

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

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**RESPONDENT INTUIT INC.'S OPPOSITION TO COMPLAINT COUNSEL'S  
MOTION *IN LIMINE* TO PRECLUDE INTUIT FROM INTRODUCING AT TRIAL  
EVIDENCE OF PURPORTED CUSTOMER SATISFACTION  
AS A DEFENSE TO LIABILITY**

Complaint Counsel (CC)'s motion to preclude evidence regarding "customer satisfaction" is a thinly-veiled attempt to prevent consideration of evidence confirming that consumers were not misled by the challenged ads. To begin, the relief sought is hopelessly vague and the motion should be denied on that basis alone. But CC is also wrong on the merits. This Court has already recognized that "feedback received by Intuit regarding its free TurboTax offer, product, or service" is "relevant to the allegations and the defenses in this case." Order Granting CC's Motion To Compel 2 (Dec. 30, 2022). While CC interpret that to mean only evidence *favorable* to their case is admissible, that is clearly not the law. Moreover, the exhibits and testimony CC's motion appears to target do not merely demonstrate the "existence of happy customers." Mot. 4. The evidence Intuit intends to introduce demonstrates that TurboTax meets or exceeds the majority of customers' expectations—including expectations about the ability to file for free. Such evidence is central to CC's deception claim, which is why comparable evidence has been admitted (and in fact relied on) in similar cases. CC's motion should be denied.

## I. BACKGROUND

Intuit’s customers regularly provide feedback on their experiences with TurboTax products (products that are extremely popular overall). This consumer feedback—reflected in Net Promoter Scores (NPS), reviews and ratings, customer service interactions, empirical survey responses, and retention rates—provides strong evidence that Intuit meets or exceeds consumer expectations for TurboTax products. NPS, for example, is a standard and well-respected customer measure of how likely customers are to recommend a company or product to a friend or colleague. *See* RX504. To assess NPS, Intuit conducts blind, unbranded studies examining whether customers’ expectations have been met and comparing performance against its competitors. *See* RX592 at INTUIT-FTC-PART3-000602703. Indeed, a specific question in Intuit’s TY2020 NPS study asked consumers about their awareness and expectations about being able to file for free using TurboTax. RX592 at INTUIT-FTC-PART3-000602669. The percentage of consumers who had an awareness or expectation of being able to file for free using TurboTax matched almost exactly the percentage of consumers in the survey who *did* file for free using TurboTax. *Id.*

Intuit has relied on these and other data because they reflect comprehensive evidence of customer experiences, offer important points of comparison against benchmark companies in the tax-preparation industry, and provide empirical support for Intuit’s successful business model. *See* Intuit MSD Opp. 9, 20, 24-25.

## II. ARGUMENT

### A. CC’s Motion Is Facially Deficient And Overbroad

“[M]otions *in limine* are generally used to ensure evenhanded and expeditious management of trials by eliminating evidence that is *clearly* inadmissible.” *1-800 Contacts, Inc.*, 2017 WL 1345288, at \*1 (FTC Mar. 30, 2017) (emphasis added). “The evidence sought to be

excluded on a motion in limine must be identified with a level of specificity which permits the court to make the appropriate determination.” *Bouygues v. Tekelec*, 2007 WL 9718142, at \*1-3 (E.D.N.C. Feb. 23, 2007). Courts “routinely” deny motions *in limine* “for lack of specificity” where they fail to identify “the particular evidence” sought to be excluded and “present a serious risk of excluding admissible evidence.” *A.Hak Indus. Servs. BV v. Techcorr USA, LLC*, 2014 WL 12591696, at \*1 (N.D. W. Va. Dec. 18, 2014) (collecting cases); *see, e.g., Grouse River Outfitters Ltd. v. Oracle Corp.*, 2019 WL 8918902, at \*11 (N.D. Cal. June 21, 2019) (denying motion *in limine* where the movant “has not specified what it seeks to exclude”).

CC’s motion should be denied on this basis alone. CC’s proposed order would preclude Intuit “from introducing evidence of satisfied consumers or high customer satisfaction to show that the claims at issue were not satisfied.” But CC have engaged in little effort to identify the specific evidence that would fall within that broad, ill-defined category. The motion provides a list of 32 “example” exhibits (Mot. 2), but they obscure rather than clarify the motion’s scope. To start, many exhibits are largely or entirely unrelated to customer expectations. For instance, CC cite to several lengthy Intuit presentations on topics such as product tests, pricing and revenue strategy, and customer growth models. *See* RX59, RX61, RX704. CC make no attempt to identify specific portions of those exhibits that should be excluded, or to justify excluding entire exhibits. CC also seek to exclude RX9, which is simply a screenshot of the TurboTax Products & Pricing page from Tax Year 2021. This page provides detailed information to consumers about the TurboTax product suite. CC have provided no justification for excluding it. This exhibit and similar ones, to the extent RX9 is provided as an exemplar, plainly should not be excluded. Further, most of the exhibits appear to relate (based on title alone) to NPS data, but CC do not purport to limit their motion to that single metric, explain why that metric should be

excluded, or explain why its exclusion would justify the exclusion of “other customer experience metrics,” Mot. 2.<sup>1</sup>

Further exacerbating the confusion are CC’s references to excerpts of Intuit’s expert reports, because those excerpts analyze certain customer data that are not otherwise mentioned in the motion or exemplar exhibits—including customer retention. To the extent retention is also covered by this motion, CC never explain why such evidence should be excluded.<sup>2</sup>

CC’s failure to adequately identify the specific evidence they seek to exclude (the proposed order identifies *no* exhibits) means granting the motion will not ensure “expeditious management” of the trial. *1-800 Contacts, Inc.*, 2017 WL 1345288, at \*1 (FTC Mar. 30, 2017). Instead, granting such a broad request “present[s] a serious risk of excluding admissible evidence.” *A.Hak*, 2014 WL 12591696, at \*1. At best, it will cause confusion and invite myriad disputes over the evidence the motion covers. “Where, as here, a party seek a general exclusion of a broad or vaguely defined category of evidence, ‘the best course of action is to deny the

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<sup>1</sup> Making matters worse, CC have not, as far as Intuit can tell, provided courtesy copies of any of the listed exhibits to the Court. (The email providing a courtesy copy of the motion to the Court, on which Intuit’s counsel were copied, made no mention of CC separately providing any exhibits.) Thus, even if it were the Court’s burden to review the exhibits to determine which portions fall within the ambit of CC’s motion, the Court has no way of doing so. It is improper for CC to ask the Court to rule on the admissibility of dozens of exhibits without being able to review them.

<sup>2</sup> CC cannot attempt to cure the vagueness and overbreadth just identified in a reply. CC had an obligation to specify *in their motion* exactly what evidence they were asking the Court to exclude. Allowing CC to do so properly for the first time in reply would unfairly prevent Intuit from addressing CC’s actual arguments, and deprive the Court of the benefit of adversarial briefing on CC’s motion.

motion and see how the case unfolds.” *Championship Tournaments, LLC v. U.S. Youth Soccer, Ass’n, Inc.*, 2022 WL 1002137, \*3 (D. Md. Apr. 4, 2022).<sup>3</sup>

**B. The Evidence At Issue Is Relevant And Admissible**

In any event, CC’s motion fails on the merits. It is premised on the notion that “the existence of happy customers is simply not evidence that consumers were not deceived[,] while consumers complaining about being deceived is evidence of deception.” Mot. 4. That assertion mischaracterizes Intuit’s evidence, misstates the law, and would unfairly allow CC to offer the same type of evidence that they seek to exclude.

