

**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'S MOTION *IN LIMINE* TO EXCLUDE OR LIMIT
COMPLAINT COUNSEL'S EVIDENCE OF CONSUMER COMPLAINTS**

Intuit respectfully moves to exclude exhibits and preclude testimony related to complaints collected by the FTC's Consumer Sentinel Network as irrelevant and unreliable hearsay. Specifically, Intuit moves to exclude GX502, GX503, GX504, and any testimony from Diana Shiller or other witnesses testifying on behalf of Complaint Counsel (CC) regarding the contents of any of those exhibits.

The 739 hearsay complaints found in these three exhibits have little to no probative value. Indeed, CC previously conceded that 343 of them are irrelevant and withdrew them from their initial disclosures. The remaining 396 represent only 0.0005 percent of the 86.4 million TurboTax customers who filed a tax return from TY 2015 to TY 2021. RX1018 ¶68. And for a host of reasons—reasons broken down by category in appendices attached to this motion—the complaints do not suggest that Intuit's advertisements were deceptive. Any evidentiary value the complaints have, moreover, is further diminished by the fact that CC made no effort to verify or otherwise substantiate them. The complaints therefore bear no indicia of reliability. To the contrary, many are demonstrably inaccurate, do not reflect consumers' actual experiences, and/or otherwise do not indicate that the complainants were deceived. Most of the complaints do not even relate to CC's allegations. Because CC have not attempted to establish that the complaints

are “reliable,” and because many are plainly “[i]rrelevant” and “immaterial” to CC’s claim here, 16 C.F.R. §3.43(b), they should be excluded.

I. BACKGROUND

CC’s reliance on Sentinel complaints has been a moving target. CC’s initial disclosures included a list of 1,435 consumers whose “complaints were obtained by searching the Federal Trade Commission’s Consumer Sentinel database for complaints ... about ‘TurboTax’ or ‘Turbo Tax’ that contained the word ‘free.’” Woodman Decl. ¶3. Just two weeks after providing that list, CC replaced it with one containing only 571 supposed complaints drawn from Sentinel. *Id.* ¶4. CC removed over 343 of those names four months later, App’x A, narrowing the list to approximately 228 complaints. Woodman Decl. ¶5. Five days after that, CC *added* a supplemental set of 168 complaints. *Id.* ¶6. CC’s exhibit list, however, includes the 343 complaints that were previously removed from the disclosures—suggesting that CC may rely on those complaints anew. *See* GX502-504.

During discussions with Intuit’s counsel, CC acknowledged that they had done nothing to verify the accuracy or authenticity of any of the complaints. Woodman Decl. ¶7; *see also* GX161 at 353:14-354:13; Ex. 1 at 189:7-11. Intuit thus performed its own investigation, issuing deposition subpoenas for 54 of the purported complainants. Woodman Decl. ¶8. Ultimately, 15 depositions were scheduled, but 5 of those 15 complainants did not appear (App’x I). Of the remaining 39 subpoenaed complainants, 19 were removed when CC revised its disclosures, and Intuit withdrew an additional 20 subpoenas after determining that deposition testimony was not even necessary to establish the complaints were unreliable or irrelevant. Woodman Decl. ¶¶9-10.

Intuit also subpoenaed 316 additional complainants identified in CC’s final disclosures, requesting documents in support of their complaints. *Id.* ¶11. Of those 316 consumers, most

(242) never responded, and an additional 13 were unreachable due to insufficient contact information. *Id.* Of the 61 consumers who responded, only 23 possessed and produced materials. *Id.* These responses identified 13 consumers (or more than 20 percent of the responders) who represented that they had not complained at all or that their complaint was irrelevant to CC's allegations. *Id.*

Undeterred, CC have included 739 complaints on their exhibit list—including, again, 343 complaints that CC recognized were irrelevant and had already removed from their initial disclosures. CC have also indicated that they do not intend to call *any* of the complainants as witnesses, demonstrating that CC—despite bearing the burden of establishing admissibility at the evidentiary hearing, *see, e.g., Bourjaily v. United States*, 483 U.S. 171, 175-176 (1987)—do not intend to offer any additional evidence to attempt to establish reliability, relevance, or materiality.

II. ARGUMENT

Under the Commission's rules, unreliable, irrelevant, or immaterial evidence must be excluded. 16 C.F.R. §3.43(b). And hearsay is admissible only where it “is relevant, material, and bears satisfactory indicia of reliability so that its use is fair.” *Id.* None of the exhibits that are the subject of this motion is relevant or sufficiently reliable to be admissible.

A. Most Of The Complaints Are Irrelevant

Most of the Sentinel complaints at issue here are inadmissible because they are not relevant to CC's allegations. CC themselves recognized that 343 of the complaints were not relevant and removed them from CC's initial disclosures. App'x A. On that basis alone, those 343 complaints must be excluded.

Even setting aside CC's concession, those complaints (and others) are on their face unrelated to any aspect of the alleged deception. For example, the exhibits at issue contain

complaints that concern: the amount of the complainant's tax refund,¹ delays in receiving refunds,² the purported deletion of TurboTax customer accounts,³ issues accessing data on adjusted gross income,⁴ issues importing tax data into paid products,⁵ rideshare and other non-income-related discounts,⁶ and TurboTax Canada.⁷ In fact, 24 complaints that CC has *not* withdrawn from their disclosures are from individuals who never even started (let alone finished) their taxes using any TurboTax product. App'x B.

Moreover, multiple complainants confirmed that their complaints had nothing to do with TurboTax's advertising. GX138 at 40:11-41:2; GX125 at 26:13-28:15, 29:1-30:7; GX128 at 16:23-17:4, 28:4-12, 28:21-29:1; GX136 at 35:25-36:20; 72:8-73:1. For example, two complainants (Ms. Joshi and Ms. Boldini) moved to quash their subpoenas on the ground that their complaints were "unrelated to this case."⁸ And another provided a declaration stating: "[I] have no issues or concerns with Intuit's advertising. ... My complaint was not about advertising for the TurboTax product. *I was not misled—through ads or otherwise—about whether I would qualify for TurboTax Free Edition.*" RX344 (emphasis added). Still other complainants similarly testified that their complaints were irrelevant to CC's claims: one confirmed that his

¹ GX502 (Sentinel Ref. Nos. 130495007, 70018493, 86911706, 104961507).

² GX502 (Ref. Nos. 106878141, 139087290, 83945875, 138450005, 134354638, 120586711).

³ GX502 (Ref. Nos. 125229543, 122996444, 95594624).

⁴ GX502 (Ref. No. 114925174).

⁵ GX502 (Ref. No. 83852520).

⁶ App'x E.

⁷ GX502 (Ref. Nos. 106735263, 149051812, 146359706).

⁸ GX502 (Ref. No. 107039236) (Boldini); GX504 (Ref. No. 150243514) (Joshi).

complaint was about QuickBooks only, GX134 at 10:19-24, 14:9-14; a second admitted that he had only ever used TurboTax Desktop products to file his taxes, GX130 at 37:15-19; 38:16-39:9; a third admitted that his complaint was about the increased price of TurboTax Deluxe, not that he was misled by TurboTax advertising, GX137 at 74:14-75:2; and a fourth confirmed that his complaint did not state he was deceived by any Intuit advertising, GX122 at 24:12-15. These responses starkly confirm the irrelevance of the complaints CC now seek to admit.

Furthermore, several complaints are focused on the *IRS's* Free File Program, which is not at issue here. App'x F; *see also* GX136 at 19:11-18 (consumer confirming in deposition that his complaint was about the IRS Free File program, not Intuit's advertising); GX125 at 59:18-60:13 (similar). Particularly since CC have asserted privilege to shield their communications with the IRS, it would be manifestly unfair for CC to be able to use the IRS Program as a sword against Intuit.

CC relies on these irrelevant complaints to artificially inflate the number of consumers who have complained about TurboTax's free advertising. That so many complaints have already been shown to be irrelevant undermines the entire set of complaints. And once the wholly irrelevant complaints are removed, the remaining *potentially* relevant complaints represent a miniscule, "immaterial" percentage of TurboTax's customer base. 16 C.F.R. §3.43(b). The complaint exhibits should therefore be excluded in their entirety. At a minimum, the irrelevant complaints identified in the appendices should be excluded because they have no probative value.

B. The Complaints Are Unreliable Hearsay

In addition to being irrelevant, the exhibits are hearsay because they are out-of-court statements CC offer "to prove the truth of the matter[s] asserted." Fed. R. Evid. 801(c). Specifically, CC intend to use these complaints to prove deception. Woodman Decl. ¶12. The

hearsay rule has specifically been applied to statements in consumer complaints. *See Williams v. Remington Arms Co.*, 2008 WL 222496, at *8-9 (N.D. Tex. Jan. 28, 2008).

Relevant factors in determining whether hearsay evidence “bears satisfactory indicia of reliability so that its use is fair,” 16 C.F.R. §3.43(b), include “the context in which the hearsay material was created, whether the statement was sworn to, and whether it is corroborated or contradicted by other forms of direct evidence,” FTC Rules of Practice, 74 Fed. Reg. 1804, 1816 (Jan. 13, 2009). Courts also consider “whether the declarant is available to testify,” and “whether the party objecting to the hearsay statements subpoenas the declarant.” *Glassman v. Azar*, 2019 WL 2917990, at *3 (E.D. Cal. July 8, 2019) (citing *Calhoun v. Bailer*, 626 F.2d 145, 149 (9th Cir. 1980)). And with respect to consumer complaints in particular, courts examine whether the complainants “reported roughly similar experiences,” whether they had “motive to lie,” and whether there is risk the reported experiences were the result of “faulty perception, memory, or meaning.” *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 608 (9th Cir. 1993). All of these various factors indicate that the Sentinel complaints are unreliable.

Context: The context in which the complaints were created demonstrates their unreliability. On their face, there are no indications that the statements contained in the complaints were made with any degree of precision or care. Several complainants, for example, merely pasted a hyperlink to a ProPublica article, without any substantive complaint detailing their individual experiences.⁹ And other complaints expressly mention ProPublica reporting or litigation against Intuit (including this litigation) as the impetus for the complaint. App’x G. Among the limited number of depositions Intuit was able to conduct, in fact, two consumers admitted being inspired to complain by ProPublica’s (mistaken) reporting. *See* GX128 at 51:14-

⁹ GX502 (Ref. Nos. 107952295, 108309026, 115309837, 132053746, 115307158).

