

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

**DOCKET NO. 9427
PUBLIC VERSION**

**OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO REMOVE REDACTIONS
FROM PARAGRAPHS 29-32 OF THE COMPLAINT**

Respondents submit this Opposition to Complaint Counsel's Motion to Remove Redactions from Paragraphs 29-32 of the Complaint ("Motion"). The redacted information falls within the confines of the Protective Order, because it contains confidential, competitively sensitive information outside of the public domain. Further, the limited redacted sections contain competitively sensitive { [REDACTED] } and pricing strategy that Respondents continue to build upon and assess. Thus, revelation of the redacted information would result in a serious and clearly defined injury despite the passage of time. Respondents' injury would be further exacerbated because the redacted information is mischaracterized in both the Complaint and in Complaint Counsel's Motion.

I. FACTUAL BACKGROUND

Following the Commission's vote to issue the Complaint on February 23, 2024, Complaint Counsel and Respondents' Counsel provisionally redacted the Complaint. Complaint Counsel and Respondents' Counsel then conferred and reached an agreement regarding the removal of almost all of the redactions within the Complaint, agreeing collectively to keep only limited portions of

paragraphs 29-32 redacted. (*See* Complaint Counsel’s Unopposed Motion to Remove Certain Redactions from the Public Complaint, Docket 9427-014 (Apr. 2, 2024)). Respondents seek to maintain those limited redacted portions of paragraphs 29-32 as both parties originally agreed.

II. ARGUMENT

A. Paragraphs 29-32 contain confidential material that: 1) is not in the public domain, and 2) constitutes competitively sensitive information, qualifying these sections for redaction under the Protective Order.

On February 26, 2024, the Court issued a protective order in this case “[f]or the purpose of protecting the interests of the parties . . . against improper use and disclosure of confidential information” (Protective Order Governing Confidential Material, Docket 9427-003, (Feb. 26, 2024), Attachment A at 2). The Protective Order further defines “confidential” material as “any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information.” *Id.* Further, the Protective Order notes that “[a] designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain” and that counsel believes the material aligns with paragraph 1 of the Protective Order. *See id.*

As required by the Protective Order, the redacted information is not already within the public domain. In fact, Respondents actively ensure this information remains confidential, considering revelation of this information would convey potential pricing strategies, still under consideration, to competitors. (*See* Declaration of Heather Watts, Attachment B at 1-2). Further, Respondents maintain that the redacted portions of paragraphs 29-32 require protection from public disclosure as the information contained within them constitutes competitively sensitive strategy and pricing information. More specifically, the limited redacted portions contain the [REDACTED] } *Id.*

The limited information Respondents seek to keep confidential holds similar characteristics to documents that have received *in camera* treatment for containing “competitively sensitive” information in the past. *See, e.g., In the Matter of Altria Grp., Inc., and JUUL Labs, Inc.*, No. 9393, 2021 WL 2379509, at *7 (F.T.C. May 26, 2021) (awarding *in camera* treatment to documents containing “business development and marketing strategies, performance reviews, financial data, [and] methodology for setting the fees . . .” to prevent serious competitive injury that would result from disclosure). Further, the information contained in paragraphs 29-32 represents competitively sensitive *pricing* information, which would provide competitors with insight regarding how Respondents set or are considering setting their pricing strategy. *See, e.g., In re 1-800 Contacts, Inc.*, No. 9372, 2017 FTC LEXIS 55, at *5 (Apr. 4, 2017) (listing “pricing to customers” as a business record that could possibly be afforded *in camera* treatment); *see also In the Matter of LabMD, Inc.*, No. 9357, 2013 WL 5232774, at *3 (F.T.C. Sept. 10, 2013) (allowing for redaction, under a protective order, of “competitively sensitive revenue information” contained in the complaint). It follows that the limited redactions requested by Respondents are not only anticipated by and appropriate under the Protective Order but are also supported by past similar rulings by this Court.

