

**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

**RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S
MIL TO EXCLUDE USE OF SCHNELL DATA IN OTHER EXPERT REPORTS**

In a separate motion *in limine*, Complaint Counsel (“CC”) seeks to exclude expert opinions analyzing empirical customer data that are central to this case and bear directly on the parties’ claims and defenses. Here, CC further seeks to exclude other experts’ reliance on that same analysis. That request should be denied.

For the reasons set forth in Respondents’ opposition to CC’s motion *in limine* to exclude Section VIII of Mr. Schnell’s expert report, CC’s attempt to exclude this admittedly reliable, material, and highly relevant data is meritless. Respondents file this response to point out that: (1) experts routinely rely on other experts and CC does not allege that it is inappropriate here; and (2) certain data tables CC alleges were not timely disclosed did not become necessary until Respondents received CC’s expert reports in August 2024, and thus were not required to be disclosed prior to expert discovery pursuant to Commission Rule 3.31(b)(2).

First, Table 24, containing data concerning the total number of Downgraders analyzed by Dr. Benzarti, was prepared in response to data relied upon by Dr. Benzarti and presented for the

first time in his August 16, 2024 report. By putting this population of successful Downgraders at issue for the first time in his report, Respondents were entitled to rebut those opinions and submit their own data in support of that rebuttal.

Second, Table 28, containing data concerning the median time from federal interview start to federal interview finish *after downgrade*, became relevant only after Dr. Benzarti himself identified such data as relevant to his analysis of “lost time.” Benzarti Rpt. ¶ 18 (“Ideally, one would simply use the total time a given H&R Block Online Customer spends filling out their tax information after it was deleted because of the downgrading process requirements. This information may be recorded by H&R Block and **would be the easiest and most precise way of assessing this time**, but it was not available to me in preparing my report.”) (emphasis added). In both cases, the data relied upon in Respondents’ “other expert reports” was produced at the earliest time it was identified as necessary to the parties’ claims and defenses.

For the reasons set forth above, as well as in Respondents’ opposition to CC’s separate motion to exclude Section VIII of Schnell’s report, CC’s attempt to preclude reliance on this highly relevant, material, and reliable data should be denied.

Dated: October 10, 2024

Respectfully submitted,

By: /s/ Joseph J. Boylan

Courtney Lyons Snyder
Kasey Tuttle
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514
Telephone: (412) 394-7910
clsnyder@jonesday.com
ktuttle@jonesday.com

Joseph Boylan
JONES DAY
555 S. Flower Street
Los Angeles, CA 90071
Telephone: (910) 639-1886
jboylan@jonesday.com

Erin Sindberg Porter
JONES DAY
90 South Seventh Street
Suite 4950
Minneapolis, MN 55402
Telephone: (612) 217-8926
esindbergporter@jonesday.com

Antonio F. Dias
Erika Whyte
Angela Korge
JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131
Telephone: (305) 714-9800
afdias@jonesday.com
ewhyte@jonesday.com
akorge@jonesday.com

Carol A. Hogan
JONES DAY
110 North Wacker Drive Suite 4800
Chicago, IL 60606
Telephone: (312) 269-4241
chogan@jonesday.com

Hashim M. Mooppan
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3744
hmmooppan@jonesday.com

Amanda L. Dollinger
JONES DAY
250 Vesey Street,
New York, New York 10281-1047
Tel: (212) 326-3475
adollinger@jonesday.com

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2024, I caused to be delivered via email a copy of Respondents' Opposition to Complaint Counsel's MIL to Exclude Use of Schnell Data in Other Expert Reports to:

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

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

I further certify that on October 10, 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
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
sbarth@ftc.gov

Christopher E. Brown
600 Pennsylvania Avenue, NW
Washington, DC 20580
cbrown3@ftc.gov

Joshua A. Doan
600 Pennsylvania Avenue, NW
Washington, DC 20580
jdoan@ftc.gov

Counsel Supporting the Complaint

Dated: October 10, 2024

Respectfully submitted,

By: /s/ Joseph J. Boylan
Joseph J. Boylan

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