52:11; GX138 at 46:23-47:16. Complaints that merely parrot reporting or litigation allegations that Intuit vehemently disputes—without any personalized factual content—reflect “faulty perception” and are not reliable. *Figgie*, 994 F.2d at 608.

In addition, Intuit already resolved the claims of dozens of complainants who were parties to a mass-arbitration settlement. App’x C. Those complainants were potentially biased in light of their arbitration claims, and they ultimately released all claims without establishing that Intuit had engaged in any wrongdoing. It would be blatantly unfair for CC to rely on their complaints in these circumstances.

Making matters worse, CC performed virtually no investigation into the validity of the complaints to confirm the consumers’ identities, each one’s status as an actual TurboTax customer, or the accuracy of all the statements in the complaints. To the contrary, CC’s investigator Diana Shiller confirmed that she attempted to contact only twelve complainants and ultimately spoke to only *two*. *See* RX278-280; Ex. 1 at 115:16-116:5. A representative for the Bureau of Consumer Protection similarly confirmed that the Bureau did not perform any independent investigation of the validity of the complaints. GX161 at 353:14-354:13.

Several complaints, however, require no investigation, as they are deficient on their face—providing missing or incomplete names, no address, or clearly fake phone numbers. App’x K. And numerous complaints are marked: “ADMIN JUDGED INVALID. The consumer complaint is incomplete or unintelligible and the consumer cannot be reached, or the consumer and the business did not have a marketplace transaction.” App’x J. These complaints have thus already been determined to be unreliable—yet CC still apparently intends to rely on them. That is unquestionably impermissible.

The importance of CC's and the Bureau's failure is underscored by Intuit's investigation, which, again, revealed non-customer complainants, App'x B, as well as consumers who either had no memory of their complaints or affirmatively confirmed that they had *not* written a complaint about Intuit, App'x N; *see* RX354, RX372. One complainant, for example, said the complaint was filed under her name by her husband, who "suffered a brain injury and has memory problems"; upon learning that, CC maintained that the complaint was "relevant and [would] assist the trier of fact in this case." RX345.

The unsworn, uncorroborated, and inaccurate nature of the complaints: If more were needed to demonstrate the inadmissibility of the Sentinel complaints at issue, none of them is sworn or corroborated by documentary evidence. Indeed, when Intuit sought such documentary corroboration through subpoenas, it received documents from well under ten percent of the subpoenaed individuals (23 of 316), suggesting that the balance of complaints cannot be corroborated. *See* App'x L-M (non-responding complainants).¹⁰

For many of the complainants, moreover, Intuit uncovered information that outright *undermined* the complaints. For example, one complainant Intuit deposed did not even pay to use TurboTax the year that he complained of having to pay. GX136 at 21:19-22:1; 73:2. Other deposed complainants had never even started their taxes in Free Edition, suggesting that they had always intended to use a paid product. *See, e.g.,* RX146, RX207.

These concerns are underscored by an analysis conducted by *independent* coders at the direction of Tuck School of Business Professor Peter Golder. That analysis revealed "substantial heterogeneity in the complaint types," RX1018 ¶78—not the "roughly similar experiences"

¹⁰ The 23 complaints by individuals who responded to the document subpoenas should still be excluded for the other reasons provided in this motion.

characteristic of reliability, *Figgie*, 994 F.2d at 608. The independent analysis indicated, for example, that more than 20 percent of the complainants who “expected to file for free” never even mentioned TurboTax advertising as the source of that expectation. RX1018 ¶78; App’x D. And of all 396 complaints from CC’s final disclosures, nearly 40 percent referenced add-on products that are not advertised as free to begin with. RX1018 ¶79; App’x H. Overall, 70 percent of the 396 complaints either omitted references to “Free” or “Advertising” altogether or included additional information casting doubt on the complaint’s reliability (e.g., the complainants referred to litigation, or were repeat or prior customers). RX1018 ¶80.

Witness availability and Intuit’s effort to subpoena the declarants: Yet another reason to exclude the complaints is that CC has not attempted to establish that any of these complainants is unavailable to testify, which would allow Intuit to cross-examine them and test their assertions. Although Intuit diligently attempted to depose a subset of the complainants during the abbreviated discovery period, it could not reasonably have deposed all. And, as noted, the deposition testimony Intuit *was* able to obtain raised substantial questions about the accuracy of the relevant complaints. In light of that already-identified unreliability, it would be “[un]fair,” 16 C.F.R. § 3.43(b), to permit CC to introduce cursory, facially imprecise complaints in the place of live witnesses, and to deny Intuit the opportunity to cross-examine and probe the validity of the assertions.

III. CONCLUSION

The Court should grant Intuit’s Motion and exclude all references to these purported customer complaints, which constitute irrelevant, unreliable hearsay that CC has made no attempt to substantiate.

Dated: February 10, 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

**STATEMENT PURSUANT TO
ADDITIONAL PROVISION 4 OF THE SCHEDULING ORDER**

Pursuant to Additional Provision No. 4 of the April 27, 2022 Scheduling Order, as adopted in the September 12, 2022 First Revised Scheduling Order, Respondent Intuit Inc. respectfully submits this Statement representing that Counsel for Respondent has conferred with Complaint Counsel in a good faith effort to resolve the issues raised by this motion. The parties corresponded by email on February 8 and 9, 2023 concerning this motion but were unable to reach an agreement.

Dated: February 10, 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

[PROPOSED] ORDER ON RESPONDENT’S MOTION *IN LIMINE*

Upon consideration of Respondent’s motion *in limine* to exclude or limit Complaint Counsel’s evidence of consumer complaints,

IT IS ORDERED that the motion is GRANTED.

IT IS FURTHER ORDERED that the exhibits marked as GX502, GX503, and GX504 shall not be introduced as evidence in the evidentiary hearing in this matter.

IT IS FURTHER ORDERED that no witness will be permitted to testify concerning the contents of GX502, GX503, or GX504 at the evidentiary hearing in this matter.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____

**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
MOTION *IN LIMINE* TO EXCLUDE OR LIMIT COMPLAINT COUNSEL'S
EVIDENCE OF CONSUMER COMPLAINTS**

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 motion *in limine* to exclude or limit Complaint Counsel's evidence of consumer complaints.
3. On April 21, 2022, pursuant to Rule 3.31(b) of the Commission's Rules of Practice, Complaint Counsel served on Intuit their initial disclosures. Complaint Counsel represented to Intuit that Appendix B of those initial disclosures "identifie[d] consumers of whom Complaint Counsel is aware who may have discoverable and relevant information, including consumers whose complaints were obtained by searching the Federal Trade Commission's Consumer Sentinel database for complaints dated between January 1, 2019, and April 15, 2022, about 'TurboTax' or 'TurboTax' that contained the word 'free.'"
4. On May 6, 2022, Complaint Counsel replaced their Appendix B with a revised Consumer Sentinel Contact list and an accompanying set of 571 consumer complaints.

5. On September 14, 2022, Complaint Counsel served on Intuit a Revised Consumer Sentinel Contact list containing only 228 of the 571 complaints previously served on May 6.

6. On September 19, 2022, Complaint Counsel served on Intuit a supplemental Consumer Contact List and an accompanying set of 168 consumer complaints.

7. During discussions with counsel for Intuit, Complaint Counsel acknowledged that they had not attempted to verify the accuracy or authenticity of any of the complaints.

8. During fact discovery, Intuit issued deposition subpoenas to 54 of the complainants identified in the Consumer Sentinel Contact List served by Complaint Counsel on May 6.

9. Ultimately, depositions were scheduled for of 15 of those 54 consumer complainants. For 5 of the scheduled depositions, however, the consumer did not appear. The other 10 depositions took place as scheduled.

10. Of the remaining 39 complainants subpoenaed for depositions, 19 were removed when Complaint Counsel revised the Consumer Sentinel Contact List on September 14. Intuit withdrew an additional 20 subpoenas after determining that deposition testimony was not necessary.

11. In addition, Intuit issued subpoenas to 316 other complainants identified in the Consumer Sentinel Contact lists, requesting documents in support of their complaints or otherwise relevant to CC's allegations. Of those 316 consumers, 242 never responded, and an additional 13 were unreachable due to insufficient contact information. Of the 61 consumers who responded, only 23 produced any documents, and 13 consumers represented that they had not complained at all or that their complaint was irrelevant to CC's allegations.

12. On February 9, 2023, when conferring about Complaint Counsel's motion *in limine* to exclude evidence of consumer satisfaction, Complaint Counsel reiterated that they intend to introduce consumer complaint evidence as evidence of deception.

13. Attached as Appendix A is a list of the complaints that were withdrawn from Complaint Counsel's initial disclosures. This list was compiled based on a comparison of the Sentinel Contact list served on May 6, 2022 with the Revised Consumer Sentinel Consumer Contact list served on September 14, 2022.

14. Attached as Appendix B is a list of complaints by consumers who did not file their taxes using TurboTax. This list is derived from RX817 (INTUIT-FTC-PART3-000608568), which identifies the complainants for whom there is no record of an associated TurboTax AuthID during Tax Years 2014-2021, such that Intuit could not confirm they were TurboTax customers during that time.

15. Attached as Appendix C is a list of complaints by consumers who filed arbitration demands against Intuit. This list was based on a comparison of GX502-504 to the names contained in RX383 (Exhibit A to the "Confidential Master Settlement Administration Agreement," between Intuit and Keller Lenkner, dated February 23, 2022).

16. Attached as Appendix D is a list of complaints that do not mention TurboTax advertising, based on backup data to RX1018 (January 13, 2023 Expert Report of Peter Golder, "Complaint Independent Coding Results.xlsx" dataset, type5).

17. Attached as Appendix E is a list of complaints referencing non-income related discounts, based on backup data to RX1018 (January 13, 2023 Expert Report of Peter Golder, "Complaint Independent Coding Results.xlsx" dataset, type4).

