

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**RESPONDENT’S MOTION FOR DISCOVERY PURSUANT TO RULE 3.36**

Pursuant to Rule 3.36 of the Commission’s Rules of Practice, 16 C.F.R. § 3.36, Respondent Intuit Inc. respectfully moves for an order authorizing the issuance of subpoenas duces tecum to the Commissioners of the Federal Trade Commission and their staff and to the Secretary of the Federal Trade Commission and her staff. The subpoenas request a clearly defined, relevant set of documents.

**I. INTRODUCTION**

Intuit seeks information to support its defenses and that it simply cannot obtain without a subpoena. Indeed, Complaint Counsel suggested that Intuit should file a motion under Rule 3.36 in order to obtain the information sought in the attached subpoenas, which are drafted to be narrowly tailored to the claims and Intuit’s affirmative defenses so as to minimize burden and expense.

To begin, Intuit seeks information regarding the Commission’s interpretation and communications regarding two important sets of guidance documents issued by the Commission. First, Intuit seeks documents relating to the so-called “free” guides, which Complaint Counsel have asserted this claim is being brought to “vindicate.” Motion for Summary Decision at 31, 35 (Aug. 22, 2022). The 50-year-old guides appear, on their face, to address buy one, get one free

offers, and other limited-term free promotions not at issue in this case, where there is a genuine bona fide free offer that approximately 14 million people use each year. And to Intuit’s knowledge, the free guides have never been used in an enforcement action, and in any event, are not—as Complaint Counsel contend—documents carrying the force of law. Intuit needs this discovery to assess whether the free guides are being stretched beyond their text, purpose, and intent.

Second, Intuit seeks discovery regarding the Commission’s .com Guidelines. This is important because the Guidelines appear, on their face, to expressly support the manner of Intuit’s disclosures on the TurboTax website, including the inclusion of certain details behind a clearly labeled hyperlink. The Commission appears aware of this fact and has expressly cited the fact that the Guidelines are being cited by “some companies” to support their disclosure practice as a reason the Guidelines need to be updated.<sup>1</sup> To Intuit’s knowledge, it is the only such company in that position. The need for the discovery sought is obvious: if the Commission’s current view is that Intuit’s disclosures comport with the Guidelines—as they clearly do—and the Commission wishes to change the Guidelines *because of* that fact, Intuit’s advertising during the period the existing Guidelines were in effect can hardly be said to be deceptive.

In addition, Intuit has included among its affirmative defenses that it has a right to adjudication before a neutral arbiter and that this right has been violated, and that the Commission’s procedures violate Intuit’s right to procedural due process. Intuit seeks discovery in support of these defenses. As one example of Intuit’s concerns, after the Commission had voted to issue the Complaint against Intuit and assumed the role of neutral arbiter under the FTC rules, the FTC Chair retweeted a press release on her personal Twitter account referring to

---

<sup>1</sup> See Federal Trade Commission, *FTC Looks to Modernize Its Guidance on Preventing Digital Deception*, (June 3, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-looks-modernize-its-guidance-preventing-digital-deception>.

Intuit’s advertisements as “deceptive” and similarly calling the TurboTax marketing campaign “deceptive.”<sup>2</sup> As another example, Intuit understands that inaccurate information was shared with the Commissioners and that this inaccurate information may have impacted one or more Commissioner’s decision to bring this case and may have led to prejudgment of the matter. This inaccurate information includes false assertions that Intuit’s settlement with the Attorneys General of all 50 states and the District of Columbia was not enforceable by a court (it is), that Intuit would not agree to settle before tax day (it did), and that Intuit advertised its Free Edition product during the last four Super Bowls (it did not). There may very well be additional inaccurate information that has been shared.

Ultimately, Intuit believes that it will prevail because its advertising was not deceptive to begin with and its settlement with the state Attorneys General removes any threat of deception in the future. However, Intuit must also ensure a level playing field and process so that the merits can be argued fairly. The discovery sought will help ensure that is the case.

## **II. ARGUMENT**

A subpoena for the production of documents in the possession, custody, or control of the Commissioners or the Secretary is authorized where it is: (1) “reasonably expected to yield information relevant to . . . [a respondent’s] defenses”; (2) reasonable in scope; (3) specified with reasonable particularity; and (4) not reasonably obtainable by other means. *See* 16 C.F.R. §§ 3.31(c), 3.36(b), 3.37(a). Intuit’s proposed subpoenas satisfy these requirements.

Respondent requests materials regarding:

- “[A]ny votes or potential votes taken by the Commissioners related to Intuit”;
- “[C]ommunications concerning Intuit,” including “any Twitter posts by Chair Lina Khan about Intuit,” “[a]ll documents sufficient to show who operates Chair Lina Khan’s

---

<sup>2</sup> Woodman Decl., Ex. F.

Twitter account,” and documents and communications “concerning the speech Chair Lina Khan gave at an antitrust conference at Chicago Booth on April 22, 2022”;

- “[T]he FTC’s consideration of whether to update its guidance document titled ‘.com Disclosures: How to Make Effective Disclosures in Digital Advertising”;
- “[T]he FTC’s guidelines regarding the use of the word ‘free’ and similar representations in advertising”;
- “[T]he ‘case summary’ on the docket sheet on ftc.gov for the above-captioned case”;
- “[T]he FTC’s ability to obtain monetary relief,” and;
- “[T]he treatment of Intuit’s Rule 2.31 motion.”

#### **A. The Discovery Is Relevant**

Intuit’s requested discovery is reasonably expected to yield relevant information. Much of the requested discovery would show that Intuit did not violate the FTC Act. Documents relating to the FTC’s .com Guidelines and Free Guide, and to its ability to obtain monetary relief, are relevant to assess Complaint Counsel’s arguments. Complaint Counsel thus far has refused to even look for requested materials relating to the FTC’s .com Guidelines and Free Guide, therefore, Intuit must seek them from the Commissioners themselves. *See* Woodman Decl. ¶¶ 6-7. For example, materials relating to the FTC’s guidelines about digital advertising and use of the word “free” in advertising, and to its ability to obtain monetary relief, are relevant. Complaint Counsel argue that the FTC’s .com Guidelines and Free Guide support finding that Intuit’s ads were deceptive. *See* Motion for Summary Decision at 31, 35. Materials interpreting that guidance may undermine these arguments. Likewise, the Commission has effectively acknowledged that its .com Guidance supports Intuit’s theories and has sought to retract that guidance.<sup>3</sup> That too is relevant. Finally, the FTC reserved the right to seek monetary relief.

---

<sup>3</sup> *See* Federal Trade Commission, *FTC Looks to Modernize Its Guidance on Preventing Digital Deception*, (June 3, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-looks-modernize-its-guidance-preventing-digital-deception>.

Complaint at 26. Materials related to whether, and when, the FTC can obtain that relief are relevant.

Intuit also has as an affirmative defense that one or more Commissioners prejudged the merits of this dispute. Developing that theory requires discovery that Intuit can only obtain from the Secretary or the Commissioners themselves. *Cinderella Career and Finishing Schools, Inc. v. FTC* held that Chairman Dixon could not participate in a proceeding because his public statements indicated he “prejudged” the case. 425 F.2d 583, 589-590, 592 (D.C. Cir. 1970). The court reasoned that Chairman Dixon was not impartial and his participation violated due process. *Id.* at 591-92; *see also Antoniu v. SEC*, 877 F.2d 721, 726 (8th Cir. 1989) (SEC Commissioner not neutral because of speech “adjudg[ing] the facts as well as the law of a particular case in advance of hearing it”).

This is not an illusory or makeweight defense. After the case entered Part 3, the Chair has made public statements about the case that reasonably call into question her impartiality. As the Chair herself recently acknowledged in Congressional testimony, it is inappropriate for her to “comment[] on the merits” of a case while it is “currently pending in an administrative proceeding.”<sup>4</sup> Yet the Chair has done so twice, both times indicating her view that it was important to stop Intuit’s supposed deception.<sup>5</sup>

Further, Intuit believes that is likely because the Commissioners were given inaccurate information. Without discovery, Intuit cannot be certain of the basis for the Commissioners’

---

<sup>4</sup> Lina Khan, Prepared Statement of the Federal Trade Commission Before the United States Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights “Oversight of the Enforcement of the Antitrust Laws” at 6 (Sept. 20, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P210100SenateAntitrustTestimony09202022.pdf).

<sup>5</sup> Rolnik, *Q&A With FTC Chair Lina Khan: “The Word ‘Efficiency’ Doesn’t Appear Anywhere in the Antitrust Statutes”*, ProMarket (June 3, 2022), <https://www.promarket.org/2022/06/03/qa-with-ftc-chair-lina-khan-the-word-efficiency-doesnt-appear-anywhere-in-the-antitrust-statutes/>; Woodman Decl., Ex. F.

decision to issue this Complaint and to return the matter to adjudication after a federal judge observed that “nobody thinks” Complaint Counsel’s theory of liability is correct. Woodman Decl. ¶ 10; RX 73 at 17:4-5. Considering this context, Intuit has a reasonable basis to be concerned about bias and prejudgment. It should be afforded discovery to confirm whether that is the case.

**B. The Discovery Is Reasonable In Scope, Stated With Particularity, And Cannot Be Otherwise Obtained**

The requested discovery is reasonable in scope and stated with particularity. 16 C.F.R. § 3.36(b)(1), § 3.37(a). It is limited to discrete topics and specific types of materials to allow identification of readily accessible responsive materials. The requests are also narrowly tailored to support Respondent’s defenses and rebut the FTC’s allegations. Such targeted requests for relevant information fall squarely within the rule’s requirements, *see In re Intel Corp.*, No. 9341, 2010 WL 2544424, at \*1 (F.T.C. June 9, 2010), and will impose a limited burden.

Respondent cannot otherwise obtain the discovery. 16 C.F.R. § 3.36(b)(3). The documents are held by Commissioners, the Secretary, and their staff, including materials regarding Commissioner votes, control over Commissioners’ social media accounts, and Commissioners’ communications. For instance, in response to Intuit’s First Set of Requests for Admission, Complaint Counsel stated that they could not confirm whether Chair Khan sent the relevant tweet herself because they are prohibited from communicating with her under 16 CFR § 4.7(b). *See* Woodman Decl. ¶ 5. Complaint Counsel reiterated their inability to provide information on these issues more broadly during September 12, 2022 and October 3, 2022 meet and confers, suggesting that Intuit file this Motion instead. *Id.* ¶¶ 8-9. Respondent has no other way to obtain these materials.

**III. CONCLUSION**

An order should issue authorizing the subpoenas attached as Exhibits A and B.

