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INTUIT INC.

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN FRANCISCO DIVISION**

19 FEDERAL TRADE COMMISSION,

20 Plaintiff,

21 v.

22 INTUIT INC.,

23 Defendant.

Case No. 3:22-cv-01973-CRB

**DEFENDANT INTUIT INC.’S ANSWER
TO PLAINTIFF’S COMPLAINT FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Judge: Hon. Charles R. Breyer

JURISDICTION AND VENUE

6. Paragraph 6 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 6.

7. Paragraph 7 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 7.

8. Paragraph 8 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 8.

9. Paragraph 9 quotes statutory language that speaks for itself and as to which no response is required.

10. Paragraph 10 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 10.

PLAINTIFF

11. Paragraph 11 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 11.

12. Paragraph 12 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 12.

DEFENDANT

13. Intuit admits the allegations in Paragraph 13.

14. Intuit admits the allegations in Paragraph 14.

COMMERCE

15. Paragraph 15 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit admits the allegations in Paragraph 15.

DEFENDANT’S BUSINESS ACTIVITIES

I. TurboTax’s “Freemium” Version: TurboTax Free Edition

16. Intuit admits that since at least 2016 it has offered free online tax filing for customers with simple returns in the hope that, over time, as their financial situations change and their tax situations become more complicated, they will choose to use Intuit’s paid offerings. Intuit otherwise denies the allegations in Paragraph 16.

1 17. Intuit admits the allegations in Paragraph 17.

2 18. Intuit denies the allegations in Paragraph 18.

3 19. Intuit is without knowledge of what constitutes the “freemium version of
4 TurboTax” and on that basis denies the allegations in Paragraph 19. Intuit otherwise denies
5 the allegations in Paragraph 19.

6 20. Intuit admits that the free version of TurboTax has been called Free Edition
7 since 2017. Intuit further admits that in 2016 a free version of TurboTax was called Federal
8 Free Edition. Intuit otherwise denies the allegations in Paragraph 20.

9 21. Intuit is without knowledge of what constitutes the “freemium version of
10 TurboTax” and on that basis denies the allegations in Paragraph 21. Intuit admits that
11 consumers with simple tax returns are eligible to prepare and file their taxes for free using
12 TurboTax Free Edition. Intuit otherwise denies the allegations in Paragraph 21.

13 22. Intuit admits the allegations in Paragraph 22.

14 23. Intuit admits the allegations in Paragraph 23.

15 24. Intuit admits the allegations in Paragraph 24.

16 25. Intuit admits that it defines a simple tax return as including a return that can
17 be filed on Form 1040; Intuit further admits that its definition of simple tax returns includes
18 certain attached schedules. Intuit otherwise denies the allegations in Paragraph 25.

19 26. Intuit is without knowledge of what constitutes the “freemium version of
20 TurboTax” and on that basis denies the allegations in the first sentence of Paragraph 26.
21 Intuit otherwise denies the allegations in Paragraph 26.

22 27. Intuit is without knowledge of what constitutes the “freemium version of
23 TurboTax” and on that basis denies the allegations in Paragraph 27. Intuit otherwise denies
24 the allegations in Paragraph 27.

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1 **II. Advertising Practices: Intuit’s Ads Misrepresent that Consumers Can File**
2 **Their Taxes for Free Using TurboTax**

3 28. Intuit admits that since 2016 it has promoted TurboTax through advertising.
4 Intuit further admits that since 2016 it has promoted TurboTax Free Edition. Intuit
5 otherwise denies the allegations in Paragraph 28.

6 29. Intuit admits that the approximation set forth in Paragraph 29 is generally
7 correct. Intuit otherwise denies the allegations in Paragraph 29.

8 30. Intuit is without knowledge of what constitutes the “freemium version of
9 TurboTax” and on that basis denies the allegations in Paragraph 30. Intuit otherwise denies
10 the allegations in Paragraph 30.

