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

In the matter of:

Intuit Inc.,
a corporation,

Respondent.

Docket No. 9408

**COMPLAINT COUNSEL’S MOTION FOR IN CAMERA TREATMENT
OF SENSITIVE PERSONAL AND FINANCIAL INFORMATION**

This case is about Respondent Intuit’s deceptive advertising of TurboTax.

TurboTax is a commonly-used online tax preparation service that enables users to prepare and file their income tax returns. Compl. ¶ 4; Answer ¶ 4. Inherently, then, the TurboTax user experience involves consumers inputting their sensitive personal and financial information into TurboTax to complete their taxes. When complaining to the FTC about TurboTax and/or providing discovery in this matter, some consumers have disclosed certain sensitive personal and financial information. Because “[t]he personal privacy interests of consumers did not disappear when they complained to the FTC,” *Lakin Law Firm, P.C. v. FTC*, 352 F.3d 1122, 1124 (7th Cir. 2003), Complaint Counsel hereby moves for permanent in camera treatment of such information.

Standard. Under FTC Rule 3.45(b), the Court shall order that material be accorded permanent in camera treatment if the material constitutes “sensitive personal information.” 16 C.F.R. § 3.45(b). “Sensitive personal information” includes, but is not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” *Id.* In addition to the listed categories of information, this Court has previously found that even individuals’ names and addresses, among other

Public

information, can constitute sensitive personal information. *See, e.g., In re LabMD, Inc.*, 2014 WL 2331029, at *1 (F.T.C. May 6, 2014).¹ In addition to protecting sensitive personal information, this Court may “make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense.” 16 C.P.R. § 3.31(d).

Sensitive personal and financial information in this matter. Complaint Counsel seek permanent in camera treatment for the following categories of sensitive personal and financial information of consumers who have complained about TurboTax and/or who provided discovery in this matter: (1) phone numbers, (2) addresses, (3) email addresses; (4) financial account numbers, (5) credit card or debit card numbers, (6) financial transaction numbers, (7) tax identification numbers (including Social Security Numbers), and (8) dates of birth. The Court has granted in camera protection to such information in other cases. *See, e.g., In re Jerk, LLC*, 2015 WL 926508, at *3–5 (F.T.C. Feb. 23, 2015); *LabMD*, 2014 WL 2331029, at *1.

To protect this information, Complaint Counsel seeks in camera treatment for these categories of sensitive personal and financial information for any material to be introduced into the evidentiary record. In particular, Complaint Counsel seeks in camera treatment for the entirety of the following exhibits, which contain significant amounts of sensitive information—indeed there is little else in many of these exhibits:

Exhibit Number	Description	Volume of Material
GX 502	Sentinel Complaints (January 1, 2016 to March 28, 2022)	571 records 2,298 pages
GX 503	Sentinel Complaints (January 1, 2016 to March 28, 2022 - supplemental narratives)	4 records 9 pages
GX 504	Sentinel Complaints (March 29, 2022 to August 31, 2022)	168 records 673 pages
RX 231	Email from Sean Duddy re: Intuit Customers, dated April 26, 2021 – <i>Attachment only</i>	227 records 19 pages

¹ Federal courts also require litigants to redact personal data identifiers from public filings. *See, e.g., Fed. R. Civ. P. 5.2(a)*.

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Exhibit Number	Description	Volume of Material
RX 256	Spreadsheet entitled "CONFIDENTIAL - CC Revised Sentinel Consumer Contact List," dated September 14, 2022	161 records 12 pages
RX 264	Complaint Counsel Supplemental Responses to Intuit's First Set of Interrogatories, served November 10, 2022 – <i>Attachment A only</i>	396 records 160 pages
RX 266	Handwritten Notes of Diana Shiller	79 pages
RX 269	Spreadsheet entitled "2022-03-17_TurboTax 2016-March 17, 2022_COPY"	2,136 records 806 pages
RX 277	CONFIDENTIAL Complaint Counsel Reply to Intuit's Supplemental Response to Statement of Material Facts, served on September 29, 2022 – <i>Attachment A only</i>	571 records 354 pages
RX 278	Spreadsheet - Diana Shiller Call Log - F01-TUT-00069090	172 records 18 pages
RX 279	Spreadsheet - Diana Shiller Call Log - F01-TUT-00068643	18 records 3 pages
RX 280	Spreadsheet - Diana Shiller Call Log - F01-TUT-00069124	32 records 4 pages
RX 357	Complaint Counsel Supplemental Responses to Intuit's First and Second Set of Interrogatories, served December 22, 2022 – <i>Attachment A only</i>	396 records 308 pages

In the case of these thirteen exhibits, due to the volume of material, the number of consumer records, and the sensitivity of the information contained therein, redaction would not be practical.

