

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the Matter of

Intercontinental Exchange, Inc.,
a corporation,

and

Black Knight, Inc.,
a corporation.

Docket No. 9413

PUBLIC

**COMPLAINT COUNSEL’S MEMORANDUM IN OPPOSITION TO
RESPONDENTS’ MOTION TO STAY ADMINISTRATIVE HEARING**

Complaint Counsel hereby submits under Rule 3.22¹ its opposition to Respondents’ Motion to Stay Administrative Hearing Pending Federal Court Preliminary Injunction Action, filed May 31, 2023 (“Stay Motion”).

Respondents assert that the administrative hearing in this matter should be stayed in its entirety due to the pendency of related proceedings in federal court. Stay Motion at 9. However, Rule 3.41(f)(1) establishes a default position that “[t]he pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding” unless otherwise ordered for good cause. Respondents have failed to show good cause for the stay they request: They have not established that a scheduling conflict exists, and the relief they seek is poorly tailored to any conflict that may arise. Therefore, the Stay Motion should be denied.

¹ Citations to “Rules” refer to the Commission’s Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.1, *et seq.*

I. THERE IS NO SCHEDULING CONFLICT TO JUSTIFY THE STAY RESPONDENTS SEEK

Respondents assert that the date of the evidentiary hearing in this administrative proceeding (“Administrative Hearing”) conflicts with the later-set date of a limited hearing in *FTC v. Intercontinental Exchange, Inc.*, No. 3:23-cv-01710-AMO (N.D. Cal.), thus the Administrative Hearing should be stayed until the District Court has ruled. A conflict between the proceedings, however, does not exist. Moreover, any hypothetical conflict would not warrant the total stay of unclear duration that Respondents seek.

The Administrative Hearing, which will be held remotely, is set to commence July 12, 2023. The District Court has set a brief evidentiary hearing for July 25, 2023 (the “District Court Evidentiary Hearing”), allotting each side just 8 hours to present evidence, narrowly confined to cross-examination and redirect. Ex. A at 4 (Scheduling Order, *FTC v. Intercontinental Exchange, Inc.*, Case No. 3:23-cv-01710-AMO (N.D. Cal. June 6, 2023)).² Even presuming each side were to use the entirety of its allotted time, the District Court Evidentiary Hearing will last only two days. *See* Ex. B at 20 (Docket, *FTC v. Intercontinental Exchange, Inc.*, Case No. 3:23-cv-01710-AMO (N.D. Cal. May 15, 2023)) (ECF No. 94: “Evidentiary Hearing set for 7/25/2023 to 7/26/2023 . . .”). At this point, neither party can know with certainty how long the Administrative Hearing will take.³ It is possible that through the efficient presentation of relevant

² Respondents proposed to the District Court that its “trial” start on July 12, 2023. Ex. C at 20 (Joint Case Management Statement, *FTC v. Intercontinental Exchange, Inc.*, Case No. 3:23-cv-01710-AMO (N.D. Cal. May 5, 2023)). The District Court did not adopt that proposal.

³ Respondents misrepresent that “The parties expect the administrative hearing to last for approximately 4-5 weeks, concluding at the earliest on or around August 9, 2023.” Stay Motion at 2. Instead, as Complaint Counsel has repeatedly informed Respondents—and, indeed, the District Court—it anticipates the administrative hearing “is likely to conclude by early August,” prior to the August 2, 2023, hearing in *In re Microsoft Corp.*, No. 9412 (FTC). *See* Ex. C at 14; Ex. D at 27:18-28:1 (Transcript, *FTC v. Intercontinental Exchange, Inc.*, Case No. 3:23-cv-01710-AMO (N.D. Cal. May 12, 2023)).

evidence and a manageable number of witnesses, the Administrative Hearing could conclude in advance of the District Court Evidentiary Hearing.

To account for any possible conflict with the District Court Evidentiary Hearing, Complaint Counsel has proposed to Respondents a brief pause in the Administrative Hearing from July 20 through July 31 (the latter being the deadline for the parties' proposed findings of fact and conclusions of law in the District Court action), resuming the Administrative Hearing for any remaining evidence on August 1, 2023. Ex. I at 1 (Email from A. Dennis to K. Srinivasan (May 24, 2023)). This process easily resolves any "conflict" between the District Court and administrative proceedings. *E.g.*, Ex. E at 1 (Order Granting Joint Motion for Recesses, *In re POM Wonderful LLC*, No. 9344 (FTC Nov. 10, 2010)) (granting recesses in administrative hearing to accommodate attorney conflicts, including 9-day recess from May 27 until June 6, 2011).

Even if the Administrative Hearing were not briefly paused for the District Court Evidentiary Hearing, however, there still would be no need for a stay. In the event the Administrative Hearing continues beyond the start of the short District Court Evidentiary Hearing, were a witness scheduled to appear concurrently in both forums, a simple adjustment to the order of witnesses in the Administrative Hearing could resolve the conflict. A trial judge has broad discretion to control the order in which witnesses are called. *E.g.*, Fed. R. Evid. 611(a); *Argentine v. United Steelworkers of Am., AFL-CIO*, 287 F.3d 476, 486 (6th Cir. 2002) (citing *Geders v. United States*, 425 U.S. 80, 86 (1976)). If a witness were set to appear for some fraction of the District Court Evidentiary Hearing while also scheduled to testify in the Administrative Hearing, Chief Administrative Law Judge Chappell could easily switch the order of witnesses in deference to testimony in the District Court. Rule 3.21(f). Because the

Administrative Hearing will be held remotely, witnesses will not be burdened with additional travel as a result of appearing in the two proceedings. Finally, Respondents have retained at least five national law firms to represent them in these matters, and certainly have sufficient counsel to appear and assist in both proceedings.

In sum, Respondents' asserted scheduling conflicts do not amount to good cause for a total, indefinite stay of these proceedings because: (1) Respondents have not demonstrated that the evidentiary hearings are certain to overlap; (2) Any scheduling conflict for witnesses to testify in both forums is at this time hypothetical; and (3) Chief Administrative Law Judge Chappell may briefly pause the proceedings or adjust the order of witnesses to accommodate any conflict that may arise.

II. THE MERE FACT OF LITIGATING IN TWO FORUMS DOES NOT PROVIDE GOOD CAUSE FOR THE STAY RESPONDENTS SEEK

The default set forth in Rule 3.41(f)(1) is that “[t]he pendency of a collateral federal court action that relates to the administrative adjudication shall not stay the proceeding.” Respondents nevertheless argue that proceeding concurrently herein and in the District Court imposes undue burdens on all parties—including Complaint Counsel—that justify a stay.

Complaint Counsel is prepared to move forward with its case in both proceedings as scheduled. Indeed, many case deadlines—such as various discovery and filing deadlines—have been harmonized between the two cases by agreement of the parties for the sake of efficiency. *See* Order Denying Motion to Set Status Conference, Granting Joint Motion to Amend Scheduling Order, and Issuing Revised Scheduling Order at 2 (May 31, 2023); *see also* Stay Motion at 5 (“[D]iscovery and pretrial deadlines in both proceedings are moving forward in parallel . . .”). Because discovery in the District Court and in this case may be used in either

proceeding (Scheduling Order at 6 (Mar. 29, 2023)), the result is a largely unified discovery process with little duplication of effort.

Further, because the central question before the District Court is Complaint Counsel's likelihood of success in this administrative proceeding, there is substantial overlap of the legal issues. *See FTC v. Warner Commc 'ns Inc.*, 742 F.2d 1156, 1159-60, 1164 (9th Cir. 1984) (citing 15 U.S.C. § 53(b)). The substance of the briefing will be similar, and the burden on counsel of conforming their papers to each forum is minimal. The burden of assembling the evidence and briefing the issues in both proceedings thus will not be "immense," as Respondents suggest, but rather quite manageable, particularly in light of the multitude of firms and attorneys Respondents have retained to represent them.

III. RESPONDENTS RELY UPON COMMISSION ORDERS SHOWING THAT THEIR STAY MOTION IS AN OUTLIER

Respondents rely on an order from *In re Meta Platforms, Inc.*, No. 9411, 2023 WL 621507 (FTC Jan. 11, 2023) ("*Meta*") to suggest that the Commission has ordered stays in similar circumstances. *Meta*, however, is distinguishable, and illustrates that Respondents seek unusual, unjustified relief.

In *Meta*, involving parallel administrative and district court proceedings, the district court held evidentiary hearings in December 2022 and announced that its decision on the FTC's motion for a preliminary injunction would issue prior to the expiration of the parties' stipulated temporary restraining order ("TRO") on January 31, 2023. *Id.* at *1. The hearing in the related administrative proceeding was set to commence January 19, 2023. *Id.* Because of the possibility of an imminent decision by the district court, all parties submitted a joint motion to postpone the administrative hearing until February 13, 2023. *Id.* The Commission found that "[because] the . . . motion [was] joint," a continuance would not prejudice any party. *Id.* Further, the

Commission noted that the joint motion sought only “a 25-day continuance of the evidentiary hearing rather than an open-ended stay of the entire administrative proceeding.” *Id.* Finding that the short continuance would not “unduly delay[] the Commission proceeding,” the Commission granted the joint motion. *Id.* at *2.

In contrast, Respondents wish to stay the Administrative Hearing, currently scheduled *before* the District Court conducts its own hearing, with the timing of an eventual District Court decision uncertain. Respondents propose no concrete length for the stay, and instead request a stay until the District Court’s eventual ruling—precisely the sort of “open-ended stay of the entire administrative proceeding” that threatens “unduly delaying the Commission proceeding” that the Commission disapproved of in *Meta*. *Id.* at *1-2.

The other cases that Respondents cite for the proposition that “[t]he Commission has concluded in other recently litigated Part 3 merger matters . . . [that] the existence of a parallel federal proceeding presents good cause to postpone an administrative hearing until after the decision on a preliminary injunction,” Stay Motion at 3, paint a similar picture. All of those cases—like *Meta*—involved an evidentiary hearing in the district court that concluded prior to a scheduled administrative hearing, where complaint counsel and respondents jointly moved for a concrete, time-limited continuance in anticipation of a forthcoming district court opinion. *See id.* (citing *In re Hackensack Meridian Health, Inc.*, No. 9399, 2021 WL 2379546, at *1-2 (FTC May 25, 2021); *In re Thomas Jefferson Univ.*, No. 9392, 2020 WL 7237952, at *1-2 (FTC Nov. 6, 2020); *In re RAG-Stiftung*, No. 9384, 2020 WL 91294, at *1-3 (FTC Jan. 2, 2020); *In re Sanford Health*, No. 9376, 2017 WL 5845596, at *1-2 (FTC Nov. 21, 2017)). These cases illustrate that Respondents’ request for a stay of the administrative proceeding, of indeterminate duration and made well in advance of the District Court Evidentiary Hearing, is an outlier when compared

with recent precedent. And for good reason—Respondents’ suggestion that the mere existence of a parallel federal proceeding should result in a stay of administrative proceedings is flatly contradicted by the default set forth in Rule 3.41(f)(1) that “[t]he pendency of a collateral federal court action that relates to the administrative adjudication” is not, absent some other showing of good cause, grounds for a stay.

IV. RESPONDENTS SHOULD NOT BE PERMITTED TO EVADE THE STATUTORY FORUM FOR ADJUDICATION OF THEIR TRANSACTION’S LEGALITY

Respondents’ Stay Motion is the latest in a series of attempts to avoid adjudication of the legality of their merger by the Commission as provided by Congress. *See* 15 U.S.C. § 45(b). Though the purpose of the District Court action is solely to preserve the status quo until the Commission has determined whether Respondents’ merger violates Section 7 of the Clayton Act, 15 U.S.C. § 18, Respondents have repeatedly sought to supplant the administrative proceeding with the preliminary injunction action (brought under Section 13(b) of the FTC Act) in the District Court as the principal venue for litigating the merger’s legality. For example, at the outset of the federal court action, Respondents’ counsel refused to agree to entry of a TRO to which they had previously stipulated in writing unless Complaint Counsel agreed to also stipulate to set the District Court “trial” for July 12, 2023, intentionally creating a conflict with the date already set by the Commission for the Administrative Hearing, and jointly move to continue the Administrative Hearing. Ex. F at 2 (Letter from J. Everett to A. Dennis (Apr. 20, 2023)); *see also* Ex. G (Email from J. Everett to A. Dennis with attachment (April 19, 2023)) (proposing July 12, 2023, District Court “trial” date).⁴

⁴ Ultimately, this put Complaint Counsel in the unusual position of asking the District Court to enter a stipulated TRO without agreement of the other party. *See* Ex. H (Emergency Motion for a TRO, *FTC v. Intercontinental Exchange, Inc.*, No. 3:23-cv-01710-AMO (N.D. Cal. Apr. 21, 2023)).

Respondents have made clear that they do not view the Administrative Hearing as dispositive of their ability to merge, or even necessary. *E.g.*, Ex. D at 5:22-7:13 (“[The administrative proceeding] is not determining whether or not the merger can go forward.”); *id.* at 7:10-13 (“[B]ecause that’s the real question of the Court, is whether the merger can proceed on the date that is planned for closure. The administrative hearing is not going to answer that question.”); *see also* Ex. F at 1 (“First, only the District Court can enjoin the merger from closing.”). Respondents are incorrect. The Commission may enter an order prohibiting or unwinding the merger upon a finding of illegality. 15 U.S.C. § 45(b).

The instant motion reflects Respondents’ continued mistaken insistence that the preliminary injunction action—meant only to preserve the status quo—should instead function as a full merits proceeding. Stay Motion at 5 (suggesting the Administrative Hearing “will be unnecessary if the outcome of the Section 13(b) Action obviates the need to hold an administrative hearing in this proceeding”). As Congress and Courts have made clear, the administrative proceeding—not the District Court action under Section 13(b) of the FTC Act—will determine the ultimate merits of this case. 15 U.S.C § 53(b)(2) (“Upon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.”); *Warner Commc’ns*, 742 F.2d at 1162 (“Our present task is not to make a final determination on whether the proposed merger violates Section 7, but rather to make only a preliminary assessment of the merger’s impact on competition.”); *accord FTC v. H.J. Heinz Co.*, 246 F.3d 708, 714-15 (D.C. Cir. 2001); *FTC v. Meta Platforms Inc.*, No. 5:22-CV-04325-EJD, 2022 WL 16637996, at *4-6 (N.D. Cal. Nov. 2, 2022). The Commission should resist Respondents’ efforts to transform the

preliminary injunction action in the District Court under Section 13(b) into the ultimate merits proceeding.