11 31. Paragraph 31 purports to describe Intuit’s advertisements, the contents of
12 which speak for themselves and as to which no response is required. Intuit otherwise denies
13 the allegations in Paragraph 31.

14 32. Intuit denies the allegations in Paragraph 32.

15 33. Paragraph 33 purports to describe Intuit’s advertisements, the contents of
16 which speak for themselves and as to which no response is required. Intuit otherwise denies
17 the allegations in Paragraph 33.

18 34. Paragraph 34 purports to describe Intuit’s advertisements, the contents of
19 which speak for themselves and as to which no response is required. Intuit otherwise denies
20 the allegations in Paragraph 34.

21 35. Intuit admits that its ads disclose that Free Edition is available to consumers
22 with simple tax returns or “simple U.S. returns only.” Intuit otherwise denies the
23 allegations in Paragraph 35.

24 36. Paragraph 36 does not provide sufficient information to identify the ad
25 being discussed, which would speak for itself, and thus Intuit is without knowledge of the
26 facts alleged in Paragraph 36 and on that basis denies the allegations in Paragraph 36.

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1 37. Paragraph 37 does not provide sufficient information to identify the ad
2 being discussed, which would speak for itself, and thus Intuit is without knowledge of the
3 facts alleged in Paragraph 37 and on that basis denies the allegations in Paragraph 37.

4 38. Intuit denies the allegations in Paragraph 38.

5 39. Intuit admits that it has never offered a product called “TurboTax Free.”
6 Paragraph 39 does not provide sufficient information to identify the ad being discussed,
7 which would speak for itself, and thus Intuit is without knowledge of the remainder of the
8 facts alleged in Paragraph 39 and on that basis denies the allegations in Paragraph 39.

9 40. Paragraph 40 does not provide sufficient information to identify the ad
10 being discussed, which would speak for itself, and thus Intuit is without knowledge of the
11 facts alleged in Paragraph 40 and on that basis denies the allegations in Paragraph 40.

12 41. Paragraph 41 does not provide sufficient information to identify the ad
13 being discussed, which would speak for itself, and thus Intuit is without knowledge of the
14 facts alleged in Paragraph 41 and on that basis denies the allegations in Paragraph 41.

15 42. The first sentence of Paragraph 42 sets forth a legal conclusion as to which
16 no response is required. To the extent a response is required, Intuit denies the allegation
17 in the first sentence of Paragraph 42. Intuit admits that at least one company has offered a
18 free online tax preparation and filing service to all customers for five years. Intuit is
19 without knowledge of the facts alleged in the third sentence of Paragraph 42 and on that
20 basis denies the allegations in Paragraph 42.

21 **III. Website Practices**

22 **A. Intuit’s TurboTax Home Page Misleads Consumers into Believe They**
23 **Can File Their Taxes for Free Using TurboTax**

24 43. Intuit is without knowledge of what constitutes the “freemium version of
25 TurboTax” and on that basis denies the allegations in Paragraph 43. Intuit otherwise denies
26 the allegations in Paragraph 43.

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1 44. Paragraph 44 purports to describe Intuit’s website, the content of which
2 speaks for itself and as to which no response is required. Intuit otherwise denies the
3 allegations in Paragraph 44.

4 45. The first sentence of Paragraph 45 sets forth a legal conclusion as to which
5 no response is required. To the extent a response is required, Intuit denies the allegations
6 in the first sentence of Paragraph 45. Intuit otherwise denies the allegations in
7 Paragraph 45.

8 46. Intuit is without knowledge of what constitutes the “freemium version of
9 TurboTax” and on that basis denies the allegations in paragraph 46. Intuit otherwise denies
10 the allegations in Paragraph 46.

11 47. The first sentence of Paragraph 47 purports to describe Intuit’s website, the
12 content of which speaks for itself and as to which no response is required. Intuit otherwise
13 denies the allegations in Paragraph 47. Intuit is without knowledge of what constitutes the
14 “freemium version of TurboTax” and on that basis too denies the allegations in
15 Paragraph 47.

