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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SACRAMENTO**
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15 THE PEOPLE OF THE STATE OF
CALIFORNIA,
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Plaintiff,
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v.
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19 RONI DEUTCH, A PROFESSIONAL TAX
CORPORATION, a California corporation;
20 RONI LYNN DEUTCH, an individual; and
DOES 1 through 100, inclusive,
21
22 Defendants.
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Case No.
**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
APPLICATION FOR PRELIMINARY
INJUNCTION**
Hearing Date: August 25, 2010
Time: 9:00 a.m.
Dept: 21
Judge: Hon. Steve White
Action Filed: August 23, 2010

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INTRODUCTION

In these turbulent economic times, many consumers are struggling to pay off tax debt to the IRS. Most people are worried about owing money to the IRS, and for good reason. The IRS has collection powers unlike any other debt collector. It can garnish wages, levy funds in bank accounts, place federal tax liens on property, and, in extreme cases, seize assets and sell them at auction. With these collection powers at its disposal, consumers normally take proactive steps to resolve their tax debt.

Unfortunately, one step tens of thousands of consumers in California and around the country take is to retain and pay thousands of dollars in advance fees to Roni Deutch and her law firm, Roni Deutch, a Professional Tax Corporation (collectively, Defendants). Through a bevy of false promises and misrepresentations, Defendants convince consumers that if they retain Defendants, their problems with the IRS will be resolved. Once retained, however, Defendants do little more than send their clients a series of form letters and redundant requests for documents. Very few of Defendants' clients ever successfully resolve their IRS tax debt. Defendants then deny refund requests and keep their clients' unearned fees by fraudulently billing them for time Defendants did not spend on client matters.

Defendants' deceptive tax debt resolution scheme violates California's Unfair Competition Law (UCL, Bus. & Prof. Code, § 17200 et seq.) and False Advertising Law (FAL, Bus. & Prof. Code, § 17500 et seq.). Defendants have caused and continue to cause serious harm to consumers. The People submit this application for a preliminary injunction to stop Defendants' unlawful business practices and to protect consumers from becoming Defendants' next victims. Accordingly, the People request that this Court enjoin Defendants from continuing to engage in the unlawful, fraudulent, and deceptive practices that have jeopardized thousands of consumers already in financial distress.

FACTUAL BACKGROUND

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Defendant Roni Deutch, a Professional Tax Corporation (Deutch) is a California corporation and law firm operating in Sacramento County. Defendant Roni Lynn Deutch is a licensed California attorney and is the President, founder, director, and sole owner of Deutch. She is responsible for

1 overseeing all aspects of Deutch's operations.¹

2 Defendants spend approximately \$3 million per year on extensive television and radio
3 advertising to market their services.² Defendants have a boiler room of approximately 45 full-time
4 sales employees ready to sell Defendants' services to consumers who call in response to these
5 advertisements. Although Defendants have referred to these sales employees as "tax directors," they
6 have no education or experience in tax matters or in dealing with the IRS.³

7 Defendants' sales employees offer to resolve or reduce a taxpayer's back tax liability through
8 one of several IRS programs, including: (1) offer in compromise; (2) installment agreement; and (3)
9 currently not collectible status. The offer in compromise program allows taxpayers to make the IRS an
10 offer to settle their back tax liability for less than the total amount owed. The installment agreement
11 program allows clients to pay their total tax liability through monthly installment payments, rather than
12 pay the full amount in one payment. The currently not collectible program allows taxpayers with no
13 significant assets or income to prevent the IRS from collecting on the tax debt until the taxpayers'
14 financial situation improves.

15 ARGUMENT

16 I. THIS COURT SHOULD ISSUE A PRELIMINARY INJUNCTION.

17 A. This Court Has the Authority to Issue an Injunction Under Business and 18 Professions Code Sections 17203 and 17535.

19 Business and Professions Code section 17203 specifically empowers the Court to issue orders
20 "as may be necessary to prevent the use or employment by any person of any practice which
21 constitutes unfair competition."⁴ Once the trial court invokes its equitable jurisdiction, it is within the
22 court's broad discretion to determine the scope and type of relief that should be granted.⁵ Such relief
23 may be as "varied and diversified as the means that have been employed by the Defendant to produce

24 ¹ Moore Decl., ¶ 4, Exh. 1 (25:22-27, Exh. A), ¶ 7, Exh. 4 (31:12-26), ¶ 13, Exh. 10; see also
25 Flahive Decl., ¶ 5.

² Moore Decl., ¶ 7, Exh. 4 (24:16-22).

³ *Id.*, ¶ 4, Exh. 1 (16:18-24); see also S. Kreb Decl., ¶¶ 2, 4; Ahlstrom Decl., ¶ 11.

⁴ See also Bus. & Prof. Code § 17535 (providing injunctive relief for violation of False
26 Advertising Law); *People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17 ("An action filed by
27 the People seeking injunctive relief . . . is fundamentally a law enforcement action designed to protect
28 the public. . .").

⁵ *People ex rel. Mosk v. Nat'l Research Co. of Cal.* (1962) 201 Cal.App.2d 765, 775, 779.

1 the grievance complained of.”⁶

2 **B. The People Will Prevail at Trial and Harm to the Public Is Presumed to**
3 **Outweigh Harm to Defendants.**

4 In a law enforcement action brought by the Attorney General pursuant to the Unfair
5 Competition Law and the False Advertising Law, both of which provide for injunctive relief, the
6 People need only establish a reasonable probability that it will prevail at trial⁷ As described in detail
7 below, the People can demonstrate a reasonable probability of prevailing on the merits at trial, so it is
8 Defendants’ burden to prove the harm to California consumers from Defendants’ practices does not
9 outweigh the harm Defendants may suffer if the injunction issues.⁸ The People seek nothing more than
10 an injunction ensuring that Defendants operate their business in compliance with California law. There
11 can be no credible argument that such an injunction represents a greater harm to Defendants than the
12 harm caused by their continued flagrant disregard of the law.

