with Section VI.12 and all other terms of
18 this Judgment. The Oversight Committee will have the discretion to make a determination of non-
19 objection to the Statement of Work or direct Intuit to revise it. If the Oversight Committee directs
20 Intuit to revise the Statement of Work, Intuit must revise and resubmit the contract to the
21 Oversight Committee within thirty (30) days. After receiving notification that the Oversight
22 Committee has made a determination of non-objection to the Statement of Work, Intuit and the
23 Settlement Administrator must implement and adhere to the steps, recommendations, deadlines,
24 and timeframes outlined in the Statement of Work.

25 14. Intuit shall promptly provide the Fund Administrator (and the Oversight
26 Committee, if requested by the Oversight Committee) with all information the Oversight
27 Committee deems necessary to permit the Fund Administrator to distribute funds to Covered
28 Consumers as directed by the Oversight Committee, including, but not limited to, the following

1 for each consumer: full name; last known and prior mailing addresses, email addresses, and
2 telephone numbers; and for each of Tax Years 2016, 2017, and 2018, the TurboTax Paid Product
3 used by the consumer, if any, the amount the consumer paid to Intuit for said TurboTax Paid
4 Product, and the amount of any credits, chargebacks, or settlement amounts already paid by Intuit
5 or received by such consumer for the TurboTax Paid Product. In carrying out the foregoing, Intuit
6 agrees to provide such information as soon as possible but in no event more than thirty (30)
7 calendar days of the Oversight Committee's request.

8 15. Intuit shall warrant to the Oversight Committee at the time of supplying
9 information to the Fund Administrator that the information is complete and accurate to the best of
10 its knowledge and capability. Intuit's duty to provide complete and accurate information
11 regarding Covered Consumers shall continue throughout the administration process.

12 16. After the Fund Administrator has completed the administration of the Settlement
13 Fund (including making reasonable attempts to contact payees of uncashed checks and waiting a
14 reasonable period of time not less than ninety (90) calendar days), all uncashed checks may be
15 voided. Once such uncashed checks have been voided, these funds shall be distributed to state
16 unclaimed property funds, to any other fund or agency if so required by law, or to any other fund
17 or agency as lawfully directed by the Attorney General of the respective state, based on the last
18 known state residence of the payee. The Fund Administrator must distribute uncashed funds, or
19 any other remaining funds in the Settlement Fund, pursuant to instructions provided by the
20 Oversight Committee.

21 17. Covered Consumers who receive a payment from the Settlement Fund shall not be
22 required to return or discontinue the use of any Intuit goods or services, and receipt of any such
23 payment shall not be tied to any other commitment.

24 18. To the extent not already provided elsewhere, Intuit shall, upon request by the
25 Oversight Committee, provide all documentation and information necessary for the Oversight
26 Committee to confirm compliance with the Judgment. To the extent not already provided
27 elsewhere, Intuit shall ensure that all communications with the Fund Administrator regarding the
28 administration of the Settlement Fund shall include at least one representative of the Oversight

1 Committee.

2 19. The Attorneys General shall have no liability whatsoever to Intuit, the Fund
3 Administrator, or any Covered Consumer in connection with the administration of the Settlement
4 Fund or for any action by Intuit or the Claims Administrator with respect to the monies deposited.

5 **VII. ACKNOWLEDGMENTS**

6 20. Intuit, within seven (7) days of the Effective Date, (1) must submit to the
7 Oversight Committee an acknowledgment of receipt of this Judgment sworn under penalty of
8 perjury; and (2) must identify to the Oversight Committee the primary physical, postal, and email
9 address and telephone number, as designated points of contact, that the Oversight Committee may
10 use to communicate with Intuit.

11 21. For five (5) years after the Effective Date, Intuit must deliver a copy of this
12 Judgment to (1) all principals, officers, and directors; (2) all employees having managerial
13 responsibilities for Advertisements for any TurboTax Free Edition Product; the online search and
14 search engine optimization strategies and practices for any TurboTax Free Edition Product and
15 any TurboTax Paid Product; the representations made on the TurboTax Website regarding any
16 TurboTax Free Edition Product; and customer service inquiries regarding any TurboTax Free
17 Edition Product; and (3) any business entity resulting from any change in structure as set forth in
18 the Section titled Compliance Reporting. Delivery must occur within seven (7) days of the
19 Effective Date for current personnel. For all others, delivery must occur before they assume their
20 responsibilities.

21 22. From each individual or entity to which Intuit delivered a copy of this Judgment,
22 Intuit must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this
23 Judgment.

24 **VIII. COMPLIANCE REPORTING**

25 23. One (1) year after the Effective Date, Intuit must submit to the Oversight
26 Committee a compliance report, sworn under penalty of perjury, in which Intuit must identify all
27 of Intuit's tax preparation businesses by all of their names, telephone numbers, and physical,
28 postal, email, and Internet addresses and describe in detail whether and how Intuit is in

1 compliance with each Section of this Judgment.

2 24. For five (5) years after the Effective Date, Intuit must submit to the Oversight
3 Committee a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any
4 change in the following: (a) any designated point of contact; or (b) the structure of Intuit that may
5 affect compliance obligations arising under this Judgment, including: creation, merger, sale, or
6 dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices
7 subject to this Judgment.

8 25. Intuit must submit to the Oversight Committee notice of the filing of any
9 bankruptcy petition, insolvency proceeding, or similar proceeding by or against Intuit within
10 fourteen (14) days of its filing.

11 26. Any submission to the Oversight Committee required by this Judgment to be
12 sworn under penalty of perjury must be true and accurate, such as by concluding: "I declare under
13 penalty of perjury under the laws of the United States of America that the foregoing is true and
14 correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable),
15 and signature.

16 27. Unless otherwise directed by a representative of the Oversight Committee in
17 writing, all submissions to the Oversight Committee pursuant to this Judgment must be made in
18 accordance with the terms in Section XII. All submissions shall have a subject line that must
19 begin: Attorneys General v. Intuit Inc.

20 **IX. RECORDKEEPING**

21 28. Intuit must create certain records for ten (10) years after the Effective Date, and
22 retain each such record for five (5) years. Specifically, Intuit must create and retain the following
23 records:

24 A. Accounting records showing: (1) the revenues from all TurboTax Paid
25 Products and any add-on products such as Audit Defense; and (2) the revenues from all TurboTax
26 Paid Products and any add-on products such as Audit Defense that were received from consumers
27 who began the process of preparing their returns in any TurboTax Free Edition Product;

28 B. Records of all consumer complaints and refund requests concerning the

1 subject matter of this Judgment, whether received directly or indirectly, such as through a third
2 party, and any response;

3 C. All records necessary to demonstrate full compliance with each provision
4 of this Judgment, including all submissions to the Oversight Committee; and

5 D. To the fullest extent possible, a copy of each unique Advertisement or
6 other marketing material relating to any TurboTax Free Edition Product.

7 **X. COMPLIANCE MONITORING**

8 29. For a period of five (5) years, and for the purpose of monitoring Intuit's
9 compliance with this Judgment: Within thirty (30) days of receipt of a written request from the
10 Oversight Committee, Intuit must submit additional compliance reports or other requested
11 information, which must be sworn under penalty of perjury.

12 30. Nothing in this Judgment limits any State's lawful use of compulsory process,
13 pursuant to applicable state law.

14 **XI. RES JUDICATA EFFECT**

15 31. By entry of this Judgment, and upon Intuit's compliance with its terms including
16 the payments required in Section VI, this Judgment shall have res judicata effect and forever
17 discharge Intuit and its past and present officers, directors, employees, agents, affiliates, parents,
18 subsidiaries, operating companies, predecessors, assigns, and successors from all civil consumer-
19 protection or unfair-trade-practices claims that the People are authorized by law to bring that arise
20 from or relate to the allegations in the Complaints.

21 32. Nothing contained in this Judgment shall be construed to limit the ability of the
22 People to enforce the obligations that Intuit has under this Judgment. Further, nothing in this
23 Judgment shall be construed to waive or limit any private rights of action.

24 33. Notwithstanding Paragraph 31, or any other term of this Judgment, the following
25 claims are specifically reserved: (1) claims based on violations of securities laws, including
26 claims based on the offer, sale, or purchase of securities; (2) claims of regulatory agencies having
27 specific regulatory jurisdiction that are separate and independent from the regulatory enforcement
28 of the Attorneys General; and (3) claims that arise from Intuit's actions that take place after the

1 Effective Date.

2 **XII. GENERAL PROVISIONS**

3 34. This Judgment shall not be construed as an approval or sanction by the People of
4 Intuit's business practices, nor shall Intuit represent that this Judgment constitutes an approval or
5 sanction of its business practices. Any failure by the People to take any action in response to
6 information submitted pursuant to this Judgment shall not be construed as an approval or sanction
7 of any representations, acts, or practices indicated by such information, nor shall it preclude
8 action thereon at a later date.

9 35. Nothing in this Judgment shall be construed as relieving Intuit of the obligation to
10 comply with all applicable state and federal laws, regulations, and rules, nor shall any of the
11 provisions of this Judgment be deemed to be permission to engage in any acts or practices
12 prohibited by such laws, regulations, and rules.

13 36. To the extent that there are any, Intuit shall pay all court costs associated with the
14 filing (if legally required) of this Judgment. No court costs, if any, shall be taxed against the
15 People.

16 37. If any clause, provision, or section of this Judgment shall, for any reason, be held
17 illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect
18 any other clause, provision, or section of this Judgment, which shall be construed and enforced as
19 if such illegal, invalid, or unenforceable clause, section, or provision had not been contained
20 herein.