16 48. Intuit is without knowledge of what constitutes the “freemium version of
17 TurboTax” and on that basis denies the allegations in Paragraph 48. Intuit otherwise denies
18 the allegations in Paragraph 48.

19 49. Paragraph 49 purports to describe Intuit’s website, the content of which
20 speaks for itself and as to which no response is required. Intuit otherwise denies the
21 allegations in Paragraph 49.

22 50. Paragraph 50 purports to describe Intuit’s website, the content of which
23 speaks for itself and as to which no response is required. Intuit otherwise denies the
24 allegations in Paragraph 50.

25 51. Intuit denies the allegations in the first sentence of Paragraph 51. The
26 second sentence of Paragraph 51 sets forth a legal conclusion as to which no response is
27 required. To the extent a response is required, Intuit denies the allegations in the second
28 sentence of Paragraph 51.

1 **B. The TurboTax Interview Process Uses Required Upgrades Called**
2 **“Hard Stops” to Induce Consumers to Upgrade from Free to Paid**
3 **Versions of TurboTax**

4 52. Intuit is without knowledge of what constitutes the “freemium version of
5 TurboTax,” and on that basis denies the allegations in the first sentence of Paragraph 45.
6 Intuit admits that it informs consumers of required upgrades. Intuit otherwise denies the
7 allegations in Paragraph 52.

8 53. Intuit is without knowledge of what constitutes the “freemium version of
9 TurboTax,” and on that basis denies the allegations in Paragraph 53.

10 54. Intuit denies the allegations in the first sentence of Paragraph 54. Intuit is
11 without knowledge of what constitutes the “freemium version of TurboTax,” and on that
12 basis denies the allegations in the second sentence of Paragraph 54. The third and fourth
13 sentences of Paragraph 54 purport to describe certain aspects of Intuit’s website, the
14 content of which speaks for itself and as to which no response is required. Intuit otherwise
15 denies the allegations in the third and fourth sentence of Paragraph 54. Intuit admits the
16 allegations in the fifth sentence of Paragraph 54.

17 55. Paragraph 55 purports to describe a webpage, the content of which speaks
18 for itself and as to which no response is required. Intuit otherwise denies the allegations in
19 Paragraph 55.

20 56. Paragraph 56 purports to describe a webpage, the content of which speaks
21 for itself and as to which no response is required. Intuit otherwise denies the allegations in
22 Paragraph 56. Intuit is also without knowledge of what constitutes the “freemium version
23 of TurboTax” and on that basis too denies the allegations in Paragraph 56.

24 57. Paragraph 57 purports to describe a webpage, the content of which speaks
25 for itself and as to which no response is required. Intuit otherwise denies the allegations in
26 Paragraph 57.

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1 58. Paragraph 58 purports to describe a webpage, the content of which speaks
2 for itself and as to which no response is required. Intuit otherwise denies the allegations in
3 Paragraph 58.

4 59. Paragraph 59 purports to describe a webpage, the content of which speaks
5 for itself and as to which no response is required. Intuit otherwise denies the allegations in
6 Paragraph 59.

7 60. Paragraph 60 purports to describe a webpage, the content of which speaks
8 for itself and as to which no response is required. Intuit otherwise denies the allegations in
9 Paragraph 60.

10 61. Paragraph 61 purports to describe a webpage, the content of which speaks
11 for itself and as to which no response is required. Intuit otherwise denies the allegations in
12 Paragraph 61. Intuit is without knowledge of what constitutes the “freemium version of
13 TurboTax” and on that basis too denies the allegations in Paragraph 61.

14 62. Paragraph 62 purports to describe a webpage, the content of which speaks
15 for itself and as to which no response is required. Intuit otherwise denies the allegations in
16 Paragraph 62. Intuit is without knowledge of what constitutes the “freemium version of
17 TurboTax” and on that basis too denies the allegations in Paragraph 62.

