Public

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

In the matter of: **Intuit Inc.**, a corporation, Respondent.	Docket No. 9408

COMPLAINT COUNSEL'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Complaint Counsel, pursuant to Rules of Practice 3.37 and 3.38, moves for an order to compel Respondent Intuit Inc. ("Intuit") to produce data responsive to Request for Production No. 22 (the "Request"), initially served on Intuit on September 12, 2022. The Request seeks information contained in Intuit's consumer relationship management database (the "CRM") pertaining to actual or potential customers who interacted with TurboTax's free product or offer, including records of those consumers' complaints and other negative feedback. There is no dispute that the CRM data exists. Instead, Intuit first objected to the Request and refused to produce any responsive documents, and now, after reaching an impasse in negotiations, argues that the clock has run out to secure production. This Court should not permit such gamesmanship and should instead compel Intuit to produce the requested documents.

I. Statement of Facts

On September 12, 2022, Complaint Counsel issued its First Set of Requests for Production of Documents to Intuit Inc. GX-476 Decl. of R. Anguizola, Dec. 9, 2022, at ¶ 4. Request 19 seeks documents related to complaints or other negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so, while Request 22 seeks related data "contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales." *Id*. Such requests are of a sort routinely sought—and obtained—from companies in deception cases. In addition to the general relevance of consumer complaints in a case about whether consumers were deceived by Intuit's advertising, the Requests also relate directly to Intuit's own defenses – namely that TurboTax has high customer satisfaction scores, ergo consumers are not being deceived. For example, in its Opposition to Complaint Counsel's Motion for Summary Decision, Intuit relies on TurboTax's "high customer-satisfaction scores" as evidence that there is no violation of the FTC Act. Respondent's Opposition to Motion for Summary Decision, August 30, 2022, at 19. Rather than taking it from the horse's mouth, however, Requests 19 and 22 would allow the Complaint Counsel to probe that defense. Intuit also makes a related argument that the consumer complaints identified by Complaint Counsel "represent a miniscule proportion of TurboTax customers, compared to the significant number of consumers who have rated TurboTax highly." *Id*. at 9. And while Complaint Counsel disputes the conclusion Intuit draws from the volume of the consumer complaints produced to Intuit in this matter, its CRM data provides a potential repository of additional complaints regarding the marketing practices at issue in this case.

On October 3, 2022, Intuit served its Responses and Objections, agreeing, with respect to Request 19, to produce responsive documents that "discuss customer complaints and feedback from consumers who indicated that they believed from advertisements that they could file their taxes for free using TurboTax Free Edition but were not eligible to do so." *Id*. at ¶ 6. (The phrase "from advertisements" is a limiting phrase added by Intuit and the appropriateness of which Complaint Counsel disputes). With respect to Request 22, however, Intuit flatly refused to produce any data from the CRM database, arguing that the Request is "overly broad, unduly burdensome, and oppressive." *Id*.

Over the course of the next two months, Complaint Counsel attempted to secure without court intervention the production of Intuit's CRM data responsive to Request No. 22 (and portions of which are almost surely responsive to Request No. 19), including raising the issue in three meet and confers (October 12, October 28, and December 1, 2022) and sending at least four additional emails (October 26, November 23, November 28, and December 1) on the topic. *See id*. at ¶¶ 7-10; 17-21. At the same time, in an effort to address Intuit's concerns regarding the purported burden of production, Complaint Counsel agreed to review the schema or diagram of Intuit's CRM in order to determine whether it could narrow or refine the Request to data contained in certain fields. Intuit, however, failed to either produce a meaningful CRM schema or to take up Complaint Counsel on its offer to make available an FTC data analyst at a meet and confer. *See id*. at ¶¶ 11-12; 17-18. Then, on December 5, 2022, after two months of negotiations about the production of CRM data, and without producing a single item of data from its database other than a partial schema, Intuit unilaterally declared it to be "too late," and argued that Complaint Counsel had supposedly waived its right to the data "by not raising those issues in a timely fashion." *Id*. at ¶ 22.

Notably, there is no dispute as the existence of the database or the data it contains. [redacted]

II. ARGUMENT

The scope of discovery in this proceeding allows for the production of documents and other tangible things "to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). Should a dispute arise regarding a party's compliance with its discovery obligations, Rule 3.38 provides a mechanism to bring a motion to compel before the Administrative Law Judge and, "unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order" that the party resisting discovery provide the responsive documents. *See* 16 C.F.R. § 3.38(a). "Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied." (external citations omitted) *In re HomeAdvisor, Inc.*, 2022 FTC LEXIS 61, *4-5 (Fed. Trade Comm'n Aug. 16, 2022).

A. The Requests Are Relevant and Do Not Impose an Undue Burden

Intuit sits on obviously responsive, relevant information that it has not produced. This case arises from a single count complaint in which Complaint Counsel alleges that Intuit's advertisements for TurboTax misled consumers into believing they could file their taxes with TurboTax for free. *See generally* Complaint, March 28, 2022; Complaint Counsel's Mot. for Summary Decision, Aug. 22, 2022. Intuit's communications with consumers, some subset of which are captured in its CRM, then, are relevant and discoverable. *In the Matter of Natural Organics, Inc.*, 2001 FTC LEXIS 31, *4-5 (Mar. 15, 2001) (ordering production of a database containing information about consumers who responded to Respondent's advertisements and holding that "correspondence from consumers is reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or the defenses").

Not only is Intuit's CRM data [redacted] facially relevant, Intuit itself has regularly relied on this kind of [redacted] in its own defense. Intuit has argued, for example, that its high customer satisfaction scores are evidence that there is no FTC Act violation. *See supra* at 2. Intuit has also sought to defang the consumer complaints that Complaint Counsel produced, stating that the number is "miniscule"[1] vis-a-vis the total number of TurboTax customers. *Id*. By making these arguments in its defenses, Intuit all but concedes that the kind of data maintained in the CRM, and sought in Request 22, is relevant.

To the extent Intuit asserts Request 22 is overbroad or unduly burdensome, it is Respondent's burden to explain how the request is burdensome, rather than relying on boilerplate objections. *In re Matter of LabMD, Inc.*, 2014 WL 333621, at *1 (Jan. 10, 2014). Moreover, Complaint Counsel on several occasions has offered to mitigate the burden of producing the data—the specific nature of which Intuit has never articulated—on Intuit by limiting the data fields that it requests, but Intuit has withheld the kind of responsive information Complaint Counsel would need to assess whether and how to narrow the Request. *See supra* at 3.

Intuit further objects to the Request on the ground that "the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel." Intuit's basic premise is that, because Complaint Counsel filed a Motion for Summary Decision in which it argued that the legal standard to grant such a motion has been met, it therefore is precluded from this additional discovery. GX 476 at Ex. C. "Taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with

[1] This weighing out is of no moment. The total number of consumer complaints received by the Federal Trade Commission is expected to be far less than the total number of consumers who were actually victims of the alleged deceptive practices. *See* Anderson, K. B., To Whom Do Victims of Mass-Market Consumer Fraud Complain? at 1 (May 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3852323 (showing only 4.8% of study participants who experienced mass-market consumer fraud complained to a Better Business Bureau ("BBB") or a government entity).

collection, review, and production." *Id*. This position is wholly disingenuous. While Complaint Counsel has submitted to the Commission that the existing record supports summary decision, Intuit vehemently opposed the motion and the Commission has not yet ruled. Intuit has provided no support for the notion that a party, having filed for summary decision, is precluded from continuing to develop the factual record in advance of trial.

Nothing in the Part 3 Rules prohibit a party from conducting discovery after they file for summary decision. In fact, as recently as August, this Court granted a motion to compel production of documents brought by Complaint Counsel where the matter was in the same procedural posture (namely, the motion to compel was brought after a Motion for Summary Decision was filed). *See In re HomeAdvisor, Inc.*, 2022 FTC LEXIS 61, *1 (Fed. Trade Comm'n, Aug. 16, 2022). The database requested is highly relevant, and the pending Motion for Summary Decision does not shield its production.

B. Complaint Counsel Timely Brings this Motion to Compel

Complaint Counsel's Motion is timely. Nothing in the Rules or Scheduling Order prevents Complaint Counsel from applying to the Court for an order compelling the production of CRM data that Intuit should have produced voluntarily. In fact, the Scheduling Order specifically contemplates that a Motion to Compel may be filed up to twenty days after the close of discovery, but not more than 5 days after reaching an impasse.[2] Specifically, paragraph 8 of the First Scheduling Order reads:

> Any motion to compel responses to discovery requests, or to seek certification of a request for court enforcement of a nonparty subpoena, shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 20 days after the close of discovery, whichever first occurs; except that, where the parties have been engaging in negotiations over a discovery dispute, including negotiations with any nonparty with regard to a subpoena, the deadline for the motion to compel shall be within 5 days of reaching an impasse.

[2] Impasse on this issue was reached on December 5, 2022. GX 476 at ¶ 22.

First Sched. Order, April 27, 2022, at par. 8.

Here, Complaint Counsel raised the issue of the production of CRM data during three subsequent meet and confer conferences and in numerous emails. *See* supra at 3. Despite these efforts by Complaint Counsel to resolve the dispute and secure the responsive data, on December 5, 2022, Intuit informed Complaint Counsel that Intuit's Counsel unilaterally determined that it was somehow too late, and that it would not produce any responsive documents. *See* supra at 3. Complaint Counsel filed this motion four days after Intuit finally confirmed it would not be producing the data sought. *Id*. The motions is therefore timely. *See also In re OSF Healthcare Sys.*, 2012 FTC LEXIS 30, *3 (FTC February 13, 2012) (holding that motion to compel was timely when it was filed on the day that parties reached an impasse).

Although Intuit would like to have run out the clock, as a practical matter, the close of discovery is not a magic pill that would immunize Intuit from any further inquiry. In fact, when Intuit was under the misimpression that Complaint Counsel (not it) had failed to timely produced documents, it proposed the production of those documents by December 30, 2022, with the deposition of the relevant witness no later than January 13, 2023 – well after the timetable contemplated in this motion. *See* GX 476 ¶ 17. Because Complaint Counsel diligently sought the documents, negotiated until the parties reached an impasse, and filed this motion in a timely manner consistent with the scheduling order in this case, Intuit's bluster that too much time has passed can be dismissed.

C. Production of Documents Responsive to Request 22 Should Be Compelled and/or Sanctions Should be Imposed

Intuit has been in possession of Complaint Counsel's first set of documents requests for nearly three months, and nearly the entire pendency of the discovery period. Given upcoming expert discovery deadlines and time restraints in the schedule for any review of the data by Complaint Counsel's analyst, Respondent should be ordered to make production immediately, and certainly no later than five days from an order on this motion. As a backstop, if Intuit fails to produce the CRM data, the Court should order sanctions that would prevent it from capitalizing on its own obstructionism. Pursuant to Rule 3.38(b)(2)-(3), the Court should order that, should Intuit fail to produce the requested data, a negative inference will attach as to the contents of that data. Additionally, pursuant to Rule 3.38(b)(4), Intuit should be prohibited from introducing evidence—including the testimony of experts—that relies on any Intuit data maintained in its CRM.

III. Conclusion

For the foregoing reasons, Complaint Counsel moves this Court for an order compelling production of documents and for sanctions.

Respectfully submitted,

Dated: December 9, 2022

/s/ Sara Tonnesen

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Counsel Supporting the Complaint
Federal Trade Commission

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2022, I electronically filed the foregoing Motion to Compel electronically using the FTC's E-Filing system, which will send notification of such filing to:

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Secretary of the Commission
Clerk of the Court

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
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Administrative Law Judge

I further certify that on December 9, 2022, I caused the foregoing document to be served via email on:

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/s/ Sara Tonnesen

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GOVERNMENT EXHIBIT
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DECLARATION OF ROBERTO ANGUIZOLA

I, Roberto Anguizola, have personal knowledge of the facts and matters set forth below. If called as a witness, I could and would testify as follows:

1. I am counsel supporting the Complaint in *In re Intuit Inc.*, Docket No. 9408, an adjudicative proceeding pending before the Federal Trade Commission.

2. Based on the discovery conducted in this proceeding, I am informed and believe that Intuit uses one or more CRM databases. Based on my experience working with CRM databases on a number of FTC consumer protection matters, CRM databases are used by businesses like Intuit to collect, store, and analyze customer information and interactions with customers. This includes the inputting of notes and other details by a business's customer service personnel pertaining to interactions with consumers, including consumer complaints. Such customer service notes can provide relevant insight into the impressions consumers form from engaging with a business's marketing and advertising. Such data can also provide insight into a business's awareness of such customer input.

3. CRM databases are typically composed of multiple tables containing columns (labelled with field names) and rows of data. The tables are usually connected or related to each other by unique identification numbers stored in an ID field sometimes called a "primary key." A CRM schema or diagram is a tool used by many database managers to understand the organization of and relationships between tables and data fields comprising a CRM. A CRM schema or diagram can be useful to FTC data analysts in formulating and suggesting efficient ways to query CRM databases which tend to contain voluminous amounts of data.

4. On September 12, 2022, Complaint Counsel served via email its First Requests for Production of Documents to Intuit Inc (the "Requests"). Ex. A is a true and correct copy of Complaint Counsel's First Requests for Production of Documents to Intuit Inc., September 12, 2022. The Requests include No. 19 ("All documents related to

complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so."); No. 22 ("All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ('CRM'), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales."); and No. 23 ("The schema for any CRM or other database containing the data requested in Request for Production 22, including tables, fields, and relationships between tables and fields used in those databases.").