21 38. Unless otherwise directed by the People, whenever Intuit shall provide notice to
22 the People under this Judgment, that requirement shall be satisfied by sending notice to the email
23 and postal address of the following individuals:

24 Nicklas A. Akers
25 Senior Assistant Attorney General
26 California Department of Justice
27 455 Golden Gate Ave, 11th Fl.
28 San Francisco, CA 94102
nicklas.akers@doj.ca.gov

Bernard A. Eskandari
Supervising Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
bernard.eskandari@doj.ca.gov

39. All notices or other documents to be provided under this Judgment shall be sent by

1 U.S. mail, certified mail return receipt requested, or other nationally recognized courier service
2 that provides for tracking services and identification of the person signing for the notice or
3 document, and shall have been deemed to be sent upon mailing. Additionally, any notices or
4 documents to be provided under this Judgment shall also be sent by electronic mail to the email
5 addresses provided above or as directed by the People.

6 40. If a court of competent jurisdiction determines that Intuit has breached this
7 Judgment, Intuit shall pay to the People the cost, if any, of obtaining such determination and of
8 enforcing this Judgment, including without limitation legal fees, expenses, and court costs.

9 41. Defendant shall cooperate fully with the People as necessary to achieve the goals
10 and carry out the requirements of this Judgment.

11 42. This Court retains jurisdiction of this matter for purposes of construction,
12 modification, and enforcement of this Judgment.

13 43. The clerk is ordered to enter this Judgment forthwith.

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15 ORDERED AND ADJUDGED at Los Angeles, California.

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17 DATED: _____

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19 JUDGE OF THE SUPERIOR COURT
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APPENDIX A – “FREE, FREE, FREE” ADVERTISEMENTS²

- “Big Kick”
 - The “Big Kick” advertisement depicts a high school football placekicker and his supportive father. In the moments before an important kick, the son flashes back to a memory from his youth of his father encouraging him; returning to the present, the son converts the field goal attempt while his father looks on. However, instead of featuring conventional dialogue, the characters in “Big Kick” repeat only the word “free” throughout the ad.



- “Credits”
 - In the “Credits” advertisement, a John McClane-type action hero utters a wisecrack (here, the word “free” several times) as he drops a lighter onto a streak of gasoline, which triggers the explosion of a batter white van. As flames explode into the air, the action hero strides towards the camera in slow motion, prompting the credits to roll on screen, with every actor and role consisting of one or more uses of the word “free.”

² This Appendix addresses all versions of the listed advertisements, *i.e.*, 15-second, 30-second, and 60-second versions of the advertisements, to the extent they exist.

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- “Crossword”

- In “Crossword,” a white-haired couple completes a crossword puzzle in which every clue and every answer is one or more uses of the word “free.”



- “Game Show”

- The “Game Show” advertisement depicts a 70s-era game show in which a woman must guess what activity or concept her male partner is miming. Every one of the woman’s answers is correct and consists of one or more uses of the word “free.”



- "Lawyer"

- In "Lawyer," an attorney delivers an impassioned closing argument to the jury as dramatic music swells, with every word of the attorney's argument being "free." After he finishes, a member of the jury leads a standing ovation, as various jurors repeat the word "free" several times.



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- “Spelling Bee”
 - The “Spelling Bee” advertisement shows a middle school-aged boy correctly spelling the word “free” in a spelling bee. Aside from the boy’s spelling out the letters “F-R-E-E,” every line dialogue spoken by the boy and by the judge of the spelling bee consists entirely of the word “free.”

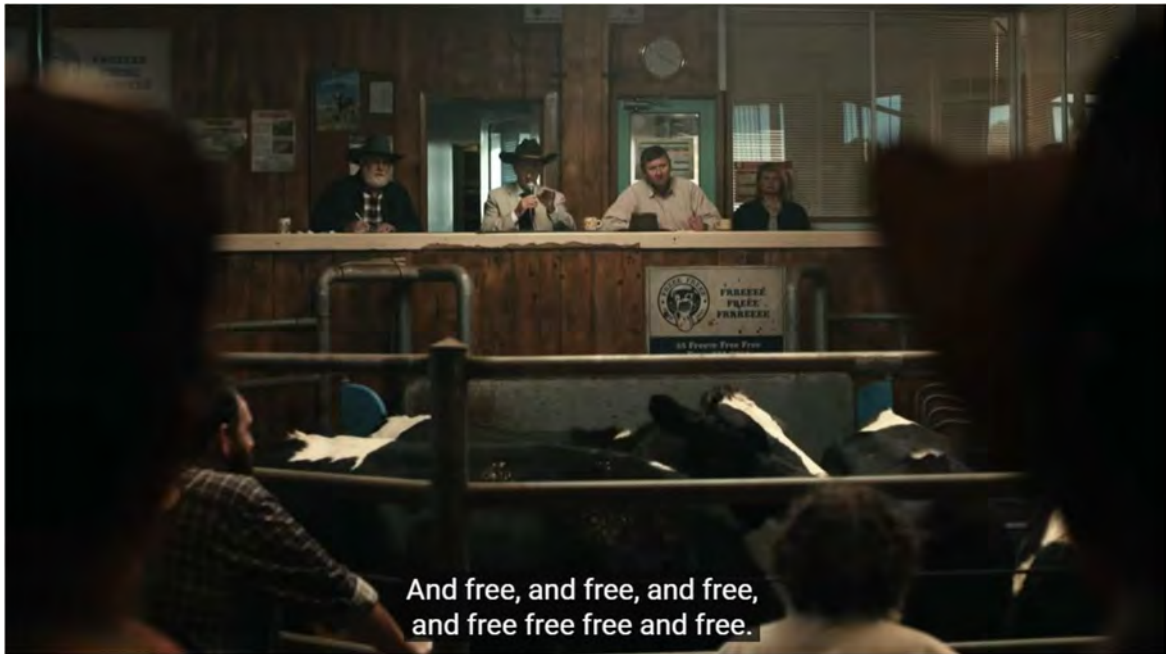


- “Echo”
 - In “Echo,” a hiker shouts “free” from the top of a mountain, with the word “free” reverberating back to her as a result.

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- “Auctioneer”
 - In “Auctioneer,” a fleet-tongued auctioneer rattles off prices and bids to a collection of ranchers and cowboys. Instead of conventional dialogue, the auctioneer repeatedly utters the word “free.”



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- “Dance Workout”
 - The “Dance Workout” advertisement depicts an instructor leading an enthusiastic dance workout class. Instead of conventional words of encouragement and instruction, the instructor repeats the word “free.”



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APPENDIX B

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APPENDIX C – PRELIMINARY STATE PERCENTAGES OF COVERED CONSUMERS

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State	Number of Covered Consumers	Percentage of Covered Consumers
AK	14,135	0.32
AL	53,656	1.20
AR	34,487	0.77
AZ	100,213	2.24
CA	371,403	8.30
CO	82,967	1.85
CT	39,078	0.87
DC	9,356	0.21
DE	13,247	0.30
FL	335,246	7.50
GA	134,480	3.01
HI	14,521	0.32
IA	33,167	0.74
ID	27,237	0.61
IL	133,990	3.00
IN	94,163	2.11
KS	38,075	0.85
KY	54,406	1.22
LA	55,578	1.24
MA	75,091	1.68
MD	66,669	1.49
ME	22,650	0.51
MI	115,565	2.58
MN	60,322	1.35
MO	81,427	1.82
MS	35,053	0.78
MT	16,072	0.36
NC	139,028	3.11
ND	9,270	0.21
NE	25,780	0.58
NH	22,074	0.49
NJ	70,164	1.57
NM	28,535	0.64
NV	49,883	1.12
NY	176,712	3.95
OH	163,367	3.65
OK	52,399	1.17
OR	68,253	1.53

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PA	158,779	3.55
RI	13,577	0.30
SC	67,238	1.50
SD	13,455	0.30
TN	111,658	2.50
TX	465,793	10.41
UT	44,289	0.99
VA	111,613	2.50
VT	9,361	0.21
WA	121,102	2.71
WI	76,682	1.71
WV	23,533	0.53
WY	8,790	0.20
Other*	329,199	7.36
Totals	4,472,788	100.00

* The “Other” category includes Covered Consumers for whom there currently is no information available on their state affiliation and consumers in U.S. territories and foreign countries, including U.S. military mail codes.

EXHIBIT C

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Pages 1 - 47

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 22-01973 CRB
)	
INTUIT, INC.,)	
)	
Defendant.)	
)	

San Francisco, California
Thursday, April 21, 2022

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

FEDERAL TRADE COMMISSION
Bureau of Consumer Protection,
Division of Marketing Practices, CC 8602
Org Code 1144, Mailstop CC-5201
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

BY: **ROBERTO ANGUIZOLA, ATTORNEY AT LAW**
JAMES E. EVANS, ATTORNEY AT LAW

For Defendant:

WILMER, CUTLER, PICKERING, HALE
& DORR LLP
1875 Pennsylvania Ave., NW
Washington, D.C. 20006

BY: **SETH P. WAXMAN, ATTORNEY AT LAW**
JONATHAN E. PAIKIN, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON THE FOLLOWING PAGE)

REPORTED BY: Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter

1 APPEARANCES: (CONT'D)

2 For the Defendant:

3 WILMER, CUTLER, PICKERING, HALE
 4 & DORR LLP
 5 7 World Trade Center
 6 250 Greenwich Street
 7 New York, New York 10007
 8 **BY: DAVID Z. GRINGER, ATTORNEY AT LAW**

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WILMER, CUTLER, PICKERING, HALE
 & DORR LLP
 2600 El Camino Real - Suite 400
 Palo Alto, California 94306
BY: SONAL N. MEHTA, ATTORNEY AT LAW

1 Thursday - April 21, 2022

10:25 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Court is now in session. The Honorable
5 Charles R. Breyer is presiding. You may be seated.

