



City Attorney Dennis Herrera News Release

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Herrera’s Instant Tax lawsuit seeks full restitution for defrauded low-income filers

Baiting low-income taxpayers with small “refund anticipation loans,” tax-preparer Kebron Daniel pocketed fees of as much as \$1,500 for loans as small as \$50

SAN FRANCISCO (Nov. 20, 2014)—City Attorney Dennis Herrera has filed suit against an Oakland, Calif.-based franchisee of Instant Tax Service—an embattled company that was once the nation’s fourth-largest tax preparation service—for a host of illegal business practices that defrauded low-income taxpayers throughout California. In a 16-page civil complaint filed in San Francisco Superior Court yesterday, Herrera alleges that one-time Instant Tax franchisee Kebron Daniel engaged in tax preparation and loan-making schemes that routinely skimmed profligate fees from refunds owed to unsuspecting taxpayers—pocketing fees of as much as \$1,500 for loans as small as \$50.

Daniel has largely run his seasonal Instant Tax business out of check-cashing outlets in low-income neighborhoods across the state, including locations in San Francisco, Los Angeles, San Diego, Antioch, Carmichael, Compton, Hayward, Inglewood and Martinez. The tax preparation and loan-making scheme appears to target working families eligible for the Earned Income Tax Credit, a refundable credit under federal law that aims to boost low-wage workers out of poverty. Often lured by the promise of quick refunds or small “refund anticipation loans,” taxpayers hired Daniel’s company to complete and file their tax returns electronically. But the company’s pattern has been to mislead consumers at every turn: failing to provide required disclosures, failing to disclose the full cost of services, failing to provide copies of tax documents, and—most egregiously—directing its customers’ refunds into its own account without taxpayers’ consent or knowledge. From there, Daniel’s company would usually withhold large, undisclosed portions of the eventual refunds before providing a significantly diminished balance—if anything—to customers.

“There may be a special place in Hell for those who rob low-income families, but until then I’m grateful for tough consumer protection laws that allow us to aggressively pursue wrongdoers like Kebron Daniel for every dollar he’s defrauded from taxpayers,” said Herrera. “Even in the context

[MORE]

of the hundreds of cases my office has taken on to fight wage and benefit theft, arbitration fraud, payday lender scams and more, this company's extortionate greed is breathtaking. It's an illegal business that preys on low-income families, robbing them of the modest tax credit federal law authorizes to improve their means. I'm very grateful to KTVU-TV 2 Investigates unit for tipping my office off to this wrongdoing, and to my office's Complex and Affirmative Litigation Team, which investigated and brought the case. I hope this action sends a strong warning to those who would ever consider engaging in similar fraudulent practices, and that it also serves as a cautionary reminder to all taxpayers to be vigilant in seeking tax preparation services with integrity."

Resources available to consumers seeking reputable tax preparation services include the IRS's Volunteer Income Taxpayer Assistance program, which provides free tax help to anyone earning under \$53,000 annually. Information about the VITA and instructions for finding nearby providers is available online at: <http://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers>. The IRS also offers tips on how best to choose a tax preparer at: <http://www.irs.gov/uac/Newsroom/IRS-Offers-Advice-on-How-to-Choose-a-Tax-Preparer>.

If Herrera's lawsuit is successful, it would secure a sweeping court order requiring that Daniel and his corporate alter ego, LILAY, Inc., fully restore all funds defrauded from his customers; pay \$2,500 in civil penalties for each unlawful act; pay the costs of Herrera's lawsuit; and be permanently enjoined from engaging in further unlawful acts.

Kebron Daniel does business as an apparent franchisee of Instant Tax Service, whose parent company, ITS Financial LLC, was shuttered by a federal court in Ohio last year for a raft of fraudulent practices. The company claimed at the time to be the fourth-largest tax-preparation firm in the nation, with about 150 franchisees nationwide, according to a Nov. 7, 2013 U.S. Justice Department News Release.

About the S.F. City Attorney's Complex and Affirmative Litigation Team

The San Francisco City Attorney's Office's Complex and Affirmative Litigation Team pursues public interest civil cases under California's Unfair Competition Law, which are funded virtually exclusively by civil recoveries—not taxpayer dollars. The award-winning program, for which the National Association of Consumer Advocates recognized Dennis Herrera as its 2009 Consumer Attorney of the Year, reflects voter-enacted changes to California law that require civil penalties recovered by public prosecutors to be used exclusively to enforce consumer protection laws. Since voters passed the amendments as part of Proposition 64 in 2004, Herrera's Complex and Affirmative Litigation Team has recovered some \$20 million in successful battles against unlawful business practices that include price-fixing, illegal marketing, credit card collections arbitration scams and more. The team's work has helped win equally important industry reforms to help protect consumer privacy, end discriminatory practices in health insurance and media metrics, protect immigrants, halt predatory evictions, and obtain recoveries for victims of wage theft.