Dated: October 14, 2022

Respectfully submitted,

By: /s/ David Z. Gringer

DAVID Z. GRINGER  
Wilmer Cutler Pickering  
Hale and Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Telephone: (212) 230-8800  
David.Gringer@wilmerhale.com

JONATHAN E. PAIKIN  
JENNIFER MILICI  
DEREK A. WOODMAN  
Wilmer Cutler Pickering  
Hale and Dorr LLP  
1875 Pennsylvania Ave NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Jonathan.Paikin@wilmerhale.com  
Jennifer.Milici@wilmerhale.com  
Derek.Woodman@wilmerhale.com

*Attorneys for Respondent Intuit Inc.*

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**DECLARATION OF DEREK WOODMAN IN SUPPORT OF  
RESPONDENT'S MOTION FOR DISCOVERY PURSUANT TO RULE 3.36**

I, Derek A. Woodman, declare as follows:

1. I am a counsel at Wilmer Cutler Pickering Hale and Dorr LLP. I represent the respondent, Intuit Inc., in the above-captioned proceeding.
2. I submit this declaration in support of Intuit's Motion for Discovery Pursuant to Rule 3.36, filed herewith on October 14, 2022.
3. Attached hereto as Exhibit A is a proposed subpoena directed to the Commissioners of the Federal Trade Commission. Respondent's Motion for Discovery Pursuant to Rule 3.36 respectfully requests an order authorizing issuance of this subpoena to the Commissioners.
4. Attached hereto as Exhibit B is a proposed subpoena directed to the Secretary of the Federal Trade Commission. Respondent's Motion for Discovery Pursuant to Rule 3.36 respectfully requests an order authorizing issuance of this subpoena to the Secretary.
5. Attached hereto as Exhibit C is a true and correct copy of Complaint Counsel's Responses and Objections to Intuit's First Set of Requests for Admission, dated August 29, 2022. Complaint Counsel stated that they could not confirm whether Chair Khan sent the



relevant tweet herself because they are prohibited from communicating with her under 16 CFR § 4.7(b). *See* Response to Request for Admission No. 11.

6. Attached hereto as Exhibit D is a true and correct copy of Complaint Counsel's Responses and Objections to Intuit's First Set of Requests for Production of Documents, dated September 9, 2022. Complaint Counsel refused to search for or produce documents relating to its free guide. *See* Response to Request for Production Nos. 7 & 8.

7. Attached hereto as Exhibit E is a true and correct copy of Complaint Counsel's Responses and Objections to Intuit's Second Set of Requests for Production of Documents, dated October 7, 2022. Complaint Counsel refused to search for or produce any documents relating to the FTC's consideration of whether to update its .com Disclosure guidelines. *See* Response to Request for Production No. 17.

8. On September 12, 2022, counsel for Intuit met and conferred with Complaint Counsel to discuss their responses and objections to Intuit's First Set of Requests for Admission. Complaint Counsel suggested that Intuit file a motion for discovery from the Commission and/or the Secretary under Rule 3.36.

9. On October 3, 2022, counsel for Intuit met and conferred with Complaint Counsel to discuss their responses and objections to Intuit's First Set of Interrogatories and First Set of Requests for Production of Documents. Complaint Counsel represented that they would not be able to access requested information relating to, among other topics, Commission votes concerning Intuit and this proceeding. Complaint Counsel suggested that Intuit file a motion for discovery from the Commission and/or the Secretary under Rule 3.36.

10. On April 21, 2022, a hearing was held before Hon. Charles Breyer in the Northern District of California on a motion for preliminary injunction that was filed by the FTC. A true and correct

transcript of proceedings in *FTC v. Intuit Inc.*, No. 22-01973-CRB (N.D. Cal Apr. 21, 2022), is attached hereto as RX 73.

11. Attached hereto as Exhibit F is a true and correct copy of a March 29, 2022, 12:34 PM, tweet from Chair Khan's personal twitter account (@linakhanFTC).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of October, 2022, in Washington, DC.

By: /s/ Derek A. Woodman  
Derek A. Woodman

# **EXHIBIT A**



# Subpoena for Production of Documentary Material

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Commissioners of the Federal Trade Commission 600 Pennsylvania Ave., NW Washington, DC 20580</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
<p>This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.</p>	
<p>3. PLACE OF PRODUCTION</p> <p>Wilmer Cutler Pickering Hale and Dorr LLP c/o David Gringer 7 World Trade Center, 250 Greenwich St. New York, NY 10007 (212) 230-8000</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>David Z. Gringer, Esq.</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>TBD</p>
<p>6. SUBJECT OF PROCEEDING</p> <p>In the Matter of Intuit Inc.; Docket No. 9408</p>	
<p>7. MATERIAL TO BE PRODUCED</p> <p>See attached Requests</p>	
<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p><i>Counsel for Respondent Intuit Inc.</i> David Z. Gringer Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center, 250 Greenwich St. New York, NY 10007 (212) 230-8000</p>
<p>DATE SIGNED</p> <p>10/14/2022</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p><u>/s/ David Z. Gringer</u></p>

## INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

## PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 9.

## YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

## TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or [travel@ftc.gov](mailto:travel@ftc.gov). PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE ADMINISTRATIVE LAW JUDGES

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**RESPONDENT INTUIT INC.'S SUBPOENA *DUCES TECUM* ATTACHMENT TO  
THE FEDERAL TRADE COMMISSION**

Pursuant to Rules 3.34 and Rule 3.36 of the Federal Trade Commission's Rules of Practice (16 C.F.R. §§ 3.34, 3.36), Respondent Intuit Inc., by and through its attorneys, requests that the Commissioners and their staff produce all documents, electronically stored information, and other materials in their possession, custody, or control that are responsive to the requests made below.

**DEFINITIONS**

1. The terms "AND" as well as "OR" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request ANY responses that might otherwise be construed to be outside its scope, or in other words, to give each request its broadest possible meaning.
2. The term "ANY" means "any and all."
3. The term "COMMUNICATION" means ANY transmission, exchange OR transfer of information (in the form of facts, ideas, inquiries, OR otherwise) by ANY means, including all written, electronic, telephonic, oral OR other inquiries, dialogues, discussions, conversations, interviews, correspondence, consultations, negotiations, agreements, understandings, meetings,

letters, notes, telegrams, advertisements, computer mail, e-mail AND ANY other DOCUMENTS evidencing ANY verbal OR nonverbal interaction between PERSONS.

4. The term “COMPLAINT” means the Part 3 Administrative Complaint issued by the Federal Trade Commission in the above-captioned proceeding.

5. The term “CONCERNING” means referencing, regarding, relating to, alluding to, describing, evidencing, reflecting, constituting, documenting, discussing, referring to, mentioning, analyzing, refuting, or recording.

6. The term “DOCUMENT” shall mean the original AND all non-identical copies AND drafts, regardless of origin OR location, of ANY writing AND ANY written, printed, typed, OR other graphic OR photographic matter of ANY kind OR description, in draft OR final form, including, but not limited to, correspondence, letters, telegrams, facsimiles, cables, telex messages, e-mail, memoranda, notes, interoffice AND interdepartmental COMMUNICATIONS, transcripts, minutes of conversations OR meetings, reports, studies, ANY audio OR video recordings, voicemail, contracts, calendar OR diary entries, pamphlets, handwritten notes, charts, tabulations, records of meetings, conferences, telephone OR other conversations OR COMMUNICATIONS, AND tapes OR slides, AND other data compilations from which information can be obtained OR translated, if necessary, by YOU through detection devices into reasonably usable form, AND all other records kept by electronic, photographic, OR mechanical means however denominated, which are in YOUR possession, custody, OR control, including electronically-stored information. If a DOCUMENT has been prepared in several copies, OR additional copies have been made, OR copies are not identical (OR, which by reason of subsequent modification of a copy by the addition of notations OR other modifications, are no longer identical), each non-identical copy is a separate DOCUMENT.

7. The term “INTUIT” means Respondent Intuit Inc., its subsidiaries, divisions, departments, affiliates, each AND every other legal entity within its control, AND ANY officer, director, employee, agent, OR representative thereof.
8. The term “PERSON” shall mean ANY natural person, corporate entity, partnership, association, limited liability company, joint venture, government entity, trust, religious order OR other entity.
9. The term “PROCEEDING” means the above-captioned proceeding.
10. The terms “YOU,” “YOUR,” and “COMMISSIONERS” refer to ANY current Commissioners of the Federal Trade Commission (“FTC”) AND ANY other PERSON acting OR purporting to act on behalf of OR under the direction, authorization, OR control of such COMMISSIONERS, including such COMMISSIONERS’ staff and advisors.

### **GENERAL INSTRUCTIONS**

1. The following Requests seek production of the original OR a true AND legible copy of each AND every DOCUMENT in YOUR possession OR under YOUR control AND which is described below. Photocopies produced in lieu of original DOCUMENTS must be accompanied by an affidavit of the custodian of the record stating that the copies are true, correct, AND complete copies of the original DOCUMENTS.
2. These Requests shall be deemed continuing in nature so as to require the supplemental production of all DOCUMENTS to the extent required by law.
3. Each DOCUMENT requested herein is requested to be produced in its entirety without deletion OR excisions regardless of whether YOU consider the entire DOCUMENT to be relevant OR responsive to these Requests.
4. If a DOCUMENT contains both privileged AND non-privileged information, portions of

the DOCUMENT that are not privileged must be produced. If a DOCUMENT OR portion of a DOCUMENT is withheld from production on the grounds of privilege (e.g., attorney-client privilege), including deliberative process privilege, OR other protection, the DOCUMENT OR portion of the DOCUMENT may be withheld from production but must be identified on a privilege log which identifies the following: the DOCUMENT Bates number, the author, the date, all recipients, the basic nature of the DOCUMENT (e.g., letter, report, notes, etc.), a description of the document's subject matter AND the grounds on which the privilege OR protection is asserted.

5. To the extent responsive DOCUMENTS exist in an electronic format, please contact Respondent's counsel to discuss the manner AND format in which the DOCUMENTS will be produced AND to facilitate the production of full AND complete copies in a usable format.

6. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of the Request for Production of Documents ANY DOCUMENTS that might otherwise be considered beyond its scope.

7. None of the Definitions above OR Requests set forth below shall be construed as an admission relating to the existence of ANY evidence, to the relevance or admissibility of ANY evidence, OR to the truth or accuracy of ANY statement OR characterization in the Definitions OR a Request.

### **REQUESTS FOR PRODUCTION**

#### **Document Request No. 1**

All DOCUMENTS OR COMMUNICATIONS concerning any votes or potential votes taken by the COMMISSIONERS related to INTUIT. To the extent deliberative process privilege



or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 2**

All DOCUMENTS OR COMMUNICATIONS concerning any Twitter posts by Chair Lina Khan about INTUIT, including posts from March 29, 2022.

**Document Request No. 3**

All DOCUMENTS sufficient to show who operates Chair Lina Khan's Twitter account.

**Document Request No. 4**

All COMMUNICATIONS concerning INTUIT, including COMMUNICATIONS between Commissioners AND COMMUNICATIONS with nonparties. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 5**

All DOCUMENTS OR COMMUNICATIONS related to the FTC's consideration of whether to update its guidance document titled ".com Disclosures: How to Make Effective Disclosures in Digital Advertising," which was announced via press release on June 3, 2022. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 6**

All DOCUMENTS OR COMMUNICATIONS related to the FTC's guidelines regarding the use of the word "free" and similar representations in advertising, *see* 16 CFR Part 251, and ALL DOCUMENTS OR COMMUNICATIONS concerning the application, relevance, and meaning of those guidelines, including, but not limited to, DOCUMENTS OR

COMMUNICATIONS relating to studies, research, expert reports, or other analyses of the use of the word “free” and similar representations in advertising. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 7**

All DOCUMENTS OR COMMUNICATIONS related to the FTC’s ability to obtain monetary relief following the Supreme Court’s April 22, 2021 decision in *AMG Capital Management, LLC v. Federal Trade Commission*, No. 19-508, including any internal memoranda or other legal analyses. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 8**

ANY DOCUMENTS OR COMMUNICATIONS CONCERNING the speech Chair Lina Khan gave at an antitrust conference at Chicago Booth on April 22, 2022, including ANY drafts of copies of that speech.