18. Attached as Appendix F is a list of complaints referencing the IRS Free File program, based on backup data to RX1018 (January 13, 2023 Expert Report of Peter Golder, “Complaint Independent Coding Results.xlsx” dataset, type8).
19. Attached as Appendix G is a list of complaints referencing ProPublica reporting, the FTC investigation, and/or this lawsuit, based on backup data to RX1018 (January 13, 2023 Expert Report of Peter Golder, “Complaint Independent Coding Results.xlsx” dataset, type7).
20. Attached as Appendix H is a list of complaints referencing add-on products that are not advertised as free, based on backup data to RX1018 (January 13, 2023 Expert Report of Peter Golder, “Complaint Independent Coding Results.xlsx” dataset, type9).
21. Attached as Appendix I is a list compiled by counsel for Intuit of complaints by individuals who failed to appear for noticed depositions noticed by Intuit.
22. Attached as Appendix J is a list of complaints marked “Admin Judged Invalid,” based on a review of the “Complaint Info Complaint Disposition” field in the FTC Sentinel complaints, GX502-504.
23. Attached as Appendix K is a list of complaints with deficient or no contact information, based on a review of the “Consumer First Name,” “Consumer Last Name,” “Consumer Address,” and “Consumer Phone” fields in the FTC Sentinel complaints, GX502-504.
24. Attached as Appendix L is a list compiled by counsel for Intuit of complaints by consumers who failed to respond to documentary subpoenas.
25. Attached as Appendix M is a list compiled by counsel for Intuit of complaints by consumers who received documentary subpoenas and were deemed to be unreachable because their residential addresses or email addresses were identified as undeliverable.

26. Attached as Appendix N is a list compiled by counsel for Intuit of complaints by consumers who stated in communications with counsel that they had no memory of their complaints or confirmed they had not written a complaint regarding TurboTax.

27. Attached as Exhibit 1 is a true and correct excerpt of the transcript of the deposition of Diana Shiller taken by Intuit as part of this proceeding on January 9, 2023.

28. Attached is a true and correct excerpt of GX122, the transcript of the deposition of consumer Justin Deryke taken by Intuit as part of this proceeding on September 14, 2022.

29. Attached is a true and correct excerpt of GX125, the transcript of the deposition of consumer Caitlyn Beck taken by Intuit as part of this proceeding on October 13, 2022.

30. Attached is a true and correct excerpt of GX128, the transcript of the deposition of consumer Connor Benbrook taken by Intuit as part of this proceeding on October 25, 2022.

31. Attached is a true and correct excerpt of GX130, the transcript of the deposition of consumer Michael Tew taken by Intuit as part of this proceeding on November 3, 2022.

32. Attached is a true and correct excerpt of GX134, the transcript of the deposition of consumer Dennis Hobson taken by Intuit as part of this proceeding on September 15, 2022.

33. Attached is a true and correct excerpt of GX136, the transcript of the deposition of consumer Adam Schulte taken by Intuit as part of this proceeding on September 20, 2022.

34. Attached is a true and correct excerpt of GX137, the transcript of the deposition of consumer Benjamin DuKatz taken by Intuit as part of this proceeding on September 29, 2022.

35. Attached is a true and correct excerpt of GX138, the transcript of the deposition of consumer Andrew Adamson taken by Intuit as part of this proceeding on October 6, 2022.

36. Attached is a true and correct excerpt of GX161, the transcript of the deposition of the Bureau of Consumer Protection (through William Maxson), taken by Intuit as part of this proceeding on December 8, 2022.

37. Attached is a true and correct copy of RX146, consumer Sherry Bodi's TurboTax Filing History Chart for Tax Years 2014-2021.

38. Attached is a true and correct copy of RX207, consumer Michael Tew's TurboTax Filing History Chart for Tax Years 2014-2021.

39. Attached are true and correct copies of RX278, RX279, and RX280, which are spreadsheets identified by Complaint Counsel as Diana Shiller's Call Logs.

40. Attached is a true and correct copy of RX344, the Declaration of Faisal Parvez, dated October 21, 2022.

41. Attached is a true and correct copy of RX345, an email thread between Phoebe Silos, Roberto Anguizola, and consumer Diane Harlow, dated October 21, 2022.

42. Attached is a true and correct copy of RX354, an email thread between Phoebe Silos and consumer David Duggan, copying Roberto Anguizola, dated October 28, 2022.

43. Attached is a true and correct copy of RX372, the Declaration of Margaret Dillaway regarding the consumer complaint submitted by Christine Ahmed.

44. Attached is a true and correct copy of RX383 (INTUIT-FTC-PART3-000002560), Exhibit A to the "Confidential Master Settlement Administration Agreement," between Intuit and Keller Lenkner, dated February 23, 2022.

45. Attached is a true and correct copy of RX817, which identifies the complainants for whom there is no record of an associated TurboTax AuthID during Tax Years 2014-2021

46. Attached is a true and correct excerpt of RX1018, the Expert Report of Professor Peter N. Golder, Ph.D., dated January 13, 2023, as well as the backup data file to that report entitled “Complaint Independent Coding Results.xlsx.”

47. Provided with this motion are true and correct courtesy copies of Complaint Counsel’s GX502-504.

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

Executed on this 10th day of February, 2023.

By: /s/ Derek Woodman

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APPENDIX A - N

(Submitted In Camera)

EXHIBIT 1

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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In the Matter of: :
:
Intuit Inc., a corporation : Docket No. 9408
:
_____:

Monday, January 9, 2023

Deposition of DIANA SHILLER,
taken Remotely Via Zoom videoconference with the
witness participating from the Offices of the
Federal Trade Commission, 600 Pennsylvania Avenue
NW, Washington, DC, beginning at 9:19 a.m.,
Eastern Standard Time, before Ryan K. Black, a
Registered Professional Reporter, Certified
Livenote Reporter and Notary Public in and for
the District of Columbia.

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A P P E A R A N C E S:
UNITED STATES FEDERAL TRADE COMMISSION
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1 Q. Do you read the complaints and then
2 determine what they mean?

3 A. I review the complaints and I summarized
4 what the consumers were reporting.

5 Q. So you are summarizing the data that
6 you're reading, correct?

7 A. Yes.

8 Q. Are you applying any particular
9 expertise when you're reading those complaints,
10 beyond reading?

11 A. No.

12 Q. Is there any kind of specialized
13 training that you are bringing to bear when you
14 are reading those complaints?

15 A. No.

16 Q. And most of the complaints that you
17 referenced in your declaration, those are not
18 consumers that you spoke to, correct?

19 A. The 60 consumer complaints that I
20 summarized, I did not call those 60 consumers.

21 Q. And the declaration refers to 571
22 consumers with complaints about TurboTax. Did
23 you call -- how many of those 571 did you call?

24 A. I'm not sure, because the list that I
25 was provided might have had some of those

1 consumers in that group.

2 Q. Okay. But you didn't undertake an
3 assignment of reach out to everybody who filed a
4 complaint, correct?

5 A. No.

6 MS. MILICI: Okay. I want to talk now
7 about the declaration itself, so let's admit
8 that. That's Tab 1.

9 (Exhibit No. RX-276, Ms. Shiller's
10 Declaration, was introduced electronically.)

11 MS. MILICI: Okay. That will take a
12 minute because it's a bigger document.

13 MS. SILOS: Yeah. It's loading. Sorry
14 about that.

15 MS. MILICI: No problem.

16 MS. SILOS: Okay. It should be
17 displayed now.

18 BY MS. MILICI:

19 Q. Okay. So for the record, this was
20 previously marked GX-342. It's in the system as
21 RX-276, but we can talk about it as GX-342. And
22 it's your declaration that was submitted in
23 support of complaint counsel's motion for summary
24 decision. Do you recognize this document?

25 A. Can you give me a second? It's a very

1 that we mentioned earlier today, that was
2 mentioned in a number of consumer complaints,
3 correct?

4 A. I don't remember if, out of the 60
5 complaints that I read, the article was
6 mentioned.

7 Q. Okay. So just -- so you didn't call the
8 consumers -- any of those 60 consumers. Did you
9 do anything else to verify that their complaint
10 was accurate?

11 A. For the list of 60 consumers, no.

12 Q. For the broader list of 571, did you do
13 anything else to confirm their complaint?

14 A. I did call some of those consumers, as
15 mentioned previously. And I did go to the
16 TurboTax website and software to see if that
17 would -- if my experience was similar to those
18 consumers' experiences. And I did review the ads
19 that were run through that period of time.

20 Q. When you say you went to the website to
21 confirm whether their experiences were accurate,
22 which consumer complaints are you referring to?

23 A. The ones prior to 2021, the consumers
24 that I called.

25 Q. Okay. So not the con -- so you're

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C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 12th day of January, 2023.



Notary Public

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

- - - - -x

In the Matter of

Intuit, Inc., a corporation,

Respondent.



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Remote deposition of JUSTIN T. DERYKE, taken pursuant to Notice, was held via videoconference, commencing September 14, 2022, at 9:07 a.m., on the above date, before Amanda McCredo, a Court Reporter and Notary Public in the State of New York.

- - -

1 A P P E A R A N C E S:

2 Appearing on behalf of the Federal Trade Commission:

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4 REBECCA PLETT, ESQ.

5 Federal Trade Commission
6 702 D Street Southwest
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8 james.evans@ftc.gov
9 rplett@ftc.gov
10 202.326.2222

11
12
13

14 Appearing on behalf of Intuit, Inc.:

15 SPENCER TODD, ESQ.
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20 spencer.todd@wilmerhale.com
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22
23
24
25

1 dashboard to access the discount.

2 Q Okay.

3 But just to confirm, the different website
4 that you're referring to is the Lyft dashboard,
5 correct?

6 A Yes.

7 Q Your complaint to the Better Business
8 Bureau doesn't say anything about TurboTax's
9 advertising on media or television or anything about
10 its commercial products?

11 A No, not specifically.

12 Q And your complaint doesn't say that you
13 were deceived by any of their advertisements,
14 correct?

15 A No.

16 Q Do you see on the fourth page of this same
17 document, RX 116, the box that says "complaint
18 info/complaint disposition"?

19 A Yes.

20 Q And you see where it says, quote,
21 "Resolved. The complainant verified the complaint
22 was resolved to his or her satisfaction"?

23 A Yes.

24 Q Was your complaint in fact resolved?

25 A Yes.

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C E R T I F I C A T E

I, AMANDA McCREDO, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



AMANDA McCREDO

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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



Remote deposition of CAITLYN BECK, taken pursuant to Notice, was held via videoconference, commencing October 13, 2022, at 8:32 a.m., on the above date, before Amanda McCredo, a Court Reporter and Notary Public in the State of New York.

1 A P P E A R A N C E S:

2 Appearing on behalf of the Federal Trade Commission:

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Federal Trade Commission

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6

7

8 Appearing on behalf of Intuit, Inc.:

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12 212.230.8800

13

14 ALSO PRESENT:

15 JAKE FRECH - Federal Trade Commission

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1 to be incorrect?

2 A I mean, in tax year 2019, I don't believe I
3 had an abandoned return -- I might have just stopped
4 using TurboTax for that -- because I did file my
5 taxes that year.

6 Q Just to clarify, this is only TurboTax. So
7 if you would have filed your taxes through someone
8 else, it wouldn't be reflected here.