CONCLUSION

For the foregoing reasons, Respondents' Stay Motion should be denied.

Dated: June 12, 2023

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Counsel Supporting the Complaint

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**INTERCONTINENTAL
EXCHANGE, INC.**

and

BLACK KNIGHT, INC.,

Defendants.

Case No. 3:23-cv-01710-AMO

SCHEDULING ORDER

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A case management conference was held on May 12, 2023. Having considered the parties' proposals, the Court **SETS** the following deadlines with respect to the FTC's claim for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act and any defenses to that claim pursuant to Federal Rule of Civil Procedure 16 and Civil Local Rule 16-10:

Close of fact discovery, other than depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period.	May 23, 2023 [agreed]
Deadline for parties to provide opening expert witness reports and all materials required by Additional Provision 21 of Chief Administrative Law Judge Chappell's March 29 Scheduling Order in Dkt. No. 9413.	May 30, 2023 [agreed]
Deadline for Plaintiff to file its memorandum in support of its request for a preliminary injunction, which shall not exceed 30 pages.	June 2, 2023
Deadline for Defendants to file memorandum(s) in opposition to the Plaintiff's request for a preliminary injunction. Defendants' memorandum(s) shall cumulatively not exceed 30 pages.	June 16, 2023
Deadline for parties to identify rebuttal expert(s) and provide rebuttal expert report(s) and all materials required by Additional Provision 21 of Chief Administrative Law Judge Chappell's March 29 Scheduling Order in Dkt. No. 9413. Any such reports are to be limited to rebuttal of matters set forth in the parties' opening expert reports. If material outside the scope of fair rebuttal is	June 23, 2023 [agreed]

<p>presented, parties will have the right to seek appropriate relief (such as striking rebuttal expert reports or seeking leave to submit surrebuttal expert reports).</p>	
<p>Deadline for Plaintiff to file its reply memorandum in support of its request for a preliminary injunction. The FTC’s reply memorandum shall not exceed 15 pages.</p>	<p>June 23, 2023</p>
<p>Parties that intend to offer as evidence materials designated as confidential by an opposing party or non-party shall provide notice to the opposing party or non-party by this date.</p>	<p>June 26, 2023</p>
<p>Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.</p>	<p>June 29, 2023 [agreed]</p>
<p>Deadline to file motions for in camera treatment of proposed hearing exhibits.</p>	<p>June 30, 2023</p>
<p>Deadline to file motions <i>in limine</i>. Any briefs in support of, or opposition to, motions <i>in limine</i>, including Daubert motions, shall not exceed 10 pages.</p>	<p>June 30, 2023</p>
<p>Deadline to file proposed pre-hearing findings of fact and conclusions of law. Each side’s proposed pre-hearing findings of fact and conclusions of law shall not exceed 50 pages.</p>	<p>June 30, 2023</p>
<p>Deadline to submit direct evidence through declarations, deposition designations, and exhibits.</p>	<p>June 30, 2023</p>
<p>Deadline to file responses to motions for in camera treatment of proposed hearing exhibits.</p>	<p>July 6, 2023</p>
<p>Deadline to file opposition to motions <i>in limine</i>.</p>	<p>July 6, 2023</p>
<p>Pre-hearing conference.</p>	<p>July 20, 2023 at 11 am</p>

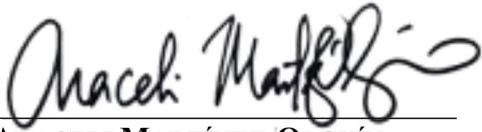
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<p>Evidentiary hearing on Plaintiff’s Motion begins. The parties will cross-exam witnesses, as well as redirect them. The parties are limited to 8 hours per side.</p>	<p>July 25, 2023 at 9 am</p>
<p>Deadline to submit post-hearing proposed findings of fact and conclusions of law. Each side’s post-hearing proposed findings of fact and conclusions of law shall not exceed 75 pages.</p>	<p>July 31, 2023</p>

Any party may seek modification of this Order for good cause, except that the parties may also modify discovery and expert disclosure deadlines by agreement.

IT IS SO ORDERED.

Dated: June 6, 2023


 ARACELI MARTÍNEZ-OLGUÍN
 UNITED STATES DISTRICT JUDGE
 NORTHERN DISTRICT OF CALIFORNIA

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EXHIBIT B

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:23-cv-01710-AMO**

Federal Trade Commission v. Intercontinental Exchange, Inc. et al Date Filed: 04/10/2023
Assigned to: Judge Araceli Martinez-Olguin Jury Demand: None
Cause: 15:53(b) - Prelim & Perm Inj Relief & other Equitable Nature of Suit: 410 Anti-Trust
Relief Jurisdiction: U.S. Government Plaintiff

Plaintiff

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Counter-claimant

Intercontinental Exchange, Inc.

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V.

Counter-defendant

Federal Trade Commission

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Stephen Ehrlich
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Daniel Aldrich
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Peter Alan Richman
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Counter-claimant

Black Knight, Inc.

represented by **Elliot Remsen Peters**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Adam L Goodman
(See above for address)
ATTORNEY TO BE NOTICED

Jonathan M Moses
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Khari Jamil Tillery
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R. James Slaughter
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V.

Counter-defendant

Federal Trade Commission

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Peter Alan Richman
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 ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/10/2023	1	COMPLAINT <i>For a Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(B) of the Federal Trade Commission Act</i> against Intercontinental Exchange, Inc., Black Knight, Inc. Filed by federal trade commission. (Attachments: # 1 Civil Cover Sheet)(Dennis, Abby) (Filed on 4/10/2023) Modified on 4/10/2023 (slh, COURT STAFF). (Entered: 04/10/2023)
04/10/2023	2	Proposed Summons. (Dennis, Abby) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	3	Proposed Summons. (Dennis, Abby) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	4	Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed by Federal Trade Commission. (Attachments: # 1 Unredacted Complaint, # 2 Proposed Order)(Dennis, Abby) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	5	<p>Case assigned to Magistrate Judge Joseph C. Spero.</p> <p>Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening.</p> <p>Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges. Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 4/24/2023. (ark, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)</p>
04/10/2023	6	CERTIFICATE OF SERVICE by Federal Trade Commission re 4 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed , 2 Proposed Summons, 3 Proposed Summons (Dennis, Abby) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	7	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 7/7/2023. Initial Case Management Conference set for 7/14/2023 at 02:00 PM in San Francisco, Courtroom F, 15th Floor. (slh, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)

04/10/2023	8	Summons Issued as to Intercontinental Exchange, Inc.. (slh, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/10/2023	9	Summons Issued as to Black Knight, Inc.. (slh, COURT STAFF) (Filed on 4/10/2023) (Entered: 04/10/2023)
04/11/2023	10	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Federal Trade Commission.. (Dennis, Abby) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/11/2023	11	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (klh, COURT STAFF) (Filed on 4/11/2023) (Entered: 04/11/2023)</p>
04/11/2023	12	NOTICE of Appearance by Minna L. Naranjo (Naranjo, Minna) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/11/2023	13	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to District Judge Araceli Martinez-Olguin for all further proceedings. Magistrate Judge Joseph C. Spero no longer assigned to case, Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras.. Signed by Clerk on 4/11/2023. (Attachments: # 1 Notice of Eligibility for Video Recording)(ark, COURT STAFF) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/11/2023	14	WAIVER OF SERVICE Returned Executed filed by Federal Trade Commission. Service waived by Black Knight, Inc. waiver sent on 4/10/2023, answer due 6/9/2023. (Dennis, Abby) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/11/2023	15	WAIVER OF SERVICE Returned Executed filed by Federal Trade Commission. Service waived by Intercontinental Exchange, Inc. waiver sent on 4/10/2023, answer due 6/9/2023. (Dennis, Abby) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/11/2023	16	NOTICE RE: UNAVAILABILITY AND GENERAL DUTY JUDGE. Signed by Judge Jacqueline Scott Corley on 4/11/2023. (klh, COURT STAFF) (Filed on 4/11/2023) (Entered: 04/11/2023)
04/14/2023	17	Certificate of Interested Entities by Intercontinental Exchange, Inc. (Naranjo, Minna) (Filed on 4/14/2023) (Entered: 04/14/2023)
04/17/2023	18	NOTICE of Appearance by Elliot Remsen Peters (Peters, Elliot) (Filed on 4/17/2023) (Entered: 04/17/2023)
04/17/2023	19	NOTICE of Appearance by R. James Slaughter (Slaughter, R.) (Filed on 4/17/2023) (Entered: 04/17/2023)
04/17/2023	20	NOTICE of Appearance by Khari Jamil Tillery (Tillery, Khari) (Filed on 4/17/2023) (Entered: 04/17/2023)

04/17/2023	21	CLERK'S NOTICE ON REASSIGNMENT. You are noticed that the Court has scheduled an Initial Case Management Conference before Judge Araceli Martinez-Olguin upon reassignment. For a copy of Judge Martinez-Olguin's Standing Order and other information, please refer to the Court's website at www.cand.uscourts.gov . Case Management Statement due by 7/13/2023. Initial Case Management Conference set for 7/20/2023 10:00 AM in San Francisco, Courtroom 10, 19th Floor. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (jlg, COURT STAFF) (Filed on 4/17/2023) (Entered: 04/17/2023)
04/17/2023	22	Joint Administrative Motion to File Under Seal <i>Re ECF Nos. 1 and 4</i> filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Declaration of Boris Kogan (ICE), # 2 Declaration of Blake Gibson (Black Knight), # 3 Proposed Order)(Naranjo, Minna) (Filed on 4/17/2023) (Entered: 04/17/2023)
04/20/2023	23	Defendants' REQUEST <i>for an Expedited Case Management Conference</i> re 21 Clerk's Notice by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit A - Defendants' Proposed Pretrial Schedule)(Naranjo, Minna) (Filed on 4/20/2023) Modified on 4/21/2023 (slh, COURT STAFF). (Entered: 04/20/2023)
04/21/2023	24	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18193762.) filed by Black Knight, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Moses, Jonathan) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	25	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18193775.) filed by Black Knight, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Goodman, Adam) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	26	CASE MANAGEMENT STATEMENT filed by Federal Trade Commission. (Attachments: # 1 Exhibit 1 - Order Entering Stipulation Concerning Remote Depositions)(Dennis, Abby) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	27	Declaration of Ashley Masters in Support of 26 Case Management Statement filed by Federal Trade Commission. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Related document(s) 26) (Masters, Ashley) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	28	Order by District Judge Araceli Martinez-Olguin granting 24 Motion for Pro Hac Vice as to Jonathan M. Moses. (jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	29	Order by District Judge Araceli Martinez-Olguin granting 25 Motion for Pro Hac Vice as to Adam L. Goodman. (jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	30	NOTICE of Appearance by Michelle Park Chiu <i>for Defendant Intercontinental Exchange, Inc.</i> (Chiu, Michelle) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	31	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195343.) Filing fee previously paid on 04/21/2023 filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Robins, Harry) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	32	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195430.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Dodds, John) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	33	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195458.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1

		Certificate of Good Standing)(Kliebard, Kenneth) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	34	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195487.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Johns, Zachary) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	35	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195529.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Kantor, Ryan) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	36	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18195551.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Zhu, Qian) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	37	Emergency MOTION for Temporary Restraining Order filed by Federal Trade Commission. (Attachments: # 1 Proposed Order)(Dennis, Abby) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	38	Declaration of Ashley Masters in Support of 37 Emergency MOTION for Temporary Restraining Order filed byFederal Trade Commission. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Related document(s) 37) (Masters, Ashley) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	39	Order by District Judge Araceli Martinez-Olguin granting 37 Emergency MOTION for Temporary Restraining Order. (tmi, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	40	Order by District Judge Araceli Martinez-Olguin granting 31 Motion for Pro Hac Vice as to Harry Robins.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	41	Order by District Judge Araceli Martinez-Olguin granting 32 Motion for Pro Hac Vice as to John C. Dodds.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	42	Order by District Judge Araceli Martinez-Olguin granting 33 Motion for Pro Hac Vice as to Kenneth Kliebard.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	43	Order by District Judge Araceli Martinez-Olguin granting 34 Motion for Pro Hac Vice as to Zachary Johns.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	44	Order by District Judge Araceli Martinez-Olguin granting 35 Motion for Pro Hac Vice as to Ryan Kantor.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	45	Order by District Judge Araceli Martinez-Olguin granting 36 Motion for Pro Hac Vice as to Qian Zhu.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	46	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18196898.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Everett, John) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	47	NOTICE of Appearance by Rishi Pankaj Satia (Satia, Rishi) (Filed on 4/21/2023) (Entered: 04/21/2023)

04/21/2023	48	Order by District Judge Araceli Martinez-Olguin granting 46 Motion for Pro Hac Vice as to John Clayton Everett.(jlg, COURT STAFF) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	49	NOTICE of Appearance by Kalpana Srinivasan (Srinivasan, Kalpana) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/21/2023	50	NOTICE of Appearance by Michael Gervais (Gervais, Michael) (Filed on 4/21/2023) (Entered: 04/21/2023)
04/24/2023	51	***FILED IN ERROR - SEE DKT. 52*** MOTION for leave to appear in Pro Hac Vice (Filing fee \$317, receipt number ACANDC-18199416) filed by Intercontinental Exchange, Inc. (Kaplan, Alexander) (Filed on 4/24/2023) Modified on 4/24/2023 (jlg, COURT STAFF). (Entered: 04/24/2023)
04/24/2023		Electronic filing error . Counsel: Kaplan. Please attach Certificate of Good Standing to your motion/application. This filing will not be processed by the clerks office. Please re-file in its entirety. Re: 51 MOTION for leave to appear in Pro Hac Vice (Filing fee \$317, receipt number ACANDC-18199416) filed by Intercontinental Exchange, Inc. (jlg, COURT STAFF) (Filed on 4/24/2023) (Entered: 04/24/2023)
04/24/2023	52	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18199416.) Filing fee previously paid on 4/24/2023 filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Certificate of Good Standing)(Kaplan, Alexander) (Filed on 4/24/2023) (Entered: 04/24/2023)
04/24/2023	53	Order by District Judge Araceli Martinez-Olguin granting 52 Motion for Pro Hac Vice Alexander L Kaplan. (jlg, COURT STAFF) (Filed on 4/24/2023) (Entered: 04/24/2023)
04/24/2023	54	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18200191.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Raymond, Shawn) (Filed on 4/24/2023) (Entered: 04/24/2023)
04/24/2023	55	Order by District Judge Araceli Martinez-Olguin granting 54 Motion for Pro Hac Vice Shawn Lawrence Raymond. (jlg, COURT STAFF) (Filed on 4/24/2023) (Entered: 04/24/2023)
04/25/2023	56	ORDER re 23 Defendants' REQUEST for an Expedited Case Management Conference. Signed by Judge Araceli Martinez-Olguin on 04/25/2023. (tmi, COURT STAFF) (Filed on 4/25/2023) (Entered: 04/25/2023)
04/25/2023	57	<i>Defendant Intercontinental Exchange, Inc.'s ANSWER to Complaint and Affirmative Defenses and, COUNTERCLAIM against Federal Trade Commission by Intercontinental Exchange, Inc.. (Naranjo, Minna) (Filed on 4/25/2023) (Entered: 04/25/2023)</i>
04/25/2023	58	<i>Defendant Black Knight, Inc.'s ANSWER to Complaint , COUNTERCLAIM against Federal Trade Commission by Black Knight, Inc.. (Slaughter, R.) (Filed on 4/25/2023) (Entered: 04/25/2023)</i>
04/25/2023	59	CERTIFICATE OF SERVICE by Black Knight, Inc. re 58 Answer to Complaint, Counterclaim (Slaughter, R.) (Filed on 4/25/2023) (Entered: 04/25/2023)
04/26/2023	60	CERTIFICATION OF INTERESTED ENTITIES OR PERSONS PURSUANT TO FED. R. CIV. P. 7.1 AND CIVIL LOCAL RULE 3-15 filed by Black Knight, Inc. (Peters, Elliot) (Filed on 4/26/2023) (Entered: 04/26/2023)

