

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

In the matter of

H&R BLOCK INC.,
a corporation,

HRB DIGITAL LLC,
a limited liability company, and

HRB TAX GROUP, INC.,
a corporation.

DOCKET NO. 9427

SUPPLEMENT TO SECOND JOINT STATUS REPORT

1. Complaint Counsel and counsel for H&R Block, Inc., HRB Digital LLC, and HRB Tax Group, Inc. (“Respondents”) (together, the “Parties”) submit this Supplement to the Second Joint Status Report, filed on August 28, 2024.

2. In the Second Joint Status Report, “Complaint Counsel note[d] for the Court’s awareness that Respondents . . . retained an expert, [Mr.] Ron Schnell, with whom Judge Himes authored the 2021 article, ‘Antitrust Enforcement and Big Tech: After the Remedy Is Ordered.’ 1 Stanford Computational Antitrust 64 (2021).” However, both Parties stated that they “ha[d] no reason to believe that Judge Himes’s co-authorship of this publication w[ould] impair his judicial impartiality.”

3. Judge Himes conducted a pretrial conference with the Parties on Thursday, September 5, 2024, during which he addressed his working relationship with Mr. Schnell. Judge Himes stated that his relationship with Mr. Schnell would not affect his partiality and that he could be fair and impartial in this case.

4. Judge Himes then allowed the Parties to take a recess to discuss the disclosure. After the recess, Complaint Counsel requested to reconvene the pretrial conference to Monday, September 9, 2024, to give them further opportunity to discuss with their management.

5. Judge Himes granted Complaint Counsel's request and reset the pretrial conference to the following Monday, September 9, 2024.

6. At the follow-up pretrial conference on Monday, September 9, 2024, Complaint Counsel expressed that they would like the opportunity to question Mr. Schnell at his deposition about his relationship with Judge Himes and H&R Block.

7. Respondents expressed concerns about having this issue unresolved until after the September 20, 2024 deposition. Judge Himes agreed and ordered the parties to resolve this issue by Friday, September 13, 2024, and to submit a supplement to the Second Joint Status Report setting forth Complaint Counsel's final position by Friday, September 13, 2024.

8. Accordingly, after the status conference, the Parties conferred about providing a declaration from Mr. Schnell. *See* **Exhibit A**.

9. After conferring, Respondents provided the "Declaration of Ron Schnell," attached hereto as **Exhibit B**.

10. Complaint Counsel thereafter stated that they will not seek the recusal of Judge Himes.

11. The Parties therefore agreed that this issue is now resolved.

Dated: September 13, 2024

By: s/ Simon Barth
Claire Wack, MD Bar No. 1312190275
Simon Barth, MA Bar No. 706122
Christopher E. Brown, VA Bar No. 72765
Joshua A. Doan, DC Bar No. 490879
Federal Trade Commission
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Counsel Supporting the Complaint
Federal Trade Commission

Respectfully submitted,

By: /s Erika Whyte

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2024, I filed the foregoing document electronically using the FTC’s E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

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

I further certify that on September 13, 2024, I caused the foregoing document to be served via email to:

Claire Wack
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
cwack@ftc.gov

Simon Barth
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Counsel Supporting the Complaint

Dated: September 13, 2024

Respectfully submitted,

By: /s/ Erika Whyte

Erika Whyte

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

Exhibit A

From: Hogan, Carol A.
Sent: Tuesday, September 10, 2024 6:39 PM
To: Wack, Claire; Brown, Christopher; Doan, Josh; Barth, Simon K.
Cc: Whyte, Erika; Dias, Antonio F.
Subject: RE: Schnell Issue
Attachments: Declaration of R. Schnell(1541184768.1).pdf

See attached Declaration of Mr. Schnell.

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From: Wack, Claire <cwack@ftc.gov>
Sent: Monday, September 9, 2024 7:14 PM
To: Hogan, Carol A. <chogan@jonesday.com>; Brown, Christopher <cbrown3@ftc.gov>; Doan, Josh <jdoan@ftc.gov>; Barth, Simon K. <sbarth@ftc.gov>
Cc: Whyte, Erika <ewhyte@jonesday.com>; Dias, Antonio F. <afdias@jonesday.com>
Subject: RE: Schnell Issue

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Report Suspicious

I won't hold it against you.

Here are the questions we ask Mr. Shnell to answer in a declaration:

1. What date was Mr. Schnell retained to serve as an expert witness in FTC Docket No. 9427?
2. Since being retained to serve as an expert in FTC Docket No. 9427, how many times has Mr. Schnell communicated with Judge Himes?

3. Has Mr. Schnell, since having been retained on this matter, communicated with Judge Himes regarding H&R Block?
4. Prior to being retained to serve as an expert witness in FTC Docket No. 9427, did Mr. Schnell ever communicate with Judge Himes regarding his working with or for H&R Block?
 - a. If yes, please provide the approximate date and subject matter of each such communication.
5. Has Mr. Schnell, since having been retained on this matter, communicated with Judge Himes about his work as an FTC ALJ?
 - a. If yes, please provide the approximate date and subject matter of each such communication.