To start, CC are wrong to suggest that the evidence cited simply reflects “the existence of happy customers.” Mot. 4. Intuit’s competitive NPS, thousands of customer reviews, and consistently high product ratings on the TurboTax website also bear on the core issue in this case, indicating that Intuit’s advertisements are not deceptive. That is because if the ads *were* deceptive—i.e., if customers who expected to file for free before using TurboTax could not do so—expressions of these unmet expectations would be reflected in their reports of their experience using the product. Customer-retention rates, for example, are a key metric for assessing whether consumers believe they received what they were offered. The fact that most customers return to use TurboTax products (both free and paid) year after year suggests the absence of any unfulfilled expectation that consumers could file for free; if customers felt deceived by a bait-and-switch scheme, they would likely not return to the product the next year.

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<sup>3</sup> To be clear, CC’s motion is not objectionable for targeting a category of evidence rather than a specific set of exhibits; it is objectionable because the category CC has “identified” is itself vague. Particularly where the exemplar exhibits included by CC do not clearly define the boundaries of the proposed category, it is not clear which exhibits would qualify for exclusion and which would not. In fact, CC’s proposed category is so broad that it appears to encompass some of CC’s own proposed evidence.

See RX1018 ¶¶47, 52-54. Customer reviews and ratings (both positive and negative) likewise provide meaningful information about customer expectations regarding a consumer's ability to file for free. Again, if any significant number of TurboTax customers had been deceived into paying for something that they were previously told was free, one would expect that to be reflected in that data. See *id.* ¶ 50; RX1027 ¶¶154-162. Customer-experience metrics therefore indicate more than just the existence of happy customers; they are evidence of customer expectations being met—in other words, evidence of no deception. See RX1018 ¶¶31-33, 67.

Evidence similar to Intuit's has (contrary to CC's assertions) been relied on in other deception cases. For example, *FTC v. DirecTV*, 2018 WL 3911196 (N.D. Cal. Aug. 16, 2018), involved the "FTC's theory ... that Defendant's advertisements were likely to mislead reasonable consumers because, in its view, critical details of Defendant's offer were not disclosed prominently enough," *id.* at \*5. In rejecting that theory, the court relied in part on DirecTV's NPS of 34—lower than Intuit's score here—and DirecTV's customer retention rate. *Id.* at \*18 & n.17. The court also allowed (and in fact credited) testimony from a DirecTV executive that "if consumers believed that the terms in DirecTV's advertisements did not match the terms disclosed when they sought to subscribe, that feeling of deception would have been reflected in ... DirecTV's data collected on pain points, consumer research, sales calls, closing rates, activation rates, and churn." *Id.* That data, the court found, undermined the FTC's theory of deception. *Id.* *DirecTV* makes clear that Intuit's evidence reflecting consumers' experiences, which similarly demonstrates that customers were not deceived by the challenged ads, is admissible.

CC are equally wrong to request exclusion of lay testimony about "the fulfillment of consumer expectations" (Mot. 2), because Intuit surely must be permitted to introduce some

evidence regarding “consumer expectations” in a case where its actions are “considered from the perspective of the reasonable consumer” (CC Pretrial Br. 30). *See also* Ex. A (Yoeli Tr.) 38:23-39:22 (describing CC’s deception theory as consumers visiting the TurboTax website with “some expectation” it would be free for them); *id.* at 49:1-14 (explaining the word “expectation” was used as a “catch-all phrase for what the law refers to as the interpretation of a reasonable consumer”).

Intuit’s evidence is thus directly relevant to CC’s claim. CC’s arguments focus on reasonable consumers’ beliefs—after being exposed to Intuit’s free advertising—about their ability to file their taxes for free using TurboTax. *See, e.g.,* CC’s MSD 21. Evidence that goes to that issue—including the exhibits identified in CC’s motion concerning customer expectations about TurboTax products, price, or the ability to file for free and whether those expectations have been met—is manifestly relevant. CC have already recognized, in fact, that customer-feedback evidence is “facially relevant.” CC’s Motion To Compel Production of Documents 4-5 (Dec. 9, 2022). That was why CC argued Intuit had to produce “Voice of Consumer” data from its customer relationship management (CRM) database. *Id.* This Court agreed, ruling that “feedback received by Intuit regarding its free TurboTax offer, product, or service” is “relevant to the allegations and the defenses in this case.” Order Granting CC’s Motion To Compel 2 (Dec. 30, 2022). That ruling requires admission of the evidence CC now seek to exclude.

CC’s cited cases do not support exclusion. For example, in *Daniel Chapter One*, 2009 FTC LEXIS 86 (Apr. 20, 2009), the court excluded evidence of consumer beliefs that an advertised product could treat cancer because the “non-scientific, consumer testimonials” had “little probative value for determining whether [the] product work[ed] in the manner claimed”—that is whether, as a scientific matter, the product could actually treat cancer. *Id.* at \*4-8. Thus,

consumers' beliefs had no impact on whether the claims were deceptive. And indeed, the respondents conceded they did not intend to use the testimonials to show a lack of deception. *Id.* at \*7. Here, however, consumers would have discovered whether they were ineligible to file for free while using the product—and thus would voice their approval or disapproval in their feedback.

As for *FTC v. Amy Travel Service, Inc.*, 875 F.2d 564, 572 (7th Cir. 1989), the court there excluded testimony from two customer witnesses who were not exposed to the allegedly deceptive claims, as well as a set of “postcards and letters” from additional customers. Even if those customers had been given the allegedly deceptive sales pitch (the court’s opinion does not say), there were no indications the isolated anecdotes contained in the postcards were representative of customers’ experiences. *See id.*

Intuit, by contrast, seeks to introduce comprehensive consumer-experience data with metrics on which industry participants themselves rely. Like in *DirectTV*, if CC’s theory of deception were true, one would expect it to be reflected in at least some of those metrics, and yet it is not. The evidence instead shows that TurboTax meets or exceeds the expectations of the overwhelming majority of its customers, including their expectations about filing for free. CC’s request that the Court ignore that data entirely is telling.

### **C. The Evidence Is Admissible To Respond to CC’s Evidence**

At a minimum, the evidence apparently covered by CC’s motion is admissible to rebut CC’s own consumer-satisfaction evidence. CC’s witness and exhibit lists reflect CC’s intent to offer evidence obtained from the CRM database, as well as consumer complaints from the Sentinel database, to support their arguments. *See also* CC’s Pretrial Br. 23-27. But CC cannot have it both ways, arguing that evidence of *negative* customer feedback is relevant but that evidence of *positive* customer feedback is not. If CC’s evidence of negative feedback is admitted



(after Intuit was compelled to produce it), Intuit’s responsive evidence of positive feedback must be as well. CC’s “heads we win, tails you lose” argument is based on snippets of cases taken wholly out of context and misstates the applicable law.

**III. CONCLUSION**

The Court should deny CC’s motion.

Dated: February 24, 2023

Respectfully submitted,

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

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**DECLARATION OF DEREK WOODMAN IN SUPPORT OF  
RESPONDENT INTUIT INC.'S OPPOSITION TO COMPLAINT COUNSEL'S  
MOTION IN LIMINE TO PRECLUDE INTUIT FROM INTRODUCING AT TRIAL  
EVIDENCE OF PURPORTED CUSTOMER SATISFACTION  
AS A DEFENSE TO LIABILITY**

I, Derek A. Woodman, declare as follows:

1. I am a counsel at Wilmer Cutler Pickering Hale and Door LLP. I represent Intuit Inc. in the above-captioned proceeding.
2. I submit this declaration in support Intuit's opposition to Complaint Counsel's motion *in limine* to preclude Intuit from introducing at trial evidence of purported customer satisfaction as a defense to liability.
3. Attached as Exhibit A is a true and correct excerpt of the transcript of the deposition of Erez Yoeli, Ph.D. taken by Intuit as part of this proceeding on February 16, 2023.
4. Attached is a true and correct copy of RX504 (INTUIT-FTC-PART3-000600984), an article by Chen, E., "What is the Net Promoter Score (NPS)?" MIT Orbit, available at <https://orbit-kb.mit.edu/hc/en-us/articles/206440723-What-is-the-Net-Promoter-Score-NPS->.
5. Attached is a true and correct copy of RX592 (INTUIT-FTC-PART3-000602627), a presentation entitled "TurboTax Online TY20 NPS Study," dated August 2021.