6 Our court reporter can't be in two places at once.

7 **THE COURT:** She can't?

8 **THE CLERK:** She is appearing by phone. She went from
9 Zoom to phone.

10 **THE COURT:** Apparently we don't have an in-person
11 court reporter, but we have a remote court reporter. We will
12 see how remote it is in a minute.

13 But I would appreciate if the parties, when they address
14 the Court or each other, identify themselves and so we will
15 have a record of it.

16 Why are all the lights out in this courtroom? What is
17 going on?

18 **THE CLERK:** I think it's for effect because it was a
19 little too bright.

20 **THE COURT:** I like a little sunshine. Sunshine in the
21 judicial process, isn't that -- doesn't that just make
22 everyone's day?

23 **THE CLERK:** Okay, let me call the case, Judge.

24 **THE COURT:** Apparently I'm like an airline. Masks are
25 optional, so I leave it up to you. Except if you are not

1 vaccinated, please wear a mask.

2 **THE CLERK:** Calling civil action C22-1973 Federal
3 Trade Commission versus Intuit, Inc.

4 Counsel, please state your appearances in the microphone
5 for the Court. Thank you.

6 **MR. ANGUIZOLA:** Good morning, Your Honor, I am Roberto
7 Anguizola on behalf of the Federal Trade Commission, and with
8 me is co-counsel James Evans.

9 **THE COURT:** Good morning.

10 **MR. WAXMAN:** Good morning, Your Honor, I'm Seth Waxman
11 representing Intuit. And with me at counsel table are my
12 colleagues Sonal Mehta, David Gringer and Jonathan Paikin.

13 **THE COURT:** Good morning. And Counsel can remain
14 seated unless you want to come up to the podium. Not
15 necessary. But make sure your remarks are before a microphone.

16 So this matter is on based upon the FTC's request for
17 injunctive relief, and it was initially filed -- well, I don't
18 have the date of its filing -- but about two weeks ago; is that
19 correct?

20 **MR. ANGUIZOLA:** March 28th, Your Honor.

21 **THE COURT:** March 28th. And it was assigned at that
22 time to Judge Davila that related to this Court.

23 And the question -- the initial question was when to
24 conduct the hearing on the proposed injunctive relief.

25 The hearing I think was scheduled -- originally scheduled

PUBLIC

1 for April 18th; is that right or am I off on that?

2 **MR. ANGUIZOLA:** It was originally scheduled for
3 March -- no, April 14th.

4 **THE COURT:** April 14th.

5 **THE CLERK:** Counsel, please don't forget to state your
6 name.

7 **THE COURT:** Yeah, state your name.

8 And if my memory services me correctly, it's like
9 April 15th is when taxes are due or was there some extension to
10 April 18th? I couldn't quite figure out what day tax day is.
11 It will live in infamy. What day is tax day?

12 **MR. ANGUIZOLA:** Your Honor, this is Roberto Anguizola.
13 And tax day this year was Monday April 18th.

14 **THE COURT:** Oh, so it was the IRS, Internal Revenue
15 Service, they gave you a weekend to collect your assets. Yes.

16 **MR. WAXMAN:** I think it was -- this is Seth Waxman
17 speaking. I think it was the confluence of tax day and Good
18 Friday.

19 **THE COURT:** Ah, okay.

20 **MR. WAXMAN:** That led --

21 **THE COURT:** There you go. Sorry. Exactly. Yeah, I'm
22 sure that's correct. I'm sure that's correct. So that's fine.
23 But anyway you know, it was the 18th.

24 You know, the way it hit me was actually in Mr. Waxman's
25 brief was, you got to have an emergency of some weight in order

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1 to invoke the injunctive powers of the Court and not
2 basically -- an injunction is not to disrupt a satisfactory
3 status quo.

4 In other words, I can understand that an injunctive relief
5 can be given to stop a particular harm when the particular harm
6 is a serious particular harm that is about to occur.

7 But the way I looked at it -- and you can correct me --
8 the FTC can correct me if I'm wrong -- was that this is a harm
9 that was, quote, known -- a potential harm -- I'm not passing
10 judgment on the merits of whether it is a harm or not -- but it
11 was a -- it was known to the FTC for a considerable period of
12 time, and they didn't seek injunctive relief until shortly
13 before tax day.

14 And after all, I mean, we know what the case is about.
15 The case is about filing for taxes.

16 So it is a particular -- it is a particular remedy geared
17 to a particular time of the year that is of significance here.

18 And so when I got it, I looked at it and thought why wait?
19 What was the -- what was the reason for waiting?

20 Because the problem is if we wait on something like this,
21 first of all, if there is harm, much of it is accrued.

22 And secondly, it becomes in and of itself entirely
23 disruptive to a company that is operating a particular way.

24 Third, it probably minimizes -- has a minimal impact on
25 damages if there are damages because it is -- you wait so late.

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1 So, the FTC did respond and their response was -- well,
2 let's see, how should I put it? How about this: They were
3 simply out lawyered in this case. They were out lawyered in
4 that they waited, waited for responses and they weren't
5 forthcoming; and ultimately there were -- they were unable to
6 arrive at a disposition. And so time elapsed -- time passed
7 and here we are.

8 And it really wasn't their fault because they operated in
9 good faith trying to achieve a result. They thought they were
10 going to achieve a result or didn't -- I don't know -- and --
11 and time passes, which, of course, happens. I understand that.

12 And it is not -- it is not the sort of thing where I would
13 say that, you know, somebody is operating in good faith and
14 somebody is operating in bad faith.

15 I don't know that I need to get into that because the fact
16 of the matter is regardless of whose fault it was, here we are.
17 Here we are.

18 And -- and the request for emergency relief is -- it is
19 basically mooted, notwithstanding the merits of the situation.

20 Now, I haven't heard from you. And I'm quite sure the FTC
21 wants to respond to this, so I will, of course, listen. But
22 I'm giving you my impression after reading hundreds of pages of
23 argument on this subject.

24 So, go ahead. Come on up, if you would like.

25 **MR. ANGUIZOLA:** Good morning again. Again,

PUBLIC

1 Your Honor, Roberto Anguizola, for the record, on behalf of the
2 U.S. FTC.

3 **THE COURT:** Right.

4 **MR. ANGUIZOLA:** And here we are. The reason why it
5 was appropriate for an emergency before tax day -- and I don't
6 want to spend a lot of time on that because here we are after
7 tax day -- can be found in -- before I get into this, I want to
8 address a housekeeping matter, which is that a lot of the
9 material -- I think a lot of the material is under seal here,
10 and I think it is difficult for me to address your very
11 specific questions about the timing and whether this matters
12 without referring to that material.

13 And I don't know whether there is anybody in the courtroom
14 that should not be hearing this information. So that's a
15 question that I pose to Intuit's Counsel.

16 **THE COURT:** Well, I don't want a secret hearing. I
17 mean, this is a public proceeding.

18 **MR. ANGUIZOLA:** Okay.

19 **THE COURT:** You know, just -- and really, all I do
20 generally seal is personal identification information, privacy
21 concerns and so forth.

22 In terms of overall strategy and so forth, I'm not so
23 inclined to -- to somehow burden a party with trying to make an
24 argument when, in fact, the argument is based on under seal
25 documents. I doubt if Intuit has a problem with that.

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1 **MR. WAXMAN:** Your Honor, Seth Waxman for Intuit.

2 **THE COURT:** Yes.

3 **MR. WAXMAN:** I don't see -- if we are talking about
4 the issues of exigency, nothing has been filed addressed under
5 seal. Some confidential business documents have been filed
6 under seal. And, of course, Your Honor received a sealed
7 filing yesterday.

8 But, on the question of what the exigency is or isn't, I
9 just can't imagine any confidential company information being
10 relevant.

11 **THE COURT:** Well, okay. Give your free-wheeling
12 argument and let me hear it.

13 **MR. ANGUIZOLA:** Okay. With your permission, I will,
14 Your Honor.

15 So our case was filed March 28th. And that's important
16 because if you -- if the Court looks at Government Exhibit 298,
17 at Intuit FFA-FTC 105770, it -- it's a chart that maps out
18 Intuit's season and when most -- most consumers purchase
19 products -- tax preparation products from Intuit.

20 And the biggest point -- the peak of the season is the two
21 weeks prior to the tax day.

22 And so, you mentioned earlier that we got out lawyered and
23 maybe we got snookered by the company and its lawyers, but it
24 became clear to us that Intuit wanted to delay this case until
25 after tax day. That became clear to us --

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1 **THE COURT:** When did that become clear to you?

2 **MR. ANGUIZOLA:** It became clear to us around March.

3 **THE COURT:** Well, become clear to me -- if it's true,
4 if they did -- and I'm not commenting on whether they did or
5 not -- it would occur to me much earlier than that, I would
6 think that knowing that April 15th or 18th is tax day, knowing
7 that -- and after all, the FTC does have a calendar. We know
8 that -- I would think that if I was in defense strategy here
9 having embarked upon a particular marketing plan that was set
10 well in advance of tax day, that maybe they don't want any
11 disruption in their marketing plan because it is geared to the
12 generation of income given that they know that most people,
13 myself included, file around April 15th.

14 That's when we owe the government some money. Much rather
15 have the money in my pocket than Uncle Sam's pocket.

16 So I --

17 **MR. ANGUIZOLA:** Yes, Your Honor --

18 **THE COURT:** I mean, really, it seems to me it is sort
19 of a -- somewhat naive, if I may use that word without the
20 pejorative effect, to think that of course they want to run it
21 out.