The case is: *People of the State of California ex rel. Dennis Herrera v. LILAY, Inc. d/b/a INSTANT TAX, et al.*, San Francisco Superior Court Number CGC-14-542789, filed Nov. 19, 2014. For more information on the San Francisco City Attorney's Office, visit: <http://www.sfcityattorney.org/>.

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11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 PEOPLE OF THE STATE OF CALIFORNIA
14 ex rel. DENNIS HERRERA, SAN
FRANCISCO CITY ATTORNEY,

15 Plaintiff,

16 vs.

17 LILAY, INC. d/b/a INSTANT TAX;
18 KEBRON DANIEL d/b/a INSTANT TAX;
and DOES 1-50, inclusive,

19 Defendants.
20

Case No. CGC-14-542789

COMPLAINT FOR INJUNCTIVE RELIEF AND
CIVIL PENALTIES FOR VIOLATIONS OF
BUSINESS AND PROFESSIONS CODE
SECTION 17200

1 Plaintiff, the People of the State of California (“THE PEOPLE”), acting by and through San
2 Francisco City Attorney Dennis J. Herrera, is informed and believes and alleges as follows:

3 INTRODUCTION

4 1. This action arises under the California Unfair Competition Law, Business and
5 Professions Code section 17200 *et. seq.* (“Unfair Competition Law”). It challenges the unfair,
6 unlawful and/or fraudulent business practices of defendants LILAY, INC. and KEBRON DANIEL
7 (“DEFENDANTS”).

8 2. DEFENDANTS own, operate and control a seasonal tax preparation business
9 (“INSTANT TAX”) that preys on low-income taxpayers. Many of these taxpayers, especially
10 working families, receive the Earned Income Tax Credit (EITC), a refundable credit intended to boost
11 low-wage workers out of poverty. DEFENDANTS and other fraudulent seasonal tax preparers target
12 low-income taxpayers, in particular EITC recipients, because they are a vulnerable and lucrative
13 population. DEFENDANTS defraud California taxpayers by, among other things, withholding
14 exorbitant fees from taxpayers’ refunds without the taxpayers’ knowledge or consent.

15 3. INSTANT TAX operates out of check-cashing outlets in low-income neighborhoods
16 throughout California, including locations in San Francisco, Antioch, Carmichael, Compton, Hayward,
17 Inglewood, Martinez, Los Angeles, and San Diego.

18 4. INSTANT TAX holds itself out as a legitimate tax preparer. When an unsuspecting
19 consumer requests tax preparation assistance, INSTANT TAX prepares and electronically files a tax
20 return, directs the Internal Revenue Service (IRS) to deposit the customer’s refund check into
21 INSTANT TAX’s own bank account (or an account it controls), and then retains for itself a large and
22 undisclosed portion of the customer’s refund.

23 5. For example, one San Francisco taxpayer agreed to have INSTANT TAX prepare and
24 electronically submit her federal tax return in exchange for INSTANT TAX giving her a \$100 loan
25 and deducting a \$400 fee from her refund. Without the taxpayer’s knowledge or consent, INSTANT
26 TAX directed the IRS to deposit her refund into an account controlled by INSTANT TAX, and then
27 deducted \$1,293.95 before presenting the remaining funds to the taxpayer as her “refund.” The
28 taxpayer had no way to know the amount of fees she paid because INSTANT TAX did not give her

1 the opportunity to verify the return before it was filed or provide her with a copy of the return. Only
2 after she suspected that she was the victim of fraud did she contact the IRS and learn that her federal
3 tax refund was issued to INSTANT TAX in the amount of \$4,380.35. The taxpayer received only
4 \$3,086.40 from INSTANT TAX.

5 6. Another taxpayer went to INSTANT TAX after seeing a commercial promising cash up
6 front. INSTANT TAX gave her an “instant loan” of \$50. INSTANT TAX filed her taxes and
7 eventually gave her a “refund” check for approximately \$1,600. When the taxpayer contacted the IRS,
8 she learned that the true amount of her refund was approximately \$6,000. INSTANT TAX took over
9 \$4,000 from this taxpayer. When the taxpayer complained to INSTANT TAX, she was told, among
10 other things, that INSTANT TAX charged her \$1,500 in fees because of the \$50 loan.

