

FILE BY FAX

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PELANATITA OLOSONI, and DEREK SNARR, on behalf of themselves, the general public, and those similarly situated,

Plaintiffs,

v.

H&R BLOCK, INC., HRB TAX GROUP, INC., HRB DIGITAL LLC, and DOES 1 THROUGH 50,

Defendants.

Case No. **CGC-19-576093**

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

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1. Plaintiffs Pelanatita Olosoni and Derek Snarr, on behalf of themselves, the general public, and those similarly situated, (collectively “Plaintiffs”), by and through their attorneys, bring this class action against Defendants H&R Block, Inc., HRB Tax Group, Inc., HRB Digital LLC, and Does 1-50, inclusive (collectively “Defendants” or “H&R Block”), for violations of California’s Consumer Legal Remedies Act (“CLRA”), California Civil Code §§ 1750 *et seq.*; False Advertising Law (“FAL”), Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and for breach of contract and unjust enrichment. Plaintiffs allege the following upon information and belief, except for those allegations that specifically pertain to Plaintiffs, which are based on Plaintiffs’ personal knowledge.

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2. Defendants market and sell the H&R Block brand of tax preparation software and services to consumers and businesses.

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3. In 2002, the Internal Revenue Service (“IRS”) launched a program pursuant to which the majority of taxpayers in the United States would be able, and would be encouraged, to e-file their federal tax returns for free. To accomplish this goal, the IRS partnered with private companies to handle the e-filing services and processes. Under the program, all taxpayers with adjusted gross income below the 70th percentile (currently, below \$66,000 per year) are eligible for free online filing.

Through their participation in the IRS “Free File” program, Defendants are required to make available free electronic tax filing services to certain eligible taxpayers and to refrain from marketing their commercial services in competition with the Free File program. While Defendants purport to offer such a free service, available at <https://www.hrblock.com/ffa/> (referred to herein as “Defendants’ True Free File Service” or “H&R Block Free File”), Defendants are affirmatively acting to hide that program from taxpayers and to divert taxpayers seeking free e-filing services into Defendants’ paid programs. These actions violate both California law and Defendants’ agreement with the IRS.

1 5. Defendants aggressively advertise, and direct consumers to, a competing service
2 that Defendants represent as “free,” “free tax filing,” and “H&R Block’s free online tax filing,”
3 available at <https://www.hrblock.com/online-tax-filing/free-online-tax-filing/> (Defendants’ “Fake
4 ‘Free’ Offer”), which is *not* the same as Defendants’ True Free File Service and which is
5 ultimately *not* free for most taxpayers. Defendants’ Fake “Free” Offer is a lure Defendants use to
6 ensnare unsuspecting taxpayers. At the same time, Defendants take steps to hide the existence of
7 Defendants’ True Free File Service, including intentionally hiding it from search engines and
8 depressing its search rankings. This is essentially a bait-and-switch scheme: Defendants use
9 deceptive, misleading, and unfair marketing and tactics to divert taxpayers from the true IRS Free
10 File program into their Fake “Free” Offer (or to pages promoting it), and then Defendants tell
11 taxpayers who are eligible for free filing under the IRS Free File program that they have to pay
12 for Defendants’ tax preparation services (“Defendants’ Bait-and-Switch Program”).

13 6. The majority of taxpayers are eligible to file their tax returns for free and should be
14 directed to one of the IRS Free File offers. By contrast, only a small portion of taxpayers satisfy
15 the conditions for filing a free return within the Fake “Free” part of Defendants’ Bait-and-Switch
16 Program. Nonetheless, Defendants heavily promote their Bait-and-Switch Program, manipulate
17 search engine results to divert taxpayers seeking free services (such as Defendants’ True Free File
18 Service) into Defendants’ Bait-and-Switch Program, and then prompt many taxpayers to pay
19 Defendants for services that those taxpayers do not need. Once Defendants lure taxpayers into
20 Defendants’ Bait-and-Switch program, Defendants falsely and misleadingly tell most of them that
21 they must pay to file their tax returns, even though the taxpayers are actually eligible to file their
22 returns for free through Defendants’ True Free File Service or through another IRS Free File
23 program available from another provider. Defendants’ deceptive conduct of creating the Bait-and-
24 Switch program misleads reasonable taxpayers to believe that they are ineligible for the IRS Free
25 File program, when in fact they are eligible.

26 7. For those few taxpayers who actually make it to the landing page for Defendants’
27 True Free File Service, those over the age of 51 will find that they are generally ineligible for
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1 Defendants' True Free File Service, even though they are eligible for free filing under multiple
2 other free services within the IRS Free File program. But Defendants do not inform such
3 taxpayers that there are other free filing offers or that the IRS Free File program is much broader
4 than Defendants' True Free File Service. Instead, they mislead reasonable taxpayers to believe
5 that they are ineligible for the IRS Free File program, when in fact they are eligible, and that they
6 must pay to file with H&R Block, when in fact there are other free options that are readily
7 available to such taxpayers.

8 8. In pursuing this scheme, Defendants disregard (and intentionally violate) their
9 agreement with the IRS, which requires Defendants to direct taxpayers to other free e-filing
10 services when they do not qualify for Defendants' True Free File Service, and which requires
11 Defendants to refrain from marketing their paid services in such direct competition with and to
12 the disadvantage of the IRS Free File program. Defendants' marketing campaign is not only
13 deceptive but, at a minimum, it unfairly violates the spirit of Defendants' contract with the IRS, in
14 which Defendants agreed to ensure that taxpayers, especially lower income taxpayers, would
15 have unfettered access to free e-filing services.

16 9. Throughout the relevant period, Defendants have obtained substantial profits from
17 their unlawful, deceptive and unfair practices.

18 **PARTIES**

19 10. Plaintiff Pelanatita Olosoni is, and at all times alleged in this Complaint was, an
20 individual and resident of Hayward, California.

21 11. Plaintiff Derek Snarr is, and at all times alleged in this Complaint was, an
22 individual and resident of San Francisco, California.

23 12. Defendant H&R Block, Inc. is a company existing under the laws of the State of
24 Missouri, having its principal place of business at One H&R Block Way, Kansas City, Missouri
25 64105.

1 13. Defendant HRB Tax Group, Inc. is a company existing under the laws of the State
2 of Missouri, having its principal place of business at One H&R Block Way, Kansas City,
3 Missouri 64105.

4 14. Defendant HRB Digital LLC is a company existing under the laws of the State of
5 Delaware, having its principal place of business at One H&R Block Way, Kansas City, Missouri
6 64105.

7 15. The Defendants sued as Does 1 through 50 inclusive are individuals who
8 participated in the tortious conduct alleged herein but whose true names and capacities are
9 unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs will
10 seek leave of Court to amend this Class Action Complaint when said true names and capacities
11 have been ascertained.

12 16. The Parties identified in paragraphs 12-15 of this Class Action Complaint are
13 collectively referred to hereafter as "Defendants."

14 17. With respect to the allegations herein, each of the Defendants was each other's
15 agent and, in doing the things herein alleged, was acting within the scope and course of its
16 authority as such agent.

17 18. With respect to the allegations herein, each of the Defendants was a member of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 19. With respect to the allegations herein, the acts and omissions of each of the
21 Defendants concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged.

23 20. With respect to the allegations herein, each of the Defendants ratified each and
24 every act or omission complained of herein. At all times herein mentioned, each of the
25 Defendants aided and abetted the acts and omissions of each and all of the other Defendants in
26 proximately causing the damages, and other injuries, as herein alleged.

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JURISDICTION AND VENUE

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2 21. Plaintiffs bring this action pursuant, *inter alia*, to the California Business and
3 Professions Code, section 17200, *et seq.* Plaintiffs and Defendants are “persons” within the
4 meaning of the California Business and Professions Code, section 17201.

5 22. The injuries, damages and/or harm upon which this action is based, occurred or
6 arose out of, and will continue to occur and arise out of, activities engaged in by Defendants
7 within and affecting the State of California.

8 23. Defendants aggressively market their tax preparation services in California to
9 citizens of California, have engaged in numerous transactions with California taxpayers, have
10 harmed many California taxpayers, and will continue to harm many California taxpayers, as
11 alleged herein.

12 24. Defendants have engaged, and continues to engage, in substantial and continuous
13 business practices in the State of California, including in the County of San Francisco.

14 25. Defendants have an Online Services Agreement associated with their online tax
15 preparation services, which includes an arbitration provision that states, in part, as follows:

16 **11.3 Waiver of right to bring class action and representative claims.** All arbitrations
17 will proceed on an individual basis. The arbitrator is empowered to resolve the dispute
18 with the same remedies available in court, including compensatory, statutory, and punitive
19 damages; attorneys' fees; and declaratory, injunctive, and equitable relief. However, any
20 relief must be individualized to you and will not affect any other client. The arbitrator is
21 also empowered to resolve the dispute with the same defenses available in court, including
22 but not limited to statutes of limitation. **You and the H&R Block Parties also agree that**
23 **each may bring claims against the other in arbitration only in your or their**
24 **respective individual capacities and in so doing you and the H&R Block Parties**
25 **hereby waive the right to a trial by jury, to assert or participate in a class action**
26 **lawsuit or class action arbitration, to assert or participate in a private attorney**
27 **general lawsuit or private attorney general arbitration, and to assert or participate**
28 **in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind.**
If a court decides that applicable law precludes enforcement of any of this paragraph’s
limitations as to a particular claim for relief, then that claim for relief (and only that claim
for relief) must remain in court and be severed from any arbitration. The H&R Block
Parties do not consent to, and the arbitrator will not have authority to conduct, any class
action arbitration, private attorney general arbitration, or arbitration involving joint or
consolidated claims, under any circumstance.

1 26. Under *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), Defendants' arbitration
2 provision purports to deprive California taxpayers of their right to seek a public injunction under
3 the CLRA, FAL, and UCL in any forum and thus is not enforceable. This action is not subject to
4 arbitration because it seeks public injunctive and declaratory relief, under *McGill*, to prohibit
5 Defendants from continuing their deceptive and unfair practices and to protect the general public
6 from the threat of future injury. Moreover, Defendants' arbitration provision explicitly states that
7 "If a court decides that applicable law precludes enforcement of any of this paragraph's
8 limitations as to a particular claim for relief, then that claim for relief (and only that claim for
9 relief) must remain in court and be severed from any arbitration." Under the express terms of this
10 arbitration provision, the claims asserted in this lawsuit "must remain in court" and are not
11 subject to the limitations of Defendants' purported arbitration agreement.

12 27. In addition, Plaintiff Snarr has opted out of the arbitration within 60 days, as
13 provided by Defendants' Online Services Agreement:

14 **Right to Opt Out of This Arbitration Agreement: You are not required to accept**
15 **arbitration even though you must accept this Agreement to receive service today.**
16 **You may opt out of this Arbitration Agreement within the first 60 days after you**
17 **accept this Agreement by fully filling out the form found at**
18 **www.hrblock.com/goto/optout, or by sending a signed letter to Arbitration Opt-Out,**
19 **P.O. Box 32818, Kansas City, MO 64171. The letter should include your printed**
20 **name, the first five digits of your Social Security Number, state, zip code, and the**
21 **words "Reject Arbitration." If you opt out of this Arbitration Agreement, any prior**
22 **arbitration agreement will remain in force and effect.**

23 28. Plaintiff Snarr filed his federal and state tax returns on April 15, 2019, and opted
24 out of the above-referenced arbitration provision on May 14, 2019, by filling out the form found
25 at www.hrblock.com/goto/optout.

26 29. In accordance with California Civil Code Section 1780(d), Plaintiffs file herewith
27 a declaration, attached as Exhibit 1, establishing that they are filing this lawsuit in the county in
28 which Plaintiff Snarr filed his tax return and was harmed.

 30. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

A. Defendants' Online Tax Services

31. Defendants develop, market, sell, operate, and control a number of financial products and services, including electronic tax preparation and filing software, services, and applications. According to a press release, dated April 24, 2019, on Defendants' website, H&R Block products and services were used to prepare more than 20 million tax returns in the United States in Defendants' most recent fiscal year. About 2 million of those were through desktop products and about 6 million were filed online, while only 661,000 of those were part of the IRS Free File program. *See* <https://www.hrblock.com/tax-center/newsroom/around-block/financial-statements/tax-season-volume-april-19-2019/> (last accessed May 14, 2019).

32. Electronic tax preparation and filing software and services generally consist of two basic components: a user interface that prompts users to provide relevant information and an electronic tax engine which processes the information. The interface is similar to that with a live tax preparer. Through a series of questions, taxpayers provide information to the software, which is then processed by the tax engine for calculation. The tax engine is a software program based upon federal and state tax codes and regulations.