18 63. Intuit is without knowledge of what constitutes the “freemium version of
19 TurboTax” and on that basis denies the allegations in Paragraph 63. Intuit otherwise denies
20 the allegations in Paragraph 63.

21 64. Paragraph 64 sets forth a legal conclusion as to which no response is
22 required. To the extent a response is required, Intuit denies the allegations in Paragraph 64.

23 65. Paragraph 65 purports to describe a webpage, the content of which speaks
24 for itself and as to which no response is required. Intuit otherwise denies the allegations in
25 Paragraph 65.

26 **IV. Intuit’s Truly Free Version of TurboTax: The Free File Version**

27 66. Intuit denies the allegations in Paragraph 66.

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1 67. Allegations regarding the IRS Free File program and the software that Intuit
2 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
3 no response to Paragraph 67 is required. To the extent a response is required, Intuit denies
4 the allegations in Paragraph 67.

5 68. Allegations regarding the IRS Free File program and the software that Intuit
6 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
7 no response to Paragraph 68 is required. To the extent a response is required, Intuit admits
8 that the numbers set forth in Paragraph 68 are generally correct. Intuit otherwise denies
9 the allegations in Paragraph 68.

10 69. Allegations regarding the IRS Free File program and the software that Intuit
11 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
12 no response to Paragraph 69 is required. To the extent a response is required, Intuit admits
13 that the software it previously donated to the IRS Free File program included all IRS tax
14 forms, so long as consumers fell within the prescribed adjusted gross income threshold.
15 Intuit otherwise denies the allegations in Paragraph 69.

16 **A. The IRS Free File Program**

17 70. Allegations regarding the IRS Free File program and the software that Intuit
18 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
19 no response to Paragraph 70 is required. To the extent a response is required, Intuit denies
20 the allegations in Paragraph 70.

21 71. Allegations regarding the IRS Free File program and the software that Intuit
22 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
23 no response to Paragraph 71 is required. To the extent a response is required, Intuit is
24 without knowledge of the allegations in Paragraph 71 and on that basis the allegations are
25 denied.

26 72. Allegations regarding the IRS Free File program and the software that Intuit
27 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
28 no response to Paragraph 72 is required. To the extent a response is required, Intuit admits

1 the first three sentences of allegations in Paragraph 72. Intuit otherwise denies the
2 allegations in Paragraph 72.

3 **B. The Free File Version of TurboTax**

4 73. Allegations regarding the IRS Free File program and the software that Intuit
5 previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus
6 no response to Paragraph 73 is required. To the extent a response is required, Intuit denies
7 the allegations in Paragraph 73.

8 74. Intuit is without knowledge of what constitutes the "freemium version of
9 TurboTax" and on that basis denies the allegations in Paragraph 74. Intuit admits that the
10 IRS Free File program is a competitor of TurboTax commercial software and that Intuit
11 employees acknowledged this fact. Intuit otherwise denies the allegations in Paragraph 74.

12 75. Allegations regarding the IRS Free File program and the software that Intuit
13 previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus
14 no response to Paragraph 75 is required. To the extent a response is required, Intuit admits
15 the allegations in Paragraph 75.

16 76. Allegations regarding the IRS Free File program and the software that Intuit
17 previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus
18 no response to Paragraph 76 is required. To the extent a response is required, Intuit admits
19 the allegations in Paragraph 76.

20 77. Allegations regarding the IRS Free File program and the software that Intuit
21 previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus
22 no response to Paragraph 77 is required. To the extent a response is required, Intuit admits
23 the allegations in Paragraph 77.

24 78. Allegations regarding the IRS Free File program and the software that Intuit
25 previously donated to the IRS Free File program are irrelevant to the FTC's claim, and thus
26 no response to Paragraph 78 is required. To the extent a response is required, Intuit is
27 without knowledge of what constitutes the "freemium version of TurboTax" and on that
28

1 basis denies the allegations in Paragraph 78. Intuit otherwise denies the allegations in
2 Paragraph 78.