B. The limited redactions contained in paragraphs 29-32 are necessary to prevent a clearly defined, serious injury.

The redacted portions of paragraphs 29-32 reference competitively sensitive information that, if revealed, would result in a clearly defined, serious injury to Respondents. *See In re Altria Grp., Inc.*, No. 9393, 2021 WL 2379509, at *1. Namely, this information would result in competitors gaining insight into Respondents’ business strategies and operations, allowing competitors to replicate these strategies and profit off Respondents’ continued efforts to keep such information private over many years. (*See* Declaration of Heather Watts, Attachment B at 1-2). As

Respondents identify in their declaration, the online tax preparation industry is extremely competitive. (Declaration of Heather Watts, Attachment B at 2). Revelation of the redacted portions of paragraphs 29-32 would provide competitors with a leg-up in the industry, allowing them access to methodology for evaluating their own prices without the time or effort it took to gather this information. *Id.*

C. This redacted information remains competitively sensitive, despite the passage of time.

This Court’s Order on the Unopposed Motion to Remove Certain Redactions from the Public Complaint cites to the “presumption against denying public access for information more than three years old” which typically applies to *in camera* treatment of confidential information. (Docket 9427-017 (Apr. 5, 2024)). If the Court applies this *in camera* presumption to the redactions in paragraphs 29-32, the redacted text should still receive protection because the information *continues* to be competitively sensitive, despite the passage of time. *See In the Matter of Axon Enterprise, Inc.*, No. 9389, 2020 WL 6058523, at *2 (F.T.C. Oct. 2, 2020) (explaining that to rebut the three-year presumption that usually applies to *in camera* requests, a party must show that the material *remains* competitively sensitive). Here, the redacted portions of paragraphs 29-32 contain financial data and pricing and marketing strategies regarding initiatives that Respondents continue to build upon and assess. (*See* Declaration of Heather Watts, Attachment B at 2). Removing the redactions contained in paragraphs 29-32 would provide competitors with insight into Respondents’ *current* business strategies, allowing competitors to capitalize on the details of [REDACTED]; Respondents have sought to keep confidential over many years. *See id.*; *see also In the Matter of Intuit*, No. 9408, 2023 WL 2682326 (F.T.C. Mar. 21, 2023) (granting *in camera* status to information over three years old, among other documents, following Intuit’s

assertion in its motion¹ that the information could be used to reveal respondent's "trade secrets, financial data and metrics, regulatory and business strategies, as well as [respondent's] pricing, sales, and marketing strategies . . ." because the information pertained to respondent's "current business operations, in addition to multi-year initiatives that are still in development").

D. If the Court orders the redactions removed, the Complaint's complete mischaracterization of the redacted information will further exacerbate Respondents' injury.

In addition to the competitive injury that would accompany the removal of these redactions, the Complaint's inaccurate depiction of the { [REDACTED] } and its associated records would further compound Respondents' injuries. Public disclosure of this incorrect information could harm Respondents' relationship with its consumers and skew perceptions generally of the company. For example, the redacted portion of paragraph 32 of the Complaint states that { [REDACTED]

{ [REDACTED] } (See Complaint, Docket 9427-001, at 7). This is an incorrect statement and a clear misreading of Respondents' documents. Respondents' documents suggest a different situation entirely, namely { [REDACTED] } { [REDACTED] } Thus, the stated figure is a gross distortion in the context of the Complaint's claims.

The Court need look no further than the Motion, which wrongly characterizes the redacted information as { [REDACTED] } (Motion, Docket 9427-019, at 4). This characterization is incorrect as the { [REDACTED]

¹ See *Intuit*, Docket No. 9408-099, at *8-9 (Mar. 15, 2023) (Respondent Intuit Inc.'s Second Motion for *In Camera* Treatment of Certain Trial Exhibits), Attachment F.

[REDACTED]
[REDACTED]
[REDACTED] } To the extent Complaint Counsel seeks removal of these redactions for the sake of “public interest,” the redacted portions in the Complaint only serve to mislead consumers by presenting incorrect figures and omitting key information.