22 Their strategy, whether legal or not legal or whether
23 appropriate or inappropriate -- and I'm not passing judgment on
24 that -- it is their strategy. And they want to keep it in
25 effect without a disruption. And so I think that was obvious

PUBLIC

1 pre-March, wasn't it?

2 And by the way, you had conversations with them before
3 that time. So, I don't know what those conversations were, but
4 my guess is that that they didn't -- they didn't bring about
5 the changes that you thought appropriate in your duty as a
6 member of the FTC staff in a timely manner and that unfolded.

7 But it was somewhat predictable given that there is an
8 inertia of a company to try to change things at a particular
9 time when their income, their revenues, depend upon a plan.

10 **MR. ANGUIZOLA:** And that's correct. And that's --
11 obviously our position and hope was that the TRO hearing would
12 happen well in advance of -- with enough advance to prevent the
13 greatest harm, which is the two weeks prior to tax day.

14 I want to address where we are now, which is --

15 **THE COURT:** Okay.

16 **MR. ANGUIZOLA:** -- after tax day.

17 **THE COURT:** Yeah.

18 **MR. ANGUIZOLA:** If you turn to that same document,
19 Intuit 10577 at Government Exhibit 298, there is still harm to
20 be had.

21 So between now and the automatic extension date for --
22 for -- filing an -- a late tax return, which consumers can do
23 between now and October, Intuit as of tax year 2019 generated
24 \$35 million of revenue from consumers in that category.

25 And so even though we can agree to disagree on how naive

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1 we were and the timing and whether the Defense Counsel out
2 lawyered us, there is still harm occurring now.

3 And we filed a third declaration of FTC investigator Diana
4 Shiller -- it is Government Exhibit 319 at docket 57-3 -- which
5 demonstrates that the advertising at issue, the deceptive free
6 claims that are at the core of this case, are still being made
7 by Intuit as part of their post-season strategy.

8 So, yes, we -- we wish that we could have prevented the
9 harm that would have happened at the peak, but there is still a
10 lot of harm that can be prevented now.

11 **THE COURT:** Okay. So let's move on. Let's move on to
12 your argument. Tell me -- let's assume that, you know, bygones
13 be bygones, and there are certain changes -- it is a clean
14 slate.

15 You come in -- let's say you just discovered this. Who
16 cares. You come in and you say, you know, Judge, between
17 April 15th and October 15th, if that's the date, you know, this
18 tool, this method, is going to be disseminated to prospective
19 filers; and we feel -- the FTC feels that the representations
20 or the method by which filers are advised as to the mechanics
21 of how the system works is unfair -- is unfair, inappropriate.

22 And it is inappropriate in the following way: It entices
23 or encourages or represents to a taxpayer that he or she will
24 have paid free service when, in fact, the reality is they will
25 not or the reality is that they will be so deeply involved in

PUBLIC

1 the filing system that they will at that point elect to pay
2 compensation to Intuit as distinct from disassociating itself
3 from the website.

4 I think those are the arguments that I sort of got --

5 **MR. ANGUIZOLA:** And that's correct. And that
6 behavior, despite the fact that Intuit has knowledge of this
7 action and very well knows that the FTC's concerns with it and
8 should know the illegality of it, the deception that is
9 happening, they -- the very next day after tax day -- if you
10 look at Shiller declaration. It is on the docket 57-3 at
11 paragraph 14 -- she has an image of a blog published by
12 TurboTax. "Did you miss the tax deadline?"

13 And then there is a representation "you can start for
14 free." And when you click that, if you go to paragraph 15, you
15 land on the TurboTax website. And there is the free claims,
16 "free, zero, zero, zero."

17 The truth of the matter is -- and we have laid this out in
18 our matter -- two-thirds of American consumers are ineligible
19 to file for free using TurboTax. And that's deception.

20 Intuit's answer is: Well, we tell them "simple returns
21 only" or something of that ilk.

22 And we have conducted a survey to determine is that a good
23 disclaimer. And we have consulted with Professor Novemsky from
24 Yale University at GX -- Government Exhibit 302.

25 His survey shows that 55 percent of consumers that have

PUBLIC

1 not -- have not used TurboTax in the past -- he refers to that
2 as group A -- 55 percent of those people think that they have a
3 simple tax return even though they would -- based on the
4 questions in the survey they would be ineligible.

5 So the majority of consumers or at least a significant
6 minority, which is the standard, go in and don't understand
7 that disclaimer. And that disclaimer contradicts the -- the
8 very claim even if it was understood.

9 It is also confusing because we have laid out how -- the
10 disclaimer itself -- Intuit's definition of what "simple tax
11 return" means changes from year to year to year.

12 So I -- shortly after filing this case, I received an
13 e-mail from a consumer saying "Yes, I got snookered this year
14 because last year I had unemployment benefits and last year a
15 simple return under Intuit's definition would include
16 unemployment." And he was able to file for free.

17 This year, simple return means something else, and it is
18 not included. So this year he went in; entered all the data;
19 wasted his time and ended -- faced with a decision, "Do I now
20 start all over or do I pay and stop wasting my time?"

21 And the harm that happens is you create -- they are
22 creating a marketplace where the consumers don't -- you know,
23 they think it is a dishonest marketplace, and this is
24 ultimately what we are trying to avoid here.

25 So the conduct is ongoing. And now they have -- they have

PUBLIC

1 had a chance to correct it and they haven't.

2 **THE COURT:** Well, is your quarrel -- I'm trying to
3 figure out exactly what your quarrel is with.

4 Are you saying they shouldn't say "simple" because
5 "simple" is one of those terms that means -- it is in the eye
6 of the beholder; that something is either simple. Something to
7 one person may seem simple, to the other person may be
8 complicated. And therefore, it is not a defining term that
9 would give guidance to a person to understand that he or she
10 would not be required to pay a fee for the services that are
11 rendered.

12 It is just not -- it is not exact enough. And, in fact,
13 it is misleading in that -- in that it just has too many things
14 in the common parlance of its understanding that would pull
15 people in and that's why it's deceptive.

16 **MR. ANGUIZOLA:** Well, it begins with the use of the
17 word "free." Simple return is a --

18 **THE COURT:** Well, free -- listen, I have no problem
19 with the word "free." My problem is with the word "simple."

20 I mean, free is free. Free means no paying. Do not pay
21 and don't have to pay. That's what free means. It doesn't
22 mean anything else. It doesn't mean sort of free. Pay a
23 dollar, \$10, \$20. Free is free.

24 But that's not -- is that the deception? Are you saying
25 it is really not free? It is not free in the sense that they

PUBLIC

1 charge? And, therefore, it is not free.

2 **MR. ANGUIZOLA:** It is not free --

3 **THE COURT:** But they come back and they say: Look, we
4 didn't say our system is free to everybody. We said it's free
5 if the return is a simple return. That's what we said.

6 Now, so the deception, I think, at one level has to be
7 with the term "simple" and not "free," I think.

8 Have I got it wrong? Tell me I got it wrong.

9 **MR. ANGUIZOLA:** I don't think --

10 **THE COURT:** What?

11 **MR. ANGUIZOLA:** I don't think you have it exactly,
12 right. The deception --

13 **THE COURT:** Okay.

14 **MR. ANGUIZOLA:** -- begins with the word "free," and
15 then there are different variations of their ad.

16 So the question is: Is there some language that modifies
17 the claim free and -- in other words, a disclaimer? And is
18 that disclaimer clear and conspicuous?

19 So the Novemsky survey went to the question of whether the
20 disclaimer "simple return" is clear. It is not clear. People
21 don't understand what that means, and it is a -- and it is a
22 moving goalpost because Intuit changes it all the time.

23 **THE COURT:** I understand that argument.

24 **MR. ANGUIZOLA:** It is also not --

25 **THE COURT:** Why am I wrong in saying the confusion

PUBLIC

1 arises out of the term "simple?" It doesn't arise out of the
2 term "free."

3 Free gets you there. Free gets you in the door. But
4 there is a disclaimer. They don't say it is free to everybody,
5 and nobody thinks it is free to everybody.

6 **MR. ANGUIZOLA:** The survey data shows otherwise,
7 Your Honor, but you are not completely wrong for all of the
8 ads.

9 **THE COURT:** Well, okay. That is virtue.

10 **MR. ANGUIZOLA:** But what -- part of the issue deals
11 with conspicuousness. So if we turn back to the television ads
12 that they have now pulled -- conveniently pulled at the end of
13 the season when they knew that they were going to get sued --
14 and you can call that shrewd and good lawyering -- but that's
15 what they did.

16 In those ads simple return is a blurry microprint at the
17 end of the ad at the bottom. Sometimes they have a voiceover.
18 They say 30, 40 times or however many times. And so in that
19 instance it is not conspicuous.

20 They get closer -- even if they were able to argue that in
21 some of the space constrained ads or in some of the internet
22 ads, that they get closer to simple returns -- return -- the
23 simple return disclaimer being conspicuous, it is not clear.
24 And that's where the Novemsky survey illustrates that it is not
25 a good disclaimer because people don't understand what they

PUBLIC

1 mean.

2 So there are two problems. One, in a lot of the ads, the
3 ads that started the case, it is not conspicuous at all.

4 So the consumer will just take in the promise that it is
5 going to be free without ever seeing the disclaimer.

6 And then the second problem is even when consumers can see
7 and comprehend that there is a disclaimer, they don't
8 understand what that means. And it contradicts the central
9 claim, which is that is free.