3 79. Allegations regarding the IRS Free File program and the software that Intuit
4 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
5 no response to Paragraph 79 is required. To the extent a response is required, Intuit denies
6 the allegations in Paragraph 79.

7 80. Allegations regarding the IRS Free File program and the software that Intuit
8 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
9 no response to Paragraph 80 is required. To the extent a response is required, Intuit admits
10 the allegations in the first sentence of Paragraph 80. Intuit is without knowledge of what
11 constitutes the “internet landing page for TurboTax Freedom Edition” and on that basis
12 denies the allegations in the second sentence of Paragraph 80.

13 81. Allegations regarding the IRS Free File program and the software that Intuit
14 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
15 no response to Paragraph 81 is required. To the extent a response is required, Intuit admits
16 the allegations in the first sentence of Paragraph 81. Intuit is without knowledge of what
17 constitutes the “internet landing page for TurboTax Freedom Edition” and on that basis
18 denies the allegations in the second sentence of Paragraph 81.

19 82. Allegations regarding the IRS Free File program and the software that Intuit
20 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
21 no response to Paragraph 82 is required. To the extent a response is required, Intuit denies
22 the allegations in Paragraph 82.

23 83. Allegations regarding the IRS Free File program and the software that Intuit
24 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
25 no response to Paragraph 83 is required. To the extent a response is required, Intuit denies
26 the allegations in Paragraph 83.

27 84. Allegations regarding the IRS Free File program and the software that Intuit
28 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus

1 no response to Paragraph 84 is required. To the extent a response is required, Intuit denies
2 the allegations in the first sentence of Paragraph 84. Intuit admits the allegations in the
3 second sentence of Paragraph 84. Intuit is without knowledge of what constitutes the
4 “internet landing page for the IRS Free File Program Delivered by TurboTax,” and on that
5 basis denies the allegations in the third sentence of Paragraph 84.

6 **C. The Tension Between the Free File and “Freemium” Versions of**
7 **TurboTax**

8 85. Allegations regarding the IRS Free File program and the software that Intuit
9 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
10 no response to Paragraph 85 is required. To the extent a response is required, Intuit denies
11 the allegations in Paragraph 85.

12 86. Allegations regarding the IRS Free File program and the software that Intuit
13 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
14 no response to Paragraph 86 is required. To the extent that a response is required,
15 Paragraph 86 purports to describe testimony, the content of which speaks for itself. Intuit
16 otherwise denies the allegations in Paragraph 86.

17 87. Allegations regarding the IRS Free File program and the software that Intuit
18 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
19 no response to Paragraph 87 is required. To the extent a response is required, Intuit denies
20 the allegations in the first sentence of Paragraph 87. The second and third sentences of
21 Paragraph 87 purport to describe publicly filed documents, the contents of which speak for
22 themselves and as to which no response is required. Intuit otherwise denies the allegations
23 in Paragraph 87.

24 88. Allegations regarding the IRS Free File program and the software that Intuit
25 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
26 no response to Paragraph 88 is required. Paragraph 88 purports to describe a publicly filed
27 document, the content of which speaks for itself and as to which no response is required.
28 Intuit otherwise denies the allegations in Paragraph 88.

1 89. Allegations regarding the IRS Free File program and the software that Intuit
2 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
3 no response to Paragraph 89 is required. To the extent a response is required, Intuit denies
4 the allegations in Paragraph 89.

5 90. Allegations regarding the IRS Free File program and the software that Intuit
6 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
7 no response to Paragraph 90 is required. To the extent a response is required, Intuit denies
8 the allegations in Paragraph 90.

9 91. Allegations regarding the IRS Free File program and the software that Intuit
10 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
11 no response to Paragraph 91 is required. Paragraph 91 purports to describe a document,
12 the content of which speaks for itself and as to which no response is required. Intuit
13 otherwise denies the allegations in Paragraph 91.