E. The public interest is protected by the information that has already been unredacted in the Complaint.

In its Motion, Complaint Counsel acknowledges that the gist and meaning of its allegations about Respondents’ conduct is more than clear from the Complaint, even if the limited redacted information in paragraphs 29-32 is allowed to stay redacted. In fact, Complaint Counsel concedes that the redacted information “merely lend[s] specificity to the more general Complaint allegations and offer[s] context for Respondents’ decision to keep downgrading difficult.” (*See* Motion, Docket 9427-019, at 4). These limited redactions do not prevent the public from understanding Complaint Counsel’s allegations against Respondents with respect to downgrading in the online DIY products. Balancing the substantial harm to the Respondents against Complaint Counsel’s admission that the limited reactions “merely lend specificity” to otherwise clear and understandable allegations weighs in favor of allowing these limited portions of paragraph 29-32 to remain redacted.

CONCLUSION

Respondents have agreed to remove each and every redaction in the Complaint other than those that remain in limited portions of paragraphs 29-32, which for all of the reasons set forth above, Respondents seek protection under the Protective Order as well as the Court’s prior rulings. For the foregoing reasons, Respondents respectfully submit that Complaint Counsel’s Motion to Remove Redactions from Paragraphs 29-32 of the Complaint should be denied.

Dated: May 3, 2024

Respectfully submitted,

By: /s/ Antonio F. Dias

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Counsel for the Respondents H&R Block, Inc., HRB Digital LLC, & HRB Tax Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2024, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
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600 Pennsylvania Avenue, NW
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Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Jay L. Himes
Administrative Law Judge
600 Pennsylvania Ave., NW
Suite H-110
Washington, DC 20580

I further certify that on May 3, 2024, I caused the foregoing document to be served via email to:

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Administrative Law Judge
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Dated: May 3, 2024

Respectfully submitted,

By: /s/ Erika Whyte
Erika Whyte

Exhibit A

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

_____)	
In the Matter of)	
)	
H&R Block Inc.,)	
a corporation,)	
)	Docket No. 9427
HRB Digital LLC,)	
a limited liability company, and)	
)	
HRB Tax Group, Inc.,)	
a corporation,)	
)	
Respondents.)	
_____)	

PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL

Commission Rule 3.31(d) states: “In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section.” Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 26, 2024

ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

IT IS HEREBY ORDERED THAT this Protective Order Governing Confidential Material (“Protective Order”) shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, “confidential material” shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records. “Document” shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. “Commission” shall refer to the Federal Trade Commission (“FTC”), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation “CONFIDENTIAL – FTC Docket No. 9427” or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC Docket No. 9427” or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an

order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

Exhibit B

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

In the matter of

**H&R BLOCK INC.,
a corporation,**

**HRB DIGITAL LLC,
a limited liability company, and**

**HRB TAX GROUP, INC.,
a corporation.**

Docket No. 9427

Public Version

**DECLARATION OF HEATHER WATTS IN SUPPORT OF RESPONDENTS'
OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO REMOVE REDACTIONS
FROM PARAGRAPHS 29-32 OF THE COMPLAINT**

I, Heather Watts, declare as follows:

1. I am currently President for HRB Digital LLC and affiliated entities that operate under the trade name of H&R Block. I have personal knowledge of the facts and matters set forth below. If I were called as a witness in this matter, I could and would testify competently to each of the matters stated.

2. I submit this affidavit in support of H&R Block, Inc., HRB Digital LLC, and HRB Tax Group, Inc. ("Respondents") and their efforts to prevent certain information, contained in paragraph 29 through 32 of the Complaint filed by the Federal Trade Commission in Docket No. 9427 ("Complaint"), from being publicly disclosed.

3. The allegations contained in paragraph 29 through 32 of the Complaint reveal highly sensitive competitive pricing strategy and associated financial information that has never been disclosed to the public.

4. Those paragraphs discuss { [REDACTED] } that was done by Respondents

to { [REDACTED]
[REDACTED] }

5. The { [REDACTED] } referred to in paragraphs 29 through 32 provide insight into the pricing of various product offerings, product structure and consumer preference in the DIY online tax preparation marketplace, and revealing the redacted sections would provide competitors with actual knowledge of { [REDACTED] } Respondents in considering potential changes to its product design, structure, and pricing. This design, structure, and pricing information is not yet available in the marketplace.

6. The information in paragraphs 29 through 32 of the Complaint remains competitively sensitive despite it originating from documents more than three years old because it concerns pricing and marketing strategies and related financial data that Respondents continue to build upon and assess presently.