9 A Okay.

10 Q So other than that, this appears accurate?

11 A Yes.

12 Q Let's walk through this briefly.

13 In tax year 2015, which would be the
14 calendar year 2016, you started your taxes in
15 TurboTax Free Edition.

16 Do you see that?

17 A Yes.

18 Q But you ultimately filed using the product
19 TurboTax offered through the IRS Free File program;
20 is that right?

21 A Yes, it looks to be so.

22 Q So you were able to find the TurboTax Free
23 File offering in tax year 2015?

24 A Yes.

25 Q And you found the Free File offering after

1 starting your return in the TurboTax commercial
2 product, is that right?

3 A Yes. I guess. So it's from 2015, so, I
4 mean, we're talking about seven years ago.

5 Q How did you find the Free File product in
6 tax year 2015?

7 A I honestly don't know. Chances are it was
8 more than likely through Google searches. I'm
9 really not sure. Searches are probably a best bet.

10 Q Do you remember how you arrived at the
11 TurboTax website in tax year 2015?

12 A No.

13 Q In tax year 2016, you started and finished
14 your taxes using TurboTax Free Edition, right?

15 A Yes.

16 Q Why did you decide to use TurboTax in tax
17 year 2016?

18 A Because it was still free and they had my
19 prior tax records.

20 Q Did your -- did you consider using any
21 other brand of tax prep software?

22 A No, because I didn't really know of any
23 other brands.

24 Q And were you satisfied with the product
25 that TurboTax provided?

Page 27

1 A Yes.

2 Q In tax year 2017, you again started and
3 finished filing your tax return in TurboTax Free
4 Edition; is that right?

5 A Yes.

6 Q Why did you decide to use TurboTax again in
7 that year?

8 A Again, because it was free and they had my
9 prior tax records.

10 Q And you were satisfied with the TurboTax
11 product offered?

12 A Yes.

13 Q And did you consider using any other brand
14 of tax prep software?

15 A No. Again, I didn't know of any others.

16 Q In tax year 2018, you started using --
17 starting used Free Edition, but ultimately upgraded
18 and filed your taxes using TurboTax Deluxe; is that
19 right?

20 A Yes.

21 Q So why did you decide to use TurboTax in
22 tax year 2018?

23 A Because I was still continuing under the
24 impression that it was free and they also had my
25 prior tax returns on record.

Page 28

1 Q So when you went to the TurboTax website in
2 2018, had you already used TurboTax in the three
3 prior years; is that right?

4 A Yes.

5 Q And you decided to use it again that year;
6 is that right?

7 A Yes.

8 Q Your decision to use TurboTax in 2018,
9 then, was not based on any TurboTax ads?

10 A I mean, it was probably -- it was
11 supplemented by TurboTax ads certainly, but it was
12 also because I had never had -- I had never been
13 charged for it before, so...

14 Q And what do you mean that it was --

15 MR. ANGUIZOLA: Derek, can we go off the
16 record for one second?

17 MR. WOODMAN: Yes.

18 We are off the record.

19 (Recess taken.)

20 BY MR. WOODMAN:

21 Q So, we're back on the record. I just want
22 to clarify my previous line of questioning. We were
23 discussing your tax filing in tax year 2018. I may
24 have referred instead to "2018."

25 So, to restate my question, why did you

Page 29

1 decide to use TurboTax in tax year 2018?

2 A Yeah. It was because it was still -- to my
3 understanding, it was free and they had my prior tax
4 records.

5 Q So you chose to use TurboTax in tax year
6 2018 because you used it the three prior years?

7 A Yes.

8 Q And was your decision to use TurboTax in
9 tax year 2018 based on any TurboTax ads?

10 A It was supplemented by -- I think it was
11 reinforced by the ads that I was seeing where it
12 would -- it was still, like, the prevalence of the
13 free messaging because I knew that it was still
14 important to me to have a free offering for filing.

15 Q Did you consider using any other brand of
16 tax prep software?

17 A No, not really at the time because I had
18 never been charged using TurboTax before and hadn't
19 encountered any issues with it until then.

20 Q And just to summarize, why did you decide
21 to use TurboTax every year between tax year 2015 and
22 tax year 2018?

23 A Because it was free and it was the most
24 well known. It was kind of the only one I knew of.

25 Q And you said you were satisfied with the

1 date.)

2 BY MR. WOODMAN:

3 Q Directing you to what's been marked as
4 Respondent's Exhibit 164. Let me know when you have
5 that up.

6 A Yes, yes.

7 Q Do you recognize this document?

8 A Yes.

9 Q What is it?

10 A This is the final copy of the declaration
11 that I made to the FTC.

12 Q If you can please turn to Exhibit C, which
13 starts on page 10.

14 A Yes.

15 Q What is Exhibit C?

16 A This is a copy of the complaint that I made
17 to the Better Business Bureau.

18 Q So looking at your original complaint at
19 the top of the page, "Apparently I didn't use the
20 correct TurboTax Freedom as opposed to TurboTax
21 Free, which feels massively misleading." And you
22 also wrote "Nothing ever showed up stating I was
23 using the wrong free version of TurboTax or I had a
24 version I needed to use because of my low income."

25 A Yes.

Page 59

1 Q So your complaint was about Intuit's
2 failure to disclose the program it offered through
3 the IRS Free File program; is that right?

4 A Kind of. There were multiple issues that
5 occurred, but definitely -- it wasn't that they
6 failed to disclose; it felt like it was buried. It
7 felt like people were led away from the thing that
8 was actually free for something that sounded almost
9 identical but ended up paid.

10 Q So your complaint was about them, in your
11 words -- or to paraphrase your words, misdirecting
12 people from the IRS Free File program?

13 A Yes.

14 MR. ANGUIZOLA: Objection. That
15 mischaracterizes the complaint.

16 BY MR. WOODMAN:

17 Q Can you restate your answer, please?

18 A I'm sorry, can you reiterate your question
19 really quick?

20 Q We can move on. I think you stated what
21 your complaint was about.

22 So you also wrote that you were confused by
23 needing to pay to file an amendment, right?

24 A Yes.

25 Q Your original complaint does not mention

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C E R T I F I C A T E

I, AMANDA McCREDO, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn, and that such examination is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



AMANDA McCREDO

GX128

(Submitted In Camera)

GX130

(Submitted In Camera)

GX134

(Submitted In Camera)

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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

Respondent.



The Virtual Deposition of ADAM BRIAN SCHULTE
Taken Via Remote Zoom Videoconference
Commencing at 2:02 p.m.
Tuesday, September 20, 2022
Stenographically reported by:
Joanne Marie Bugg, CSR-2592, RPR, RMR, CRR

Job No. 5464124

1 APPEARANCES:

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9 ranguizola@ftc.gov

10 Appearing on behalf of the Federal Trade Commission.

11

12 ELEANOR DAVIS

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18 eleanor.davis@wilmerhale.com

19 Appearing on behalf of the Respondent.

20

21 ALSO PRESENT:

22 Jake Frech - paralegal

23

24

25

1 A. Yes. The biggest thing here is that many of these
2 people would unknowingly qualify for a free refund with
3 the IRS Free File program that is run through TurboTax
4 itself.

5 Q. Okay. Thank you. So having reread that, would it be
6 fair to say that the biggest part of your complaint was
7 about Free File?

8 A. Well, I would say that that was probably 50 percent.
9 But, yeah, I mean, the Free File certainly was a large
10 portion of that overall complaint.

11 Q. Great.

12 A. Or maybe I should say more like two-thirds to
13 three-quarters. Because there was another underlying
14 thing that kind of made me feel like lead to file this
15 complaint.

16 Q. All right. Is your complaint about Free File what
17 primarily prompted you to make your complaint?

18 A. Yes.

19 Q. And did you make this complaint after you finished
20 filing your taxes for tax year 2019?

21 A. I did.

22 Q. And in tax year 2019, how did you file your taxes?

23 A. I had started doing my -- well, I used the IRS Free
24 File program to submit that and, you know, so when it
25 was all said and done Free File, I had started with the

Page 19

1 other office within the TurboTax entity itself. But
2 they gave me or provided me a phone number to call.
3 And after, you know, it took a couple attempts because
4 trying to catch me when I'm not working, and we
5 basically had a phone conversation where I kind of
6 stated how I felt about it, and just stated like
7 ultimately like what it boils down to is I just felt
8 like it was a lack of transparency on TurboTax's part
9 that was misleading people. And at the very least I
10 just felt like, you know, putting this complaint like
11 to get my voice heard, and would TurboTax really change
12 anything when it's all said and done. Maybe, maybe
13 not. So I just, you know, I explained that over the
14 phone call. And after, you know, they said they would
15 do what they can, and I just kind of left it at that,
16 because at that point I figured like okay. I'd done my
17 thing. I have voiced my concern, and it is what it is
18 at that point.

19 Q. Okay. And you said you had voiced your concern. When
20 you say concern, that wasn't based on -- well, let me
21 rephrase. Was that a concern based on your own
22 experience paying?

23 A. Well, not my experience. Not my personal, because I
24 luckily had like kept searching and searching, and was
25 able to stumble on the Free File version. So I did not

1 end up paying. But through seeing other people's
2 reactions to TurboTax that year, like and even some
3 acquaintances, or like not acquaintances, but friends
4 of friends that I know, like overheard that they ended
5 up having to pay, and then come to find out, though,
6 they actually didn't like after the fact.

7 So it was like I kind of felt like I was
8 lucky, because I managed to find that, and didn't have
9 to pay, but other people were getting tricked into
10 that. At least that's how I felt that, you know, they
11 were being tricked into pay, even though they didn't
12 have to.

13 And so around that time of year, aside from
14 filing the complaint, I was also, you know, I left the
15 review on the app, like on the Google Play store,
16 because I have an Android phone, so that's what I use.

17 And then I've also made Facebook comments
18 just kind of letting people know before you do your
19 taxes, check on the IRS Free File, because you might
20 qualify and, you know, just trying to put it on blast
21 that, hey, you guys might be able to get this for free.

22 Q. And before this year that we've been discussing, that's
23 tax year 2019, had you previously prepared and filed
24 your taxes using TurboTax?

25 A. Yes.

1 people are going be having to pay, you know, does that
2 answer the question? I know I kind of --

3 Q. No. Thank you. That was very helpful. Thank you.

4 And I guess you said you started using the
5 product in was it tax year '19 when you hit pay wall
6 for the first time?

7 A. I believe so. Let me -- because I can pull up some of
8 my documents here, TurboTax 2019 receipts. Yes, it was
9 TurboTax year -- it was tax year 2019 where I ran into
10 that pay wall.