6. Attached is a true and correct excerpt of RX1018, the Expert Report of Professor Peter N. Golder, Ph.D., dated January 13, 2023.

7. Attached is a true and correct excerpt of RX1027, the Expert Report of Bruce F. Deal, dated January 13, 2023.

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

Executed on this 24th day of February, 2023.

By: /s/ Derek Woodman

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# EXHIBIT A

*Submitted in Camera*



MIT Orbit Knowledgebase Testing your MVP and Finding Product/Market Fit Measuring traction

# What is the Net Promoter Score (NPS)?



Elaine Chen  
7 years ago

The Net Promoter Score (or NPS) is a standard measure of customer satisfaction. This is how you test for NPS within your paid customer install base.

## Articles in this section

What are some ways to measure traction?

Show the product concept, then ask this question on a 10 point scale (1 = not at all likely, 10 = very likely):

What is Product/Market Fit?

- "How likely is it that you would recommend [your product] to a friend [or family, or colleague etc]?"

What is the Net Promoter Score (NPS)?

Now you need to categorize the responses:

- Promoters = 9, 10 - your loyal enthusiasts
- Passives = 7, 8 - satisfied but unenthusiastic
- Detractors = 0-6 - unhappy, can damage brand by word of mouth

Then you can calculate the Net Promoter Score as follows: (NPS)

- $NPS = \% \text{ Promoters} - \% \text{ Detractors}$

As a matter of reference, in 2013, Apple laptop (the best scoring computer company) scored an NPS of 76%; Kaiser (best health insurance company) scored an NPS of 18%. Generally a good idea to look up the norms of NPS for your industry because NPS is not very transferable across industries (after all it will always be more pleasurable to use an iPhone or MacBookAir than to buy insurance!)

Read more here: <http://www.netpromoter.com/why-net-promoter/know/>

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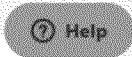
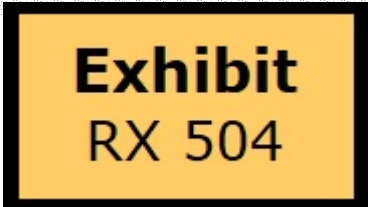
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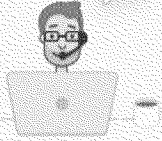
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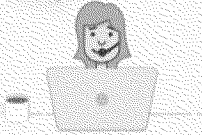
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**RX592**

***(Submitted In Camera)***

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**  
                                 **Alvaro M. Bedoya**

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**EXPERT REPORT OF PROFESSOR PETER N. GOLDR, PH.D.  
JANUARY 13, 2023**



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## I. INTRODUCTION

### A. Qualifications

1. My name is Peter Golder. I am a professor of marketing at the Tuck School of Business at Dartmouth College in Hanover, New Hampshire. In 2014, I was appointed by Dartmouth's president to be one of seven founding faculty members in Dartmouth's Society of Fellows. From 2015 to 2018, I served as area coordinator of the Tuck School's marketing faculty group. From 2015 to 2020, I was co-editor-in-chief of the academic journal *Marketing Letters*. From 2017 to 2020, I was faculty director of the Tuck School's First-Year Project course and, from 2018 to 2020, I was faculty director of the Tuck School's global experiential courses. In 2020, I was named an Academic Fellow of the Marketing Science Institute. I previously served as professor of marketing and coordinator of the marketing department doctoral program at the Stern School of Business at New York University in New York, New York.
2. I hold a Ph.D. in Business Administration (Marketing) from the University of Southern California and a B.S. in Mechanical Engineering from the University of Pennsylvania.
3. My research experience and interests include branding, historical analysis of markets, sources of market leadership, product features and customer perceptions associated with quality, innovation, market entry strategies, new product development and marketing, and global marketing. I have employed a variety of research methods in addressing these topics, including the historical research method, surveys, case studies, and econometric analysis. In 2000, I published a paper on the historical research method in the *Journal of Marketing Research*, one of the leading journals in the marketing discipline, providing a comprehensive description of the method and explaining its usefulness for generating

loyalty increases,<sup>28</sup> improving the chances they will return to Intuit in future years and share their positive experience with friends and family.

30. Companies that operate on a Customer Lifetime Value strategy, therefore, are incentivized to ensure that customers have a positive experience with the product and regularly track metrics that reflect the customer experience. Consistent with a Customer Lifetime Value approach, Intuit tracks NPS, customer reviews and ratings, and customer retention. Across each of these metrics, Intuit has high ratings, indicative of customers who feel that the TurboTax product meets or exceeds their expectations.

**A. TurboTax Customer Reviews Indicate Customers Receive Benefits from the Service and Do Not Feel Misled**

31. Customer ratings and reviews reflect a post-consumption judgment made by customers that compares their experience of a product relative to their expectations.<sup>29</sup> Customer sentiment largely reflects the difference between what a customer expected from a product and what he or she received.<sup>30</sup> A consumer's expectations about a product may come from various

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<sup>28</sup> See e.g., Yang, Zhilin and Robin T. Peterson, "Customer Perceived Value, Satisfaction, and Loyalty: The Role of Switching Costs," *Psychology & Marketing*, Vol. 21, No. 10, October 2004, pp. 799-822 ("Yang and Peterson (2004)"), INTUIT-FTC-PART3-000598504, p. 815 ("Perceived value is another key driver of customer loyalty and also significantly influences customer satisfaction. As e-commerce has made cost transparency more feasible, total product/service cost, not solely the list price, has become an increasingly important feature for attracting customers. The total cost constitutes both explicit expenses (i.e., product/service price) and implicit expenses such as shipping costs, return costs, coupon usages, discount rewards, and free services. Additionally, firms should provide the product portfolio and value-added free services that are in demand to increase their competitive advantage.").

<sup>29</sup> Golder, Peter N. et al., "What is Quality? An Integrative Framework of Processes and States," *Journal of Marketing*, Vol. 76, No. 4, July 2012, pp. 1-23 ("Golder, Mitra, and Moorman (2012)"), INTUIT-FTC-PART3-000595336, p. 4.

<sup>30</sup> Kotler, Philip and Kevin Keller, *Marketing Management* 14<sup>th</sup> Ed., Pearson Education, 2012 ("Kotler and Keller (2012)"), INTUIT-FTC-PART3-000596682, ("satisfaction is a person's feelings of pleasure or disappointment that result from comparing a product's perceived performance (or outcome) to expectations. If the performance falls short of expectations, the customer is dissatisfied. If it matches expectations, the customer is satisfied. If it exceeds expectations, the customer is highly satisfied or delighted. Customer assessments of product performance depend on many factors, especially the type of loyalty relationship the customer has with the

sources of information including past experiences, third-parties, competitors' offerings, the firm itself (advertising, market share, firm reputation), and product-specific signals.<sup>31</sup> Thus, both the experience of the product attributes and the customer's expectations regarding the product attributes are key components of whether customers feel their expectations were met.<sup>32</sup> Managing expectations regarding both price and product attributes (in particular by not setting expectations unrealistically high) is a key component of improving customer sentiment, and ultimately customer retention.<sup>33</sup>

32. Academic literature indicates that feelings of deception lead to negative feelings about a brand, lower probability of recommending the product to a friend, and lower overall satisfaction.<sup>34</sup> In contrast, high customer ratings indicate that the customers' expectations were generally matched or exceeded by the customers' experiences with the product. Because meeting or exceeding customer expectations leads to customer loyalty, it is critical

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brand.”) p. 128. *See also*, Golder, Mitra, and Moorman (2012); Mitra, Debanjan and Peter N. Golder, “How Does Objective Quality Affect Perceived Quality? Short-Term Effects, Long-Term Effects, and Asymmetries,” *Marketing Science*, Vol. 25, No. 3, May-June 2006, pp. 230-247 (“Mitra and Golder (2006)”), INTUIT-FTC-PART3-000595317.