5. On September 22, 2022, Complaint Counsel served a Supplemental Witness List on the attorneys for Respondent, Intuit Inc. A true and correct copy is attached as Ex. B. The second witness identified on Complaint Counsel's Supplemental Witness List was a Bureau of Consumer Protection Data Analyst and included the following description of the expected testimony:

> We expect a data analyst to testify about their summary of voluminous consumer complaint and other Customer Relationship Management ("CRM") data that we expect to receive from Intuit pursuant to Complaint Counsel's requests for production. The data analyst will be assigned to the matter and identified once the relevant data is produced.

6. On October 3, 2022, Intuit provided its responses and objections to the Requests. Ex. C is true and correct copy of Respondent Intuit Inc.'s October 3, 2022 Responses and Objections to Complaint Counsel's First Requests for Production of Documents. In response to Request 19, Intuit states, following its objections, "subject to and without waiving the foregoing objections, Intuit will produce responsive documents that it locates after a reasonable search that discuss customer complaints and feedback from consumers who indicated that they believed from advertisements that

they could file their taxes for free using TurboTax Free Edition but were not eligible to do so." *Id*. In response to Request 22, Intuit states, following its objections, "[b]ased on the foregoing objections, Intuit does not intend to provide documents in response to this Request." *Id*.

7. On October 12, 2022, I participated in a meet and confer with counsel for Intuit during which several discovery-related topics were discussed. During this meeting, I raised our request for data from Intuit's CRM. In an effort to address Intuit's objections to the production of the CRM data, I proposed that Intuit produce a CRM schema(s) or diagram(s) to assist Complaint Counsel in potentially narrowing the requested data fields within the Intuit CRM. I also offered to make an FTC data analyst available for a meet and confer with Intuit's relevant database personnel to come up with the most efficient and cost-effective way for Intuit to produce the CRM consumer data Complaint Counsel had requested.

8. On October 14, 2022, Complaint Counsel served a Notice of Deposition to Respondent Intuit Inc. The notice identified topics to be covered during the deposition, including Topic 16 calling for testimony regarding: "Intuit's customer relationship management systems and record keeping regarding its TurboTax customers, including sales, products and services purchased, refunds, chargebacks, abandonment, customer complaints, customer feedback, and customer service notes."

9. In an email I sent to counsel for Intuit on October 26, 2022, in the context of providing dates for the depositions noticed by Intuit, I identified Megan Baburek as the FTC Data Analyst, stating: "Intuit has not yet produced the CRM data she will likely analyze. When we have a better idea of when Intuit will produce the CRM data, we will have a better idea of when we can make Ms. Baburek available. We reiterate our request for a schema of Intuit's CRM database(s) and our invitation to make Ms. Baburek available for a meet and confer with Intuit's relevant database personnel to come up with the most efficient and cost-effective way for Intuit to produce the consumer data

Complaint Counsel has requested." Attached as Ex. D is a true and correct copy of the Oct. 26, 2022 Email from R. Anguizola to Counsel for Intuit.

10. On October 28, 2022, I participated in another meet and confer with counsel for Intuit. During the conference, the counsel for the parties conferred on whether Complaint Counsel would limit or withdraw any topics noticed by Complaint Counsel for the 3.33(c)(1) deposition of Intuit. One topic that was discussed was Topic 16 calling for testimony regarding: "Intuit's customer relationship management systems and record keeping regarding its TurboTax customers, including sales, products and services purchased, refunds, chargebacks, abandonment, customer complaints, customer feedback, and customer service notes." During the meet and confer, we stated that Topic 16 was there, in part, to authenticate the CRM data we expected Intuit to produce. Intuit's Counsel replied that, if Intuit decided to produce the CRM data, then authentication would not be an issue. Based on this representation, we agreed to withdraw Topic 16. I came away from this meeting with the impression that the parties were still conferring on the CRM data. While Intuit had not withdrawn its objection to producing the CRM data, my impression was that Intuit's counsel were open to a compromise on this discovery dispute and that a motion compelling production of the CRM would be premature.

11. On November 1, 2022, Intuit produced documents Bates-labeled INTUIT-FTC-PART3-000490025 through INTUIT-FTC-PART3-00040027 which [redacted]. A true and correct copy of the Nov. 1, 2022 cover letter from B. Chapin to R. Plett is attached here as Ex. E.

12. Instead of a CRM schema, however, we received [redacted]: (1) INTUIT-FTC-PART3-000490026.XML; (2) INTUIT-FTC-PART3-000490025.XML; and (3) INTUIT-FTC-PART3-000490027.XML. [redacted]

[redacted]. This missing information materially hindered Complaint Counsel's efforts to use of these documents to negotiate about the scope of Request 22.

13. On November 15, 2022, Complaint Counsel took the deposition of Intuit through a 3.33(c)(1) deposition of [redacted]. True and correct copies of the relevant excerpts of the Intuit 3.33(c)(1) Dep. Transcript (Nov. 15, 2022) are attached as Ex. F. [redacted] was identified by Intuit to testify on Topic 17, seeking testimony from Intuit on "[consumer complaints, customer service notes, correspondence, and other information reflecting consumer dissatisfaction or confusion pertaining to the advertising, marketing, and offering of TurboTax for free (and/or TurboTax Free Edition." *Id.* at 5:4-6:7.

14. During the deposition, Intuit testified as follows: [redacted]

15. Intuit also testified that [redacted]

[redacted]

16. [redacted].

17. On November 22, 2022, I received an email from Intuit's Counsel alleging that Complaint Counsel had not identified the data analyst listed on its witness list nor produced documents responsive to Intuit's Request No. 36, seeking documents and communications relating to data analysis performed by or at the direction of Complaint Counsel. Counsel for Intuit continued, "[w]e propose postponing this deposition until two weeks after Complaint Counsel identify the data analyst and provide Intuit with documents or information related to any analysis performed by that witness, to occur no later than January 13, 2023." A true and correct copy of this email is attached hereto as Ex. G.

18. On November 23, 2022, at 5:31 PM, I replied to the message in an email exchange among Complaint Counsel and Counsel for Intuit, stating that at the meet and confer then being discussed, "we will want to discuss the CRM data Intuit has not yet produced." At 5:42 PM on November 23, 2022, Counsel for Intuit replied "[w]e have no idea what issue you are referring to, so I suggest that you send us a written description of the issue ahead of the call, otherwise we won't be able to engage with you. I don't understand why this is so hard for you to do." At 7:04 PM that night, I replied to Complaint Counsel's email by stating that "in a previous meet and confer, we engaged with defense counsel on the CRM data" and that I was merely "suggesting a follow up discussion at our next meet and confer." I also stated that, "[a]s we have offered before, we are willing to narrow our request by limiting the data fields covered by this request," set forth the kind of information we would need to so narrow the requests, and offered "to conduct a meet and confer that would include our data analyst, Megan

Baburek, and the relevant database personnel at Intuit." In response, at 7:28 PM, Counsel for Intuit replied, in part, "we have lots of objections none of which you have addressed and the time for raising the issue has long passed. We can have a brief conversation about this at the end of our meet and confer if you like but it seems like you are only raising this to distract from the issues that we have raised like your deficient privilege log." A true and correct copy of this email chain is attached to as Ex. H.

19. On November 28, 2022, I received an additional email from counsel for Intuit with regard to the upcoming scheduled deposition of the FTC data analyst. In response, I expressed my hope that the parties could "reach agreement on the production of the CRM data during our meet and confer this Thursday." A true and correct copy of this email chain is attached as Ex. I.

20. On December 1, 2022, I emailed Complaint Counsel the following:

> Dear Counsel:
>
> During the November 15, 2022 deposition of [redacted] as Intuit's 3.33(c)(1) designee, Intuit testified that [redacted]
>
> Specifically, request for production no. 22 provides:

Request for Production No. 22:
All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

Similarly, request for production no. 19 calls for: "All documents related to complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so." The applicable time period for both requests is: documents created after November 1, 2020.

We understand that one of Intuit's concerns is that these requests are burdensome. To address that concern, we are willing to explore further temporal limitations and to narrow our request by limiting the data fields covered by this request if that would lessen Intuit's production burden.

To that end, we asked Intuit to produce a CRM schema or diagram to help us identify the relevant data fields within the Intuit CRM and potentially narrow the data Intuit would have to produce. Instead of a CRM schema, we received 3 XML files from Intuit: (1) INTUIT-FTC-PART3-000490026.XML; (2) INTUIT-FTC-PART3-000490025.XML; and (3) INTUIT-FTC-PART3-000490027.XML. While these documents [redacted] As indicated in previous communications, without that information it is challenging to narrow our request.

Despite these limitations, we took another run through the XML files Intuit produced and propose that Intuit produce the following narrower subset of CRM data [redacted]:

- Identifying customer information (name, email, phone), as well as any id or customer account number associated with the customer identified;

- Date of complaint or customer interaction
- Product(s) used or referenced in the interaction, and
- Complaint details such as topic, contact method, description, chat history, and customer service call notes.

[redacted]

If it would be helpful to Intuit, we are willing to make our data analyst, Megan Baburek, available for a meet and confer next week that could potentially include the relevant database personnel at Intuit. Please let us know.

If instead, Intuit is going to stand on its objections and does not intend to produce the complaint and CRM data we have requested, please let us know. We sincerely hope that is not the case because we think we can reach a compromise that would allow Complaint Counsel to receive the relevant data while minimizing the burden on Intuit.

A true and correct copy of my Dec. 1 email to D. Woodman of WilmerHale is attached as Ex. J.

21. On the same day, I participated in a meet and confer where I again pressed for the production of data from Intuit's CRM.

22. On December 5, 2022, I received an email from counsel for Intuit regarding the production of CRM data, stating that "it is too late...to be raising issues concerning RFPs 19 and 22," and arguing that Complaint Counsel has "waived any arguments related to Intuit's response to those RFPs by not raising those issues in a timely fashion." A true and correct copy of the email is attached as Ex. K.

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

Executed: December 9, 2022
Washington, DC

Roberto Anguizola
Roberto Anguizola

PUBLIC

Declaration of R. Anguizola

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

COMPLAINT COUNSEL'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO INTUIT INC.

Pursuant to Rule 3.37 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, Complaint Counsel requests that Respondent Intuit Inc. ("Intuit") produce the items and documents specified below.

INSTRUCTIONS

1. **Response; objections: Within 21 days of service** of this request, you are required to: (1) confer about the format for the production of electronically stored information; and (2) serve a written response to this request on Complaint Counsel stating, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. The response may state an objection to a requested form for producing electronically stored information. If you object to a requested form - or if no form was specified in the request – you must state the form you intend to use. Within five days of serving your objections, if any, to this request you shall meet and confer with Complaint Counsel to attempt to resolve such disputes.

2. **Time, Place, and Manner for Production:** Electronic copies of the items requested below are to be produced by **Tuesday, October 11, 2022**, by transmitting them to Complaint Counsel via secure file transfer. When you are ready to transmit the items requested below, please email Complaint Counsel at: ranguizola@ftc.gov; jevans1@ftc.gov; and rplett@ftc.gov, and we will send you an invitation to transmit the items via the FTC secure file transfer system. All items requested must be produced as they were kept in the usual course of business or must be organized and labeled to correspond to the categories in this request. If production of the requested items at the time, place, and manner set forth above is not possible, please contact Complaint Counsel Roberto Anguizola at (202) 326-3284, James Evans at (202) 326-2026, or Rebecca Plett at (202) 326-3664, **no later than Friday, October 7,**

2022, to discuss an alternate time, place, or manner for production of the requested items.

3. **Applicable Time Period:** Unless otherwise specified, the time period covered by each request below shall be from November 1, 2020, through the date of your complete compliance with these requests. Documents originating before this period but referring or relating to actions or conduct within the period should be included in your production response(s). If after the date of production, you become aware of additional responsive documents, you should produce those documents to Complaint Counsel.

4. If any documents responsive to a document request have been previously produced to the Commission during the course of its investigation, *In re Intuit* Matter No. 1923119, you shall identify the document(s) previously provided and the date of submission instead of re-submitting the document(s). Identification shall be by Bates number if the documents were so numbered when submitted, or by author, date, and subject matter if not so numbered, and shall specify to which request(s) they are responsive. Documents that may be responsive to more than one request need not be submitted more than once; however, your response shall indicate, for each document submitted, each document request to which the document is responsive.

5. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the document request. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables, or other attachments.

6. If any of the responsive documents are in the form of ESI, please produce these documents in their existing, native formats.

7. If any requested material is withheld based on a claim of privilege, submit, together with such claim, a schedule of items withheld that states individually for each item withheld: (a) the nature of the document; (b) the identity of the person who created the document; (c) the identity of the person to whom the document was directed; (d) the subject matter of the document; (e) the date of the document; (f) the identity of all parties who executed the document; (g) the nature of the privilege which you claim; and (h) the custodian of the document.

8. As used herein, the singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun

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so used, and vice versa; the use of the masculine form of a pronoun shall be considered to include also within its meaning the feminine form of the pronoun so used, and vice versa; the use of any tense of any verb shall be considered to include within its meaning all other tenses of the verb so used; and the use of "and" shall be considered to include "or," and vice versa.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. "**Advertisement**" or "**Advertising**" or "**Ad**" means any written or verbal statement, illustration, or depiction that promotes the sale or use of a good or service or is designed to increase consumer interest in a brand, good, or service. Advertising media covered by this definition includes but is not limited to: packaging and labeling; promotional materials; print, including direct mail; television, including short form TV ads and infomercials; radio; video advertisements, including YouTube ads and ads disseminated through streaming services, and internet, social media, and other digital content, including banner advertisements and web pages, mobile networks and applications.