Best,
Claire

From: Hogan, Carol A. <chogan@jonesday.com>
Sent: Monday, September 9, 2024 5:21 PM
To: Wack, Claire <cwack@ftc.gov>; Brown, Christopher <cbrown3@ftc.gov>; Doan, Josh <jdoan@ftc.gov>; Barth, Simon K. <sbarth@ftc.gov>
Cc: Whyte, Erika <ewhyte@jonesday.com>; Dias, Antonio F. <afdias@jonesday.com>
Subject: RE: Schnell Issue

Sorry Claire- I forgot the E

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From: Hogan, Carol A. <chogan@jonesday.com>
Sent: Monday, September 9, 2024 4:17 PM
To: Wack, Claire <cwack@ftc.gov>; Brown, Christopher <cbrown3@ftc.gov>; Doan, Josh <jdoan@ftc.gov>; Barth, Simon K. <sbarth@ftc.gov>
Cc: Whyte, Erika <ewhyte@jonesday.com>; Dias, Antonio F. <afdias@jonesday.com>
Subject: RE: Schnell Issue

Clair- thank you. But as we told you and Judge Himes, Mr. Schnell is busy and traveling internationally and our ability to communicate with him is very limited. As a result, we really need to know **as soon as possible** what information you think you still need to know on this issue in order to respond to you this week.

The queries were just sent over.

Carol A. Hogan, Esq.

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From: Wack, Claire <cwack@ftc.gov>

Sent: Monday, September 9, 2024 3:24 PM

To: Hogan, Carol A. <chogan@jonesday.com>; Brown, Christopher <cbrown3@ftc.gov>; Doan, Josh <jdoan@ftc.gov>; Barth, Simon K. <sbarth@ftc.gov>

Cc: Whyte, Erika <ewhyte@jonesday.com>; Dias, Antonio F. <afdias@jonesday.com>

Subject: RE: Schnell Issue

Carrie – We don't believe that the two questions below are sufficient however, as you know, we are working on getting you three of our rebuttal reports today. We will circle back with you tomorrow morning regarding the below.

Additionally, regarding Mr. Schnell's report, just before today's conference with Judge Himes Erika said we would shortly be receiving "the queries" Mr. Schnell used to produce the data summaries in Section VIII of his report. Please let us know when we will receive it.

Best,
Claire

From: Hogan, Carol A. <chogan@jonesday.com>

Sent: Monday, September 9, 2024 3:33 PM

To: Wack, Claire <cwack@ftc.gov>; Brown, Christopher <cbrown3@ftc.gov>; Doan, Josh <jdoan@ftc.gov>; Barth, Simon K. <sbarth@ftc.gov>

Cc: Hogan, Carol A. <chogan@jonesday.com>; Whyte, Erika <ewhyte@jonesday.com>; Dias, Antonio F. <afdias@jonesday.com>

Subject: Schnell Issue

Claire – based on your statements to Judge Himes this morning, and in an effort to comply with Judge Himes' directive that we resolve this issue quickly, we will provide you with a declaration of Mr. Schnell, which answers the following two questions:

When did Mr. Schnell first begin working with H&R Block?

Was H&R Block discussed during the July 2024 conversation between Judge Himes and Mr. Schnell?

These were the two questions that you told Judge Himes this morning that your team still had concerns with. Please confirm that providing you with this declaration will allow you to resolve this issue quickly.

Carol A. Hogan, Esq.

Partner

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Exhibit B

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

In the matter of

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

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

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

Docket No. 9427

DECLARATION OF RON SCHNELL

I, Ron Schnell, declare as follows:

1. I am a Managing Director at Berkeley Research Group, LLC (“BRG”), which is a global consulting firm that helps leading organizations advance in three key areas: disputes and investigations, corporate finance, and performance improvement and advisory. I have over 40 years of experience in the fields of computer science and software. I have a master’s degree in computer science from Syracuse University and have a working knowledge of over 40 computer languages.

2. I have been retained by Jones Day, counsel for Respondents (“HRB”), to serve as a testifying expert witness in the field of computer science, computer software, data analysis, software development, and software architecture in the above-captioned action.

3. I have personal knowledge of the facts and matters set forth below. If I were called as a witness in this matter, I could and would testify competently to each of the matters stated.

4. In September 2019, Jones Day engaged my firm, BRG, on behalf of HRB, to assist on various projects arising out of investigations and litigation relating to HRB’s involvement in the IRS Free File program, including a civil investigative demand issued by the Federal Trade Commission (“FTC”), which I understand was the precursor for this lawsuit.

5. Since that time, I have had numerous discussions with Jones Day regarding the FTC's investigation of HRB, and it was my understanding that I would be called upon to serve as a testifying expert should the need arise.

6. On July 8, 2024, Jones Day, on behalf of HRB, formally engaged me to serve as a testifying expert in the above-captioned action.

7. Since being formally engaged as a testifying expert in the above-captioned action, I have communicated with Judge Himes one time by telephone. During that communication, we did not discuss HRB.

8. Prior to August 19, 2024, I was not aware that Judge Himes was the Administrative Law Judge ("ALJ") in this matter.

9. Prior to being formally engaged as a testifying expert in the above-captioned action, I never discussed HRB with Judge Himes.

10. Since being formally engaged as a testifying expert in the above-captioned action, I have only communicated with Judge Himes on the one occasion identified above. With respect to his work as an FTC ALJ, my recollection is that we discussed his new office space in New York and that he could no longer do speaking engagements. As stated above, we did not discuss HRB.

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

Executed this 10th day of September, 2024.



RON SCHNELL