<sup>31</sup> Golder, Mitra, and Moorman (2012), p. 10.

<sup>32</sup> Golder, Mitra, and Moorman (2012), p. 10.

<sup>33</sup> Golder, Mitra, and Moorman (2012), p. 15; *See also*, Kerin, Roger and Steven Hartley, *Marketing* 15<sup>th</sup> Ed., New York, NY, McGraw-Hill Education, 2020 (“Kerin and Hartley (2020)”), INTUIT-FTC-PART3-000596659; Perreault, William et al., *Essentials of Marketing*, New York, NY, McGraw-Hill Education, 2019 (“Perreault, et al. (2019)”), INTUIT-FTC-PART3-000598454.

<sup>34</sup> *See e.g.*, Xie, Guang-Xin et al., “Disentangling the Effects of Perceived Deception and Anticipated Harm on Consumer Responses to Deceptive Advertising,” *Journal of Business Ethics*, Vol. 29, April 1, 2014, pp. 281-293 (“Xie, Madrigal, and Boush (2014)”), INTUIT-FTC-PART3-000598490; Craig, Adam et al., “Suspicious Minds: Exploring Neural Processes During Exposure to Deceptive Advertising,” *Journal of Marketing Research*, Vol. 49, No. 3, June 2012, pp. 361-372 (“Craig, et al. (2012)”), INTUIT-FTC-PART3-000595267; Román, Sergio, “Relational Consequences of Perceived Deception in Online Shopping: The Moderating Roles of Type of Product, Consumer’s Attitude Toward the Internet and Consumer’s Demographics,” *Journal of Business Ethics*, Vol. 95, No. 3, September 2012, pp. 373-391 (“Román (2012)”), INTUIT-FTC-PART3-000598459; Held, Johanna and Claas Christian Germelmann, “Deception in Consumer Behavior Research: A Literature Review on Objective and Perceived Deception,” *Cairn.Info*, Vol. 3, No. 21, 2018, pp. 119-145 (“Held and Germelmann (2018)”), INTUIT-FTC-PART3-000595396.

that companies do so, especially in the case of product categories reliant on repeat purchasers.<sup>35</sup>

33. Meeting or exceeding customer expectations is also essential to brand reputation and long-term growth.<sup>36</sup> Intuit has every incentive to cultivate and maintain a strong reputation and to meet customers' expectations to both secure new customers and to retain existing ones.<sup>37,38</sup> Meeting or exceeding customer expectations is especially critical in the tax preparation industry where there is low overall industry growth, relatively low barriers to switching, and renewed competition for each and every customer each year.<sup>39</sup>

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<sup>35</sup> Kotler and Keller (2016), p. 152 (“A buyer’s satisfaction is a function of the product’s perceived performance and the buyer’s expectations. Recognizing that high satisfaction leads to high customer loyalty, companies must ensure that they meet and exceed customer expectations.”).

<sup>36</sup> Kerin and Hartley (2020), p. 128 (“Studies show that satisfaction or dissatisfaction affects consumer communications and repeat-purchase behavior. Satisfied buyers tell three other people about their experience. In contrast, about 90 percent of dissatisfied buyers will not buy a product again and will complain to nine people. Satisfied buyers also tend to buy from the same seller each time a purchase occasion arises. The financial implications of repeat-purchase behavior are significant”). *See also*, Perreault., et al. (2019), p. 133.

<sup>37</sup> Intuit’s Senior Vice President of Marketing Cathleen Ryan testified to the importance of meeting or exceeding customer expectations including in Intuit’s advertising, stating “it is in our best interest to ensure clarity in our advertising. We want the right customers to find the right products. We do not want the wrong customers to find products that aren’t right for them. We want people to start in the right SKU. It is best for our business. It is best for our customers, and that is what we strive for,” Deposition of Cathleen Ryan (as Intuit 3.33(c) Designee), *In the Matter of: Intuit Inc., A Corporation*, Docket No. 9408, November 28, 2022 (“Ryan 3.33c Deposition (2022)”), 47:6-15.

<sup>38</sup> Greg Johnson, Intuit’s Executive Vice President and General Manager of Intuit’s Consumer Group at the time of his deposition, also testified to the importance of meeting or exceeding customer expectations in respect to long term growth, that Intuit’s “guiding approach is to grow customers that pay us nothing, and so that is our focus to build relationships and grow our business and grow those relationships,” Examination of Greg Johnson via Zoom, *Federal Trade Commission in the Matter of: TurboTax, Inc., A Corporation*, Docket No. 1923119, September 29, 2020 (“Johnson Deposition”) at 124:17-23.

<sup>39</sup> Intuit, “[REDACTED],” November 18, 2022, INTUIT-FFA-FTC-000153389 (GX 448-B), p. 26. (“[REDACTED]”).  
Intuit, “[REDACTED] INTUIT-FTC-PART3-000489527 ([REDACTED])”).

[REDACTED]). Expert Report of Rebecca Kirk Fair, *In the Matter of: Intuit Inc., a corporation*, No. 9408, January 13, 2023 (“Kirk Fair Report”), Section V.C (“Many Respondents Demonstrate a Willingness to Consider Alternatives and To Identify and Use the Appropriate Product for Their Specific Situation”).

with 4.4 stars, and H&R Block with 4.1 stars.<sup>60</sup> The Auto Insurance Provider benchmark group had an average rating of 4.6 out of 5 stars,<sup>61</sup> followed by the Wireless Carrier benchmark group with 3.7 stars,<sup>62</sup> and the TV Service Providers benchmark group with 3.1 stars.<sup>63</sup>

*c) Customer Retention Rates*

47. Intuit reported an approximately 80 percent customer retention rate in a September 2022 Investor Day presentation, meaning that the vast majority of customers continue to use TurboTax products year-over-year.<sup>64</sup> [REDACTED]

<sup>60</sup> Jackson Hewitt did not have a rating available on Influenster. “TurboTax,” *Influenster*, <https://www.influenster.com/reviews/turbo-tax> (“TurboTax”), accessed January 2, 2023; “TaxAct,” *Influenster*, <https://www.influenster.com/reviews/taxact> (“TaxAct”), accessed January 2, 2023; “TaxSlayer,” *Influenster*, <https://www.influenster.com/reviews/taxslayer> (“TaxSlayer”), accessed January 2, 2023; “H&R Block,” *Influenster*, <https://www.influenster.com/reviews/hr-block> (“H&R Block”), accessed January 2, 2023.

<sup>61</sup> I calculate the average rating of the Automobile Insurance Provider benchmark group by taking the average Influenster rating of the following auto insurance providers: Geico (4.5 stars out of 5), State Farm (4.6 out of 5 stars), and Allstate (4.7 out of 5 stars). Progressive and USAA did not have ratings available on Influenster. See “GEICO Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/geico> (“GEICO Reviews 2022”), accessed January 2, 2023; “StateFarm Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/statefarm-insurance> (“StateFarm Insurance Reviews 2022”), accessed January 2, 2023; “Allstate Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/allstate-insurance> (“Allstate Insurance Reviews 2022”), accessed January 2, 2023.

<sup>62</sup> I calculate the average rating of the Wireless Carriers benchmark group by taking the average Influenster rating of the following wireless carriers included in the benchmark company analysis: AT&T (3.8 out of 5 stars), T-Mobile (3.3 out of 5 stars), Verizon Wireless (4.0 out of 5 stars). See “AT&T Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/att> (“AT&T Insurance Reviews 2022”), accessed January 2, 2023; “T-Mobile Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/t-mobile> (“T-Mobile Insurance Reviews 2022”), accessed January 2, 2023; “Verizon Wireless Insurance Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/verizon-wireless> (“Verizon Wireless Insurance Reviews 2022”), accessed January 2, 2023.