2. "**Any**" shall be construed to include the word "**all**," and the word "**all**" shall be construed to include the word "**any.**"

3. "**Company**," "**You**," or "**Your**" means **Intuit Inc.**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

4. "**Document**" or "**Documents**" are synonymous in meaning and equal in scope to the usage of the terms as defined by 16 C.F.R. 3.34(b), and includes, without limitation, the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, communication, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, journal, agenda, minute, code book, or label. "Document" shall also include electronically stored information ("ESI"). ESI means

the complete original and any nonidentical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information, including, but not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

5. "**Each**" shall be construed to include "**every**," and "**every**" shall be construed to include "**each**."

6. "**Relating to**" or "**Regarding**" means discussing, describing, reflecting, referring, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

7. "**TurboTax**" means any income tax preparation product or service offered by Intuit using the TurboTax brand or mark.

DOCUMENTS REQUESTED

Produce the following Documents:

1. A copy of each unique TurboTax advertisement that uses or used any of the following words: "free," "zero," "$0," "no cost," or "gratis."

2. All documents relating to any aspect of the creation, development, approval, modification, execution, or evaluation of any advertisement responsive to Request for Production 1, including client briefs, creative briefs, research analyses, point of views, story boards, call reports, meeting reports, or other contact reports.

3. All documents relating to the advertising and marketing strategy associated with any advertisement responsive to Request for Production 1.

4. All documents relating to data on, or analysis of, consumer perception, comprehension, or recall (including copy tests, focus groups, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, a/b tests, multivariate tests, and communication tests) of any advertisement responsive to Request for Production 1.

5. All documents, without regard to the applicable time period, relating to the TurboTax "Power of Free" advertising campaign.

6. All documents, without regard to the applicable time period, relating to TurboTax Super Bowl advertisements that used any of the following words: "free," "zero," "$0," "no cost," or "gratis."

7. All documents relating to the creation, content, placement, use, approval, modification, or rejection of any disclaimers or disclosures used in any advertisement responsive to Requests for Production 1.

8. For any advertisement responsive Request for Production 1, documents sufficient to show the beginning and ending dates of dissemination, audience size, and the times and locations the ads were disseminated.

9. For print ads responsive Request for Production 1, produce documents sufficient to show every publication in which the ads were disseminated.

10. For video, television and radio ads responsive Request for Production 1, documents sufficient to show every network, system, streaming service, or station in which the ads were disseminated.

11. For internet ads responsive Request for Production 1, documents sufficient to show the platform used (e.g., mobile, desktop); its successfulness in driving traffic to the TurboTax website (e.g., click-through rates per ad, keyword or campaign; traffic and cost statistic per ad, keyword or campaign; impressions; quality scores; cross device conversion rates); and the URL of the landing page each advertisement directed the consumer to.

12. For any advertisement responsive Request for Production 1, documents sufficient to identify the cost of each advertisement.

13. For any advertisement responsive Request for Production 1, documents sufficient to identify the revenue directly or indirectly derived from each advertisement.

14. Documents relating to the return on investment (ROI) or monetization of TurboTax advertisements that use or used any of the following words: "free," "zero," "$0," "no cost," or "gratis" or customers acquired by the company through such ads.

15. All documents regarding the use of the phrase "simple U.S. tax returns" in TurboTax advertisements, including on websites.

16. Copies of all materially different consumer-facing popups or websites describing Intuit's eligibility restrictions for using a TurboTax product or service for free.

17. Copies of all materially different websites that include the terms "for simple U.S. returns only," "for simple returns," "simple tax returns," or "see why it's free."

18. All documents relating to data on, or analysis of, consumer perception, comprehension, or recall (including copy tests, focus groups, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, a/b tests, multivariate tests, and communication tests) about the cost of TurboTax products or services.

19. All documents related to complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so.

20. All documents related to employee complaints or negative employee feedback regarding the TurboTax advertisements that use the terms "free," "zero," "$0," "no cost," or "gratis."

21. Documents sufficient to show each different customer service script or frequently asked questions (FAQs) used by the company to communicate with consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so, and the time period during which each script or FAQ was used.

22. All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

23. The schema for any CRM or other database containing the data requested in Request for Production 22, including tables, fields, and relationships between tables and fields used in those databases.

24. Data related to negative consumer feedback or complaints about free offers pertaining to TurboTax, including data that is not captured in your CRM.

25. All documents related to any arbitration filed against Intuit related to free offers pertaining to TurboTax.

Dated: September 12, 2022

Respectfully submitted,

s/Rebecca Plett
Roberto Anguizola
Rebecca Plett
James Evans

Complaint Counsel
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CERTIFICATE OF SERVICE

This is to certify that on September 12, 2022, I caused the foregoing Complaint Counsel's First Requests for Production of Documents to Intuit Inc., to be served via email on:

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Attorneys for Respondent, Intuit Inc.

/s/ Rebecca Plett
Rebecca Plett

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Declaration of R. Anguizola

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the matter of: **Intuit Inc.**, a corporation, Respondent.	Docket No. 9408

COMPLAINT COUNSEL'S SUPPLEMENTAL WITNESS LIST

Pursuant to the Scheduling Order, Complaint Counsel hereby provides their Supplemental Witness List to Respondent Intuit Inc. ("Intuit"). This list identifies the fact witnesses who may testify for Complaint Counsel at the hearing in this action by deposition and/or investigational hearing transcript, declaration, or orally by live witness. It does not identify expert or rebuttal witnesses, whom the Complaint Counsel will identify separately in compliance with the Scheduling Order.

The information disclosed herein, including status of employment for Intuit employees and job titles, is based upon information reasonably available to Complaint Counsel at present. Discovery is ongoing and likely will have an impact on Complaint Counsel's final proposed witness list. To the extent a witness listed below was not identified in Complaint Counsel's initial disclosures, this Supplemental Witness List is intended to supplement such disclosures. Subject to the limitations in the Scheduling Order entered in this action, Complaint Counsel reserves the right:

A. To present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any other person that Intuit identifies as a potential witness in this action;

B. For any individual listed below as being associated with a corporation, government agency, or other non-party entity, to substitute a witness designated by the associated non-party entity in response to any subpoena that has been or may be issued by Complaint Counsel or Intuit to that non-party entity in this action;

C. To present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from the custodian of records of any nonparty from which documents or records have been or will be obtained in this action, including, but not limited to, the non-parties listed below, to the extent necessary for the admission of documents or deposition or investigational hearing testimony into evidence in the event that a stipulation cannot be reached concerning the admissibility of such documents or testimony;

D. To present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any witnesses to rebut the testimony of witnesses proffered by Intuit;

E. Not to present testimony by deposition and/or investigational hearing transcript, declaration, or orally by live witness, from any of the witnesses listed below; and

F. To supplement this Supplemental Witness List if additional information becomes available through discovery or otherwise, and pursuant to the Scheduling Order.

Subject to these reservations of rights, Complaint Counsel's supplemental list of witnesses is as follows:

I. FTC Employees

1. **Diana Shiller, Investigator, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices.**

We expect that Ms. Shiller will testify about Intuit's marketing and advertising and her captures of such marketing and advertising, about TurboTax's websites and offers and her captures of such websites and offers, her review and capture of other publicly available information like websites and articles, her review of information provided by an advertising monitoring service, consumer complaints she reviewed and/or collected through the FTC's Sentinel platform, her receipt and review of documents produced by Intuit or third parties, and other tasks performed as part of the FTC's investigation of Intuit Inc.

2. **Data Analyst, Federal Trade Commission, Bureau of Consumer Protection.**

We expect a data analyst to testify about their summary of voluminous consumer complaint and other Customer Relationship Management ("CRM") data that we expect to receive from Intuit pursuant to Complaint Counsel's requests for production. The data analyst will be assigned to the matter and identified once the relevant data is produced.

II. Current and Former Intuit Employees

3. **Elizabeth Berger, Director of Marketing, Intuit.**

We expect Elizabeth Berger will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

4. **Heather Champoux**, **Marketing Manager, Intuit.**

We expect Heather Champoux will testify about the timelines for and execution of TurboTax marketing and advertising initiatives, including but not limited to marketing and advertising initiatives for Free Edition and other TurboTax offers that use "free" claims.

5. **Jennifer Crosby, current or former Director of National Media and Digital Marketing, Intuit.**

We expect Jennifer Crosby will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, and marketing and advertising through social media, mobile platforms, and video platforms.

6. **Allison Garrison, current or former Sr. Customer Experience Leader, Intuit.**

We expect Allison Garrison will testify about customer experiences using TurboTax, including but not limited to customer experiences with Free Edition and with other TurboTax offers that use "free" claims, including strategic initiatives to identify and quantify customer pain points.

7. **Cathy Goode, Director, Marketing Strategy, Intuit.**

We expect Cathy Goode will testify about Free Edition and the business strategy for offering, marketing, selling, advertising and promoting it, and Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

8. **Randy Hellman, Marketing Manager, TurboTax Brand (May 2019-August 2021).**

We expect Randy Hellman will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other free TurboTax offers that use "free" claims.

9. **Heather Hillerman, Marketing Manager, Intuit.**

We expect Heather Hillerman will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

10. **Mandy Ison, Group Manager PPC & SEO, Intuit.**

We expect Mandy Ison will testify about marketing and advertising TurboTax, including but not limited to paid and organic search advertising for Free Edition and other TurboTax offers that use "free" claims.

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11. **Erin Mrozek, Director of Product Marketing, Intuit.**

We expect Erin Mrozek will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, and the business strategy related to such "free" claims.

12. **Monica Muilenburg, Director of Marketing Strategy, Intuit.**

We expect Monica Muilenburg will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

13. **Danielle Roark, Group Marketing Manager, Intuit.**

We expect Danielle Roark will testify about Intuit's brand advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

14. **Jack Rubin, Vice President, Marketing, Partnerships & Advertising Operations, Intuit.**

We expect Jack Rubin will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, and the business strategy related to such "free" claims.

15. **Cathleen Ryan, Vice President of Marketing, Intuit.**

We expect Cathleen Ryan will testify about Intuit's marketing and advertising strategy for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, the clarity of advertising strategies, and the business strategies related to Free Edition and other "free" claims.

16. **Jason Smerican, Director of Consumer Group Go-To-Market Operations & Technology, Intuit.**

We expect Jason Smerican will testify about the product and customer experiences for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, and Intuit's CRM and consumer and product metrics.

17. **Erin Smith, Senior Partner Development Manager, Intuit.**

We expect Erin Smith to testify about Intuit's advertisements of TurboTax, as well as its marketing and advertising and marketing and advertising strategies related to Free Edition and other TurboTax offers that use "free" claims.

18. **Mary-Ann Somers, former Senior Vice President of Marketing, Intuit.**

We expect Mary-Ann Sommers will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

19. **Nick Soukas, Vice President & Growth Team Leader, Customer & Business Growth, Intuit**.

We expect Nick Soukas will testify about Intuit's marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

20. **Cesar Villegas, Vice President of Design, Intuit.**

We expect Cesar Villegas will testify about the visual design of TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims, and upgrade experiences related to "free" offers.

21. **Intuit Inc.**

Pursuant to 16 C.F.R. 3.33(c), we expect Intuit to testify about its marketing strategy and advertising for TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims. We also expect Intuit to testify about its CRM and data contained in its CRM, customer complaints related to Free Edition and other TurboTax offers that use "free" claims, including but not limited to complaints about being prompted to upgrade and pay for TurboTax, complaints about the inability to file for free with TurboTax, and complaints about unexpected costs and expenses related to TurboTax. We also expect Intuit will testify about marketing analytics for

TurboTax, including but not limited to Free Edition and other TurboTax offers that use "free" claims.

III. Intuit's Current and Former Advertising and Marketing Agencies

22. **3Q Digital**

We expect 3Q Digital will testify about TurboTax search engine advertising data, including but not limited to pay per click links, key word performance, and other advertising-related data.

23. **Tobey Bennett, Group Brand Director, Wieden + Kennedy.**

We expect Tobey Bennett will testify about Intuit's marketing and advertising campaigns, including but not limited to video and television advertising for Free Edition and other TurboTax offers that use "free" claims.

24. **Sam Bloom, CEO, Camelot Strategic Marketing & Media.**

We expect Sam Bloom will testify about Intuit's display advertising, including but not limited to display advertising related to Free Edition and other TurboTax offers that use "free" claims.

25. **Camelot Strategic Marketing & Media.**

We expect Camelot Strategic Marketing & Media will testify about Intuit's display advertising, including but not limited to display advertising related to Free Edition and other TurboTax offers that use "free" claims.

26. **Collier.Simon.**

We expect Collier.Simon will testify about the creative strategy, appearance, design, and execution of Intuit's advertising, including but not limited to advertising related to Free Edition and other TurboTax offers that use "free" claims.

27. **Nick Collier, Partner, Creative Strategy, Collier.Simon.**

We expect Nick Collier will testify about the creative strategy, appearance, design, and execution of Intuit's advertising, including but not limited to advertising related to Free Edition and other TurboTax offers that use "free" claims.

28. **Wieden + Kennedy**.

We expect Wieden + Kennedy will testify about Intuit's marketing and advertising campaigns, including but not limited to video and television advertising for Free Edition and other TurboTax offers that use "free" claims.

29. **Reid Ganther, Account Director, 3Q Digital.**

We expect Reid Ganther will testify about TurboTax search engine advertising data, including but not limited to pay per click links, key word performance, and other advertising-related data.