10 So there is -- there are those two distinctions, and there
11 is -- it is a moving target. There's different kinds of ads,
12 but even the current ads that they are running have a problem
13 because that disclaimer is just not clear. It is not
14 understood.

15 **THE COURT:** All right. Well, let me hear from
16 Mr. Waxman, unless you just want to submit it?

17 **MR. WAXMAN:** Your Honor, Seth Waxman for Intuit. I
18 mean, I -- no, I don't want to, of course, just submit it.

19 I do want to address the merits and particularly this
20 issue of the confusion involving "simple" on a going forward
21 basis, but I think I need to say a few things in response to
22 misrepresentations that were made before.

23 This notion that we have tried to snooker the FTC is so
24 utterly false, and the paper trail -- there is an exhaustive
25 paper trail that will demonstrate some of which is already in

PUBLIC

1 the record.

2 This investigation was begun in a very public way three
3 tax seasons ago. Every single time there was a request for
4 production of documents, witnesses, et cetera, we have provided
5 them with alacrity.

6 We have attempted to, over the course of those years, make
7 changes -- the screen that you were just shown is from the 2019
8 tax year. We have made any number of changes to the ads that
9 they claim were deceptive in an effort to satisfy them.

10 We have asked them -- in fact, literally, quote, begged
11 the FTC since they filed its -- sent its draft complaint to us
12 almost a year ago to explain to us what it is -- on what basis
13 they believe these ads are deceptive.

14 These are ads that say very prominently -- you can see in
15 the screen you just saw on the very first line -- "for simple
16 returns only" which is hyperlinked. When you click on that
17 hyperlink, it tells you exactly who qualifies and who doesn't.

18 It then says -- right after "for simple returns only",
19 quote, "see if you qualify at turbotax .com."

20 And when you go to turbotax .com, you get a screen, which
21 was also displayed by Mr. Evans, that has the tile of things
22 saying: "Tell us about you." Do you --

23 **THE COURT:** Why don't you walk me through this? Walk
24 me through this in terms of a current -- I mean, current as of
25 today, a year or so --

PUBLIC

1 **MR. WAXMAN:** Yeah.

2 **THE COURT:** Here is -- let's -- let's talk about what
3 we are going to talk about. I'm not concerned about the past,
4 though I think it is entirely appropriate for you to respond.
5 For the record and so forth --

6 **MR. WAXMAN:** I understand. There is one more thing I
7 do want to say.

8 **THE COURT:** Go ahead because I don't want to cut you
9 off.

10 **MR. WAXMAN:** We have asked them over and over and over
11 again in the past year to tell us what is still objectionable
12 about the changed ads, none of which are running.

13 They have told us repeatedly: "We are not going to get
14 into that with you."

15 We went to them in November and said, look, let's get an
16 agreement on some -- what it is that you want so we can do this
17 before tax season.

18 We are a consumer product company. We don't want to be on
19 the wrong side of the government. We rely on repeat business.

20 If there is something that is confusing to a significant
21 part of the population, we want to conclude it; and we were
22 told repeatedly "We are not willing to discuss that."

23 "We are not willing to discuss that."

24 The very first time we heard anything was about two weeks
25 before the hearing before the complaint was filed when we met

PUBLIC

1 first with the Career Chief and then with the Chair of the
2 Commission who told us what it is that she still found
3 objectionable.

4 And that very day we wrote to her and said: Look, we will
5 pull all of the television, video, Facebook, online ads; okay.
6 And in response to that a few days later we got this lawsuit.

7 Now, this lawsuit is a request not that Your Honor decide
8 the merits of whether what we are doing on a going forward
9 basis is -- does or doesn't violate the FTC Act.

10 They have noticed this under Section 5 for a hearing in
11 September. The FTC is going to decide that issue.

12 They filed a complaint with you seeking only the following
13 relief: A temporary restraining order and a preliminary
14 injunction pending the September hearing to prevent us from
15 running the ads which had already stopped.

16 They now have, not in any pleading, a new exigency, which
17 as it turns out that some people missed the filing deadline and
18 they have to file by October.

19 And so their request here today is that you enter a 14-day
20 temporary restraining order and then have some hearing on a
21 preliminary injunction based on a showing that utterly does not
22 exist.

23 I mean, as Your Honor stated at the outset, preliminary
24 injunctive relief is -- as the Supreme Court has explained, is
25 extraordinary and a drastic remedy. And what is extraordinary

PUBLIC

1 about this case is how completely insubstantial the
2 Government's papers are.

3 They have attached -- we have some testimony today from my
4 colleague about somebody who supposedly called him to say he
5 was snookered. We have a complaint, a temporary restraining
6 order, and a reply brief that doesn't attach or reference a
7 single consumer declaration.

8 They have represented that of the tens of millions of
9 people who use TurboTax, both the free edition and the various
10 paid editions, they have received 23 complaints about the
11 advertisements.

12 We don't have those complaints. We don't know whether a
13 single one of those complaints has to do with some
14 misconception about whether you could or couldn't file for
15 free.

16 The only thing they have produced -- although we have
17 declarations and declarations and declarations saying that they
18 had to spend years talking with experts and consultants about
19 surveys -- what we have is some gossamer survey that was done
20 the week before -- start to finish the week before they filed
21 their complaint that purports to test whether people who see
22 the ads, which are not running anymore, believe that everyone
23 can file for free.

24 And yet, the survey did not show any one of the challenged
25 ads to anybody. It just asked people: If you were told that

PUBLIC

1 it's free if you file a simple return, do you think your return
2 is simple?

3 And so that survey says nothing whatsoever about the
4 challenge in this case, which is that our ads were deceptive.

5 It doesn't say anything about the ads at all because not
6 one person was shown any of these ads. And that is the sum and
7 substance of the Government's representations here.

8 And it requires not only a denial of the TRO and the
9 preliminary injunction but dismissal because that is the only
10 relief that is requested.

11 Now, the Government --

12 **THE COURT:** Are you then -- let me try to posit a bit.
13 Are you saying that those ads that have been pulled, if that's
14 the right word, discontinued, in light of FTC concerns and
15 discussion and so forth, is that as to that category of ads,
16 they will not be disseminated, published, going forward?

17 So there really isn't the -- the prospect of a, quote,
18 continued -- merits aside -- a continuing harm?

19 So this -- you are saying this motion has to fail for a
20 variety of reasons but one of which is there isn't an ad out
21 there that we are publishing that is the subject of a complaint
22 by the FTC.

23 We don't even know exactly what they are talking about.
24 They haven't viewed -- criticized or put into the record a
25 present ad that would be susceptible of that interpretation.

PUBLIC

1 And secondly, there is no consumer evidence, if I can use
2 that term, to show that there is a deception or a confusion as
3 it relates to that particular ad. Is that a fair summary?

4 **MR. WAXMAN:** Yes. Yes, it is even better than that
5 because although they have no evidence whatsoever that the --
6 that the television, video and online ads -- that we have
7 represented will not ever run again. We aren't even
8 planning -- we have undertaken not to run any television or
9 video or online ads until next tax season, which would be after
10 the FTC conducts its Section 5 hearing and makes a ruling.

11 **THE COURT:** So then what is the -- what is your
12 response to the -- to the question: Between now and
13 October 15th, how then is Intuit or TurboTax, whatever you want
14 to call yourselves, how are you presenting the product to the
15 public effective on April 18th to December -- to October? How
16 is it being shown to the public?

17 **MR. ANGUIZOLA:** Right. So it is shown to the public
18 on our website. And Your Honor can -- we have invited
19 Your Honor on paper and now orally to go to www.turbotax.com,
20 which is what the previous ad said you should do to see if you
21 qualify, and you can see for yourself that it makes lavishly,
22 promiscuously clear that it has four different editions.

23 There is a free edition, which 14 million people use each
24 year, totally for free; and that the free edition is for simple
25 returns only, which is a hyperlinked statement. And when you

PUBLIC

1 go to the hyperlink, it will give you the list of eligibility
2 for filing for free.

3 And it then says: To see if you qualify, go to
4 turbotax.com. And when you go to turbotax .com, you will
5 see -- Mr. Evans put it up on the page -- a display of tiles
6 that says tell me about -- tell us about yourself to decide
7 which edition you should use.

8 And if you click on, for example, "I sold stocks. I have
9 a rental property. I have childcare expenses. I -- I have
10 donated more than \$300 in charitable contributions," it
11 automatically tells you that you cannot use the free edition.
12 You have to use either basic or one of the other higher-grade
13 things.

14 And so, leaving aside the complete absence of proof -- the
15 complaint in this case addressed three or four TV ads.

16 The very first time that we were told in a meeting with
17 Chair Lina Khan what it was that the Commission still thought
18 was misleading, that very day we undertook to pull the ads, and
19 the ads have been pulled since then.

20 They are now saying: Well, we ran into court asking for a
21 TRO and a PI because tax day was coming. They now say: Well,
22 some people, some very small percentage of people, missed the
23 deadline and they are on extension.

24 And it's true that none of the ads that are in our
25 complaint are running anymore, but you can still -- and you can

PUBLIC

1 look at the latest declaration from their paralegal -- if you
2 Google "online free tax" --

3 **THE COURT:** Isn't my answer to it: Okay, I'm going to
4 allow you to amend your complaint. Go amend your complaint and
5 gear it towards -- I'm not granting the TRO. I'm not granting
6 the preliminary injunction. Times have changed.

7 We are now talking about those people who are going to
8 take advantage of the April 18th to October 15th extension.

9 If -- if you feel that there are deceptive ads out there
10 now, put them in your amended complaint and then we will talk
11 about it. They will either be there or they won't.