**Document Request No. 9**

ANY DOCUMENTS OR COMMUNICATIONS CONCERNING the treatment of Intuit’s Rule 2.31 motion.

Dated: October 14, 2022

Respectfully submitted,

WILMER CUTLER PICKERING HALE  
AND DORR LLP

/s/ David Z. Gringer

David Z. Gringer

Eleanor Davis  
7 World Trade Center  
250 Greenwich St.  
New York, NY 10007  
Telephone: (212) 230-8800  
Facsimile: (212) 230-8888  
David.Gringer@wilmerhale.com  
Eleanor.Davis@wilmerhale.com

Jonathan E. Paikin  
Jennifer Milici  
Derek A. Woodman  
1875 Pennsylvania Ave NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
Jonathan.Paikin@wilmerhale.com  
Jennifer.Milici@wilmerhale.com  
Derek.Woodman@wilmerhale.com

*Attorneys for Respondent Intuit Inc.*

# **EXHIBIT B**



# Subpoena for Production of Documentary Material

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO April Tabor Secretary of the Federal Trade Commission 600 Pennsylvania Ave., NW Washington, DC 20580</p>	<p>2. FROM  <b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
<p>This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.</p>	
<p>3. PLACE OF PRODUCTION  Wilmer Cutler Pickering Hale and Dorr LLP c/o David Gringer 7 World Trade Center, 250 Greenwich St. New York, NY 10007 (212) 230-8000</p>	<p>4. MATERIAL WILL BE PRODUCED TO David Z. Gringer, Esq.</p> <p>5. DATE AND TIME OF PRODUCTION TBD</p>
<p>6. SUBJECT OF PROCEEDING  <b>In the Matter of Intuit Inc.; Docket No. 9408</b></p>	
<p>7. MATERIAL TO BE PRODUCED  <b>See attached Requests</b></p>	
<p>8. ADMINISTRATIVE LAW JUDGE  <b>The Honorable D. Michael Chappell Federal Trade Commission Washington, D.C. 20580</b></p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA <i>Counsel for Respondent Intuit Inc.</i> David Z. Gringer Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center, 250 Greenwich St. New York, NY 10007 (212) 230-8000</p>
<p>DATE SIGNED 10/14/2022</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA <i>/s/ David Z. Gringer</i></p>

## INSTRUCTIONS AND NOTICES

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

### PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within the earlier of ten days after service thereof or the time for compliance therewith. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 9.

## YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

## TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel. Witness travelers can contact the FTC travel office for guidance at (202) 326-3299 or [travel@ftc.gov](mailto:travel@ftc.gov). PLEASE NOTE: Reimbursement for necessary transportation, lodging, and per diem expenses cannot exceed the maximum allowed for such expenses by an employee of the federal government.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**RESPONDENT INTUIT INC.'S SUBPOENA DUCES TECUM ATTACHMENT TO  
THE SECRETARY OF THE FEDERAL TRADE COMMISSION**

Pursuant to Rules 3.34 and Rule 3.36 of the Federal Trade Commission's Rules of Practice (16 C.F.R. §§ 3.34, 3.36), Respondent Intuit Inc., by and through its attorneys, requests that the Secretary of the Federal Trade Commission, April Tabor, and her staff produce all documents, electronically stored information, and other materials in their possession, custody, or control that are responsive to the requests made below.

**DEFINITIONS**

1. The terms "AND" as well as "OR" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of each request ANY responses that might otherwise be construed to be outside its scope, or in other words, to give each request its broadest possible meaning.
2. The term "ANY" means "any and all."
3. The term "COMMUNICATION" means ANY transmission, exchange OR transfer of information (in the form of facts, ideas, inquiries, OR otherwise) by ANY means, including all written, electronic, telephonic, oral OR other inquiries, dialogues, discussions, conversations, interviews, correspondence, consultations, negotiations, agreements, understandings, meetings,

letters, notes, telegrams, advertisements, computer mail, e-mail AND ANY other DOCUMENTS evidencing ANY verbal OR nonverbal interaction between PERSONS.

4. The term “COMPLAINT” means the Part 3 Administrative Complaint issued by the Federal Trade Commission in the above-captioned proceeding.

5. The term “CONCERNING” means referencing, regarding, relating to, alluding to, describing, evidencing, reflecting, constituting, documenting, discussing, referring to, mentioning, analyzing, refuting, or recording.

6. The term “DOCUMENT” shall mean the original AND all non-identical copies AND drafts, regardless of origin OR location, of ANY writing AND ANY written, printed, typed, OR other graphic OR photographic matter of ANY kind OR description, in draft OR final form, including, but not limited to, correspondence, letters, telegrams, facsimiles, cables, telex messages, e-mail, memoranda, notes, interoffice AND interdepartmental COMMUNICATIONS, transcripts, minutes of conversations OR meetings, reports, studies, ANY audio OR video recordings, voicemail, contracts, calendar OR diary entries, pamphlets, handwritten notes, charts, tabulations, records of meetings, conferences, telephone OR other conversations OR COMMUNICATIONS, AND tapes OR slides, AND other data compilations from which information can be obtained OR translated, if necessary, by YOU through detection devices into reasonably usable form, AND all other records kept by electronic, photographic, OR mechanical means however denominated, which are in YOUR possession, custody, OR control, including electronically-stored information. If a DOCUMENT has been prepared in several copies, OR additional copies have been made, OR copies are not identical (OR, which by reason of subsequent modification of a copy by the addition of notations OR other modifications, are no longer identical), each non-identical copy is a separate DOCUMENT.

7. The term “INTUIT” means Respondent Intuit Inc., its subsidiaries, divisions, departments, affiliates, each AND every other legal entity within its control, AND ANY officer, director, employee, agent, OR representative thereof.
8. The term “PERSON” shall mean ANY natural person, corporate entity, partnership, association, limited liability company, joint venture, government entity, trust, religious order OR other entity.
9. The term “PROCEEDING” means the above-captioned proceeding.
10. The terms “YOU,” “YOUR,” and “COMMISSIONERS” refer to ANY current Commissioners of the Federal Trade Commission (“FTC”) AND ANY other PERSON acting OR purporting to act on behalf of OR under the direction, authorization, OR control of such COMMISSIONERS, including such COMMISSIONERS’ staff and advisors.

### **GENERAL INSTRUCTIONS**

1. The following Requests seek production of the original OR a true AND legible copy of each AND every DOCUMENT in YOUR possession OR under YOUR control AND which is described below. Photocopies produced in lieu of original DOCUMENTS must be accompanied by an affidavit of the custodian of the record stating that the copies are true, correct, AND complete copies of the original DOCUMENTS.
2. These Requests shall be deemed continuing in nature so as to require the supplemental production of all DOCUMENTS to the extent required by law.
3. Each DOCUMENT requested herein is requested to be produced in its entirety without deletion OR excisions regardless of whether YOU consider the entire DOCUMENT to be relevant OR responsive to these Requests.
4. If a DOCUMENT contains both privileged AND non-privileged information, portions of



the DOCUMENT that are not privileged must be produced. If a DOCUMENT OR portion of a DOCUMENT is withheld from production on the grounds of privilege (e.g., attorney-client privilege), including deliberative process privilege, OR other protection, the DOCUMENT OR portion of the DOCUMENT may be withheld from production but must be identified on a privilege log which identifies the following: the DOCUMENT Bates number, the author, the date, all recipients, the basic nature of the DOCUMENT (e.g., letter, report, notes, etc.), a description of the document's subject matter AND the grounds on which the privilege OR protection is asserted.

5. To the extent responsive DOCUMENTS exist in an electronic format, please contact Respondent's counsel to discuss the manner AND format in which the DOCUMENTS will be produced AND to facilitate the production of full AND complete copies in a usable format.

6. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of the Request for Production of Documents ANY DOCUMENTS that might otherwise be considered beyond its scope.

7. None of the Definitions above OR Requests set forth below shall be construed as an admission relating to the existence of ANY evidence, to the relevance or admissibility of ANY evidence, OR to the truth or accuracy of ANY statement OR characterization in the Definitions OR a Request.

### **REQUESTS FOR PRODUCTION**

#### **Document Request No. 1**

All DOCUMENTS OR COMMUNICATIONS concerning any votes or potential votes taken by the COMMISSIONERS related to INTUIT. To the extent deliberative process privilege

or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 2**

All DOCUMENTS OR COMMUNICATIONS CONCERNING the “case summary” on the docket sheet on ftc.gov for the above-captioned case. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 3**

All COMMUNICATIONS concerning INTUIT, including COMMUNICATIONS between Commissioners AND COMMUNICATIONS with nonparties. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

**Document Request No. 4**

All DOCUMENTS OR COMMUNICATIONS related to the treatment of Intuit’s Rule 2.31 motion.

**Document Request No. 5**

All DOCUMENTS OR COMMUNICATIONS related to the FTC’s ability to obtain monetary relief following the Supreme Court’s April 22, 2021 decision in *AMG Capital Management, LLC v. Federal Trade Commission*, No. 19-508, including any internal memoranda or other legal analyses. To the extent deliberative process privilege or any other privilege is asserted over any DOCUMENTS OR COMMUNICATIONS, a log consistent with General Instruction 4 is required.

Dated: October 14, 2022

Respectfully submitted,

WILMER CUTLER PICKERING HALE  
AND DORR LLP

/s/ David Z. Gringer

David Z. Gringer  
Eleanor Davis  
7 World Trade Center  
250 Greenwich St.  
New York, NY 10007  
Telephone: (212) 230-8800  
Facsimile: (212) 230-8888  
David.Gringer@wilmerhale.com  
Eleanor.Davis@wilmerhale.com

Jonathan E. Paikin  
Jennifer Milici  
Derek A. Woodman  
1875 Pennsylvania Ave NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
Jonathan.Paikin@wilmerhale.com  
Jennifer.Milici@wilmerhale.com  
Derek.Woodman@wilmerhale.com

*Attorneys for Respondent Intuit Inc.*

# **EXHIBIT C**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

In the matter of:

**Intuit Inc.**,  
a corporation,  
  
Respondent.

Docket No. 9408

**COMPLAINT COUNSEL'S OBJECTIONS AND RESPONSES TO  
RESPONDENT INTUIT INC.'S FIRST SET OF REQUESTS FOR  
ADMISSION**

**Intuit Request for Admission 1:** Admit that the FTC Commissioners voted to approve the COMPLAINT no later than 4:56 PM ET on March 28, 2022.