04/27/2023	61	MOTION for leave to appear in Pro Hac Vice of <i>Abigail C. Noebels</i> (Filing fee \$ 317, receipt number ACANDC-18211718.) filed by Intercontinental Exchange, Inc.. (Noebels, Abigail) (Filed on 4/27/2023) (Entered: 04/27/2023)
04/27/2023	62	Order by District Judge Araceli Martinez-Olguin granting 61 Motion for Pro Hac Vice as to Abigail C. Noebels. (jlg, COURT STAFF) (Filed on 4/27/2023) (Entered: 04/27/2023)
04/28/2023	63	CLERK'S NOTICE Updating Proposed Dates for Expedited Case Management Conference re 56 Order. This court is no longer available on May 4, 2023. Counsel please select either Friday, May 12 or Thursday, May 18 at 10:00 AM. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (tmi, COURT STAFF) (Filed on 4/28/2023) (Entered: 04/28/2023)
04/28/2023	64	RESPONSE re 56 Order by Federal Trade Commission. (Dennis, Abby) (Filed on 4/28/2023) (Entered: 04/28/2023)
04/28/2023	65	CLERK'S NOTICE SCHEDULING CASE MANAGEMENT CONFERENCE. Case Management Statement due by 5/5/2023. Initial Case Management Conference set for 5/12/2023 at 10:00 AM in San Francisco, Courtroom 10, 19th Floor. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ads, COURT STAFF) (Filed on 4/28/2023) (Entered: 04/28/2023)
04/28/2023	66	CLERK'S NOTICE REGARDING 5/12/2023 CASE MANAGEMENT CONFERENCE 65 . The Parties must submit a Joint Case Management Statement no later than 12pm (noon) on 5/5/2023 . Local Rule 16-10(b) requires that, "[u]nless excused by the Judge, lead trial counsel for each party must attend the initial Case Management Conference. Lead counsel for Defendant Black Knight, Inc., is excused from appearing if Defendant Black Knights counsel who appears at that 5/12/2023 Case Management Conference has full authority to enter into stipulations and make admissions pursuant to the Northern District of Californias general standing order on Joint Case Management Statements. Defendant Black Knight must file a notice confirming counsel's authority no later than Monday, 5/1/2023 . <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ads, COURT STAFF) (Filed on 4/28/2023) (Entered: 04/28/2023)
05/01/2023	67	Response re 66 Clerk's Notice by Black Knight, Inc.. (Peters, Elliot) (Filed on 5/1/2023) (Entered: 05/01/2023)
05/03/2023	68	NOTICE of Appearance by Steven Keeley Taylor (Taylor, Steven) (Filed on 5/3/2023) (Entered: 05/03/2023)
05/03/2023	69	NOTICE of Appearance by Emily Lu Wang (Wang, Emily) (Filed on 5/3/2023) (Entered: 05/03/2023)
05/03/2023	70	NOTICE of Appearance by Eleanor Frances Brock (Brock, Eleanor) (Filed on 5/3/2023) (Entered: 05/03/2023)
05/03/2023	71	NOTICE of Appearance by Kelly Seranko Kaufman (Kaufman, Kelly) (Filed on 5/3/2023) (Entered: 05/03/2023)
05/05/2023	72	JOINT CASE MANAGEMENT STATEMENT filed by Federal Trade Commission. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Dennis, Abby) (Filed on 5/5/2023) (Entered: 05/05/2023)

05/09/2023	73	MOTION for leave to appear in Pro Hac Vice, (Filing Fee: \$317.00, receipt number ACANDC-18246162) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit)(Zuniga, Krisina) (Filed on 5/9/2023) (Entered: 05/09/2023)
05/09/2023	74	NOTICE by Intercontinental Exchange, Inc. <i>Notice of Constitutional Challenge</i> (Naranjo, Minna) (Filed on 5/9/2023) (Entered: 05/09/2023)
05/10/2023	75	Order by District Judge Araceli Martinez-Olguin granting 73 Motion for Pro Hac Vice as to Krisina Zuiga.(ads, COURT STAFF) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	76	NOTICE of Appearance by Daniel Aldrich (Aldrich, Daniel) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	77	NOTICE of Appearance by Laura Antonini (Antonini, Laura) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	78	NOTICE of Appearance by Catharine Bill (Bill, Catharine) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	79	NOTICE of Appearance by Caitlin Cipicchio (Cipicchio, Caitlin) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	80	NOTICE of Appearance by Steven Couper (Couper, Steven) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	81	NOTICE of Appearance by Janet Kim (Kim, Janet) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	82	NOTICE of Appearance by Christopher Lamar (Lamar, Christopher) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	83	NOTICE of Appearance by Lauren Sillman (Sillman, Lauren) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	84	NOTICE of Appearance by Nina Shishir Thanawala (Thanawala, Nina) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	85	NOTICE of Appearance by Nicolas Stebinger (Stebinger, Nicolas) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/10/2023	86	NOTICE of Appearance by Neal Jonathan Perlman (Perlman, Neal) (Filed on 5/10/2023) (Entered: 05/10/2023)
05/11/2023	87	MOTION for leave to appear in Pro Hac Vice <i>Michael Kelso</i> (Filing fee \$ 317, receipt number ACANDC-18253378.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Kelso, Michael) (Filed on 5/11/2023) (Entered: 05/11/2023)
05/11/2023	88	Order by District Judge Araceli Martinez-Olguin granting 87 Motion for Pro Hac Vice as to Michael C. Kelso.(ads, COURT STAFF) (Filed on 5/11/2023) (Entered: 05/11/2023)
05/11/2023	89	CLERK'S NOTICE requesting parties to submit a proposed scheduling order in Word format to amopo@cand.uscourts.gov no later than 5/12/2023 by 9:00 AM. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ads, COURT STAFF) (Filed on 5/11/2023) (Entered: 05/11/2023)

05/12/2023	90	<p>Minute Entry for proceedings held before District Judge Araceli Martinez-Olguin: Initial Case Management Conference held on 5/12/2023.</p> <p>The Court and Parties discussed case status and scheduling order. The Court will issue a follow-up Order.</p> <p>Digital Recording Time: 10:00 - 10:47. Proceedings transcribed by Tara Jauregui (Echo Reporting) echoreporting@yahoo.com. Plaintiff Attorney: Abby Lauren Dennis, Ashley Masters. Defendant Intercontinental Exchange Inc. Attorney: John Clayton Everett, Jr., Kalpana Srinivasan, and Krisina J. Zuniga Defendant Black Knight Inc. Attorney: Khari Jamil Tillery and R. James Slaughter.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (ads, COURT STAFF) (Date Filed: 5/12/2023) Modified on 5/18/2023 (knm, COURT STAFF). (Entered: 05/12/2023)</p>
05/12/2023	91	STIPULATION WITH PROPOSED ORDER <i>Stipulated Protective Order</i> filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Declaration of Michelle Park Chiu) (Chiu, Michelle) (Filed on 5/12/2023) (Entered: 05/12/2023)
05/15/2023	92	CERTIFICATE OF SERVICE by Intercontinental Exchange, Inc. re 74 Notice (Other) (Naranjo, Minna) (Filed on 5/15/2023) (Entered: 05/15/2023)
05/16/2023	93	CERTIFICATE OF SERVICE by Black Knight, Inc. re 58 Answer to Complaint, Counterclaim (Slaughter, R.) (Filed on 5/16/2023) (Entered: 05/16/2023)
05/16/2023	94	SCHEDULING ORDER. Evidentiary Hearing set for 7/25/2023 to 7/26/2023 at 09:00 AM in San Francisco, Courtroom 10, 19th Floor before Judge Araceli Martinez-Olguin. Pre-hearing Conference set for 7/20/2023 11:00 AM in San Francisco, Courtroom 10, 19th Floor before Judge Araceli Martinez-Olguin. Signed by Judge Araceli Martinez-Olguin on 5/16/2023. (ads, COURT STAFF) (Filed on 5/16/2023) (Entered: 05/16/2023)
05/16/2023	95	MOTION to Strike 57 Answer to Complaint, Counterclaim, 58 Answer to Complaint, Counterclaim filed by Federal Trade Commission. Motion Hearing set for 6/22/2023 02:00 PM in San Francisco, Courtroom 10, 19th Floor before Judge Araceli Martinez-Olguin. Responses due by 5/30/2023. Replies due by 6/6/2023. (Dennis, Abby) (Filed on 5/16/2023) (Entered: 05/16/2023)
05/17/2023	96	TRANSCRIPT ORDER for proceedings held on 05/12/2023 before Judge Araceli Martinez-Olguin by Federal Trade Commission, for Court Reporter not listed - San Francisco. (Dennis, Abby) (Filed on 5/17/2023) (Entered: 05/17/2023)
05/17/2023	97	TRANSCRIPT ORDER for proceedings held on 05/12/2023 before Judge Araceli Martinez-Olguin by Intercontinental Exchange, Inc., for Court Reporter not listed - San Francisco. (Srinivasan, Kalpana) (Filed on 5/17/2023) (Entered: 05/17/2023)
05/18/2023	98	<p>AUDIO RECORDINGS ORDER (requesting docket(s): 90), by Federal Trade Commission. Court will send to Rebecca Hyman at rhyman@ftc.gov a link to the files requested in this order. Fee waived because filer is USAO, FPD or CJA counsel on this case. (Dennis, Abby) (Filed on 5/18/2023)</p> <p>The audio recording link was emailed to the above listed email address on 5/18/2023, by K. Melen. (Entered: 05/18/2023)</p>
05/19/2023	99	AUDIO RECORDINGS ORDER (requesting docket(s): 90), by Intercontinental Exchange, Inc.. Court will send to Shawn L. Raymond at sraymond@susmangodfrey.com

		a link to the files requested in this order. (Filing fee \$ 32, receipt number ACANDC-18283949). (Raymond, Shawn) (Filed on 5/19/2023) The audio recording was sent to the requested party on 6/5/2023 by B.Sims (bns, COURT STAFF). (Entered: 05/19/2023)
05/22/2023	100	Statement re 22 Joint Administrative Motion to File Under Seal <i>Re ECF Nos. 1 and 4 Defendants' Joint Statement Regarding Pending Administrative Motion To Seal</i> by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit A)(Naranjo, Minna) (Filed on 5/22/2023) (Entered: 05/22/2023)
05/23/2023	101	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-18295030.) filed by Intercontinental Exchange, Inc.. (Attachments: # 1 Exhibit Certificate of Good Standing)(Carlis, Adam) (Filed on 5/23/2023) (Entered: 05/23/2023)
05/25/2023	102	Order by Judge Araceli Martinez-Olguin granting 101 Motion for Pro Hac Vice as to Adam Carlis. (ads, COURT STAFF) (Filed on 5/25/2023) (Entered: 05/25/2023)
05/30/2023	103	AUDIO RECORDINGS ORDER (requesting docket(s): 90). Court will send to Kiffen Loomis - Farallon Capital at kloomis@faralloncapital.com a link to the files requested in this order. (Filing fee \$ 32, receipt number 275NQ9IH). (knm, COURT STAFF) (Filed on 5/30/2023) The audio recording link was emailed to above listed email address on 5/30/2023, by B. Sims. (Entered: 05/30/2023)
05/30/2023	104	OPPOSITION/RESPONSE (re 95 MOTION to Strike 57 Answer to Complaint, Counterclaim, 58 Answer to Complaint, Counterclaim) - <i>Defendants' Response in Opposition to the FTC's Motion to Strike Defendants' Affirmative Defenses</i> filed by Black Knight, Inc., Intercontinental Exchange, Inc.. (Srinivasan, Kalpana) (Filed on 5/30/2023) (Entered: 05/30/2023)
05/31/2023	105	NOTICE of Appearance by Jessica Drake (Drake, Jessica) (Filed on 5/31/2023) (Entered: 05/31/2023)
06/01/2023	106	AUDIO RECORDINGS ORDER (requesting docket(s): 90). Court will send to Nick Rodelli at nick.rodelli@cfraresearch.com, a link to the files requested in this order. (Filing fee \$ 32, receipt number 275RKJTE) (knm, COURT STAFF) (Filed on 6/1/2023) The audio recording link was emailed to above listed email address on 6/5/2023, by B. Sims.(bns, COURT STAFF). (Entered: 06/01/2023)
06/02/2023	107	Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed by Federal Trade Commission. (Attachments: # 1 Proposed Order, # 2 Unredacted Version of PLAINTIFFS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION)(Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	108	EXHIBITS re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed <i>DECLARATION OF ASHLEY MASTERS</i> filed by Federal Trade Commission. (Related document(s) 107) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	109	Brief re 1 Complaint, <i>PLAINTIFFS MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION</i> filed by Federal Trade Commission. (Attachments: # 1 Proposed Order)(Related document(s) 1) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	110	EXHIBITS re 109 Brief, <i>DECLARATION OF ASHLEY MASTERS</i> filed by Federal Trade Commission. (Attachments: # 1 List of Under Seal Exhibits)(Related document(s) 109)