12 I mean, I don't, like, to know really what to do in the
13 sense that I'm not going to do what they want to do basically
14 because I think it is moot. And I'm not passing any judgment
15 on the merits. But it is moot.

16 I mean, I don't think it is appropriate for a Court to
17 say: Well, it is moot. But let me tell you how I really feel.
18 I like to do that but --

19 (Laughter)

20 **THE COURT:** -- I'm not supposed to. I'm not supposed
21 to do that, so I'm not going to do that.

22 But I think that because they are talking about, one, a
23 serious matter. I don't treat this as not a serious matter.
24 Two, that people should have an opportunity to come to court,
25 the Government included if, in fact, they feel that they have a

PUBLIC

1 basis for it. So I ask you, Mr. Waxman, what is wrong with
2 that?

3 **MR. WAXMAN:** I think if Your Honor were to dismiss the
4 complaint and deny the relief and give them the opportunity,
5 which they have in any event to file a new complaint; and they
6 can file a complaint with a TRO that not only says that these,
7 you know, Google and Bing hits are misleading but actually
8 adduce a modicum of evidence that would allow Your Honor to --

9 **THE COURT:** They have to.

10 **MR. WAXMAN:** Yeah.

11 **THE COURT:** I mean, whether --

12 **MR. WAXMAN:** So --

13 **THE COURT:** It is not Sunday school. You know, I
14 mean, they have to follow the rules. So let me ask -- this is
15 fabulous to have in-live, person-to-person argument in the
16 courtroom -- but I want to ask the FTC.

17 So, what is wrong with that? In other words, I simply
18 dismiss -- I deny your request for injunctive relief. I
19 dismiss with leave to amend. I think I dismiss with leave to
20 amend. I don't think I simply -- I don't know how else you get
21 to a leave to amend unless it is dismissed. Give me your
22 views. Come on up. We will chance it.

23 **MR. ANGUIZOLA:** This is Roberto Anguizola. They are
24 mischaracterizing the complaint. So --

25 **THE COURT:** Okay.

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1 **MR. ANGUIZOLA:** The complaint -- they would like the
2 Court to believe that the complaint was only about television
3 ads. And it is correct. We highlighted the television ads
4 because at the time that the complaint was filed the television
5 ads were ongoing, and the television ads were particularly
6 egregious.

7 But from the very get-go, if you look at paragraph 30 of
8 the complaint -- I believe it is docket 1 -- it says: Intuit
9 has employed ads including via television, YouTube and other
10 social media marketing the premium version of TurboTax
11 including but not limited to those in the absolute zero and
12 free, free, free campaigns. They have pulled the free, free,
13 free campaigns.

14 We were looking at ads beyond television. It's in black
15 and white in paragraph 30. We were looking at ads beyond those
16 particular television campaigns.

17 Then if we turn to paragraph 126, reads: The FTC has
18 reasons to believe that Defendant is violating or is about to
19 violate laws enforced by the Commission.

20 And 126(c) says: Intuit has continued engaging in many of
21 the challenged acts and practices even after learning it was
22 the subject of Government investigations; and (d), during the
23 pendency of the FTC's investigation, Intuit has continued its
24 deceptive free advertising which is ongoing.

25 Then, Count One -- again, none of -- that all envisions a

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1 situation where there is harm at the time a complaint is filed
2 and there is harm beyond television and there is harm that --
3 there is a belief that it is going to keep going on.

4 Then Count One is not limited to television. I'm not
5 going to read it, but it -- it deals with -- it is broader than
6 television.

7 It deals with instances in connection with advertising,
8 marketing, promotion, offering for sale or sale of online tax
9 preparation products or services including through the means
10 described in paragraphs 16 through 126.

11 That is beyond television. The paragraphs 16 through 126
12 deal with the website. They deal with social media. They do
13 deal with television.

14 So what they did was take out a subsegment of it, and now
15 they would like the Court to believe that our complaint doesn't
16 cover the ongoing conduct.

17 \$35 million of revenue between now and October maybe is a
18 drop in the bucket for Intuit, but in my career at the FTC,
19 most of my cases involve harm that is far less than that. And
20 it still merits --

21 **THE COURT:** Your argument is your complaint is
22 adequate in that regard and that there is no necessity of
23 amending your complaint because it stands for and accuses
24 Intuit of engaging in deceptive practices, which are ongoing.

25 **MR. ANGUIZOLA:** Correct.

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1 **THE COURT:** And there is a real harm because of the
2 existence of post-April filers.

3 I don't think that they missed the deadline. I have
4 been -- my tax accountant says: No, you are not missing a
5 deadline. You are taking advantage of a different date.

6 So it is not that. It is another way -- assuming one
7 qualifies, it is another way of collecting revenue under the
8 law. So you are saying that is ongoing -- your complaint is
9 adequate.

10 **MR. ANGUIZOLA:** That's correct.

11 **THE COURT:** What about Mr. Waxman's point, you know,
12 you don't have anyone complaining here basically? What are you
13 talking about? You know, is this just a theory that people
14 don't understand it because if they didn't understand it, you
15 know, why -- how many clients do you have in roughly in the
16 last year? How many people?

17 **MR. ANGUIZOLA:** So in the last tax season 14 million
18 people filed for free.

19 **THE COURT:** No. But the whole thing.

20 **MR. ANGUIZOLA:** The whole thing is -- free is the
21 biggest category.

22 **THE COURT:** Yeah.

23 **MR. ANGUIZOLA:** But I don't know, maybe 40, 50 million
24 people use it.

25 **THE COURT:** Out of there -- out of there, there would

PUBLIC

1 be a substantial number of people who have -- if it is true --
2 have a level of dissatisfaction with the way the product is
3 being presented to them.

4 And Mr. Waxman's point, as I understand it, is it's not
5 there and that's a pretty good indication, isn't it, that it is
6 not -- that it is not deceptive?

7 People come in, after all, and they look at cans of food
8 on Safeway counters which say "all natural," and they say wait,
9 a minute the propellant that takes out -- that's not all
10 natural. I mean, they say: What are you supposed to assume,
11 that, like, Old Faithful is propelling the material out?

12 And I get those. I get: Is all butter all butter? Is
13 all natural all natural? What does that mean? I never quite
14 got it.

15 But I think the saying is that people aren't shy about
16 grievances that they have if they feel they have been deceived
17 and especially within the context of where they are paying
18 money and required by law to pay money.

19 So if they think that they have been hoodwinked, where are
20 those declarations?

21 **MR. ANGUIZOLA:** A couple things on that. He has
22 misstated the evidence. So we decided to proceed more
23 efficiently here and conduct a survey rather than rely on
24 consumer declarations.

25 And according to the survey, 52.7 percent of people in

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1 group A, they mistakenly think that they can file for --
2 TurboTax for free.

3 So those -- there is a significant minority -- I would say
4 majority -- but the standard is significant minority that are
5 under the misimpression they can file for free even though the
6 people that were surveyed would not have been eligible for
7 that.

8 And when they are asked what was the source of that
9 belief, 46 percent stated they received that belief based on
10 TurboTax advertisements; and 46.9 received that misimpression
11 from the TurboTax website. And if we combine the source of
12 the -- the ads and the website causing the confusion, it goes
13 up to 72.3 percent.

14 And these are people that are ineligible and they are
15 saying: Why am I confused? Because I either saw an ad or I
16 went to the website.

17 And Professor Novemsky explains why he didn't do a
18 traditional copy-test in this case. And the reason for that
19 is: First, he thought it was appropriate to do a perception
20 survey because the ads have been running for so long and
21 have -- and the deception has been so pervasive that he wanted
22 to know am I dealing with a pool of people where a traditional
23 copy-test which is designed to just test particular claims in a
24 particular ad -- is the pool of people so confused, through no
25 fault of their own and they are identifying Intuit, TurboTax,

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1 as the source of that confusion -- is that group so confused
2 that we can't do a traditional copy-test?

3 And that's why they didn't do that and they went with this
4 perception survey, which is powerful in and of itself.

5 Defendants didn't copy-test or if they did copy-test, they
6 didn't provide it to the FTC and haven't provided it to the
7 Court.

8 And the reason for that, I suspect, that they probably did
9 a perception survey -- they have no -- they can do that through
10 a consulting expert -- and decided that a copy-test was not
11 appropriate. So you don't have copy tests from either side.

12 And to go -- in terms of the consumer complaints, we have
13 the declaration of Diana Shiller, which is at docket 12-655,
14 where she summarizes the consumer complaints; and there is many
15 more than what they -- what they describe.

16 As of March 28, 2022, the FTC had received 571 consumer
17 complaints about free TurboTax.

18 From January 1, 2021 to March 28, 2022, the FTC received
19 152 complaints.

20 She summarizes the 57 complaints that have been filed from
21 November 1, 2021 to March 28, 2022; 55 of the 57 consumers
22 thought that they could file for free; 23 of the 57 consumers
23 mentioned they saw advertising indicating that their tax filing
24 would be free; and 54 to 57 consumers paid TurboTax when they
25 thought their filing -- even though they initially went there

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1 because they thought the filing was going to be for free.

2 Traditionally the consumer complaints that we receive are
3 the tip of the iceberg.

4 I have done cases with zero consumer complaints. You
5 don't need consumer complaints, but there is a lot of them and
6 we did a survey instead.

7 The ads covered by the current complaint are ongoing as of
8 a couple days ago and --

9 **THE COURT:** Can you run me through one of these ads --

10 **MR. ANGUIZOLA:** Sure.

11 **THE COURT:** -- on my computer here or whatever it is
12 called?

13 **MR. ANGUIZOLA:** Sure.

14 **THE COURT:** It is nice to talk about it.