14 **D. Consumer Confusion About the Names of the Free File and**
15 **“Freemium” Versions of TurboTax and Intuit’s Decision to Change the**
16 **Name of the Free File Version of TurboTax**

17 92. Allegations regarding the IRS Free File program and the software that Intuit
18 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
19 no response to Paragraph 92 is required. To the extent a response is required, Intuit is
20 without knowledge of what constitutes the “freemium version of TurboTax” and on that
21 basis denies the allegations in Paragraph 92.

22 93. Allegations regarding the IRS Free File program and the software that Intuit
23 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
24 no response to Paragraph 93 is required. To the extent a response is required, Intuit denies
25 the allegations in Paragraph 93.

26 94. Intuit is without knowledge of what constitutes the “freemium version of
27 TurboTax” and on that basis denies the allegations in Paragraph 94.

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1 95. Intuit is without knowledge of what constitutes the “freemium version of
2 TurboTax” and on that basis denies the allegations in Paragraph 95.

3 96. Allegations regarding the IRS Free File program and the software that Intuit
4 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
5 no response to Paragraph 96 is required. To the extent a response is required, Intuit admits
6 that from TY 2015 through TY 2017, the name of the software that Intuit donated to the
7 IRS Free File Program was Freedom Edition. Intuit otherwise denies the allegations in
8 Paragraph 96.

9 97. Paragraph 97 purports to describe a document, the content of which speaks
10 for itself and as to which no response is required. Intuit otherwise denies the allegations in
11 Paragraph 97.

12 98. Allegations regarding the IRS Free File program and the software that Intuit
13 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
14 no response to Paragraph 98 is required. To the extent a response is required, Intuit denies
15 the allegations in Paragraph 98.

16 99. Paragraph 99 purports to describe online stories about Intuit, the contents of
17 which speak for themselves and as to which no response is required. Intuit otherwise denies
18 the allegations in Paragraph 99.

19 100. Allegations regarding the IRS Free File program and the software Intuit
20 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
21 no response to Paragraph 100 is required. To the extent a response is required, Intuit denies
22 the allegations in Paragraph 100.

23 101. Intuit is without knowledge as to what constitutes the “freemium version of
24 TurboTax” and on that basis denies the allegations in Paragraph 101. Paragraph 101 also
25 purports to describe a document, the content of which speaks for itself and as to which no
26 response is required. Intuit otherwise denies the allegations in Paragraph 101.

27 102. Allegations regarding the IRS Free File program and the software that Intuit
28 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus

1 no response to Paragraph 102 is required. To the extent a response is required, Intuit admits
2 that in TY 2018, the name of the software it donated to the IRS Free File Program changed
3 to TurboTax Free File Program. Intuit otherwise denies the allegations in Paragraph 102.

4 103. Allegations regarding the IRS Free File program and the software that Intuit
5 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
6 no response to Paragraph 103 is required. To the extent a response is required, Intuit admits
7 that in 2019, the name of the software it previously donated to the IRS Free File program
8 was changed to IRS Free File Program Delivered by TurboTax, as required by the IRS.
9 Intuit otherwise denies the allegations in Paragraph 103.

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

13 104. Intuit is without knowledge of what constitutes the “freemium version of
14 TurboTax” and on that basis denies the allegations in Paragraph 104. Intuit otherwise
15 denies the allegations in Paragraph 104.

16 105. Allegations regarding the IRS Free File program and the software that Intuit
17 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
18 no response to Paragraph 105 is required. To the extent a response is required, Intuit is
19 without knowledge of what constitutes the “freemium version of TurboTax” and on that
20 basis denies the allegations in Paragraph 105. Intuit otherwise denies the allegations in
21 Paragraph 105.

22 106. Paragraph 106 purports to describe a document, the content of which speaks
23 for itself and as to which no response is required. Intuit is otherwise without knowledge
24 of what constitutes the “freemium version of TurboTax” and on that basis denies the
25 allegations in Paragraph 106.