33. Defendants offer a desktop version of their software as well as an online version and a mobile application version. Taxpayers using the online version of H&R Block tax preparation software and services create an account and fill out their tax information through a web-based or smartphone-based program or interface. Nearly all of Defendants' electronic tax preparation and filing software and services are sold to consumers and businesses for a fee. Among those marketed to the public for profit by Defendants is their Fake "Free" Offer, which is only free in limited instances and which is used by Defendants as part of their Bait-and-Switch Program to extract money from vulnerable taxpayers. Although most taxpayers (and all taxpayers with AGI of \$66,000 or less in 2018) are entitled to file their returns for free, Defendants deceptively and unfairly inform those taxpayers that they are required to pay for Defendants' tax

1 services. (Defendants' for-profit tax preparation offerings are collectively referred to herein as
2 "Paid HRB Tax Programs.")

3 **B. IRS Free File Program**

4 34. Congress passed the Restructuring and Reform Act of 1998, which set goals to
5 have at least 80 percent of all federal tax returns filed electronically by 2007. To meet this 80
6 percent benchmark, the IRS developed a "Free File" program in 2001-2002, whereby, in theory,
7 the majority of taxpayers would be entitled to e-file their federal tax returns for free.

8 35. Rather than develop its own software to allow for the filing of tax returns
9 electronically, the IRS decided to partner with established private software companies to provide
10 free tax preparation and filings services. In 2002, Free File Alliance, LLC was formed, consisting
11 of companies engaged in the electronic tax preparation and filing industry ("Members"),
12 including the major electronic tax preparation companies such as Defendants. In 2010, those
13 Members formed Free File, Inc. to take the place of Free File Alliance, LLC, but the Members
14 and Free File, Inc. still sometimes use the name "Free File Alliance" to refer to themselves. (Free
15 File, Inc. and its predecessor Free File Alliance, LLC are collectively referred to herein as "FFI.")

16 36. On October 30, 2002, FFI and the IRS entered into a 3-year agreement that set
17 forth parameters for the IRS Free File program, pursuant to which FFI would offer free online tax
18 preparation and filing services to the majority of taxpayers. In exchange for providing this
19 service, the IRS agreed not to independently develop and maintain its own tax return e-filing
20 system.

21 37. In particular, the Free File program is intended to serve all taxpayers with an
22 adjusted gross income ("AGI") equal to or less than that of 70 percent of all taxpayers for the
23 prior year ("Eligible Taxpayers"). For the 2018 tax year, taxpayers with an AGI of \$66,000 or
24 less would qualify for the Free File program. To further encourage e-filing, the IRS provides
25 substantial incentives to taxpayers who file their returns electronically, including quicker
26 processing and more rapid tax refunds, and threatens those who do not with a greater likelihood
27 of an audit.

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1 38. FFI and IRS have subsequently renewed their original agreement and entered into
2 supplemental Memorandum of Understanding agreements to the original agreement. The current
3 operating agreement between FFI and the IRS is the Eighth Memorandum of Understanding on
4 Service Standards and Disputes Between the Internal Revenue Service and Free File,
5 Incorporated (“Eighth MOU”, attached hereto as Exhibit 2), which became effective on October
6 31, 2018 and has a termination date of October 31, 2021. As a Member of FFI, Defendants agreed
7 to and are bound by the Eighth MOU.

8 **C. The Eighth MOU Requires FFI Members to Provide Filers With Easy,
9 Streamlined Access to Free Tax Filing Services.**

10 39. Under the terms of the Eighth MOU, FFI Members are to assist the IRS in
11 increasing electronic filing of tax returns, and in particular, provide those services “to
12 economically disadvantaged and underserved populations at no cost to either the individual user
13 or to the public treasury.” Ex. 2, Art. 2. In participating in the program, the FFI Members
14 explicitly agree “to serve the greater good” and acknowledge that the program “is focused on
15 covering the taxpayers least able to afford e-filing their returns on their own.” *Id.* FFI Members
16 also agree to “[m]ake tax return preparation and filing easier and reduce the burden on individual
17 taxpayers, particularly the economically disadvantaged and underserved populations,” *Id.*, § 2.1;
18 and “provid[e] taxpayers the option to file their tax return online without charge.” *Id.*, § 2.4.

19 40. Pursuant to the Eighth MOU, FFI as a whole is required to make free e-filing
20 services available to all Eligible Taxpayers. Each Member of FFI is only responsible, however, to
21 serve between 10% and 50% of Eligible Taxpayers. Accordingly, the Members of FFI have
22 agreed among themselves that each Member will serve only a portion of Eligible Taxpayers,
23 based on various criteria, so that all Eligible Taxpayers have access to at least one platform on
24 which they can e-file their return. In other words, Members agree that some Members will serve
25 only qualified taxpayers who make over a certain amount or require the use of certain additional
26 schedules, whereas others will serve only those with lower AGIs or do not need those schedules.
27 Defendants have agreed with FFI Members to offer free e-filing services to taxpayers with
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1 \$66,000 or less in AGI and: (i) who are between the ages of 17 and 51; (ii) who have been on
2 active duty in the military; or (iii) who qualify for the Earned Income Credit. Other Members
3 serve non-military taxpayers with up to \$66,000 of AGI, with different exclusions. The various
4 factors that a consumer must consider to determine which Member's offer he or she qualifies for
5 is complex. The current list of available offers under the IRS Free File program is available at
6 <https://apps.irs.gov/app/freeFile> (last accessed Apr. 30, 2019).

7 41. To ensure that Eligible Taxpayers are able to e-file for free, FFI and the IRS have
8 agreed that each Member must set up their e-filing system in such a way so as to ensure taxpayers
9 who do not qualify for that particular Member's free e-filing service can easily locate a free e-
10 filing service for which they do qualify. Ex. 2, §§ 4.19.2(iii), 4.32.2. Specifically, in the event that
11 a taxpayer is ineligible for Defendants' Free File offer, Defendants is required to direct the
12 taxpayer "back to the IRS Free File Landing Page as the first and most prominent alternative
13 action so that [the taxpayer] may immediately consider other Free File offers available from the
14 Free File Program." Ex. 2, §§ 4.19.2(iii).

15 42. FFI and the IRS agreed that the IRS Free File program should not be used by FFI
16 Members to sell their commercial products and services. Members are not permitted to include "a
17 'value-added' button (i.e., an icon, link, or any functionality that provides a taxpayer with access
18 to a Member's commercial products or services) on the Member's Free File Landing Page." Ex.
19 2, § 4.32.6. More generally, "[n]o marketing, soliciting, sales or selling activity, or electronic
20 links to such activity are permitted in the Free File Program," with two limited exceptions. The
21 first exception is the sale of a federal return after the taxpayer is notified that he or she is
22 ineligible for the Member's Free File offer, has been directed back to the IRS Free File Landing
23 Page to consider other Free File offers, and has nonetheless chosen "to complete and file his or
24 her return using the Member's commercial offer." Ex. 2, § 4.32.5. The second exception is for
25 "disclosures or sales (as applicable) related to free or paid state tax preparation offers as
26 specifically provided for in this MOU." *Id.*

1 43. Once a taxpayer has filed a return using a Member's Free File service, the Member
2 is required to send at least one email to the taxpayer prior to the next year's tax season reminding
3 the taxpayer of that Member's Free File offer and inviting the taxpayer to return to that Member's
4 Free File Landing Page. Ex. 2, § 4.32.4. Free File Members may not use that communication to
5 market non-Free File products or services.

6 **D. Defendants' Bait-and-Switch Program Is Designed to Trick Taxpayers Into**
7 **Paying to E-File and Violates the Terms and Spirit of the Eighth MOU.**

8 44. Defendants purport to offer two separate "free" services: Defendants' True Free
9 File Service and Defendants' Bait-and-Switch Program. However, the Bait-and-Switch Program
10 is designed to supplant Defendants' True Free File Service and then to railroad Eligible
11 Taxpayers into purchasing Paid HRB Tax Programs:

12 45. Defendants' True Free File Service is offered pursuant to their participation in the
13 FFI and the Eighth MOU. To qualify for Defendants' True Free File Service, which provides free
14 e-filing for both federal and state tax returns, the taxpayer must have \$66,000 or less in AGI and:
15 (i) be between the ages of 17 and 51; (ii) have been on active duty in the military; or (iii) qualify
16 for the Earned Income Credit. The website for Defendants' True Free File Service is:
17 <https://www.hrblock.com/ffa/>.

18 46. Defendants' Bait-and-Switch Program, while using the word "free" extensively, is
19 actually free for few taxpayers and is designed to extract money from unsuspecting, vulnerable
20 taxpayers, thereby undermining the usage, effectiveness, and goals of Defendants' True Free File
21 Service and of the IRS Free File program generally. Among other things: (a) Defendants pay to
22 broadly advertise their Bait-and-Switch Program on multiple platforms, in ways designed to
23 deceive, mislead, and confuse consumers about the nature and cost of Defendants' tax services
24 and to effectively supplant Defendants' True Free File Service; (b) Defendants manipulate search
25 engine results to ensure that the vast majority of internet users searching for Defendants' True
26 Free File Service are funneled instead into Defendants' Bait-and-Switch Program; and
27 (c) Defendants design their websites to convince taxpayers that they are in the process of filing a
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1 free return when, in fact, they are in Defendants' Bait-and-Switch Program. In their advertising,
2 internet search manipulations, and website designs, Defendants repeatedly and heavily emphasize
3 the word "free," to mislead taxpayers as to the nature of the Bait-and-Switch Program.

4 **1. Defendants Went to Great Lengths to Steer Taxpayers Into the Bait-**
5 **and-Switch Program Instead of Their True Free File Service.**

6 47. Defendants have used a variety of tactics to conceal their True Free File Service
7 and to supplant it with their Bait-and-Switch Program.

8 48. First, Defendants have paid for extensive ad campaigns on television, radio,
9 internet, and social media platforms for Defendants' Bait-and-Switch Program.

10 49. Second, Defendants purposely made it difficult to find Defendants' True Free File
11 Service by placing a "noindex" tag on the webpage for that True Free File Service, which
12 essentially tells search engines **not** to crawl that page. In particular, the source code for
13 <https://www.hrblock.com/ffa/> included the following line of code:

14 `<meta name="robots" content="noindex, nofollow">`

15 50. As a result, the website for Defendants' True Free File Service typically would not
16 appear near the top of internet search results, while webpages for Defendants' Bait-and-Switch
17 Program (such as <https://www.hrblock.com/online-tax-filing/free-online-tax-filing>,
18 <https://www.hrblock.com/online-tax-filing>, and [https://www.hrblock.com/tax-](https://www.hrblock.com/tax-center/filing/efile/free-e-file)
19 [center/filing/efile/free-e-file](https://www.hrblock.com/tax-center/filing/efile/free-e-file)) would appear at the top of the list of results for searches consisting
20 of terms such as "free," "file," "filing," "tax," "taxes," and/or "h&r block."

21 51. ProPublica, a nonprofit news organization, recently published a series of articles
22 exposing Defendants' and Intuit, Inc.'s unfair and deceptive practices with respect to the IRS Free
23 File program and Defendants' Bait-and-Switch Program. One of those articles explained how
24 Intuit, Inc. and Defendants used their source code to hide the webpage for Defendants' True Free
25 File Service, using the code referenced in the above paragraph. *See*
26 [https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-](https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines)
27 [engines](https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines) (last accessed Apr. 30, 2019).

1 52. In response to that negative press about Defendants' deceptive and unfair
2 practices, and recognizing that their practices were, in fact, unfair and deceptive, Defendants
3 recently changed the above-referenced line of source code to the following:

4 <meta name="robots" content="index, follow">

5 53. Accordingly, it appears that Defendants are now allowing search engine robots to
6 index the homepage for Defendants' True Free File Service. However, Defendants continue to
7 engage in a number of additional unfair and deceptive practices.

8 54. For example, Defendants hijack demand for their True Free File Service and
9 redirect taxpayers into Defendants' Bait-and-Switch Program.

10 55. Webpages for Defendants' Bait-and-Switch Program (such as
11 <https://www.hrblock.com/online-tax-filing/free-online-tax-filing>,
12 <https://www.hrblock.com/online-tax-filing>, and [https://www.hrblock.com/tax-](https://www.hrblock.com/tax-center/filing/efile/free-e-file)
13 [center/filing/efile/free-e-file](https://www.hrblock.com/tax-center/filing/efile/free-e-file)) continue to appear at the top of the list of results for searches
14 consisting of terms such as "free," "file," "filing," "tax," "taxes," and/or "h&r block."