IV. Consumers

30. **Consumers.**

Complaint Counsel reserve the option to call one or more consumers identified in their initial disclosures, consumers deposed by either party, or identified through a review of data produced and expected to be produced by Intuit in response to Complaint Counsel's requests for production or other discovery requests. We expect consumers to testify about Intuit's advertising, marketing, promotion, offering for sale, or sale of TurboTax, including its direct or indirect, and/or express or implied representations that consumers can file their taxes for free using TurboTax.

Dated: September 22, 2022 Respectfully submitted,

s/Rebecca Plett
Roberto Anguizola
Rebecca Plett
James Evans

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2022, I caused the foregoing Complaint Counsel's Supplemental Witness List, to be served via email on:

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Attorneys for Respondent, Intuit Inc.

/s/ Rebecca Plett
Rebecca Plett

Declaration of R. Anguizola

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

RESPONDENT INTUIT INC.'S RESPONSES AND OBJECTIONS TO COMPLAINT COUNSEL'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 3.37 of the Commission's Rules of Practice, 16 C.F.R. § 3.37(b), Respondent Intuit Inc., by and through its attorneys, responds and objects to Complaint Counsel's First Set of Requests for Production of Documents (Nos. 1–23). The General Objections apply to each Request and are incorporated into the Specific Objections. Intuit reserves the right to supplement, amend, or qualify its objections and responses.

GENERAL OBJECTIONS

1. The FTC began its investigation of Intuit on May 9, 2019. Intuit has fully cooperated with that investigation and has, to date, produced over 551,364 pages of documents. The FTC itself repeatedly characterized the materials Intuit was required to produce as "voluminous" and necessitating a three-year plus investigation. *See* Declaration of James Evans in Support of Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction ¶ 29, *FTC v. Intuit Inc.*, No. 3:22-cv-01973-CRB (N.D. Cal. Apr. 7, 2022), ECF No. 48-6. The FTC has also deposed eight individuals, four of whom served additionally as corporate representatives of Intuit. Intuit objects to the extent a Request seeks information or documents that are unreasonably cumulative or duplicative of materials already in the possession of Complaint Counsel. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be

required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation.”).

2. Intuit objects to Requests that seek documents “without regard to the applicable time period” as overbroad, unduly burdensome, and duplicative of materials previously produced as part of the investigation. Intuit will search for and produce documents created after November 1, 2020, which is the applicable time period set forth in Paragraph 3 of the Instructions to Complaint Counsel’s First Set of Requests for Production of Documents.

3. Intuit objects to the extent a Request seeks information or documents protected from disclosure by any privilege, protection, or immunity, including the attorney-client privilege, the attorney work product protection, or any other privilege, immunity, principle, doctrine, or rule of confidentiality, or any disclosure which is not permitted by federal, state, or any other applicable law or regulation. Intuit will not produce any such documents or information and will redact any such information that is included in documents produced in response to these Requests. If any protected information or material is disclosed, such disclosure is not intentional and shall not be deemed a waiver of any privilege or protection. To the extent Intuit withholds material responsive to any Request based on a claim of privilege or other protection identified above, Intuit will identify the nature of the documents, communications, or tangible things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable the FTC to assess the claim. Intuit objects to Instruction No. 7 on the grounds that it broadens the obligations required by, or is otherwise inconsistent with, Rule 3.38A of the Commission’s Rules of Practice. 16 C.F.R. § 3.38A. Intuit is willing to meet and

confer with Complaint Counsel to discuss on the specific format and content of the schedule required under Rule 3.38A.

4. To the extent a Request seeks the disclosure of protected material, including but not limited to trade secrets, confidential information, proprietary information, or any information implicating privacy interests, Intuit's response and production shall be subject to the Protective Order issued on March 30, 2022, pursuant to Rule 3.31(d).

5. Intuit objects to the definition of "Company," "You" and "Your" and to the extent a Request purports to impose on Intuit a duty to create, search for, secure, and produce documents or things not within its possession, custody, or control or solely in the possession of unrelated divisions or subsidiaries. Intuit will undertake a reasonable search of its files related to the TurboTax online software and produce responsive documents. It will not search for documents that may be in the possession, custody, or control of Intuit's affiliates, subsidiaries having corporate identities separate and distinct from Intuit, unrelated to TurboTax products, or "consultants, and other persons working for or on behalf" of Intuit.

6. Intuit objects to each of the Requests seeking "all," "each," "any," "relating to", and "regarding" the referenced information or documents on the grounds that such requests are unduly burdensome or expensive, seek cumulative information, and do not describe the information sought with sufficient particularity. Similarly, Intuit objects to the definition of "Documents" for the same reasons. Intuit will construe the terms of all Requests to request that Intuit use reasonable diligence to locate responsive non-privileged information and documents, based upon inquiry of those persons who reasonably may be expected to possess such information and on examination of those sources that reasonably may be expected to yield such information.

7. Intuit objects to each of the Instructions to the extent that they purport to broaden the obligations required by, or are otherwise inconsistent with, the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, the Administrative Law Judge's orders in this Proceeding, or any other applicable order, rule, or law, including but not limited to the Instruction expressly rejected by Chief Judge Chappell that Intuit identify for each Request material previously produced by Respondent in the course of the Commission's investigation that is responsive to the Requests. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation.").

8. Intuit objects to Instruction No. 2 on the grounds that it requests that Intuit complete its production in response to the Requests by October 11, 2022, which is neither practical nor feasible. Intuit will begin rolling productions on or before October 11, 2022 and will endeavor to complete its production in response to the Requests as soon as is practicable.

9. Intuit objects to the definition of "Advertisement," "Advertising," and "Ad" on the grounds that it is overbroad, unduly burdensome, and does not describe the information sought with sufficient particularity. Intuit will interpret "advertisement" consistently with its commonly understood meaning to mean video advertisements displayed on television, YouTube, or other forms of social media, online pay-per-click advertisements, and display advertisements.

10. Intuit objects to the definition of the term "TurboTax" on the grounds that it is overbroad, unduly burdensome, and does not describe the information sought with sufficient particularity. Intuit will interpret "TurboTax" to mean the brand under which Intuit markets and sells TurboTax products (e.g., "TurboTax Free Edition," "TurboTax Deluxe," "TurboTax Deluxe

Live," "TurboTax Premier," "TurboTax Premier Live," "TurboTax Self-Employed," and "TurboTax Self-Employed Live").

11. Intuit expressly reserves the right to object, on the ground of competency, relevance, materiality, privilege, or any other applicable ground, to the use of responses, in whole or in part, provided to these Requests or the subject matter thereof, in any subsequent proceeding in this or any other action.

12. As it has throughout the investigation, Intuit intends to search for and produce responsive information pertinent to the case in good faith. Intuit has attempted to explain its objections and what it intends to do with respect to each Request in plain language and is willing and available to meet and confer to discuss its response and objections to any Request where Complaint Counsel has questions or concerns.

SPECIFIC OBJECTIONS AND RESPONSES

Request for Production No. 1:

A copy of each unique TurboTax advertisement that uses or used any of the following words: "free," "zero," "$0," "no cost," or "gratis."

Response to Request for Production No. 1:

In addition to the General Objections set forth above, Intuit objects to this Request to the extent it calls for the production of advertisements containing phrases not referenced in the Complaint. Intuit further objects that the Request seeks entire categories of media not referenced in the Complaint. The Complaint focuses almost exclusively on video advertisements, referencing or discussing only television commercials, video advertisements on YouTube and other forms of social media, display advertisements, and online pay-per-click advertising. The Request is overbroad and unduly burdensome to the extent it seeks advertisements produced or disseminated through other forms of media. Additionally, it is unduly burdensome to require Intuit to produce all responsive social media advertisements because TurboTax is promoted through a wide variety of social platforms, which apart from YouTube, are not referenced in the Complaint.

Intuit further objects to this Request as overly broad and unduly burdensome to the extent it seeks advertisements that simply state, "Start for Free," because the vast majority of advertisements using that phrase are not relevant to the allegations in the Complaint. Therefore, Intuit will not interpret this Request as seeking TurboTax advertisements that only use or used the phrase "Start for Free."

Subject to and without waiving the foregoing General and Specific Objections, Intuit will produce responsive video advertisements displayed on YouTube and responsive television commercials, pay-per-click advertisements, and display advertisements that it locates after a reasonable search. Intuit does not intend to provide advertisements disseminated through other forms of media.

Request for Production No. 2:

All documents relating to any aspect of the creation, development, approval, modification, execution, or evaluation of any advertisement responsive to Request for Production 1, including client briefs, creative briefs, research analyses, point of views, story boards, call reports, meeting reports, or other contact reports.

Response to Request for Production No. 2:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" as to "any aspect" of Intuit's advertising without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. There are tens of thousands of documents related to the creation, development, approval, modification, execution, and evaluation of advertisements that are not relevant to the allegations in the Complaint. The vast majority of decisions related to advertisement production, filming, script writing, directing, tone, staffing, coding and placement do not make it more or less likely that these advertisements were misleading. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request as vague and ambiguous because the terms "point of views," "call reports," "meeting reports," or "other contact reports" are undefined and fail to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as overly broad and unduly burdensome as it relates to advertisements that are no longer being produced by Intuit. Pursuant to Intuit's recent settlement with the Attorneys General of the 50 states and the District of Columbia, Intuit has agreed to remove all of its "Free, Free, Free" advertisements. Ex. A to Notice of Settlement with State Attorneys General at 21, *In the Matter of Intuit Inc.*, Docket No. 9408 (F.T.C. May 5, 2022). Requiring Intuit to collect and review many thousands of documents regarding advertisements that it can no longer run, in an action seeking only injunctive relief, is unduly burdensome given the comparatively small benefit to be obtained.

Intuit further objects to this Request as unreasonably cumulative and duplicative of materials already in the possession of Complaint Counsel. Intuit refers Complaint Counsel to those materials produced in response to the FTC's Civil Investigative Demands issued on June 28, 2019 and May 18, 2020 and will not produce additional documents. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation."). Intuit launched its "Free Free Free" ad campaign, which continued during Tax Years 2020 and 2021, in Tax Year 2018. As a result, Intuit's creation, development, approval, modification, execution, or evaluation of advertisements responsive to Request for Production No. 1 were previously formulated, and therefore responsive documents regarding this strategy would have already been produced to Complaint Counsel.

Intuit further objects to this Request as seeking documents or information protected from disclosure by the attorney-client privilege, the attorney work product protections, or any other privilege, immunity, principle, doctrine, or rule of confidentiality.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 3:

All documents relating to the advertising and marketing strategy associated with any advertisement responsive to Request for Production 1.

Response to Request for Production No. 3:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. There are tens of thousands of documents related to advertising and marketing strategy, including those discussing advertisement production, filming, script writing, directing, tone, staffing, coding and placement that do not make it more or less likely that the advertisements were misleading. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Further, Intuit objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence based on Complaint Counsel's representation to the Commission that "extrinsic evidence" other than Intuit's advertisements is "not required" in this proceeding. *See* Reply ISO MSD 5.

Intuit further objects to this Request as overly broad and unduly burdensome as it relates to advertisements that are no longer being produced by Intuit. Pursuant to Intuit's recent settlement with the Attorneys General of the 50 states and the District of Columbia, Intuit has agreed to remove all of its "Free, Free, Free" advertisements. Ex. A to Notice of Settlement with State Attorneys General at 21, *In the Matter of Intuit Inc.*, Docket No. 9408 (F.T.C. May 5, 2022). Requiring Intuit to collect and review many thousands of documents regarding advertisements that it can no longer run, in an action seeking only injunctive relief, is unduly burdensome given the comparatively small benefit to be obtained.

Intuit further objects to this Request as unreasonably cumulative and duplicative of materials already in the possession of Complaint Counsel. Intuit refers Complaint Counsel to those materials produced in response to the FTC's Civil Investigative Demands issued on June 28, 2019 and May 18, 2020, and will not produce additional documents. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation."). Intuit's advertising and marketing strategy associated with any advertisement responsive to Request for Production No. 1 was previously formulated, and therefore any responsive documents regarding this strategy would have already been produced to Complaint Counsel.

Intuit further objects to this Request as seeking documents or information protected from disclosure by the attorney-client privilege, the attorney work product protections, or any other privilege, immunity, principle, doctrine, or rule of confidentiality.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 4:

All documents relating to data on, or analysis of, consumer perception, comprehension, or recall (including copy tests, focus groups, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, a/b tests, multivariate tests, and communication tests) of any advertisement responsive to Request for Production 1.

Response to Request for Production No. 4:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll DOCUMENTS" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production

Subject to and without waiving the foregoing objections, Intuit will produce responsive, non-privileged documents that it locates after a reasonable search and limited to a reasonable set of custodians.

Request for Production No. 5:

All documents, without regard to the applicable time period, relating to the TurboTax "Power of Free" advertising campaign.

Response to Request for Production No. 5:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request to the extent it is not subject to any temporal limitation. Because this Request seeks documents without any limit to time period, it is unduly burdensome, oppressive, and seeks irrelevant information.

To the extent that there are any responsive documents from before November 1, 2020, Intuit has already performed a reasonable search for such documents, and any such documents located after that reasonable search were produced during the course of the FTC's investigation. Intuit refers Complaint Counsel to those materials produced in response to the FTC's Civil Investigative Demands issued on June 28, 2019 and May 18, 2020 and will not produce additional documents. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation."). Specifically, Intuit produced hundreds of pages of documents relating to advertisements that contained the word "free," including many relating to the "Power of Free" advertising campaign, in its September 13, 2019, October 11, 2019, July 1, 2020, and July 31, 2020 productions. *See* September 13, 2019 Intuit CID Response, GX 60, GX 61, and RX 65. To the extent this Request seeks documents from after November 1, 2020, it is duplicative of documents sought through Requests for Production Nos. 1 and 4.