13 Defendants’ ongoing illegal practices pose a continuing threat to consumers, both those already
14 targeted by Defendants and those who will become targets in the absence of an injunction. The
15 consumers targeted by Defendants stand to lose substantial amounts of money not only in up-front fees
16 but also through interest, penalties, and IRS collection actions that could be avoided. Once consumers
17 lose their assets or wages to IRS collection actions, those assets and wages cannot be recovered no
18 matter which party prevails in this litigation. This is the very definition of irreparable harm.

18 **II. DEFENDANTS VIOLATE CALIFORNIA’S FALSE ADVERTISING LAW BY USING FALSE**
19 **PROMISES AND MISREPRESENTATIONS TO LURE CONSUMERS INTO THEIR SCAM.**

20 The False Advertising Law makes it unlawful for any person to make any statement that such
21 person knows, or by the exercise of reasonable care should know, to be untrue or misleading in order to
22 sell goods or services.⁹ Under the FAL, a statement is untrue or misleading if the statement is likely to
23 mislead members of the public.¹⁰ To prove a FAL violation, the People do not have to prove fraud,
24 reliance, or intent to deceive or actual deception.¹¹ California courts have repeatedly held that a

25 ⁶ *Wickersham v. Crittenden* (1892) 93 Cal. 17, 32; see also *People v. Superior Court (Jayhill)*
26 (1973) 9 Cal.3d 283, 286.

27 ⁷ *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.

28 ⁸ *Id.* at pp. 70-72.

⁹ Bus. & Prof. Code, § 17500.

¹⁰ *Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.

¹¹ *People v. Superior Court (Olson)* (1979) 96 Cal.App.3d 181, 190, 198.

1 violation occurs at the time that a consumer is solicited, regardless of whether the consumer purchases
2 the goods or services offered.¹² A representation susceptible to both a misleading and a non-misleading
3 interpretation will be construed against the person making it.¹³

4 The declarations submitted in support of this motion establish that Defendants make untrue and
5 misleading statements regarding their tax debt resolution services. Through false promises and
6 misrepresentations, Defendants convince distressed taxpayers to pay high up-front fees for assistance
7 in both resolving their tax debts with the IRS and stopping IRS collection actions. Defendants do not
8 honor their promises. Instead, clients are left without tax debt relief, without a refund, and, in many
9 cases, subject to IRS collection actions. This evidence makes it reasonably probable that the People
10 will prevail at trial in proving that Defendants have violated and continue to violate the FAL.¹⁴

11 **A. Defendants' Advertising Contains False and Misleading Statements.**

12 In an advertisement entitled "It's Your Turn," Defendants feature four clients who all promote
13 Defendants' services by claiming that Defendants "saved" them from having to pay the IRS thousands
14 of dollars.¹⁵ Defendants did not save three of these clients any money. All Defendants did was place
15 these three clients on currently not collectible status with the IRS, which temporarily halts IRS
16 collection actions.¹⁶ The clients are still liable for the entire tax debt, interest and penalties continue to
17 accrue, and if the clients' financial situation improves, the IRS can reinstitute collection actions against
18 them. Defendants did save the fourth client money by securing an offer in compromise with the IRS,
19 but Defendants overstated the amount of his savings by approximately \$45,000.¹⁷

20 **B. Defendants Make False Representations About Their Success Rate in
21 Resolving IRS Tax Debts.**

22 Defendants' sales pitch emphasizes that their success rate is as high as 99 percent in resolving

23 ¹² *People v. Toomey* (1985) 157 Cal.App.3d 1, 22-23; *People v. Superior Court (Jayhill)*
(1973) 9 Cal.3d 283, 289.

24 ¹³ *Resort Car Rental System, Inc. v. Federal Trade Comm'n* (9th Cir. 1975) 518 F.2d 962,
964.

25 ¹⁴ Defendants' violation of the FAL also constitutes a violation of the UCL. (Bus. & Prof.
Code, § 17200.)

26 ¹⁵ Moore Decl., ¶ 7, Exh. 4 (22:25 – 23:21).

27 ¹⁶ *Ibid.*; see also Flahive Decl., ¶ 12.

28 ¹⁷ *Id.*, ¶ 7, Exh. 4 (22:25 – 23:21). Defendants' false advertisement also violates Rule 1-400(D)
of California's Rules of Professional Conduct, which prohibits attorneys from using untrue, false,
deceptive, or misleading statements to advertise their services.

1 clients' back tax liability with the IRS.¹⁸ Most of Defendants' clients, however, do not receive any tax
2 debt relief. Of those clients who retain Defendants to submit an offer in compromise to the IRS,
3 Defendants only submit an offer to the IRS for about 25 percent of these clients and are only successful
4 for about 10 percent.¹⁹ Of those clients who retain Defendants to apply for an installment agreement or
5 for currently not collectible status, Defendants only secure this tax debt relief for about 25 percent²⁰

6 **C. Defendants Make False and Deceptive Promises About the Tax Debt
7 Resolution That Deutch Will Be Able to Obtain for Consumers.**

8 Defendants leave no doubt in consumers' minds that if they retain Defendants, they will
9 receive tax debt relief.²¹ When consumers call, Defendants' sales agents conduct a "tax analysis,"
10 which is nothing more than a thinly veiled sales pitch. After asking consumers about their income,
11 expenses, assets, tax liability, and any IRS collection actions, the sales agents ask consumers to hold
12 while they speak to an attorney to determine if they qualify for one of the IRS's tax debt resolution
13 programs.²² When the sales agents return, they inform consumers that they qualify for one of the
14 IRS's tax debt resolution programs,²³ and assure them that Defendants will be able to secure tax debt
15 relief.²⁴ For those who retain Defendants for an offer in compromise, sales agents promise consumers
16 that they can settle their tax debt for a small fraction of what is owed.²⁵ Only the IRS, and not
17 Defendants, can determine if a consumer is entitled to tax debt relief or if a consumer qualifies for one
18 of the IRS's tax debt resolution programs.

19 As part of their pitch, the sales agents also promise that Defendants can eliminate or reduce

20 ¹⁸ Stein Decl., ¶ 38; Hill Decl., ¶ 4; C. Keane Decl., ¶ 4; J. Keane Decl., ¶ 3; Hernandez Decl.,
21 ¶ 8; S. Krebs Decl., ¶ 21; 3d Stein Decl., ¶ 28.