Authority. Courts have traditionally accorded strong protection against public disclosure of information voluntarily provided by witnesses and informants. *See Forrester v. United States Dep't of Labor*, 433 F. Supp. 987, 989 (S.D.N.Y. 1977) (recognizing that "public policy requires that individuals may furnish investigative information to the government with complete candor and without the understandable tendency to hedge or withhold information out of fear that their names and the information they provide will later be open to public view") (citing cases). Similarly, the Commission's strong interest in protecting the personal information of consumer complainants has been widely recognized by this Court and federal courts. *See, e.g., Jerk*, 2015 WL 926508,

Public

at *3-5 (granting in camera treatment to consumer information including names, phone numbers, addresses, email addresses, etc.); *Lakin Law Firm*, 352 F.3d at 1124; *Carter, Fullerton & Hayes LLC v. FTC*, 520 F. Supp. 2d 134, 144-45 (D.D.C. 2007) (upholding the FTC's decision to withhold from public review the names, addresses, and telephone numbers of consumers who complained to the FTC).

Personally identifying information in consumers' complaints submitted to the FTC have received protection from disclosure in light of the "substantial privacy interest of protecting victims ... from abuse, harassment, and embarrassment given the very real risk of their being identified." *Ayuda, Inc. v. FTC*, 70 F. Supp. 3d 247, 266 (D.D.C. 2014) (shielding from release under FOIA "personal identifying information in the form of names, addresses, telephone numbers, and email addresses" of complainants in the FTC's Consumer Sentinel database). The court in *Ayuda* cautioned that "[i]f an individual is identified through his or her personal information, the release of such information may result in ... potential embarrassment and harassment." *Id.*

Regarding sensitive financial information, Rule 3.45 identifies dates of birth, financial account, tax identification, and credit card or debit card numbers as sensitive personal information. *See also, e.g., True the Vote v. Hosemann*, No. 3:14-cv-532, 2014 WL 4273332, at *25-26 (S.D. Miss. Aug. 29, 2014) (recognizing, in light of growing concerns of identity theft, the threat posed by combining pieces of personal information to obtain "a host of other highly personal information about an individual, particularly in this day of computers with vast searching powers"). Absent this litigation, this information would not ordinarily be released in the public domain. Nor would in camera treatment of this information undermine the full and fair resolution of this case. Complaint Counsel therefore requests permanent in camera treatment for any sensitive personal financial information disclosed in this matter.

Conclusion. Recognizing this Court's preference against adjudicating piecemeal requests for in camera treatment, *see In re McWane*, Trial Tr. at 2235:6-8 (Sept. 14, 2012),

Public

Complaint Counsel request that the Court grant in camera treatment to the requested categories of personal sensitive information for any material to be introduced into the evidentiary record in this matter, including the entirety of the thirteen exhibits listed above which contain voluminous sensitive information.

Respectfully submitted,

Dated: February 10, 2023

/s/ James Evans

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Federal Trade Commission**

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

In the matter of:

Intuit Inc.,
a corporation,

Respondent.

Docket No. 9408

**[Proposed] ORDER GRANTING COMPLAINT COUNSEL'S
MOTION FOR IN CAMERA TREATMENT OF SENSITIVE
PERSONAL AND FINANCIAL INFORMATION**

Complaint Counsel for the Federal Trade Commission ("FTC") filed a Motion for In Camera Treatment of Sensitive Personal and Financial Information ("Motion").

Having fully considered all arguments in the Motion and Opposition, Complaint Counsel's Motion is GRANTED.

It is hereby ORDERED that the following sensitive consumer information is granted in camera treatment in this matter: (1) phone numbers, (2) addresses, (3) email addresses; (4) financial account numbers, (5) credit card or debit card numbers, (6) financial transaction numbers, (7) tax identification numbers (including Social Security Numbers), and (8) dates of birth. Unless otherwise ordered by the court, such sensitive consumer information should not be placed on the public record. If it is necessary to present or file a document that already contains such information, the sensitive consumer information should be "blacked out" or redacted before the document is presented in open court or a public version is submitted for filing.

It is further ORDERED that the following thirteen exhibits are granted in camera treatment in their entirety: GX 502, GX 503, GX 504, RX 231 (the attachment only), RX 256, RX 264 (Attachment A only), RX 266, RX 269, RX 277 (Attachment A only), RX 278, RX 279, RX 280, and RX 357 (Attachment A only).

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Dated: _____

D. Michael Chappell
Chief Administrative Law Judge

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CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, I electronically filed the foregoing Complaint Counsel's Motion for In Camera Treatment electronically using the FTC's E-Filing system, and I caused the foregoing document to be sent via email to:

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*Secretary of the Commission
Clerk of the Court*

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

I further certify that on February 10, 2023, I caused the foregoing document to be served via email on:

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