		(Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	111	EXHIBITS re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed byFederal Trade Commission. (Attachments: # 1 Unredacted Version of PX0021, # 2 Unredacted Version of PX0042, # 3 Unredacted Version of PX1012, # 4 Unredacted Version of PX1026, # 5 Unredacted Version of PX1042, # 6 Unredacted Version of PX1046, # 7 Unredacted Version of PX1059, # 8 Unredacted Version of PX1077, # 9 Unredacted Version of PX1085, # 10 Unredacted Version of PX1091, # 11 Unredacted Version of PX1093, # 12 Unredacted Version of PX1096, # 13 Unredacted Version of PX1100, # 14 Unredacted Version of PX1102, # 15 Unredacted Version of PX1116, # 16 Unredacted Version of PX1132, # 17 Unredacted Version of PX1158, # 18 Unredacted Version of PX1166, # 19 Unredacted Version of PX1224, # 20 Unredacted Version of PX1236, # 21 Unredacted Version of PX1238, # 22 Unredacted Version of PX1241, # 23 Unredacted Version of PX1267, # 24 Unredacted Version of PX1270, # 25 Unredacted Version of PX1365, # 26 Unredacted Version of PX1411, # 27 Unredacted Version of PX1452)(Related document(s) 107) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	112	EXHIBITS re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed byFederal Trade Commission. (Attachments: # 1 Unredacted Version of PX1553, # 2 Unredacted Version of PX1556, # 3 Unredacted Version of PX1588, # 4 Unredacted Version of PX1640, # 5 Unredacted Version of PX1694, # 6 Unredacted Version of PX1695, # 7 Unredacted Version of PX1696, # 8 Unredacted Version of PX1697, # 9 Unredacted Version of PX1698, # 10 Unredacted Version of PX1700, # 11 Unredacted Version of PX1701, # 12 Unredacted Version of PX1704, # 13 Unredacted Version of PX1705, # 14 Unredacted Version of PX1706, # 15 Unredacted Version of PX1708, # 16 Unredacted Version of PX1709, # 17 Unredacted Version of PX1711, # 18 Unredacted Version of PX1718, # 19 Unredacted Version of PX2022, # 20 Unredacted Version of PX2023, # 21 Unredacted Version of PX2033, # 22 Unredacted Version of PX2092, # 23 Unredacted Version of PX2094, # 24 Unredacted Version of PX2098, # 25 Unredacted Version of PX2123, # 26 Unredacted Version of PX2131, # 27 Unredacted Version of PX2157, # 28 Unredacted Version of PX2212, # 29 Unredacted Version of PX2218, # 30 Unredacted Version of PX2259)(Related document(s) 107) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	113	EXHIBITS re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed byFederal Trade Commission. (Attachments: # 1 Unredacted Version of PX2311, # 2 Unredacted Version of PX2313, # 3 Unredacted Version of PX2316, # 4 Unredacted Version of PX2319, # 5 Unredacted Version of PX2509, # 6 Unredacted Version of PX2521, # 7 Unredacted Version of PX2522, # 8 Unredacted Version of PX2523, # 9 Unredacted Version of PX2524, # 10 Unredacted Version of PX2525, # 11 Unredacted Version of PX2526, # 12 Unredacted Version of PX4097, # 13 Unredacted Version of PX4116, # 14 Unredacted Version of PX4138, # 15 Unredacted Version of PX4142, # 16 Unredacted Version of PX4189, # 17 Unredacted Version of PX4219, # 18 Unredacted Version of PX4220, # 19 Unredacted Version of PX4224, # 20 Unredacted Version of PX6007, # 21 Unredacted Version of PX6012, # 22 Unredacted Version of PX6013)(Related document(s) 107) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/02/2023	114	EXHIBITS re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed byFederal Trade Commission. (Attachments: # 1 Unredacted Version of PX6021, # 2 Unredacted Version of PX6025, # 3 Unredacted Version of PX6026, # 4 Unredacted Version of PX6027, # 5 Unredacted Version of PX6029, # 6 Unredacted Version of PX6032, # 7 Unredacted Version of PX6033, # 8 Unredacted Version of PX6034, # 9 Unredacted Version of PX6035, # 10 Unredacted Version of PX6036, # 11 Unredacted Version of PX6037, # 12 Unredacted Version of PX6038, # 13

		Unredacted Version of PX6039, # 14 Unredacted Version of PX6040, # 15 Unredacted Version of PX6041, # 16 Unredacted Version of PX6042, # 17 Unredacted Version of PX6043, # 18 Unredacted Version of PX6044, # 19 Unredacted Version of PX6045, # 20 Unredacted Version of PX6046, # 21 Unredacted Version of PX6047, # 22 Unredacted Version of PX6048, # 23 Unredacted Version of PX6051, # 24 Unredacted Version of PX6053, # 25 Unredacted Version of PX6062, # 26 Unredacted Version of PX7001, # 27 Unredacted Version of PX7002, # 28 Unredacted Version of PX7007, # 29 Unredacted Version of PX8000)(Related document(s) 107) (Dennis, Abby) (Filed on 6/2/2023) (Entered: 06/02/2023)
06/06/2023	115	Transcript of Proceedings held on 05/12/23, before Judge Araceli Martinez-Olguin. Court Reporter/Transcriber Echo Reporting, Inc., telephone number echoreporting@yahoo.com. Tape Number: 10:00 - 10:47. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerk's Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re 96 Transcript Order) Redaction Request due 6/27/2023. Redacted Transcript Deadline set for 7/7/2023. Release of Transcript Restriction set for 9/5/2023. (Related documents(s) 96) (Jauregui, Tara) (Filed on 6/6/2023) (Entered: 06/06/2023)
06/06/2023	116	REPLY to Opposition (re 95 MOTION to Strike 57 Answer to Complaint, Counterclaim, 58 Answer to Complaint, Counterclaim) filed by Federal Trade Commission. (Dennis, Abby) (Filed on 6/6/2023) (Entered: 06/06/2023)
06/06/2023	117	Proposed Order re 95 MOTION to Strike 57 Answer to Complaint, Counterclaim, 58 Answer to Complaint, Counterclaim by Federal Trade Commission. (Dennis, Abby) (Filed on 6/6/2023) (Entered: 06/06/2023)
06/06/2023	118	AMENDED SCHEDULING ORDER. All dates and deadlines remain unchanged. Signed by Judge Araceli Martinez-Olguin on 6/6/2023. (ads, COURT STAFF) (Filed on 6/6/2023) (Entered: 06/06/2023)
06/06/2023	119	Clerk's Notice Continuing Motion Hearing. Motion to Strike Hearing set for 7/20/2023 at 10:00 AM in San Francisco, Courtroom 10, 19th Floor before Judge Araceli Martinez-Olguin. (Related documents(s) 95). (This is a text-only entry generated by the court. There is no document associated with this entry.) (ads, COURT STAFF) (Filed on 6/6/2023) (Entered: 06/06/2023)
06/08/2023	120	TRANSCRIPT ORDER for proceedings held on 5/12/2023 before Judge Araceli Martinez-Olguin for Court Reporter not listed - San Francisco, ordered by Grace Hill. (knm, COURT STAFF) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/08/2023	121	NOTICE of Appearance by Erica R. Sutter of Fenwick & West LLP on behalf of Non-Party PollyEx, Inc. (Sutter, Erica) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/08/2023	122	Statement re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed <i>Non-Party Constellation Web Solutions Inc.'s Statement In Support of Sealing Confidential Business Material Filed by Plaintiff Provisionally Under Seal (ECF No. 107)</i> by Constellation Web Solutions Inc.. (Richey, Carrie) (Filed on 6/8/2023) (Entered: 06/08/2023)
06/08/2023	123	TRANSCRIPT ORDER for proceedings held on 5/12/2023 before Judge Araceli Martinez-Olguin for Court Reporter not listed - San Francisco, ordered by David Littlejohn. (knm, COURT STAFF) (Filed on 6/8/2023) (Entered: 06/08/2023)

06/09/2023	124	NOTICE of Appearance by David C. Brownstein <i>for Non-Party Parvesh Sahi</i> (Brownstein, David) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	125	NOTICE of Appearance by David Mark Goldstein, Esq <i>for Non-Party Parvesh Sahi</i> (Goldstein, David) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	126	NOTICE of Appearance by Scott Andrew Sher (<i>on behalf of Blend Labs, Inc.</i>) (Sher, Scott) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	127	ADMINISTRATIVE MOTION Seal Confidential Business Material re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed by Blend Labs, Inc.. Responses due by 6/13/2023. (Attachments: # 1 Declaration PETER FRECHETTE, # 2 Proposed Order)(Sher, Scott) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	128	Brief re 110 Exhibits, 108 Exhibits to an Administrative Motion to File Under Seal, 109 Brief, 113 Exhibits to an Administrative Motion to File Under Seal,,,, <i>Lender Price's L.R. 79-5(f)(3) Statement in Support of Sealing</i> filed by Cre8Tech Labs, Inc. d/b/a Lender Price. (Attachments: # 1 Declaration Declaration of Dawar Alimi In Supuport of Lender Price's L.R. 79-5(f)(3) Statement)(Related document(s) 110 , 108 , 109 , 113) (Shipow, Mark) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	129	Statement re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed <i>Defendants' Joint Statement Regarding Plaintiff's Administrative Motion To Consider Whether Another Party's Material Should Be Sealed [Dkt No. 107]</i> by Intercontinental Exchange, Inc.. (Attachments: # 1 Declaration of Boris Kogan, # 2 Declaration of Blake Gibson, # 3 Proposed Order)(Naranjo, Minna) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	130	Declaration of Joe Joffrion in Support of 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed filed by Impac Mortgage Holdings, Inc.. (Related document(s) 107) (Wanger, Christopher) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	131	<i>Statement in Support of Sealing Certain Confidential Business Material filed by Plaintiff Provisionally under Seal</i> by Umpqua Bank. (Attachments: # 1 Declaration of Brian Kittredge in Support of Umpqua Bank's Statement in support of Sealing Confidential Business Material)(Perez, Phillip) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	132	Statement re 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed <i>Non-Party PollyEx, Inc.'s Statement In Support of Administrative Motion to Consider Whether Another Party's Material Should be Sealed</i> by PollyEx, Inc.. (Sutter, Erica) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	133	Declaration of Parvesh Sahi in Support of 110 Exhibits, 107 Administrative Motion to Consider Whether Another Party's Material Should Be Sealed <i>and In Support of Sealing Portions of Exhibit PX6047</i> filed by Parvesh Sahi. (Related document(s) 110 , 107) (Brownstein, David) (Filed on 6/9/2023) (Entered: 06/09/2023)
06/09/2023	134	MOTION for Extension of Time to File <i>a Statement And/Or Declaration In Support Of Sealing</i> filed by Mutual of Omaha Mortgage. (Attachments: # 1 Declaration of Mark Carroll In Support Of Non-Party Mutual Of Omaha Mortgage's Motion To Extend Deadline To File A Statement And/Or Declaration In Support Of Sealing, # 2 Declaration of J. Barrett Marum In Support Of Non-Party Mutual Of Omaha Mortgage's Motion To Extend Deadline To File A Statement And/Or Declaration In Support Of Sealing, # 3 Proposed Order)(Marum, J.) (Filed on 6/9/2023) (Entered: 06/09/2023)

06/10/2023	135	NOTICE of Appearance by Stephen Ehrlich (Ehrlich, Stephen) (Filed on 6/10/2023) (Entered: 06/10/2023)
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PACER Service Center			
Transaction Receipt			
06/12/2023 03:32:00			
PACER Login:	NStebinger2020	Client Code:	
Description:	Docket Report	Search Criteria:	3:23-cv-01710-AMO
Billable Pages:	20	Cost:	2.00

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 FEDERAL TRADE COMMISSION,

5 Plaintiff,

6 v.

7 INTERCONTINENTAL
8 EXCHANGE, INC.

9 and

10 BLACK KNIGHT, INC.,

11 Defendants.

Case No. 3:23-cv-01710-AMO

JOINT CASE MANAGEMENT
STATEMENT

JOINT CASE MANAGEMENT STATEMENT

Plaintiff Federal Trade Commission (“FTC” or “Commission”) has met and conferred with Defendants Intercontinental Exchange, Inc. (“Intercontinental Exchange”) and Black Knight, Inc. (“Black Knight”) (collectively, “Defendants”) as required under Civil Local Rule 16-3. The FTC, ICE, and Black Knight jointly submit this JOINT CASE MANAGEMENT STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9:

A. JURISDICTION AND SERVICE

The parties agree that this Court has subject-matter jurisdiction over the FTC’s complaint for a preliminary injunction pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. There are no issues pending regarding personal jurisdiction. Defendants do not plan to contest venue in this district. Defendants waived service on April 11, 2023.

PLAINTIFF’S STATEMENT REGARDING DEFENDANTS’ COUNTERCLAIMS:

On April 25, 2023, Defendants filed counterclaims asking the Court to declare the FTC’s structure and administrative procedures unconstitutional and to enjoin the Commission from pursuing an administrative enforcement action against Defendants. It is unknown to the FTC whether Defendants have effected service on the United States, including on the United States Attorney for the Northern District of California, as required by Federal Rules of Civil Procedure 4(i) and 12(a)(2). The FTC reserves its rights to contest the Court’s subject-matter jurisdiction over Defendants’ counterclaims and to dispute the adequacy of service.

DEFENDANTS’ STATEMENT REGARDING DEFENDANTS’ COUNTERCLAIMS:

Last month, the United States Supreme Court unanimously confirmed this Court’s subject matter jurisdiction over defendants’ constitutional claims. *See Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. ____, 143 S. Ct. 890, 900 (2023) (“We now conclude that the review

1 schemes set out in the Exchange Act and the FTC Act do not displace district court jurisdiction
2 over Axon’s and Cochran’s far-reaching constitutional claims.”).

3 **B. FACTS**

4 Defendants Intercontinental Exchange and Black Knight are (among other things not
5 relevant here) financial technology companies that offer to lenders systems that facilitate the
6 origination, underwriting, issuance, and servicing of mortgage loans. The Intercontinental
7 Exchange Mortgage Technology business unit operates, among other things, a loan origination
8 system (“LOS”) called Encompass and a product pricing and eligibility engine (“PPE”) called
9 Encompass Product and Pricing Service (“EPPS”). Among other things, PPE software helps
10 lenders identify loan rates for a borrower, determine the borrower’s eligibility for a given loan,
11 and lock in the loan’s terms for the borrower. Black Knight operates, among other things, an
12 LOS called Empower and a PPE called Optimal Blue. EPPS is embedded in and has been
13 offered only to Encompass customers; Optimal Blue is a PPE that is available on numerous
14 LOS systems, including Encompass, and is integrated into Empower.