22 ¹⁹ Moore Decl., ¶ 7, Exh. 4 (6:1-21).

23 ²⁰ *Id.*, ¶ 7, Exh. 4 (10:3-11, 13:9-18).

24 ²¹ Brown Decl., ¶ 4; Hernandez Decl., ¶ 8; 4th Stein Decl., ¶ 25; 3d Stein Decl., ¶¶ 7, 15;
25 Milano Decl., ¶ 5; Jennings Decl., ¶ 3; Pegram Decl., ¶ 3; Williams Decl., ¶ 3; Britton Decl., ¶ 3; Vera
26 Decl., ¶ 3; Feldman Decl., ¶ 4.

27 ²² J. Keane Decl., ¶ 3; Hernandez Decl., ¶ 8; S. Krebs Decl., ¶ 24; 3d Stein Decl., ¶ 25; 2d Stein
28 Decl., ¶ 15; Stein Decl., ¶ 26; Reschman Decl., ¶ 4.

29 ²³ J. Keane Decl., ¶ 3; Bohrer Decl., ¶¶ 11, 17; Morar Decl., ¶ 4; S. Krebs Decl., ¶¶ 9, 24;
30 Ahlstrom Decl., ¶ 16; 3d Stein Decl., ¶ 20; 2d Stein Decl., ¶¶ 16, 20; Stein Decl., ¶ 27; Acevedo
31 Decl., ¶ 6; Reschman Decl., ¶ 4; Feldman Decl., ¶ 4; Sharek Decl., ¶ 5, Exh. 3 (4:13-27).

32 ²⁴ C. Keane Decl., ¶¶ 3-4; Scheid Decl., ¶ 4; Bohrer Decl., ¶ 11; 3d Stein Decl., ¶¶ 22, 26; 2d
33 Stein Decl., ¶¶ 17, 20; Stein Decl., ¶¶ 34, 36; Milano Decl., ¶ 4; Reschman Decl., ¶ 5; Galazin Decl., ¶
34 3.

35 ²⁵ In one instance, a sales agent promised a consumer that Defendants could settle a tax debt
36 of approximately \$33,000 for \$500. Stein Decl., ¶ 27. See also Scheid Decl., ¶ 4; 3d Stein Decl., ¶ 27,
37 Moore Decl., ¶ 4, Exh. 1 (20:2 – 20:11); Snyder Decl., ¶ 5; Reschman Decl., ¶ 5

1 interest and penalties that the IRS has added to the underlying tax debt.²⁶ The sales agents also
2 promise consumers that if they retain Defendants, they will be able to stop or prevent IRS collection
3 actions just by filing for power of attorney on consumers' behalf.²⁷ Again, only the IRS, and not
4 Defendants, can determine if it is appropriate to eliminate or reduce accrued interest and penalties.
5 Retaining Defendants has no effect on the IRS's ability to collect on consumers' tax debts. When
6 Defendants' employees complained about this false promise, Defendants' management refused to stop
7 making this promise because they believed doing so would make it more difficult to sell Deutch's
8 services.²⁸

9 **D. Defendants Falsely Represent to Consumers That They Charge a "Flat
10 Fee" and That They Will Return Any Unearned Fees.**

11 Defendants require customers to pay an up-front fee as high as \$4,700.²⁹ Defendants' sales
12 agents inform consumers that this is a "flat fee" and promise consumers that the fee will not increase
13 during the course of the representation.³⁰ In fact, this "flat fee" can increase in a variety of ways. First,
14 if Defendants or the client terminates the representation, Defendants will charge \$300 per hour for their
15 services.³¹ If this charge exceeds the "flat fee," Defendants assert that the client owes the difference.³²
16 Second, during the representation, Defendants increase the amount of the "flat fee" by \$500 or more if
17 any of the following events occur: (1) clients change their address; (2) clients change their marital
18 status; (3) clients become business owners or self-employed; or (4) clients' tax liability is significantly
19

20 ²⁶ Hernandez Decl., ¶ 11, Greenwood Decl., ¶ 4; Milano Decl., ¶ 4; Acevedo Decl., ¶ 6;
21 Thomas Decl., ¶ 6; Britton Decl., ¶ 3; Snyder Decl., ¶ 5; Sharek Decl., ¶ 3, Exh. 1 (9:21 – 10:23).

22 ²⁷ Richards Decl., ¶ 6; Meguire Decl., ¶ 3; Greenwood Decl., ¶¶ 3, 8; Hernandez Decl., ¶ 11;
23 Knight Decl., ¶ 6; Stillens Decl., ¶ 13; S. Kreb Decl., ¶ 23; Ahlstrom Decl., ¶ 16; Nardi Decl., ¶ 4;
24 Sharek Decl., ¶ 5, Exh. 3 (2:5-28).

25 ²⁸ Richards Decl., ¶ 6.

26 ²⁹ Scheid Decl., ¶ 5.

27 ³⁰ Hill Decl., ¶ 4; Brown Decl., ¶ 5; Dewan Decl., ¶ 5; S. Kreb Decl., ¶ 25; 4th Stein Decl., ¶
28 19; 3d Stein Decl., ¶ 23; Stein Decl., ¶¶ 14, 40; Greenwood Decl., ¶ 6; Harris Decl., ¶ 5; Sander Decl.,
¶ 5; Snyder Decl., ¶ 6; Moore Decl., ¶ 17, Exh. 14.

29 ³¹ Defendants charge \$300 per hour for all of their employees' time, including legal assistants
who are paid \$12.11 per hour. (Moore Decl., ¶ 14, Exh. 11.)

30 ³² Acevedo Decl., ¶ 65, Exh. 61 (Paid Deutch "flat fee" of \$2,875 and Deutch billed her for
\$4,005, but Deutch stated that "[a]s a professional courtesy, this office will not pursue the outstanding
balance owed by you to this office."); see also Pegram Decl., ¶ 24, Exh. 24; Galazin Decl., ¶¶ 8, 18,
Exhs. 3 (¶ 8.01), 9.

1 higher than the client originally believed.³³

2 Defendants also promise they will refund any part of the “flat fee” that they do not earn. As
3 described in more detail below in Section III.A., Defendants issue false billing statements to ensure that
4 they do not refund most, if any, of their clients’ fees.