**Response:** Complaint Counsel object to Request for Admission 1 in that it is not relevant to the claims or defenses in this matter. Complaint Counsel further object in that Request for Admission 1 calls for privileged and non-public information regarding the time of the FTC Commissioners' vote. The Commission's privileges can only be waived by the Commission itself. Notwithstanding and without waiving these objections, Complaint Counsel partially admit that an affirmative vote was taken by the Commission to issue a complaint in this matter on March 28, 2022. The remainder of Request for Admission 1 is denied. Request for Admission 1 is premised on an inaccurate definition of the term "COMPLAINT." Part 3 administrative complaints are not "filed," they are issued when an affirmative vote is taken by the Commission. Administrative proceedings such as this one commence "when an affirmative vote is taken by the Commission to issue a complaint." 16 C.F.R. § 3.11(a).

**Intuit Request for Admission 2:** Admit that the COMPLAINT was not sent to INTUIT until 11:21 AM ET on March 29, 2022.

**Response:** Complaint Counsel object to Request for Admission 2 in that it is not relevant to the claims or defenses in this matter. Notwithstanding and without waiving this objection, Complaint Counsel admit that Joel Christie, Attorney, Office of

Public

the Secretary, emailed a copy of the complaint in this matter to Counsel for Intuit Inc. at approximately 11:21 AM ET on March 29, 2022. Complaint Counsel lack information and knowledge sufficient to enable it to admit or deny whether the complaint in this matter was sent to Counsel for Intuit Inc. through other means before 11:21 AM ET on March 29, 2022. Complaint Counsel are informed and believe that the complaint in this matter was served on Respondent Intuit Inc. on March 31, 2022.

**Intuit Request for Admission 3:** Admit that the FTC Commissioners voted to approve a version of the COMPLAINT on March 28, 2022, that was not the version of the COMPLAINT sent to INTUIT on March 29, 2022.

**Response:** Complaint Counsel object to Request for Admission 3 in that it is not relevant to the claims or defenses in this matter. Complaint Counsel further object in that the term “version” is vague and ambiguous in this context. Notwithstanding and without waiving these objections, Request for Admission 3 is denied. The Commission took an affirmative vote to issue a complaint in this matter and a true and correct copy of the complaint was served on Intuit. A redacted public version of the complaint issued in this matter appears on the FTC website at: <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923119-intuit-inc-matter-turbotax>. Complaint Counsel are informed and believe that the complaint, including the non-public unredacted version of the complaint, in this matter was served on Respondent Intuit Inc. on March 31, 2022.

**Intuit Request for Admission 4:** Admit that TURBOTAX FREE EDITION is free for those taxpayers who qualify.

**Response:** Request for Admission 4 is denied based on the definition of “TURBOTAX FREE EDITION,” which misdescribes Intuit’s marketing of TurboTax. As alleged in the complaint in this matter, in its marketing and advertising Intuit represents that consumers can file their taxes for free using TurboTax. This representation is deceptive because in numerous instances Intuit did not permit

Public

consumers to file their taxes for free using TurboTax. In some limited instances certain taxpayers were eligible for free filing using a version of TurboTax known as “TurboTax Free Edition” provided they qualified based on Intuit’s applicable eligibility criteria.

**Intuit Request for Admission 5:** Admit that TURBOTAX FREE EDITION allows taxpayers whose returns use Form 1040 with no attached schedules to file their state and federal taxes for free.

**Response:** Request for Admission 5 is denied based on the definition of “TURBOTAX FREE EDITION,” which misdescribes Intuit’s marketing of TurboTax. As alleged in the complaint in this matter, in its marketing and advertising Intuit represents that consumers can file their taxes for free using TurboTax. This representation is deceptive because in numerous instances Intuit did not permit consumers to file their taxes for free using TurboTax. In some limited instances certain taxpayers were eligible to file their state and federal tax returns for free using a version of TurboTax known as “TurboTax Free Edition” provided their returns used Form 1040 with no attached schedules and they otherwise qualified based on Intuit’s applicable eligibility criteria.

**Intuit Request for Admission 6:** Admit that INTUIT discloses all fees and charges associated with its TURBOTAX ONLINE PRODUCTS to consumers before consumers are prompted to pay on the TURBOTAX WEBSITE.

**Response:** Complaint Counsel object to Request for Admission 6 because it is overbroad, and ambiguous and vague as to the time period covered by it. Notwithstanding and without waiving these objections, Complaint Counsel lack information and knowledge sufficient to enable it to admit or deny Request for Admission 6 because it would be impossible for Complaint Counsel to determine whether Intuit disclosed all fees and charges associated with TURBOTAX ONLINE

PRODUCTS in every instance where a consumer was prompted to pay on the TURBOTAX WEBSITE.

**Intuit Request for Admission 7:** Admit that ANY ADVERTISEMENT that complies with the AG SETTLEMENT would not be false, misleading, OR deceptive.

**Response:** Complaint Counsel object to Request for Admission 7 in that it is irrelevant to the claims and defenses in this matter. Notwithstanding and without waiving this objection, Request for Admission 7 is denied. The states' Assurance of Voluntary Compliance ("AVC") allows, among other things, for "Space-Constrained Advertisements" in which Intuit need only disclose that "eligibility requirements apply" and provide a hyperlink to more fulsome disclosures. Injunctive Relief § III.B. This contradicts the black letter law principles articulated in the .com Disclosures, at 10, among other FTC sources. The AVC also allows for visual-only disclosures in "Space-Constrained Video Advertisements," allowing the audio portion to disclose only "that not all taxpayers qualify" – and not even that in a video of 8 seconds or less. Plus this entire provision sunsets after ten years. Injunctive Relief § III.C. This contradicts the black letter law principles articulated in the Deception Policy Statement, at 180, and the TV Ad Policy Statement, among other FTC sources. The AVC defines "Space-Constrained Advertisements" as any "that has space, time, format, size, or technological restrictions that limit Intuit from being able to make the disclosures required by this Assurance." Definitions § J. The AVC allows hyperlinks to disclosures on Intuit's website, without specifying that information integral to the claim cannot be hidden behind a hyperlink. Injunctive Relief § III.D. Finally, the AVC provides monetary relief only for "Covered Consumer[s]" harmed from 2016 to 2018. Definitions § I. If the Commission enters the proposed Order, it can then seek "the refund of money" and other relief for additional consumers harmed by Intuit's "dishonest or fraudulent" conduct. 15 U.S.C. § 57b(a) & (b). The AVC provisions are inadequate, allow ongoing deception and harm, and in so doing, undermine consumer welfare. They allow Intuit



Public

to continue marketing in much the same way it has been, other than by running “Free, free, free, free” ads, which were notoriously egregious and hence, are specifically barred. The AVC would allow Intuit to continue using the deceptive and ever-changing phrase “simple tax returns” as a purported disclaimer.

**Intuit Request for Admission 8:** Admit that ANY ADVERTISEMENT that complies with the AG SETTLEMENT would not violate Section 5(a) of the Federal Trade Commission Act.

**Response:** Complaint Counsel object to Request for Admission 8 in that it is irrelevant to the claims and defenses in this matter. Notwithstanding and without waiving this objection, Request for Admission 8 is denied. The states’ Assurance of Voluntary Compliance (“AVC”), among other things, allows for “Space-Constrained Advertisements” in which Intuit need only disclose that “eligibility requirements apply” and provide a hyperlink to more fulsome disclosures. Injunctive Relief § III.B. This contradicts the black letter law principles articulated in the .com Disclosures, at 10, among other FTC sources. The AVC also allows for visual-only disclosures in “Space-Constrained Video Advertisements,” allowing the audio portion to disclose only “that not all taxpayers qualify” – and not even that in a video of 8 seconds or less. Plus this entire provision sunsets after ten years. Injunctive Relief § III.C. This contradicts the black letter law principles articulated in the Deception Policy Statement, at 180, and the TV Ad Policy Statement, among other FTC sources. The AVC defines “Space-Constrained Advertisements” as any “that has space, time, format, size, or technological restrictions that limit Intuit from being able to make the disclosures required by this Assurance.” Definitions § J. The AVC allows hyperlinks to disclosures on Intuit’s website, without specifying that information integral to the claim cannot be hidden behind a hyperlink. Injunctive Relief § III.D. Finally, the AVC only provides monetary relief for “Covered Consumer[s]” harmed from 2016 to 2018. Definitions § I. If the Commission enters the proposed Order, it can then seek “the refund of money” and

Public

other relief for additional consumers harmed by Intuit's "dishonest or fraudulent" conduct. 15 U.S.C. § 57b(a) & (b). The AVC provisions are inadequate, allow ongoing deception and harm, and in so doing, undermine consumer welfare. They allow Intuit to continue marketing in much the same way it has been, other than by running "Free, free, free, free" ads, which were notoriously egregious and hence, are specifically barred. The AVC would allow Intuit to continue using the deceptive and ever-changing phrase "simple tax returns" as a purported disclaimer.

**Intuit Request for Admission 9:** ADMIT that the injunctive relief provided in the AG SETTLEMENT is based substantially on terms proposed by the FTC, and provided to INTUIT, in November 2021.

**Response:** Complaint Counsel object to Request for Admission 9 in that it is irrelevant to the claims and defenses in this matter and seeks inadmissible evidence pertaining to compromise offers and negotiations barred by Federal Rule of Evidence 408. Notwithstanding and without waiving these objections, Request for Admission 9 is denied.

**Intuit Request for Admission 10:** ADMIT that the FTC lacks authority to obtain monetary relief under Section 13(b) of the Federal Trade Commission Act.

**Response:** Complaint Counsel object to Request for Admission 10 in that it is irrelevant to the claims and defenses in this administrative proceeding. Notwithstanding and without waiving its objection, Complaint Counsel admit that the FTC presently lacks authority to obtain monetary relief under Section 13(b) of the Federal Trade Commission Act. Complaint Counsel reserve the right to seek monetary relief under Section 13(b) of the Federal Trade Commission should Congress revise

Public

Section 13(b) to expressly authorize restitution and disgorgement or otherwise grant the FTC further remedial authority.

The FTC has authority to obtain monetary relief under Section 19 of the Federal Trade Commission Act. As indicated in the complaint in this matter:

[T]he Commission has reason to believe that, if the facts are found as alleged in the Complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations. Such relief could be in the form of restitution for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

Complaint, Notice, at p. 26.

**Intuit Request for Admission 11:** ADMIT that on March 29, 2022, FTC Chair Lina Khan retweeted a tweet thread from the @FTC account announcing the filing of this lawsuit and stating, among other things, that “Intuit engaged in a years-long marketing campaign centered on the promise of ‘free services’,” and that Intuit “mislead[s] consumers into believing that they can file their taxes for free with TurboTax.”

**Response:** Complaint Counsel object to Request for Admission 11 in that it is irrelevant to the claims and defenses in this matter. Notwithstanding and without waiving this objection, Complaint Counsel lack information and knowledge sufficient to enable it to admit or deny Request for Admission 11. A Twitter account with the handle @linakhanFTC retweeted a tweet thread from the @FTC account announcing the filing of this lawsuit and stating, among other things, that “Intuit engaged in a years-long marketing campaign centered on the promise of ‘free services’,” and that Intuit

Public

“mislead[s] consumers into believing that they can file their taxes for free with TurboTax.” However, it is unclear whether FTC Chair Lina Khan was personally responsible for retweeting that particular tweet thread. Complaint Counsel is prohibited from inquiring further pursuant to 16 C.F.R. § 4.7(b).