15 On May 4, 2022, Intercontinental Exchange and Black Knight signed an Agreement and
16 Plan of Merger, whereby Intercontinental Exchange agreed to acquire 100% of Black Knight for
17 approximately \$13.1 billion. The merger agreement’s outside date is November 4, 2023.

18 In May 2022, the FTC began an investigation of the proposed merger. On March 7,
19 2023, Intercontinental Exchange and Black Knight agreed (in response to concerns raised by the
20 FTC about competition among LOS providers) to remove Empower (Black Knight’s LOS
21 system) from the proposed transaction, sell Empower to a third party (Constellation Web
22 Solutions, Inc.), and revise the merger consideration accordingly. Two days later, on March 9,
23 2023, the Commission voted 4-0 to issue an administrative complaint challenging the merger
24 and authorize the petition for a TRO and PI. On the same day, the Commission commenced an
25 administrative proceeding on the antitrust merits of the proposed acquisition before an
26 Administrative Law Judge and set July 12, 2023, as the date on which the merits trial would
27 begin. According to the FTC’s Rules of Practice for Adjudicative Proceedings, the
28

1 Administrative Law Judge shall file an initial decision within 70 days after the last filed, post-
2 hearing initial or reply proposed findings of fact, conclusions of law, and order. The
3 Administrative Law Judge may extend this time period by up to 30 days for good cause, and the
4 Commission may further extend this time period for good cause. Any ruling by the ALJ is an
5 initial ruling subject to de novo review by the Commission.

6 On April 10, 2023, the FTC filed this action. The parties anticipate that the following
7 factual issues regarding the merger will be disputed: (a) whether commercial LOSs, all LOSs,
8 PPEs for users of Encompass, and all PPEs constitute relevant antitrust markets as alleged in the
9 FTC’s complaint (ECF No. 1, filed April 10, 2023) (“Complaint” or “Compl.”), and, if so, the
10 contours of those markets (Compl. ¶¶ 37-68); (b) market shares and concentration in the
11 relevant markets (Compl. ¶¶ 69-75); (c) whether it is reasonably probable that the proposed
12 acquisition will result in anticompetitive effects in one or more of the relevant antitrust markets
13 alleged in the Complaint, or in other relevant antitrust markets for ancillary services (Compl. ¶¶
14 76-133); (d) whether new entry or expansion by existing firms will be timely, likely, or
15 sufficient to offset any anticompetitive effects (Compl. ¶¶ 134-143); (e) whether any merger-
16 specific, verifiable, and cognizable efficiencies from the merger outweigh any anticompetitive
17 effects of the merger; and (f) the effect of Defendants’ contingent divestiture of certain Black
18 Knight assets (including its LOS) to Constellation (Compl. ¶¶ 144-145).

19 **C. LEGAL ISSUES**

20 This action presents the following legal issues for determination:

21 **PLAINTIFF’S STATEMENT:**

- 22 1. Whether, in an administrative proceeding, the Commission is likely to succeed in
23 showing that the effect of the proposed acquisition “may be substantially to lessen
24 competition, or tend to create a monopoly,” in violation of Section 7 of the Clayton
25 Act, 15 U.S.C. § 18;

2. Whether the Commission has properly shown that, weighing the equities and considering the Commission’s likelihood of ultimate success, a preliminary injunction would be in the public interest;
3. Whether the Section 13(b) inquiry must focus on the antitrust merits of the transaction at issue or whether the Court should also consider Defendants’ constitutional challenges as affirmative defenses to the FTC’s motion for a preliminary injunction under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); and
4. Whether the district court has subject-matter jurisdiction to entertain Defendants’ constitutional counterclaims for declaratory and injunctive relief.

DEFENDANTS’ STATEMENT

1. Whether Defendants are entitled to declaratory relief that the FTC’s administrative process is unconstitutional, violates Article I of the Constitution, violates Article II of the Constitution, and violates Defendants’ respective constitutional rights under the Due Process Clause, the Equal Protection Clause, and the Seventh Amendment; and
2. Whether Defendants have shown that FTC’s administrative process has caused and will continue to cause Defendants to suffer immediate and irreparable harm to their constitutional rights such that the FTC should be enjoined from pursuing an administrative enforcement action against Defendants.

D. MOTIONS

On April 10, 2023, with respect to the Complaint, the FTC filed an administrative motion to consider whether another party’s confidential information should remain under seal. Dkt. No. 4. On April 17, 2023, Defendants filed a joint administrative motion to file under seal certain portions of the Complaint. Dkt. No. 22. The Court has not yet ruled on these motions.

On April 21, 2023, the FTC filed a motion for entry of a stipulated temporary restraining order (Dkt. No. 37), which the Court granted that same day (Dkt. No. 39).

1 **E. AMENDMENT OF PLEADINGS**

2 Pursuant to Fed. R. Civ. P. 15(a)(1)(B), the FTC may amend its Complaint by May 8,
3 2023.

4 **F. EVIDENCE PRESERVATION**

5 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
6 Electronically Stored Information, and that they met and conferred pursuant to Fed. R. Civ. P.
7 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the
8 issues reasonably evident in this action. The parties further certify that such steps are being
9 taken.

10 **G. DISCLOSURES**

11 On March 22, 2023, the parties exchanged mandatory initial disclosures pursuant to
12 Rule 3.31(b) of the FTC’s Rules of Practice for Adjudicative Proceedings. 16 C.F.R. § 3.31(b)
13 (requiring disclosure of individuals “likely to have discoverable information,” documents, and
14 electronically stored information “relevant to the allegations of the Commission’s complaint, to
15 the proposed relief, or to the defenses of the respondent”). On April 3, 2023, Defendants served
16 amended mandatory initial disclosures, and, on April 17, 2023, the FTC served supplemental
17 mandatory initial disclosures.

18 The parties have agreed that their mandatory initial disclosures from the administrative
19 proceeding satisfy the initial disclosure requirements of Federal Rule of Civil Procedure
20 26(a)(1) for purposes of this proceeding. If the parties need to supplement or correct their
21 disclosures during the pendency of this action, they will do so pursuant to Federal Rule of Civil
22 Procedure 26(e) and Rule 3.31(e) of the FTC’s Rules of Practice for Adjudicative Proceedings.

23 **H. DISCOVERY**

24 On March 29, 2023, Chief Administrative Law Judge Chappell issued a scheduling
25 order in the administrative proceedings that provided, in part, that “any discovery obtained in
26 this proceeding may be used in the related federal court litigation, and vice versa.” 3/29/2023
27
28

1 Order at ¶ 8.¹ Substantial discovery has already occurred, including the production of
2 documents, the issuance of non-party subpoenas, and many fact depositions.

3 The parties agree that the deadlines for discovery in the administrative proceeding, as set
4 forth in Chief Administrative Law Judge Chappell’s March 29, 2023 Scheduling Order attached
5 as **Exhibit A**, will apply with respect to the FTC’s claim for a preliminary injunction under
6 Section 13(b) of the Federal Trade Commission Act and any defenses to that claim. In pertinent
7 part:

- 8 a) The deadline for fact discovery shall be **May 23, 2023**, other than discovery
9 permitted under Rule 3.24(a)(4) of the FTC’s Rules of Practice for
10 Adjudicative Proceedings, expert depositions, and discovery for purposes of
11 authenticity of exhibits; provided that this deadline will not preclude the
12 parties from completing discovery of third-parties pursuant to timely served
13 subpoenas whose document productions have not been completed by May
14 23, 2023 and/or who did not make themselves reasonably available for
15 deposition pursuant to a timely subpoena within the fact discovery period.
- 16 b) The FTC will provide its expert witness list on **April 21, 2023**; Defendants
17 will provide their expert witness list on **April 28, 2023**.
- 18 c) The FTC will serve its expert report(s) by **May 30, 2023**. Defendants will
19 serve their expert report(s) by **June 13, 2023**. The FTC will identify any
20 rebuttal expert(s) and serve any rebuttal expert report(s) by **June 23, 2023**.
- 21 d) The deadline for expert depositions shall be **June 29, 2023**.
- 22 e) The parties agree to no more than five (5) experts per side.

23
24
25 ¹ Judge Chappell’s order also provides that “Document requests, interrogatories, and requests
26 for admission served by the parties in connection with any federal action will count against the
27 discovery request limits noted above and vice versa. No individual or entity deposed in one
28 action may be re-deposed in the other. The parties preserve all rights to object to the
admissibility of evidence.” 3/29/2023 Order at ¶ 8.

1 The parties agree that the same limits on discovery set forth in Chief Administrative
2 Law Judge Chappell’s March 29, 2023 Scheduling Order apply in this proceeding. In pertinent
3 part, no more than 50 document requests, including all discrete subparts; 20 interrogatories,
4 including all discrete subparts; and 10 requests for admission, including all discrete subparts,
5 shall be served on any named party, except that there shall be no limit on the number of requests
6 for admission for authentication and admissibility of exhibits. There is no limit to the number
7 of sets of discovery requests the parties may issue, so long as the total number of each type of
8 discovery request, including all subparts, does not exceed these limits. Document requests,
9 interrogatories, and requests for admission served by the parties in connection with the
10 administrative proceeding will count against the discovery request limits noted above and vice
11 versa. No individual or entity deposed in one action may be re-deposed in the other. The
12 parties preserve all rights to object to the admissibility of evidence.

13 The parties have also reached additional discovery-related agreements:

14 Written Discovery. The parties agree to serve document requests, interrogatories, and
15 requests for admission (except for requests for admissions for purposes of authenticity of
16 documents) to parties by no later than **May 12, 2023**. The parties agree to serve any objections
17 to document requests within 5 business days of service of the request, to meet and confer to
18 attempt to resolve any disputes, and to discuss timing of production within 3 business days of
19 the objections being served. The party responding to document requests will make a good-faith
20 effort to produce responsive documents as expeditiously as possible, including by making
21 productions on a rolling basis.

22 Depositions. The parties agree that relief from the limitation on the number of
23 depositions set forth in Federal Rule of Civil Procedure 30(a)(2) is necessary and appropriate.
24 Each side may depose any witness who is listed on either side’s preliminary, supplemental, or
25 final witness list in the administrative proceeding; who provides a declaration or affidavit; or
26 who is listed on any party’s initial disclosures. All depositions, including depositions of fact
27 and expert witnesses, shall last no more than seven (7) hours on the record. Unless the parties
28

1 otherwise agree, at the request of any party, the time and allocation for a non-party deposition
2 shall be divided evenly between them, but the noticing party may use any additional time not
3 used by the opposing party. If no party makes such a request, cross-examination of the witness
4 will be limited to one hour. For purposes of allocating deposition time, former employees,
5 consultants, agents, contractors, or representatives of the parties are considered party witnesses
6 if they are represented by Defendants' counsel or if any Defendant is paying for the witness'
7 counsel, and Defendants may not subpoena depositions of their own party witnesses.

8 Non-Party Subpoenas. Non-parties shall provide copies or make available for inspection
9 and copying of documents requested by subpoena to the party issuing the subpoena. The party
10 that has requested documents from non-parties shall provide copies of the documents received
11 from non-parties to the opposing party within three business days of receiving the documents.
12 No deposition of a non-party shall be scheduled between the time a non-party provides
13 documents in response to a subpoena duces tecum to a party, and three business days after the
14 party provides those documents to the other party, unless a shorter time is required by
15 unforeseen logistical issues in scheduling the deposition, or a non-party produces those
16 documents at the time of the deposition, as agreed to by all parties involved. The parties shall
17 serve any subpoenas on non-parties no later than **May 12, 2023**.

18 Declarations. A party that obtains a declaration from a non-party will promptly produce
19 it to the other side, and in any event not later than (1) seven days before the non-party is
20 scheduled to be deposed, or (2) **May 9, 2023**, whichever is earlier, absent a showing of good
21 cause. Each side is limited to 15 declarations by non-parties, except for declarations regarding
22 authenticity and admissibility of exhibits. The parties reserve all rights and objections with
23 respect to the use and/or admissibility of any declaration, and no declaration will be admitted
24 unless a fair opportunity was available to depose the declarant.

25 Limitations on Expert Discovery. Expert disclosures, including each side's expert
26 reports, shall comply with the requirements of Federal Rule of Civil Procedure 26(a)(2), except
27 as modified by agreement or order:
28

- 1 a) Neither side must preserve or disclose, including in expert deposition
2 testimony, the following documents or materials:
- 3 i. any form of communication or work product shared between any of
4 the parties' counsel and their expert(s), or between any of the
5 experts themselves;
 - 6 ii. any form of communication or work product shared between an
7 expert(s) and persons assisting the expert(s);
 - 8 iii. expert's notes, unless they constitute the only record of a fact or an
9 assumption relied upon by the expert in formulating an opinion in
10 this case;
 - 11 iv. drafts of expert reports, analyses, or other work product; or
 - 12 v. data formulations, data runs, data analyses, or any database-related
13 operations not relied upon by the expert in the opinions contained in
14 his or her final report.
- 15 b) The parties agree that they will disclose the following materials with all
16 expert reports:
- 17 i. a list by Bates number of all documents relied upon by the
18 testifying expert(s); and copies of any materials relied upon by the
19 expert not previously produced that are not readily available
20 publicly;
 - 21 ii. a list of all commercially-available computer programs used by the
22 expert in the preparation of the report;
 - 23 iii. a copy of all data sets used by the expert, in native file format and
24 processed data file format; and
 - 25 iv. all customized computer programs used by the expert in the
26 preparation of the report or necessary to replicate the findings on
27 which the expert report is based.
- 28

1 Protective Order. The parties are in the process of negotiating a protective order and
2 intend to submit a motion for entry of that protective order soon. Any party serving discovery
3 requests, notices, or subpoenas sent to a non-party shall provide the non-party with a copy of the
4 Protective Order.

5 Remote Deposition Protocol. The parties agree that the Stipulation and Order
6 Governing the Taking of Remote Depositions, entered by Chief Administrative Law Judge
7 Chappell in the administrative proceeding on April 6, 2023 and attached as **Exhibit B**, will
8 apply in this proceeding, and will file a joint stipulation and proposed order to that effect.