5 **E. Defendants Advise Consumers to Stop Making Their Monthly
6 Installment Payments to the IRS.**

7 Many prospective clients already have installment agreements with the IRS in place before
8 contacting Defendants. Once they retain Defendants, these clients have difficulty both continuing to
9 make payments to the IRS and paying the high up-front fee Defendants demand. To avoid this
10 problem, Defendants advise potential clients that once they retain Defendants, they are no longer
11 legally obligated to continue making payments to the IRS.³⁴ Based on Defendants’ advice, consumers
12 stop making their monthly IRS payments and pay Defendants’ fee instead, thus placing themselves in
13 greater jeopardy of facing IRS collection action.³⁵

14 **F. Defendants Reward Their Sales Agents to Encourage Violations of the
15 False Advertising Law.**

16 Defendants pay lavish bonuses and incentives to their sales agents who meet and exceed
17 Defendants’ monthly sales quota, and have significantly increased these rewards in recent years.
18 Defendants’ sales agents have received all-expense-paid trips to Hawaii and Las Vegas, and monthly
19 bonuses as high as \$30,000; many earn over \$100,000 per year.³⁶ Not coincidentally, Defendants’
20 sales numbers have dramatically increased over the same period. Several years ago, Defendants’ sales
21 agents each typically sold Defendants’ services to about 18 to 30 clients per month. Now, some sales
22 agents sell to over 100 clients per month.³⁷ If a sales agent does not meet Defendants’ ever-increasing
23 sales quota, that agent is subject to immediate termination.³⁸ This reward and punishment system

24 ³³ Galazin Decl., ¶ 8, Exh. 3 (¶¶ 3.08 – 3.14); see also Moore Decl., ¶ 4, Exh. 1 (18:15 –
25 19:12); Acevedo Decl., ¶ 43, Exh. 37 (increased fees by \$650 for increased tax liability); Sharek
26 Decl., ¶ 6, Exh. 4 (11:1 – 12:28); Jennings Decl., ¶ 63, Exh. 60 (increased fees by \$500 for changing
27 address).

28 ³⁴ Richards Decl., ¶ 5; Stein Decl., ¶ 42; 2d Stein Decl., ¶ 19; 4th Stein Decl., ¶ 20; Galazin
Decl., ¶ 4; Sharek Decl., ¶ 9, Exh. 7 (2:13-25); see also, e.g., Jennings Decl., ¶ 17, Exh. 12.

³⁵ Galazin Decl., ¶ 6.

³⁶ Hernandez Decl., ¶ 12; Bohrer Decl., ¶¶ 6, 7; Stecklein Decl., ¶ 11; Duvall Decl., ¶¶ 13-14,
Moore Decl., ¶ 4, Exh. 1 (16:25 – 17:10); Flahive Decl., ¶¶ 8-9.

³⁷ Bohrer Decl., ¶ 5; Stecklein Decl., ¶ 11; S. Krebs Decl., ¶ 27; Duvall Decl., ¶ 15; Johnson
Decl., ¶ 10; Richards Decl., ¶ 12.

³⁸ Bohrer Decl., ¶ 18; Duvall Decl., ¶ 15; Ahlstrom Decl., ¶ 18.

1 encourages the sales agents to do everything they can to meet and exceed Defendants' monthly quota,
2 even if they must violate the FAL to do so.³⁹

3 **III. DEFENDANTS HAVE ENGAGED IN UNLAWFUL BUSINESS PRACTICES IN VIOLATION**
4 **OF BUSINESS AND PROFESSIONS CODE SECTION 17200.**

5 Business and Professions Code section 17200 et seq. defines unfair competition as "any
6 unlawful, unfair or fraudulent business act or practice." In drafting the UCL, the Legislature
7 intentionally used "sweeping language" and empowered the court to issue injunctions to curb any such
8 business practices "in whatever context such activity might occur."⁴⁰ Defendants' business acts and
9 practices constitute unfair competition because they are unlawful. The UCL "borrows" violations of
10 other laws and makes them actionable as unlawful business practices.⁴¹ An unlawful business act or
11 practice includes any activity that is forbidden by law, "be it civil or criminal, federal, state or
12 municipal, statutory or regulatory, or court-made."⁴² As described below, Defendants' business
13 practices violate various provisions of California's Rules of Professional Conduct, Civil Code, and
14 Business and Professions Code, and are thus unlawful.

15 **A. Defendants Unlawfully Retain Unearned Fees and Falsely Bill for Time**
16 **They Did Not Spend on Client Matters.**

17 Attorneys may not charge clients an "unconscionable" fee and must "promptly refund any
18 part of a fee paid in advance that has not been earned."⁴³ Defendants' fees are unconscionable because
19 they involve "an element of fraud or overreaching by the attorney, so that the fee charged, under the
20 circumstances, constitute[s] a practical appropriation of the client's funds" and because Defendants'

21 ³⁹ Defendants' effort to monitor their sales agents is nothing more than a sham because those
22 responsible for monitoring also receive bonuses tied to the sales department's monthly sales goal.
(Hernandez Decl., ¶¶ 7-10; Sharek Decl., ¶ 3, Exh. 1 [1:1 – 3:26], ¶ 4, Exh. 2 [1:1 – 3:17], ¶ 6, Exh. 4
23 [1:1 – 5:8], ¶ 7, Exh. 5 [1:1 – 5:13], ¶ 8, Exh. 6 [1:1 – 5:7].)

24 ⁴⁰ *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 111.

25 ⁴¹ *State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1103.

26 ⁴² *Saunders v. Superior Court.* (1994) 27 Cal. App. 4th 832, 838-839.