7. The DIY online tax preparation industry is extremely competitive. Revealing sensitive pricing strategy and related financial data to Respondents' competitors would result in a serious competitive injury to Respondents in that it would reveal to its competitors a potential pricing and product strategy that competitors could use against Respondents in the marketplace.

8. Companies need to be able to { [REDACTED] } different issues, including pricing strategies, without the fear that such information will be revealed to the public or its competitors.

9. The serious competitive injury of publicly revealing the information contained in paragraphs 29 through 32 of the Complaint would be exacerbated by the fact that those allegations are argumentative, contain inaccuracies and take information provided out of context.

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

Executed this 2 day of May, 2024.

Heather Watts

[Name]

Exhibit C

Pursuant to the April 5, 2024 Order on the Unopposed Motion to Remove Certain Redactions from the Public Complaint, requiring counsel to attach "a complete copy of the relevant paper, conspicuously marking redactions to be removed by, for example, highlighting or underscoring[,]" the following is a copy of the nonpublic Complaint. The passages Complaint Counsel seeks to make public are highlighted in yellow. The portions of paragraphs 29-32 that are still contested are also underscored.

PUBLIC

EXHIBIT C

FILED UNDER SEAL

EXHIBIT C

FILED UNDER SEAL

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Exhibit D

Pursuant to 16 C.F.R. § 3.45(e), the following pages from Respondents' Opposition to Complaint Counsel's Motion to Remove Redactions from Paragraphs 29-32 of the Complaint contain redacted information currently protected by the February 26, 2024 Protective Order Governing Confidential Material.

Should the Commission intend to disclose in a final decision any of the redacted information in this document, please contact:

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EXHIBIT D

FILED UNDER SEAL

PUBLIC

EXHIBIT D

FILED UNDER SEAL

EXHIBIT D

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FILED UNDER SEAL

Exhibit E

Pursuant to 16 C.F.R. § 3.45(e), the following pages from Respondents' Declaration of Heather Watts in Support of Respondents' Opposition to Complaint Counsel's Motion to Remove Redactions from Paragraphs 29-32 of the Complaint contain redacted information currently protected by the February 26, 2024 Protective Order Governing Confidential Material.

Should the Commission intend to disclose in a final decision any of the redacted information in this document, please contact:

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PUBLIC

EXHIBIT E

FILED UNDER SEAL

EXHIBIT E

FILED UNDER SEAL

Exhibit F

Pursuant to the March 22, 2024 Scheduling Order, Respondents attach Intuit's Second Motion for *In Camera* Treatment of Certain Trial Exhibits, which is cited in Respondents' Opposition and located on the F.T.C. docket but cannot be found on Westlaw or Lexis. See *In the Matter of Intuit*, Docket No. 9408, (Mar. 15, 2023). For convenience, attached directly below the Motion is the corresponding Order, which is available on Westlaw and Lexis. See *In the Matter of Intuit*, No. 9408, 2023 WL 2682326 (F.T.C. Mar. 21, 2023).

In the Matter of:

Intuit Inc., a corporation.

Docket No. 9408

**RESPONDENT INTUIT INC.'S SECOND MOTION FOR
IN CAMERA TREATMENT OF CERTAIN TRIAL EXHIBITS**

Pursuant to 16 C.F.R. §3.45(b), the First Revised Scheduling Order, and this Court's March 1, 2023 Order, Respondent Intuit Inc. respectfully moves for *in camera* treatment of confidential and competitively sensitive information on Complaint Counsel's and Intuit's final proposed exhibit lists.

Pursuant to the Court's order, *see* Order on Resp.'s Mot. for *In Camera* Treatment (Mar. 1, 2023), Intuit has undertaken a comprehensive re-review of the 316 exhibits that were not previously granted *in camera* status. Based on that assessment, Intuit has withdrawn its request for *in camera* treatment for 153 of 316 documents included in the prior motion and has further tailored proposed redactions for certain documents that were previously sought to be withheld in full.