<sup>63</sup> I calculated the average rating of the TV Service Providers benchmark group by taking the average Influenster rating of the following TV service providers included in the benchmark company analysis: Charter Spectrum (3.1 out of 5 stars) and Comcast (3.1 out of 5 stars). Dish Network did not have ratings available on Influenster and I exclude DirecTV because the average rating is based on one customer review. See “Charter Communications Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/charter-communications> (“Charter Communications Reviews 2022”), accessed January 2, 2023; “Comcast Xfinity Reviews 2022,” *Influenster*, <https://www.influenster.com/reviews/comcast-xfinity> (“Comcast Xfinity Reviews 2022”), accessed January 2, 2023.

<sup>64</sup> Investor Day (2022), p. 96 (“Excluding stimulus-only filers”).



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Customers who feel deceived by their purchase are unlikely to return to the product in the next year, thus TurboTax's high customer retention rates suggest the absence of an unfulfilled expectation that consumers could file for free, and therefore indicate the opposite of deception among its consumers.

## 2. TurboTax Customer Reviews and Retention Are Inconsistent with Deception

48. Complaint Counsel disregard the evidence that customers reflect positively on their experience with TurboTax and choose to remain TurboTax customers year-over-year. Dr. Novemsky speculated that customer ratings "could" remain high because of customers' attempts to decrease cognitive dissonance after paying for TurboTax.<sup>67</sup> This theory relies on the theory of cognitive dissonance, which refers to the conflict that occurs when a person's behaviors and beliefs do not align. In this case, such cognitive dissonance would

<sup>65</sup> Intuit, "[REDACTED]," May 16, 2019, INTUIT-FTC-PART3-000607308, p. 8. [REDACTED]

[REDACTED]. Intuit, "[REDACTED]," May 16, 2019, INTUIT-FTC-PART3-000607308, p. 9.

<sup>66</sup> Intuit, "[REDACTED]," June 2021, INTUIT-FTC-PART3-000602174, slide 3.

<sup>67</sup> Second Novemsky Declaration, ¶ 58 ("Professor Golder points to TurboTax's high customer satisfaction scores and retention rates as evidence that consumers were not misled about TurboTax's products. However, high customer satisfaction could be in spite of initial confusion rather than indicating a lack of confusion. Dissonance reduction (i.e., 'I paid to use TurboTax, so I must have valued it') and high switching costs could contribute to positive scores and retention rates. The action of paying alone causes consumers to like a product more, as does the action of honoring one's sunk costs and continuing with the product."). Whether or not Dr. Novemsky offers this opinion in rebuttal, my opinion remains that cognitive dissonance is not driving Intuit's high customer ratings.

supposedly cause customers that made an apparently illogical choice (i.e., paying for something they thought would be free) to reconcile this choice with their perception of the product (i.e., to rate the product highly, even though they were deceived or dissatisfied).<sup>68</sup>

While cognitive dissonance is a real phenomenon in the literature, I have seen no evidence (and Dr. Novemsky points to no evidence) that, in this case, cognitive dissonance exists, let alone is so strong as to overpower the negative feelings of deception that are hypothesized to exist here. In my opinion, cognitive dissonance cannot explain Intuit's high customer ratings.

49. Under such a theory, customers expressing that they value their purchase of products and services could be seen as an indicator of deception. If this theory is to be believed, it would lead to future FTC investigations into products and services delivering value to tens of millions of customers. This would be absurd, especially in cases such as this one where no evidence of cognitive dissonance has been provided.
50. Thus, if a consumer expected to file for free when they began using the TurboTax product but, in fact, could not do so, we would expect to see that reflected in a customer's report of their experience using the product.
51. As a result, Dr. Novemsky's unsupported assertion that cognitive dissonance is driving Intuit's consistently positive ratings from its customers and high customer retention rate is

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<sup>68</sup> George, Babu P and Manoj Edward, "Cognitive Dissonance and Purchase Involvement in the Consumer Behavior Context," *The IUP Journal of Marketing Management*, Vol. VIII, No. 3 &4, 2009, pp. 7-24 ("Cognitive Dissonance and Purchase Involvement in the Consumer Behavior Context"), INTUIT-FTC-PART3-000595280, p. 7 ("Cognitive dissonance is a psychological phenomenon that occurs when there exists a discrepancy between what a person believes and information that calls this into question (Festinger, 1957). It is psychologically uncomfortable to hold contradictory cognitions. The psychological discomfort triggers a mental recovery process in the affected individual that can lead to: (1) search for information supportive of the held belief coupled with constant attempts to downplay the cognition that resulted in the phenomenon of dissonance, or (2) to a change in belief reflective of the new condition.").

directly at odds with decades of marketing research on customer behavior, including marketplace evidence where actually deceptive or deceitful products tend to have consumer ratings that reflect the mismatch between customer expectations and reality.<sup>69</sup>

## **B. Customers Are Not Locked-In Once They Have Begun Using TurboTax Free Edition or Filed in Prior Years Using TurboTax Free Edition**

52. In apparent recognition that Intuit’s paying customer retention rate is inconsistent with the deception alleged, Dr. Novemsky and Complaint Counsel have previously suggested that Intuit’s customer retention is high because of high switching costs, sunk costs, the status quo bias, and “brand loyalty” (which it appears Complaint Counsel consider to be negative, rather than evidence that disproves their theory).<sup>70</sup> However, Complaint Counsel and Dr.

<sup>69</sup> For example, the NPS for Chime Financial, Inc., which was investigated by ProPublica for consumer deception, was -28 in 2022. In another example, the NPS for MoneyGram International, Inc., which was investigated by the FTC for consumer deception, was 25 in 2022. See “Brand Page MoneyGram International,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/moneygram-international> (“Brand Page MoneyGram International”), accessed July 20, 2022, INTUIT-FTC-PART3-000600989; “Brand Page Chime,” *Comparably*, July 20, 2022, <https://www.comparably.com/brands/chime> (“Brand Page Chime”), accessed July 20, 2022, INTUIT-FTC-PART3-000600996. See also **Appendix F** for more discussion of the investigations into Chime Financial and MoneyGram.

<sup>70</sup> Second Novemsky Declaration, ¶ 59 (“Professor Golder discusses this point in further detail, including Intuit’s high customer retention rate. He presents this high retention rate as evidence that consumers were never deceived. However, if consumers were deceived but continued with TurboTax so as not to waste their sunk time and effort in entering information, then they might continue to use TurboTax in subsequent years because of the status quo bias, a well-known bias in consumer behavior. Their lack of awareness of this bias will lead them to infer that they are in fact using TurboTax because they like it, not just because it’s the status quo.”); FTC Administrative Complaint; FTC Administrative Complaint, ¶¶ 10-12 (“This ‘freemium’ business strategy involves, in part, growing Intuit’s customer base by offering free services to consumers to whom Intuit sells separate add-on products and services. The ‘freemium’ strategy also involves persuading customers to upgrade from free to paid versions of TurboTax. The ‘freemium’ strategy further involves ‘brand loyalty,’ or retention of consumers who previously filed their taxes for free in the ‘freemium’ version of TurboTax returning to TurboTax in subsequent years when they are no longer eligible for the ‘freemium’ version and paying Intuit for a paid version of TurboTax.”); Batra, Rajeev et al., “Brand Love,” *Journal of Marketing*, Vol. 76, No. 2, March 2012, pp. 1-16 (“Brand Love”), INTUIT-FTC-PART3-000595202, p. 6 (“When consumers described their love of brand to us, they invariably described a broad and long-term consumer-brand relationship, with multiple interrelated cognitive, affective, and behavioral elements.”); Batra, Rajeev et al., “Brand Love: Development and Validation of a Practical Scale,” *Springer Science and Business Media Marketing Letter*, Vol. 28, No. 1, 2017, pp. 1-14 (“Brand Love: Development and Validation of a Practical Scale”), INTUIT-FTC-PART3-000595188. Again, whether or not Dr. Novemsky offers this opinion in rebuttal, or Complaint Counsel actually maintains its suggestion regarding switching costs, my opinion remains that switching costs are *not* driving Intuit’s high retention rates.