Respectfully submitted,

Dated: August 29, 2022

*Roberto Anguizola*

---

**Roberto Anguizola**, IL Bar No. 6270874

**James Evans**, VA Bar No. 83866

**Rebecca Plett**, VA Bar No. 90988

Federal Trade Commission

600 Pennsylvania Ave., NW, CC-6316

Washington, DC 20580

(202) 326-3284 / [ranguizola@ftc.gov](mailto:ranguizola@ftc.gov)

(202) 326-2026 / [james.evans@ftc.gov](mailto:james.evans@ftc.gov)

(202) 326-3664 / [rplett@ftc.gov](mailto:rplett@ftc.gov)

**Counsel Supporting the Complaint**  
**Federal Trade Commission**

Public

**DECLARATION OF ROBERTO ANGUIZOLA**

I am an attorney at the Federal Trade Commission and Complaint Counsel in this action. I am authorized to make this declaration for and on behalf of the Bureau of Consumer Protection.

I have read the foregoing Complaint Counsel's Objections and Responses to Respondent Intuit Inc.'s First Set of Requests for Admission and I am familiar with the contents thereof. The responses to these requests for admission are true and correct to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this declaration are true and correct.

Executed on: August 29, 2022

*Roberto Anguizola*  
\_\_\_\_\_  
Roberto Anguizola  
Complaint Counsel

### CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, I caused the foregoing document to be served via email on:

David Z. Gringer  
Wilmer Cutler Pickering Hale & Dorr  
LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
David.Gringer@wilmerhale.com  
(212) 230-8800

Jonathan E. Paikin  
Jennifer Milici  
Derek A. Woodman  
Wilmer Cutler Pickering Hale & Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
Jonathan.Paikin@wilmerhale.com  
Jennifer.Milici@wilmerhale.com  
Derek.Woodman@wilmerhale.com  
(202) 663-6000

*Attorneys for Respondent, Intuit Inc.*

*Roberto Anguizola*

---

Roberto Anguizola

# **EXHIBIT D**

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the matter of:

**Intuit Inc.,**  
a corporation,  
  
Respondent.

Docket No. 9408

**COMPLAINT COUNSEL'S RESPONSES AND OBJECTIONS TO INTUIT'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complaint Counsel hereby makes the following Objections and Responses ("Responses") to the Defendant Intuit Inc.'s ("Intuit's") First Set of Requests for Production of Documents ("Requests"). Complaint Counsel reserves its right to supplement, revise, modify, or otherwise change or amend these Responses and Objections based on any documents, tangible things, information, or evidence obtained through further investigation and discovery.

**GENERAL STATEMENTS**

1. By responding or agreeing to produce documents in response to these Requests, Complaint Counsel does not concede that such documents exist or are within the scope of discovery, relevant, material, or admissible in evidence. In particular, Complaint Counsel does not waive or intend to waive, but rather reserves and intends to reserve: (a) any objections to the relevance, materiality, privilege, or admissibility as evidence, for any purpose, of any documents provided in response to these Requests; (b) the right to object on any ground to the use of any documents provided in response to these Requests at any hearing; or (c) the right to object on any ground at any time to a demand for a further response.

2. Intuit's request does not specify a time, place, or manner for making the production. *See* 16 C.F.R. 3.37(a). Complaint Counsel is gathering and reviewing documents and information requested and expects to produce responsive documents



on a rolling basis. Complaint Counsel intends to produce such documents electronically, as outlined in the “BCP Production Requirements” attached hereto.

3. Complaint Counsel’s Responses should not be construed to limit Complaint Counsel’s basis for any relief sought from Intuit in this action.

4. Complaint Counsel’s Responses are based upon discovery it has received to date. Complaint Counsel notes that fact discovery is ongoing and will continue under the Scheduling Order.

5. Complaint Counsel may be omitting from its Responses the identification of documents not yet known to Complaint Counsel. Complaint Counsel does not waive its right to rely upon or use at any hearing facts and documents that are not being produced or individually identified at this time. Complaint Counsel will identify for Intuit in advance of a hearing the documents Complaint Counsel plans to introduce as exhibits at a hearing, as set out by the Scheduling Order.

6. Complaint Counsel’s Responses are based on a search of the documents in the possession, custody, or control of the Division of Marketing Practices (“Division”), the division of the Commission’s Bureau of Consumer Protection that investigated this matter and is handling the prosecution of this action. *See* 16 C.F.R. 3.31(c)(2).

7. Complaint Counsel cannot respond to requests encompassing documents or information held by the Commissioners, the General Counsel, any Bureau or Office not involved in the matter, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staff. Intuit may seek such documents or information pursuant to 16 C.F.R. 3.36.

8. Privileges held by the Commission (not Complaint Counsel) can only be waived by the Commission.

### **General Objections**

1. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent that they seek documents that are not discoverable

pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4, the Federal Rules of Civil Procedure, or otherwise exempt from disclosure by law, including, but not limited to, identification of documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, or any other applicable privilege of law. Complaint Counsel does not intend to waive any of the privileges asserted in this objection by any inadvertent reference to, or production of, protected documents or information that may occur, and reserves the right to seek the return of any such material inadvertently produced to Intuit. The documents and information for which Complaint Counsel asserts these privileges include but are not limited to:

(a) communications and correspondence between the FTC and any law enforcement agency and any documents circulated between the FTC and law enforcement agencies; (b) documents and materials obtained from other law enforcement agencies under confidentiality agreements; (c) drafts of pleadings and declarations; (d) pre-decisional or deliberative FTC documents; (e) internal documents circulated among Commission staff; (f) memoranda from Commission staff to any of the Commissioners; (g) compilations or indices of FTC records; (h) communications and other correspondence between FTC attorneys and among FTC staff, except to the extent such staff have submitted declarations in this lawsuit and/or will be testifying witnesses and the correspondence or communication relate to the particular subject(s) addressed in their declaration and/or testimony; and (i) other notes and documents prepared for or in anticipation of litigation by Commission staff.

2. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent they are vague, ambiguous, overly broad, unduly burdensome, or duplicative of other Requests.

3. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent that they seek documents that are outside the scope of discovery, not relevant to any party's claim or defense, or are not proportional to the needs of the case.

4. Complaint Counsel objects to these Requests, and to each instruction and definition therein, to the extent that they seek to impose on Complaint Counsel any obligations beyond those provided for in the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4, or the Federal Rules of Civil Procedure.

5. Complaint Counsel objects to these Requests to the extent that they seek documents that are not within Complaint Counsel's possession, custody, or control. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

6. Complaint Counsel objects to these Requests to the extent that they are not limited to requests for documents about Intuit's business practices that are at issue in this matter.

7. Complaint Counsel objects to these Requests to the extent that they seek information that Complaint Counsel has already provided to Intuit, including through Complaint Counsel's federal court filings and administrative proceedings in this matter.

8. Complaint Counsel objects to these Requests to the extent they seek documents that are already in the possession, custody, or control of Intuit, Intuit's counsel, or that can be obtained from some other source, such as Intuit's advertising agencies, that is more convenient to Intuit, less burdensome to Complaint Counsel, or less expensive for both parties. *See* 16 CFR 3.31(c)(2)(i).

9. Complaint Counsel objects to Intuit's Requests to the extent that they require Complaint Counsel to analyze or organize factual evidence for Intuit, which Intuit can do equally itself.

10. Complaint Counsel objects to Intuit's Requests to the extent that they require Complaint Counsel to undertake legal research for Intuit, which Intuit can do equally itself.

11. Each of the above-listed General Objections is incorporated by reference to each specific Response and objections set forth below. The specific Responses and objections set forth below are made without waiving any of the above-listed General Objections.

### **Specific Responses and Objections**

1. **Request for Production 1:** All DOCUMENTS OR COMMUNICATIONS reviewed, consulted, considered, OR relied upon in drafting the COMPLAINT.

#### **Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law.

Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*,

located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel also objects to the Request because it is premised on an inaccurate definition of the term "COMPLAINT." Part 3 administrative complaints are not "filed," they are issued when an affirmative vote is taken by the Commission. Administrative proceedings such as this one commence "when an affirmative vote is taken by the Commission to issue a complaint." 16 C.F.R. § 3.11(a). Complaint Counsel will construe the request to relate to the administrative complaint in this matter that was issued by the Commission on March 28, 2022.

Complaint Counsel further objects to the Request as overly broad, and unduly burdensome to the extent it requests "all documents or communications reviewed, consulted, considered, or relied upon."

So construing, subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce all nonprivileged documents supporting the allegations in the complaint. Additionally, Complaint Counsel directs Intuit to the exhibits and documents it filed in the related federal court action, see Docket No. 6, Exhibit Volumes 1-7.

**2. Request for Production 2:** All DOCUMENTS that contradict ANY allegation in the COMPLAINT.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the

scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel also objects to the Request because it is premised on an inaccurate definition of the term "COMPLAINT." Part 3 administrative complaints are not "filed," they are issued when an affirmative vote is taken by the Commission. Administrative proceedings such as this one commence "when an affirmative vote is taken by the Commission to issue a complaint." 16 C.F.R. § 3.11(a). Complaint Counsel will construe the request to relate to the administrative complaint in this matter that was issued by the Commission on March 28, 2022.

Moreover, Complaint Counsel objects to the Request to the extent it requires Complaint Counsel to draw legal conclusions about whether documents contradict allegations in the complaint. Subject to and without waiving the foregoing general and specific objections, Complaint Counsel states that it is not aware of any such documents in its possession, custody or control.

3. **Request for Production 3:** All DOCUMENTS reviewed OR consulted in the drafting of ANY interrogatory response.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement

evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Complaint Counsel also objects to the Request as overbroad to the extent it seeks documents Complaint Counsel may have reviewed, but that were not relevant to the Interrogatory Responses or that Complaint Counsel did not rely on in drafting the Interrogatory Responses. Complaint Counsel will construe the Request to encompass documents relied upon in drafting Interrogatory Responses. So construing the Request, subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

4. **Request for Production 4:** All notes, recordings, logs, OR other DOCUMENTS relating to interviews conducted with nonparties regarding the allegations in this PROCEEDING, the subject matter of this PROCEEDING, INTUIT, OR the PROCEEDING itself.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel also objects to this Request to the extent it seeks documents that are outside the scope of discovery and/or not relevant to the claims or defenses in this matter.

Complaint Counsel further objects to the Request because it is overbroad and unduly burdensome. The Request asks for documents relating to interviews conducted with third parties about Intuit, without limiting the scope to this matter. Complaint Counsel will construe the Request to encompass the documents related to the current proceeding. So construed, and subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.



5. **Request for Production 5:** All DOCUMENTS produced in response to ANY subpoena issued in this PROCEEDING OR produced voluntarily by ANY nonparty that relates to the allegations in this PROCEEDING.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law.

Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Complaint Counsel further objects to the Request to the extent it encompasses documents outside the scope of discovery and/or irrelevant to this proceeding.

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

6. **Request for Production 6:** All DOCUMENTS discussing, analyzing, OR reviewing advertisements for “free” merchandise OR services by INTUIT OR ANY other company.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC’s Rules of Practice, 16 C.F.R. Parts 2, 3, and 4.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit’s counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel further objects to the Request to the extent it seeks documents or information outside the scope of discovery and/or not relevant to the claims or defenses in this matter. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel’s Responses.

Complaint Counsel further objects to the Request as overbroad and unduly burdensome. The Request seeks documents not just for Intuit’s “free” advertising, but “free” advertising of any company at any time. To require Complaint Counsel to produce records related to “free” advertising claims across the agency and across time would be immensely burdensome, is outside the scope of discovery, and is unlikely to

lead to any relevant or admissible evidence. Thus, Complaint Counsel will construe the Request to encompass documents related to Intuit's "free" advertising claims for TurboTax only. So construing the Request, subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

7. **Request for Production 7:** All DOCUMENTS relating to OR reflecting rules OR guides adopted, provided, OR administered by the FTC about how to evaluate ADVERTISEMENTS for "free" merchandise OR services.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel further objects to the Request to

the extent it seeks documents or information outside the scope of discovery and/or not relevant to the claims or defenses in this matter.

Complaint Counsel further objects to the Request as overly broad and unduly burdensome. The Request is not limited in time, and includes documents “relating to” guides, which could encompass documents from many decades, from across the entire agency. To identify such documents would be incredibly burdensome. Subject to and without waiving the foregoing general and specific objections, Complaint Counsel points Intuit to the following documents:

- Guide Concerning Use of the Word “Free” and Similar Representations, 16 C.F.R. § 251.1 (1971), regulatory text and record available at <https://www.ftc.gov/legal-library/browse/rules/guide-concerning-use-word-free-similar-representations> (superseding Guide Concerning Use of the Word “Free” and Similar Representations, 36 Fed. Reg. 21,517 (1953)).
- .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.
- Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising (Oct. 21, 1970), available at <https://www.ftc.gov/legal-library/browse/commission-enforcement-policy-statement-regarding-clear-conspicuous-disclosures-television>.
- FTC Statement on Deception, 103 F.T.C. 174 (1984) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)), available at <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception>.

8. **Request for Production 8:** All DOCUMENTS relating to OR reflecting policy discussions involving the FTC about ADVERTISEMENTS for “free” merchandise OR services.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC’s Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the Request to the extent it seeks documents or information outside the scope of discovery and/or not relevant to the claims or defenses in this matter.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit’s counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel’s Responses.

Complaint Counsel also objects to the Request as vague, as it is not clear what the scope of “involving the FTC” is. Complaint Counsel will construe the Request to encompass discussions the FTC actively participated in. Complaint Counsel further objects to this Request as overbroad and unduly burdensome, not proportional to the needs of the case, and unlikely to lead to admissible evidence. The Request seeks

documents about policy discussions from the FTC without any limits in scope as to time, offices within the FTC, or even the matter at hand involving Intuit. So construed, and subject to and without waiving the foregoing general and specific objections, Complaint Counsel directs Intuit to the following documents:

- Guide Concerning Use of the Word “Free” and Similar Representations, 16 C.F.R. § 251.1 (1971), regulatory text and record available at <https://www.ftc.gov/legal-library/browse/rules/guide-concerning-use-word-free-similar-representations> (superseding Guide Concerning Use of the Word “Free” and Similar Representations, 36 Fed. Reg. 21,517 (1953)).
- .com Disclosures: How to Make Effective Disclosures in Digital Advertising (Mar. 2013), available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.
- Enforcement Policy Statement in Regard to Clear and Conspicuous Disclosure in Television Advertising (Oct. 21, 1970), available at <https://www.ftc.gov/legal-library/browse/commission-enforcement-policy-statement-regarding-clear-conspicuous-disclosures-television>.
- FTC Statement on Deception, 103 F.T.C. 174 (1984) (appended to *In re Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984)), available at <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception>.

9. **Request for Production 9:** All screenshots from the TURBOTAX WEBSITE captured using “SnagIt” OR ANY other screen capture software OR tool, whether referenced in the Second Declaration of Diana F. Shiller in the matter of FTC v. Intuit Inc., No. 3:22-cv-01973-CRB (N.D. Cal.), OR otherwise.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Complaint Counsel also objects to the Request as overbroad and unduly burdensome. The Request is not limited in scope to Complaint Counsel's investigation of Intuit and could encompass captures of Intuit's website by any FTC staff at any point in time, unrelated to the facts and allegations at issue in this matter. Therefore, Complaint Counsel will construe the Request to encompass captures obtained as part of Complaint Counsel's investigation of and litigation against Intuit in this matter. So construing the Request, subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

10. **Request for Production 10:** All DOCUMENTS that support OR relate to the allegation in Paragraph 43 of the COMPLAINT that “the term ‘simple tax returns’ is not understood by many consumers.”

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC’s Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit’s counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel’s Responses.

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel points Intuit to the following documents:

- GX 302, ¶ 4.3 & 29-34 (Professor Nathan Novemsky finding that a “substantial portion of the taxpayers who are not eligible to use TurboTax Free Edition under Intuit’s criteria (and hence, do not have a ‘simple U.S. return,’ as Intuit uses the term) believe that their returns are ‘simple’ and therefore have the misimpression their returns meet TurboTax’s definition of a ‘simple U.S. return.’)



- GX 313, ¶ 22. (Professor Nathan Novemsky finding that “even accounting for possible inflation of 10%, the TurboTax Perception Survey would still show significant number of consumers, approximately 45% of consumers in Group A and 18% of consumers in Group B, who did not have what Intuit considered a ‘simple return’ having the misimpression that they did have a ‘simple return.’”)

Subject to and without waiving the foregoing general and specific objections

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce any additional responsive documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

11. **Request for Production 11:** All DOCUMENTS related to the “early testing” performed by Professor Nathan Novemsky and referenced in ¶ 9 of the Second Declaration of Nathan Novemsky in *FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB (N.D. Cal.).

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC’s Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit’s counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be

in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel will produce responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

12. **Request for Production 12:** All DOCUMENTS consulted, relied upon, OR cited in drafting the First AND Second Declarations of Nathan Novemsky in FTC v. Intuit Inc., No. 3:22-cv-01973-CRB (N.D. Cal.).

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Subject to and without waiver of the foregoing specific and general objections, the Complaint Counsel will produce non-privileged documents responsive to this Request.

13. **Request for Production 13:** All DOCUMENTS relating to OR reflecting ANY votes taken by ANY current OR former Commissioners of the Federal Trade Commission regarding TURBOTAX.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that are publicly available or that are in the possession, custody, or control of Intuit or Intuit's counsel. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel further objects to the Request to the extent it seeks documents or information outside the scope of discovery and/or not relevant to the claims or defenses in this matter.

Complaint Counsel further objects to the Request as overbroad and unduly burdensome to the extent it seeks documents relating to or reflecting Commissioner votes related to TurboTax without limiting the scope to only this matter. Complaint Counsel will construe the Request to encompass documents related to and reflecting Commissioner votes to approve the administrative complaint and related federal court complaint for a temporary restraining order and preliminary injunctive relief in this matter. Subject to and without waiver of the foregoing specific and general objections, the Complaint Counsel directs Intuit to the following documents:

- Regarding the March 28, 2022 Commission Vote:
  - March 28, 2022 Administrative Part 3 Complaint, public redacted version available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/D09408IntuitP3Complaint.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/D09408IntuitP3Complaint.pdf).
  - March 29, 2022 FTC Press Release “FTC Sues Intuit for Its Deceptive TurboTax “free” Filing Campaign,” available at <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-sues-intuit-its-deceptive-turbotax-free-filing-campaign>.
- Regarding the August 19, 2022 Commission Vote:
  - August 19, 2022 Commission Order Returning Matter to Adjudication and Setting a New Hearing Date, available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/D09408%20Commission%20Order%20Returning%20Matter%20to%20Adjudication%20and%20Setting%20New%20Hearing%20Date%20etc.%20-%20August%2019%2C%202022.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/D09408%20Commission%20Order%20Returning%20Matter%20to%20Adjudication%20and%20Setting%20New%20Hearing%20Date%20etc.%20-%20August%2019%2C%202022.pdf).
  - August 23, 2022 FTC Press Release “FTC Lifts Stay on Intuit Administrative Proceeding,” available at <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-lifts-stay-intuit-administrative-proceeding>.

14. **Request for Production 14:** All COMMUNICATIONS OR documents reflecting COMMUNICATIONS between anyone at the Federal Trade Commission and ANY nonparty regarding the allegations in this PROCEEDING, the subject matter of this PROCEEDING, INTUIT, OR the PROCEEDING itself, including members of Congress, their staffs, the IRS, the media, customers, competitors, OR other government agencies.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel further objects to the Request to the extent it seeks documents or information not outside the scope of discovery and/or relevant to the claims or defenses in this matter.

Complaint Counsel further objects to the Request as overbroad and unduly burdensome, and not proportional to the needs of the case. The Request encompasses "anyone at the Federal Trade Commission," covering hundreds of individuals. It also is not limited to this matter, but includes any communications about Intuit, regardless of the time of the communication or the subject of the communication. Complaint Counsel will construe the Request as encompassing communications or documents reflecting communications of Complaint Counsel and FTC staff assisting with this investigation where such communications are related to this proceeding or the allegations in this

proceeding with nonparties. So construing the Request, subject to and without waiver of the foregoing specific and general objections, the Complaint Counsel will produce non-privileged documents responsive to this Request.