As directed by the March 1 Order (at 2), Intuit has withdrawn its initial request for *in camera* treatment of 17 deposition and investigational hearing transcripts, and further refined its proposed redactions to the remaining 4 transcripts to ensure only specific discussions of highly confidential information are protected from public disclosure. Intuit also has significantly reduced from 163 to 42 the number of documents more than three years old (for which it seeks *in camera* treatment. Consistent with the March 1 Order (at 2), the remaining pre-2020 documents

each contain competitively sensitive information, trade secrets, and business metrics that is still pertinent to Intuit's current business operations that, if disclosed, would cause serious commercial injury to Intuit. *See* Decl. of Jack Rubin ("Updated Rubin Decl.") ¶14.

In addition to the documents included in Intuit's first motion for *in camera* treatment, Intuit seeks *in camera* treatment of 44 of the 459 documents that have been designated by the parties as exhibits since the previous motion.

Intuit also seeks *in camera* treatment of a small number of documents directly related to exhibits for which the Court has already granted *in camera* status. Intuit has designated as RX 384-A and 385-A two exhibits to confidential agreements that were already granted *in camera* treatment because they contained confidential consumer information—RX 384 and RX 385. Further, Intuit has included additional AAA customer arbitration releases in the compendium designated at RX 386, which the Court granted *in camera* treatment because they disclosed confidential customer information. Intuit requests that these incremental documents be granted *in camera* treatment consistent with the Court's March 1 Order.

For the reasons set forth in the accompanying Updated Rubin Declaration, *in camera* treatment of the exhibits identified herein is necessary to avoid public disclosure of Intuit's confidential information that, if disclosed, would give Intuit's competitors an unfair competitive advantage and cause serious competitive and financial injury to Intuit.

I. ARGUMENT

At the Court's instruction, the Updated Rubin Declaration explains, in greater detail, why each of the documents for which Intuit seeks *in camera* treatment contain confidential and competitively sensitive information that, if disclosed, would cause serious competitive and financial injury to Intuit. *See* Updated Rubin Decl. ¶¶4,7, 14-46. Intuit has endeavored to limit its request for *in camera* treatment to only those exhibits or portions of exhibits that reveal Intuit's

confidential and proprietary information with sufficient specificity that their public disclosure would cause serious competitive and financial injury to Intuit. *Id.* ¶¶4-14.¹

Each of the documents for which Intuit seeks *in camera* treatment are non-public, confidential, and are not widely distributed within the company. Updated Rubin Decl. ¶¶5, 14-46. Because their public disclosure would cause serious injury to the company, Intuit limits access to these documents within the company to only those individuals who need to know the information to perform their duties. Updated Rubin Decl. ¶5. Thus, although Intuit regularly uses PowerPoint presentations to develop and document its confidential business, regulatory, and marketing strategies, it strictly limits access to these documents. *Id.* ¶10. Accordingly, that an Intuit business plan is formatted as a presentation, memorandum, or other commonly shared format does not indicate that it was disseminated beyond those with a need to know the information contained therein. *See id.* ¶5.

A. Trade Secrets and Product Development

Intuit seeks *in camera* treatment of 64 documents that contain detailed information regarding Intuit's trade secrets or product development plans, which are non-public, confidential, and critical to Intuit's business operations and success.² Intuit's trade secrets and product development plans reveal the specifics of how Intuit plans, develops, deploys, and evaluates new products and features for TurboTax. Updated Rubin Decl. ¶¶19, 23, 28, 33, 38. These documents also reveal how Intuit tracks customer engagement with and profitability of its product offerings, as well as how it assesses the success of its marketing strategy. *Id.* These records include detailed descriptions of specific customer segments that Intuit believes use or

¹ Where Intuit seeks partial *in camera* treatment, it has identified those portions in yellow highlighting in the exhibit copies submitted with this Motion.

² The number of exhibits provided in Sections A-G include documents that pre-date 2020, which are also addressed in Section H.

may be likely to use TurboTax, analyses of Intuit's efforts to develop new products and features to attract such customers, and discussions of the expected and actual financial impact of these product development decisions. Updated Rubin Decl. ¶¶19, 28, 33, 38. Were these trade secrets and product development plans publicly disclosed, Intuit's competitors would have direct insight into Intuit's strategic decision-making regarding its planning, development, and implementation of critical features and functionalities in TurboTax. Updated Rubin Decl. ¶¶19, 23, 28, 33. Competitors could use Intuit's trade secrets to adjust their own competitive strategies to undercut Intuit's TurboTax business thereby weakening Intuit's competitive standing in an already highly competitive market, which could result in the potential loss of portions of Intuit's customer base. *Id.* To prevent serious competitive injury to Intuit, Intuit requests *in camera* treatment of its trade secrets and products development plans for 10 years. *See Altria Grp.*, 2021 WL 2258803, at *2 (F.T.C. May 19, 2021).