Novemsky provide no evidence of high switching costs, instead suggesting vaguely (and without support) that the status quo bias may cause customers to stick with their prior provider. Although status quo bias may cause a customer without strong feelings about a particular product category to return to the same brand out of familiarity or inertia,<sup>71</sup> the literature makes clear that if consumers were deceived, they *would* have strong feelings.<sup>72</sup>

53. These arguments are inconsistent with my review of the record, and the theory disregards the widely accepted and well-studied marketing literature on customer satisfaction and Customer Lifetime Value and the realities of Intuit's operation in a competitive industry. The argument that cognitive dissonance and the status quo bias will be strong enough to deliver consistently high retention rates in the face of an effort to mislead consumers at the scale alleged by Complaint Counsel belies common sense and basic principles of marketing.
54. Importantly, Dr. Novemsky's and Complaint Counsel's theory is inconsistent with the evidence from Intuit's ordinary course of business documents discussing the competitive nature of the tax preparation industry and low switching costs, the existence of advertising by Intuit's competitors emphasizing the ease of switching among different tax providers each year, and evidence of actual customer switching behavior.
55. In fact, consumer deponents highlight multiple avenues they used for filing their taxes after switching from TurboTax, including H&R Block, TaxAct, TaxSlayer, FreeTaxUSA,

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<sup>71</sup> Arkes, Hal R. and Catherine Blumer, "The Psychology of Sunk Cost," *Organizational Behavior and Human Decision Processes*, Vol. 35, 1985, pp. 124-140 ("The Psychology of Sunk Cost"), INTUIT-FTC-PART3-000595136.

<sup>72</sup> See e.g., Xie, Madrigal, and Boush (2014), Román (2012); Held and Germelmann (2018).

Open-ended responses to the Kirk Fair Disclosure Survey also indicated a willingness of consumers to conduct additional research and potentially switch tax preparation providers when faced with an upgrade screen.<sup>96</sup>

67. TurboTax's high NPS, positive customer reviews, and high customer retention imply that customers do not feel misled upon using TurboTax. In other words, Intuit's consumer data demonstrate that most customers feel that the service they receive from TurboTax products matches or exceeds their expectations. Given the high-involvement purchase process and demonstrably low switching costs, both within-year and between-years, the fact that customers choose to stay with Intuit indicates they are simply revealing their true preference for TurboTax as a provider.

#### **IV. LOW COMPLAINT RATES ARE INCONSISTENT WITH THE THEORY OF DECEPTION ALLEGED**

68. Another potential source of information regarding whether customers' expectations were met or exceeded is consumer complaints. In this matter, Complaint Counsel have provided to date only 396 complaints that they currently allege are relevant to the allegations.<sup>97</sup> Even if we were to accept that *all* of these complaints are relevant complaints (which, as I will discuss in this section, is an overstatement), this upper bound on complaints would represent the views of only 0.0005 percent of the 86.4 million TurboTax customers who

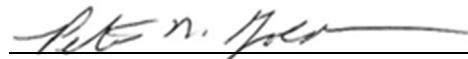
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<sup>96</sup> For example, one survey respondent stated that, if faced with an upgrade screen, they would, "search the internet and compare the Turbo Tax pay for edition with other tax platforms with comparable features." See Kirk Fair Report, ¶¶ 34-35.

<sup>97</sup> Complaint Counsel's Supplemental Responses to Intuit's First and Second Set of Interrogatories, *In the matter of: Intuit Inc., A Corporation*, No. 9408, December 22, 2022 ("Complaint Counsel's Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022").

you buy” with assisted tax preparation products, meaning any taxpayers who choose to evaluate a CPA or tax professional as an option will likely be faced not only with higher prices, but would be more limited in their ability to evaluate different assisted tax preparation options and comparison shop based on price.

246. Therefore, reducing the impact or amount of Intuit’s advertising of Free Edition could have the perverse effect of diverting potential TurboTax customers to other, comparable, DIY tax preparation solutions or to more expensive assisted tax preparation solutions, including people who could have filed for free using TurboTax.



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Peter N. Golder  
January 13, 2023

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**  
                                 **Alvaro M. Bedoya**

**In the Matter of:**

**Intuit Inc.**, a corporation.

**Docket No. 9408**

**EXPERT REPORT OF BRUCE F. DEAL  
JANUARY 13, 2023**

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## I. INTRODUCTION

### A. Qualifications

1. My name is Bruce Deal. I am a Managing Principal of Analysis Group, Inc. (“Analysis Group”), an economic and financial consulting firm. I lead the economic consulting practice in Analysis Group’s Menlo Park, California office. I have over 30 years of experience in economic, litigation, and financial consulting. I have developed and managed hundreds of assignments requiring complex economic analysis of publicly available and internal client information. I have a master’s degree in Public Policy from Harvard University and I have completed additional graduate coursework at Harvard.
2. Before joining Analysis Group in 1996, I worked as a consultant and manager at Arthur Andersen, the then-largest accounting and consulting firm in the world. In this position, I provided financial and management consulting services in areas such as operational organization and efficiency and projected financial performance. In addition, I taught economics and analytic methods to graduate students at Harvard, as well as serving as a consultant through Harvard University for the Minister of Finance of Indonesia, where I joined a group of Harvard colleagues focusing on trade policy and government finance. Over the course of my career I have also given many presentations and published articles in trade journals and professional journals.
3. Since joining Analysis Group more than 25 years ago, I have been involved in hundreds of projects involving a wide variety of economic issues. This has included dozens of projects where I have served as an expert on economic and financial issues. I have been accepted as an expert in federal courts, state courts, and international and domestic arbitrations. My work has included matters working for both defendants and plaintiffs, working for government entities, and has included both civil and criminal matters.
4. I have led and served as an expert on many matters involving alleged violations of false advertising and consumer protection laws in many different contexts, including insurance, banking, healthcare, and telecommunications. This work has been done at all phases of litigation, including class certification, liability, damages, and restitution. Nearly all of my projects involve the analysis of detailed financial and related data. This

doing so.<sup>314</sup> Out of the approximately [REDACTED], I identified [REDACTED] customers who saw the first upgrade screen [REDACTED] (measured in elapsed rather than active time) into the process.

153. In summary, Complaint Counsel’s theory of harm is arguably most applicable to customers who: (i) arrived at the TurboTax website directly through an Intuit advertisement, (ii) were new customers seeking to file for free (so started in Free Edition), (iii) subsequently spent “significant” time entering information before being informed that they would need to upgrade; and (iv) ended up paying for filing their federal or state tax return using TurboTax. Out of [REDACTED] customers not addressed in **Section VI**, my analyses have identified [REDACTED] customers who even potentially fit this description. For the rest of the customers, one or more of the conditions above do not apply. Complaint Counsel, and Dr. Novemsky, assert that customers were misled into believing that TurboTax was free for them and were harmed as a result of Intuit’s alleged deception. This assertion is contradicted by Intuit’s data. At most, I find [REDACTED] customers [REDACTED] may have the conditions consistent with the possibility of being deceived. In **Section VII.C** below, I describe the additional contemporaneous evidence that suggests that even these customers were not deceived, as Complaint Counsel and Dr. Novemsky allege.