15 56. Defendants' Bait-and-Switch Program includes a webpage
16 (<https://www.hrblock.com/tax-center/filing/efile/free-e-file>) that is designed to capture taxpayers
17 seeking free e-filing services and which ranks highly in search results. A screenshot that page is
18 below. That page represents that many taxpayers (but not all) can e-file for free with H&R Block
19 through its Fake "Free" Offer, and includes links to other pages within Defendants' Bait-and-
20 Switch Program (including <https://www.hrblock.com/online-tax-filing/free-online-tax-filing>,
21 <https://www.hrblock.com/online-tax-filing>, and [https://www.hrblock.com/filing-options-and-](https://www.hrblock.com/filing-options-and-products.html)
22 [products.html](https://www.hrblock.com/filing-options-and-products.html)). Defendants thereby represent and imply that Defendants' Fake "Free" Offer is the
23 free filing service taxpayers are seeking, when Defendants know that taxpayers are seeking the
24 truly free filing that is available through the IRS Free File program. Remarkably, *none* of the
25 links on this page take taxpayers to Defendants' True Free File Service and, as the screenshot
26 below shows, Defendants do not refer taxpayers to either Defendants' True Free File Service or to
27 the IRS Free File program:
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TAX INFORMATION CENTER : FILING : EFILE

Free E-File Taxes – Learn How to e-File for Free

Free e-File Tax Return

Free e-file taxes online with H&R Block. File your tax return with free e-file options online at H&R Block and let our expert online tax preparation help you file your taxes.

In many instances, it is possible to free e-file your tax return. Electronic tax filing is the process of submitting your completed tax return to the IRS through electronic means, usually over the Internet. This process is very desirable since it reduces the processing time of your return and may get a refund to you quicker. However, it is not available for everyone. Additionally, it is not always possible to find a free e file option. You may have to pay a small fee for this. H&R Block offers several tax filing options.

In many cases, free tax e-file services are available. For example, you may be able to use your tax software or file online to complete your taxes and then benefit from a free e-file credit provided to you by the organization. Most tax preparation companies will lump any fees associated in the electronic filing process into your fee for the service. This allows you to avoid paying an additional fee at the completion of your taxes to file them.

It is also important to remember that in order to file your taxes through an electronic method like this, you will need to first complete your tax return. The electronic filing process is only a submission process that sends your completed return to the IRS. You still need to complete your return and make sure that you get all of the deductions you qualify for included.

To make it easier for you to complete your taxes and to free e-file, work with H&R Block. Let our tax professionals help you to complete your taxes quickly and with the best level of accuracy. You can then get free e file service in many instances. This could help you to get your tax refund faster and it allows you to track your submission status. Let H&R Block help you to get the most back.

Learn more about H&R Block tax offices and our free tax preparation services.

RELATED TOPICS
Dependents
Credits
Filing Online
< >

57. On certain pages within the Bait-and-Switch Program (such as <https://www.hrblock.com/online-tax-filing/> and <https://www.hrblock.com/filing-options-and-products.html>), Defendants present four online options to the taxpayer, but none of them is the True Free File Service. The first option is the Fake “Free” Offer that is designed to lure taxpayers

1 into Defendants' Bait-and-Switch Program. Screenshots from the two webpages referenced in the
2 first sentence of this paragraph are, respectively, below:

WAYS TO FILE TAX QUESTIONS & TOOLS TAX REFORM SIGN IN

ONLINE TAX FILING

Tell us about you, then take on your taxes

Have kids | Own a home | Have an HSA | Freelancer / Contractor | Have investments | Own rentals | Self-employed | Own a business

Free online	Deluxe online	Premium online	Self-employed online
Best if you have a W-2, have kids & rent	Best for homeowners, donations & HSAs	Best for freelancers, contractors & investors	Best for self-employed & small business
\$0	\$49.99	\$69.99	\$104.99
+ \$29.99 per state filed	+ \$39.99 per state filed	+ \$32.99 per state filed	+ \$29.99 per state filed
File for free	Start for free	Start for free	Start for free
More details	More details	More details	More details

Our top choice for online tax prep* - PC Mag

Offers | Compare online tax filing solutions

WAYS TO FILE TAX QUESTIONS & TOOLS TAX REFORM SIGN IN

In person or online, Block has your back

I'll do my own taxes | View all →

Free online	Deluxe online	Premium online
Best if you have a W-2, have kids & rent	Best for homeowners, donations & HSAs	Best for freelancers, contractors & investors
More forms for free than TurboTax		
+ per state filed	+ per state filed	+ per state filed
File for free	Start for free	Start for free
More details	More details	More details

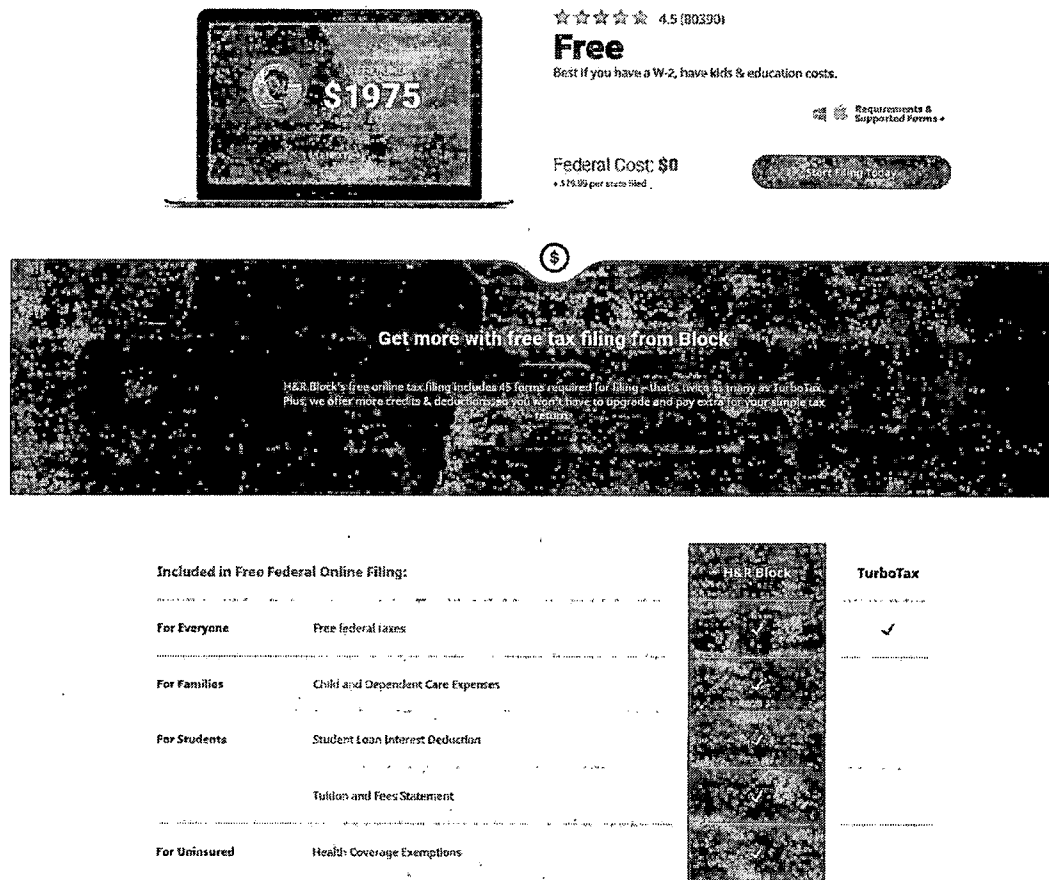
Do my taxes for me | View all →

Tax Pro Go™	In-office / Drop-off
Upload your docs & we'll do the rest	Sit with a tax pro or drop off your docs
* Starting at	* Starting at
1 state included	Add'l fee per state
Get started	Find an office
More details	More details

Know your price, every step of the way | Learn more →

Help me choose

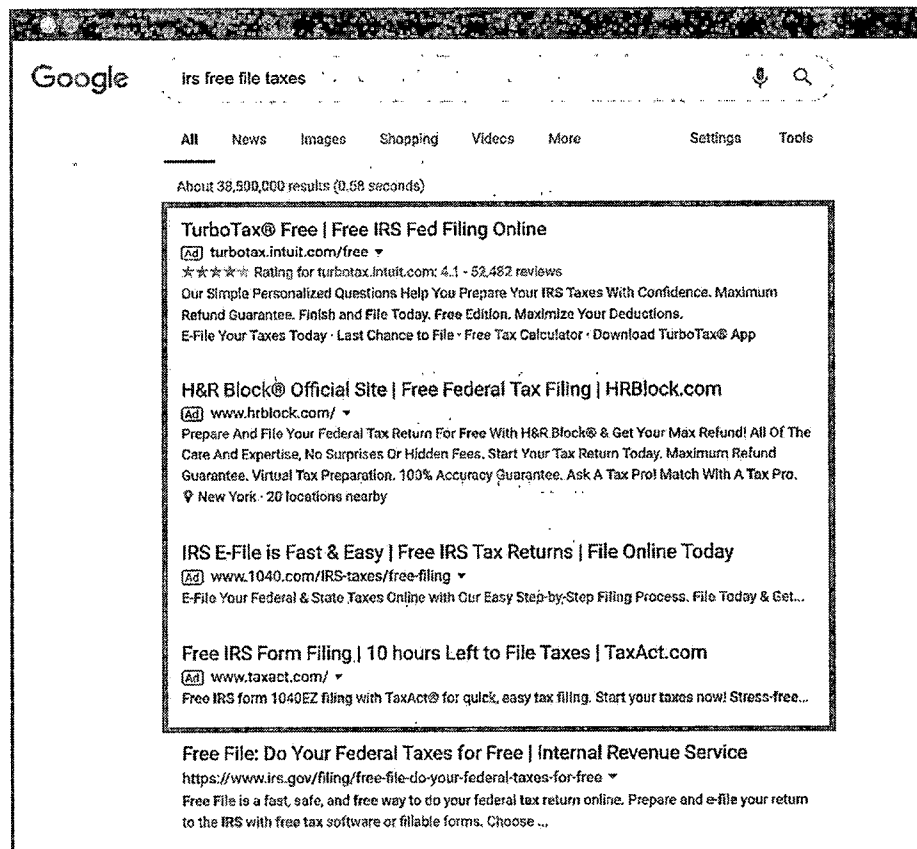
1 58. The landing page for Defendants’ Fake “Free” Offer ([https://](https://www.hrblock.com/online-tax-filing/free-online-tax-filing)
 2 www.hrblock.com/online-tax-filing/free-online-tax-filing), whether reached through clicking on
 3 an internet search result or on a link or icon on another webpage within Defendants’ Bait-and-
 4 Switch Program, represents that Defendants’ tax preparation services are “free” without referring
 5 taxpayers to either Defendants’ True Free File Service or to the IRS Free File program, as a
 6 screenshot of that landing page shows below:



24 59. Even if consumers enter information establishing that they are eligible for
 25 completely free filing under Defendants’ True Free File Service and/or other IRS Free File
 26 programs, Defendants manipulate them into paying for tax products, services, and/or “upgrades.”
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1 60. If, at any point, the taxpayer is informed that he or she does not qualify for the
 2 Fake “Free” Offer (whether at the end of filling out information or, occasionally, sooner) the
 3 taxpayer is presented with Defendants’ Paid HRB Tax Programs and must choose a paid option to
 4 continue. The taxpayer is not directed to Defendants’ True Free File Service or to the landing
 5 page for the IRS Free File program, where eligible taxpayers would be able to truly file for free
 6 and would not be told that they have to pay for Defendants’ services. Thus, Defendants have
 7 structured their website to convince most taxpayers to believe that they are not eligible for free
 8 filing when they are in fact eligible for free filing.

9 61. During peak filing season, Defendants purchase search advertising (in addition to
 10 other advertising) to promote its Bait-and-Switch Program to consumers seeking free filing
 11 services. For example, in the screenshot below, the second Google search result for “irs free file
 12 taxes” was a paid advertisement from Defendants directing taxpayers to “H&R Block Official
 13 Site| Free Federal Tax Filing | HRBlock.com”:



1 62. Visitors to Defendants' homepage (www.hrblock.com) are first and most
2 prominently presented with a choice between two buttons (or links): one for visiting an H&R
3 Block office and one for e-filing online. The online option links to
4 <https://www.hrblock.com/online-tax-filing>. That webpage (see paragraph 57 above) does not refer
5 taxpayers to Defendants' True Free File Service or the IRS Free File program. At the bottom of
6 the page, in small font, there is also a link titled "Free E-File" which links to
7 <https://www.hrblock.com/tax-center/filing/efile/free-e-file>. That webpage (see paragraph 58
8 above) does not refer taxpayers to Defendants' True Free File Service or the IRS Free File
9 program. Thus, while Defendants' homepage provides an entry point into the Bait-and-Switch
10 Program, it does not refer to or link to Defendants' True Free File Service or the IRS Free File
11 program.

12 63. Defendants takes other affirmative acts to channel taxpayers into their Bait-and-
13 Switch Program, to heighten the visibility of their Bait-and-Switch Program, and to suppress the
14 IRS Free File program.