11 Q. And when you started preparing your taxes in tax year
12 2019, did you start in the Free Edition?

13 A. Yes. I started in the Free Edition. Or hold on. Let me
14 get my years right. TurboTax tax year 2021, tax year
15 2020 was delivered by -- yeah, okay. The order was in
16 2020, so that would have -- yep, so 2019 was the year
17 that I filed with the Free File edition, but I started
18 in the regular Free Edition with TurboTax, and was
19 running into the pay wall.

20 Q. Okay. And, Mr. Schulte, if it's easier for you to just
21 talk about the calendar year like on X day 2020, you
22 know, I saw this, so I did that, feel free to do that.
23 Whatever is easiest for you.

24 A. Yeah, um-hmm.

25 Q. Before you ran into the pay wall in 2020 for tax year

1 2019, did you think you'd be able to complete your
2 taxes for free using TurboTax?

3 A. Mostly yes. I was suspecting that there was going to be
4 issues, because the previous year I ran into a similar
5 pay wall. But, hey, I got the promo code for deluxe
6 for free that year, so I figured, well, maybe I could
7 do a little bit of Googling around and find a similar
8 promo code, but to no avail that year.

9 Q. And in that previous year where you hit pay wall for
10 the first time when you started filing your taxes that
11 year, did you think you'd be able to complete your
12 taxes for free using TurboTax?

13 A. Yes, I certainly did, because the past couple years
14 prior like, again, it was just as easy as upload the
15 W-2, the form with your student loan interest paid.
16 Boom. It's all done. And it worked as advertised.
17 Totally free. You'd still get like the prompts to
18 upgrade based on this, and but when it's all said and
19 done when it got to the final page where you click
20 submit, it went through, and I was getting it free.

21 MS. PLETT: And can we go off the record for
22 a moment?

23 MS. DAVIS: Sure.

24 (Off the record at 2:45 p.m.)

25 (Back on the record at 3:08 p.m.)

1 think when you mentioned putting yourself in the
2 mindset of the average consumer, it was in the context
3 of how you were responding to Intuit's advertising?

4 A. Oh, yes.

5 Q. So in that respect, would you consider yourself an
6 average consumer?

7 A. Yes, I would.

8 Q. All right. Another thing you mentioned, I believe the
9 phrase you used was the biggest hinge. Apologize if
10 I'm not quoting that exactly correctly, but I believe
11 you mentioned that the biggest hinge for you was that
12 you had previously been able to file for free using
13 TurboTax. Does that sound right?

14 A. Yes, yes. Like, again, the first couple years worked
15 just as advertised, works as intended, however you want
16 to put it. But like I just had my W-2 and the form for
17 student loan interest, submitted everything, and it was
18 all done easy peasy.

19 Q. Would you say that that's why you thought you would be
20 able to file for free?

21 A. Yes. I mean, having a couple of years where it does
22 that, and like, yeah, like that would kind of put me in
23 the mindset of that it should stay that way. And I
24 understand changes happen but like, you know, I would
25 envision that the change, changes made would be

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1 sufficient to show that.

2 Q. And before you made your complaint to the Better
3 Business Bureau in February of 2020, had you ever paid
4 to file with TurboTax?

5 A. No. Like I said, luckily I was able to find
6 workarounds. So like the year prior, I got the free
7 promo code. So at the end of the day, I didn't pay a
8 cent out of my own pocket. And then the year I filed
9 the complaint, I managed to get on the IRS Free File
10 TurboTax program, and get that done free.

11 MS. DAVIS: All right. I think that's
12 everything from me.

13 MS. PLETT: There's nothing else for me.

14 MS. DAVIS: We can go off the record.

15 (The Deposition was concluded at 4:32 p.m.
16 Signature of the witness was not requested by
17 counsel for the respective parties hereto.)

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GX137

(Submitted In Camera)

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BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION



DOCKET NUMBER: 9408

IN THE MATTER OF INTUIT, INC.,

* * * * *

ORAL PROCEEDINGS OF THE
DEPOSITION OF ANDREW ADAMSON
October 6, 2022

REPORTER BY: Paul Morse
Certified Court Reporter
and Notary Public

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BEFORE THE UNITED STATES
FEDERAL TRADE COMMISSION

BEFORE:

Paul Morse, Commissioner.

APPEARANCES:

PHOEBE SILOS, ESQUIRE, of WILMERHALE,
LLP, 7 World Trade Center, 250 Greenwich
Street, New York, New York 10007, appearing on
behalf of the Respondent.

REBECCA PLETT, ESQUIRE, of THE FEDERAL
TRADE COMMISSION, 701 D Street SW,
Washington, D.C. 20002, appearing on behalf of
the Government.

ALSO PRESENT: Jacob Frech

* * * * *

I, Paul Morse, CCR, a Court Reporter of
Mobile, Alabama, acting as Commissioner,
certify that on this date, as provided by the
Federal Rules of Civil Procedure and the
foregoing stipulation of counsel, there came

1 Q. And how much did you pay in state
2 filing fees?

3 A. Zero dollars.

4 Q. And did you purchase any add-on
5 products that year?

6 A. No.

7 Q. So how much did you spend in total
8 in tax year 2017?

9 A. Zero dollars.

10 Q. All right. And so, again, why did
11 you decide to use TurboTax in tax year 2018?

12 A. For the reasons I've previously
13 stated. It's always been free. It's easy to
14 use year to year.

15 Q. Yeah. And again, it wasn't
16 because you saw any advertisement. Right?

17 A. That's correct.

18 Q. All right. And you sent us
19 several e-mails that you were sent -- e-mail
20 advertisements that you were sent by TurboTax
21 over the years. And I just want to make
22 something clear for the record. Did any of
23 those e-mail advertisements affect your

1 decision to use TurboTax?

2 A. No.

3 Q. And in tax year 2018, what product
4 did you start in?

5 A. Free Edition.

6 Q. And what product did you finish
7 in?

8 A. Deluxe.

9 Q. All right. Do you ever -- do you
10 remember ever writing a complaint about
11 TurboTax?

12 A. Yes.

13 Q. Where did you write this
14 complaint?

15 A. I believe with the BBB and then
16 the FTC's complaint portal.

17 Q. And then by the BBB do you mean
18 the Better Business Bureau?

19 A. That's correct.

20 Q. Okay. And do you remember when
21 you wrote this complaint?

22 A. Sometime in the spring of 2019,
23 thereabouts.

Page 41

1 A. Not to the best of my knowledge,
2 no.

3 Q. And do you understand that the
4 deadline to file your taxes every year is in
5 mid-April?

6 A. Yes.

7 Q. And have you ever had to file an
8 extension to push the deadline to file your
9 taxes?

10 A. No.

11 Q. So now if I could direct your
12 attention back to RX, I think it's 155, which
13 is the complaint. So you wrote this complaint
14 on May 8, 2019. Is that right?

15 A. Right.

16 Q. So is it fair to say that you
17 wrote this complaint several months after you
18 filed your taxes for tax year 2018?

19 MS. PLETT: Objection.

20 A. Yes.

21 MS. PLETT: That's not what he
22 said.

23 Q. Mr. Adamson, did you write this

1 complaint several months after you wrote -- or
2 after you filed your taxes for tax year 2018?

3 A. Yes.

4 Q. And so this would be several
5 months after you knew that you had to pay for
6 TurboTax that year. Right?

7 A. That's correct.

8 Q. And so why did you wait about
9 three months to write the complaint?

10 A. I had already, I believe,
11 communicated with TurboTax's customer service
12 department and wasn't getting anywhere. And
13 then I believe ProPublica had published an
14 article about how this exact thing had happened
15 to several other customers. So at that point
16 is when I filed my complaint.

17 Q. And you mentioned this ProPublica
18 article in your complaint. Right?

19 A. I believe so, yes.

20 Q. Do you remember what this article
21 was about?

22 A. I believe it was about the
23 practice of advertising, that it was a

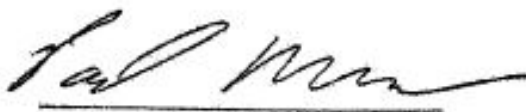
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REPORTER'S CERTIFICATE

STATE OF ALABAMA,
BALDWIN COUNTY,

I, Paul Morse, Certified Court Reporter and Commissioner for the State of Alabama at Large, do hereby certify that the above and foregoing proceedings was taken down by me by stenographic means, and that the content herein was produced in transcript form by computer aid under my supervision, and that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings occurring on said date and at said time.

I further certify that I am neither of kin nor of counsel to the parties to the action nor in any manner interested in the result of said case.



Paul Morse, CCR
ACCR #588 Expires 9/30/23

GX161

(Submitted In Camera)

RX146

(Submitted In Camera)

RX207

(Submitted In Camera)



Respondent Exhibit
278
(Submitted In Camera)

Produced as Native File:

RX 278 - F01-TUT-00069090.xlsx



Respondent Exhibit
279
(Submitted In Camera)

Produced as Native File:

RX 279 - F01-TUT-00068643.xlsx



Respondent Exhibit
280
(Submitted In Camera)

Produced as Native File:

RX 280 - F01-TUT-00069124.xlsx

DECLARATION OF FAISAL PARVEZ

I, Faisal Parvez, declare as follows:

1. On January 28, 2019, I filed a complaint with the Better Business Bureau of California, San Jose related to my experience filing that year's tax return through the Uber for TurboTax Self-Employed program.

2. I filed the complaint because I was unable to use a credit to file my taxes for free using the Uber for TurboTax Self-Employed program. When I completed my taxes and proceeded to the payments section, TurboTax's website had the full charge listed for the Self-Employed product which cost \$89.99. I subsequently called Intuit's support line and Intuit was unable to resolve the issue.

3. After filing the complaint, Intuit's Office of the President contacted me and issued me a service code. I used the service code to file my Tax Year 2018 return for free. After receiving the service code to file my Tax Year 2018 return for free, I considered the matter resolved.

4. Before filing the complaint, I had been a TurboTax customer for at least six years. Since filling the complaint, I have continued to use TurboTax to prepare my taxes.

5. On October 7, 2022, I received three Subpoenas for the Production of Documentary Material, to Testify at an Adjudicative Hearing, and to Testify at a Deposition that Intuit issued.

6. I understand that the FTC identified me as a consumer who would likely have information relevant to the FTC's allegations. My assumption is that it must have done so because of the complaint that I filed with the BBB.