11 7. INSTANT TAX’s practices violate numerous California and federal laws governing tax
12 preparers and electronic return providers. INSTANT TAX is not registered or bonded; it does not
13 provide written disclosures; it induces customers via misleading statements; it denies customers their
14 right to review tax returns *before* they are filed; it refuses to provide copies of returns *after* they are
15 filed; and it directs customer refunds directly into an INSTANT TAX account. Most egregiously,
16 INSTANT TAX helps itself to large and undisclosed fees before it gives taxpayers their refunds.

17 8. THE PEOPLE bring this suit to enjoin DEFENDANTS from future illegal conduct that
18 is harmful to consumers and to recover funds for consumers who were victimized by DEFENDANTS’
19 unlawful, fraudulent, and/or unfair practices. THE PEOPLE also seek to impose civil penalties on
20 DEFENDANTS for their illegal conduct.

21 PARTIES

22 9. Plaintiff, the People of the State of California (“THE PEOPLE”), by and through San
23 Francisco City Attorney Dennis J. Herrera, prosecutes this action pursuant to California Business and
24 Professions Code section 17200 *et. seq.*

25 10. Defendant KEBRON DANIEL is the sole Officer (Chief Executive Officer, Chief
26 Financial Officer, and Secretary) and sole Director of LILAY INC.

27 11. Defendant LILAY, INC. is a California corporation registered at One Lakeside Drive,
28 #701, Oakland, CA 94612.

1 12. Defendants KEBRON DANIEL and/or LILAY, INC. have owned and operated a tax
2 preparation business under the name Instant Tax Service (“INSTANT TAX”) in California for at least
3 the last several years.

4 13. The transactions and practices described herein involve additional entities whose
5 identities and involvement are unknown to THE PEOPLE. The true names and capacities, whether
6 corporate, associate, individual, partnership, or otherwise, of Defendants Does 1 through 50, inclusive,
7 are unknown to THE PEOPLE, which therefore sue said defendants by such fictitious names. THE
8 PEOPLE will seek leave of court to amend this complaint to allege their true names and capacities
9 when the same are ascertained.

10 14. THE PEOPLE are informed and believe and thereupon allege that all of the acts and
11 omissions described in this Complaint by any defendant were duly performed by, and attributable to,
12 all DEFENDANTS, including Doe Defendants, each acting as agent and/or under the direction and
13 control of the others, and such acts and omissions were within the scope of such agency, direction,
14 and/or control. Any reference in this complaint to any acts of “DEFENDANTS” shall be deemed to
15 be the acts of each and every defendant acting individually, jointly or severally.

16 15. THE PEOPLE are informed and believe and thereupon allege that all DEFENDANTS
17 controlled, authorized, directed and/or participated in all of the conduct and business practices by
18 INSTANT TAX described herein. Any reference in this complaint to any acts of “INSTANT TAX”
19 shall be deemed to refer to the acts of each and every defendant acting individually, jointly or
20 severally.

21 16. Whenever reference in this complaint is made to any act or transaction of any
22 corporation, business, or other organization, that allegation shall be deemed to mean that the
23 corporation, business, or other organization did or authorized the acts alleged in this complaint through
24 its principals, officers, directors, employees, members, agents and representatives while they were
25 acting within the actual or ostensible scope of their authority.

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1 25. It is unlawful for a tax preparer to obtain the signature of a customer to a tax return or
2 authorizing document which contains blank spaces to be filled in after it has been signed. Bus. & Prof.
3 Code § 22253(a)(3).

4 26. It is unlawful for a tax preparer to fail or refuse to give a customer a copy of any
5 document requiring the customer's signature, within a reasonable time after the customer signs the
6 document. Bus. & Prof. Code § 22253(a)(4). Similarly, under the California Revenue & Tax Code,
7 tax preparers are required to "furnish a copy of any state tax return to a taxpayer." Cal. Rev. & Tax
8 Code § 18625.

9 27. It is unlawful for a tax preparer to engage in advertising practices which are fraudulent,
10 untrue, or misleading. Bus. & Prof. Code § 22253(a)(6).

11 28. It is unlawful for a tax preparer to disclose confidential information concerning a client
12 or a prospective client without the written permission of the client or prospective client. Bus. & Prof.
13 Code, § 22252.1(a); *accord* Bus. & Prof. Code §17530.5.

14 29. A "Refund Anticipation Loan" is a loan, whether provided by the tax preparer or
15 another entity, such as a financial institution, in anticipation of, and whose payment is secured by, a
16 client's federal or state income tax refund or by both. Bus. & Prof. Code § 22251(f).