To the extent the Request seeks documents from after November 1, 2020, it seeks information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. There are many documents related to Intuit's "Power of Free" advertising campaign, including those discussing production, filming, script writing, directing, tone, staffing, coding and placement that do not make it more or less likely that the advertisements were misleading. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request as overly broad and unduly burdensome as it relates to advertisements that are no longer being produced by Intuit. Pursuant to Intuit's recent settlement with the Attorneys General of the 50 states and the District of Columbia, Intuit has agreed to remove all of its "Free, Free, Free" advertisements. Ex. A to Notice of Settlement with State Attorneys General at 21, *In the Matter of Intuit Inc.*, Docket No. 9408 (F.T.C. May 5, 2022). Requiring Intuit to collect and review many thousands of documents regarding advertisements that it can no longer run, in an action seeking only injunctive relief, is unduly burdensome given the comparatively small benefit to be obtained.

Based on the foregoing objections, Intuit does not intend to provide additional documents in response to this Request, beyond those already provided in response to Requests for Production Nos. 1 and 4.

Request for Production No. 6:

All documents, without regard to the applicable time period, relating to TurboTax Super Bowl advertisements that used any of the following words: “free,” “zero,” “$0,” “no cost,” or “gratis.”

Response to Request for Production No. 6:

In addition to the General Objections set forth above, Intuit objects to this Request for “[a]ll documents” without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as vague and ambiguous because the term “TurboTax Super Bowl advertisements” is undefined and fails to identify the documents sought with reasonable particularity, and because it is unclear what it means for a document to “relat[e] to” a “TurboTax Super Bowl advertisement.”

Intuit further objects to this Request to the extent it is not subject to any temporal limitation. Because this Request seeks documents without any limit to time period, it is unduly burdensome, oppressive, and seeks irrelevant information.

To the extent that there are any responsive documents from before November 1, 2020, Intuit has already performed a reasonable search for such documents, and any such documents located from that reasonable search were produced during the course of the FTC's investigation. Intuit refers Complaint Counsel to those materials produced in response to the FTC's Civil Investigative Demands issued on June 28, 2019 and May 18, 2020 and will not produce additional documents. *See* April 27, 2022 Scheduling Order ¶ 7 ("Respondent will not be required to produce to Complaint Counsel in its initial disclosures or in response to any discovery request any documents produced by Respondent to Complaint Counsel in the course of the investigation."). Specifically, Intuit produced hundreds of pages of documents relating to advertisements that contained the word "free," including many relating to its Super Bowl advertisements, in its September 13, 2019, October 11, 2019, July 1, 2020, and July 31, 2020 productions. *See* September 13, 2019 Intuit CID Response, GX 60, GX 61, and RX 65. To the extent this Request seeks documents from after November 1, 2020, it is duplicative of documents sought through Requests for Production Nos. 1 and 4. Super Bowl advertisements using the words, "free," "zero," "0," "no cost," or "gratis," are a subset of the advertisements requested by Request for Production No. 1. Moreover, internal documents discussing these advertisements will be produced in Intuit's responses to Requests for Production No. 4, subject to Intuit's objections to these Requests.

Additionally, Intuit objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. Intuit has not run a "free" Super Bowl ad in many years and any responsive documents would have been captured by responses to the FTC's Civil Investigative Demands. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the

Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request as overly broad and unduly burdensome as it relates to advertisements that are no longer being produced by Intuit. Pursuant to Intuit's recent settlement with the Attorneys General of the 50 states and the District of Columbia, Intuit has agreed to remove all of its "Free, Free, Free" advertisements. Ex. A to Notice of Settlement with State Attorneys General at 21, *In the Matter of Intuit Inc.*, Docket No. 9408 (F.T.C. May 5, 2022). Requiring Intuit to collect and review many thousands of documents regarding advertisements that it can no longer run, in an action seeking only injunctive relief, is unduly burdensome given the comparatively small benefit to be obtained.

Based on the foregoing objections, Intuit does not intend to provide additional documents in response to this Request, beyond those already provided in response to Requests for Production Nos. 1 and 4.

Request for Production No. 7:

All documents relating to the creation, content, placement, use, approval, modification, or rejection of any disclaimers or disclosures used in any advertisement responsive to Requests for Production 1.

Response to Request for Production No. 7:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as seeking documents or information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other privilege, immunity, principle, doctrine, or rule. Moreover, to the extent this Request seeks documents that are not privileged, Intuit objects to this Request as overly broad and unduly burdensome because it is duplicative of documents sought through Requests for Production Nos. 1 and 4. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request, beyond those already provided in response to Requests for Production Nos. 1 and 4.

Request for Production No. 8:

For any advertisement responsive Request for Production 1, documents sufficient to show the beginning and ending dates of dissemination, audience size, and the times and locations the ads were disseminated.

Response to Request for Production No. 8:

Intuit objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objection, Intuit will produce responsive, non-privileged documents that it locates after a reasonable search.

Request for Production No. 9:

For print ads responsive Request for Production 1, produce documents sufficient to show every publication in which the ads were disseminated.

Response to Request for Production No. 9:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "print ads" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence because it seeks information that is not relevant to the allegations in the Complaint. The Complaint focuses almost exclusively on video advertisements, referencing or discussing only television commercials, video advertisements on YouTube and other forms of social media, display advertisements, and online pay-per-click advertising. The FTC does not refer to "print advertisements" in its Complaint. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request because it is unnecessarily cumulative and duplicative of documents sought through Request for Production No. 8.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request, beyond those already provided in response to Request for Production No. 8.

Request for Production No. 10:

For video, television and radio ads responsive to Request for Production 1, documents sufficient to show every network, system, streaming service, or station in which the ads were disseminated.

Response to Request for Production No. 10:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "video … ads" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence because it seeks information that is not relevant to the allegations in the Complaint. The Complaint focuses almost exclusively on video advertisements, referencing or discussing only television commercials, video advertisements on YouTube and other forms of social media, display advertisements, and online pay-per-click advertising. The FTC does not refer to "radio ads" in its Complaint. Advertisements produced or disseminated through radio are therefore not relevant to this proceeding. Additionally, the channels through which Intuit's advertisements are disseminated are not relevant to the allegations in the Complaint. Where Intuit broadcasts or publishes an advertisement does not make it more or less likely that the advertisement in question is in some way misleading. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request as unnecessarily cumulative and duplicative of documents sought through Request for Production No. 8.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request, beyond those already provided in response to Request for Production No. 8.

Request for Production No. 11:

For internet ads responsive Request for Production 1, documents sufficient to show the platform used (e.g., mobile, desktop); its successfulness in driving traffic to the TurboTax website (e.g., click-through rates per ad, keyword or campaign; traffic and cost statistic per ad, keyword or campaign; impressions; quality scores; cross device conversion rates); and the URL of the landing page each advertisement directed the consumer to.

Response to Request for Production No. 11:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the terms "internet ads," "quality scores," and "cross device conversion rates" are undefined and fail to identify the documents sought with reasonable particularity. Intuit further objects to this Request as overly broad, unduly burdensome, and oppressive to the extent that it purports to include advertisements on social media channels as a type of internet advertisement. For purposes of responding to this Request, Intuit will interpret "internet advertisements" to include only pay-per-click and display advertisements.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objections, Intuit will agree to perform a reasonable search for and produce documents sufficient to show the information requested for pay-per-click advertisements and display advertisements.

Request for Production No. 12:

For any advertisement responsive Request for Production 1, documents sufficient to identify the cost of each advertisement.

Response to Request for Production No. 12:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "cost of each advertisement" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. The cost associated with each of TurboTax's advertisements is not relevant to this proceeding, as the dollar amounts that Intuit spent on each of its advertisements is not relevant to whether these advertisements were in some way misleading. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 13:

For any advertisement responsive Request for Production 1, documents sufficient to identify the revenue directly or indirectly derived from each advertisement.

Response to Request for Production No. 13:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "indirectly derived" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. The revenue associated with each of TurboTax's advertisements is not relevant to this proceeding, to the extent it can even be discerned. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to

Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Intuit further objects to this Request as seeking information that does not exist because Intuit cannot determine that a specific advertisement is responsible for a certain dollar amount of revenue.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 14:

Documents relating to the return on investment (ROI) or monetization of TurboTax advertisements that use or used any of the following words: "free," "zero," "$0," "no cost," or "gratis" or customers acquired by the company through such ads.

Response to Request for Production No. 14:

Intuit objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objection, Intuit will produce responsive, non-privileged documents that it locates after a reasonable search and limited to a reasonable set of custodians.

Request for Production No. 15:

All documents regarding the use of the phrase "simple U.S. tax returns" in TurboTax advertisements, including on websites.

Response to Request for Production No. 15:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as vague and ambiguous because the term "regarding the use of the phrase 'simple U.S. tax returns'" fails to identify the documents sought with reasonable particularity. Intuit further objects to this Request as seeking documents or information protected from disclosure by the attorney-client privilege, the attorney work product protections, or any other privilege, immunity, principle, doctrine, or rule of confidentiality.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking

Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objections, Intuit will produce responsive, non-privileged documents that it locates after a reasonable search and limited to a reasonable set of custodians.

Request for Production No. 16:

Copies of all materially different consumer-facing popups or websites describing Intuit's eligibility restrictions for using a TurboTax product or service for free.

Response to Request for Production No. 16:

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objection, Intuit will produce responsive, non-privileged documents that it locates after a reasonable search.

Request for Production No. 17:

Copies of all materially different websites that include the terms "for simple U.S. returns only," "for simple returns," "simple tax returns," or "see why it's free."

Response to Request for Production No. 17:

In addition to the General Objections set forth above, Intuit objects to this Request as overly broad, unduly burdensome and oppressive, because the terms "for simple U.S. returns only," "for simple returns," "simple tax returns," or "see why it's free," may appear in the footer disclosure drop-down on every single webpage. Producing each of these websites would be unduly burdensome, given that the drop-downs are substantially similar on each web page, of which there are nearly 1,000.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit refers Complaint Counsel to materials produced in response to the FTC's Civil Investigative Demands issued on June 28, 2019 and May 18, 2020, specifically the TurboTax commercial websites including the word "free" that Intuit produced to the FTC as part of its September 13, 2019 production. *See* September 13, 2019

Intuit CID Response, GX 60, GX 61, and RX 65. To the extent there are any responsive documents beyond those already produced to the FTC, Intuit notes that Complaint Counsel appears to have been tracking the webpages that include the above terms, and therefore it is unnecessary for Intuit to provide these publicly available materials that are already in Complaint Counsel's possession.

Request for Production No. 18:

All documents relating to data on, or analysis of, consumer perception, comprehension, or recall (including copy tests, focus groups, marketing or consumer surveys and reports, penetration tests, recall tests, audience reaction tests, a/b tests, multivariate tests, and communication tests) about the cost of TurboTax products or services.

Response to Request for Production No. 18:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as overly broad, unduly burdensome, and oppressive because it is not limited to consumer perception, comprehension, or recall of TurboTax Free Edition advertisements, and whether these advertisements influence consumers' perceptions about their ability to file their taxes for free with TurboTax.

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. As drafted, this Request includes documents discussing perceptions of TurboTax's paid tax filing products, and even TurboTax services beyond tax preparation, none of which is relevant to any allegation in the Complaint. Moreover, to the extent that this Request seeks documents related to consumer perception of TurboTax's "Free" advertisements, it is duplicative of Request for Production No. 4. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request, beyond those already provided in response to Request for Production No. 4.

Request for Production No. 19:

All documents related to complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so.

Response to Request for Production No. 19:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as vague and ambiguous because the term "expected to file their taxes for free" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that does not exist, as it would require Intuit to speculate as to the actual expectations of consumers in order to respond. Intuit cannot know what exactly each consumer "expected" before filing with TurboTax.

Intuit further objects to this Request as overly broad, unduly burdensome, and seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence because it encompasses documents related to complaints about free offers other than TurboTax Free Edition. Complaints from consumers who expected to file their taxes for free for some reason other than a TurboTax advertisement are also not relevant to this proceeding. Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objections, Intuit will produce responsive documents that it locates after a reasonable search that discuss customer complaints and feedback from consumers who indicated that they believed from advertisements that they could file their taxes for free using TurboTax Free Edition but were not eligible to do so.

Request for Production No. 20:

All documents related to employee complaints or negative employee feedback regarding the TurboTax advertisements that use the terms "free," "zero," "$0," "no cost," or "gratis."

Response to Request for Production No. 20:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further responds that, based on its review of thousands of documents collected during the FTC's initial investigation as well as this proceeding, it is not aware of any documents that discuss employee complaints or negative employee feedback regarding TurboTax "Free" advertisements. Moreover, Intuit objects to this Request as overly broad and unduly burdensome because it is duplicative of documents sought through other Requests. To the extent that any such documents exist, they will be captured by the searches that Intuit intends to run for other Requests.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to

Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide additional documents in response to this Request, beyond those already provided in response to the other Requests for Production.

Request for Production No. 21:

Documents sufficient to show each different customer service script or frequently asked questions (FAQs) used by the company to communicate with consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so, and the time period during which each script or FAQ was used.