7. I subsequently contacted counsel for Intuit and requested that the subpoenas be withdrawn because my complaint was fully resolved and I have no issues or concerns with Intuit's advertising.



8. My complaint was not about advertising for the TurboTax product. I was not misled—through ads or otherwise—about whether I would qualify for TurboTax Free Edition . Instead, I understood that I could file my Tax Year 2018 federal return for free using the Uber for TurboTax Self-Employed program because I worked for Uber during Tax Year 2018. That was correct. I was able to file my Tax Year 2018 federal return for free using the Uber for TurboTax Self-Employed program.

9. Therefore, I request that the FTC remove the me from its list of relevant complainants and that my complaint not be used by the FTC in litigation against TurboTax.

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

Executed on this 21st day of October, 2022, in Sicklerville, New Jersey.

By: Faisal Parvez
Faisal Parvez

RX345

(Submitted In Camera)

RX354

(Submitted In Camera)

RX372

(Submitted In Camera)



Respondent Exhibit
383
(Submitted In Camera)

Produced as Native File
INTUIT-FTC-PART3-000002560
[Excerpted from Full Exhibit]



Respondent Exhibit
817
(Submitted In Camera)

Produced as Native File

INTUIT-FTC-PART3-000608568



**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. GOLDER, 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

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.⁹⁶

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

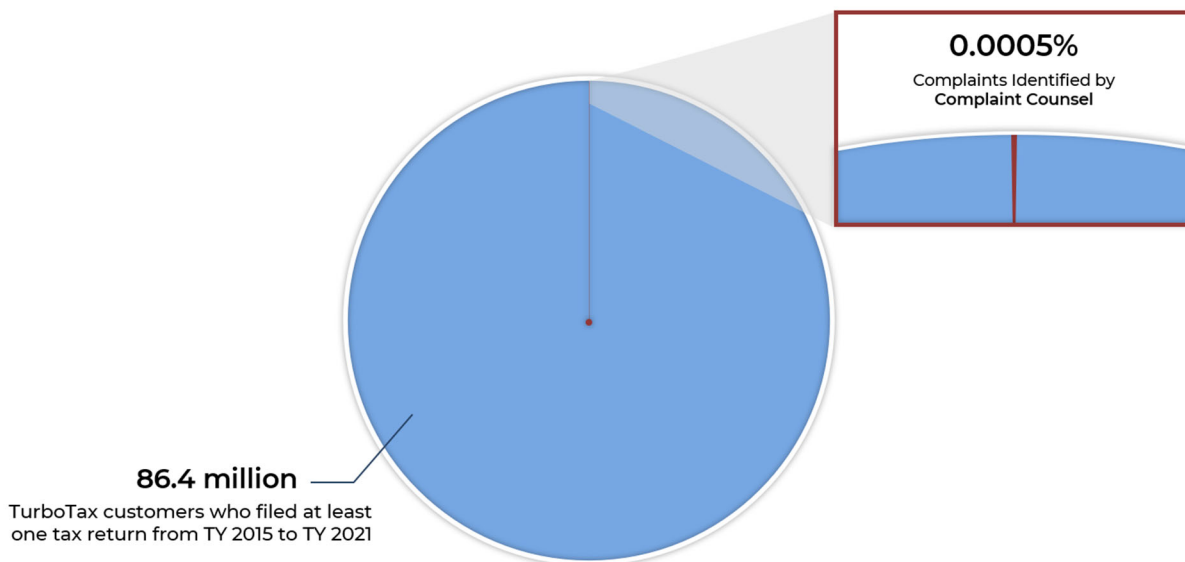
68. Another potential source of information regarding whether customers’ expectations were met or exceeded is consumer complaints. In this matter, Complaint Counsel have provided to date only 396 complaints that they currently allege are relevant to the allegations.⁹⁷ Even if we were to accept that *all* 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

⁹⁶ 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.

⁹⁷ 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”).

filed at least one return from TY 2015 to TY 2021.⁹⁸ Again, such a minuscule number of complaints is inconsistent with Complaint Counsel’s alleged deception.

Figure 6
Complaints Identified by Complaint Counsel as a Share of TurboTax Customers Who Filed At Least One Return
TY 2015 – TY 2021



A. Complaint Counsel and Ms. Shiller’s Analyses of Complaints Are Unreliable

69. In June, Complaint Counsel and Diana Shiller (an investigator for the FTC) identified a set of 571 consumer complaints (“Initial Production”) that they claimed were related to “free” TurboTax.⁹⁹ In September, Complaint Counsel produced 396 complaints (“Revised

⁹⁸ From TY 2015 – TY 2021, 86.4 million customers filed their returns with TurboTax. Intuit customer-level data, INTUIT-FTC-PART3-000608571-2. *See also*, INTUIT-FTC-PART3-000603000.

⁹⁹ Declaration of Diana F. Shiller, *In the matter of: Intuit Inc., a corporation*, Docket No. 9408, May 6, 2022 (“Shiller Declaration”), GX 342, ¶ 220. Ms. Shiller explained that Complaint Counsel had gathered these complaints from a variety of sources, including the FTC’s Consumer Sentinel Database, a database which tracks consumer complaints reported directly to the FTC, as well as complaints submitted by other government agencies (e.g., Consumer Financial Protection Bureau, State Attorneys General, Internal Revenue Service) and the BBB.

Production”). The Revised Production included two sets of complaints: 228 complaints that were previously produced by Complaint Counsel in the Initial Production and 168 incremental complaints. Complaint Counsel claimed to have “narrowed the set of complaints to those that appear on their face to go to the core of [...] the Complaint.”¹⁰⁰ In reducing their Initial Production (from 571 to 228 complaints), Complaint Counsel seem to admit that more than half of the complaints in their Initial Production were not relevant to their allegations.

70. Ms. Shiller reviewed the subset of complaints that were filed in TY 2021, and defined three (not mutually exclusive) types of complaints: (1) “consumers [who] thought they were filing for free” (“Free” complaint type); (2) “consumers [who] mentioned they saw advertising indicating their tax filing will be free” (“Advertising” complaint type); and (3) “consumers [who] paid TurboTax when they thought their tax filing will be free” (“Paid” complaint type).¹⁰¹ Ms. Shiller did not describe the purpose of defining these three types, but presumably they were an attempt to identify complaints relevant to the allegations.
71. Ms. Shiller provided the analysis of these complaints independent of each other. However, this methodology is flawed and overstates the number of relevant complaints. At the very least, a complaint that is not classified as both the “Free” and “Advertising” complaint types would not include sufficient evidence to demonstrate that the complaint was related

¹⁰⁰ See Complaint Counsel, CONFIDENTIAL – CC Revised Cat. L Sentinel Complaints, September 14, 2022. See Attachment A of Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022 and Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022. Complaint Counsel’s Reply to Respondent Intuit Inc.’s Supplemental Response to the Statement of Material Facts as to Which There is no Genuine Issue for Trial, *In the matter of: Intuit Inc., A Corporation*, No. 9408, September 29, 2022 (“Complaint Counsel’s Reply”), p. 3 and Attachment A.

¹⁰¹ Shiller Declaration, ¶ 221.

to Complaint Counsel's allegations.¹⁰² For example, complainants who thought they should be able to file for free but do not mention seeing any TurboTax advertising may have developed the impression of their ability to file for free from sources that are not at issue, or may just be expressing disappointment that there is a free product and that they cannot use it. Similarly, complainants who say they saw an ad but did not think they could file for free could not be deceived as alleged by Complaint Counsel. In fact, the Revised Production removed more than half of the complaints Ms. Shiller had originally flagged in at least one of her three types, illustrating that Ms. Shiller's methodology is overbroad and unreliable for identifying relevant complaints based on their substance.¹⁰³

72. Complaint Counsel provided the underlying coding for both Ms. Shiller's initial classification and a revised classification performed by Complaint Counsel and their staff.^{104, 105} I note that neither Ms. Shiller nor Complaint Counsel were blind to the purpose of the coding process. It is best practice in matters requiring nuanced, interpretive human judgments (e.g., reviewing consumer verbatim text) to use independent (or "blind")

¹⁰² I note that if one is looking for data that show a consumer was confused by an ad and potentially harmed by having to pay Intuit for filing, then one should consider all three Shiller complaint types. Complainants who thought they should be able to file for free and mention seeing an ad but were not categorized as "paid TurboTax" may have filed for free or may have been initially confused but that confusion cleared up at any point before filing.

¹⁰³ Of the 60 complaints Ms. Shiller originally reviewed, only 26 (43 percent) remained in the Revised Production.

¹⁰⁴ Complaint Counsel's Reply, p. 3 ("Upon learning about Intuit's objections and intentions regarding consumer depositions, Complaint Counsel and staff working at Complaint Counsel's direction rereviewed the 571 consumer complaints referenced in Ms. Shiller's declaration.")

¹⁰⁵ I note that Complaint Counsel slightly modified the language of Ms. Shiller's complaint types as a part of their revised classification. Complaint Counsel made the following adjustments to Ms. Shiller's complaint types: 1) "consumers [who] thought they were filing for free" was changed to "consumers [who] indicated that they believed or TurboTax communicated that filing taxes with TurboTax would be free," 2) "consumers [who] mentioned they saw advertising indicating that their tax filing will be free" was changed to "consumers [who] mentioned advertising about a free TurboTax option," and 3) "consumers [who] paid TurboTax" was changed to "consumers [who] indicated they were charged for or paid for TurboTax." See Complaint Counsel's Reply, p. 6.

reviewers who are not aware of the hypotheses or goals of the analysis.¹⁰⁶ Such a methodology combats biases in human judgment. For example, reviewers who are aware of the goals or hypotheses may be subject to confirmation bias, a bias that causes humans to seek information that confirms their expectations and discard information that is inconsistent with expectations.¹⁰⁷

73. Complaint Counsel’s underlying coding covered all of the complaints from TY 2021 that were included in both the Revised and Initial Productions (26 complaints).¹⁰⁸ Notably, Complaint Counsel and Ms. Shiller disagree on the classification of certain complaints.¹⁰⁹ In fact, when looking at the number of complaints flagged as both relating to “Free” and “Advertising”, Complaint Counsel and Ms. Shiller reached different results. Ms. Shiller

¹⁰⁶ See “Diamond, Shari Seidman, *Reference Manual on Scientific Evidence* 3rd Ed., 2011 (“Reference Manual on Scientific Evidence”), p. 374 (“An early handbook for judges recommended that survey interviews be “conducted independently of the attorneys in the case.” [...] [A]ny potential bias is minimized by having interviewers and respondents blind to the purpose and sponsorship of the survey and by excluding attorneys from any part in conducting interviews and tabulating results.”).