17 30. Any tax preparer who advertises a Refund Anticipation Loan must "state conspicuously
18 that it is a loan and that a fee or interest will be charged by the lending institution," and "shall not
19 directly or indirectly represent the loan as a client's actual refund." Bus. & Prof. Code § 22253.1(a).

20 31. Tax preparers must prominently post specific information and make timely, specific,
21 written disclosures associated with Refund Anticipation Loans. *Id.* § 22253.1(b-c).

22 32. Tax preparers who facilitate Refund Anticipation Loans may not misrepresent a
23 material factor or condition of the loan, nor engage in any practice that operates a fraud upon the
24 consumer in connection with the loan. *Id.*

25 33. California's usury laws (e.g. Cal. Const., art XV, § 1 and Cal. Civ. Code, § 1916-1 *et.*
26 *seq.*) are applicable to such loans.

27 34. The State of California also regulates the sale or lease of goods and services, including
28 tax preparation services, under the Consumer Legal Remedies Act. *See* Cal. Civ. Code § 1750 *et. seq.*

1 The Act declares unlawful a number of unfair or deceptive acts and practices, including “inserting an
2 unconscionable provision in [a] contract.” *Id.* §1770(a)(19).

3 **B. Federal Law Governing Tax Preparers**

4 35. Under federal law, a tax preparer is “any person who prepares for compensation, or
5 who employs one or more persons to prepare for compensation, any return of tax imposed by this title
6 or any claim for refund of tax imposed by this title.” 26 U.S.C.A. § 7701(a)(36); *accord* 26 C.F.R. §
7 301.7701–15(a).

8 36. Under 26 U.S.C. § 6695(f), it is unlawful for a tax preparer to deposit a taxpayer’s
9 refund check into a bank account controlled by the tax preparer, with an exception for deposits by a
10 bank into the taxpayer’s account with the bank. Federal regulations echo this provision and establish
11 that it also applies to “an electronic version of a check.” 26 C.F.R. § 1.6695–1(f)(1).

12 37. Federal law also requires tax preparers to furnish a completed copy of the tax return to
13 the taxpayer at the time the taxpayer signs the return. 26 U.S.C. § 6107; 26 U.S.C. § 6695(a); 26
14 C.F.R. § 1.6107–1(a). In the case of electronically signed tax returns, the signing tax preparer must
15 furnish all of the information that will be transmitted as the electronically signed tax return to the
16 taxpayer contemporaneously with furnishing the Form 8879, “IRS e-file Signature Authorization.” 26
17 C.F.R. § 1.6695–1(b)(2).

18 38. Further, 26 U.S.C. § 7216(a) makes it a crime for tax preparers to disclose or use any
19 information provided by a taxpayer for any purpose other than preparing the return. Such disclosures
20 also subject tax preparers to monetary penalties. 26 U.S.C. § 6713(a).

21 39. When a tax preparer offers services on credit and defers fees until the taxpayer receives
22 a refund, those fees are a loan product subject to the provisions of the Truth in Lending Act, 15 U.S.C.
23 § 1601, *et. seq.* (“TILA”) and its implementing Regulation Z, 12 C.F.R. Part 226. *See People v. JTH*
24 *Tax, Inc.* (2013) 212 Cal.App.4th 1219, 1228–29. The TILA and Regulation Z require accurate
25 disclosure of interest rates and finance charges when creditors provide loans and/or extensions of
26 credit to consumers.

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1 **C. Federal Law Governing E-File Providers**

2 40. All tax return preparers that reasonably expect to file ten or more individual income tax
3 returns per year must file all such income tax returns electronically. 26 U.S.C. § 6011(e)(3). The
4 requirements governing participation in the IRS *e-file* Program are set forth in IRS Revenue Procedure
5 2007-40, IRS Publication 1345 (*Handbook for Authorized IRS e-file Providers of Individual Income*
6 *Tax Returns*) and IRS Publication 3112 (*IRS e-file Application and Participation*). A violation of any
7 provision of these Publications is a violation of Revenue Procedure 2007-40. Rev. Proc. 2007-40, § 7.

8 41. A participant in the IRS *e-file* Program is referred to as an “Authorized IRS *e-file*
9 Provider” (“*e-file* Provider”). *Id.*, § 3. One category of *e-file* Provider is Electronic Return
10 Originators (EROs), defined as *e-file* Providers that originate the electronic submission of returns. *Id.*
11 Although an ERO may also engage in return preparation, that activity is separate and different from
12 the origination of the electronic submission of the return to the IRS. IRS Pub. 3112, p. 20.