27 ⁴³ Cal. R. Prof. Conduct 4-200(A); Cal. R. Prof. Conduct 3-700(D)(2). Defendants also allow
28 clients to pay their legal fees in a series of installment payments (Scheid Decl., ¶¶ 5, 7, Exh. 2), but,
by failing to use required contractual language and to make required disclosures, do not comply with
the Unruh Act. (Civil Code, § 1801, et seq.) To collect on these installment payments, Defendants
threaten clients with IRS collection actions, scream and curse at their clients, discuss clients' debts
with third parties, and falsely imply that the collection department employees are attorneys. (T. Kreb
Decl., ¶¶ 4, 10-13; Sharek Decl., ¶ 3, Exh. 1 [4:5 – 5:9, 11:1 – 12:19], ¶ 6, Exh. 4 [6:18 – 7:23, 15:20-
27, 18:19-20, 22:22-25, 25:28 – 26:14], ¶7, Exh. 5 [6:1-6, 8:1-6]; Seals Decl., ¶¶ 32, 35, Exh. 28;
Moore Decl., ¶ 7, Exh. 4 [20:4-11], ¶ 15, Exh. 12 ["Collector will warn past due client of the possible
consequences of not making their payment."]; Lee Decl., ¶ 10; Stillens Decl., ¶ 8; Landers Decl., ¶ 6.)

1 billing scheme “shock[s] the conscience.”⁴⁴ Defendants systematically bill for time that they did not
2 spend on a client’s matter in order to justify retaining unearned, advance fees.⁴⁵

3 Defendants use a fraudulent billing scheme devised and implemented by Defendant Roni
4 Deutch to regularly deny or severely minimize refunds to clients.⁴⁶ Defendants designed their billing
5 scheme so that they can keep clients’ fees no matter when the representation ends and whether or not
6 clients receive tax debt resolution.⁴⁷ When a client requests a refund, Defendants review the client’s
7 file and prepare an itemization of all of the tasks Defendants performed on the client’s behalf,⁴⁸
8 assigning each task a time value and multiplying that value by a billing rate of \$300 per hour.⁴⁹ If the
9 total value of these services is higher than the amount the client paid, Defendants deny the refund
10 request;⁵⁰ if it is lower, Defendants issue a refund for the balance.⁵¹ The time values that Defendants
11 assign to client tasks do not represent the amount of time actually spent, but instead are standardized
12 time values that Defendants always use for that particular task.⁵² For instance, Defendants issue form
13 letters to clients that are automatically generated by Defendants’ computer system, yet Defendants bill
14 clients 0.35 hours, or 21 minutes, for each letter.⁵³ These form letters provide general information and
15 are sometimes irrelevant. For example, Defendants send form letters about bankruptcy to clients who
16

17 ⁴⁴ *Bushman v. State Bar* (1974) 11 Cal.3d 558, 563; see also *Matter of Scapa* (Cal. Bar Ct.,
18 Oct. 27, 1993) 1993 WL 443393 at *1, 5, 18 (holding attorney’s fee unconscionable because services
19 were performed largely by non-attorney staff and consisted mostly of opening a file and sending form
20 letters).

21 ⁴⁵ *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 558-59 (holding that fees must be supported
22 by documents detailing the actual amount of time the attorney spent on client matters).

23 ⁴⁶ Packey Decl., ¶¶ 11-12, 16; Flahive Decl., ¶ 11.

24 ⁴⁷ Harris Decl., ¶¶ 8-10, Exh. 2 (denied refund after only representing client for two weeks);
25 see also Williams Decl., ¶ 17, Exh. 11; Sanders Decl., ¶ 18, 22, Exh. 14 (retained 75 percent of fee
26 even though client did not owe the IRS any money).

27 ⁴⁸ See, e.g., Hill Decl., ¶ 53, Exh. 52; Karhio Decl., ¶ 38, Exh. 31; Duvall Decl., ¶ 8, Packey
28 Decl., ¶ 6; Moore Decl., ¶ 6, Exh. 3 (23:23-26); Flahive Decl., ¶ 10.

⁴⁹ See, e.g., Hill Decl., ¶ 53, Exh. 52.

⁵⁰ *Ibid.*

⁵¹ See, e.g., Greenwood Decl., ¶ 17, Exh. 6; see also Moore Decl., ¶ 7, Exh. 4 (3:10-16);
Johnson Decl., ¶ 12; Flahive Decl., ¶ 10.

⁵² Duvall Decl., ¶ 8; Packey Decl., ¶¶ 11, 15; Johnson Decl., ¶ 13; Flahive Decl., ¶ 11;
Richards Decl., ¶ 11.

⁵³ See, e.g., Jennings Decl. ¶¶ 10, 12, 14-15, 17, 21-22, 25, 27, 30, 32-36, 39, 43-45, Exhs. 5,
7, 9-10, 12, 15-16, 19, 21, 23, 25-29, 32, 35, 38-40; see also Lee Decl., ¶ 4; Stecklein Decl., ¶ 13;
Stillens Decl., ¶ 15; Duvall Decl., ¶ 8; Packey Decl., ¶¶ 11, 14; Ahlstrom Decl., ¶ 24; Sullivan-Pico
Decl., ¶ 10; Johnson Decl., ¶¶ 13, 15; Flahive Decl., ¶ 11; Moore Decl., ¶ 16, Exh. 13.

1 are not considering bankruptcy⁵⁴ and about home ownership to clients who do not own homes.⁵⁵
2 Similarly, Defendants issue boilerplate document request letters to their clients and bill 0.35 hours for
3 each letter.⁵⁶ If Defendants do not receive the documents requested in a particular letter, they change
4 the date of the letter and the deadline for receiving the documents, and issue a new letter. Nonetheless,
5 Defendants claim they spend 0.35 hours preparing and sending each of these virtually identical
6 letters.⁵⁷ In fact, it takes about five minutes to prepare each form letter and document request letter.⁵⁸

7 Defendants cannot use accurate time values in their billing statements because, aside from time
8 spent on the telephone, Defendants do not require their employees to actually record the time they
9 spend on client tasks.⁵⁹ There are simply no time records for Defendants to reference when they are
10 creating their billing statements.