15 64. For example, H&R Block explicitly instructs its customer service staff to push
16 people away from its free offering. In written internal guidance regarding the Free File program,
17 H&R Block instructs its employees as follows: "Do not send clients to this Web site unless they
18 are specifically calling about the Free File program. We want to send users to our paid products
19 before the free product, if at all possible." See Justin Elliott & Paul Kiel, *TurboTax and H&R*
20 *Block Saw Free Tax Filing as a Threat — and Guttled It*, ProPublica,
21 <https://www.propublica.org/article/intuit-turbotax-h-r-block-guttled-free-tax-filing-internal-memo>
22 (last accessed May 13, 2019).

23 65. In addition, Defendants run affiliate marketing programs or campaigns for third-
24 party publishers of blogs and other websites. Such affiliate marketing programs encourage such
25 publishers to promote Defendants' tax services on their websites and to provide links to
26 Defendants' webpages where consumers can sign up for Defendants' services. In exchange, the
27 publishers earn a commission when such consumers use Defendants' services, particularly
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1 Defendants Paid HRB Products. Through such affiliate marketing programs, Defendants provide
2 financial incentives for third-party publishers to direct consumers to Defendants' Bait-and-Switch
3 Program.

4 66. In the affiliate marketing program, the taxpayer typically takes a slight detour by
5 clicking on an article or webpage published by the affiliate publisher. That article or webpage
6 (perhaps in the guise of providing a review, a recommendation, or some other information) refers
7 to H&R Block services, may actively promote H&R Block services, and provides a link to
8 Defendants' website. The affiliate then collects a commission for transactions in which that
9 consumer engages while on Defendants' website.

10 67. Links from third-party websites to Defendants' Bait-and-Switch webpages are a
11 key reason why Defendants' Bait-and-Switch webpages rank so highly in the list of results for
12 search engine queries. Accordingly, Defendants' affiliate program not only pays other parties to
13 refer customers to Defendants' Bait-and-Switch Program but it also bolsters the ranking of
14 Defendants' Bait-and-Switch Program in search results generally. Defendants more broadly seed
15 the internet and provides incentives for other websites to link to Defendants' Bait-and-Switch
16 program and to Defendants' webpages to ensure that those webpages are ranked at the top of
17 search results.

18 68. By contrast, Defendants make no such efforts to encourage links to Defendants'
19 True Free File Service. For the most part, and particularly within the Bait-and-Switch Program to
20 which most customers are directed, Defendants do not promote or link to their True Free File
21 Service from other webpages within Defendants' online domain. If anything, Defendants take
22 steps to ensure that their True Free File Service is difficult to find, thereby minimizing the
23 number of third-party links to that service, lowering their ranking and public awareness of that
24 genuinely free service, and minimizing the number of taxpayers who find and use Defendants'
25 True Free File Service.

26 69. Defendants' deceptive and unfair search engine manipulations, together with their
27 deceptive, unfair, and confusing use of "free" in connection with their Bait-and-Switch Program,
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1 also ensure that consumers will be directed to Defendants' Bait-and-Switch Program even when
2 Defendants has not purchased certain search engine advertising. For example, on May 6, 2019,
3 the third non-paid search result for a Google search for "free tax filing" was a link to Defendants'
4 Fake "Free" Offer (titled "Free Online Tax Filing" and including the description: "File your taxes
5 online for free with H&R Block Free Edition. File free taxes online with an easy-to-use tax
6 preparation system from H&R Block."). No link to Defendants' True Free File Service appeared
7 on the first page of Google search results.

8 70. On May 6, 2019, a search for "h&r block free filing" showed that the top three
9 results were for pages within Defendants' Bait-and-Switch Program, with broad result headings
10 such as "Free Online Tax Filing," "Free e-File," and "File Taxes Online – Online Tax Filing
11 Products." Defendants' True Free File Service appeared as the fourth result under the heading
12 "Free State Tax Filing – Free File Alliance," which could confuse or mislead consumers as to
13 whether it provided free filing for federal returns:

14 71. Moreover, even when a taxpayer lands on Defendants' True Free File Service, the
15 webpage does not inform taxpayers over the age of 51 that they are eligible for free filing under
16 the IRS Free File program and the webpage does not immediately direct them to the landing page
17 for the IRS Free File program where those taxpayers can select from multiple free filing options.
18 Instead, the only alternative Defendants explicitly provide to such taxpayers is Defendants' Paid
19 HRB Tax Programs. Directly under the eligibility criteria on the main webpage for Defendants'
20 True Free File Service, Defendants state "If you do not qualify for H&R Block's Free File
21 program, it's only ~~\$69.99~~ \$29.99 to file a federal return and \$39.99 for each state return filed."
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FILE FEDERAL AND STATE TAXES FOR FREE WITH H&R BLOCK FREE FILE

If your AGI was \$66,000 or less and can answer to one of these questions, then you can start your free file return.

Are you between the ages of 17-51 (as of 12/31/2018)? Or
Were you active duty military? Or
Do you qualify for the earned income tax credit (EITC)?

[Start For Free](#)

If you do not qualify for H&R Block's Free File program, it's only \$69.99 \$29.99 to file a federal return and \$39.99 for each state return filed.

State Tax Filing

If you qualify for H&R Block's Free File program, all states are free to file for any state you lived or claimed income in.

[Learn More](#)

More Resources

Additional Free File Tools

[Return to the IRS.gov Free File](#) ▶
[H&R Block Free File Supported Forms](#) ▶

Need Additional Help?

[FAQs](#) ▶
[Customer Support](#) ▶

Policy and Forms

[Accuracy/Calculation Guarantee](#) ▶
[Privacy and Security Information](#) ▶

72. In the FAQs associated with this webpage, Defendants mislead taxpayers (particularly those over the age of 51) into believing that they are not eligible for free filing under the IRS Free File program when they are in fact eligible. Defendants never expressly disclose that the IRS Free File program is much broader than Defendants' True Free File Service and that taxpayers who do not qualify for Defendants' True Free File Service have other options to file for free. For example, the first three FAQs are quoted below:

What is the Free File Alliance (FFA)?

FFA is a public-private partnership between the IRS and participating tax preparers. Eligible taxpayers may prepare and file their federal tax returns for free, utilizing the online programs of the participating tax preparers. Taxpayers between the ages of 17 and 51 who have an adjusted gross income (AGI) of \$66,000 or less are eligible for the H&R Block FFA program.

How can I do my federal taxes for free? Is there a catch?

1 The Free File Alliance is a public-private partnership between the IRS and
 2 participating tax preparers. Taxpayers between the ages of 17 and 51 who
 3 have an adjusted gross income (AGI) of \$66,000 or less are eligible for the
 H&R Block FFA program.

4 **How do I file online?**

E-filing is a fast and convenient alternative to mailing your return.
 5 However, the IRS has strict regulations about which returns are eligible
 6 for e-filing. First, we'll determine if your return is eligible for e-file. If it
 7 is, we'll present you with your options for how to receive your refund or
 8 pay your balance due. (If it is not eligible, we'll let you know, then we'll
 9 present you with your options.) Depending on the option you select, we
 10 may ask for additional information. Next, we'll give you a link to your
 11 completed return and, when you're ready, we'll send your return to the
 IRS. The IRS will accept or reject your return, and we'll send you an e-
 12 mail letting you know. If your return is accepted, we'll let you know if you
 13 need to do anything else. If it's rejected, we'll help you resolve the
 14 problems in your return. Log in to the H&R Block Free File online
 15 program, go to the Main Menu to check your filing status.

16 73. In sum, Defendants simultaneously: make it easy and likely for a taxpayer to end
 17 up on a webpage for Defendants' Bait-and-Switch Program; make it very unlikely that a taxpayer
 18 would find Defendants' True Free File Service; make it very unlikely that a taxpayer would see or
 19 understand the difference between the Bait-and-Switch Program and the True Free File Service;
 20 and mislead many taxpayers who are eligible for free filing into believing that they are not
 21 eligible and that they should pay Defendants for tax filing services.

22 74. Defendants' efforts (including efforts directly on the main page for Defendants'
 23 True Free File Service) to convert Eligible Taxpayers who are not eligible for Defendants' True
 24 Free File Service into paying customers for Defendants' Paid HRB Tax Programs, without
 25 informing them of and directing them to other free filing options within the IRS Free File
 26 program as the first, best option for those Eligible Taxpayers, are a breach of the Eighth MOU
 27 and constitute violations of the CLRA, FAL, and UCL.

28 **2. Defendants Extract Extensive Information from Taxpayers Under False
 Pretenses and then Trick Vulnerable Tax Payers Into Purchasing Paid
 HRB Tax Programs.**

75. After arriving at Defendants' online filing options, taxpayers are prompted to
 create a profile (or sign in if they already have an account) and are then prompted to provide their

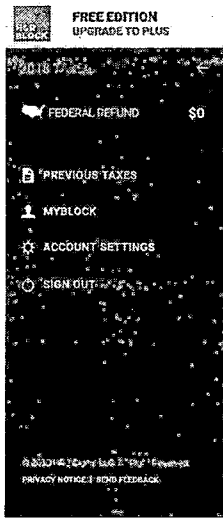
1 sensitive personal and financial information. At the beginning of the process, taxpayers are
2 informed that the filing will be free, as indicated by the screenshots in the section above. Eligible
3 Taxpayers believe that they have begun the process of filing for free and that Defendants will not
4 charge them if they qualify for free filing under Defendants True Free File Service or the IRS
5 Free File program. Once they log in, create an account, or begin providing their information to
6 Defendants (other than through the landing page for Defendants' True Free File Service, which
7 the vast majority of taxpayers never see), taxpayers are **not**, at any point, informed of or directed
8 to Defendants True Free File Service or the IRS Free File program, even if they clearly qualify
9 for such free services.

10 76. After the taxpayer creates a profile or logs in, Defendants then present the taxpayer
11 with more than a dozen questions about their finances and personal data.

12 77. In reality, Defendants' Fake "Free" Offer is free for only a limited number of
13 taxpayers who have **only** W-2 income, who have not worked as independent contractors or
14 received any other forms of income, and who are taking only very specific deductions and are not
15 required to file other forms.

16 78. The majority of the individuals who begin with the Fake "Free" Offer in
17 Defendants' Bait-and-Switch Program are informed (often **at the end of the process**) that they
18 will, in fact, be charged for Defendants' services. Defendants inform most taxpayers that they
19 "need" a Paid HRB Tax Product and prompt consumers to agree to Defendants' charges. Below is
20 an example of the type of message displayed to taxpayers who do not qualify for Defendants'
21 Fake "Free" Offer but who would still qualify for free filing under Defendants' True Free File
22 Service and/or other IRS Free File offers:

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you need H&R Block Premium to
finish your taxes.

Why? Because you have self-employment income, which
isn't covered in our Free or Deluxe products.

Add for **only \$69.99 more**

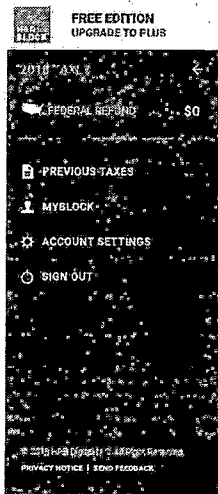
Additional state filing fees may apply

[More info](#)

GET H&R BLOCK PREMIUM

[← BACK](#)

79. Clicking on the link for “More info” further misleads consumers to believe that they are ineligible for free filing and must pay Defendants for their services, as the following example demonstrates:



For an **accurate return with the best outcome**, you need H&R Block Premium.

Which forms are included?

- Best for freelancers, contractors, investors and rental property owners.
- Secure, encrypted online storage and year-round access to your tax documents.
- First-class tax prep designed to help you make smart, strategic tax decisions now and in the future.

Add for **just \$69.99 more.**

Additional state filing fees may apply

GET H&R BLOCK PREMIUM

[← BACK](#)

80. Defendants know that many taxpayers who have spent the time required to enter their information in the Bait-and-Switch Program are unlikely to start over somewhere else,

1 particularly given that Defendants hide the fact that another service would be truly free.
2 Defendants also intend for reasonable taxpayers to conclude (and reasonably taxpayers do
3 conclude) that they are simply ineligible for free filing under the IRS Free File program, because
4 Defendants do not conspicuously inform them that (1) their Bait-and-Switch Program is not part
5 of the IRS Free File program, or (2) the taxpayers would be eligible for free filing through the
6 IRS Free File Program—either Defendants’ True Free File Service or another Free File service
7 available from another provider. As intended by Defendants, many taxpayers ultimately pay the
8 charge that Defendants tells them is required at the end of the Bait-and-Switch Program.

9 81. Defendants do not inform taxpayers caught in Defendants’ Bait-and-Switch
10 Program that they can file tax returns for free if they qualify for Defendants’ True Free File
11 Service, or whether the taxpayers do in fact qualify for Defendants’ True Free File Service. For
12 taxpayers using Defendants’ Bait-and-Switch Program but who qualify for Defendants’ True Free
13 File Service, Defendants do not offer to transfer the taxpayers’ information to Defendants’ True
14 Free File Service to complete their return for free.