13 42. Publication 1345 imposes various requirements on *e-file* Providers. First, echoing 26
14 U.S.C. § 6695(f), which applies to tax return preparers, “Providers must not direct the payment (or
15 accept payment) of any monies issued to a taxpayer client by the government in respect of a Federal
16 tax liability to the Provider or any firm or entity with which the Provider is associated.” IRS Pub.
17 1345, p. 14.

18 43. Second, *e-file* Providers must never charge a separate fee for the Direct Deposit of a
19 refund. *Id.*, p. 15.

20 44. Third, *e-file* Providers must provide a complete copy of the return to the taxpayer,
21 including Form 8453 (*U.S. Individual Income Tax Transmittal for an IRS e-file Return*) and any other
22 documents that the ERO cannot electronically transmit. *Id.*, p. 28.

23 45. Fourth, *e-file* Providers must supply taxpayers with an accurate “Submission ID,”
24 which is a globally unique 20 digit number assigned to electronically filed tax returns. *Id.*, p. 43.

25 46. Fifth, *e-file* Providers that assist taxpayers in applying for a tax refund-related financial
26 product (e.g. a Refund Anticipation Loan) must: 1) ensure taxpayers understand that by agreeing to
27 such a product they will not receive their refund from the IRS (as the IRS will send their refund to the
28 financial institution), 2) advise taxpayers that Refund Anticipation Loans are interest-bearing loans

1 and not a quicker way of receiving their refunds from the IRS, 3) advise taxpayers of all fees and other
2 known deductions to be paid from their refund and the remaining amount the taxpayers will actually
3 receive, 4) secure the taxpayer's written consent to disclose tax information to the lending financial
4 institution in connection with an application for a tax refund-related product; 5) refrain from basing
5 their fees on a percentage of the refund amount or computing their fees using any figure from tax
6 returns; and 6) refrain from any advertising that does not clearly describe the Refund Anticipation
7 Loan as a loan or other financial product rather than as a quicker refund. IRS Pub. 1345, p. 44-46.

8 **DEFENDANTS' UNFAIR, UNLAWFUL AND/OR FRAUDULENT BUSINESS PRACTICES**

9 **A. Instant Tax General Business Practices**

10 47. INSTANT TAX has provided tax preparation services and electronic tax filing services
11 to low-income taxpayers in California for the past several years. INSTANT TAX continues to provide
12 these services.

13 48. INSTANT TAX operates out of check-cashing outlets. During tax season, INSTANT
14 TAX sets up temporary folding tables inside these permanent check-cashing businesses.

15 49. INSTANT TAX is a tax preparer as defined by California and Federal law. See Bus. &
16 Prof. Code § 22251(a)(1) and 26 U.S.C. § 7701(a)(36).

17 50. INSTANT TAX is not registered as a tax preparer with the California Tax Education
18 Council. This is a violation of Bus. & Prof. Code §22253(a)(1).

19 51. On information and belief, INSTANT TAX does not maintain a surety bond in the
20 amount of \$5,000 that identifies all employees or associated tax preparers. This is a violation of Bus.
21 & Prof. Code §22250.

22 52. During the past two tax seasons, INSTANT TAX has operated out of at least two
23 locations in San Francisco and locations in Hayward and Antioch.

24 53. On information and belief, INSTANT TAX is an ERO and/or has a federal Preparer
25 Tax Identification Number (PTIN) associated with approximately twenty additional California
26 addresses, including locations in Carmichael, Compton, Inglewood, Martinez, Los Angeles, and San
27 Diego.
28

1 54. INSTANT TAX has not registered to do business nor filed a fictitious business name
2 statement (in accordance with Business & Professions Code § 17900 *et. seq.*) in San Francisco.

3 55. On information and belief, INSTANT TAX has not registered to do business nor filed a
4 fictitious business name statement (in accordance with Business & Professions Code § 17900 *et. seq.*)
5 in other California counties where it operates.

6 56. Until approximately November 6, 2013, INSTANT TAX operated as a franchisee of
7 Instant Tax Services Financial LLC (“ITS Financial”), a nationwide tax preparation franchise. On that
8 date, the U.S. District Court for the Southern District of Ohio issued an injunction permanently putting
9 ITS Financial out of business, after a trial in which the court found overwhelming evidence of fraud
10 and deception by ITS Financial, including numerous violations of the Internal Revenue Code. *United*
11 *States v. ITS Financial, LLC*, No. 3:12-CV-95, 2013 WL 5947222, (S.D. Ohio Nov. 6, 2013).