Response to Request for Production No. 21:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "expected" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as seeking information that does not exist, as it would require Intuit to speculate as to the expectations of consumers in order to respond. Intuit cannot know what exactly each consumer "expected" before filing with TurboTax

Intuit further objects to this Request as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. This Request seeks customer service scripts used by Intuit to communicate with consumers, yet Intuit does not sell its TurboTax Online products over the phone, and these scripts do not contain advertising or marketing tactics. Moreover, the Complaint does not contain allegations that any deception occurred during phone conversations between Intuit's customer service representatives and consumers.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 22:

All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

Response to Request for Production No. 22:

In addition to the General Objections set forth above, Intuit objects to this Request as overly broad, unduly burdensome, and oppressive, and as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence because much of the information in these databases related to customers or prospective customers who selected a free offer is not relevant to any issue material to this proceeding.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 23:

The schema for any CRM or other database containing the data requested in Request for Production 22, including tables, fields, and relationships between tables and fields used in those databases.

Response to Request for Production No. 23:

In addition to the General Objections set forth above, Intuit objects to this Request as vague and ambiguous because the term "schema" is undefined and fails to identify the documents sought with reasonable particularity.

Intuit further objects to this Request as overly broad, unduly burdensome, and oppressive, and as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence. The burden associated with producing documents in response to Requests for Production Nos. 22 and 23 is disproportionate to any resulting benefit. Much of the information in these databases related to customers or prospective customers who selected a free offer is not relevant to any issue material to this proceeding.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 24:

Data related to negative consumer feedback or complaints about free offers pertaining to TurboTax, including data that is not captured in your CRM.

Response to Request for Production No. 24:

In addition to the General Objections set forth above, Intuit objects to this Request as overly broad, unduly burdensome, and oppressive, and as seeking information that is neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence because it seeks data related to customer feedback or complaints that are not relevant to any issue material to this proceeding. Intuit further objects to this Request as vague and ambiguous because the phrase "free offers pertaining to TurboTax" is not defined and Intuit offers a wide range of "free offers" on its TurboTax products, many of which are not relevant to any issue material to this proceeding.

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Based on the foregoing objections, Intuit does not intend to provide documents in response to this Request.

Request for Production No. 25:

All documents related to any arbitration filed against Intuit related to free offers pertaining to TurboTax.

Response to Request for Production No. 25:

In addition to the General Objections set forth above, Intuit objects to this Request for "[a]ll documents" without limitation as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case.

Intuit further objects to this Request as seeking documents or information protected from disclosure by the attorney-client privilege, the attorney work product protections, or any other privilege, immunity, principle, doctrine, or rule of confidentiality.

Moreover, Intuit objects to this Request as overly broad, unduly burdensome, oppressive, not reasonably particularized, and not proportional to the needs of the case as to any electronically stored information provided to the claimants in the arbitration proceedings. The vast majority of these documents are either irrelevant to the current proceeding or have already been produced to the FTC. Moreover, blanket requests for "cloned" discovery, regardless of time period or subject matter are not reasonably particularized to the needs of this case and are beyond the scope of allowable discovery. *See Ludlow v. Flowers Foods, Inc.*, 2019 U.S. Dist. LEXIS 203496, at *53 (S.D. Cal. 2019) ("Asking for all documents produced in another matter is not generally proper.").

Intuit also objects to this Request on the ground that the burden and expense of the proposed discovery outweighs its likely benefit to Complaint Counsel. *See* § 3.31(c)(2)(iii). Complaint Counsel have already filed a motion for summary decision to the Commission, representing that the record is sufficiently complete to allow judgment as a matter of law. Complaint Counsel made no representation to the Commissioners that discovery was ongoing or that any additional discovery was necessary to prosecute its case. Thus, taking Complaint Counsel's representations at their word, the information is likely to be of no benefit to Complaint Counsel while imposing substantial costs to Intuit associated with collection, review, and production.

Subject to and without waiving the foregoing objections, Intuit will produce all arbitration decisions from any arbitration filed against Intuit related to free offers pertaining to

TurboTax., as well as all settlement agreements and releases executed in connection with such proceedings.

Dated: October 3, 2022

Respectfully submitted,

WILMER CUTLER PICKERING HALE AND DORR LLP

/s/ David Z. Gringer

David Z. Gringer
7 World Trade Center
250 Greenwich St.
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Telephone: (212) 230-8800
Facsimile: (212) 230-8888
David.Gringer@wilmerhale.com

Jonathan E. Paikin
Jennifer Milici
Derek A. Woodman
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Washington, DC 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363
Jonathan.Paikin@wilmerhale.com
Jennifer.Milici@wilmerhale.com
Derek.Woodman@wilmerhale.com

Attorneys for Respondent Intuit Inc.

CERTIFICATE OF SERVICE

I certify that on October 3, 2022 I caused the foregoing document to be served via email to:

Roberto Anguizola
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: ranguizola@ftc.gov
Tel: (202) 326-3284

Rebecca Plett
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: rplett@ftc.gov
Tel: (202) 326-3664

James Evans
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: jevans1@ftc.gov
Tel: (202) 326-2026

Counsel Supporting the Complaint

Dated: October 3, 2022

Respectfully submitted,

/s/ Derek A. Woodman
Derek A. Woodman
Counsel for Intuit Inc.

Declaration of R. Anguizola

EXHIBIT D

From: Anguizola, Roberto
To: Gringer, David; Woodman, Derek
Cc: Jacob, Reade; Mackey, Katherine; Martin, Shelby L.; Silos, Phoebe; Bridge, Charles; Milici, Jennifer; Paikin, Jonathan; Davis, Eleanor; Plett, Rebecca; Evans, James; Tonnesen, Sara
Subject: RE: In re Intuit Inc., Docket No. 9408 - Confirming deposition dates
Date: Wednesday, October 26, 2022 2:05:00 PM

David,

Thank you for the update.

Based on the additional information you provided, we would like to adjust the schedule for Intuit witnesses as follows:

- [redacted]: Nov. 8
- [redacted]: Nov 10
- [redacted] (and Intuit on certain topics): Nov. 18
- [redacted]: Nov. 30 (previously Nov. 18, rescheduled to accommodate [redacted])
- [redacted]: Dec. 2
- [redacted]: TBD (noticed for Nov. 18, but we are now agreeing to conduct [redacted] deposition that day)
- Intuit: TBD based on witnesses Intuit designates

Availability for FTC witnesses noticed by Intuit appears below:

- Bureau of Consumer Protection, under 16 C.F.R. § 3.33(c) (Assistant Director Will Maxson will be the designee): Nov. 29
- FTC Investigator Diana Shiller: Available any day the week of January 9 or any day the week of January 16, 2023. [redacted] We will consent to the taking of this deposition after the close of fact discovery. Please let us know what date works.
- Nathan Novemsky: Feb. 1, 2023 at 9am ET (Professor Novemsky is holding this date, please confirm)
- FTC Data Analyst Megan Baburek: TBD. Intuit has not yet produced the CRM data she will likely analyze. When we have a better idea of when Intuit will produce the CRM data, we will have a better idea of when we can make Ms. Baburek available. We reiterate our request for a schema of Intuit's CRM database(s) and our invitation to make Ms. Baburek available for a meet and confer with Intuit's relevant database personnel to come up with the most efficient and cost effective way for Intuit to produce the consumer data Complaint Counsel has requested.

Regards,

Roberto Anguizola
Federal Trade Commission

FTC BCP/DMP, CC-8602
Org 1144, Mailstop CC-6316
600 Pennsylvania Ave., NW
Washington, DC 20580
Cell: (202) 256-0452 (preferred)
Telephone: (202) 326-3284
E-mail: ranguizola@ftc.gov

From: Gringer, David <David.Gringer@wilmerhale.com>
Sent: Wednesday, October 26, 2022 10:05 AM
To: Anguizola, Roberto <ranguizola@ftc.gov>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Confirming deposition dates

Roberto,

As I promised, you are the first to learn (after me) that WilmerHale will be representing [redacted] in connection with this proceeding. We will be speaking with her later this week about her schedule and will report back on date(s) that work for her.

In addition, we have dates for two other Intuit employees:

[redacted]-11/10

[redacted] (and Intuit on certain topics)-11/18. We will identify those topics [redacted] will be testifying about once we reach an agreement on the scope of the topics themselves.

Can you please let us know the dates that work for Intuit's noticed depositions?

Thanks,

David

David Gringer | WilmerHale
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+1 917 747 0731 (c)
david.gringer@wilmerhale.com

Please consider the environment before printing this email.

From: Gringer, David
Sent: Tuesday, October 25, 2022 1:21 PM
To: Anguizola, Roberto <ranguizola@ftc.gov>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Confirming deposition dates

Roberto,

Just to be clear, I have not yet offered a date for [redacted], but I'll see if December 1 works. If and when we have something to report on [redacted], I promise that you will be the first to know.

Thanks,

David

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+1 917 747 0731 (c)
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Please consider the environment before printing this email.

PUBLIC

postmaster@wilmerhale.com—and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at http://www.wilmerhale.com.

From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Tuesday, October 25, 2022 1:19 PM
To: Gringer, David <David.Gringer@wilmerhale.com>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Confirming deposition dates

EXTERNAL SENDER

David,

Thank you. We can make the proposed dates work. Let's plan on:

[redacted]: Dec. 2
[redacted]: Nov. 8
Intuit: Nov. 30
[redacted]: Dec. 1
[redacted]: Nov. 18 (assuming we can reschedule [redacted] who is currently noticed for Nov. 18)

Have you determined whether you are going to represent [redacted]?

Regards,

Roberto Anguizola
Federal Trade Commission
FTC BCP/DMP, CC-8602
Org 1144, Mailstop CC-6316
600 Pennsylvania Ave., NW
Washington, DC 20580
Cell: (202) 256-0452 (preferred)
Telephone: (202) 326-3284
E-mail: ranguizola@ftc.gov

From: Gringer, David <David.Gringer@wilmerhale.com>
Sent: Tuesday, October 25, 2022 9:58 AM
To: Anguizola, Roberto <ranguizola@ftc.gov>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Meet & Confer re: Notice of Deposition to Intuit & Other Topics

Complaint Counsel,

We have some dates for depositions for certain of the witnesses you have identified. To hold these dates, please confirm that they work no later than tomorrow at 5PM ET:

[redacted]-Nov. 18 or Dec. 2

[redacted]-Nov. 8

Intuit (we anticipate that we will have some topics covered by one or more individuals not currently being deposed. We anticipate that [redacted] will serve as designee on other topics.): Nov. 30 or Dec. 1

[redacted]-Nov. 18, Nov. 30, or Dec. 2.

Also, [redacted] has not been employed at Intuit this year. We are not yet her counsel and cannot accept service on her behalf at this time.

Sincerely,

David

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david.gringer@wilmerhale.com

Please consider the environment before printing this email.

From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Monday, October 24, 2022 3:03 PM
To: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: In re Intuit Inc., Docket No. 9408 - Meet & Confer re: Notice of Deposition to Intuit & Other Topics

EXTERNAL SENDER

Dear Counsel,

Thank you. We received your correspondence concerning Complaint Counsel's Notice of Deposition to Respondent Intuit Inc. We are available to meet and confer on the deposition topics and your objections anytime 12PM – 4PM on Tuesday, 10/25. Also available on Wednesday, 10/26.

We also reiterate our request to meet and confer on the following topics:

1. Complaint Counsel's contemplated Motion to Strike Affirmative Defenses;
2. Complaint Counsel's contemplated Motion for Appointment of a Consumer Ombuds (to assist unrepresented consumer third parties that have received burdensome discovery requests from Respondent); and
3. The deposition schedule for Intuit and FTC witnesses, including the deposition of FTC Investigator Diana Shiller.

Please let us know your availability for a Zoom meeting.

Regards,

Roberto Anguizola
Federal Trade Commission
FTC BCP/DMP, CC-8602
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600 Pennsylvania Ave., NW
Washington, DC 20580
Cell: (202) 256-0452 (preferred)
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E-mail: ranguizola@ftc.gov

From: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Sent: Friday, October 21, 2022 10:36 PM
To: Tonnesen, Sara <stonnesen@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>; Harris, Thomas <tharris1@ftc.gov>; Goodman, Jody <jgoodman1@ftc.gov>; Robbins, Colleen B. <CROBBINS@ftc.gov>; Rosa, Virginia <vrosa@ftc.gov>; Brooke, J. Ronnie <JBROOKE@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>; Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>
Subject: In re Intuit Inc., Docket No. 9408 - Notice of Deposition to Intuit

Counsel,

Please find attached correspondence concerning Complaint Counsel's Notice of Deposition to Respondent Intuit Inc.

Best,
Derek

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Please consider the environment before printing this email.

For more information about WilmerHale, please visit us at http://www.wilmerhale.com.

Declaration of R. Anguizola

EXHIBIT E

WILMERHALE

November 1, 2022

Benjamin Chapin

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Rebecca Plett, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: *In the Matter of Intuit Inc.*, Docket No. 9408

Ms. Plett:

We will be sending today via secure file transfer documents responsive to Complaint Counsel's First Set of Requests for Production of Documents, dated September 12, 2022, consistent with Intuit's Responses and Objections thereto. The volume name is INTUIT-FTC-PART3-VOL-004. Today's production includes [redacted] responsive to the FTC's Request for Documents No. 23. The documents are Bates-labeled INTUIT-FTC-PART3-000490025 through INTUIT-FTC-PART3-00040027. The custodian for all records in today's production is Intuit Inc. Please note that the files have been encrypted and the associated password will be provided separately via e-mail.

Pursuant the Protective Order Governing Confidential Material in this proceeding, certain documents in this production have been designated as confidential material.

Sincerely,

/s/ Benjamin Chapin

Benjamin Chapin

cc: Roberto Anguizola, Esq., Federal Trade Commission
James Evans, Esq., Federal Trade Commission

Declaration of R. Anguizola

EXHIBIT F

In the Matter of:

Intuit, Inc.