15 **MR. ANGUIZOLA:** Yeah.

16 **THE COURT:** It is also nice to see it, so --

17 **MR. ANGUIZOLA:** You just go to --

18 **THE COURT:** Here we go, [www.turbotax .com](http://www.turbotax.com).

19 **MR. ANGUIZOLA:** And one thing that is missing is this
20 is a deceptive door opener case. And so what that means is
21 there are ads disseminated all over the internet, all over
22 social media. They have stopped television. But up until the
23 eve of the filing of this case television and even after that,
24 they could not --

25 **THE COURT:** Well, I watched the Super Bowl. I think

1 there were some ads in there.

2 **MR. ANGUIZOLA:** And they had ads -- they had an ad
3 that violated -- that covered --

4 **THE COURT:** I have no comment on --

5 **MR. ANGUIZOLA:** -- during the Academy Awards.

6 **THE COURT:** -- what happened with the Super Bowl.

7 The 49ers should have been in that. I mean, that was the
8 violation in the Super Bowl.

9 **MR. ANGUIZOLA:** So if you turn to paragraph 6 of the
10 Shiller declaration, docket 57-3, there is an example of a
11 Google ad. File an extension for free. Free tax filing.

12 **THE COURT:** Okay.

13 **MR. ANGUIZOLA:** So that's on the screen. That's one
14 example. That's ongoing. That one is April 19th. That's the
15 same day that she filed her declaration.

16 **MR. WAXMAN:** I'm sorry. What paragraph is that?

17 **MR. ANGUIZOLA:** Paragraph 6, docket 57-3.

18 If we turn to paragraph 8, there is a TurboTax banner ad
19 in the Milwaukee Journal Sentinel. That was as of April 14th.
20 That one is before the deadline.

21 If we go to paragraph 10 and then scroll down, scroll down
22 further, there is an example of a Facebook ad. Then
23 paragraph --

24 **MR. WAXMAN:** Excuse me. That is not an ad that is
25 running and you know it.

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1 **MR. ANGUIZOLA:** That is an ad from the Facebook --

2 **MR. WAXMAN:** -- library.

3 **MR. ANGUIZOLA:** Right.

4 **THE COURT:** I'm sorry. What is the distinction?

5 I'm --

6 **MR. WAXMAN:** It is an ad from the past that has been
7 documented.

8 **THE COURT:** Oh, okay. No, no, I get it.

9 **MR. WAXMAN:** -- in a library of prior publications.

10 **MR. ANGUIZOLA:** I think Facebook pulled the ads from
11 the past. It has the recent ones. But even if they are not on
12 Facebook, they are on Google. They are on Apple News.

13 **THE COURT:** Well, what I'm asking you for is this, if
14 you can show me an ad that was running as of April 18th or
15 19th; and I can look at it and I can understand what you are
16 complaining about. That's all I need to see.

17 **MR. ANGUIZOLA:** So paragraph 9 is an April 18th --

18 **THE COURT:** Now, looking at this one -- looking at
19 this one as an example it says -- so maybe I am taking the air
20 out of Mr. Waxman's presentation -- but it says "TurboTax free
21 edition, for simple tax returns only*"

22 That's what it is. Okay, and it's your position that
23 that's not explanatory enough that that's -- that's an
24 inadequate disclosure.

25 **MR. ANGUIZOLA:** That's correct.

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1 **THE COURT:** That's an inadequate disclosure. If I'm
2 there, I see this ad and I say: Oh, boy, free, great. So then
3 I see TurboTax free edition. That is fabulous. For simple tax
4 returns only. Oh, I say: What does that mean? I don't
5 understand what that means.

6 What then do I do as a consumer? What is my
7 responsibility as a consumer to do anything with respect to
8 this ad, which tells me that it is limited to simple tax
9 returns?

10 **MR. ANGUIZOLA:** The problem is that the consumers --
11 the survey results don't show that the consumers don't know
12 that what means. They think they know what it means, and they
13 think their returns are simple even when they are not simple by
14 Intuit's definition.

15 And so if you -- they are making a zero or free claim --
16 if you scroll down, James, I think one of the things that is
17 missing and that is more prominent on the screen if you look at
18 the language underneath the file date to file, it says free
19 in -- that's more prominent.

20 It is zero, zero, zero, which is the same as free; and the
21 only disclaimer is "for simple tax returns only" and consumers
22 believe that their returns are simple even when they are not.

23 **THE COURT:** So your statement is the disclaimer is
24 meaningless?

25 **MR. ANGUIZOLA:** Exactly.

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1 **THE COURT:** So you can put anything in that
2 disclaimer, like "just kidding" or "it only works if you are a
3 lifelong Libertarian." Whatever it says you think the
4 disclaimer is irrelevant to the infraction; that is, the wrong
5 that has been committed.

6 So your suggestion to me -- I can stop -- Judge, just
7 stop. Once they say "free, free, free," they are on the hook.
8 Doesn't make any difference what we say underneath.

9 **MR. ANGUIZOLA:** There may be instances that --

10 **THE COURT:** When you say "simple tax return," which I
11 always thought the problem is that people don't understand what
12 "simple" means. Simple to one person isn't simple to another.

13 That is the deception; that people will think that
14 "simple" means something which it doesn't mean which it -- like
15 somebody says: Oh, well, I have a -- I have some interest. I
16 have a government loan or I have got unemployment benefits or
17 dat, dat, dat. Nothing is simpler than that.

18 And they say: Oh, no, no, no, we think that is simple but
19 it is not actually simple.

20 So the term "simple" doesn't -- doesn't appropriately
21 elucidate, appropriately encompass the disclaimer that ought to
22 be considered by the consumer when the consumer gets on this
23 website. That's the FTC's --

24 **MR. ANGUIZOLA:** That's absolutely correct.

25 **THE COURT:** Well, then I think I can try to figure it

PUBLIC

1 out from that point.

2 **MR. ANGUIZOLA:** And we lay out the FTC black letter
3 law on disclaimers, when they are appropriate.

4 If the disclaimer -- first of all, Intuit came into it
5 backward. They looked at the .com disclosure guide and found
6 instances where the FTC says "for certain disclaimers you can
7 use a hyperlink."

8 What they didn't -- what they omitted, and they omitted to
9 file this with the Court, were the first ten pages of the guide
10 that talk about instances where the disclaimer -- the
11 information that is being disclaimed is so central to the claim
12 such as where you have cost information that you can't --

13 **THE COURT:** So the disclaimer you would actually
14 entertain, it would be a disclaimer in this ad which would say
15 "TurboTax free edition but probably not for you."

16 **MR. ANGUIZOLA:** That would be one -- there is -- and
17 our order doesn't --

18 **THE COURT:** I mean, that would certainly be fair.

19 **MR. ANGUIZOLA:** Our proposed order is not
20 prescriptive. They can certainly come up with a different way
21 to do it, but this is from the part of the guides on . com
22 disclosures that they omitted.

23 Disclosures that are an integral part of a claim or
24 inseparable from it should not be communicated through a
25 hyperlink. Instead, they should be placed on the same page and

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1 immediately next to the claim and be sufficiently prominent so
2 that the claim and the disclosure are read at the same time.

3 **THE COURT:** Why isn't that this? I mean, it is right
4 there; isn't it? I mean, it is right under the word "free,
5 free, free" or "zero, zero, zero," it says "TurboTax free
6 edition, for simple tax returns only."

7 **MR. ANGUIZOLA:** We go back to simple tax --

8 **THE COURT:** I understand that. They are saying the
9 disclosure is inadequate.

10 **MR. ANGUIZOLA:** That's correct.

11 **THE COURT:** It should say "but not for you." Okay. I
12 got it. I understand. It seems like we are rewriting the
13 issues of disclosure.

14 **MR. ANGUIZOLA:** Your Honor, if I may, Your Honor,
15 first of all --

16 **THE COURT:** I will return to you.

17 **MR. ANGUIZOLA:** I had one more --

18 **THE COURT:** Well, then go right ahead and then I will
19 give it to Mr. Waxman. We have plenty of time.

20 **MR. ANGUIZOLA:** At paragraph 15, this is the latest
21 ad, and that one is squarely dealing with the people that
22 missed tax day.

23 And Your Honor more correctly described it as you get an
24 automatic extension, so it is not that you are in violation but
25 there is that group of people. And this conduct from now until

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1 October is going to generate \$35 million of revenue.

2 And this is a problem. When they click on "start for
3 free," then you can turn to paragraph 15, and you get right
4 back to a free claim and an inadequate disclaimer that doesn't
5 do its job.

6 **THE COURT:** The disclaimer in the one you just showed
7 me is a hyperlink which says "simple tax refund only."

8 **MR. ANGUIZOLA:** Right. And hyperlinking is not
9 recommended for essential claims involving costs.

10 **THE COURT:** No. The irony is in this case, of course,
11 I have already ruled that the hyperlink for the arbitration
12 clause was inadequate.

13 And the Circuit in its wisdom reversed me. And then, of
14 course, Intuit came in and said: Oh, by the way, we don't want
15 arbitration. But that's not this case.

16 **MR. WAXMAN:** You wouldn't know it isn't this case
17 since 60 paragraphs of this complaint are complaining about the
18 IRS free file program, which the FTC well knows both Intuit and
19 H&R Block withdrew from following the 2019 tax year. But
20 nonetheless, we are subjected to pages and pages of allegations
21 about it.

22 But let's look at the examples that he just gave. And,
23 Your Honor, I think net-net the best thing to do is for you to
24 just follow those links.

25 Let's look at them in reverse order. The one that he

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1 identified on paragraph 15, it has: Did you miss the deadline?
2 And it says, you know -- the very next page.