Respectfully submitted,

Dated: September 9, 2022

/s/ Rebecca Plett

**Roberto Anguizola**, IL Bar No. 6270874

**Rebecca Plett**, VA Bar No. 90988

**James Evans**, VA Bar No. 83866

Federal Trade Commission

600 Pennsylvania Ave., NW, CC-6316

Washington, DC 20580

(202) 326-3284 / [ranguizola@ftc.gov](mailto:ranguizola@ftc.gov)

(202) 326-3664 / [rplett@ftc.gov](mailto:rplett@ftc.gov)

(202) 326-2026 / [james.evans@ftc.gov](mailto:james.evans@ftc.gov)

**Counsel Supporting the Complaint  
Federal Trade Commission**

### CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2022, I caused the foregoing Complaint Counsel's Responses and Objections to Intuit's First Set of Requests for Production of Documents, and the BCP Production Requirements, to be served via email on:

David Z. Gringer  
 Phoebe Silos  
 Charles Bridge  
 Eleanor Davis  
 Wilmer Cutler Pickering Hale & Dorr LLP  
 7 World Trade Center  
 250 Greenwich Street  
 New York, NY 10007  
 David.Gringer@wilmerhale.com  
 Phoebe.Silos@wilmerhale.com  
 Charles.Bridge@wilmerhale.com  
 Eleanor.Davis@wilmerhale.com  
 (212) 230-8800

Shelby Martin  
 Wilmer Cutler Pickering Hale & Dorr LLP  
 1225 Seventeenth Street, Suite 2600  
 Denver, CO 80202  
 Shelby.Martin@wilmerhale.com  
 (720) 274-3135

Katherine Mackey  
 Wilmer Cutler Pickering Hale & Dorr LLP  
 60 State Street  
 Boston, MA 02109  
 Katherine.Mackey@wilmerhale.com  
 (617) 526-6000

Jonathan E. Paikin  
 Jennifer Milici  
 Derek A. Woodman  
 Vinecia Perkins  
 Andres Salinas  
 Spencer Todd  
 Jocelyn Berteaud  
 Benjamin Chapin  
 Margaret (Molly) Dillaway  
 Reade Jacob  
 Wilmer Cutler Pickering Hale & Dorr LLP  
 1875 Pennsylvania Avenue NW  
 Washington, DC 20006  
 Jonathan.Paikin@wilmerhale.com  
 Jennifer.Milici@wilmerhale.com  
 Derek.Woodman@wilmerhale.com  
 Vinecia.Perkins@wilmerhale.com  
 Andres.Salinas@wilmerhale.com  
 Spencer.Todd@wilmerhale.com  
 Joss.Berteaud@wilmerhale.com  
 Benjamin.Chapin@wilmerhale.com  
 Molly.Dillaway@wilmerhale.com  
 Reade.Jacob@wilmerhale.com  
 (202) 663-6000

*Attorneys for Respondent, Intuit Inc.*

/s/ Rebecca Plett  
 Rebecca Plett

# **EXHIBIT E**



**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

In the matter of:

**Intuit Inc.,**  
a corporation,  
  
Respondent.

Docket No. 9408

**COMPLAINT COUNSEL'S RESPONSES AND OBJECTIONS TO INTUIT'S  
SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Complaint Counsel hereby makes the following Objections and Responses ("Responses") to the Defendant Intuit Inc.'s ("Intuit's") Second Set of Requests for Production of Documents ("Requests"). Complaint Counsel reserves its right to supplement, revise, modify, or otherwise change or amend these Responses and Objections based on any documents, tangible things, information, or evidence obtained through further investigation and discovery.

**General Statements**

1. By responding or agreeing to produce documents in response to these Requests, Complaint Counsel does not concede that such documents exist or are within the scope of discovery, relevant, material, or admissible in evidence. In particular, Complaint Counsel does not waive or intend to waive, but rather reserves and intends to reserve: (a) any objections to the relevance, materiality, privilege, or admissibility as evidence, for any purpose, of any documents provided in response to these Requests; (b) the right to object on any ground to the use of any documents provided in response to these Requests at any hearing; or (c) the right to object on any ground at any time to a demand for a further response.

2. Intuit's request does not specify a time, place, or manner for making the production. *See* 16 C.F.R. 3.37(a). Complaint Counsel is gathering and reviewing documents and information requested and expects to produce responsive documents

on a rolling basis. Complaint Counsel intends to produce such documents electronically, as outlined in the “BCP Production Requirements” previously provided to Intuit.

3. Complaint Counsel’s Responses should not be construed to limit Complaint Counsel’s basis for any relief sought from Intuit in this action.

4. Complaint Counsel’s Responses are based upon discovery it has received to date. Complaint Counsel notes that fact discovery is ongoing and will continue under the Scheduling Order.

5. Complaint Counsel may be omitting from its Responses the identification of documents not yet known to Complaint Counsel. Complaint Counsel does not waive its right to rely upon or use at any hearing facts and documents that are not being produced or individually identified at this time. Complaint Counsel will identify for Intuit in advance of a hearing the documents Complaint Counsel plans to introduce as exhibits at a hearing, as set out by the Scheduling Order.

6. Complaint Counsel’s Responses are based on a search of the documents in the possession, custody, or control of the Division of Marketing Practices (“Division”), the division of the Commission’s Bureau of Consumer Protection that investigated this matter and is handling the prosecution of this action. *See* 16 C.F.R. 3.31(c)(2).

7. Complaint Counsel cannot respond to requests encompassing documents or information held by the Commissioners, the General Counsel, any Bureau or Office not involved in the matter, the office of Administrative Law Judges, or the Secretary in his or her capacity as custodian or recorder of any such information, or their respective staff. Intuit may seek such documents or information pursuant to 16 C.F.R. 3.36.

8. Privileges held by the Commission (not Complaint Counsel) can only be waived by the Commission.

## General Objections

1. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent that they seek documents that are not discoverable pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4, the Federal Rules of Civil Procedure, or otherwise exempt from disclosure by law, including, but not limited to, identification of documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, or any other applicable privilege of law. Complaint Counsel does not intend to waive any of the privileges asserted in this objection by any inadvertent reference to, or production of, protected documents or information that may occur, and reserves the right to seek the return of any such material inadvertently produced to Intuit. The documents and information for which Complaint Counsel asserts these privileges include but are not limited to:

- (a) communications and correspondence between the FTC and any law enforcement agency and any documents circulated between the FTC and law enforcement agencies;
- (b) documents and materials obtained from other law enforcement agencies under confidentiality agreements;
- (c) drafts of pleadings and declarations;
- (d) pre-decisional or deliberative FTC documents;
- (e) internal documents circulated among Commission staff;
- (f) memoranda from Commission staff to any of the Commissioners;
- (g) compilations or indices of FTC records;
- (h) communications and other correspondence between FTC attorneys and among FTC staff, except to the extent such staff have submitted declarations in this lawsuit and/or will be testifying witnesses and the correspondence or communication relate to the particular subject(s) addressed in their declaration and/or testimony; and
- (i) other notes and documents prepared for or in anticipation of litigation by Commission staff.

2. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent they are vague, ambiguous, overly broad, unduly burdensome, or duplicative of other Requests.

3. Complaint Counsel objects to these Requests, and each instruction and definition therein, to the extent that they seek documents that are outside the scope of discovery, not relevant to any party's claim or defense, or are not proportional to the needs of the case.

4. Complaint Counsel objects to these Requests, and to each instruction and definition therein, to the extent that they seek to impose on Complaint Counsel any obligations beyond those provided for in the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4, or the Federal Rules of Civil Procedure.

5. Complaint Counsel objects to these Requests to the extent that they seek documents that are not within Complaint Counsel's possession, custody, or control. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

6. Complaint Counsel objects to these Requests to the extent that they are not limited to requests for documents about Intuit's business practices that are at issue in this matter.

7. Complaint Counsel objects to these Requests to the extent that they seek information that Complaint Counsel has already provided to Intuit, including through Complaint Counsel's federal court filings and administrative proceedings in this matter.

8. Complaint Counsel objects to these Requests to the extent they seek documents that are already in the possession, custody, or control of Intuit, Intuit's counsel, or that can be obtained from some other source, such as Intuit's advertising

agencies, that is more convenient to Intuit, less burdensome to Complaint Counsel, or less expensive for both parties. *See* 16 CFR 3.31(c)(2)(i).

9. Complaint Counsel objects to Intuit's Requests to the extent that they require Complaint Counsel to analyze or organize factual evidence for Intuit, which Intuit can do equally itself.

10. Complaint Counsel objects to Intuit's Requests to the extent that they require Complaint Counsel to undertake legal research for Intuit, which Intuit can do equally itself.

11. Each of the above-listed General Objections is incorporated by reference to each specific Response and objections set forth below. The specific Responses and objections set forth below are made without waiving any of the above-listed General Objections.

### **Specific Responses and Objections**

15. **Request for Production 15:** All DOCUMENTS OR COMMUNICATIONS related to the FTC or FTC staff's assessment of the viability of Counts I-VIII in the SECOND PROPOSED COMPLAINT.

#### **Response:**

Complaint Counsel objects to the Request because it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, and the government deliberative process privilege, and to the extent it seeks documents protected by any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because it refers to "the FTC" and "FTC staff," presumably encompassing all FTC employees, and because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you"

which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners. Complaint Counsel further objects to the Request because it seeks information not relevant to any party's claim or defense. On the basis of these objections, Complaint Counsel will not be producing documents responsive to this Request.

16. **Request for Production 16:** All DOCUMENTS OR COMMUNICATIONS supporting, relied upon by, OR consulted in drafting the Declaration of Diana F. Shiller dated May 6, 2022 (GX 342 in the PROCEEDING) (the "Shiller Declaration"), including, but not limited to, ALL DOCUMENTS OR COMMUNICATIONS supporting, relied upon by, OR consulted in drafting Paragraphs 43, 47, 53, 72, 95-103, 114-115, 117-123, 127, 129, 131, 135, 137, 142, 148, 152, 156-173, 175-176, 179, 181-182, 184, AND 186-208 of the Shiller Declaration.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or

control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you" which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

Subject to and without waiving the foregoing objections, Complaint Counsel directs Intuit to the following documents already produced to Intuit in this matter:

- GX 59, GX 200, 202-206, 208-283, 285-89, 299-300, 307-310, 317-318, 320-341, 344-351
- Complaint Counsel also points Intuit to the following documents

previously produced to Intuit (all Bates numbers prefixed F01-TUT-):

00071083	00067351	00067351	00067351
00067360	00067361	00067364	00077279
00068121-25	00077334-35	00071135-36	00068083-82
00068087	00068074	00067377	00067379
00067383	00077299	00077301	00077388
00068081	00071138	00077354	00068079
00077266	00077418	00077339	00077328
00069745	00069749	00069743	00068094
00068408-09	00068408-39	00068202-04	00069770-71
00067413	00067423	00067427	00077305
00071049-65	00078405-13	00071265-70	00071159-67
00078296	00071232	00071156	00071233
00071260	00071217	00071246	00071263
00071228	00071230	00071259	00071222
00078350	00067429	00067439	00078420

Complaint Counsel will produce additional responsive, non-privileged documents that have not already been produced or made available to Intuit.

17. **Request for Production 17:** All DOCUMENTS OR COMMUNICATIONS related to the FTC's consideration of whether to update its guidance document titled

“.com Disclosures: How to Make Effective Disclosures in Digital Advertising,” which was announced via press release on June 3, 2022.

**Response:**

Complaint Counsel objects to the Request because it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, and the government deliberative process privilege, and to the extent it seeks documents protected by any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC’s Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that are publicly available. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit’s definition of the term “document” incorporates Intuit’s definition of the term “you” which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners. Complaint Counsel further objects to the Request because it seeks information not relevant to any party’s claim or defense because Complaint Counsel relies only on publicly available guidance that currently exists. As written, this Request is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to any valid defenses. The information is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Complaint Counsel will not be producing documents responsive to this Request.

18. **Request for Production 18:** All DOCUMENTS OR COMMUNICATIONS related to the FTC’s guidelines regarding the use of the word “free” and similar representations in advertising, see 16 CFR Part 251, including those concerning the application, relevance, and meaning of those guidelines, including, but not limited to, DOCUMENTS OR COMMUNICATIONS relating to studies, research, expert reports, or other analyses of the use of the word “free” and similar representations in advertising.



**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that are publicly available to Intuit.

Complaint Counsel further objects to the Request because it is overbroad and unduly burdensome. The Request asks for documents relating to the FTC's guidelines concerning the use of the word "free," without limiting the scope to this matter, or even to any time period or division of the FTC. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you" which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

As written, this Request is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to any valid defenses. The information is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Complaint Counsel will not be producing documents responsive to this Request.