15 82. Defendants also do not inform taxpayers caught in Defendants’ Bait-and-Switch
16 Program that they are eligible to file tax returns for free under the IRS Free File program, which
17 requires only that the taxpayer’s AGI not exceed \$66,000. There are no limitations on the federal
18 program based on self-employment income, various deductions, and other limitations of
19 Defendants’ Fake “Free” Offer.

20 83. In sum, Defendants’ Bait-and-Switch Program violates, and is designed to
21 circumvent, several of the provisions and protections of the Eighth MOU. In derogation of
22 Section 4.19.2, Defendants’ Bait-and-Switch Program does not “unequivocally inform taxpayers
23 who are ineligible for the free offer at the earliest feasible point,” that they are ineligible for the
24 free e-filing service and direct them back to the IRS Free File Landing Page. To the contrary,
25 Defendants’ Bait-and-Switch Program requires taxpayers to answer numerous questions and
26 provide a lot of personal and financial information before telling them whether they “need to
27 upgrade” (i.e., pay for the service). At no point does Defendants’ Bait-and-Switch Program direct
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1 taxpayers back to the IRS Free File Landing Page or inform them that they do or may qualify for
2 a Free File offer. Instead, Defendants uses Defendants' Bait-and-Switch Program to direct
3 taxpayers to Defendants' paid commercial services and products, which violates and/or unfairly
4 circumvents Sections 4.32.5 and 4.32.6 of the Eighth MOU.

5 84. As a result, many taxpayers, including many in precarious financial situations,
6 were tricked into paying fees to Defendants when they should have been directed to free filing
7 options.

8 85. Defendants know that if they informed taxpayers who do not qualify for free filing
9 in Defendants' Bait-and-Switch Program about Defendants' True Free File Service and about the
10 IRS Free File program, and transferred the financial information they had already entered into
11 Defendants' True Free File Service and/or directed them to the IRS Free File landing page, those
12 taxpayers likely would not purchase any of Defendants' commercial offerings. Thus, Defendants
13 have devised a complicated scheme to evade the spirit of the MOU to increase their profits.

14 86. Defendants' efforts (and the efforts of others) to steer taxpayers away from the
15 Free File program to which they are entitled have worked. During the 2017 tax season, 2,231,261
16 taxpayers, less than *three percent* of Eligible Taxpayers, used Free File, a significant decrease
17 from 2005, a year in which 5,142,125 taxpayers filed through Free File. *See* Internal Revenue
18 Service Advisory Council Public Report (Nov. 2018), at 16, available at
19 <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

20 **E. Plaintiff Olosoni's Experiences**

21 87. Plaintiff Olosoni's AGI for 2018 was less than \$66,000, so she was an Eligible
22 Taxpayer under the IRS Free File program, and she qualified for a free federal return e-filing
23 under multiple offers available under the IRS Free File program. If she had been directed to the
24 IRS Free File website in 2019, Plaintiff Olosoni would have found offers from multiple providers
25 to file her federal return for free.

26 88. Plaintiff Olosoni has been using Defendants' online products to file her taxes since
27 about 2015. Defendants charged her fees in every year that she had filed through them despite the
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1 fact that she qualified for truly free filing under the IRS Free File program and despite
2 Defendants' representations in advertisements on their webpages that taxpayers could file tax
3 returns for "free" through H&R Block.

4 89. Throughout this period, Plaintiff Olosoni saw television advertisements, heard
5 radio advertisements, and viewed representations on Defendants' website that taxpayers could file
6 tax returns for "free" through H&R Block.

7 90. At one point, Plaintiff Olosoni called Defendants to determine why she had been
8 charged despite Defendants' representations that tax filing would be "free" and despite her belief
9 that she was entitled to file her returns for free. That inquiry was never substantively answered.

10 91. In or about January 2019, Plaintiff Olosoni directly logged in to Defendants'
11 website. When she logged in to her account, Defendants routed Plaintiff Olosoni to their Bait-
12 and-Switch Program rather than Defendants' True Free File Service. Defendants never informed
13 Plaintiff Olosoni that she was not accessing Defendants' True Free File Service or that
14 Defendants' had established a Bait-and-Switch Program to supplant the IRS Free File program.
15 Defendants concealed the fact that their Bait-and-Switch Program was separate from (and
16 designed to compete with and undermine) Defendants' True Free File Service.

17 92. Based on her belief that she was eligible to file for free under generally available
18 programs (such as the IRS Free File program), Defendants' representations in their television and
19 radio advertisements, and the representations on Defendants' webpages within their Bait-and-
20 Switch Program, Plaintiff Olosoni believed she qualified for a free tax return and that she could
21 file a free tax return through Defendants' website. Plaintiff Olosoni spent approximately 45
22 minutes entering in her sensitive personal and financial information, in reliance on that belief.

23 93. At the end of that process, she was informed that she was not eligible to file her
24 tax return for free and that she would be charged fees (about \$85) for her state and federal filings.
25 She was given the option to either pay upfront or have the fees deducted from her refund. She
26 opted to have the fees deducted from her refund, in reliance on Defendants' representation that
27 she did not qualify to file her tax return for free.

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1 94. Plaintiff Olosoni would not have paid for Defendants' service if she had been
2 informed by Defendants at the outset of the process that she was eligible for Defendants' True
3 Free File Service (as well as free tax filing from other tax service providers) and that the service
4 to which she had been directed was not part of that True Free File Service and/or if she had been
5 directed to the websites for those truly free e-filing services.

6 95. Plaintiff Olosoni will continue to seek free tax filing services in the future and
7 expects to continue to be eligible for such services as mandated by the IRS. Because Defendants
8 (a) disguise their Bait-and-Switch Program as being a true Free File program, (b) use deceptive
9 and confusing terms to describe and market those services and can easily change the name of
10 their True Free File Service and/or their competing Bait-and-Switch Program, (c) can change the
11 conditions of and/or landing page for their True Free File Service, and (d) can deploy search
12 engine optimization strategies to divert taxpayers away from Defendants' True Free File Service
13 and the IRS Free File program and into alternative, competing services, Plaintiff Olosoni is likely
14 to again be misled into spending time to complete tax forms through Defendants, including
15 providing her sensitive financial information, and paying for her tax filings, unless the injunctive
16 relief requested in this Class Action Complaint is awarded.

17 **F. Plaintiff Snarr's Experiences**

18 96. Plaintiff Snarr's AGI for 2018 was less than \$66,000, so he was an Eligible
19 Taxpayer under the IRS Free File program, and he qualified for a free federal return e-filing under
20 multiple offers available under the IRS Free File program. If he had been directed to the IRS Free
21 File website in 2019, Plaintiff Snarr would have found offers from multiple providers to file his
22 federal return for free.

23 97. Plaintiff Snarr conducted a Google search for the words "free tax filing" (or a
24 substantially similar combination of words) on or about April 15th, 2019. Defendants' website
25 was one of the top results.

26 98. Through that search result and its associated link, Defendants routed Plaintiff
27 Snarr to their Bait-and-Switch Program rather than Defendants' True Free File Service.
28

1 Defendants never informed Plaintiff Snarr that he was not accessing Defendants' True Free File
2 Service or that Defendants' had established a Bait-and-Switch Program to supplant the IRS Free
3 File program. Defendants concealed the fact that their Bait-and-Switch Program was separate
4 from (and designed to compete with and undermine) Defendants' True Free File Service.

5 99. Plaintiff Snarr spent multiple hours entering his tax information on or about
6 April 15, 2019, believing that he was eligible to file his tax return for free and that the tax
7 preparation and filing service offered by Defendants would be free. But, at the end of H&R
8 Block's online process for providing information for tax filing (part of Defendants' Bait-and-
9 Switch Program), Plaintiff Snarr was informed that he did not qualify for the Fake "Free" Offer
10 that Defendants' had advertised and to which Defendants had directed him, and was informed that
11 he needed to pay fees to file his tax return with H&R Block.

12 100. Plaintiff Snarr was surprised by the fee disclosure because it was contrary to his
13 belief that he was entitled to file for free and it was contrary to what Defendants had represented
14 in their Google search result and on their website. Plaintiff Snarr opted to proceed, despite the
15 fees (which were charged to him), in reliance on Defendants' representation that he did not
16 qualify to file his tax return for free.

17 101. Plaintiff Snarr would not have paid for Defendants' service if he had been
18 informed by Defendants at the outset of the process that he was eligible for Defendants' True
19 Free File Service (as well as free tax filing from other tax service providers) and that the service
20 to which he had been directed was not part of that True Free File Service and/or if he had been
21 directed to the websites for those truly free e-filing services.

22 102. Plaintiff Snarr will continue to seek free tax filing services in the future and
23 expects to continue to be eligible for such services as mandated by the IRS. Because Defendants
24 (a) disguise their Bait-and-Switch Program as being a true Free File program, (b) use deceptive
25 and confusing terms to describe and market those services and can easily change the name of
26 their True Free File Service and/or their competing Bait-and-Switch Program, (c) can change the
27 conditions of and/or landing page for their True Free File Service, and (d) can deploy search
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1 engine optimization strategies and tactics to divert taxpayers away from Defendants' True Free
2 File Service and the IRS Free File program and into alternative, competing services, Plaintiff
3 Snarr is likely to again be misled into spending time to complete tax forms through Defendants,
4 including providing his sensitive financial information, and paying for his tax filings, unless the
5 injunctive relief requested in this Complaint is awarded.

6 **G. Because Defendants Intend to Continue Their Deceptive and Unfair Conduct,**
7 **a Public Injunction Is Needed to Protect the Public from Future Harm.**

8 103. While Defendants' Bait-and-Switch Program has been exposed in multiple
9 articles, Defendants have not ended the Bait-and-Switch Program, and thus Defendants clearly
10 intend to continue extracting money from taxpayers who are entitled to file returns for free and
11 who should be directed to Defendants' True Free File Service or to the IRS Free File program's
12 website.

13 104. Among other things, Defendants intend to continue (1) operating and aggressively
14 marketing their Bait-and-Switch Program, including through television, radio, social media,
15 banner advertising, paid search advertising, affiliate marketing programs, and search engine
16 optimization programs, (2) hiding the availability of Defendants' True Free File Service by
17 preventing search engines from indexing key pages and content of those webpages, by excluding
18 Defendants' True Free File Service from affiliate marketing programs, and by otherwise
19 depressing search engine rankings, (3) using the deceptive word "free" for their Bait-and-Switch
20 Program, and targeting their marketing (affiliate marketing and otherwise) for Defendants' Bait-
21 and-Switch Program to capture people searching for "free" tax filing services, in order to confuse
22 their Bait-and-Switch Program with the IRS Free File program and to mislead taxpayers because
23 Defendants' Bait-and-Switch Program is not actually free for most taxpayers, including those
24 taxpayers who qualify for IRS Free File, (4) failing to provide a clear and prominent disclosure
25 that the "free" portion of Defendants' Bait-and-Switch Program is not Defendants' True Free File
26 Service and failing to clearly identify the differences between the programs, (5) failing to clearly
27 inform taxpayers of their eligibility for the IRS Free File program, (6) failing to inform users at
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1 the earliest opportunity of their ineligibility for free filing under the Bait-and-Switch Program and
2 to direct them to other truly free filing services, or to transfer to Defendants' Free File program
3 any information they have already entered so that it need not be reentered, (7) prompting users for
4 payment and selling paid services without clearly informing those users of their right to free tax
5 services, (8) failing to clearly and accurately inform taxpayers that any information they have
6 provided to Defendants will automatically and conveniently be transferred to Defendants' True
7 Free File Service if the taxpayer elects to proceed with Defendants' True Free File Service and
8 then immediately transferring all relevant information a taxpayer has provided to Defendants to
9 Defendants' True Free File Service if the taxpayer elects to proceed with Defendants' True Free
10 File Service, and (9) unfairly competing with, undermining, and supplanting both Defendants'
11 True Free File Service and the IRS Free File program generally.

12 105. Defendants profit from the public's lack of awareness of or confusion about the
13 various IRS Free File offers, from Defendants' efforts to minimize public awareness of the IRS
14 Free File offers and the ways to take advantage of them, and from the victims of Defendants'
15 Bait-and-Switch Program.

16 106. To protect these illicit and inequitable profits and to maintain space in which to
17 conduct their deceptive and unfair practices with respect to taxpayers who are entitled to free tax
18 preparation services, Defendants have spent millions of dollars lobbying to make sure that the
19 IRS is legally prohibited from offering their own tax preparation and filing service, which would
20 make tax filing easy and free for most taxpayers and thereby substantially reduce Defendants'
21 profits from their Paid HRB Tax Programs.