9 Pre-Trial Discovery Conference. This stipulated Order relieves the parties of their duty
10 under Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16-2(d) to confer about
11 scheduling and a discovery plan.

12 **I. CLASS ACTIONS**

13 There is no proposed class at issue in this matter.

14 **J. RELATED CASES**

15 On March 9, 2023, the Commission commenced an administrative proceeding on the
16 antitrust merits of the proposed acquisition, FTC Dkt. No. 9413, with the merits trial scheduled
17 to begin on July 12, 2023.

18 **K. RELIEF**

19 The FTC requests that the Court enter a preliminary injunction to prevent Defendants
20 from taking any further steps to consummate the proposed acquisition, or any other acquisition
21 of stock, assets, or other interests of one another, either directly or indirectly; retain jurisdiction
22 and maintain the status quo until the administrative proceeding initiated by the Commission is
23 concluded; and award such other and further relief as the Court may determine is appropriate,
24 just, and proper. The FTC believes that Defendants are not entitled to the relief sought in their
25 counterclaims challenging the constitutionality of the administrative process filed on April 25,
26 2023.

1 Defendants believe that the FTC is not entitled to the relief sought. Defendants are
2 seeking both declaratory and injunctive relief based on their constitutional challenges to the
3 FTC’s administrative process. Defendants preserve their right to seek preliminary injunctive
4 relief if that relief becomes necessary and appropriate.

5 **L. SETTLEMENT AND ADR**

6 The parties have not engaged in formal settlement discussions and believe that ADR is
7 unlikely to resolve their differences.

8 **M. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

9 The parties decline to consent to proceed before a Magistrate Judge for all purposes; this
10 matter was assigned to U.S. District Court Judge Araceli Martínez-Olguín on April 11, 2023.

11 **N. OTHER REFERENCES**

12 The parties agree this case is not suitable for reference to binding arbitration, a special
13 master or the JPML.

14 **O. NARROWING OF ISSUES**

15 The parties do not believe that it is possible to narrow the issues at this time.

16 **P. EXPEDITED TRIAL PROCEDURE**

17 The parties do not believe that this case is appropriate to be handled under the Expedited
18 Trial Procedure of General Order 64.

19 **Q. PROPOSED CASE SCHEDULE**

20 The parties have reached agreement on the schedule for fact and expert discovery
21 regarding the FTC’s claims for a preliminary injunction under Section 13(b) of the Federal
22 Trade Commission Act, 15 U.S.C. § 53(b), but disagree as to the timing and scope of the
23 evidentiary hearing regarding the FTC’s motion for a preliminary injunction and related briefing
24 as it pertains to the FTC’s claims under Section 13(b). The parties have not reached agreement
25 on the schedule as it pertains to Defendants’ counterclaims.
26
27
28

FACT AND EXPERT DISCOVERY SCHEDULE:

As set forth in Section H above, the parties agree that the deadlines for discovery in the administrative proceeding, as set forth in Chief Administrative Law Judge Chappell’s March 29, 2023 Scheduling Order attached as Exhibit A, will apply in this proceeding with respect to the FTC’s claim for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act and any defenses to that claim:

Close of fact discovery, other than depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period.	May 23, 2023
Deadline for Plaintiff to provide expert witness reports and all Backup Materials (as defined below).	May 30, 2023
Deadline for Defendants to provide expert witness reports and all Backup Materials (as defined below).	June 13, 2023
Plaintiff to identify rebuttal expert(s) and provide rebuttal expert report(s) and all Backup Materials (as defined below). Any such reports are to be limited to rebuttal of matters set forth in Defendants’ expert reports. If material outside the scope of fair rebuttal is presented, Defendants will have the right to seek appropriate relief (such as striking Plaintiff’s rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Defendants).	June 23, 2023
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	June 29, 2023

1 **PRELIMINARY INJUNCTION HEARING AND COUNTERCLAIMS:**

2 **PLAINTIFF’S POSITION:**

3 The issue before this Court is the FTC’s likelihood of success in already ongoing
4 proceedings before an Administrative Law Judge, *In the Matter of Intercontinental Exchange,*
5 *Inc. and Black Knight, Inc.*, FTC Docket No. 9413, in establishing that the effect of Defendants’
6 proposed transaction “may be substantially to lessen competition, or to tend to create a
7 monopoly” under Section 7 of the Clayton Act, 15 U.S.C. § 18. *FTC v. Affordable Media*, 179
8 F.3d 1228, 1233 (9th Cir. 1999) (Under Section 13(b) of the Federal Trade Commission Act, “a
9 court must 1) determine the likelihood that the Commission will ultimately succeed on the
10 merits and 2) balance the equities.”); *FTC v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1162 (9th
11 Cir. 1984) (The “Commission meets its burden if it ‘raise[s] questions going to the merits so
12 serious, substantial, difficult and doubtful as to make them fair ground for thorough
13 investigation, study, deliberation and determination by the FTC in the first instance and
14 ultimately by the Court of Appeals.’”).

15 The administrative trial will begin in a little over two months, on July 12, 2023, and is
16 likely to conclude by early August. To lessen the burden on the Court, as well as on any
17 nonparties who would need to testify in both the preliminary injunction hearing and the
18 administrative trial, the FTC proposes submitting the entire administrative trial record to this
19 Court in August following the conclusion of the administrative trial, with briefing and any
20 hearing to be concluded by September 22, 2023, pursuant to the below proposed schedule. This
21 proposed schedule allows the Court to rule based on this administrative record or order a short
22 evidentiary hearing in August should the Court wish to hear from live witnesses. *FTC v.*
23 *Tronox Ltd.*, 332 F. Supp. 3d 187, 196 (D.D.C. 2018) (ruling based on “the complete
24 administrative record before the ALJ” along with “live testimony from three witnesses of [each
25 side’s] choosing”). It also leaves ample time for a decision by this Court in advance of
26 Defendants’ voluntary and self-imposed outside closing date of November 4, 2023, at which
27 point the merger agreement allows, but does not require, either Defendant to terminate the
28

1 merger agreement.

2 The FTC does not dispute that the District Court must “exercise independent judgment”
 3 as to whether the FTC is entitled to a preliminary injunction. However, it does not follow that
 4 Defendants are entitled to the equivalent of a full merits trial in federal court, or that such a
 5 hearing is a “long-standing, standard approach.” Indeed, some preliminary injunctions under
 6 Section 13(b) have been decided solely on the papers and oral argument where, unlike here, the
 7 Court did not have the benefit of the full administrative record. *E.g., FTC v. Lab. Corp. of Am.*,
 8 No. SACV 10–1873 AG (MLGx) (C.D. Cal. Dec. 16, 2010) (declining Defendants’ request for
 9 an evidentiary hearing and setting “a hearing without witnesses” roughly two months after the
 10 FTC filed its complaint) (attached as Exhibit D to Dkt. 38).

11 Defendants propose holding the preliminary injunction hearing on the same date as the
 12 administrative trial—which was set, and can only be moved, by the FTC commissioners—is
 13 scheduled to commence.

The parties will jointly submit to this Court a comprehensive listing of all the materials in the record of the administrative proceeding, FTC Dkt. No. 9413. The entire administrative record from the FTC administrative proceeding will be in the record and can be considered as evidence in this Court.	August 18, 2023
The FTC shall file its memorandum in support of its request for a preliminary injunction. The FTC’s memorandum shall not exceed 50 pages.	August 18, 2023
Defendants shall file their memorandum(s) in opposition to the FTC’s request for a preliminary injunction. Defendants’ memorandum(s) shall cumulatively not exceed 50 pages.	September 1, 2023
The FTC shall file its reply memorandum in support of its request for a preliminary injunction. The FTC’s reply memorandum shall not exceed 25 pages.	September 8, 2023
Oral argument on the FTC’s motion for a	September 23, 2023

preliminary injunction

The above schedule follows the deadlines followed in Local Rules 7-2 and 7-3, although the FTC is amenable to an accelerated briefing schedule in August should the Court want to move more expeditiously.

Alternatively, if the Court prefers to hold the evidentiary hearing before the administrative trial, the FTC requests that the Court schedule a hearing of 15 hours per side to begin the week of June 26, if convenient for the Court, to allow time for the hearing to conclude and for oral argument before the administrative trial begins on July 12, 2023.

With respect to Defendants’ counterclaims, these counterclaims—which were filed after this Court’s order of April 25, 2023 regarding the case management conference and statement—implicate 15 U.S.C. § 56(a), which requires the Commission to notify and consult with the Department of Justice regarding defense of complaints filed against the Commission. The Commission notified the Department of Justice regarding the counterclaims on April 26, 2023; pursuant to Section 56(a), the Department of Justice has 45 days from such notification “to commence, defend, or intervene” in the action. Under Federal Rule of Civil Procedure 12(a)(2), the United States has 60 days after service to answer the counterclaims. As the FTC has informed Defendants, it cannot proceed with setting a schedule regarding the counterclaims until it knows how the Department of Justice intends to proceed.

DEFENDANTS’ POSITION:

The FTC sought relief in this Court by filing a preliminary injunction and then successfully obtaining a temporary restraining order. Defendants are subject to that temporary restraining order and only this Court can grant or deny the extraordinary relief sought by the FTC of an injunction to stop the ICE/BK merger. Defendants seek a prompt hearing on the preliminary injunction – which can be done on a complete record in this Court rather than one developed in another tribunal subject to different evidentiary standards and credibility determinations. A prompt hearing is necessary because the outside date for closing this merger is November 4, 2023. Defendants are amenable to beginning the preliminary injunction

1 proceeding on June 26 or as soon after as the Court is available, though believe the parties’
2 current discovery schedule lends itself to beginning on July 12. The preliminary injunction – as
3 a decision of likelihood on the merits – should precede any hearing before the ALJ. The FTC
4 implicitly acknowledges this ordering is appropriate by indicating the preliminary injunction
5 can proceed on June 26 before its ALJ hearing.

6 This Court’s statutory authority to enter preliminary injunctions brings with it a duty to
7 “exercise independent judgment” about whether the FTC has met its burden to “raise questions
8 going to the merits so serious, substantial, difficult[,] and doubtful” to warrant a preliminary
9 injunction. *Fed. Trade Comm’n v. Meta Platforms Inc.*, No. 5:22-CV-04325-EJD, 2023 WL
10 2346238, at *8 (N.D. Cal. Feb. 3, 2023) (internal quotations omitted). As in the Meta matter,
11 there is a tried-and-true path for exercising independent judgment where (as here) the FTC both
12 requests a preliminary injunction and pursues an administrative proceeding: the preliminary
13 injunction takes precedent and is heard and decided first based on an evidentiary hearing in the
14 federal court. The preliminary injunction is the only time-sensitive issue and that standard
15 procedure puts it first. It is also the most efficient process (this Court’s ruling may moot the
16 administrative proceeding), the most prudent approach (it may avoid ruling on the substantial
17 constitutional issues raised by the FTC’s administrative proceeding that would be front and
18 center if this Court effectively deferred to that proceeding), and the only way to reach the merits
19 before the merger’s November 4, 2023 outside date (the administrative process will not finish
20 this year).

21 The only case the FTC has cited to support its contrary approach is *Tronox*, but even
22 there the court did not agree to decide the injunction based on an evidentiary record developed
23 in the administrative proceeding and instead adopted the defendants’ proposal for live witnesses
24 and argument. *See Fed. Trade Comm’n v. Tronox Ltd.*, 332 F. Supp. 3d 187, 196 (D.D.C. 2018)
25 (“The Commission proposed that the hearing proceed with oral arguments based solely on the
26 closed evidentiary record before the ALJ. The Defendants objected, ultimately proposing that
27 each side be allowed to present live testimony from two expert witnesses and a fact witness.
28

1 The Court allowed each side to present live testimony from three witnesses of their choosing,
2 and to present opening and closing arguments.”). The only reason the preliminary injunction
3 hearing followed the administrative hearing in *Tronox* is because, unlike here, the government
4 did not seek a preliminary injunction in federal court until after administrative hearing had
5 finished. *Id.* (“[T]he ALJ held an administrative trial from May 18 to June 22, 2018. . . . On
6 July 10, 2018, the FTC petitioned this Court for a TRO and a preliminary injunction to halt a
7 potential closing of the deal.”). Here, the administrative hearing has not started, the schedule
8 for discovery would be identical, the parties are many months away from a ruling by the ALJ,
9 and any ALJ ruling is subject to de novo appeal. Indeed, the parties have had limited
10 interaction with the ALJ beyond a preliminary scheduling conference and the ALJ has not
11 begun to address the substantive issues in this case. There is no reason to abandon the long-
12 standing, standard approach that the United States District Court fully hear and decide the
13 FTC’s requested preliminary injunction before the administrative hearing occurs.

14 The FTC’s approach would have this Court exercise its “independent judgment” on the
15 basis of a paper record that this Court would have no role in overseeing. Since this Court is the
16 only court that may enjoin the merger, it should see and hear the parties’ witnesses for itself,
17 make its own determinations on the admissibility of evidence, and come to its own conclusions
18 on the law and the facts.

19 Defendants respectfully request a full and fair hearing on the preliminary injunction. To
20 the extent this Court’s preferred dates and deadlines conflict with the schedule and dates in the
21 administrative proceeding, 16 C.F.R. § 3.1 provides that “[i]n the event of a scheduling conflict
22 between a proceeding in which the Commission also has sought or is seeking relief under
23 Section 13(b) of the FTC Act . . . and another proceeding, the proceeding in which the
24 Commission also has sought or is seeking relief under Section 13(b)”—here the preliminary
25 injunction proceeding—“shall take precedence.”