3 **THE COURT:** Put it up on the board here so I can see
4 it, please. Thank you. Okay.

5 **MR. WAXMAN:** I don't think I can stay at the mic
6 and -- so here is one that -- this is actually one that is
7 still running. It is on a blog. It is not a video ad or
8 anything.

9 It says: Did you miss the deadline? And then right
10 underneath it -- if you just scroll up the page, Mr. Evans --
11 it says: I clicked on -- no, down, I'm sorry -- I clicked on
12 the affiant, the start for free button and it directed me to
13 the page following, which is on the next page.

14 And this I think is important because this is exactly what
15 happens. It says: Let's find the right tax solution for you.

16 And if you click on "I donated \$300 or more," you will see
17 that it tells you right off the bat you can't use for free.

18 If you click on "I own a home" or "I have rental income"
19 or "I sold stocks" or "I am self-employed," it tells you just
20 by clicking on the information -- the tabs that they are asking
21 for -- which product is available or not available.

22 If we go back to the ad that my friend was referencing, I
23 think it was paragraph -- I think it was paragraph 9, yes, 9
24 where Your Honor pointed out that in the ad -- or this is an
25 e-mail -- it says TurboTax free edition for simple tax returns

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1 only, asterisk.

2 Now, my friend and the affiant didn't bother to display
3 for Your Honor the rest of the page which has the asterisk.
4 And the asterisk says -- I guess I have lost this already on my
5 telephone -- the asterisk says --

6 **THE COURT:** Well, can you do it?

7 **MR. WAXMAN:** Yeah. "Simple" --

8 **THE COURT:** Give it to somebody under --

9 **MR. WAXMAN:** Not under 70.

10 **THE COURT:** Okay.

11 (Laughter)

12 **MR. WAXMAN:** The asterisk at the bottom of the page
13 says "a simple tax return is form 1040 only."

14 "Situations covered in TurboTax free edition, TurboTax
15 live basic and TurboTax live full service basic are the
16 following: W2 income, limited interest and dividend income
17 reported on a 1099 INT, claiming the standard deduction, earned
18 income credit, child tax credits, and student loan interest
19 deduction."

20 Those are the instances, the asterisk, that explains to
21 you what a simple tax return is.

22 Now, on this notion that -- it is difficult to unscramble
23 all this. Professor Novemsky's one-week survey which showed
24 nobody any of these ads, either the ones that are now in
25 response to a Google search request or the TV video ads,

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1 purports to answer the question whether people are confused
2 when they see the ads about whether they can or can't file for
3 free.

4 And what Professor Novemsky basically said is: I'm not
5 going to show anybody the ads. I'm just going to collect a
6 bunch of people who say they have never used the TurboTax
7 product and just ask them the question: Do you think you file
8 a simple tax return; so just like you and I were sitting in a
9 cafe on Market Street and just asked everybody who walked by.

10 The question is whether these ads are deceptive. The word
11 that Your Honor pointed to -- the only thing that could be
12 deceptive is some understanding about what "simple" means.

13 Now, "simple" is how the California Franchise Tax Board
14 describes its free filing surveys for simple returns only. And
15 we have that in the record in this case.

16 It is also exactly the same terminology that Intuit's
17 commercial competitors -- H&R Block, TaxSlayer and TaxEdge --
18 all use the term "for simple returns only."

19 And in the outset of this investigation three years ago,
20 we changed it to say "simple returns only." We hyperlinked it.

21 If you go to any of these websites and you follow the
22 Google hit and you click on the TurboTax file for free thing,
23 you will see pop up what I just read you. This is available
24 only for the following types of categories.

25 We added the words "visit turbotax .com to see if you

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1 qualify;" and if you click on that hyperlink, it gives you this
2 menu of things where you can say -- you know, if you click "I
3 own a home" or if you click "I made more than \$300 in
4 charitable contributions" or "I sold stocks" or "I had rental
5 income," you don't qualify.

6 I mean, this isn't a case in which they are entitled to
7 extraordinary preliminary injunctive relief pending a hearing
8 that they themselves have set in which they just say "this is
9 confusing."

10 You need -- in order to have a drastic or extraordinary
11 remedy of preliminary injunctive relief pending their merits
12 hearing, you not only need evidence. They need to carry their
13 burden that the evidence shows that they are likely to succeed
14 on the merits. And they have nothing.

15 I just want to correct two things. My friend said: Oh,
16 well, there were 571 complaints. That is a typo and they well
17 know that. It was 57 total of which 23 related to the ads.
18 But we don't know what people -- why they were complaining
19 about the ads; 571 is just the typo. Otherwise, the numbers
20 don't add up.

21 Second of all, they say: Well, you know, Professor
22 Novemsky didn't really think that he could properly do a
23 copy-test by which they mean how people the ads that they are
24 claiming are irretrievably deceptive to a reasonable person.
25 And they say we didn't do that either. I don't know what they

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1 are talking about.

2 We provided them long before they filed the lawsuit a
3 survey and report done by a woman named -- I forget her first
4 name but her last name is Kirk Fair, who the FTC routinely uses
5 as its own expert in these cases, who did a copy-test result
6 (sic) and reported that people were not confused. The level of
7 confusion was minuscule.

8 And this notion that oh, well, we couldn't do it because
9 so many people have some preconception about what a simple tax
10 return is -- I mean, it is just ridiculous.

11 **THE COURT:** Thank you. Anything further?

12 **MR. ANGUIZOLA:** If you go to the website and you look
13 at the information after that asterisk, it is not clear and
14 conspicuous. It is in mouse print. And a consumer that
15 scrolls through is not going to see that especially in light of
16 the more prominent free claim that happens above.

17 I think also a consumer is not necessarily going to go
18 through the little cards and know to pick those when there is a
19 big prominent claim that says "free" and they can click on an
20 orange button that says "file for free."

21 There is no typo. There is -- there were different date
22 ranges that the investigator provided in the declaration.

23 So the 571 consumer complaints deal with a different date
24 range than the 57.

25 **THE COURT:** Thank you. Submitted. Thank you.

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MR. ANGUIZOLA: Thank you, Your Honor.

MR. WAXMAN: Thank you.

(Proceedings adjourned at 11:38 a.m.)

---oOo---

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Wednesday, April 27, 2022



Marla F. Knox, CSR No. 14421, RPR, CRR, RMR
United States District Court - Official Reporter

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,
Plaintiff,
v.
INTUIT INC.,
Defendant.

Case No. [22-cv-01973-CRB](#)

**ORDER DENYING MOTION FOR
EMERGENCY RELIEF**

Plaintiff Federal Trade Commission (FTC) moves for a Temporary Restraining Order and a Preliminary Injunction under Section 13(b) of the FTC Act, arguing that Defendant Intuit Inc. is deceptively advertising TurboTax Free Edition in violation of Section 5(a). See Emergency Mot. (dkt. 28); Compl. (dkt. 1). The FTC alleges that Intuit advertises that TurboTax Free Edition is “free free free free” and includes only a small and vague disclaimer that it is “for simple returns only” or to “see details at TurboTax.com.” Taxpayers whose returns do not meet Intuit’s definition of “simple” eventually run into a message on the TurboTax website informing them that they must pay to file.

Under Section 13(b) of the FTC Act, a district court may grant a preliminary injunction “[u]pon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest.” 15 U.S.C. § 53(b); see FTC v. Affordable Media, 179 F.3d 1228, 1233 (9th Cir. 1999). A defendant engages in deceptive acts or practices under Section 5(a) of the FTC Act if it (1) made a representation, omission, or practice, (2) which was likely to mislead consumers acting reasonably under the circumstances, and (3) which was material. FTC v. Stefanchik, 559 F.3d 924, 928 (9th Cir. 2009); 15 U.S.C. § 45(a).

The Court denies the FTC’s motion for emergency relief for three reasons. First, Tax Day, which was April 18, 2022, has passed. Most taxpayers have already filed their taxes. Intuit represented in its briefing and at oral argument that its advertising is largely done for this tax season. See Opp. (dkt. 45) at vi. Any prospective harm is therefore attenuated. Second, even before Tax Day, Intuit had removed several of the most plausibly deceptive advertisements—that is, three videos that repeated the word “free” a dozen or more times over 30 seconds before a very brief disclaimer. See Shiller decl. (dkt. 7-13, GX 301) ¶¶ 16-31 (describing these ads); Ryan decl. (dkt. 45-3) ¶¶ 16-26 (noting their removal). Third, to the extent other advertisements might violate the FTC Act, the Court notes that the FTC has brought an administrative proceeding against Intuit, with a hearing set for September 14, 2022. See 15 U.S.C. § 45(b); AMG Cap. Mgmt., LLC v. Fed. Trade Comm’n, 141 S. Ct. 1341, 1346 (2021) (detailing the administrative process). An Administrative Law Judge (ALJ) with expertise in these matters will hear (and likely rule) before Intuit resumes its advertising campaign in the lead-up to Tax Day 2023.

For the foregoing reasons, the Court DENIES the FTC’s Emergency Motion for a Temporary Restraining Order and a Preliminary Injunction.¹ However, if Intuit resumes its full advertising campaign before the ALJ releases her § 45(b) report, or the facts on the ground change significantly, the FTC may return to this Court to request relief.

IT IS SO ORDERED.

Dated: April 22, 2022



CHARLES R. BREYER
United States District Judge

¹ The administrative motion for emergency relief on the briefs (dkt. 50) is DENIED AS MOOT.

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

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I further certify that on May 4, 2022, I caused the foregoing document to be served via email to:

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Respectfully submitted,

/s/ Derek A. Woodman

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