November 15, 2022
[redacted] *- 3.33(c)*

Condensed Transcript with Word Index

For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

FEDERAL TRADE COMMISSION

IN THE MATTER OF:)
Intuit Inc.,) Docket No. 9408
a corporation,)
Respondent.)
________________________________)

Tuesday, November 15, 2022
Via Zoom Videoconference

The above-entitled matter came on for oral examination, pursuant to notice, at 6:19 p.m. Eastern Time, for the testimony of:

[redacted]
3.33(c)

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

For the Federal Trade Commission:
SARA TONNESEN, ESQ.
ROBERTO ANGUIZOLA, ESQ.
REBECCA PLETT, ESQ.
JAMES EVANS, ESQ.
Federal Trade Commission
600 Pennsylvania Avenue, NW, CC-6316
Washington, DC 20580
202.326.2879
stonnesen@ftc.gov
ranguizola@ftc.gov
rplett@ftc.gov
jevans1@ftc.gov

For Intuit and the Witness:

DEREK WOODMAN, ESQ.
JOSS BERTEAUD, ESQ.
ANDRES C. SALINAS, ESQ.
Wilmer Cutler Pickering Hale and Dorr, LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
202.663.6980
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202.663.6213
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202.663.6289
andres.salinas@wilmerhale.com

[redacted]

REPORTER'S NOTES:
QUOTATION MARKS ARE USED FOR CLARITY AND DO NOT NECESSARILY REFLECT A DIRECT QUOTE

PROPER NAMES ARE PHONETICALLY SPELLED UNLESS STATED ON THE RECORD

[redacted]
was called as a witness and, after having been first duly sworn, testified as follows:

E X A M I N A T I O N

[redacted]

5

[redacted]

6

[redacted]

7

[redacted]

8

[redacted]

9

[redacted]

11

[redacted]

10

[redacted]

12

[redacted]

13

[redacted]

15

[redacted]

14

[redacted]

16

[redacted]

PUBLIC

Declaration of R. Anguizola

EXHIBIT G

From: Woodman, Derek
To: Tonnesen, Sara; Evans, James; Plett, Rebecca; Anguizola, Roberto
Cc: Perkins, Vinecia; Salinas, Andres C.; Todd, Spencer L.; Berteaud, Joss; Chapin, Benjamin; Dillaway, Molly; Jacob, Reade; Mackey, Katherine; Martin, Shelby L.; Silos, Phoebe; Bridge, Charles; Milici, Jennifer; Paikin, Jonathan; Gringer, David; Davis, Eleanor
Subject: In re Intuit Inc., Docket No. 9408 - Data Analyst Deposition
Date: Tuesday, November 22, 2022 10:29:38 PM

Counsel,

As Complaint Counsel have neither identified the unnamed data analyst included on your witness list nor provided any documents responsive to Intuit's RFP No. 36, it is not appropriate to proceed with next Wednesday's scheduled deposition of that individual. We propose postponing this deposition until two weeks after Complaint Counsel identify the data analyst and provide Intuit with documents or information related to any analysis performed by that witness, to occur no later than January 13, 2023.

Please let us know by the end of the day tomorrow (Wednesday, Nov. 23) whether Complaint Counsel agree with that timeline. If Complaint Counsel no longer intend to offer testimony from a data analyst, please let us know as soon as practicable that is the case.

Best,
Derek

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derek.woodman@wilmerhale.com

PUBLIC

Declaration of R. Anguizola

EXHIBIT H

PUBLIC

From: Gringer, David
To: Anguizola, Roberto; Woodman, Derek
Cc: Perkins, Vinecia; Salinas, Andres C.; Todd, Spencer L.; Berteaud, Joss; Chapin, Benjamin; Dillaway, Molly; Jacob, Reade; Mackey, Katherine; Martin, Shelby L.; Silos, Phoebe; Bridge, Charles; Milici, Jennifer; Paikin, Jonathan; Davis, Eleanor; Tonnesen, Sara; Plett, Rebecca; Evans, James
Subject: Re: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit"s Second Set of Interrogatories)
Date: Wednesday, November 23, 2022 7:28:26 PM

Roberto,

This is why it is important to make a written record of issues. I remember you saying something at a meet and confer, and us telling you that you needed to give us advance notice before you raised something and James committing to send us a letter which you never did.

We have lots of objections none of which you have addressed and the time for raising the issue has long passed. We can have a brief conversation about this at the end of our meet and confer if you like but it seems like you are only raising this to distract from the issues that we have raised like your deficient privilege log.

Happy Thanksgiving.

David

David Gringer | WilmerHale
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250 Greenwich Street
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+1 917 747 0731 (c)
david.gringer@wilmerhale.com

From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Wednesday, November 23, 2022 7:08 PM
To: Gringer, David <David.Gringer@wilmerhale.com>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>

Subject: RE: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit's Second Set of Interrogatories)

EXTERNAL SENDER

Dear David,

Thank you for your email.

In a previous meet and confer, we engaged with defense counsel on the CRM data that we requested in Complaint Counsel's First Set of Requests for Production of Documents to Intuit Inc. I was suggesting a follow up discussion at our upcoming meet and confer. Specifically, request for production no. 22 provides:

> **Request for Production No. 22:**
> All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

The applicable time period for this request is: documents created after November 1, 2020.

As we have offered before, we are willing to narrow our request by limiting the data fields covered by this request if that would lessen Intuit's production burden. To that end, we asked Intuit to produce a CRM schema or diagram to help us identify the relevant data fields within the Intuit CRM and potentially narrow the data Intuit would have to produce. Instead of a CRM schema, [redacted] Without that information, it is difficult to narrow our request beyond the temporal narrowing that was already part of our original request. If it would be helpful to Intuit, we are willing to conduct a meet and confer that would include our data analyst, Megan Baburek, and the relevant database personnel at Intuit. Please let us know.

If instead, Intuit is going to stand on its objections and does not intend to produce the CRM data we have requested, please let us know. We sincerely hope that is not the case because we think we can reach a compromise that would allow Complaint Counsel to receive the relevant data while minimizing the burden on Intuit.

Best regards,

Roberto Anguizola

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From: Gringer, David <David.Gringer@wilmerhale.com>
Sent: Wednesday, November 23, 2022 5:42 PM
To: Anguizola, Roberto <ranguizola@ftc.gov>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: Re: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit's Second Set of Interrogatories)

Roberto,

We have no idea what issue you are referring to, so I suggest that you send us a written description of the issue ahead of the call, otherwise we won’t be able to engage with you. I don’t understand why this is so hard for you to do.

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david.gringer@wilmerhale.com

From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Wednesday, November 23, 2022 5:31:47 PM
To: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: Re: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit's Second Set of Interrogatories)

EXTERNAL SENDER

Derek,

Thank you.

We can meet and confer anytime after 2PM on Thursday, Dec. 1. In addition to the topics you identified, we will want to discuss the CRM data Intuit has not yet produced.

We wish you and your team a Happy Thanksgiving.

Regards,

Robert

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From: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Sent: Wednesday, November 23, 2022 4:58:20 PM
To: Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>;

Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit's Second Set of Interrogatories)

Roberto,

Thank you for your response regarding your responses and objections to our Second Set of Interrogatories. We would like to further discuss your response to Interrogatory No. 17—are you available to meet and confer next Thursday or Friday?

In addition, we have not heard from you in response to several letters we have sent requesting to meet and confer on other issues, which we would like to discuss at the same time. Those outstanding issues were raised in the following letters:

- November 2, 2022 letter regarding Intuit's Third Set of Requests for Production
- November 11, 2022 letter regarding Intuit's Fourth Set of Requests for Production
- November 21, 2022 letter regarding Intuit's Third Set of Interrogatories
- November 22, 2022 letter regarding Complaint Counsel's first Privilege Log

Best,
Derek

Derek A. Woodman | WilmerHale
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From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Thursday, November 17, 2022 2:33 PM
To: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>; Tonnesen, Sara <stonnesen@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Meet and Confer (Intuit's Second Set of Interrogatories)

EXTERNAL SENDER

Derek,

Thank you for your email following up on our responses and objections to Intuit's Second Set of Interrogatories.

First, you ask whether Complaint Counsel has relied on any privilege assertion to withhold any information or otherwise limit a response and, if so, what privilege we relied on. Our intent was to provide responsive information while preserving all applicable privileges. We maintain that our interrogatory responses as written achieve that purpose. Without waiving any privileges asserted in our interrogatory answers, I can confirm that we have not withheld any information or otherwise limited a response to Intuit's Second Set of Interrogatories based on any privilege assertion.

Second, you ask whether Complaint Counsel will revise its response to Interrogatory No. 17 "to remove or, as appropriate, to supplement the improper references to previous legal submissions and other lawsuits." Complaint Counsel's response to Interrogatory No. 17 was appropriate. As the October 31 Order Granting In Part and Denying In Part Respondent's Motion to Compel Responses to Intuit's First Set of Interrogatories ("October 31 Order") makes clear, it is appropriate for an interrogatory answer to reference documents where, as here, the answer contains sufficient detail to permit the interrogating party to identify the individual documents from which the answer may be ascertained. October 31 Order at p. 5 (citing cases). Complaint Counsel's response to Interrogatory No. 17 appropriately explains that Intuit's alleged conduct itself (the wide dissemination of deceptive ads) is evidence of its egregiousness. In addition to this narrative answer, Complaint Counsel also references specific documents that support Complaint Counsel's response and from which an answer to the interrogatory may be ascertained. Complaint Counsel also appropriately references other cases involving the deception alleged in the Complaint. To the extent Intuit had any doubt, those cases should have put it on notice that its conduct was deceptive. Continuing the deception after that point was also "notoriously egregious." Moreover, for purposes of this proceeding, Complaint Counsel does not have to show that Intuit's deception was "egregious." Therefore, Interrogatory No. 17 is completely irrelevant and not likely to lead to the discovery of admissible evidence.

If you would like to engage in further discussion on this topic, please let us know your availability.

Kind regards,

Roberto Anguizola
Federal Trade Commission
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600 Pennsylvania Ave., NW
Washington, DC 20580
Cell: (202) 256-0452 (preferred)
Telephone: (202) 326-3284
E-mail: ranguizola@ftc.gov

From: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Sent: Tuesday, November 15, 2022 11:30 AM
To: Tonnesen, Sara <stonnesen@ftc.gov>; Evans, James <jevans1@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Meet and Confer

Counsel,

I write to follow up on the outstanding points regarding Intuit's Second Set of Interrogatories. Specifically, you have not responded to our email below regarding the following:

- If you have relied on any privilege assertion to withhold any information or otherwise limit a response and, if so, what privilege you relied on; and
- Whether you will revise your response to Interrogatory No. 17 to remove or, as appropriate, to supplement the improper references to previous legal submissions and other lawsuits.

Particularly given Chief Judge Chappell's ruling on our motion to compel regarding our First Set of Interrogatories, we do not believe there should be any genuine dispute regarding your obligation on these two points. If you disagree, please explain your position so we can engage in a productive discussion on these issues.

Best,
Derek

Derek A. Woodman | WilmerHale
+1 202 663 6980 (t)

From: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Sent: Tuesday, November 1, 2022 10:27 PM
To: Tonnesen, Sara <stonnesen@ftc.gov>; Evans, James <jevans1@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>;

Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>
Subject: In re Intuit Inc., Docket No. 9408 - Meet and Confer

Counsel,

We wanted to follow up to commemorate a few of the points we discussed during Friday's meet and confer:

- Motion to Strike Intuit's Affirmative Defenses. In the event you file a motion to strike Intuit's affirmative defenses, **you agreed to consider stipulating to an extension of time for Intuit to respond until 14 days after the deposition of Diana Shiller. You said that you would let us know whether you agree to that yesterday.** Please let us know if you will agree to the extension. Otherwise, we will seek the same relief from the Commission.

- Depositions. You stated that you will not be deposing Monica Muilenberg and Heather Hillerman. In addition, **you agreed to check Will Maxson's availability for the deposition of the Bureau on November 28, and dates the week of December 5.** Please let us know his availability. **You also agreed to narrow the topics for Intuit's corporate testimony in accordance with our discussions and will send a revised version of the topics.** Among other modifications, you agreed to the following:

    - To limit the topics to Tax Years 2019-2021, with the exception of what you contend are the Super Bowl ads from Tax Years 2014 and 2015.

    - To consider whether Topic 1 has any component not already covered by the other topics and, if not (as Intuit believes), to withdraw it;

    - To remove the references to "reports" in Topic 3 (in other words, to end the sentence after the phrase "story boards");

    - To search for and identify specific documents relevant to Topics 7 and 8 so as to narrow the topics to those documents;

    - To narrow Topic 9 to the discussion of a "funnel" in RX 52;

    - To withdraw Topics 4, 6, 15, and 16 as duplicative of other Topics.

- Intuit's Second Set of Interrogatories.

    - You stated your position that you are not required to provide any additional information regarding your privilege assertions in your responses, including whether you actually relied on any privilege to withhold any information and, if you did, what privilege you relied on. **You agreed to consider whether to clarify your responses to**

provide additional information. In light of Chief Judge Chappell's ruling yesterday on Intuit's motion to compel, we expect that you will clarify your responses to provide additional information.

- You confirmed that you have not withheld any information because it was publicly available.