12 57. The U.S. District Court for the Southern District of Ohio, in its opinion enjoining ITS
13 Financial from operation, found that ITS Financial instructed franchisees that their customer base
14 should consist primarily of “early filers” because they “generally need their money quickly for urgent
15 needs like rent, electricity, or outstanding bills and balances with other companies” and that “[d]ue to
16 this urgent need, these customers are more likely to take advantage of our advanced refund loan
17 options.” *Id.* at *48. ITS Financial “encourage[d] franchisees to target African-Americans in
18 particular,” including by maintaining a “spreadsheet detailing market penetration into African-
19 American communities.” *Id.* Furthermore, ITS Financial “closely monitor[ed] franchisee fees,” *id.* at
20 *49, and “encourag[ed] and help[ed] their franchisees to obfuscate the size of their fees,” *id.* at *92,
21 including what ITS Financial CEO Fesum Ogbazion refers to as “junk fees” and “revenue generators,”
22 *id.* at *50. The “junk fees” that ITS Financial directed franchisees to charge include fees for “service
23 bureau,” “document preparation,” “refund estimate,” “technology software,” “account setup,” “check
24 printing,” “and e-file, electronic transmission.” *Id.* ITS Financial “taught franchisees at its Corporate
25 training sessions to downplay or conceal fees . . . by, among other things, focusing the customer on the
26 refund amounts on fee disclosure sheets and being as vague as possible about the fees.” *Id.* at *55.
27 ITS Financial, through its CEO, berated franchisees—“not for charging high fees—but for giving
28 some of [their] customers partial refunds because they had complained about high fees.” *Id.* at 50.

1 **B. Instant Tax Practices Re: Preparation and Filing of Tax Returns**

2 58. Prospective customers typically arrive at the INSTANT TAX table within a check-
3 cashing outlet and work with an INSTANT TAX employee who prepares and electronically files the
4 customer's personal income tax returns on the spot. INSTANT TAX keeps this single, in-person
5 transaction extraordinarily brief, providing customers with little to no information about its services,
6 practices, or the tax-preparation process.

7 59. INSTANT TAX does not provide customers with requisite disclosures (name, address,
8 telephone number and evidence of compliance with the bonding requirement) in writing and in
9 advance of providing tax preparation services. This is a violation of Bus. & Prof. Code § 22252.

10 60. INSTANT TAX induces customers to use its services via statements and
11 representations that are fraudulent, untrue and/or misleading, thus violating Bus. & Prof. Code
12 § 22253(a)(2). For example, some customers do not even understand that they are transacting to have
13 their taxes prepared and filed, as INSTANT TAX often represents to customers that they are merely
14 applying for a loan.

15 61. INSTANT TAX typically collects from customers a single signature on an electronic
16 signature pad. On information and belief, the tax return is often blank or incomplete when the
17 customer provides this signature. This practice violates Bus. & Prof. Code § 22253(a)(3).

18 62. INSTANT TAX does not contemporaneously furnish to customers all of the
19 information that will be transmitted as the electronically signed tax return nor does INSTANT TAX
20 furnish to customers an IRS e-file signature form (e.g. Form 8879, "IRS e-file Signature
21 Authorization"). These practices violate 26 C.F.R. § 1.6695-1(b)(2).

22 63. Even upon request, INSTANT TAX does not provide customers with a copy of the
23 completed tax return, any related tax forms or schedules, or a "Submission ID." This practice violates
24 Bus & Prof. Code § 22253(a)(4), Cal. Rev. & Tax Code § 18625, 26 U.S.C. §§ 6107(a) and 6695(a),
25 26 C.F.R. § 1.6107-1(a), and IRS Publication 1345, p. 29.

26 **C. Instant Tax Practices Re: Tax Refunds and Fees**

27 64. On information and belief, INSTANT TAX directs the IRS to electronically deposit
28 customer refunds into accounts held or controlled by INSTANT TAX, without customers' knowledge

1 or consent. To the extent that INSTANT TAX deposits taxpayers' refunds into accounts it owns or
2 controls, DEFENDANTS violate 26 U.S.C. § 6695(f), 26 C.F.R. § 1.6695-1(f)(1), and IRS
3 Publication 1345, p. 14. To the extent that INSTANT TAX creates accounts for customers without
4 their knowledge or consent, DEFENDANTS unlawfully disclose taxpayer information in violation of
5 Bus. & Prof. Code §§ 17530.5 and 22252.1, and 26 U.S.C. §§ 6713(a) and 7216(a).