### **C. Customers Behavior After Filing Using TurboTax Undermines Complaint Counsel’s Assertion That They Were Deceived**

154. As discussed in **Section IV.A**, customer deception is likely to present itself in the form of low customer experience scores and low retention. Put simply, it is hard to imagine that being the victim of a “bait and switch” operation would lead to positive feelings about a company or product; indeed, one would expect the opposite. In this section, I analyze customer product recommendation scores (“PRS”),<sup>315</sup> reviews, and complaints, which

<sup>314</sup> Complaint, ¶¶ 41, 58 (“Since TY 2020, Intuit has continued to employ a customer interview model in which consumers who are not eligible for the ‘freemium’ version of TurboTax do not learn they are ineligible until they have already invested significant time and effort creating an account and inputting their sensitive personal and financial information into TurboTax.”; “In the case of the Hard Stop screens, this confrontation comes after consumers have already created a TurboTax account and expended substantial time inputting sensitive personal and financial information into Intuit’s user interface.”).

<sup>315</sup> I note that PRS are different from NPS, another customer satisfaction measure discussed in Section V.A. While NPS data are obtained through an unbranded study sent via email and include satisfaction scores for Intuit’s

demonstrate that the majority of the customers I analyzed did not have unfavorable experiences using TurboTax. This is unlikely to have been true had they been deceived by Intuit since, customer experience typically measures the difference between customers' expectations and the product purchased; where high satisfaction ratings indicate that the customer's expectations were met and low satisfaction ratings indicate that the customer's expectations were not met.<sup>316</sup>

155. Upon completion of their tax returns, some TurboTax customers are offered an opportunity to evaluate their experience or refer TurboTax to a friend. Customers' evaluation of their experience is collected through two types of surveys: PRS and customer review. For the PRS survey, customers rate their experience by answering how likely they are to recommend TurboTax to a friend on a scale of 1 (not very likely) to 10 (extremely likely), shown in **Figure 16**. Approximately 332,000 [REDACTED] of the [REDACTED] TY21 customers I discussed in the previous section participated in the survey and assigned a score, which are available in Intuit's customer-level data.<sup>317</sup> The rate is similar to the overall percentage [REDACTED] TurboTax customers who completed their returns in TY21. Of the [REDACTED] customers, slightly [REDACTED] [REDACTED] gave a *perfect score* of 10, indicating that they would be extremely likely to recommend TurboTax to a friend. Only [REDACTED] of these customers gave a score of 1, indicating that they would not be very likely to recommend TurboTax to a friend.<sup>318</sup>

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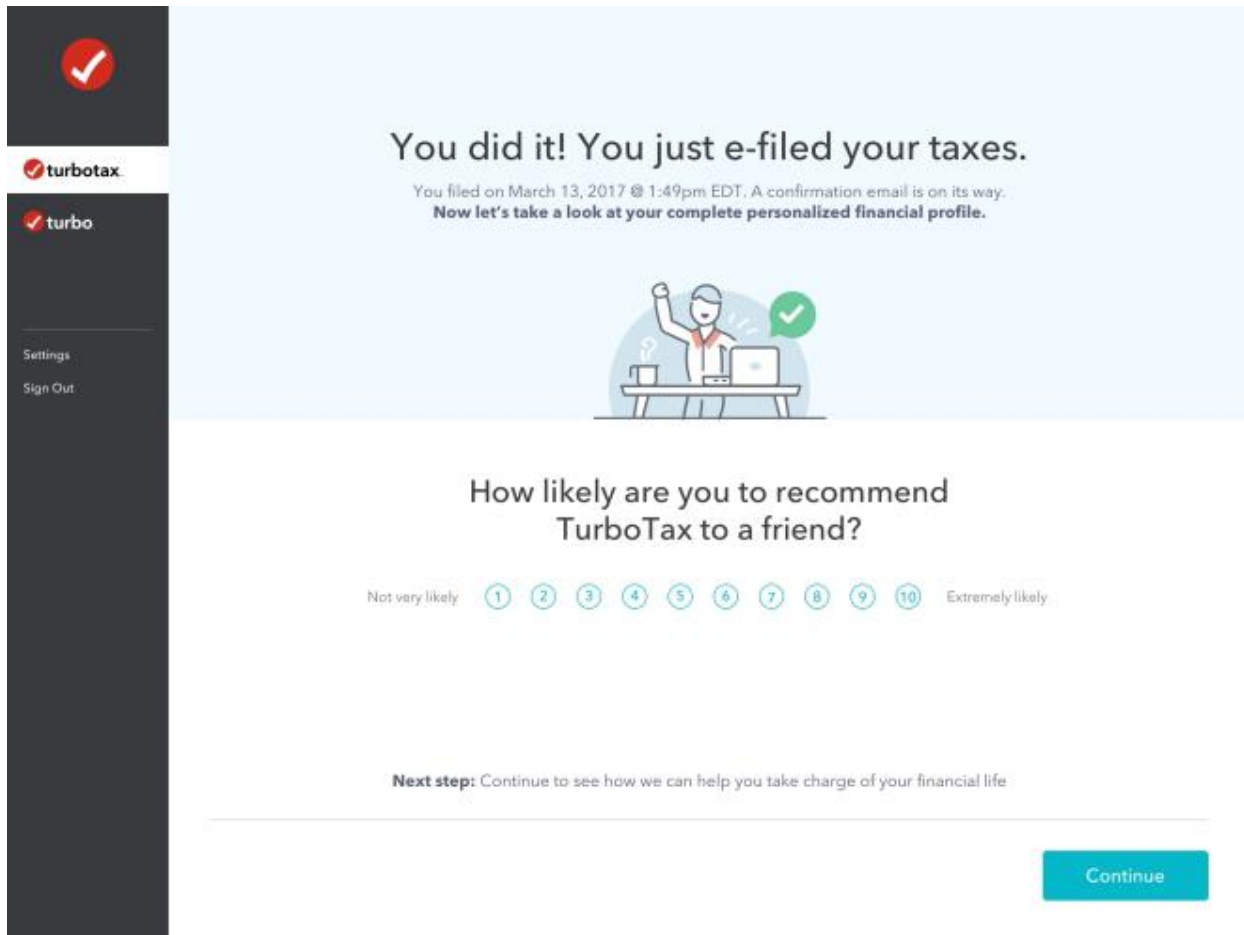
direct competitors, PRS are gathered in-product and can be traced back to each customer's unique authentication. See Golder January 2023 Report, Section III.A titled "TurboTax Customer Reviews Indicate Customers Receive Benefits from the Service and Do Not Feel Misled."

<sup>316</sup> See e.g., Kerin, Roger A. and Steven W. Hartley, *Marketing* Fifteenth Ed., McGraw Hill, 2020 INTUIT-FTC-PART3-000596659, p. 128 ("After buying a product, the consumer compares it with his or her expectations and is either satisfied or dissatisfied. If the customer is dissatisfied, marketers must determine whether the product was deficient or consumer expectations were too high. Product deficiency may require a design change. If expectations are too high, a company's advertising or the salesperson may have oversold the product's features."). See also Kotler, Philip and Kevin Lane Keller, *Marketing Management* Fifteenth Ed., Pearson, 2016 INTUIT-FTC-PART3-000597494, p. 153 ("In general, satisfaction is a person's feelings of pleasure or disappointment that result from comparing a product or service's perceived performance (or outcome) to expectations. If the performance or experience falls short of expectations, the customer is dissatisfied. If it matches expectations, the customer is satisfied. If it exceeds expectations, the customer is highly satisfied or delighted.").

<sup>317</sup> See Appendix D, "Technical Appendix," for additional information relevant to the data.

<sup>318</sup> Looking at the top two and bottom two scores, while [REDACTED] respondents gave a score of 9 or 10, indicating their high satisfaction, only [REDACTED] a score of 1 or 2.