¹⁰⁷ Confirmation bias is a phenomenon well documented by economists and psychologists. See Rabin, Matthew and J.L. Schrag, “First Impressions Matter: A Model of Confirmatory Bias,” *The Quarterly Journal of Economics*, Vol. 114, No. 1, 1999, pp. 37-82 (“First Impressions Matter: A Model of Confirmatory Bias”) J. L. (1999). First impressions matter: A model of confirmatory bias. *The Quarterly Journal of Economics*, 114(1), 37-82., p. 38 (“A person suffers from confirmatory bias if he tends to misinterpret ambiguous evidence as confirming his current hypotheses about the world”) and p. 46 (“[C]onfirmatory bias occurs when people selectively collect or scrutinize evidence.”).

¹⁰⁸ See **Appendix E**.

¹⁰⁹ For example, Ms. Shiller identified a complaint included in her count of “Free”; but excluded from her count of “Advertising.” Complaint Counsel re-coded this complaint as applying to both complaint types, despite no mention of advertising or ads by the complainant. See Complaint Counsel’s Reply, Attachment A, pp. 1, 23 (“1/27/22. [...] I filed my tax return and selected the free version. TurboTax would not let me proceed to file my taxes unless I paid \$39. I decided to move forward and pay \$39 even though I was told up front I didn’t have to pay any money. After I clicked the payment to agree to pay \$39, they gave me a receipt of payment of \$78, of which I did not agree to pay. There was no option to cancel that or get my money back. They out right stole my money. --- Additional Comments: Refund.”). Complaint Counsel did not provide any explanation as to why their re-coding differed from Ms. Shiller’s original coding.

identified only 18 complaints matching both of these types, while Complaint Counsel identified 22.¹¹⁰

74. The inconsistency of Ms. Shiller and Complaint Counsel’s coding, as well as my own review of the complaints, demonstrates that classifying these complaints is a challenging exercise, in part because many complaints are nuanced and difficult to interpret. Complaint Counsel and Ms. Shiller appear to have been looking to classify complaints as relevant to the allegations, without a clear (or any) methodology for reliably making that assessment. As a result, I developed a coding methodology to review the 396 complaints provided by Complaint Counsel. For this review, I employed an independent coding methodology, unlike Ms. Shiller and Complaint Counsel’s non-blind review.¹¹¹ Due to the blind nature of an independent coding methodology, this process reflects as much as possible an unbiased review of the consumer complaints. Two independent coders reviewed all complaints in the Revised Production. The coders reviewed these complaints for the following types (“Golder Complaint Types”).^{112,113}

¹¹⁰ Complaint Counsel’s Reply, Attachment A.

¹¹¹ Independent coders are blind-to-the purpose judges who reviewed the consumer complaints provided by Complaint Counsel, following the instructions listed in **Appendix D**.

¹¹² See **Appendix E** for additional details about this process.

¹¹³ I also asked the two independent coders to flag complainants who reported that they did not file their taxes with TurboTax (i.e., complainants who directly explain that they did not file with TurboTax, or complainants who submitted their complaint on behalf of a TurboTax customer but did not file with TurboTax themselves). While these complainants may have been confused, they are unlikely to have paid for TurboTax (something identified as important according to Ms. Shiller’s methodology). For example, complainant [REDACTED] started his complaint by writing “Well I signed up under their advertisement for Free EZ filing for taxes, got all my information in, and then was told there would be a charge. [...] I didn’t intend to pay them, I had better offers elsewhere with more security, and they found more money owed to me in taxes. So Turbo Tax wasn’t good for me.” See Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022, pp. 202-205. I do not use this complaint type in my analyses.

75. **Shiller Complaint Types.** I asked the coders to review the complaints to flag complaints based on each of the three Shiller Complaint Types. These types are:

- “Free” - Complainants who expected that they would be able to file for free;¹¹⁴
- “Advertising” - Complainants who mentioned they saw advertising indicating their tax filing would be free;¹¹⁵ and
- “Paid” - Complainants who paid TurboTax when they expected that they would be able to file for free.¹¹⁶

76. **Potentially Irrelevant Complaint Types.** I asked the coders to review the complaints for additional content-related types that suggest that these complaints are not related to the allegations in this matter. These complainants complained about charges unrelated to the tax filing process (e.g., add-ons) or indicated that they expected that they would be able to file for free due to reasons unrelated to Intuit’s advertising of TurboTax Free Edition. These additional types include:

- Complainants who expected that they would be able to file for free because they were able to file for free with TurboTax in previous years;¹¹⁷
- Complainants who expected that they would be able to file for free due to a non-income related discount (e.g., military discount, discount associated with driving for Uber/Lyft);¹¹⁸
- Complainants who expected that they would be able to file for free due to their income (i.e., low income);¹¹⁹

¹¹⁴ The Shiller Declaration states this complaint type as, “consumers [who] thought they were filing for free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁵ The Shiller Declaration states this complaint type as, “consumers [who] mentioned they saw advertising indicating their tax filing will be free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁶ The Shiller Declaration states this complaint type as, “consumers [who] paid TurboTax when they thought their tax filing will be free.” See Shiller Declaration, ¶ 221. In my coding instructions, I modified this wording slightly for clarity.

¹¹⁷ These complaints reflect expectations based on prior experiences, and year-to-year changes may be driven by changes in an individual’s tax situation.

¹¹⁸ These discounts are unrelated to the at-issue free ads.

¹¹⁹ These complainants may have expected that they would be able to file for free due to their low income, reflecting the qualification requirements for the IRS Free File Program, not Intuit’s free offers.

- Complainants who referred to the IRS Free File Program;¹²⁰ and
- Complainants who complained about “extra” charges, including charges for add-on products.¹²¹

77. **Unique TurboTax Relationship Complaint Types.** I asked the coders to review the complaints for additional types to identify complainants with unique relationships with TurboTax. These complainants did not complain in the regular course of being a new customer who engaged with Intuit’s Free Ads and the TurboTax website for the first time. These additional types include:

- Complainants who referred to a ProPublica article, FTC investigation, and/or lawsuit;¹²²
- Complainants who indicated that they are repeat or prior TurboTax customers.¹²³

78. **Figure 7** below illustrates that there is substantial heterogeneity in the complaint types that independent coders identified.¹²⁴ Unsurprisingly, given the flawed and overbroad nature of the Shiller methodology, the Shiller Complaint Types reflect the largest portions of complaints. Even within the Shiller Complaint Types, **Figure 7** shows that more than 20 percent of the complaints that the independent coders identified as “expected that they

¹²⁰ These complaints may be related to the IRS Free File Program, which has qualification requirements based on income.

¹²¹ These extra charges are unrelated to whether the actual tax filing was free.

¹²² These complainants were likely not complaining in the regular course of their experience as a TurboTax customer.

¹²³ These complainants have prior experience with the TurboTax Suite and therefore are more likely to be familiar with the qualification requirements.

¹²⁴ For any complaints about which there was disagreement for a particular complaint type, the two independent coders discussed their determinations directly, without any guidance from me and jointly recoded the response. If the two coders were unable to reach a consensus, additional personnel at Analysis Group, working under my direction and guidance, reviewed the complaint and made the final determination. Analysis Group personnel were responsible for breaking ties in 18 instances out of the 4,356 (396 complaints × 11 categories) classifications that the independent coders reviewed. I reviewed 17 of these 18 instances as well and agree with the final determinations in all of these 17 instances. I could not review one complaint for which the two coders were unable to reach a consensus because the complaint is written in Spanish. Analysis Group personnel who speak Spanish made the final determination for this complaint.

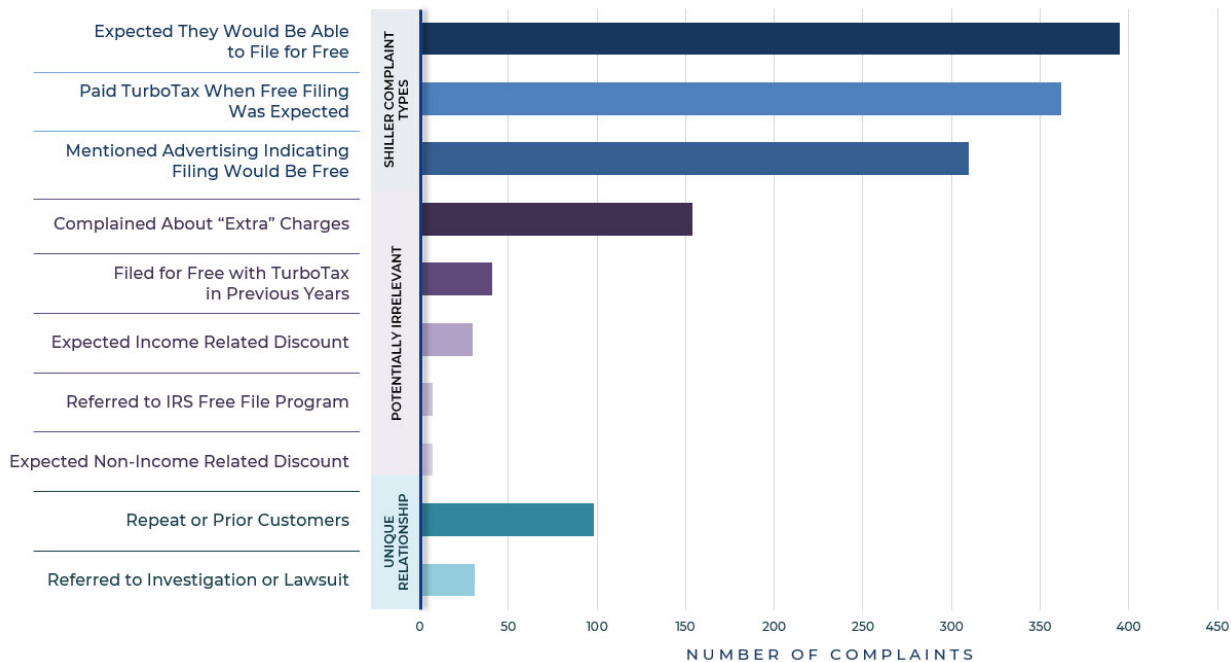
would be able to file for free” were not flagged by the independent coders as mentioning TurboTax advertising.¹²⁵ Again, Ms. Shiller’s flawed methodology would classify these complaints as relevant to the allegations, even without any evidence that the individuals saw any at-issue advertising. This does not even account for the fact that Complaint Counsel did not independently verify the accuracy of *any* complaint.¹²⁶

79. My analysis, which accounts for additional complaint types, demonstrates the need for an independent, careful, and nuanced review of these complaints. For example, independent coders flagged almost 40 percent of the 396 complaints as relating, at least in part, to charges for add-on products that customers can select to purchase when they file their taxes (see **Figure 7**). These add-on products are not advertised as free, and a taxpayer can prepare and file their taxes for free and separately purchase an add-on.