22 107. Defendants' investment of money in such lobbying efforts shows a determination
23 to minimize the number of people who actually file tax returns for free, an intent to continue to
24

25
26 ¹ See, e.g., <https://www.propublica.org/article/congress-is-about-to-ban-the-government-from-offering-free-online-tax-filing-thank-turbotax> (last accessed April 23, 2019),
27 <https://www.propublica.org/article/filing-taxes-could-be-free-simple-hr-block-intuit-lobbying-against-it> (last accessed May 13, 2019), and <https://sunlightfoundation.com/2013/04/15/tax-preparers-lobby-heavily-against-simple-filing/> (last accessed May 13, 2019).
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1 profit from taxpayers who should be filing for free, and thus an intent to undermine the IRS Free
2 File program and the Eighth MOU.

3 108. Moreover, Defendants' practices are poised to become worse, not better, in the
4 future. Because the IRS is allowed under current law to develop their own e-filing system,
5 Defendants have at least some incentive to moderate their behavior. In theory, if Defendants'
6 conduct were to go too far and there were too many complaints, the IRS could enter the market
7 and eliminate much of Defendants' profits. At the same time, Defendants' incentive is to try to do
8 the bare minimum to avoid such a result, without sacrificing too much of the profits it currently
9 earns through the Bait-and-Switch Program. By offering fig-leaf solutions to their much larger
10 problems, Defendants are attempting to convince the IRS that it does not need to develop their
11 own system. More significantly at this point, Defendants are attempting to ensure the passage of
12 the legislation that is on track to prohibit the IRS from developing their own generally available,
13 easy-to-use, cost-free e-filing system (*see* footnote 1 herein). Once that law gets passed, and the
14 IRS is prohibited from developing an e-filing system, Defendants will no longer face any
15 deterrence at all from the threat of IRS competition.

16 109. To protect the general public from the threat of future injury, Plaintiffs seek a
17 public injunction, under *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), prohibiting Defendants
18 from continuing their deceptive and unfair practices.

19 110. To stop Defendants', deceptive, unfair, and unlawful conduct, Defendants should
20 be prohibited from marketing and operating a supposedly "free" service in competition with
21 Defendants' True Free File Service. The only "free" e-filing service Defendants should be
22 allowed to offer to the public is Defendants' True Free File Service. If Defendants wish to offer
23 free filing to additional taxpayers beyond those eligible for their True Free File Service, they can
24 simply expand the eligibility for their True Free File Service; there is no need to offer a
25 competing "free" service. Defendants should be prohibited from using the word "free" in
26 connection with services other than Defendants' True Free File Service. Defendants should be
27 prohibited from advertising any alternative free tax filing service (including purchasing search
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1 advertisements in connection with the search term “free”) other than advertisements for
2 Defendants’ True Free File Service.

3 111. Defendants must unequivocally inform taxpayers at the earliest feasible point—
4 including on the landing page for their True Free File Service, any FAQs section for their True
5 Free File Service, and at any point at which a taxpayer enters information indicating that the
6 taxpayer is eligible for free filing under the IRS Free File program—whether the taxpayers are
7 eligible or ineligible for Defendants’ True Free File Service, whether they are eligible for free
8 filing under the IRS Free File program, and where and how the taxpayers may file for free using
9 such services. Defendants should be prohibited from marketing Paid HRB Tax Products (whether
10 through an upgrade prompt, a recommendation, an advertisement, or a menu featuring paid
11 services) to taxpayers who are eligible for free filing under the IRS Free File program.

12 112. In the event Defendants are allowed to continue to offer a “free” service in
13 addition to Defendants’ True Free File Service, then through a prominent disclosure on the home
14 page of the alternative free service, on other webpages/screens throughout the process of such
15 service, and on any page that indicates that a taxpayer does not qualify for the alternative free
16 service or proposes an upgrade or payment for Defendants’ Paid HRB Tax Programs:

17 (a) Defendants must make clear that the alternative free service is not Defendants’ True Free File
18 Service; (b) Defendants must clearly identify the differences between Defendants’ True Free File
19 Service and the alternative free service; (c) Defendants must disclose that there are other free
20 filing offers available through the IRS Free File program; (d) Defendants must provide a
21 prominent link to Defendants’ True Free File Service and to the IRS Free File Landing Page; and
22 (e) Defendants must unequivocally inform taxpayers at the earliest feasible point—including on
23 the landing page for the alternative free service and as soon as the taxpayer enters any response
24 (such as the taxpayer’s AGI) that is sufficient to determine the taxpayer’s eligibility for the
25 following services—whether they are eligible or ineligible for Defendants’ True Free File
26 Service, whether they are generally eligible or ineligible for other offers under the IRS Free File
27 program, and whether they are eligible or ineligible for the alternative free e-filing service. At any
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1 point in which the choice to proceed with Defendants' True Free File Service is presented,
2 Defendants must clearly inform the taxpayer that any information they have provided to
3 Defendants and that would be used for Defendants' alternative free filing service will
4 automatically be transferred to Defendants' True Free File Service and, if the taxpayer elects to
5 proceed with Defendants' True Free File Service, Defendants must immediately transfer
6 information the taxpayer has already provided to Defendants and that can be used for Defendants'
7 True Free File Service.

8 113. In addition, Defendants should be prohibited from engaging in practices designed
9 to lower the prominence and ranking of Defendants' True Free File Service in search results. In
10 particular, Defendants should be prohibited from interfering with any search engine robot
11 crawling or indexing that would tend to increase the ranking of the webpages for Defendants'
12 True Free File Service. And Defendants should be prohibited from using search advertisements
13 and search engine optimization techniques to promote the ranking of any competing service (such
14 as their Bait-and-Switch Program or any other Paid HRB Tax Program) to the prejudice of
15 Defendants' True Free File Service or to the prejudice of the IRS Free File program.

16 114. Absent injunctive relief, Plaintiffs and the public at large are likely to be misled or
17 confused again by Defendants' practices. Defendants can easily change the name of their True
18 Free File Service and/or their competing Bait-and-Switch Program (and the terms Defendants
19 uses to describe and market those services), Defendants can also change the conditions of and/or
20 landing page for their True Free File Service, and Defendants can deploy search engine
21 optimization strategies to divert taxpayers away from Defendants' True Free File Service and the
22 IRS Free File program and toward alternative, competing services, such that Plaintiffs and other
23 members of the public will not be sure (a) whether they are actually proceeding with Defendants'
24 True Free File Service or some other service or (b) whether they are actually eligible for
25 Defendants' True Free File Service or some other service. Absent injunctive relief, Defendants
26 could also continue to market their Paid HRB Tax Products and manipulate consumers into
27 paying for Defendants' unnecessary services.

28

CLASS ALLEGATIONS

1
2 115. Plaintiffs bring this action against Defendants, on behalf of themselves and all
3 others similarly situated, as a class action pursuant to sections 382 and 1781 of the California
4 Civil Code. Plaintiffs seek to represent the following groups of similarly situated persons, defined
5 as follows:

6 All persons who, between May 17, 2015 and the present, paid to file one or more federal
7 tax returns through Defendants' internet-based filing system even though they were
8 eligible to file those tax returns for free under IRS Free File (the "Nationwide IRS Free
9 File Class").

10 116. Plaintiffs also seek to represent a subclass consisting of those members of the
11 Nationwide IRS Free File Class who were eligible to file the subject tax returns through
12 Defendants' True Free File Service (the "Nationwide HRB Free File Subclass").

13 117. Plaintiffs also seek to represent a subclass consisting of those members of the
14 Nationwide IRS Free File Class who resided in and were citizens of California at the time of the
15 payments (the "California IRS Free File Subclass").

16 118. Plaintiffs also seek to represent a subclass consisting of those members of the
17 Nationwide HRB Free File Class who resided in and were citizens of California at the time of the
18 payments (the "California HRB Free File Subclass").

19 119. The Nationwide IRS Free File Class and Nationwide HRB Free File Subclass are
20 referred to, collectively, as the "Nationwide Classes." The California IRS Free File Class and
21 California HRB Free File Sub-subclass are referred to, collectively, as the "California
22 Subclasses." The Nationwide Classes and California Subclasses are referred to collectively herein
23 as the "Classes."

24 120. The following persons and entities are excluded from the Classes: Defendants and
25 their officers, directors, employees, subsidiaries, and affiliates; and all judges assigned to this case
26 and any members of their immediate families.

27 121. Plaintiffs reserve the right to propose additional or alternative classes or
28 subclasses, or to narrow the above class and subclass definitions. This reservation includes but is

1 not limited to classes or subclasses involving consumers in multiple states or involving particular
2 issues.

3 122. This action has been brought and may properly be maintained as a class action
4 against Defendants because there is a well-defined community of interest in the litigation and the
5 proposed Classes are easily ascertainable.

6 123. The proposed Classes are so numerous that joinder of all members is
7 impracticable. The precise number of members in each of the Nationwide Classes is not yet
8 known to Plaintiff, but it is well in excess of 1,000 people. The precise number of members in
9 each of the California Subclasses is not yet known to Plaintiff, but it is well in excess of 1,000
10 people.

11 124. Common Questions Predominate: This action involves common questions of law
12 and fact to the Classes because each class member's claim derives from the deceptive, unlawful
13 and/or unfair statements and omissions that led consumers to believe that Defendants' True Free
14 File Service was actually free. The common questions of law and fact predominate over
15 individual questions, as proof of a common or single set of facts will establish the right of each
16 member of the Classes to recover. There are questions of law and fact that are common to the
17 Classes, including, but not limited to, the following:

- 18 • whether Defendants' Bait-and-Switch Program was a deceptive, unfair, and/or
19 unlawful practice (or set of practices);
- 20 • whether Defendants misled class members by representing that their Fake "Free"
21 Offer was actually free;
- 22 • whether Defendants deceptively, unfairly, and/or unlawfully diverted Eligible
23 Taxpayers from Defendants' True Free File Service into Defendants' paid products
24 and services;
- 24 • whether Defendants deceptively, unfairly, and/or unlawfully diverted Eligible
25 Taxpayers from truly free filing offers available under the IRS Free File program
26 into Defendants' paid products and services;
- 26 • whether members of the Classes are third-party beneficiaries of the Eighth MOU
27 and prior versions thereof;
- 28 • whether Defendants breached their obligations to the class;

- 1 • whether Defendants engaged in the alleged conduct knowingly, recklessly, or
negligently;
- 2 • the amount of revenues and profits Defendants received and/or the amount of
3 monies or other obligations lost by class members as a result of such wrongdoing;
- 4 • whether class members are entitled to injunctive relief and other equitable relief
5 and, if so, what is the nature of such relief; and
- 6 • whether class members are entitled to payment of actual, compensatory, incidental,
7 consequential, exemplary, and/or statutory damages plus interest, and if so, what is
8 the nature of such relief.

9 125. Plaintiffs' claims against Defendants are typical of the claims of the Classes
10 because Plaintiffs and all other members of the Classes were eligible for free filing under the IRS
11 Free File program but were charged for Defendants' products and services as a result of
12 Defendants' Bait-and-Switch Program.

13 126. Plaintiffs will fairly and adequately protect the interests of all class members
14 because it is in their best interests to prosecute the claims alleged herein to obtain full
15 compensation due to them for the unfair and illegal conduct of which they complain. Plaintiffs
16 also have no interests that are in conflict with, or antagonistic to, the interests of class members.
17 Plaintiffs have retained highly competent and experienced class action attorneys to represent them
18 interests and that of the classes. By prevailing on their own claims, Plaintiffs will establish
19 Defendants' liability to all class members. Plaintiffs and their counsel have the necessary
20 financial resources to adequately and vigorously litigate this class action, and Plaintiffs and
21 counsel are aware of their fiduciary responsibilities to the class members and are determined to
22 diligently discharge those duties by vigorously seeking the maximum possible recovery for class
23 members.

24 127. Superiority: There is no plain, speedy, or adequate remedy other than by
25 maintenance of this class action. The prosecution of individual remedies by members of the
26 classes will tend to establish inconsistent standards of conduct for Defendants and result in the
27 impairment of class members' rights and the disposition of their interests through actions to
28 which they were not parties. Class action treatment will permit a large number of similarly
situated persons to prosecute their common claims in a single forum simultaneously, efficiently,

1 and without the unnecessary duplication of effort and expense that numerous individual actions
2 would engender. Furthermore, as the damages suffered by each individual member of the classes
3 may be relatively small, the expenses and burden of individual litigation would make it difficult
4 or impossible for individual members of the class to redress the wrongs done to them, while an
5 important public interest will be served by addressing the matter as a class action.

6 128. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
7 management of this action that would preclude its maintenance as a class action.

8 **PLAINTIFFS' FIRST CAUSE OF ACTION**

9 **(Violation of the Consumers Legal Remedies Act (the "CLRA"), California Civil Code §
10 1750, *et seq.*, on behalf of Plaintiffs and the California Subclasses)**

11 129. Plaintiffs reallege and incorporate the paragraphs of this Complaint as if set forth
12 herein.