6 65. INSTANT TAX then deducts undisclosed fees before it finally pays the "refund" to the
7 customer. On information and belief, among these fees is a Direct Deposit fee, which violates IRS
8 Publication 1345, p. 15.

9 66. The undisclosed fees that INSTANT TAX deducts from customers' refunds are
10 routinely between \$400 and \$1,000, and often much higher. These fees are objectively exorbitant and
11 far in excess of INSTANT TAX's own costs or the national average for tax preparation services.¹ For
12 instance, according to a 2013 tax-year survey of National Society of Accountants (NSA) members, the
13 average cost to prepare a Form 1040 and state return without itemized deduction was \$152 in 2013.²

14 67. Even after INSTANT TAX eventually provides its customers with a check, which is for
15 the amount of the customer's refund *less the fees INSTANT TAX has deducted*, INSTANT TAX still
16 does not disclose that any fees were deducted, nor does it disclose the total, original amount of the
17 customer's tax refund. Consequently, such fees are deducted without consumers' consent, knowledge,
18 or full understanding.

19 68. INSTANT TAX's fees and fee practices are procedurally and substantively
20 unconscionable. By failing to accurately disclose the fees that it charges or explain how fees are
21 collected, DEFENDANTS preclude any opportunity for meaningful bargaining. Furthermore, the fees
22 themselves are grossly inflated. By charging unconscionable fees, DEFENDANTS violate the
23

24 ¹ The U.S. District Court for the Southern District of Ohio found that for ITS Financial "the
25 average total fee for bank products and tax-preparation services charged to ITS customers in January
26 2013 was \$566.18." *United States v. ITS Financial, LLC*, No. 3:12-CV-95, 2013 WL 5947222, at *51
27 (S.D. Ohio Nov. 6, 2013). This was more than double the total fees that competitors H & R Block,
28 Jackson Hewitt, and Liberty Tax charged their customers in recent years, based on publicly available
data from those companies. *Id.*

² See <http://www.nsacct.org/life-and-taxes/life-and-taxes/2013/12/12/taxprepfees2013> (last
visited November 5, 2014).

1 Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et. seq.*, and the Unfair Competition Law, Bus.
2 & Prof. Code 17200 *et. seq.*

3 **D. Instant Tax Practices Re: Refund Anticipation Loans**

4 69. INSTANT TAX specifically targets low-income customers with advertising campaigns
5 that tout its ability to get taxpayers their refund money quickly at tax time. Many customers are lured
6 in by advertisements promising instant loans, refunds, or rebates associated with their tax returns.
7 These practices violate Cal. Bus. & Prof. Code §§ 22253.1 and 22253(a)(6), and federal rules set forth
8 in IRS Publication 1345, pp.45-46, and IRS Publication 3112, pp. 23-24.

9 70. INSTANT TAX provides customers with Refund Anticipation Loans, as defined by
10 Bus. & Prof. Code § 22251(f), by deferring the tax preparation fees it charges customers for
11 approximately 21 days (or less)—from the time of tax filing until the IRS electronically deposits
12 customer refunds.³ INSTANT TAX also provides some customers with a \$50 or \$100 check at the
13 time of filing or shortly thereafter, to be paid back from the customer’s tax refund.

14 71. By virtue of their short-term nature and the exorbitant fees, the effective interest rates
15 of these loans are 1) unconscionable, in violation of the Consumer Legal Remedies Act. See Cal. Civ.
16 Code § 1750 *et. seq.* and 2) in excess of interest caps established by California usury laws (Cal. Const.,
17 art XV, § 1 and Cal. Civ. Code, § 1916-1 *et. seq.*).

18 72. INSTANT TAX does not post information nor provide disclosures in conjunction with
19 its Refund Anticipation Loans. These practices violate Bus. & Prof. Code § 22253.1, and provisions
20 of TILA and its implementing Regulation Z, 12 C.F.R. Part 226.

21 73. In the alternative, to any extent that INSTANT TAX has partnered with lenders to
22 provide Refund Anticipation Loans, INSTANT TAX has provided advice or assistance to customers
23 with respect to obtaining these loans (in exchange for fees), and thus meets the definition of a “credit
24 services organization” under state law. INSTANT TAX has failed, however, to comply with the
25 requirements imposed on “credit services organizations” under the Credit Services Act of 1984. Civil
26 Code § 1789.10 *et. seq.* INSTANT TAX has failed to register with, and receive a certificate of

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28 ³ The IRS issues more than 9 out of 10 refunds in less than 21 days. See
<http://www.irs.gov/Refunds/What-to-Expect-for-Refunds-This-Year> (last visited November 5, 2014).

