

**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**

**COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION IN  
LIMINE TO EXCLUDE EXPERT TESTIMONY OF DR. YOUSSEF BENZARTI**

Complaint Counsel intend to call Dr. Youssef Benzarti, an Associate Professor of Economics at the University of California, Santa Barbara, and an expert in public economics, to opine on the substantial injuries that Respondents' downgrading practices impose on consumers. Dr. Benzarti, whose peer-reviewed academic research focuses on how much money consumers forego to avoid working on their tax returns,<sup>1</sup> is eminently qualified to opine on this injury.

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<sup>1</sup> See, e.g., Benzarti, Youssef. "How taxing is tax filing? Using revealed preferences to estimate compliance costs." *American Economic Journal: Economic Policy* 12.4 (2020): 38-57.

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**Support for Opinion on Harm to Would-Be Downgraders.** In his report,<sup>2</sup> Dr. Benzarti estimated the value of time lost by consumers who downgraded (“downgraders”). He further opined that consumers who were discouraged from downgrading to avoid the downgrading requirements (“would-be downgraders”), were also likely subject to substantial injury..<sup>3</sup> Contrary to Respondents’ characterization of this opinion as “*per se* speculation,” Dr. Benzarti based this opinion on [REDACTED]

[REDACTED]

[REDACTED]<sup>4</sup> Dr. Benzarti’s research methodology was

[REDACTED]

[REDACTED]<sup>5</sup> Therefore, Respondents’ claim that Dr.

Benzarti’s opinion on harm to would-be downgraders lacks “any evidentiary or methodological support,” is utterly false.

**Relevance of Harm to Downgraders.** Respondents further seek to exclude Dr. Benzarti’s testimony because his specific harm estimates relate to time lost by

<sup>2</sup> Although Attorney Snyder’s Declaration in Support of Respondents’ Motion *in Limine* may be read to suggest that Complaint Counsel seeks confidential treatment of Dr. Benzarti’s report, Complaint Counsel marked Dr. Benzarti’s report confidential only because he relies on data provided by Respondents in discovery. Respondents marked *all* their discovery responses confidential, regardless of sensitivity. Complaint Counsel believe Dr. Benzarti’s entire report should be part of the public record but have redacted quotes therefrom because the Court has not yet decided the issue.

<sup>3</sup> Exhibit 1, ¶ 11, 137.

<sup>4</sup> Exhibit 1, ¶ 11. *See also* ¶ 137 [REDACTED]

[REDACTED]

(emphasis added).

<sup>5</sup> Exhibit 1, ¶ 80.

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downgraders and not overpayments by would-be downgraders. Respondents wrongly claim that the downgrading counts “are directed solely to customers who did **not** actually downgrade because of these allegedly unfair Downgrade Practices.” This strained argument is based on a disingenuous and unduly narrow reading of the Complaint. In addition to alleging harm to would-be downgraders, the Complaint clearly and repeatedly describes how Respondents’ unfair downgrading practices harm downgraders. *E.g.*, Complaint, ¶¶ 8, 15, 16, 20, 23, 24, 25, 26, and 27. Moreover, even under Respondents’ flawed and self-serving reading of the Complaint, the harm to downgraders, namely, time spent contacting customer service and restarting their tax returns, is entirely relevant. Such time harms are precisely what would-be downgraders seek to avoid when Respondents’ downgrading practices coerce them into paying for more expensive products than they want or need.

Respondents’ argument that this Court should consider only harm to would-be downgraders is particularly galling because it was Respondents’ own [REDACTED] [REDACTED] that prevented Dr. Benzarti from quantifying such harm. Complaint Counsel’s Interrogatory No. 1(h) sought to discover how many customers overpay for DIY products and by how much; such data is necessary to precisely estimate harm to would-be downgraders. After demanding that Interrogatory 1 be limited to downgraders, challenging the burden and relevance of the request for information on non-downgraders, Respondents claimed they [REDACTED] [REDACTED] *See* Exhibits 2 and 3. Respondents should not be permitted to strategically recast the Complaint as limited to would-be

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downgraders, whose overpayments – because of Respondents’ own asserted [REDACTED]

[REDACTED] – Dr. Benzarti was unable to precisely quantify.

**Conclusion.** Because Respondents’ Motion in Limine to Exclude Expert Testimony of Dr. Youssef Benzarti (“Motion”) is facially baseless and *Daubert* motions have “little application in a bench trial,”<sup>6</sup> Complaint Counsel respectfully request that the Court DENY Respondents’ Motion.