13 130. Defendants' actions, representations and conduct have violated, and continue to
14 violate the CLRA, because they extend to transactions that are intended to result, or which have
15 resulted, in the sale of products to consumers.

16 131. Each Plaintiff and each member of the California Subclasses is a "consumer" as
17 that term is defined by the CLRA in California Civil Code § 1761(d).

18 132. The tax services that Plaintiffs (and other similarly situated members of the
19 California Subclasses) purchased from Defendants was a "service" within the meaning of
20 California Civil Code § 1761(b).

21 133. Defendants' acts and practices, set forth in this Complaint, led Plaintiffs, members
22 of the California Subclasses, and other members of the general public to falsely believe that
23 Defendants' Fake "Free" Offer provides free tax preparation and filing for most taxpayers. In
24 truth, the Fake "Free" Offer was and is subject to several undisclosed and surprising conditions
25 and was and is not free for most taxpayers. Accordingly, Defendants' representations that the
26 Fake "Free" Offer is a "free" service and that it is the free filing service taxpayers are seeking and
27 to which they are entitled are false, misleading, and unfair.

28 134. By engaging in the actions, representations and conduct set forth in this

1 Complaint, Defendants have violated, and continue to violate, § 1770(a)(5), § 1770(a)(7),
2 § 1770(a)(9), § 1770 (a)(10), and § 1770(a)(13) of the CLRA. In violation of California Civil
3 Code §1770(a)(5), Defendants' acts and practices constitute improper representations that the
4 goods and services they sell have sponsorship, approval, characteristics, ingredients, uses,
5 benefits, or quantities, which they do not have (in particular, that Plaintiffs and members of the
6 California Subclasses could/can file for free through Defendants' Fake "Free" Offer and/or that
7 Defendants' Fake "Free" Offer was/is the truly free filing service Plaintiffs and members of the
8 California Subclasses were/are seeking). In violation of California Civil Code §1770(a)(7),
9 Defendants' acts and practices constitute improper representations that the Fake "Free" Offer and
10 Defendants' tax services were and are of a particular standard, quality, or grade (in particular, that
11 they were/are free to Plaintiffs and members of the California Subclasses and/or that Defendants'
12 Fake "Free" Offer was/is the truly free filing service Plaintiffs and members of the California
13 Subclasses were/are seeking), when they are not. In violation of California Civil Code
14 §1770(a)(9), Defendants falsely, deceptively, and unfairly markets and advertises their Fake
15 "Free" Offer as free for most taxpayers, with the intent to direct Plaintiffs and members of the
16 California Subclasses into paid services, such that Plaintiffs and members of the California
17 Subclasses did/do not receive Defendants' services as advertised. In violation of California Civil
18 Code §1770(a)(10), Defendants falsely, deceptively, and unfairly market and advertise their Fake
19 "Free" Offer as free for most taxpayers, with the intent to not to supply reasonably expected
20 demand for such free e-filings but instead to direct Plaintiffs and members of the California
21 Subclasses into paid services. Finally, in violation of California Civil Code §1770(a)(13),
22 Defendants makes false and misleading statements of fact concerning the existence of and
23 amounts of price reductions for their tax e-filing services.

24 135. Plaintiffs request that this Court enjoin Defendants from continuing to employ the
25 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
26 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
27 future, Plaintiffs, members of the California Subclasses, and the general public will continue to
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1 suffer harm.

2 136. CLRA § 1782 NOTICE. **Irrespective of any representations to the contrary in**
3 **this Class Action Complaint, Plaintiffs specifically disclaim, at this time, any request for**
4 **damages under any provision of the CLRA.** Plaintiffs, however, hereby provide Defendants
5 with notice and demand that within thirty (30) days from that date, Defendants correct, repair,
6 replace or otherwise rectify the unlawful, unfair, false and/or deceptive practices complained of
7 herein. Defendants failure to do so will result in Plaintiffs amending this Class Action Complaint
8 to seek, pursuant to California Civil Code § 1780(a)(3), on behalf of themselves and those
9 similarly situated members of the California Subclasses, compensatory damages, punitive
10 damages and restitution of any ill-gotten gains due to Defendants' acts and practices.

11 137. Plaintiffs also request that this Court award their costs and reasonable attorneys'
12 fees pursuant to California Civil Code § 1780(d).

13 **PLAINTIFFS' SECOND CAUSE OF ACTION**

14 **(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"), on**
15 **behalf of Plaintiffs and the California Subclasses)**

16 138. Plaintiffs reallege and incorporate by reference the paragraphs of this Complaint as
17 if set forth herein.

18 139. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
19 preceding the filing of the Complaint, Defendants made untrue, false, deceptive and/or misleading
20 statements in connection with the advertising and marketing of their Fake "Free" Offer.

21 140. Defendants made (and continue to make) representations and statements (by
22 omission and commission) that led Plaintiffs, members of the California Subclasses, and other
23 members of the general public to believe that Defendants' Fake "Free" Offer was free for most
24 taxpayers and that Defendants' Fake "Free" Offer was the truly free filing service Plaintiffs and
25 members of the California Subclasses were seeking when attempting to file their returns for free.

26 141. In truth, Defendants' Fake "Free" Offer is not part of the IRS Free File program, is
27 subject to several undisclosed and surprising conditions, is not free for most taxpayers, and is part
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1 of Defendants' Bait-and-Switch Program, so Defendants' claims that that service is "free" are
2 false and misleading.

3 142. Plaintiffs, members of the California Subclasses, and members of the general
4 public relied to their detriment on Defendants' false, misleading and deceptive advertising and
5 marketing practices, including each of the misrepresentations and omissions set forth in the
6 Substantive Allegations above. Had Plaintiffs, members of the California Subclasses, and
7 members of the general public been adequately informed and not intentionally deceived by
8 Defendants, they would have acted differently by, without limitation, refraining from using
9 Defendants' Fake "Free" Offer and the Paid HRB Tax Programs.

10 143. Defendants' acts and omissions are likely to deceive the general public.

11 144. Defendants engaged in these false, misleading and deceptive advertising and
12 marketing practices to increase their profits. Accordingly, Defendants engaged in false
13 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
14 Professions Code.

15 145. The aforementioned practices, which Defendants used, and continue to use, to
16 their significant financial gain, also constitutes unlawful competition and provides an unlawful
17 advantage over Defendants' competitors as well as injury to the general public.

18 146. As a direct and proximate result of such actions, Plaintiffs, the members of the
19 California Subclasses, and other members of the general public have suffered, and continue to
20 suffer, injury in fact and have lost money and/or property as a result of such false, deceptive and
21 misleading advertising in an amount which will be proven at trial, but which is in excess of the
22 jurisdictional minimum of this Court.

23 147. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
24 of monies, as necessary and according to proof, to restore any and all monies acquired by
25 Defendants from Plaintiffs and from the members of the California Subclasses by means of the
26 false, misleading and deceptive advertising and marketing practices complained of herein, plus
27 interest thereon.

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1 148. Plaintiffs seek, on behalf of themselves, the members of the California Subclasses,
2 and the general public, a declaration that the above-described practices constitute false,
3 misleading and deceptive advertising.

4 149. Plaintiffs seek, on behalf of themselves, the members of the California Subclasses,
5 and the general public, an injunction to prohibit Defendants from continuing to engage in the
6 false, misleading and deceptive advertising and marketing practices complained of herein. Such
7 misconduct by Defendants, unless and until enjoined and restrained by order of this Court, will
8 continue to cause injury in fact to the general public and the loss of money and property in that
9 Defendants will continue to violate the laws of California, unless specifically ordered to comply
10 with the same. This expectation of future violations will require current and future taxpayers to
11 repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to
12 which they are not entitled. Plaintiffs, the members of the California Subclasses, and other
13 members of the general public have no other adequate remedy at law to ensure future compliance
14 with the California Business and Professions Code alleged to have been violated herein.

15 **PLAINTIFFS' THIRD CAUSE OF ACTION**

16 **(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions**
17 **Code § 17200, et seq. ("UCL") on behalf of Plaintiffs and the California Subclasses)**

18 150. Plaintiffs reallege and incorporate by reference the paragraphs of this Complaint as
19 if set forth herein.

20 151. Within four (4) years preceding the filing of this lawsuit, and at all times
21 mentioned herein, Defendants have engaged, and continue to engage, in unlawful, unfair, and
22 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
23 business practices outlined in this complaint.

24 152. In particular, Defendants have engaged, and continue to engage, in unlawful
25 practices by, without limitation, violating the following state laws: (i) the CLRA as described
26 herein; (ii) the FAL as described herein; and (iii) the unlawful, unfair, and/or fraudulent breach of
27 contract.
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1 153. In particular, Defendants have engaged, and continue to engage, in unfair,
2 unlawful, and fraudulent practices as set forth in paragraphs 1-9, 44-108, and 168 herein, which
3 include without limitation:

- 4 a. concealing Defendants' True Free File Service from taxpayers (e.g., through
5 coding and search engine strategies, by failing to link to or discuss the True
6 Free File Service in prominent places on Defendants' webpages, by failing to
7 clearly disclose the material differences between Defendants' Fake "Free"
8 Offer and Defendants' True Free File Service while knowing that there is
9 consumer confusion and that consumers are seeking the True Free File Service,
10 and by failing to identify and link to the True Free File Service and the IRS
11 Free File program after taxpayers provide information revealing that they are
12 eligible for those truly free services);
- 13 b. marketing and operating Defendants' Bait-and-Switch Program to extract
14 money from taxpayers entitled to free filing (e.g., using paid advertisements
15 directed toward consumers seeking free filing, using marketing and search
16 engine strategies to direct Eligible Taxpayers to Defendants' Fake "Free" Offer
17 when they should be directed to Defendants' True Free File Service and/or the
18 IRS Free File program, misrepresenting that Defendants' Fake "Free" Offer is
19 free for most taxpayers, misrepresenting and causing Plaintiffs and members of
20 the Classes to believe that Defendants' Fake "Free" Offer is the free filing
21 service Plaintiffs and members of the California Subclasses are seeking when
22 attempting to file their returns for free, causing consumers to spend substantial
23 amounts of time and effort inputting their tax information (including sensitive
24 personal and financial information) before notifying them they are not eligible
25 for the Fake "Free" Offer, prompting Eligible Taxpayers to pay for
26 Defendants' services and misrepresenting that Eligible Taxpayers are required
27 to pay for services they do not actually need, and failing to use information
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1 provided by Eligible Taxpayers to direct them to and automatically begin
2 generating tax returns through Defendants' True Free File Service); and
3 c. unlawfully, unfairly and/or fraudulently violating, breaching and/or
4 circumventing the provisions of the Eighth MOU as set forth above and below.

5 154. Moreover, Defendants have unfairly competed with and continue to unfairly
6 compete with the IRS Free File program and the truly free e-filing services available under that
7 program, including Defendants' own True Free File Service. Defendants have profited and
8 continues to profit from their unfair, deceptive, and unlawful conduct.

9 155. Plaintiffs, the members of the California Subclasses, and members of the general
10 public relied to their detriment on Defendants' unlawful, unfair, and fraudulent business practices.
11 Had Plaintiffs, the members of the California Subclasses, and members of the general public been
12 adequately informed and not deceived by Defendants, they would have acted differently by not
13 paying for Defendants' Paid HRB Tax Programs, and instead they would have used one of the
14 IRS Free File services.

15 156. Defendants' acts and omissions are likely to deceive and mislead the general
16 public.

17 157. Defendants engaged in these unfair, deceptive and unlawful practices to increase
18 their profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and
19 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

20 158. The aforementioned practices, which Defendants have used to their significant
21 financial gain, also constitute unlawful competition and provide an unlawful advantage over
22 Defendants' competitors as well as injury to the general public.

23 159. As a direct and proximate result of such actions, Plaintiffs, the members of the
24 California Subclasses, and other members of the public, have suffered and continue to suffer
25 injury in fact and have lost money and/or property as a result of such deceptive and/or unlawful
26 trade practices and unfair competition in an amount which will be proven at trial, but which is in
27 excess of the jurisdictional minimum of this Court. Among other things, Plaintiffs and the
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1 California Subclasses lost the amounts they paid for Defendants' services (as a result of
2 Defendants' Bait-and-Switch Program), when they should not have paid anything to file their tax
3 returns.

4 160. As a direct and proximate result of such actions, Defendants have enjoyed, and
5 continue to enjoy, significant financial gain in an amount which will be proven at trial, but which
6 is in excess of the jurisdictional minimum of this Court.