26 107. The first sentence of Paragraph 107 purports to describe a document, the
27 content of which speaks for itself and as to which no response is required. Intuit otherwise
28 denies the allegations in Paragraph 107.

1 108. Paragraph 108 purports to describe a document, the content of which speaks
2 for itself and as to which no response is required. Intuit otherwise denies the allegations in
3 Paragraph 108.

4 109. Allegations regarding the IRS Free File program and the software that Intuit
5 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and on
6 thus no response to Paragraph 109 is required. To the extent a response is required, Intuit
7 is without knowledge of what constitutes the “freemium version of TurboTax” and on that
8 basis denies the allegations in the first sentence of Paragraph 109. Intuit otherwise denies
9 the allegations in Paragraph 109.

10 110. Allegations regarding the IRS Free File program and the software that Intuit
11 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
12 no response to Paragraph 110 is required. To the extent a response is required, Intuit admits
13 the number of consumers alleged in the first sentence of Paragraph 110. Intuit otherwise
14 denies the allegations in Paragraph 110.

15 **F. Intuit Used Paid Search Terms to Direct Consumers Searching for the**
16 **IRS Free File Program to the “Freemium” and Paid Versions of**
17 **TurboTax**

18 111. Intuit admits the allegations in the first sentence of Paragraph 111. Intuit
19 otherwise denies the allegations in Paragraph 111.

20 112. Allegations regarding the IRS Free File program and the software that Intuit
21 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
22 no response to Paragraph 112 is required. To the extent a response is required, Intuit is
23 without knowledge of the allegations in Paragraph 112 because it does not know what it
24 means for “search terms” to be “relevant to the IRS Free File Program,” and on that basis
25 denies the allegations in Paragraph 112. Intuit otherwise denies the allegations in
26 Paragraph 112.

27 113. Intuit is without knowledge of the allegations in Paragraph 113 because it
28 does not know what it means for “search terms” to be “relevant to the IRS Free File

1 Program,” nor does it know whether consumers were “searching for information about, or
2 links to reach the website for, the IRS Free File Program,” and on that basis denies the
3 allegations in Paragraph 113.

4 114. Allegations regarding the IRS Free File program and the software that Intuit
5 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
6 no response to Paragraph 114 is required. To the extent a response is required, Intuit is
7 without knowledge of what constitutes the “freemium version of TurboTax” and on that
8 basis denies the allegations in Paragraph 114. Intuit otherwise denies the allegations in
9 Paragraph 114.

10 115. Allegations regarding the IRS Free File program and the software that Intuit
11 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
12 no response to Paragraph 115 is required. To the extent a response is required, Intuit is
13 without knowledge of what constitutes the “freemium version of TurboTax” and on that
14 basis denies the allegations in Paragraph 115. Intuit otherwise denies the allegations in
15 Paragraph 115.

16 116. Intuit denies the allegations in Paragraph 116.

17 **G. Intuit’s TurboTax Website Does Not Mention the Free File Version of**
18 **TurboTax and Funnels Customers to the Paid and “Freemium”**
19 **Versions of TurboTax**

20 117. Intuit admits that the TurboTax website includes a “Products and Pricing
21 Screen”, which speaks for itself and as to which no response is required. To the extent a
22 response is required, Intuit denies the allegations in Paragraph 117.

23 118. Paragraph 118 purports to describe a webpage, the contents of which speak
24 for itself and as to which no response is required. To the extent a response is required,
25 Intuit denies the allegations in Paragraph 118.

26 119. Paragraph 119 purports to describe a webpage, the content of which speaks
27 for itself and as to which no response is required. Intuit otherwise denies the allegations in
28

1 Paragraph 119. Intuit is without knowledge of what constitutes the “freemium version of
2 TurboTax” and on that basis too denies the allegations in Paragraph 119.

3 120. Intuit is without knowledge of what “These screens” refers to, and on that
4 basis denies the allegations in Paragraph 120.