26 Defendants believe the FTC’s concerns as to the counterclaims and schedules are not
27 warranted because the counterclaims raise solely legal questions. Nonetheless, Defendants are
28

1 amenable to resolution of their counterclaims coming after and trailing the resolution of the
 2 FTC’s request for a preliminary injunction – which would allow the preliminary injunction to
 3 complete discovery and proceed in the near term. Defendants’ proposed deadlines track the
 4 schedule set by the ALJ for a July 12, 2023² hearing:
 5

6 7 Parties to provide updated preliminary witness list identifying those fact witness each side may call, which will include no more than 30 persons total with no more than 7 witnesses who did not appear on that side’s preliminary list exchanged in the Administrative Action, with a brief summary of the proposed testimony. 8 9 10 11	May 5, 2023
12 Plaintiff provides to Defendants final proposed witness list, comprised of no more than 25 witnesses that Plaintiff anticipates will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Plaintiffs’ preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Plaintiffs’ basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness. 13 14 15 16 17 18	June 8, 2023
19 Plaintiff’s Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support. This motion and Defendants’ opposition are limited to 50 pages. Plaintiff may file a reply limited to 25 pages. 20 21 22	June 15, 2023
23 Defendants provide to Plaintiff final proposed witness list, comprised of no more than 25 witnesses that Defendants anticipate will be called to testify at the Hearing, with no more than 5 24 25	June 15, 2023

26 ² If the Court sets the evidentiary hearing for June 26 or a different date in July, Defendants are confident the parties could reach agreement on any necessary adjustments to the pre-trial
 27 deadlines so that trial could start on that date.
 28

1	witnesses who did not appear on Defendants’ preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.	
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5	Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non- party.	June 16, 2023
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7		
8	Deadline for filing motions <i>in limine</i> to preclude admission of evidence.	June 26, 2023
9		
10	Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits.	June 26, 2023
11		
12	Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence.	June 30, 2023
13		
14	Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits.	June 30, 2023
15		
16	Defendants’ Opposition to Motion for Preliminary Injunction and Memorandum of Points in Authority.	June 30, 2023
17		
18	Exchange final proposed witness lists and exhibit lists.	July 3, 2023
19		
20	Exchange proposed stipulations of law, facts, and authenticity.	July 7, 2023
21		
22	Pretrial Conference.	July 11, 2023
23	Trial begins.	July 12, 2023
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1 **R. PRELIMINARY INJUNCTION HEARING**

2 The parties do not have agreement on this issue.

3 The FTC requests a hearing on the FTC’s request for a preliminary injunction as soon as
4 convenient for the Court on or after **September 22, 2023**, following the July 12 administrative
5 trial, or as soon as convenient for the Court on or after **June 26, 2023**, preceding the July 12
6 administrative trial.

7 Intercontinental Exchange and Black Knight are amenable to beginning the preliminary
8 injunction proceeding on the FTC’s proposed date of **June 26, 2023**, or as soon after as the
9 Court is available. The parties’ current discovery schedule lends itself to beginning on **July 12,**
10 **2023**, but the Defendants will be ready as soon as the Court wishes.

11 **S. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

12 Pursuant to Civil Local Rule 3-15, Intercontinental Exchange filed its Certification of
13 Interested Entities or Persons on April 14, 2023. Intercontinental Exchange has no parent
14 corporation and no publicly held corporation owns more than ten percent of Intercontinental
15 Exchange. Defendant Black Knight filed its Certification of Interested Entities or Persons on
16 April 26, 2023. Black Knight has no parent corporation and no publicly held corporation owns
17 more than ten percent of Black Knight. There is no conflict or interest (other than the named
18 parties) to report.

19 **T. PROFESSIONAL CONDUCT**

20 All attorneys of record have reviewed the Guidelines for Professional Conduct for the
21 Northern District of California.

22 **U. OTHER MATTERS**

- 23 1. Service. Service of any documents not filed via ECF, including pleadings, discovery
24 requests, Federal Rule of Civil Procedure 45 subpoenas for testimony or documents,
25 expert disclosure, and delivery of all correspondence, whether under seal or
26 otherwise, shall be by electronic mail to the following individuals designated by
27 each party:
28

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In the event the volume of served materials is too large for email and requires electronic data transfer by file transfer protocol or a similar technology, or overnight delivery if agreed by the parties, the serving party will telephone or email the other side’s principal designee when the materials are sent to provide notice that the materials are being served. For purposes of calculating discovery response times under the Federal Rules of Civil Procedure, electronic delivery shall be treated the same as hand delivery.

- 2. Answer. Defendants Intercontinental Exchange and Black Knight each answered the Complaint on April 25, 2023 and asserted counterclaims. Plaintiff has not yet answered Defendants’ counterclaims. Pursuant to Federal Rule of Civil Procedure 12(a)(2), the United States must serve an answer within 60 days after proper service.
- 3. Privilege Logs. The parties agree to suspend the obligations of Federal Rule of Civil Procedure 26(b)(5)(A) to produce a log of privileged materials withheld from discovery taken in this action (excluding Defendants’ productions made during the course of the FTC’s pre-complaint investigation). Notwithstanding the foregoing, the parties shall log withheld materials that are: (1) authored by, addressed to, or received from any non-party; or (2) internal to a party that are not authored by, sent to, or received from the party’s attorneys. For purposes of this paragraph, a “non-

1 party” excludes a party’s retained testifying or consulting expert and employees of
2 such expert within the meaning of Federal Rule of Civil Procedure 26(b). The
3 parties shall maintain all documents responsive to a discovery request that they
4 withhold pursuant to a claim of privilege or protection. Either Defendant may agree
5 with Plaintiff to further modify that defendant’s logging obligations.

6 4. Inadvertent Production of Protected Material. In accordance with Federal Rule of
7 Civil Procedure 16(b)(3)(B)(iv) and Federal Rule of Evidence 502(d), inadvertent
8 production of documents or communications containing privileged information or
9 attorney work product shall not be a basis for loss of privilege or work product of the
10 inadvertently produced material, provided that the producing party notifies the
11 receiving party within three (3) business days of learning of the inadvertent
12 production. When a party determines that it has inadvertently produced such
13 material, it will notify the other parties, who will promptly return, sequester, or
14 delete the protected material from their document management systems. Within five
15 (5) business days of identifying inadvertently produced information or documents(s),
16 the party seeking claw-back of such materials shall provide a revised privilege log
17 for the identified information or documents.

18 5. Attorney Work-Product. The parties will neither request nor seek to compel the
19 production of any interview notes, interview memoranda, or recitation of
20 information contained in such notes or memoranda, or recitation of information
21 contained in such notes or memoranda, created by any party’s Counsel, except as
22 specified in Paragraph H.8. Nothing in this agreement requires the production of
23 any party’s attorney work-product; confidential attorney-client communications;
24 communications with or information provided to any potentially or actually retained
25 expert; communications between counsel for the FTC, its Commissioners and/or
26 persons employed by the FTC; or materials subject to the deliberative-process
27 privilege or any other privilege.
28

1 6. Modification of Scheduling and Case Management Order. Any party may seek
2 modification of the Case Management Order for good cause, except that the parties
3 may also modify discovery and expert disclosure deadlines by agreement.
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1 Dated: May 5, 2023

Respectfully submitted,

2 /s/ Abby L. Dennis
3 Abby L. Dennis
4 Peter Richman
5 Ashley Masters
6 Abigail Wood
7 Daniel Aldrich
8 Laura Antonini
9 Catharine Bill
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FILER'S ATTESTATION

I, Abby L. Dennis, am the ECF User whose ID and password are being used to file this
JOINT CASE MANAGEMENT STATEMENT (DKT. 72). In compliance with Civil Local Rule
5-1(h), I hereby attest that concurrence in the filing of this document has been obtained from
each of the other signatories.

By: /s/ Abby L. Dennis
Abby L. Dennis

Exhibit A

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

In the Matter of)	
)	
Intercontinental Exchange, Inc.,)	
a corporation, and)	
)	Docket No. 9413
Black Knight, Inc.,)	
a corporation,)	
)	
Respondents.)	

SCHEDULING ORDER

- April 7, 2023 - Complaint Counsel provides preliminary list of witnesses that Complaint Counsel may call to testify at the Hearing (not including experts), which will include no more than 35 persons (including no more than 20 non-party witnesses) with a brief summary of the proposed testimony.
- April 14, 2023 - Respondents' Counsel provides preliminary list of witnesses that Respondents may call to testify at the Hearing (not including experts), which will include no more than 35 persons (including no more than 20 non-party witnesses) with a brief summary of the proposed testimony.
- April 21, 2023 - Complaint Counsel provides expert witness list.
- April 28, 2023 - Respondents' Counsel provides expert witness list.
- May 5, 2023 - Complaint Counsel and Respondents to provide updated may call fact witness lists, which will include no more than 30 persons total with no more than 7 witnesses who did not appear on that side's preliminary list, with a brief summary of the proposed testimony.
- May 12, 2023 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity of documents.

Deadline for issuing document requests, interrogatories and subpoenas, except for discovery for purposes of authenticity of exhibits.

- May 23, 2023 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period.

- May 30, 2023 - Deadline for Complaint Counsel to provide expert witness reports and all material required to be produced pursuant to Additional Provision 21 of this Order.

- June 8, 2023 - Complaint Counsel provides to Respondents' Counsel final proposed witness list, comprised of no more than 25 witnesses that Complaint Counsel anticipates will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Complaint Counsel's preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Complaint Counsel provides courtesy copies to ALJ of final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

- June 13, 2023 - Deadline for Respondents' Counsel to provide expert witness reports (to be provided by 4 p.m. ET) and all material required to be produced pursuant to Additional Provision 21 of this Order. Respondents' expert reports shall include (without limitation) rebuttal, if any, to Complaint Counsel's expert witness report(s).

- June 15, 2023 - Respondents' Counsel provides to Complaint Counsel final proposed witness list, comprised of no more than 25 witnesses that Respondents anticipate will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Respondents' Counsel's preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondents' Counsel provides ALJ with final proposed witness and exhibit lists, the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including expert witnesses.

- June 16, 2023 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹
- June 23, 2023 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s) and all material required to be produced pursuant to Additional Provision 21 of this Order. Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).
- June 26, 2023 - Deadline for filing motions *in limine* to preclude admission of evidence.
- June 26, 2023 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- June 29, 2023 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- June 29, 2023 - Exchange and serve courtesy copy on ALJ of objections to final proposed witness lists and exhibit lists. The parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits and raise only objections that are necessary and valid.
- June 30, 2023 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.

¹ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party's intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days' notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days' notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

- June 30, 2023 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- July 3, 2023 - Complaint Counsel files pretrial brief supported by legal authority.
- July 7, 2023 - Exchange proposed stipulations of law, facts, and authenticity.
- July 10, 2023 - Respondents’ Counsel files pretrial brief supported by legal authority.
- July 11, 2023 - Final prehearing conference to begin at 1:00 p.m. EDT.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties’ list of stipulations shall be marked as “JX1” and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. All trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the admission of each other’s exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as “JX2” and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

- July 12, 2023 - Commencement of Hearing, to begin at 10:00 a.m. EDT.

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ

personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission.** The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include “Docket 9413” in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission’s Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also “recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference.” Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. No more than 50 document requests, including all discrete subparts; 20 interrogatories, including all discrete subparts; and 10 requests for admission, including all discrete subparts, shall be served on any named party, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits.

8. If any federal court proceeding related to this administrative proceeding is initiated, any discovery obtained in this proceeding may be used in the related federal court litigation, and vice versa. Document requests, interrogatories, and requests for admission served by the parties in connection with any federal action will count against the discovery request limits noted above and vice versa. No individual or entity deposed in one action may be re-deposed in the other. The parties preserve all rights to object to the admissibility of evidence.

9. The parties agree to serve any objections to document requests within 5 business days of service of the request, to meet and confer to attempt to resolve any disputes, and to discuss timing of production within 3 business days of the objections being served. The party responding to document requests will make a good-faith effort to produce responsive documents as expeditiously as possible, including by making productions on a rolling basis.

10. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests, or to seek certification of a request for court enforcement of a non-party 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 non-party with regard to a subpoena, the deadline for the motion to compel shall be within 5 business days of reaching an impasse.

11. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge. The parties agree to meet and confer regarding a remote deposition protocol.

12. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the time and place of the deposition is scheduled. The parties need not separately notice the deposition of a non-party noticed by an opposing party. Unless the parties otherwise agree, at the request of any party, the time and allocation for a non-party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour. For purposes of

allocating deposition time under this Scheduling Order, former employees, consultants, agents, contractors, or representatives of the parties are considered party witnesses if they are represented by Respondents' counsel or if any Respondent is paying for the witness' counsel, and Respondents may not subpoena depositions of their own party witnesses.

13. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and three business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

14. A party that obtains a declaration from a non-party will promptly produce it to the other side, and in any event not later than (1) seven days before the non-party is scheduled to be deposed, or (2) May 9, 2023, whichever is earlier, absent a showing of good cause. Each side is limited to 15 declarations by non-parties, except for declarations regarding authenticity and admissibility of exhibits. The parties reserve all rights and objections with respect to the use and/or admissibility of any declaration, and no declaration will be admitted unless a fair opportunity was available to depose the declarant.

15. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45; in *In re Otto Bock Healthcare North American*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (Apr. 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

16. Motions *in limine* are strongly discouraged. Motion *in limine* refers "to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered." *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (Apr. 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *SEC v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

17. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. A general designation that a party reserves the right to call anyone on the opposing party's witness list is not sufficient. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. Other than as set forth above, the final proposed witness list may not include additional witnesses not listed in the preliminary or supplemental witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause. Under no circumstances, except by consent of all parties or an order by the Administrative Law Judge upon a showing of good cause, may the final proposed witness list include a witness who has not been deposed.

18. If any party wishes to offer a rebuttal witness other than a rebuttal expert, the party shall file a request in writing in the form of a motion to request a rebuttal witness. That motion shall be filed as soon as possible after the testimony sought to be rebutted is known and shall include: (a) the name of any witness being proposed (b) a detailed description of the rebuttal evidence being offered; (c) citations to the record, by page and line number, to the evidence that the party intends to rebut; and shall demonstrate that the witness the party seeks to call has previously been designated on its witness list or adequately explain why the requested witness was not designated on its witness list.

19. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

20. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

21. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

- (i) a list of all commercially-available computer programs used by the expert in the preparation of the report;
- (ii) a copy of all data sets used by the expert, in native file format and processed data file format; and
- (iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

- (i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;
- (ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);
- (iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;
- (iv) drafts of expert reports, analyses, or other work product; or
- (v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

22. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

23. It is possible that the evidentiary hearing in this matter will be conducted remotely by video conference. The parties are encouraged, in advance of the hearing, to take expert depositions for the purpose of perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the expert's testimony via live video at

trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

24. It is possible that the evidentiary hearing in this matter will be conducted remotely by video conference. The parties may, in advance of the hearing, take trial depositions of fact witnesses who had been deposed before the close of discovery and to submit such trial deposition testimony (as video and/or transcript of trial deposition testimony) as an exhibit in lieu of presenting the fact witness' testimony via live video at trial. Although the parties may submit trial depositions in lieu of live video testimony at trial for all fact witnesses in the case, you may choose to do trial depositions for fewer than all fact witnesses.