¹²⁵ For example, complainant [REDACTED] wrote “I [filed] my tax return with [sic] turbo tax and it was supposed to be free but got hit with unexpected charges[.]” Similarly, a summary of complainant [REDACTED] complaint reports “Consumer states she received an alert about the Turbo Tax, lawsuit, & wanted to file report, consumer filed taxes for 2021 in January 2022, & paid about \$100, after being told it would be free of charge.” See Complaint Counsel, CONFIDENTIAL – Supplemental Cat. L Sentinel Complaints, September 19, 2022 2022, pp. 34-37 and pp. 402-405.

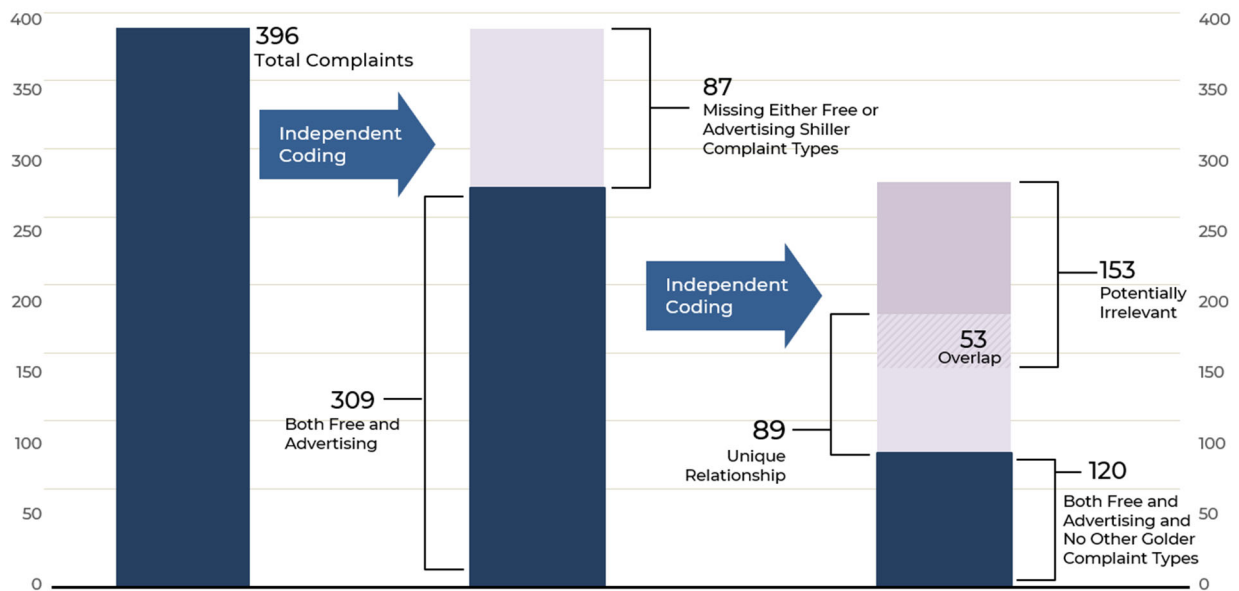
¹²⁶ The Maxson deposition confirmed that the Bureau of Consumer Protection did not perform any independent investigation of the validity of the consumer complaints relied on by Complaint Counsel. Deposition of William T. Maxson (as Bureau of Consumer Protection 3.33(c) designee), *In the Matter of Intuit Inc., A Corporation*, Docket No. 9408, December 8, 2022 (“Maxson Deposition”) A Corporation, Docket No. 9408, December 8, 2022, 353:14-354:13.

Figure 7
Independent Coding of Complaints Illuminates the Overbroad Nature of the Shiller Methodology



80. Overall, independent coders identified 70 percent of complaints as either missing one of the “Free” or “Advertising” Shiller Complaint Types or having at least one additional Golder Complaint Type (*see Figure 8*). These results suggest that Complaint Counsel’s effort to identify complaints and Ms. Shiller’s flawed methodology are unreliable as they are unable to capture the nuance and heterogeneity within the complaints produced.

Figure 8
Summary of Independent Coding



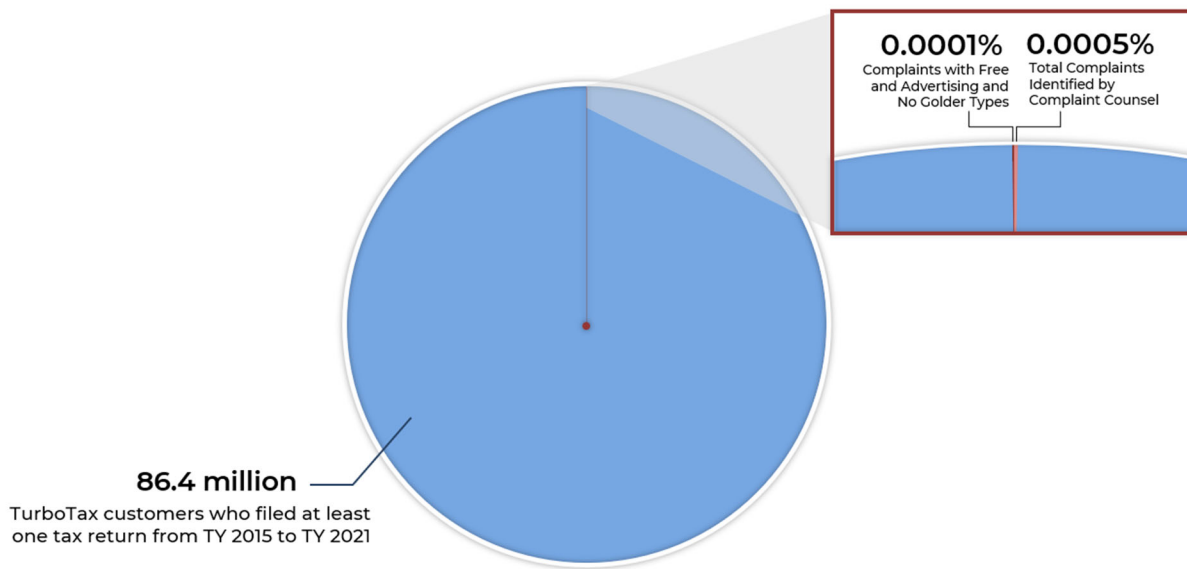
81. Complaint Counsel has also submitted a supplemental and non-blind coding exercise in which they determined that almost 60 percent of the complaints in the Revised Production are not responsive to either the allegation that “consumers who were not eligible for the [Free Edition] version of TurboTax [did] not learn they were ineligible until they had already invested significant time and effort [...]”¹²⁷ or the allegation that “the term ‘simple tax returns’ is not understood by many consumers.”¹²⁸
82. Regardless of whether one considers all complaints identified by Complaint Counsel or my revised and more complete independent coding, the volume of complaints identified by Complaint Counsel is minuscule in the context of the tens of millions of TurboTax

¹²⁷ Complaint Counsel determined 69 percent of complaints in the Revised Production were not responsive to Interrogatory No. 6, which requested the evidentiary basis for this allegation. *See* Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, p. 19.

¹²⁸ Complaint Counsel determined 78 percent of complaints in the Revised Production were not responsive to Interrogatory No. 7, which requested the evidentiary basis for this allegation. *See* Complaint Counsel’s Supplemental Responses to First and Second Set of Interrogatories, December 22, 2022, p. 22.

customers. These customers do not represent the experiences or views of most TurboTax customers. As discussed at the start of **Section IV**, the complaints identified by Complaint Counsel represent the views of only 0.0005 percent of the 86.4 million TurboTax customers who filed at least one return over the period during which the complaints were filed (i.e., TY 2015 to TY 2021). If I limit Complaint Counsel’s Revised Production to those complaints that independent coders flagged as having both “Free” and “Advertising” Shiller Complaint Types and no additional Golder Complaint Types (i.e., no potentially irrelevant or unique TurboTax relationship type), these complaints represent the views of only 0.0001 percent of the same customer base (*see Figure 9*).

Figure 9
Complaints Identified by Complaint Counsel and Independent Coders as a Share of TurboTax Customers Who Filed At Least One Return TY 2015 – TY 2021



83. I understand that Complaint Counsel have suggested that the complaints received are often just the “tip of the iceberg” and therefore there may be more complaints.¹²⁹ But these numbers are so small, even a dramatic increase in unreported complaints would not change my fundamental view that Complaint Counsel’s theory of widespread deception is unfounded. Intuit’s Free Ads were widely disseminated. If the ads created the misimpression that TurboTax was “free for them” when it was not, there would very likely be a substantially greater number of complaints. To further test that view, below I engaged in a detailed benchmarking exercise to contextualize the number of Complaints received.

B. Intuit’s Rate of BBB Complaints Is in Line with a Set of Comparable Benchmark Companies

84. The existence of a small number of customer complaints is not indicative of deception. Customer complaints occur in every industry and are a valuable source of information because they “represent critical turning points in the company’s relationship with its customers.”¹³⁰ Complaints represent an opportunity to remedy a problem, and as such, companies monitor complaints to identify areas where they could improve customer experience.¹³¹

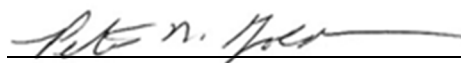
¹²⁹ Maxson Deposition, 353:6-13.

¹³⁰ Knox, George and Rutger van Oest, “Customer Complaints and Recovery Effectiveness: A Customer Base Approach,” *Journal of Marketing*, Vol. 78, September 2014, pp. 42-57 (“Customer Complaints and Recovery Effectiveness: A Customer Base Approach”), INTUIT-FTC-PART3-000596665, p. 42.

¹³¹ Kotler and Keller (2012), p. 141 (“Listening to customers is crucial to customer relationship management. Some companies have created an ongoing mechanism that keeps their marketers permanently plugged in to frontline customer feedback.”).

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.



Peter N. Golder
January 13, 2023



Respondent Exhibit
1018
(Submitted In Camera)

Produced as Native File

Backup Data to January 13, 2023 Expert Report of Peter Golder
"Complaint Independent Coding Results.xlsx"

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 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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Dated: February 14, 2023

Respectfully submitted,

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