5 121. Allegations regarding the IRS Free File program and the software that Intuit
6 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
7 no response to Paragraph 121 is required. Paragraph 121 purports to describe a webpage,
8 the contents of which speak for itself and as to which no response is required. To the extent
9 a response is required, Intuit denies the allegations in Paragraph 121.

10 **H. Summary**

11 122. Allegations regarding the IRS Free File program and the software that Intuit
12 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
13 no response to Paragraph 122 is required. To the extent a response is required, Intuit admits
14 that the product it formerly donated to the IRS Free File program covered all tax situations,
15 forms, and deductions. Intuit otherwise denies the allegations in Paragraph 122.

16 123. Intuit is without knowledge of what constitutes the “freemium version of
17 TurboTax,” and on that basis denies the allegations in Paragraph 123.

18 124. Allegations regarding the IRS Free File program and the software that Intuit
19 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
20 no response to Paragraph 124 is required. To the extent a response is required, Intuit denies
21 the allegations in the first sentence of Paragraph 124. Intuit admits the revenue number
22 alleged in Paragraph 124. Intuit otherwise denies the allegations in Paragraph 124.

23 125. Allegations regarding the IRS Free File program and the software that Intuit
24 previously donated to the IRS Free File program are irrelevant to the FTC’s claim, and thus
25 no response to Paragraph 125 is required. To the extent a response is required, Intuit admits
26 the number of consumers and revenue numbers alleged in the first and second sentence of
27 Paragraph 125. Intuit is without knowledge of the allegations in the last sentence of
28 Paragraph 125. Intuit otherwise denies the allegations in Paragraph 125.

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126. Paragraph 126 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 126.

VIOLATIONS OF THE FTC ACT

127. Paragraph 127 quotes statutory language which speaks for itself and as to which no response is required.

128. Paragraph 128 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 128.

COUNT I

Deceptive Advertisements

129. Intuit denies the allegations in Paragraph 129.

130. Intuit denies the allegations in Paragraph 130.

131. Paragraph 131 sets forth a legal conclusion as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 131.

CONSUMER INJURY

132. Paragraph 132 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 132.

**LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF THE EQUITIES, AND NEED FOR RELIEF**

133. Paragraph 133 sets forth legal conclusions as to which no response is required. To the extent a response is required, Intuit denies the allegations in Paragraph 133.

Fifth Defense

1
2 The FTC is unlikely to prevail on the merits in the administrative proceedings
3 because they violate the United States Constitution in a number of ways, including: (1)
4 Intuit’s Fifth Amendment Due Process right to adjudication before a neutral arbiter because
5 of prejudgment on the merits; (2) because the structure of the Commission as an
6 independent agency that wields significant executive power, and the associated constraints
7 on the removal of the Commissioners and other FTC officials, violates the doctrine of
8 separation of powers; (3) the structure of the FTC administrative proceedings, in which the
9 Commission both initiates and finally adjudicates the Complaint against Intuit, violates
10 Intuit’s Fifth Amendment Due Process right to adjudication before a neutral arbiter; (4) the
11 Commission’s procedures violate Intuit’s right to procedural due process under the Due
12 Process Clause of the Fifth Amendment; and (5) the Commission’s procedures arbitrarily
13 subject Intuit to administrative proceedings rather than to proceedings before an Article III
14 judge in violation of Intuit’s right to Equal Protection under the Fifth Amendment.
15
16

OTHER DEFENSES

17
18 Intuit reserves the right to assert other defenses as discovery and the proceedings
19 continue.

20 * * *

21 Wherefore, Intuit respectfully requests that the Court (i) dismiss the Complaint in
22 its entirety with prejudice, (ii) award its costs of suit, including attorneys’ fees, and (iii)
23 award such other and further relief as the Court may deem proper.
24

25 Dated: April 20, 2022

Respectfully submitted,

26 By: /s/ David Z. Gringer
27 David Z. Gringer (*pro hac vice*)
28 WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center

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