7 161. Plaintiffs seek, on behalf of themselves and those similarly situated members of
8 the California Subclasses, full restitution of monies, as necessary and according to proof, to
9 restore any and all monies acquired by Defendants from Plaintiffs, the members of the California
10 Subclasses, the general public, or those similarly situated by means of the false, misleading and
11 deceptive advertising and marketing practices complained of herein, plus interest thereon.

12 162. Plaintiffs seek, on behalf of themselves, the members of the California Subclasses,
13 and the general public, a declaration that the above-described trade practices are fraudulent,
14 unfair, and/or unlawful.

15 163. Plaintiffs seek, on behalf of themselves, the members of the California Subclasses,
16 and the general public, an injunction to prohibit Defendants from continuing to engage in the
17 deceptive and/or unlawful trade practices complained of herein. Such misconduct by Defendants,
18 unless and until enjoined and restrained by order of this Court, will continue to cause injury in
19 fact to the general public and the loss of money and property in that Defendants will continue to
20 violate the laws of California, unless specifically ordered to comply with the same. This
21 expectation of future violations will require current and future taxpayers to repeatedly and
22 continuously seek legal redress in order to recover monies paid to Defendants to which they is not
23 entitled. Plaintiffs, the members of the California Subclasses, and members of the general public
24 have no other adequate remedy at law to ensure future compliance with the California Business
25 and Professions Code alleged to have been violated herein.

26 **PLAINTIFFS' FOURTH CAUSE OF ACTION**

27 (Breach of Contract, on behalf of Plaintiffs and the Classes)

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1 164. Plaintiffs reallege and incorporate by reference the paragraphs of this Complaint as
2 if set forth herein.

3 165. The Eighth MOU is a contract between the IRS and FFI (including FFI Members).
4 Defendants are Members of FFI and are subject to the terms of the Eighth MOU.

5 166. The Eighth MOU was entered into for the express benefit of “economically
6 disadvantaged and underserved populations” of taxpayers and “the lowest 70 percent of the
7 taxpayers.”

8 167. Plaintiffs and members of the Classes are third-party beneficiaries of the Eighth
9 MOU.

10 168. Defendants breached the terms of the Eighth MOU by:

- 11 a. failing to comply with the first paragraph of Article 2, which requires
12 Defendants to “extend[] the benefits of online tax preparation and electronic
13 filing to economically disadvantaged and underserved populations at no cost to
14 . . . the individual user;”
- 15 b. failing to comply with Section 2.1, which requires Defendants to “[m]ake tax
16 preparation and filing easier and reduce the burden on individual taxpayers,
17 particularly the economically disadvantaged and underserved populations;”
- 18 c. failing to comply with Section 2.4, which requires Defendants to “provid[e]
19 taxpayers the option to file their tax return online without charge;”
- 20 d. failing to comply with Section 4.15.14, which requires Defendants to “clearly
21 list their free customer service options;”
- 22 e. failing to comply with Section 4.19.2, which requires Defendants to
23 “unequivocally inform taxpayers who are ineligible for the free offer at the
24 earliest feasible point” that they are ineligible for the Free File offer and the
25 reason for the ineligibility, and, in the event that a taxpayer is ineligible for
26 either Defendants’ Fake “Free” Offer or Defendants’ True Free File Service,
27 Defendants are required to direct the taxpayer “back to the IRS Free File
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Landing Page as the first and most prominent alternative action so that [the taxpayer] may immediately consider other Free File offers available from the Free File Program;”

- f. failing to comply with Section 4.19.4, which prohibits Defendants from posting “a billing screen requesting or collecting bank/financial information (e.g., debit/credit card information) from customers who qualify for a free return where no state tax products have been purchased;”
- g. failing to comply with Sections 4.19.2 and 4.32.2, which require Defendants to direct taxpayers to Defendants’ True Free File Service as the first option, then direct Eligible Taxpayers who do not qualify for that True Free File Service to the IRS Free File program where such Eligible Taxpayers can find other free offers, and only then may Defendants present Eligible Taxpayers with an alternative free service, and, only as a last resort, may Defendants offer taxpayers paid services; and
- h. failing to comply with Section 4.19.4, which prohibits Defendants from “marketing, soliciting, sales or selling activity, or electronic links to such activity . . . in the Free File Program” (such violations include but are not limited to Defendants’ marketing of paid services on the landing page for their True Free File Service, as the first and most prominent alternative to using Defendants’ True Free File Service).

169. Plaintiffs and members of the Classes have been damaged by the Defendants’ breaches of the MOU because Plaintiffs and members of the Classes were entitled to file their federal tax returns for free pursuant to the Eighth MOU but were misled by Defendants and were charged by Defendants to file their tax returns.

170. Plaintiffs, on behalf of themselves and the members of the Classes, seek recovery for damages, as well as injunctive relief requiring Defendants to comply in good faith with the terms of the Eighth MOU.

PLAINTIFFS' FIFTH CAUSE OF ACTION

(Unjust Enrichment, on behalf of Plaintiffs and the Classes)

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3 171. Plaintiffs reallege and incorporate by reference the paragraphs of this Complaint as
4 if set forth herein.

5 172. Plaintiffs and the members of the Classes conferred benefits on the Defendants by
6 paying for Defendants' products and services, when they were eligible to file their tax returns for
7 free.

8 173. But for Defendant's inequitable conduct alleged herein, which misled, misdirected,
9 and manipulated Plaintiffs and the members of the Classes into paying for services they did not
10 need, Plaintiffs and the members of the Classes would not have paid Defendants anything for
11 their tax filings.

12 174. Defendants engaged in these unjust practices to increase their profits to the
13 detriment of Plaintiffs and those similarly situated:

14 175. It would be unjust and inequitable for Defendants to retain the benefits of their
15 misconduct as alleged herein, because, among other things, Defendants misled, misdirected, and
16 manipulated Plaintiffs and the members of the Classes into paying for services they did not need,
17 and Defendants knew or should have known that they were unjustly profiting from Plaintiffs and
18 the members of the Classes.

19 176. Because Defendant's retention of the non-gratuitous benefit conferred on it by
20 Plaintiffs and those similarly situated is unjust and inequitable, Defendant must disgorge such
21 benefits and pay restitution to Plaintiffs and the members of the Classes for their unjust
22 enrichment, as ordered by the Court.

23 177. Plaintiffs seek, on behalf of themselves and the members of the Classes, full
24 disgorgement of Defendants' revenues or profits from their wrongful conduct and/or full
25 restitution of the fees paid by Plaintiffs and members of the Classes, to restore any and all monies
26 acquired by Defendants from Plaintiffs, members of the Classes, and the general public, by means
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1 of the Bait-and-Switch Program and the false, misleading, and deceptive advertising and
2 marketing practices complained of herein, plus interest thereon.

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs, on behalf of themselves, the Classes, and the general public,
5 respectfully requests that the Court enter judgment against Defendants as follows:

6 A. A public injunction temporarily and permanently enjoining Defendants from
7 continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in
8 this Complaint (including without limitation paragraphs 44-86, 103-14, 133-34, 139-
9 40, and 153), and including without limitation:

- 10 1) prohibiting Defendants from marketing and operating any supposedly “free”
11 service in addition to or in competition with Defendants’ True Free File
12 Service, including prohibiting Defendants from advertising any other service
13 as “free” and from purchasing search advertisements, other than
14 advertisements for Defendants’ True Free File Service, in connection with the
15 search term “free;”
- 16 2) as an alternative to the public injunction described immediately above, a public
17 injunction requiring Defendants, on the home page of any alternative free tax
18 filing service they may offer, on other webpages or screens throughout the
19 process of using such service, and on any page that indicates that a taxpayer
20 does not qualify for the alternative free service or proposes an upgrade or
21 payment for Defendants’ Paid HRB Tax Programs, (a) to provide a clear and
22 prominent disclosure that the alternative free service is not Defendants’ True
23 Free File Service; (b) to clearly identify the differences between Defendants’
24 True Free File Service and the alternative free service; (c) to disclose that there
25 are other free filing offers available through the IRS Free File program; (d) to
26 provide a prominent link to Defendants’ True Free File Service and to the IRS
27 Free File Landing Page; (e) to unequivocally inform taxpayers at the earliest
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1 feasible point—including on the landing page for the alternative free service
2 and/or as soon as the taxpayer enters any response (such as the taxpayer’s
3 AGI) that is sufficient to determine the taxpayer’s eligibility for the following
4 services—whether they are eligible or ineligible for Defendants’ True Free File
5 Service, whether they are generally eligible or ineligible for other offers under
6 the IRS Free File program, and whether they are eligible or ineligible for
7 Defendants’ alternative free e-filing service; (f) to clearly and accurately
8 inform taxpayers that any information they have provided to Defendants and
9 that would be used for Defendants’ alternative free filing service will
10 automatically and conveniently be transferred to Defendants’ True Free File
11 Service if the taxpayer elects to proceed with Defendants’ True Free File
12 Service; and (g) to immediately transfer all relevant information a taxpayer has
13 provided to Defendants to Defendants’ True Free File Service if the taxpayer
14 elects to proceed with Defendants’ True Free File Service;

15 3) prohibiting Defendants from engaging in practices designed to lower the
16 prominence and ranking of Defendants’ True Free File Service in search
17 engine results, including prohibiting Defendants from disallowing any search
18 engine robot crawling and indexing that would tend to increase the ranking of
19 the webpages for Defendants’ True Free File Service, and prohibiting
20 Defendants from using search advertisements and search engine optimization
21 techniques to promote the ranking of any competing service to the prejudice of
22 Defendants’ True Free File Service or to the prejudice of the IRS Free File
23 program;

24 4) prohibiting Defendants from initiating, directing, or using any affiliate
25 marketing program as part of a Bait-and-Switch Program or that refers
26 taxpayers to a Bait-and-Switch Program, including any affiliate marketing
27 program that targets search terms involving “free” filing or “free” tax returns
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- 1 and then paying affiliates when those individuals seeking “free” services are
2 ultimately referred to and/or charged for Defendants’ Paid HRB Tax Programs;
3 5) requiring Defendants to provide clear information, at the earliest feasible point,
4 about each taxpayer’s eligibility for genuinely free e-filing services under the
5 IRS Free File program and how the taxpayer can get to an online provider who
6 will provide free filing services to that taxpayer;
7 6) prohibiting Defendants from marketing paid services (whether through an
8 upgrade prompt, a recommendation, an advertisement, or a menu featuring
9 paid services) to taxpayers who are eligible for free filing under the IRS Free
10 File program;

11 B. Additionally:

- 12 a. On Cause of Action Number 1 against Defendants and in favor of Plaintiffs
13 and the other members of the California Subclasses:
14 i. For restitution of the fees paid by Plaintiffs and members of the
15 California Subclasses to Defendants, in an amount to proven at trial;
16 ii. for injunctive relief pursuant to California Civil Code section 1780 and
17 as described and requested in Section A;
18 iii. [Reserved];
19 iv. [Reserved];
20 b. On Cause of Action Number 2 against Defendants and in favor of Plaintiffs
21 and the other members of the California Subclasses:
22 i. For restitution of the fees paid by Plaintiffs and members of the
23 California Subclasses to Defendants, in an amount to proven at trial
24 pursuant to, without limitation, the California Business & Professions
25 Code §§ 17200, *et seq.*; and 17500, *et seq.*; and
26 ii. for declaratory and injunctive relief pursuant to, without limitation, the
27 California Business & Professions Code §§ 17200, *et seq.* and 17500 *et*
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seq. and as described and requested in Section A;

c. On Cause of Action Number 3 against Defendants and in favor of Plaintiffs and the other members of the California Subclasses:

- i. For restitution of the fees paid by Plaintiffs and members of the California Subclasses to Defendants, in an amount to proven at trial, pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et seq.*; and
- ii. for declaratory and injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, *et seq.* and as described and requested in Section A;

d. On Cause of Action Number 4 against Defendants and in favor of Plaintiffs and the other members of the Classes:

- i. For compensatory damages (including the fees paid by Plaintiffs and members of the Classes), in an amount to proven at trial; and
- ii. for declaratory and injunctive relief as described and requested in Section A;

e. On Cause of Action Number 5 against Defendants and in favor of Plaintiffs and the other members of the Classes:

- i. For disgorgement or restitution of the benefits Defendants have obtained from (i.e., the fees paid by) Plaintiffs and members of the Classes, in an amount to proven at trial;

C. For reasonable attorneys' fees and the costs of suit incurred; and

D. For such further relief as this Court may deem just and proper.

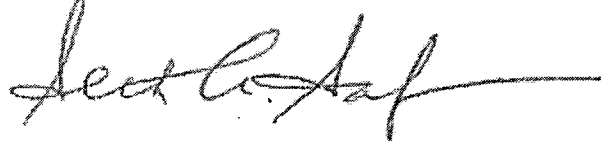
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JURY TRIAL DEMANDED

Plaintiffs hereby demands a trial by jury as to all issues.

Dated: May 17, 2019

GUTRIDE SAFIER LLP



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