Dated: October 10, 2024

Respectfully submitted,

By: s/ Simon Barth  
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Counsel Supporting the Complaint  
Federal Trade Commission

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<sup>6</sup> *In re McWane, Inc.*, 2012 WL 3719035, at \*3 (FTC Aug. 16, 2012) (citing authorities).

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 10, 2024, I filed the foregoing Opposition to Respondents' Motion *in Limine* to Exclude Expert Testimony of Dr. Youssef Benzarti electronically using the FTC's E-Filing system, and I caused courtesy copies to be sent via email to:

April Tabor  
Office of the Secretary  
Federal Trade Commission  
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*Secretary of the Commission  
Clerk of the Court*

Hon. Jay L. Himes  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Suite H-110  
Washington, DC 20580

*Administrative Law Judge*

I further certify that on October 10, 2024, I caused the foregoing document to be served via email on:

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/s/ Simon Barth  
Simon Barth

Exhibit 1  
Expert Report of Dr. Youssef Benzarti  
Filed Under Seal

# Exhibit 2

## Complaint Counsel's First Set of Interrogatories



**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**

**COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES  
TO RESPONDENTS**

Pursuant to Rule 3.35 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings and the Scheduling Order, Complaint Counsel requests that Respondents H&R Block, Inc., HRB Digital LLC, and HRB Tax Group, Inc., ("H&R Block") respond to these Interrogatories within 30 days and furnish the requested information to Complaint Counsel via email to Claire Wack (cwack@ftc.gov), Christopher E. Brown (cbrown3@ftc.gov), Simon Barth (sbarth@ftc.gov), and Joshua A. Doan (jdoan@ftc.gov) or at such time and place as may be agreed upon by all counsel.

**INSTRUCTIONS**

1. Unless otherwise specified, the time period covered by an Interrogatory shall be from Tax Season 2018 through the date of Your completion of these Interrogatories.

2. Included as Attachment A to this set of Interrogatories is a Template for Responses to Complaint Counsel's First Interrogatory ("Template"), which illustrates the manner in which You should provide Your sworn responses to Interrogatory 1. As demonstrated in the Template, each row should contain responses for one person in one Tax Season. For each subpart, the Template includes two example responses for two different hypothetical people who used a Paid Commercial Tax Product to file their tax returns.

- a. The hypothetical individual whose example responses are shown in Row 2 began preparing their return in Free Online, upgraded to Deluxe, and then filed their return on March 28, 2024. While preparing their tax return, they used live chat technical support. They paid \$100 to file their federal and state

tax returns. They did not downgrade at any point while preparing the tax return. Based on the forms attached to their federal tax return at the time of filing, and their use of an Add-on Feature, the least expensive product they could have used to file was Plus.

- b. The hypothetical individual whose responses are shown in Row 3 began preparing their return in Self-Employed, but ultimately filed in Deluxe on March 9, 2023. They did not use any Add-on Features. They paid \$109 for their federal and state tax returns. They spent 75 minutes working in Self-Employed before contacting customer service to downgrade, which took 15 minutes. Based on the forms attached to their federal tax return at the time of filing, the least expensive product they could have used to file was Deluxe.

3. Interrogatory 2 should be set forth in full preceding the answer to it and should be answered fully in writing, under oath.

4. All answers shall be served within 30 days after service of these Interrogatories.

5. These Interrogatories seek information that is in Your knowledge or possession or under Your actual or constructive custody or control, whether or not such information is located in the files of or possessed by Your individual officers, directors or employees, and whether or not such information is received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, employees, independent contractors, or volunteers.

6. To the extent that an Interrogatory may be answered by referencing a document, it is permissible to attach the document as an exhibit to the answer and refer to the document in the answer.

7. Where an Interrogatory requests an answer or portion of an answer that already has been supplied in response to another Interrogatory, the answer or portion of the answer need not be supplied a second time. It is sufficient to specify the responses that contain the answer and supply any additional information necessary to answer the Interrogatory.

8. All objections to any Interrogatory must be raised in your initial response and are otherwise waived.

9. If you object to any Interrogatory or a part of any Interrogatory, state the Interrogatory or part to which you object, state the exact nature of the objection, and describe in detail the facts upon which you base your objection. If any Interrogatory cannot be answered in full, it shall be answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any Interrogatory on the grounds of relevance or overbreadth, you shall provide all responsive information that is concededly relevant to the parties' claims or defenses or the requested relief. For each Interrogatory that cannot be answered in full, you shall describe the efforts made to locate information needed for such answer.