11 Aside from false time entries, Defendants' bills do not provide a complete list of the tasks
12 Defendants performed for clients. Instead, they simply list enough tasks so that the firm's total charge
13 is more than the client's advance fee. For example, despite sending one client letters confirming
14 multiple telephone conversations he had with Deutch, Defendants did not list a single telephone call on
15 his bill. Defendants did not need to bother billing for these telephone calls because Defendants'
16 charges for other firm services already amounted to \$350 more than the client had paid in fees. This
17 was all the justification Defendants needed to deny his initial refund request.⁶⁰ On the other hand, when
18 Defendants need to bill for telephone calls in order to ratchet up their fees so that their fees are higher
19 than a client's advance fee, they will do so. In one client's case, Defendants billed for 5.7 hours of
20 telephone calls because without those charges, Defendants' fee would have been less than the client's

21
22 ⁵⁴ See, e.g., Milano Decl., ¶ 31, Exh. 23; Thomas Decl., ¶ 29, Exh. 25.

⁵⁵ See, e.g., Milano Decl., ¶ 25, Exh. 18; Thomas Decl., ¶ 23, Exh. 19.

⁵⁶ Lee Decl., ¶ 3; Knight Decl., ¶ 4.

23 ⁵⁷ Nardi Decl., ¶¶ 35-36, Exhs. 27-28, 32; Snyder Decl., ¶¶ 12, 19, 54, Exhs. 6, 13, 42; Seals
24 Decl., ¶¶ 14, 20, 28, 56; Exhs. 10, 16, 24, 44; see also Nardi Decl., ¶ 19, Exhs. 11, 13, 32 and Snyder
Decl., ¶ 27-28, Exhs. 19-20 (Defendants bill separately for multiple copies of firm's analysis letter
even though letter itself states that "This letter was previously sent to you.").

25 ⁵⁸ Lee Decl., ¶ 3; Knight Decl., ¶ 4; Landers Decl., ¶¶ 3-4.

26 ⁵⁹ Ahlstrom Decl., ¶ 23; Stillens Decl., ¶ 18; Landers Decl., ¶ 7; Duvall Decl., ¶ 18; Packey
Decl., ¶ 7; Sullivan-Pico Decl., ¶ 17; Lee Decl., ¶ 13; Morar Decl., ¶ 5; Stecklein Decl., ¶ 15; Sihota
27 Decl., ¶ 6; Moore Decl., ¶ 6, Exh. 3 (25:10-19); Johnson Decl., ¶ 13; Flahive Decl., ¶ 11; Richards
Decl., ¶ 9.

28 ⁶⁰ Jennings Decl., ¶ 79, Exh. 75.

1 advance fee and Defendants would have been unable to justify retaining the client's entire fee.⁶¹
2 Defendants' billing statements do not genuinely reflect the services provided or the time spent on the
3 client's matter, but merely provide a sham justification for retaining their clients' unearned fees.

4 Defendant Roni Deutch promotes this fraudulent scheme by rewarding the attorneys who sign
5 these false billing letters with extravagant bonuses.⁶² Roni Deutch gives the attorneys responsible for
6 issuing these false letters thousands of dollars in bonuses depending on the total amount of refunds
7 they authorize each month.⁶³ The higher the total amount of refunds in a given month, the lower the
8 bonus; the lower the total amount of refunds, the higher the bonus.⁶⁴ Thus, Roni Deutch provides
9 valuable incentives to Defendants' attorneys to systematically cheat their clients out of refunds by
10 exaggerating the amount of time spent on their matters.

11 **B. Defendants Violate Rule 3-110(A) by Repeatedly Failing to Perform with
12 Competence and by Failing to Supervise Employees.**

13 The Rules of Professional Conduct also prohibit an attorney from "intentionally, recklessly, or
14 repeatedly fail[ing] to perform legal services with competence," which includes the duty to supervise
15 subordinate attorneys and other staff.⁶⁵ Reckless failure to perform with competence includes delaying
16 legal services without regard for a client's urgent need.⁶⁶ Defendants run their clients through a
17 labyrinth of unnecessarily lengthy forms and repetitive document requests, and then inexcusably delay
18 filing with the IRS because of inadequate staffing. This reckless disregard for their clients' needs
19 results in increased penalties and interest and in IRS collection actions that could have been avoided.

20 After a client retains Defendants, the client is instructed to complete a 40-page questionnaire
21 about the client's income, expenses, and assets.⁶⁷ The questionnaire is purportedly based on IRS Form
22 433-A, but IRS Form 433-A is only six pages long, two of which are only necessary if the taxpayer is

23 ⁶¹ Millman Decl., ¶ 49, Exh. 45.

24 ⁶² Stillens Decl., ¶ 9; Duvall Decl., ¶ 10; Packey Decl., ¶ 16; Moore Decl., ¶ 4, Exh. 1 (23:27
25 - 24:6); Johnson Decl., ¶ 14; Flahive Decl., ¶¶ 8-9.

26 ⁶³ Duvall Decl., ¶ 10, Packey Decl., ¶ 16.

27 ⁶⁴ Stillens Decl., ¶ 9; Packey Decl., ¶ 16; Johnson Decl., ¶ 14.

28 ⁶⁵ Cal. R. Prof. Conduct 3-110(A); see also *Waysman v. State Bar* (1986) 41 Cal.3d 452;
Trousil v. State Bar (1985) 38 Cal.3d 337, 342.

⁶⁶ *Matter of Brockway*, (Cal. Bar Ct., May 15, 2006) 2006 WL 1360438 at *3, 12; see also
Matter of Klein (Cal. Bar Ct., April 27, 1994) 1994 WL 171325 at *3 (holding that delay in filing
bankruptcy action to protect client from creditors constitutes reckless failure to perform).

⁶⁷ Mapp Decl., ¶ 9, Exh. 5; Stecklein Decl., ¶ 12; Galazin Decl., ¶ 8.

1 self-employed.⁶⁸ Thus, for the bulk of Defendants' clients, Defendants' questionnaire is ten times
2 longer than necessary.