B. Financial Data

Intuit seeks *in camera* treatment of 64 documents that contain confidential financial data. Intuit's documents in this category disclose detailed, confidential information about Intuit's revenues sources, expenses, profits, losses, and other financial metrics that are not publicly reported. Updated Rubin Decl. ¶¶15, 21, 25, 30, 34. This information includes customer usage data related to TurboTax products, as well as financial projections, and the metrics and methods Intuit uses to make those projections. *Id.* For instance, the information in these documents reveals Intuit's confidential revenue and customer targets and details Intuit's financial strategies for years into the future. *See id.* ¶21. That information directly relates to Intuit's growth strategy and details financial metrics that are critical to Intuit's business model, and Intuit utilizes this information to maintain its competitive standing. *See id.* ¶¶15, 21, 25, 30, 34. If this information were publicly disclosed, competitors would obtain an unfair competitive advantage and be able

to undermine or counteract Intuit's confidential strategies. *Id.* ¶¶15, 21, 25, 30, 34. For instance, competitors could use the confidential information to identify segments of Intuit's customer base to target or develop products that undermine Intuit's confidential business strategies. *Id.* ¶15. Because the disclosure of confidential financial data would cause a clearly defined, serious injury to Intuit, Intuit requests *in camera* treatment of this information for five years. *See Altria Grp.*, 2021 WL 2258803, at *5.

C. Sales and Marketing Strategy

Intuit seeks *in camera* treatment for 140 documents relating to Intuit's sales, marketing, and advertising strategies. These documents reveal Intuit's confidential strategies for marketing its products and the information underlying those strategies, including how Intuit measures and assesses the success of such strategies in driving customer engagement and use of its products. Updated Rubin Decl. ¶¶17, 22, 27, 32, 37. For example, Intuit seeks *in camera* treatment of confidential data on audience size and customer engagement about specific advertisements and advertising campaigns because such data reveals how Intuit deploys its marketing resources, including information about both the target audience and whether Intuit was successful in reaching that target audience by airing the advertisements at the time and placed identified.³ *Id.* ¶17. For example, as the Court will learn at trial, Intuit targets marketing for its specific SKUs to audiences most likely to qualify for those SKUs. Were the details released, Intuit's competitors would gain improper insight into Intuit's marketing strategies and decision-making regarding new and existing customer outreach, allowing those competitors to better position their own products to compete against Intuit's marketing efforts and to effectively copy Intuit's industry-

³ Based on the Court's March 1 Order, Intuit seeks only *in camera* treatment of the portions of the documents that are confidential. For example, while Intuit previously moved for full *in camera* treatment of GX 431, which includes (TRPs), Intuit now seeks partial *in camera* treatment of this exhibit.

leading strategies. *Id.* ¶¶17, 22, 27, 32, 37. For example, were a competitor able to discern from these records the specific target audiences Intuit chooses to market its products to, they could coopt, dilute, or directly respond to those marketing campaigns both in the immediate term and over the longer-term. *Id.* ¶¶17, 22. Because disclosure of this information would place Intuit at a severe competitive disadvantage, causing Intuit serious competitive harm, Intuit respectfully request *in camera* treatment of these documents containing sales and marketing strategy for five years. *See Benco Dental Supply Co.*, 2018 WL 5292624, at *4 (F.T.C. Oct. 11, 2018).