10. If any Documents are not identified in response to an Interrogatory on grounds of privilege, submit together with such claim a schedule of the items withheld which 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.

11. You are hereby advised that Complaint Counsel will move, if any party files any dispositive motion or at the commencement of trial, to preclude you from presenting evidence regarding responsive matters you have failed to set forth in your answers to these Interrogatories.

### DEFINITIONS

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

1. **"Add-on Feature"** means a benefit that is available to consumers who file their taxes using Paid Commercial Tax Products but not Free Online, including, for example, live expert help, AI Tax Assist, organization of tax documents for a period of time, or live phone or chat tech support. Add-on Features do not include any tax form, schedule, or worksheet.

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 **H&R Block Inc., HRB Digital LLC,** and/or **HRB Tax Group, Inc.,** and their 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, 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, smart phones, or other storage media, and such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.

5. **“Downgrade”** or **“Downgrading”** means moving from a Paid Commercial Tax Product to a less expensive Paid Commercial Tax Product or Free Online.

6. **“DIY Online Product”** means any do-it-yourself online tax preparation products offered by the Company that allow consumers to prepare and file federal tax returns, state tax returns, or both, by themselves, including Free Online and Paid Commercial Tax Products.

7. **“Each”** shall be construed to include **“every,”** and **“every”** shall be construed to include **“each.”**

8. **“Free Online”** means any DIY Online Product that a consumer pays nothing to prepare and file federal and/or state tax returns.

9. **“Identify”** with respect to documents means to provide the date, type (i.e., email, paper copy), summary of its substance, size in bytes, number of pages, and location of documents. Documents should be identified even if they are no longer in your possession, custody or control. **“Identify”** with respect to individuals or witnesses means (a) natural persons by name, title, present business affiliation, present business address, and telephone number, or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of persons who are officers, directors, and managers of the business or organization, and contact person with telephone number.

10. **“Paid Commercial Tax Product”** means any DIY Online Product that charges a fee to complete and file a federal and/or state tax return.

11. **“Person”** or **“Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.

12. **“Tax Season”** means the period during which consumers file their tax returns for the prior calendar year. For example, consumers file their 2016 tax returns in Tax Season 2017.

## INTERROGATORIES

1. For each person in each Tax Season who began preparing a tax return using a DIY Online Product, state:
  - a. The date on which the person filed their tax return(s), or, if the person abandoned the use of the Company's DIY Online Product before filing, the last date on which the person interacted with a DIY Online Product during that Tax Season;
  - b. The name of the DIY Online Product in which the person began preparing the tax return(s);
  - c. The name of the DIY Online Product in which the person filed; otherwise, state that the person did not file using a DIY Online Product;
  - d. The name of all Add-on Features the person actually used, if any;
  - e. The total amount the person paid to file the tax return(s) less refunds;
  - f. The total number of minutes the person spent in the Paid Commercial Tax Product before Downgrading;
  - g. The total number of minutes the consumer spent interacting with customer service either via phone (including IVR) or chat, including time spent waiting on hold or waiting for an agent to connect to a chat preceding any Downgrade(s); and
  - h. The name of the least expensive DIY Online Product the person could have used to file their return that Tax Season, based on the federal tax forms, schedules, and worksheets actually attached to the filing at the time of payment and filing of the tax return(s) and their use of any Add-on Features (e.g., "Plus," if the consumer used only forms available in Free Online but also used an Add-on Feature).
2. Identify and describe in detail any demographic data – including but not limited to age, gender, and state of residence – regarding customers who filed their taxes using the DIY Online Products for each DIY Online Product that was used (e.g., Free Online, Plus, Deluxe, Premium, Self-Employed).

Dated: April 4, 2024

Respectfully submitted,

/s/ Simon Barth

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**Counsel Supporting the Complaint**  
**Federal Trade Commission**

### CERTIFICATE OF SERVICE

I hereby certify that on 4 April 2024, I caused the foregoing document, Complaint Counsel's First Set of Interrogatories to Respondents, to be served via email on:

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/s/ Simon Barth  
Simon Barth

## Exhibit 3

# Respondents' Second Supplemental Responses and Objections to First Set of Interrogatories Filed Under Seal