3 Deutch also requires the client to return documentation substantiating the client's financial
4 information.⁶⁹ Defendants force many clients to repeatedly send the same documents by claiming they
5 have not received them.⁷⁰ Once documents are received, they often sit in Defendants' offices for
6 months before anyone reviews them.⁷¹ In that time, the information in the documents becomes stale
7 and cannot be used to support the client's tax debt resolution matter because the IRS requires that all
8 supporting documentation be current.⁷² Once the documents are stale, Defendants issue yet another
9 request for more current documents.⁷³

10 These delays have two explanations. First, Defendants' bonus structure for its legal assistants
11 encourages them to issue multiple document requests rather than take the time to search the firm's mail
12 to determine if a client complied with previous requests.⁷⁴ Second, Defendants also assign as many as
13 300 clients to each legal assistant, generating more work than each person can handle.⁷⁵ Defendants'
14 attorneys cannot assist or properly supervise the legal assistants because they too are overrun with
15 client files. The attorneys each typically carry caseloads of 500 to 700 clients, but can be assigned as
16 many as 1,200 clients.⁷⁶

17 These delays are very costly for Defendants' clients, causing interest and penalties to continue to
18 accrue on the client's tax debt,⁷⁷ and exposing many clients to IRS collection actions that could have
19 been avoided had Defendants diligently represented their clients. For example, one client sent

20 ⁶⁸ Moore Decl., ¶ 12, Exh. 9.

21 ⁶⁹ Mapp Decl., ¶ 9, Exh. 5; Lee Decl., ¶ 3.

22 ⁷⁰ Karhio Decl., ¶¶ 19-23, 26-27, Exhs. 16-19, 21-22; Acevedo Decl., ¶ 61; Thomas Decl., ¶
37; Mapp Decl., ¶¶ 9, 11-12, 17-18, 20-23, 27, 29-30, 32, Exhs. 5, 7-8, 12-13, 15-17, 21, 23-25; Nardi
Decl., ¶ 37.

23 ⁷¹ See, e.g., Mapp Decl. ¶¶ 11, 24, Exh. 7 (4 month delay); see also Lee Decl., ¶ 6; Morar
Decl., ¶ 3; Knight Decl., ¶ 3; Duvall Decl., ¶ 4; Sullivan-Pico Decl., ¶ 12; Geronimo Decl., ¶¶ 6, 11,
Exhs. 2, 7; Johnson Decl., ¶ 15.

24 ⁷² Knight Decl., ¶ 3; Duvall Decl., ¶ 4.

25 ⁷³ Thomas Decl., ¶ 44; Knight Decl., ¶ 3; Sihota Decl., ¶ 4; Stillens Decl., ¶ 5; Duvall Decl.,
¶ 4.

26 ⁷⁴ Lee Decl., ¶¶ 5, 7-8; Moore Decl., ¶ 4, Exh. 1 (17:17-19); Flahive Decl., ¶¶ 8-9.

27 ⁷⁵ Richards Decl., ¶ 8; see also Duval Decl., ¶ 5.

28 ⁷⁶ Stecklein ¶¶ 16-17, Sihota Decl., ¶ 4; Stillens Decl., ¶ 4; Sullivan-Pico Decl., ¶¶ 12, 16;
Ahlstrom Decl., ¶ 9; Moore Decl., ¶ 4, Exh. 1 (26:5-23).

⁷⁷ See, e.g., Snyder Decl., ¶¶ 23-24, 34, 36, Exhs. 16-17, 26, 28.

1 Defendants several IRS collection notices, the first of which he received in March. Instead of promptly
2 submitting the client's request for an installment agreement to the IRS, Defendants sent the client one
3 document request after another. Seven months later, the IRS garnished the client's wages because it
4 had not heard anything substantive from Defendants about the client's tax matter.⁷⁸

5 Although Defendants do not timely review their clients' documents, they set arbitrary, internal
6 deadlines by which their clients must return them.⁷⁹ If clients fail to meet these deadlines, Defendants
7 terminate the representation.⁸⁰ In fact, Defendants terminate about 26 percent of clients for failing to
8 meet these artificial deadlines.⁸¹ In some cases, Defendants mail a document request after the deadline
9 has passed, giving these clients no chance of meeting the deadline, and then terminate the
10 representation when clients inevitably miss the deadline.⁸²

11 When Defendants actually review the documents and questionnaire, they often conclude that the
12 client's income, expenses, or assets do not match the values assigned during the sales pitch⁸³ and the
13 client no longer qualifies for the IRS debt resolution program Defendants were retained to pursue.⁸⁴ At
14 this point, if clients elect to pursue negotiations with the IRS on their own, they often discover that,
15 although months have passed, the only filing Defendants made with the IRS on their behalf was a
16 power of attorney form.⁸⁵ Some of these clients are able to resolve their IRS tax debt without
17 Defendants' assistance, sometimes in just a single phone call.⁸⁶

18 ⁷⁸ Thomas Decl., ¶¶ 15, 25, 33, 34, 35-36, 43, 45, 47-50, Exhs. 11, 21, 30, 31, 38, 39, 40, 42-
19 44; see also Brown Decl. ¶ 58, Exh. 57; Milano Decl. ¶¶ 10, 40-41, Exhs. 4, 31; Dewan Decl., ¶ 9;
20 Jackson Decl., ¶¶ 13, 16, Exh. 6; Nardi Decl., ¶¶ 7, 26, 34; Snyder Decl., ¶¶ 39-40, 43, 45, 49, 52,
21 Exhs. 31-32, 35, 38, 41; Seals Decl., ¶¶ 7, 48.

22 ⁷⁹ Lee Decl., ¶ 5; Pegram Decl., ¶ 14, Exh. 14.

23 ⁸⁰ Mapp Decl., ¶ 33, Exh. 26; Karhio Decl., ¶ 29, Exh. 23; Acevedo Decl., ¶ 62, Exh. 58;
24 Pegram Decl., ¶ 15, Exh. 15; Moore Decl., ¶ 7, Exh. 4 (19:21 – 20:3).

25 ⁸¹ Moore Decl., ¶ 7, Exh. 4 (7:11-17, 11:1-6, 14:7-12, "Failed to Participate" column).

26 ⁸² Acevedo Decl., ¶¶ 61, 62, Exhs. 57, 58.