- You confirmed the following points: (1) Complaint Counsel's October 17 responses to Intuit's Second Set of Interrogatories set forth all responsive information currently known to Complaint Counsel; (2) Complaint Counsel's representation that you may "change" your responses is limited to circumstances in which you "learn[] that [any] response is in some material respect incomplete or incorrect"; and (3) Complaint Counsel will, as required, timely supplement its October 17 responses to the extent you learn of additional responsive information, whether through the discovery process or otherwise.

- Regarding your responses to Interrogatory Nos. 16 and 17, you also confirmed that you did not withhold any information on the basis of your objection that the Interrogatories sought a legal conclusion. **You agreed to consider whether you will revise your response to remove or supplement the improper references to your previous legal submissions and other lawsuits.**

- <u>Intuit's Second Set of Request for Production of Documents.</u>

  - You confirmed that you will produce the remainder of the responsive documents by this Friday, November 4. You also represented that you will produce a privilege log on November 4 or early next week.

  - You confirmed that you have collected and reviewed documents from the "investigative file" on the shared drive as well as the archives of management-level employees who would not save documents to that file. You confirmed that your search was confined by your understanding of the Rules' requirements, but that you had not additionally narrowed your search or production on the basis of any of your objections regarding burden or overbreadth.

  - You confirmed that the only documents you are withholding because they are already in Intuit's possession are emails between you and WilmerHale employees and that you are not withholding any documents on the basis of your objection that the requests seek documents that are publicly available.

  - You confirmed that you did not withhold any documents responsive to Request 15 on the basis of your relevance objection.

  - You confirmed you would not withhold any documents responsive to Request 16 on the basis of your objections.

  - You affirmed your position regarding the relevance of Requests 17-21 and confirmed you will not search for or produce documents responsive to those requests.

- **You agreed to consider updating your responses to Requests 22 and 23 to identify previously produced documents responsive to those requests**.

Best,
Derek

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derek.woodman@wilmerhale.com

Please consider the environment before printing this email.

PUBLIC

Declaration of R. Anguizola

EXHIBIT I

From: Anguizola, Roberto
To: Woodman, Derek; Tonnesen, Sara; Evans, James; Plett, Rebecca
Cc: Perkins, Vinecia; Salinas, Andres C.; Todd, Spencer L.; Berteaud, Joss; Chapin, Benjamin; Dillaway, Molly; Jacob, Reade; Mackey, Katherine; Martin, Shelby L.; Silos, Phoebe; Bridge, Charles; Milici, Jennifer; Paikin, Jonathan; Gringer, David; Davis, Eleanor
Subject: Re: In re Intuit Inc., Docket No. 9408 - Data Analyst Deposition
Date: Monday, November 28, 2022 10:52:00 PM

Derek,

FTC data analyst Megan Baburek was identified in my email to David Gringer last week. It doesn't make sense to go forward with her deposition until Intuit produces the CRM data we requested. Since Intuit has not yet produced the data, she cannot analyze it. Hopefully we can reach agreement on the production of the CRM data during our meet and confer this Thursday. After the data is produced and Ms. Baburek has a reasonable opportunity to review and analyze it, we will provide her availability for a deposition.

Regards,

Robert Anguizola

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From: Woodman, Derek <Derek.Woodman@wilmerhale.com>
Sent: Monday, November 28, 2022 9:44:06 PM
To: Tonnesen, Sara <stonnesen@ftc.gov>; Evans, James <jevans1@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>
Subject: RE: In re Intuit Inc., Docket No. 9408 - Data Analyst Deposition

Counsel,

You have not responded to my latest email about the deposition of Complaint Counsel's data analyst. Given that silence, and the fact that Complaint Counsel have not yet identified a data analyst just days before that scheduled deposition, we are assuming the deposition will be delayed per our proposed schedule.

Best,
Derek

Derek A. Woodman | WilmerHale

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+1 202 663 6980 (t)

From: Woodman, Derek
Sent: Tuesday, November 22, 2022 10:29 PM
To: Tonnesen, Sara <stonnesen@ftc.gov>; Evans, James <jevans1@ftc.gov>; Plett, Rebecca <rplett@ftc.gov>; Anguizola, Roberto <ranguizola@ftc.gov>
Cc: Perkins, Vinecia <Vinecia.Perkins@wilmerhale.com>; Salinas, Andres C. <Andres.Salinas@wilmerhale.com>; Todd, Spencer L. <Spencer.Todd@wilmerhale.com>; Berteaud, Joss <Joss.Berteaud@wilmerhale.com>; Chapin, Benjamin <Benjamin.Chapin@wilmerhale.com>; Dillaway, Molly <Molly.Dillaway@wilmerhale.com>; Jacob, Reade <Reade.Jacob@wilmerhale.com>; Mackey, Katherine <Katherine.Mackey@wilmerhale.com>; Martin, Shelby L. <Shelby.Martin@wilmerhale.com>; Silos, Phoebe <Phoebe.Silos@wilmerhale.com>; Bridge, Charles <Charles.Bridge@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Gringer, David <David.Gringer@wilmerhale.com>; Davis, Eleanor <Eleanor.Davis@wilmerhale.com>
Subject: In re Intuit Inc., Docket No. 9408 - Data Analyst Deposition

Counsel,

As Complaint Counsel have neither identified the unnamed data analyst included on your witness list nor provided any documents responsive to Intuit's RFP No. 36, it is not appropriate to proceed with next Wednesday's scheduled deposition of that individual. We propose postponing this deposition until two weeks after Complaint Counsel identify the data analyst and provide Intuit with documents or information related to any analysis performed by that witness, to occur no later than January 13, 2023.

Please let us know by the end of the day tomorrow (Wednesday, Nov. 23) whether Complaint Counsel agree with that timeline. If Complaint Counsel no longer intend to offer testimony from a data analyst, please let us know as soon as practicable that is the case.

Best,
Derek

Derek A. Woodman | WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006 USA
+1 202 663 6980 (t)
+1 202 663 6363 (f)
derek.woodman@wilmerhale.com

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Declaration of R. Anguizola

EXHIBIT J

From: Anguizola, Roberto
To: Gringer, David; Paikin, Jonathan; Milici, Jennifer; Woodman, Derek
Cc: Plett, Rebecca; Evans, James; Tonnesen, Sara
Subject: In re Intuit Inc., Docket No. 9408 - CRM production request
Date: Thursday, December 1, 2022 2:00:00 PM

Dear Counsel:

During the November 15, 2022 deposition of [redacted] as Intuit's 3.33(c)(1) designee, Intuit testified that [redacted]

Specifically, request for production no. 22 provides:

> **Request for Production No. 22:**
> All data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service, as contained in your customer relationship management database ("CRM"), or any database(s) used to maintain customer and potential customer information, feedback, complaints and/or sales.

Similarly, request for production no. 19 calls for: "All documents related to complaints or negative feedback from consumers or potential consumers who expected to file their taxes for free using TurboTax but were not eligible to do so." The applicable time period for both requests is: documents created after November 1, 2020.

We understand that one of Intuit's concerns is that these requests are burdensome. To address that concern, we are willing to explore further temporal limitations and to narrow our request by limiting the data fields covered by this request if that would lessen Intuit's production burden.

To that end, we asked Intuit to produce a CRM schema or diagram to help us identify the relevant data fields within the Intuit CRM and potentially narrow the data Intuit would have to produce. Instead of a CRM schema, we received 3 XML files from Intuit: (1) INTUIT-FTC-PART3-000490026.XML; (2) INTUIT-FTC-PART3-000490025.XML; and (3) INTUIT-FTC-PART3-000490027.XML. While these documents [redacted] As indicated in previous communications, without that information it is challenging to narrow our request.

Despite these limitations, we took another run through the XML files Intuit produced and propose that Intuit produce the following narrower subset of CRM data [redacted]:

- Identifying customer information (name, email, phone), as well as any id or customer account number associated with the customer identified;
- Date of complaint or customer interaction
- Product(s) used or referenced in the interaction, and
- Complaint details such as topic, contact method, description, chat history, and customer service call notes.

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

If it would be helpful to Intuit, we are willing to make our data analyst, Megan Baburek, available for a meet and confer next week that could potentially include the relevant database personnel at Intuit. Please let us know.

If instead, Intuit is going to stand on its objections and does not intend to produce the complaint and CRM data we have requested, please let us know. We sincerely hope that is not the case because we think we can reach a compromise that would allow Complaint Counsel to receive the relevant data while minimizing the burden on Intuit.

Best regards,

Roberto Anguizola
Federal Trade Commission
FTC BCP/DMP, CC-8602
Org 1144, Mailstop CC-6316
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Washington, DC 20580

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Cell: (202) 256-0452 (preferred)
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E-mail: ranguizola@ftc.gov

PUBLIC

Declaration of R. Anguizola

EXHIBIT K

PUBLIC

From: Woodman, Derek
To: Anguizola, Roberto; Plett, Rebecca; Tonnesen, Sara; Evans, James
Cc: Gringer, David; Paikin, Jonathan; Milici, Jennifer
Subject: RE: In re Intuit Inc., Docket No. 9408 - CRM production request
Date: Monday, December 5, 2022 5:04:37 PM

Roberto,

As discussed during last Thursday's call, we believe it is too late into the discovery process to be raising issues concerning RFPs 19 and 22. Even if the discovery deadline last Friday had not already passed, you have waived any arguments related to Intuit's response to those RFPs by not raising those issues in a timely fashion.

For context, you served your First Set of RFPs (which included RFPs 19 and 22) on September 12, 2022. Intuit timely served its responses and objections to those requests on October 3, 2022. Under Chief Judge Chappell's scheduling order, to the extent you had any concerns about Intuit's response, you were required to raise those concerns within 5 days. *See* Scheduling Order Additional Provision 7. However, you failed to raise any issues concerning Intuit's responses within that time. Instead, on October 12 at the end of a call about another issue, you raised your request for a CRM schema. Notwithstanding the failure to raise the issue in a timely manner, Intuit produced the requested schema on November 1. At that point, Complaint Counsel did nothing. It was not until November 23 that Complaint Counsel raised any issues concerning CRM data, and again you only did so in the context of Intuit's request to meet and confer about the discovery issues it was diligently following up on. At no point did Complaint Counsel affirmatively seek to engage with Intuit about its discovery requests, and on multiple occasions Complaint Counsel waited weeks to raise any issues concerning Intuit's RFP responses. Overall, nearly 3 months have passed since Intuit served its responses and objections. Having failed to diligently confer about Intuit's responses and objections, Complaint Counsel cannot do so now.

Moreover, even if you had not waived this issue by failing to raise it within a reasonable timeframe in accordance with Chief Judge Chappell's scheduling order, it is simply too late as a practical matter to now seek this information. The close of discovery was last Friday, December 2. Even your purportedly narrowed request still seeks voluminous information from sources that would require Intuit to spend an inordinate amount of time collecting and processing that information. As just a rough estimate, it would likely take more than a month (potentially substantially longer) to collect and produce the data. By that point, the discovery deadline would have long passed, the parties would have already exchanged expert reports, and there would be just two months (or less) until the start of the hearing. Especially given Complaint Counsel's delays, there is no reason to require the intensive effort to collect and produce this information when it will be of little practical use in this proceeding or where it might require delaying other deadlines in this case.

On top of those concerns, we stand by our prior objections. Moreover, as Complaint Counsel knows, Intuit produced [redacted]. Complaint Counsel thus has access to an extensive and wide-ranging set of consumer reactions, rather than just a subset of one-sided feedback that might be reflected in complaint-specific data. To the extent Complaint Counsel believe they need to evaluate consumer feedback concerning Free Edition or other TurboTax products, you have the information necessary to do so.

Best,
Derek

Derek A. Woodman | WilmerHale
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From: Anguizola, Roberto <ranguizola@ftc.gov>
Sent: Thursday, December 1, 2022 2:01 PM
To: Gringer, David <David.Gringer@wilmerhale.com>; Paikin, Jonathan <Jonathan.Paikin@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Woodman, Derek <Derek.Woodman@wilmerhale.com>
Cc: Plett, Rebecca <rplett@ftc.gov>; Evans, James <jevans1@ftc.gov>; Tonnesen, Sara <stonnesen@ftc.gov>
Subject: In re Intuit Inc., Docket No. 9408 - CRM production request

EXTERNAL SENDER

Dear Counsel:

During the November 15, 2022 deposition of [redacted] as Intuit's 3.33(c)(1) designee, Intuit testified that [redacted]

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- Identifying customer information (name, email, phone), as well as any id or customer account number associated with the customer identified;
- Date of complaint or customer interaction
- Product(s) used or referenced in the interaction, and
- Complaint details such as topic, contact method, description, chat history, and customer service call notes.

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

If it would be helpful to Intuit, we are willing to make our data analyst, Megan Baburek, available for a meet and confer next week that could potentially include the relevant database personnel at Intuit. Please let us know.

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Best regards,

Roberto Anguizola
Federal Trade Commission
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Public

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

In the matter of: **Intuit Inc.**, a corporation, Respondent.	Docket No. 9408

[Proposed] DECISION AND ORDER

Pursuant to Rules of Practice 3.37 and 3.38, 16 C.F.R. §§ 3.37-3.38, Complaint Counsel's Motion to Compel Production of Documents is GRANTED and it is hereby:

ORDERED that within five days of entry of this Order, Respondent shall comply with Complaint Counsel's Request for Production No. 22 in full and produce all data pertaining to customers and potential customers who interacted with a free TurboTax offer or product or service from November 1, 2020 through the date of this Order, as contained in Intuit's customer relationship management database ("CRM"), or any database(s) used by Intuit to maintain customer and potential customer information, feedback, complaints and/or sales.

SO ORDERED.

Dated: ___________________

____
D. Michael Chappell Chief
Administrative Law Judge