1 registration from, the Department of Justice before conducting business in California as a “credit
2 services organization.” *Id.* at § 1789.25. INSTANT TAX has also failed to post a surety bond as
3 required by statute. *Id.* at § 1789.18. Lastly, in connection with obtaining Refund Anticipation Loans
4 for its clients, and/or providing advice and assistance to its clients with respect to obtaining such loans,
5 INSTANT TAX has failed to provide its clients the written disclosures required by the Credit Services
6 Act, including but not limited to, written notices explaining that the customer may cancel the contract
7 at any time up until midnight of the fifth day after the transaction. *Id.* at § 1789.16.

8
9 **CAUSE OF ACTION**
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
AGAINST ALL DEFENDANTS

10 74. The People incorporate by reference paragraphs 1 through 73 inclusive.

11 75. California Business and Professions Code section 17200 prohibits any “unlawful, unfair
12 or fraudulent business act or practices.” DEFENDANTS, and each of them, have engaged in
13 unlawful, unfair and/or fraudulent business acts and practices in violation of section 17200. Such acts
14 and practices include, but are not limited to, the following:

- 15 a) DEFENDANTS have violated the California Tax Preparers Act, Bus. & Prof. Code §§
16 22250 to 22259, or aided and abetted violations of the California Tax Preparers Act, by
17 the acts and practices set forth in this Complaint;
- 18 b) DEFENDANTS have violated provisions of the California Revenue and Tax Code, or
19 aided and abetted violations of the California Revenue and Tax Code, by the acts and
20 practices set forth in this Complaint;
- 21 c) DEFENDANTS have violated provisions of the Consumer Legal Remedies Act, Cal.
22 Civ. Code section 1750 *et. seq.*, or aided and abetted violations of the Consumer Legal
23 Remedies Act, by the acts and practices set forth in this Complaint;
- 24 d) DEFENDANTS have violated provisions of the Credit Services Act of 1984, Cal. Civ.
25 Code section 1789.10 *et. seq.*, or aided and abetted violations of the Credit Services Act
26 of 1984, by the acts and practices set forth in this Complaint;
- 27
28

- 1 e) DEFENDANTS have violated California's usury laws, Cal. Const. art. XV, § 1 and
2 Cal. Civ. Code, § 1916-1 *et. seq.*, or aided and abetted violations of these laws, by the
3 acts and practices set forth in this Complaint;
- 4 f) DEFENDANTS have violated various provisions of the federal law governing tax
5 preparers and related services, including provisions of Title 26 and underlying
6 regulations, IRS Regulations and Publications, and applicable provisions of the Truth in
7 Lending Act and implementing regulations, or aided and abetted violations of these
8 federal laws and regulations, by the acts and practices set forth in this Complaint;
- 9 g) DEFENDANTS' practices, as set forth in this complaint, constitute unfair business
10 practices because they offend established public policy, they significantly threaten
11 competition, and because the harm they cause to consumers in California greatly
12 outweighs any benefits associated with those practices;
- 13 h) DEFENDANTS' practices, as set forth in this complaint, are fraudulent business practices
14 because they are likely to deceive consumers in California; and
- 15 i) DEFENDANTS have engaged in misleading and unfair advertising.

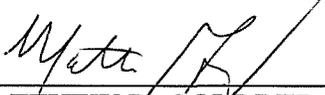
16 **PRAYER FOR RELIEF**

17 The People pray that the Court:

- 18 1. Enjoin DEFENDANTS, their successors, agents, representatives, employees, and any
19 and all other persons who act in concert or participation with DEFENDANTS by permanently
20 restraining them from performing or proposing to perform or aiding and abetting any acts in violation
21 of the Unfair Competition Law;
- 22 2. Order DEFENDANTS to restore to California consumers all funds improperly received
23 by DEFENDANTS;
- 24 3. Order DEFENDANTS to pay \$2,500 in civil penalties for each unlawful, unfair and/or
25 deceptive act, pursuant to Business and Professions Code section 17206;
- 26 4. Order DEFENDANTS to pay the costs of suit; and
- 27 5. Provide such further and additional relief as the Court deems proper;
- 28

1 Dated: November 19, 2014

2 DENNIS J. HERRERA
3 City Attorney
4 RONALD P. FLYNN
5 Chief of Complex & Affirmative Litigation
6 MATTHEW D. GOLDBERG
7 MOLLIE LEE
8 Deputy City Attorneys

9 By: 
10 _____
11 MATTHEW D. GOLDBERG

12 Attorneys for Plaintiff
13 PEOPLE OF THE STATE OF CALIFORNIA
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