27 ⁸³ Hill Decl., ¶ 3; Dewan Decl., ¶¶ 5, 10, Brown Decl., ¶¶ 11, 32, Exhs. 7, 30; J. Keane Decl.,
28 ¶¶ 8, 25; Exhs. 4, 18; Scheid Decl., ¶¶ 15, 48, Exhs. 10, 46; Bohrer Decl. ¶ 10, 14-15; Morar Decl., ¶
4; Stecklein Decl., ¶ 9; Stillens Decl., ¶ 7; S. Krebs Decl., ¶ 20; Duvall Decl., ¶ 7; Ahlstrom Decl., ¶
16; Milano Decl., ¶¶ 13, 30, Exhs. 7, 22; O'Neal Decl., ¶¶ 4, 9; Johnson Decl., ¶ 8; Vera Decl., ¶¶ 8,
14, Exhs. 5, 11; Galazin Decl., ¶¶ 3, 14; Flahive Decl., ¶ 6; Richards Decl., ¶ 7.

29 ⁸⁴ Lee Decl., ¶ 12; Mapp Decl., ¶ 26, Exh. 19; Brown Decl., ¶ 32, Exh. 30; Dewan Decl., ¶¶ 5,
30 10; J. Keane Decl., ¶ 25, Exh. 18; Scheid Decl., ¶ 48, Exh. 45.

31 ⁸⁵ Harris Decl., ¶ 7; Milano Decl., ¶ 45; Snyder Decl., ¶ 46; Seals Decl., ¶ 49.

32 ⁸⁶ Hill Decl., ¶ 50, Exh. 41; Dewan Decl., ¶ 14; C. Keane Decl., ¶ 14; J. Keane Decl., ¶ 26;
33 Harris Decl., ¶ 7; Milano Decl., ¶ 44; Acevedo Decl., ¶ 66; Jennings Decl., ¶ 78; Meguire Decl., ¶ 20,
34 Exh. 9; O'Neal Decl., ¶ 10; Britton Decl., ¶ 27; Geronimo Decl., ¶ 24; Jackson Decl., ¶ 17; Snyder
35 (continued...)

1 Defendants' reckless failure to perform with competence is readily apparent when their services
2 are compared to the Low Income Taxpayer Clinics (LITCs) that operate throughout the country
3 providing free tax services to the public.⁸⁷ Among other things, LITCs file requests for offers in
4 compromise, installment agreements, and currently not collectible status for low income taxpayers who
5 have a back tax liability.⁸⁸ LITCs only determine a client's eligibility for one of the IRS's tax debt
6 relief programs after reviewing all of their supporting financial documents, unlike Defendants who
7 make such a determination based on their client's estimates.⁸⁹ When LITCs submit a request for an
8 offer in compromise, the attorneys prepare a detailed declaration in support of the request explaining
9 the clients' special circumstances.⁹⁰ Defendants produce no such declarations or any other type of
10 services specifically tailored to individual clients. Unlike Defendants, who can take years to submit a
11 request to the IRS for back tax resolution, LITCs typically submit their requests within a few months of
12 the first meeting with the client.⁹¹ Also unlike Defendants, the LITCs have amazing success with the
13 IRS. Two LITCs have a 90 percent success rate for offers in compromise, and one LITC successfully
14 obtains installment agreements for 95 percent of clients who request one and obtains currently not
15 collectible status nearly 100 percent of the time.⁹² By contrast, Defendants' dismal success rates are a
16 testament to their reckless failure to perform with competence.

17 **C. Defendants Violate Business and Professions Code Section 6106 and Their**
18 **Fiduciary Duty by Retaining Unearned Fees and by Neglecting Clients.**

19 Ignoring their clients' matters and failing to perform the legal services for which they are
20 retained severely prejudices their clients' interests because the IRS adds interest and penalties to the tax
21 debt and institutes collection actions, all of which could have been avoided had Defendants provided
22 their clients with the proper attention they deserved. Although Defendants know of these issues, they
23 have taken no meaningful action to address them. Defendant Roni Deutch has shrugged off the

24 (...continued)

25 Decl., ¶ 46; Reschman Decl., ¶ 25; Galazin Decl., ¶ 19.

26 ⁸⁷ Izquieta Decl., ¶ 2; Willis Decl., ¶ 2.

27 ⁸⁸ Izquieta Decl., ¶ 3; Willis Decl., ¶ 4.

28 ⁸⁹ Izquieta Decl., ¶ 6; Willis Decl., ¶ 5.

⁹⁰ Izquieta Decl., ¶ 7.

⁹¹ Izquieta Decl., ¶¶ 8-9, 15, 17; Willis Decl., ¶¶ 6, 9, 12.

⁹² Izquieta Decl., ¶ 14; Willis Decl., ¶ 7, 10, 14.

1 problem by claiming that it is not her “responsibility.”⁹³

2 Defendants’ “habitual disregard” for their clients’ interests and use of fraudulent billing
3 statements to enrich their own coffers with money that rightfully belongs to their clients is the very
4 definition of moral turpitude and dishonesty.⁹⁴ Defendants’ conduct also violates the fiduciary duty
5 attorneys have to their clients, which imposes an obligation on Defendants (1) to act always in the
6 utmost good faith toward the client; (2) to act in accordance with principles of complete loyalty to the
7 client’s best interests and to the exclusion of all others’ interests, including their own; and (3) to use
8 skill, prudence and diligence in the performance of the tasks undertaken for the client.⁹⁵ Defendants
9 regularly fail to meet these standards.

10 **CONCLUSION**

11 For the foregoing reasons, the People respectfully request that the Court issue the proposed
12 preliminary injunction in order to stop Defendants’ unlawful business practices.

13 Dated: August 23, 2010

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23 _____
24 ⁹³ Ahlstrom Decl., ¶ 9.

25 ⁹⁴ Bus. & Prof. Code § 6106; *McMorris v. State Bar* (1983) 35 Cal.3d 77, 85; *Call v. State*
26 *Bar* (1955) 45 Cal.2d 104, 109-10.

27 ⁹⁵ *Cox v. Delmas* (1893) 99 Cal. 104, 123 (“The relation between attorney and client is a
28 fiduciary relation of the very highest character, and binds the attorney to most conscientious
fidelity”); *Baum v. Duckor, Spradling & Metzger* (1999) 72 Cal.App.4th 54, 69; *Finch v. State*
Bar (1981) 28 Cal.3d 659, 665 (“[T]he willful failure to perform legal services for which an attorney
has been retained in itself warrants disciplinary action, constituting a breach of the good faith and
fiduciary duty owed by the attorney to his clients.”).