**Figure 16**  
**TurboTax Product Recommendation Survey**



156. For comparison, I also analyzed the scores for approximately [REDACTED] PRS survey respondents among the TY21 TurboTax customers discussed in **Section VI.C** who started their returns in Free Edition and filed using a paid product without live support.<sup>319</sup> Among this comparison group, [REDACTED] responded to the product recommendation survey. Out of these respondents, [REDACTED] gave a perfect score of 10 and [REDACTED]

<sup>319</sup> Not surprisingly, satisfaction is correlated with prices paid, which is why this comparison group excludes those who used TurboTax Live or TurboTax Live Full Service products and is therefore limited to the subset of customers who paid a similar amount to file their returns. A comparison of PRS between customers who paid the full price to customers who took advantage of the early-season discount illustrates the importance of prices paid. (Early-season discount is built into the pricing. In TY21, the discount was valid until February 28, 2022, allowing customers to file their federal tax return for \$39, \$69, and \$89 instead of \$59, \$89, and \$119 and each state tax return for \$39 instead of \$49 for Deluxe, Premier, and Self Employed, respectively. See Intuit, [REDACTED] INTUIT-FTC-PART3-000609964. [REDACTED]

gave a score of 1, consistent with the pattern shown among the [REDACTED] respondents discussed above, [REDACTED] of whom gave a 10 and a 1, respectively. The data also show that it is unlikely that any potential systematic difference in customer satisfaction has been mitigated by different prices paid by the two groups. These customers paid, on average, similar amounts to file their TY21 tax returns as did the customers who responded to the product recommendation survey from among the [REDACTED] customers (between [REDACTED] to file their federal returns and between [REDACTED] to file their state returns).

157. Other customers are invited to provide feedback in the form of customer review to be published on the TurboTax website. These customers can submit an overall rating between 1 and 5 along with written feedback.<sup>320</sup> Approximately 6,000 (or 0.4 percent) of the [REDACTED] customers submitted a customer review, available in the customer review data.<sup>321</sup> The submission rate (i.e., the percentage of those who were prompted to participate in the survey and chose to do so) is comparable to the overall percentage [REDACTED] of the entire population [REDACTED] customers who completed a return in TY21. Similar to the PRS survey, a majority of customers who had an opportunity and agreed to assign an overall rating gave a perfect score, with [REDACTED] these customers giving a perfect overall rating of 5 and only [REDACTED] giving a score of 1.<sup>322</sup>
158. The consistency of high customer satisfaction across different groups of customers is also observed among customers who submitted a customer review. [REDACTED] percent of approximately [REDACTED] customer survey respondents among the TY21 TurboTax customers discussed in **Section VI.C** who started their returns in Free Edition and filed using a paid product without live support gave a perfect score of 5. Those who gave the lowest score of 1 constitute [REDACTED] of the respondents. The two groups, one among

<sup>320</sup> While my analysis is focused on the numeric ratings, I understand that Dr. Golder performs a comprehensive analysis of the text of the customer reviews in his report. See Golder January 2023 Report, Section IV.B.2 titled “Intuit’s Rates of Keywords Related to Deceptive Advertising or Deceptive Pricing in Complaints Are Comparable to Benchmark Companies.”

<sup>321</sup> As further discussed in Appendix D, “Technical Appendix,” TY21 customer reviews I analyze in my report are from customers who filed their tax return using a TY21 TurboTax Online product. TY21 Customer-Level Data, INTUIT-FTC-PART3-000608572; TY21 Customer Reviews, INTUIT-FTC-PART3-000490341; TY21 Customer Review ID Crosswalk, INTUIT-FTC-PART3-000608569.

<sup>322</sup> Looking at the top and bottom two ratings, [REDACTED] of respondents gave an overall rating of 4 or 5 while [REDACTED] gave an overall rating of 1 or 2.

the [REDACTED] customers and the other among those I discussed in **Section VI.C** who started their returns in Free Edition and filed using a paid product without live support, also paid similar amounts on average (between [REDACTED] to file their federal returns and between [REDACTED] to file their state returns), indicating that these customers' experiences (including having to pay to use TurboTax) met or exceeded their expectations.

159. This consistency in the distributions of customer experience measures suggests that there is nothing remarkable or substantially different about these customers' experiences meeting or exceeding their expectations—or not—within the subset of customers who started their TY21 tax return in Free Edition but paid to file their federal and/or state returns after choosing to upgrade to a paid product. Complaint Counsel's theories of harm are contradicted by this comparison, and by the infrequent "1" ratings that indicate that a customer's experience using TurboTax did not meet their expectations.
160. I also cross-referenced the 396 complaints identified by Complaint Counsel with the [REDACTED] customers I analyzed in this section.<sup>323</sup> Of the 166 customers with complaints related to TY21 tax returns, only 17 were found in the subset of [REDACTED] customers.<sup>324</sup> That is, despite lodging a complaint about some aspect of their experience with TurboTax, the remaining 149 complainants have previously interacted with TurboTax or showed awareness of or preference for paid features, which I believe is inconsistent with deception. The 17 complainants to whom Complaint Counsel's theory of harm may be applicable constitute [REDACTED] customers analyzed in this section. This minimal complaint rate is consistent with the overall complaint rate of [REDACTED] percent among the rest of TY21 TurboTax customer base. As Dr. Golder discusses in more detail, many of these complaints were unrelated to the alleged deceptive conduct, and the number of complaints were insubstantial compared to relevant benchmarks.<sup>325</sup>

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<sup>323</sup> Complaint Counsel's Supplemental Responses to Intuit's First and Second Set of Interrogatories, *In the Matter of Intuit Inc.*, Docket No. 9408, December 22, 2022, Attachment A.

<sup>324</sup> Complainant Tax History Data, INTUIT-FTC-PART3-000608568. I did not compare the substance of the complaints with Intuit's customer-level tax data to determine if the statements in the complaints were consistent with the customer-level data. Thus, even the total number of complaints matched to actual customers may be overstated to the extent that the customer-level data contradict the substance of the complaints.

<sup>325</sup> See Golder January 2023 Report, Section IV.B titled "Intuit's Rate of BBB Complaints Is in Line with a Set of Comparable Benchmark Companies."

161. Combined, there is direct evidence of either a low rating (from PRS survey or submitted as part of customer review) or a complaint for [REDACTED] customers who started their TY21 tax return in Free Edition, encountered an upgrade screen, and paid to file their federal and/or state returns. Among the customers who arrived at the TurboTax website directly through an Intuit advertisement that were new customers and subsequently spent “significant” time entering information before being informed that they would need to upgrade, there is direct evidence of either a low rating or a complaint for 508 and 2 customers, respectively. It is my opinion that these would be the only TY21 TurboTax customers for which Intuit’s customer-level data may be consistent with Complaint Counsel’s allegations of deception and theories of harm, and Dr. Novemsky’s conclusion regarding consumer misimpression. In total, these 510 customers represent [REDACTED] [REDACTED] TY21 TurboTax customer base, which is an insignificant minority of consumers (see **Figure 17**).

[REDACTED]

[REDACTED]

[REDACTED]



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162. Based on my analyses of Intuit's customer-level data, for 97.6 percent of the TY21 TurboTax customer base, I find direct evidence that is inconsistent with Complaint Counsel's allegations of deception. I closely analyzed the remaining customers and found that, even assuming Complaint Counsel's theories of harm were substantiated, the data contradict them for all but [REDACTED] of the TY21 TurboTax customer base. Finally, I cross-referenced customer complaint data, customer experience scores (PRS scores), and customer review data with my results and found 510 TY21 TurboTax customers, or [REDACTED] TY21 TurboTax customer base, for whom Intuit's alleged deception may have resulted in using a TurboTax paid product. These results directly contradict Complaint Counsel's allegations and Dr. Novemsky's conclusions. In my opinion, the vast majority of Intuit's TY21 TurboTax customer base could not have been deceived by Intuit's marketing campaigns or website design into paying for TurboTax products that they had expected to get for free.



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Bruce Deal

January 13, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2023, I caused the foregoing document to be filed electronically using the FTC's E-Filing system, which will send notification of such filing to:

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The Honorable D. Michael Chappell  
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Washington, DC 20580

I further certify that on February 24, 2023, I caused the foregoing document to be served via email to:

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Dated: February 24, 2023

Respectfully submitted,

/s/ Derek Woodman  
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*Counsel for Intuit Inc*