D. Pricing and Pricing Strategy

Intuit seeks *in camera* treatment of 22 documents that reveal information about Intuit’s non-public pricing strategy, including internal analyses of customer demographics and buying patterns. Updated Rubin Decl. ¶¶16, 26, 31, 35. Confidential information relating to Intuit’s prices and pricing strategies warrants *in camera* treatment. *See, e.g., 1-800 Contacts*, 2017 FTC LEXIS 55, at *4-5. While the actual prices (or in the case of TurboTax Free Edition, the lack of any price charged for that “truly free” product) charged by Intuit for its various products are not confidential, were the company’s strategic decision-making about its pricing models made public it would give Intuit’s competitors improper insight into how the company develops its pricing strategy and how Intuit uses pricing as an aspect of its confidential marketing strategies to more effectively market its products to key customer segments. Updated Rubin Decl. ¶¶16, 26, 31, 35. Competitors could use this information to undermine or preempt Intuit’s pricing and marketing strategies, impeding Intuit’s ability to successfully grow its customer base and ultimately causing competitive and financial injury to the company. *Id.* ¶¶16, 26, 31, 35. Intuit respectfully requests that this Court grants *in camera* treatment for documents in this category for five years.

E. Business Strategy/Strategic Initiatives

Intuit requests that the Court afford *in camera* treatment to 39 documents that reveal its confidential business strategies and strategic initiatives. Updated Rubin Decl. ¶¶20, 24, 29. These documents discuss the specifics of Intuit’s business model, revenue, and market-share goals, and evaluate TurboTax’s position relative to its competitors. *Id.* They also reveal the details of Intuit’s key short- and long-term strategic initiatives related to TurboTax and other products, including strategic financial investment allocations, product focus decisions, and potential areas for growth and acquisition. *Id.* Public disclosure of this information could result in serious injury to Intuit because it would reveal Intuit’s candid self-assessment of its own business, including potential vulnerabilities to its position in the tax preparation market. *Id.* For example, certain of these presentations include detailed analysis of Intuit’s advertising campaigns, product mix, and pricing strategies to identify areas for improvement or growth in upcoming tax seasons. *Id.* at ¶29. Competitors could use this information to either replicate Intuit’s business strategies or use Intuit’s own self-assessments to undermine and even nullify Intuit’s initiatives. *Id.* at ¶¶20, 24, 29. It may also negate Intuit’s anticipated “first-mover” advantage in several product initiatives. Because the public disclosure of this information would lead to Intuit’s competitive harm, Intuit requests that this Court grant *in camera* treatment of these documents for five years. *See 1-800 Contacts*, 2017 FTC LEXIS 55, at *9.

F. Regulatory Strategy

Intuit’s next requests *in camera* treatment of 28 exhibits that reveal Intuit’s confidential regulatory strategy. These documents discuss the specifics of Intuit’s risk management practices, including identification of regulatory risks in the marketplace and efforts to mitigate such risks through strategic engagement. Updated Rubin Decl. ¶¶36, 45. Many of these documents also contain confidential information relating to the IRS’ Free File program, which are wholly

irrelevant to Complaint Counsel's allegations. *See* Compl. ¶¶119-122. There accordingly is no public interest in the release of these confidential documents in connection with this proceeding, whereas Intuit reasonably seeks to protect its confidential information. Were Intuit's confidential information relating to its regulatory strategies disclosed, competitors would gain insight into Intuit's assessment of its regulatory risk profile and the confidential strategies it uses to mitigate those risks. Updated Rubin Decl. ¶¶36, 45. Intuit respectfully requests that this Court grant *in camera* treatment of documents containing confidential information of its regulatory strategy for five years. *See Altria Grp.*, 2021 WL 2258803, at *5.⁴

G. Sensitive Personal Information

Consistent with the Court's March 1 Order granting Intuit's request to accord *in camera* treatment to documents that contain consumer names and taxpayer information, Intuit seeks similar treatment for 16 documents in this motion. Specifically, Intuit seeks *in camera* treatment for GX 857-868 and RX 820, 821, 1372, and 1373. These documents include large spreadsheets that contain consumer names, contact information, and confidential tax information, as well as some customers' sensitive personally identifiable information (e.g., social security numbers). *See* 16 C.F.R. §3.45(b). Intuit requests these documents be afforded permanent *in camera* treatment.