19. **Request for Production 19:** All DOCUMENTS OR COMMUNICATIONS related to the FTC's decision to return the above-captioned action to adjudication on August 19, 2022.

**Response:**

Complaint Counsel objects to the Request because it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, and the government deliberative process privilege, and to the extent it seeks documents protected by any other applicable privilege of law. Complaint Counsel also objects to the Request because it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel further objects to the extent the Request seeks documents that are in the possession, custody, or control of Intuit or Intuit's counsel. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you" which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

This Request is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to any valid defenses. The information is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Complaint Counsel will not be producing documents responsive to this Request.

20. **Request for Production 20:** All DOCUMENTS OR COMMUNICATIONS related to the request the FTC informed INTUIT it received, via a letter to counsel dated March 15, 2022, from the Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations for a staff briefing regarding the FTC's investigation into INTUIT, including all DOCUMENTS OR COMMUNICATIONS shared with the Subcommittee by the FTC OR vice versa.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product

doctrine, the government deliberative process privilege, the law enforcement evidentiary or investigative file privilege, the common interest rule, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you" which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

This Request is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to any valid defenses. The information is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Complaint Counsel will not be producing documents responsive to this Request.

**21. Request for Production 21:** All DOCUMENTS OR COMMUNICATIONS related to whether the COMPLAINT voted on by the Commissioners on March 28, 2022, was the same COMPLAINT served on Intuit's counsel on March 29, 2022, including copies of both the March 28, 2022 COMPLAINT and the March 29, 2022 COMPLAINT.

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects because the Request is not relevant to the

claims or defenses in this matter. Complaint Counsel further objects to the extent the Request seeks documents that are publicly available or that are in the possession, custody, or control of Intuit or Intuit's counsel. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "document" incorporates Intuit's definition of the term "you" which encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

This Request is not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to any valid defenses. The information is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Complaint Counsel will not be producing documents responsive to this Request.

**22. Request for Production 22:** All DOCUMENTS OR COMMUNICATIONS supporting YOUR statement in YOUR response to INTUIT's Request for Admission 5 that "Intuit represents that consumers can file their taxes for free using TurboTax."

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, the common interest rule, the informant privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3 and 4. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "you" encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession,

custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses.

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel believe that the advertisements speak for themselves, and point Intuit to Complaint Counsel's Responses to Intuit's Interrogatories 1 and 2.

Complaint Counsel will identify and/or produce any additional responsive, non-privileged documents that have not already been produced or made available to Intuit, and as to which collection and production would not pose an undue burden.

23. **Request for Production 23:** All DOCUMENTS OR COMMUNICATIONS supporting YOUR statement in YOUR response to INTUIT's Requests for Admission 7 & 8 that INTUIT's "free" TV ads were "notoriously egregious."

**Response:**

Complaint Counsel objects to the Request to the extent it seeks documents or information protected from discovery by the attorney-client privilege, the work product doctrine, the government deliberative process privilege, or the law enforcement evidentiary or investigative file privilege, the common interest privilege, and/or any other applicable privilege of law. Complaint Counsel also objects to the Request to the extent it seeks documents or information that are outside of the scope of materials to be searched or produced by Complaint Counsel pursuant to the FTC's Rules of Practice, 16 C.F.R. Parts 2, 3, and 4. Complaint Counsel further objects to the extent the Request seeks documents that have been filed as exhibits, that are publicly available, that are in the possession, custody, or control of Intuit or Intuit's counsel, or that Complaint Counsel has already provided to Intuit in this proceeding or the related federal court

action. Complaint Counsel does not consider documents to be in its possession, custody, or control if they are, *inter alia*, located in the offices of Intuit, or otherwise in the possession, custody, or control of Intuit or its employees or agents, and hence they will not be produced as part of Complaint Counsel's Responses. Complaint Counsel also objects to the Request as overly broad and unduly burdensome because Intuit's definition of the term "you" encompasses not just Complaint Counsel, but every employee at the FTC, including Commissioners.

Subject to and without waiving the foregoing general and specific objections, Complaint Counsel believes the ads, and the wide dissemination of the ads, are evidence of their egregious nature. Complaint Counsel directs Intuit to the documents identified in response to Request for Production 22 and Intuit's Interrogatories 1-2.

Subject to and without waiving the foregoing specific and general objections, Complaint Counsel will produce any additional non-privileged documents responsive to this request.

Respectfully submitted,

Dated: October 7, 2022

/s/ Rebecca Plett

**Roberto Anguizola**, IL Bar No. 6270874

**Rebecca Plett**, VA Bar No. 90988

**James Evans**, VA Bar No. 83866

Federal Trade Commission

600 Pennsylvania Ave., NW, CC-6316

Washington, DC 20580

(202) 326-3284 / [ranguizola@ftc.gov](mailto:ranguizola@ftc.gov)

(202) 326-3664 / [rplett@ftc.gov](mailto:rplett@ftc.gov)

(202) 326-2026 / [james.evans@ftc.gov](mailto:james.evans@ftc.gov)

**Counsel Supporting the Complaint  
Federal Trade Commission**

## CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2022, I caused the foregoing Complaint Counsel's Responses and Objections to Intuit's Second Set of Requests for Production of Documents, to be served via email on:

David Z. Gringer  
Phoebe Silos  
Charles Bridge  
Eleanor Davis  
Wilmer Cutler Pickering Hale & Dorr LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
David.Gringer@wilmerhale.com  
Phoebe.Silos@wilmerhale.com  
Charles.Bridge@wilmerhale.com  
Eleanor.Davis@wilmerhale.com  
(212) 230-8800

Shelby Martin  
Wilmer Cutler Pickering Hale & Dorr LLP  
1225 Seventeenth Street, Suite 2600  
Denver, CO 80202  
Shelby.Martin@wilmerhale.com  
(720) 274-3135

Katherine Mackey  
Wilmer Cutler Pickering Hale & Dorr LLP  
60 State Street  
Boston, MA 02109  
Katherine.Mackey@wilmerhale.com  
(617) 526-6000

Jonathan E. Paikin  
Jennifer Milici  
Derek A. Woodman  
Vinecia Perkins  
Andres Salinas  
Spencer Todd  
Jocelyn Berteaud  
Benjamin Chapin  
Margaret (Molly) Dillaway  
Reade Jacob  
Wilmer Cutler Pickering Hale & Dorr LLP  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
Jonathan.Paikin@wilmerhale.com  
Jennifer.Milici@wilmerhale.com  
Derek.Woodman@wilmerhale.com  
Vinecia.Perkins@wilmerhale.com  
Andres.Salinas@wilmerhale.com  
Spencer.Todd@wilmerhale.com  
Joss.Berteaud@wilmerhale.com  
Benjamin.Chapin@wilmerhale.com  
Molly.Dillaway@wilmerhale.com  
Reade.Jacob@wilmerhale.com  
(202) 663-6000

*Attorneys for Respondent, Intuit Inc.*

/s/ Rebecca Plett  
Rebecca Plett

**RX 73**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Pages 1 - 47

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

FEDERAL TRADE COMMISSION, )

Plaintiff, )

VS. )

INTUIT, INC., )

Defendant. )

NO. C 22-01973 CRB

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**

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
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

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

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.

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,

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.



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 --

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

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

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

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

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

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

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



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

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

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 --

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

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

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

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.

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](http://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



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

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

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.

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

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.

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

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

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,



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

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.

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.

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.

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

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

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



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

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

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,

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

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

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.

1           **MR. ANGUIZOLA:** Thank you, Your Honor.

2           **MR. WAXMAN:** Thank you.

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

4   ---oOo---

5

6   **CERTIFICATE OF REPORTER**

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

9

10          DATE:    Wednesday, April 27, 2022

11

12

13

14



15

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

16

17

18

19

20

21

22

23

24

25

# **EXHIBIT F**





Lina Khan  199 Tweets

Search Twitter

# Explore

Settings



Follow

Lina Khan 

@linakhanFTC

Chair, Federal Trade Commission.

Retweets, Follows, & Likes ≠ Endorsements.

[ftc.gov](https://ftc.gov) Joined February 2011

807 Following 55.9K Followers

Tweets Tweets & replies Media Likes

Lina Khan Retweeted


**EU Consumer Affairs**  @EU\_Consumer · 6h  
@dreynders & @linakhanFTC affirm their mutual interest in reinvigorating dialogue on consumer issues, particularly on the impact of technological developments.

Read their joint statement following their informal dialogue on [#ConsumerProtection](#)

[ec.europa.eu/info/live-work...](https://ec.europa.eu/info/live-work...)

15 retweets 6 likes

Lina Khan Retweeted

**FTC**  @FTC · Mar 29  
New: FTC sues Intuit for its deceptive TurboTax “free” filing campaign. Commission seeks an immediate halt to Intuit’s deceptive ads for “free” products:



[ftc.gov](https://ftc.gov)  
FTC Sues Intuit for Its Deceptive TurboTax “free” Filing Campaign  
The Federal Trade Commission is taking action against Intuit Inc., the maker of the popular TurboTax tax filing software, by issuing an ...

39 replies 368 retweets 909 likes

### New to Twitter?

Sign up now to get your own pers

Input fields for sign up

By signing up, you agree to the [Te Privacy Policy](#), including [Cookie U](#)



### You might like

 **Hal Singer** @HalSinger

 **Tim Wu**  @superwuster

 **Rohit Chopra**  @chopracfb

Show more

### What's happening

War in Ukraine · LIVE

**Explosions heard after Rus says it will cut back military operations near Kyiv**

**POPSUGAR**  · Yesterday  
**The 2022 Oscars Reunited Iconic Casts**

**euronews**  · Last night  
**Going home to war: Why ar more Ukrainian refugees n turning back from Poland?**

Don't miss what's happening

People on Twitter are the first to know.

Log in

S

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of:**

**Intuit Inc., a corporation.**

**Docket No. 9408**

**[PROPOSED] ORDER ON RESPONDENT’S MOTION FOR DISCOVERY PURSUANT  
TO RULE 3.36**

Upon consideration of Respondent’s Motion for Discovery Pursuant to Rule 3.36:

IT IS HEREBY ORDERED that Respondent’s Motion is GRANTED.

IT IS FURTHER ORDERED that Respondent Intuit Inc. is authorized to issue the subpoenas attached as Exhibits A and B to the Declaration of Derek A. Woodman in support of the Motion.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Suite CC-5610  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I further certify that on October 14, 2022, I caused the foregoing document to be served via email to:

Roberto Anguizola  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Email: ranguizola@ftc.gov  
Tel: (202) 326-3284

Rebecca Plett  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Email: rplett@ftc.gov  
Tel: (202) 326-3664

James Evans  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Email: jevans1@ftc.gov  
Tel: (202) 326-2026

*Counsel Supporting the Complaint*

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Suite CC-5610  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

Dated: October 14, 2022

Respectfully submitted,

*/s/ Derek A. Woodman*

DEREK A. WOODMAN

*Counsel for Intuit Inc.*