H. Documents Created Before 2020

Finally, pursuant to the Court's direction, Intuit has reduced the number of documents older than three years for which it seeks *in camera* treatment, from 163 to 44 documents. These remaining documents reveal trade secrets, financial data and metrics, regulatory and business

⁴ A federal court similarly struck irrelevant exhibits that Complaint Counsel filed with their motion for a preliminary injunction. *See* Order, *FTC v. Intuit, Inc.*, No. 3:22-cv-1973-CRB (N.D.Cal. June 28, 2022), ECF No. 72.

strategies, as well as Intuit's pricing, sales, and marketing strategies, which remain competitively sensitive today. Updated Rubin Decl. ¶¶39-46. Public disclosure of these documents would result in serious competitive injury to Intuit because the information they reveal pertains specifically to Intuit's *current* business operations, in addition to multi-year initiatives that are still in development. *Id.* ¶¶39-46. Though the documents that contain this information are older than three years, competitors could still use the information set forth therein to replicate Intuit's businesses strategies, gaining an unfair competitive advantage and benefiting from the resources Intuit poured into developing these trade secrets and strategies and steps to keep these documents confidential. *Id.* ¶¶39-46. Thus, because these documents remain competitively sensitive, Intuit requests that they be held *in camera* for five years. *See Altria Grp.*, 2021 WL 2258803, at *2.

II. CONCLUSION

For the forgoing reasons, Intuit respectfully requests that the Court grant *in camera* treatment to the hearing exhibits identified in Attachment A hereto to the extent and for the durations indicated.

Dated: March 15, 2023

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2023 WL 2682326 (F.T.C.)

Federal Trade Commission (F.T.C.)

In the Matter of Intuit, Inc., a corporation, Respondent.

Docket No. 9408
March 21, 2023

PUBLIC

ORDER ON RESPONDENT'S SECOND MOTION FOR *IN CAMERA* TREATMENT

*1 By Order issued March 1, 2023, the motion for *in camera* treatment filed by Respondent Intuit, Inc. ("Respondent") on February 10, 2023 was granted in part and denied in part without prejudice ("March 1 Order"). After setting forth the standards by which motions for *in camera* treatment are evaluated, the March 1 Order determined that many of the documents for which Respondent sought *in camera* treatment do not meet the standards for *in camera* treatment and that Respondent's designations of vast portions of transcripts from investigational hearings and depositions were overbroad and included testimony that does not meet the criteria for *in camera* treatment. The March 1 Order directed Respondent to thoroughly review all documents for which it seeks *in camera* treatment and to narrow its requests to only those documents that comply with the Commission's strict standards for *in camera* treatment.

Respondent filed a Second Motion for *In Camera* Treatment on March 15, 2023. Respondent states that it has undertaken a comprehensive re-review of the 316 exhibits that were not previously granted *in camera* status and, based on that assessment, has withdrawn its request for *in camera* treatment for 153 of 316 documents included in the prior motion. Respondent also states that, based on its re-review, it now proposes tailored redactions for certain documents that it previously sought to be withheld in full. In addition to the documents included in Respondent's first motion for *in camera* treatment, Respondent seeks *in camera* treatment for 44 of the 459 documents that have been designated by the parties as exhibits since its previous motion.

Upon review of the motion, declaration, and exhibits, Respondent has met the standards required for *in camera* treatment. Therefore, Respondent's Second Motion for *In Camera* Treatment is GRANTED. *In camera* treatment is granted to the hearing exhibits identified in Attachment A to Respondent's Second Motion for *In Camera* Treatment to the extent and for the durations indicated in that exhibit. For exhibits where Respondent has sought *in camera* treatment for a period of five years, the expiration date is April 1, 2028. For exhibits where Respondent has sought *in camera* treatment for a period of ten years, the expiration date is April 1, 2033.

The parties are permitted to elicit testimony on the public record that includes references to, or general statements derived from, the content of information that has been granted *in camera* treatment. 16 C.F.R. § 3.45. However, any testimony revealing the confidential information from documents that have been granted *in camera* treatment shall only be provided in an *in camera* session of trial. Counsel shall segregate their questions of witnesses in such a manner that all questions on *in camera* materials will, to the extent practicable, be grouped together and elicited in one *in camera* session during the examination of a witness.

*2 Ordered:

D. Michael Chappell
Chief Administrative Law Judge

Date: March 21, 2023