25. An expert witness's testimony is limited to opinions contained in the expert report that has been previously and properly provided to the opposing party. In addition, no opinion will be considered, even if included in an expert report, if the underlying and supporting documents and information have not been properly provided to the opposing party. Unless an expert witness is qualified as a fact witness, an expert witness is only allowed to provide opinion testimony; expert testimony is not considered for the purpose of establishing the underlying facts of the case.

26. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

27. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

28. The parties shall provide to one another, to the Administrative Law Judge, and the court reporter, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of the hearing, subject to possible delays or unforeseen circumstances.

29. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

30. Complaint Counsel's exhibits shall bear the designation PX and Respondents' exhibits shall bear the designation DX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation PXD and Respondents' demonstrative exhibits shall bear the designation DXD or some other appropriate designation. If demonstrative exhibits are used with a witness, the exhibit will be marked and referred to for identification only. Any demonstrative exhibits referred to by any witness may be included in the

trial record, but they are not part of the evidentiary record and may not be cited to support any disputed fact. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number.

31. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if PX100 and DX200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

32. Pretrial briefs shall not exceed 40 pages per side unless otherwise agreed to by the parties or ordered by the Administrative Law Judge. The parties may agree on reasonable page or word limits for the post-trial briefs and proposed findings of fact and conclusions of law prior to the final prehearing conference.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: March 29, 2023

Exhibit

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

_____)	
In the Matter of)	
)	
Intercontinental Exchange, Inc.,)	
a corporation, and)	
)	Docket No. 9413
Black Knight, Inc.,)	
a corporation,)	
)	
Respondents.)	
_____)	

ORDER ENTERING STIPULATION

On April 6, 2023, Federal Trade Commission Complaint Counsel and Respondents Intercontinental Exchange, Inc. and Black Knight, Inc., filed a Proposed Stipulation Concerning Remote Deposition Practices and Protocols (“Stipulation”) and jointly requested that the Stipulation be entered as an order in this matter.

The joint request is GRANTED, and it is ORDERED that the Stipulation submitted by the parties and attached hereto, is hereby entered as an order in this matter.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 6, 2023

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

In the Matter of

**Intercontinental Exchange, Inc.,
a corporation,**

and

**Black Knight, Inc.,
a corporation.**

DOCKET NO. 9413

**STIPULATION AND ORDER GOVERNING
THE TAKING OF REMOTE DEPOSITIONS**

The Parties to the above-captioned action (the “Action”), through their respective counsel, stipulate and agree as follows:

I. GENERAL GUIDELINES AND SCOPE

1. This Stipulation and Order Governing the Taking of Remote Depositions (the “Remote Deposition Protocol”) will govern, subject to Court approval, the taking of fact and expert depositions in the above-captioned matter as a supplement to rules and procedures that may apply, including those set forth in 16 C.F.R. Part 3 (Rules of Practice for Adjudicative Proceedings), 16 C.F.R. Part 4 (Miscellaneous Rules), the Protective Order Governing Confidential Material dated March 9, 2023, the Scheduling Order dated March 29, 2023, and the Federal Rules of Civil Procedure and Evidence.

2. The Deposing Party Counsel is responsible for retaining, and covering the cost of, the court reporter, videographer, and any other vendor retained to assist with the Remote Deposition and needed to comply with the terms of this Protocol. For any Third Party depositions where both Complaint Counsel and Respondent have noticed the Remote Deposition of the same witness, any costs associated with providing the Platform for the taking of a Remote Deposition shall be split between the Noticing Parties.

3. The Parties agree to use For The Record (the “Vendor”) for all Remote Depositions, except that, in the event that circumstances prevent or significantly impede the effective use of the Vendor, other vendors may be used upon consent of the Parties, which will not be unreasonably withheld.

4. If any federal court proceeding related to this administrative proceeding is initiated, the Parties agree that this Stipulation will apply for all depositions taken or used in the related federal court litigation.

II. DEFINITIONS

5. “Attending Counsel” means any legal counsel for a party (including counsel of record and agency/in-house counsel) who is not Deposing Counsel or Defending Counsel, but who is attending a Remote Deposition either in person or remotely.

6. “Defending Counsel” means legal counsel representing the Witness with respect to a deposition in this Litigation. In the event a non-party Witness does not have counsel, then “Defending Counsel” shall mean the Witness.

7. “Deposing Counsel” means the legal counsel of the Party or Parties noticing and/or questioning the Witness at a Remote Deposition in this litigation. For clarity, Deposing Counsel does not include any legal counsel who does not notice or cross-notice a Remote Deposition but is afforded reasonable time to ask follow-up questions of the deponent.

8. “Noticing Party” means a Party that noticed a Remote Deposition of a Witness pursuant to FTC Rule 3.33, 16 C.F.R. § 3.33.

9. “Parties” for purposes of this Remote Deposition Protocol means the named Parties to this Action as well as consultants, agents, representatives, or former employees of the named Parties if they are represented by Defending Counsel or if any Party is paying for their counsel.

10. “Third Party” or “Third-Party Witness” means all natural or legal persons that are neither Parties nor persons retained by any of the Parties or the Parties’ counsel and from whom a Party is seeking testimony at a Remote Deposition in this litigation.

11. “Platform” means the video-conferencing computer application and document-sharing application that enables the Parties to conduct a Remote Deposition in accord with this Remote Deposition Protocol.

12. “Remote Deposition” means any deposition conducted pursuant to Rule 3.33 of the Part 3 Rules of Practice for Adjudicative Proceedings using a Platform as agreed to under this Remote Deposition Protocol where all of the participants—including Deposing Counsel, Defending Counsel, Attending Counsel, the Witness, court reporters, and/or videographers—are not physically present in the same location at the time the deposition is taken.

13. “Witness” means the person, including Third Parties, whose Remote Deposition has been noticed in this litigation or any person designated to appear to give testimony on behalf of a Party or Third Party pursuant to FTC Rule 3.33(c)(1), 16 C.F.R. § 3.33(c)(1).

14. “Primary Counsel” means counsel designated by the Parties and the Witness at the beginning of the Remote Deposition as provided in this Paragraph. On the

record at the start of the Remote Deposition, the Parties shall identify no more than one counsel each to serve as Primary Counsel. Similarly, if the Witness is a Third-Party Witness, then the Witness shall, on the record, at the start of the Remote Deposition, also identify no more than one counsel to serve as Primary Counsel during the Remote Deposition.

III. AGREEMENT TO CONDUCT REMOTE DEPOSITIONS

15. All depositions in this Action shall be Remote Depositions unless otherwise agreed to by the Parties or unless otherwise ordered by the Court. Third-Party depositions in this Action shall be held in person at the option of any Noticing Party. In the event a Witness raises a reasonable objection to an in-person deposition, the Noticing Party and the relevant Third-Party shall negotiate in good faith about the format of the deposition. Parties who do not agree to an in-person deposition for a given Witness shall have the opportunity to participate remotely in the deposition using the Platform. A copy of this stipulation shall be provided to each Witness or Defending Counsel.

16. Remote Depositions in this case shall be taken in compliance with applicable local and state regulations and orders governing the Witness's location.

17. Notwithstanding any other rule to the contrary, the Parties stipulate that the Witness's oath or affirmation may be administered remotely. The place of examination is the location of the Witness. A Remote Deposition will be deemed to have been conducted before an appropriate officer, as long as that officer attends the deposition via the same Platform that the Witness and Primary Counsel use to attend the deposition.

18. The Parties hereby expressly waive all objections to any Remote Deposition, and the admissibility of any testimony given during a Remote Deposition, based solely on the fact it was a Remote Deposition. Testimony given during a Remote Deposition, including both the transcript and video record, if any, may be used at a trial, at hearings, in motions, or in other modes in these proceedings to the same extent that in-person deposition testimony may be used at trial, at hearings, in motions, or in other modes in these proceedings.

IV. DURATION OF REMOTE DEPOSITIONS

19. If technical issues result in the inability of any Primary Counsel, the court reporter, videographer, or the Witness to receive either the audio or video feed of a Remote Deposition, the Remote Deposition shall be paused. Any portion of the deposition that has been transcribed while a Primary Counsel or the Witness was disconnected or experiencing technical difficulties must be re-read upon the resolution of the technical difficulty, and the disconnected Primary Counsel must be given an opportunity to object to any questions or answers that occurred in their absence. Any time spent, whether on or off the record, dealing with technical issues or other issues unique to the taking of the Remote Deposition shall not count against the time allotted for the deposition by the Scheduling Order in this Action. The duration of a Remote Deposition may be further enlarged by agreement of the Parties or by order of the Court.

20. If technical difficulties arise during the taking of a Remote Deposition, counsel for the Parties must meet and confer immediately, by telephone or other means, to determine whether the Remote Deposition can proceed or should be continued to a future date. If technical difficulties make the completion of a Remote Deposition impracticable, counsel for the Parties and the Witness shall resume the Remote Deposition at the earliest, mutually convenient opportunity. Either Party or a Third-Party Witness may seek by letter motion a protective order regarding whether or the terms under which the Remote Deposition may resume.

V. THE TECHNOLOGY TO BE USED FOR REMOTE DEPOSITIONS

21. The Platform must allow for the court reporter to accurately record, and for all participating attorneys and the court reporter to hear and see, the Witness, Deposing Counsel, Defending Counsel, and any exhibits that are introduced on the Platform during the Remote Deposition.

22. The Noticing Party shall be responsible for arranging the taking of a Remote Deposition and ensuring that email invitations to attend the Remote Deposition are sent to the Witness, the court reporter, and any Attending or Defending Counsel who, no later than three days before the Remote Deposition, shall provide their email addresses to the Noticing Party. In the event that both sides have noticed the Remote Deposition, the Party who first noticed the Remote Deposition shall be responsible for coordinating the aforementioned logistics. In lieu of providing the Witness's email address, Defending Counsel may elect, upon notice to the Noticing Party, to forward the email invitation and other relevant information to the Witness directly.

23. The Parties shall ensure that the Witness has access to technology that meets the minimum standards required by the Platform to ensure the transmission of audio and video feeds via the Platform. Upon the request of any Party, the Witness, or Defending Counsel, a Noticing Party shall arrange for the Witness and all participating attorneys to have the ability to participate in a test run of the Platform.

24. The Platform for a Remote Deposition will be configured such that any private chat feature is disabled. Breakout room features may be enabled only for breaks and recesses off the record. Conversations in the breakout rooms shall not be recorded. All other chat, instant message, e-mail, and/or texting features that may be visible to or used to communicate with the Witness are prohibited and shall be closed or disabled during the Remote Deposition in a manner that prevents the Witness from receiving messages, alerts, and notifications through such features.

25. Remote Depositions subject to this Remote Deposition Protocol shall be recorded by stenographic means at the expense of the Noticing Party. In accordance with Additional Provision 11 of the Scheduling Order entered in this Action, the deposition also may be recorded by audiovisual means at the election of either side, at the electing side's expense. Each Party will bear its own costs for copies of transcripts and copies of video recordings of any deposition. No Party or person other than the court reporter,

videographer, and/or audio recorder shall record any portion of the Remote Deposition. This prohibition extends to capturing images, audio, or footage by any means, including but not limited to taking screenshots, audio recordings, videos, or pictures of the deposition.

26. While Deposing Counsel, the Witness, and Defending Counsel all must be visible via video on the Platform while the Remote Deposition is being conducted, any video recording shall be made using the camera focused on the Witness, not Deposing Counsel or Defending Counsel, or any of the other attendees. Any persons who are attending a deposition other than Deposing Counsel, the Witness, Defending Counsel, and any other counsel in the same room with the witness shall have their cameras and microphones turned off while testimony is being taken on the record unless otherwise agreed upon by Deposing Counsel, the Witness, and Defending Counsel.

27. Any Party may elect to have a technical specialist attend a Remote Deposition to ensure that technical issues are resolved in a timely manner.

VI. EXHIBITS

28. Deposing Counsel shall be responsible for ensuring that any exhibits that they wish to mark and use at a Remote Deposition can be shown to the Witness in a manner that enables the Witness, the court reporter, and Primary Counsel to review the exhibits in their entirety during the course of the deposition and to control their ability to review the exhibits. The Parties agree that Deposing Counsel, Defending Counsel, and the Witness shall be afforded the opportunity to print a hard copy of the exhibit, to the extent practicable, if they so choose. If the electronic version of the exhibit may be viewed in its entirety in a manner that is legible, any time spent printing a hard copy of an exhibit shall not count against the time allowed for the deposition. Third-Party Witnesses and their Defending Counsel shall not retain any copies of documents used during the deposition and shall confirm that they will return or destroy any such documents at the end of the deposition. Nothing in this paragraph is meant to preclude Defending Counsel who represents a Witness and is physically located in the same room as the Witness during the Remote Deposition from providing a hard copy of an exhibit that has been introduced to the Witness, provided that doing so does not unreasonably delay the Remote Deposition. Nor is anything in this paragraph meant to preclude any counsel who is physically located in the same room as the Witness during the Remote Deposition from using or providing a hard copy of an exhibit, provided that an electronic copy of the exhibit can be made available simultaneously to those attending the deposition remotely. The Parties further agree that the preferred method of marking and using exhibits for a Remote Deposition is through the Platform, which shall enable Deposing Counsel to share exhibits with the Witness, court reporter, and all Attending Counsel.

29. If, during the course of questioning, the Witness wishes to review a document or transcript that is being displayed, the Deposing or Primary Counsel then questioning the Witness shall display or facilitate access to all other portions of the document or transcript requested by the Witness before requiring an answer to the question.

30. If the Platform for a Remote Deposition does not permit the court reporter to mark exhibits remotely, Deposing Counsel shall be responsible for marking exhibits and ensuring that such marks are communicated to the court reporter and all participating attorneys on the record during the Remote Deposition.

VII. MISCELLANEOUS PROVISIONS

31. The Parties shall conduct a joint test of the Platform prior to the taking of the first Remote Deposition using that Platform. A Party that fails to participate in such a test waives any objections to the use of the Platform.

32. Defending Counsel, Deposing Counsel, and the Witness shall enable both an audio and video connection at all times during a Remote Deposition. The audio connection shall be muted when appropriate, but the video connection shall remain active, with the camera turned on, at all times during a Remote Deposition, except during breaks so long as the Platform connection is maintained.

33. If privileged information is disclosed during a Remote Deposition inadvertently as a result of a technical disruption or other technical issue, such disclosure shall not be deemed a waiver of privilege.

34. Unless otherwise agreed by the Parties or noticed as an in-person deposition, no person may be physically located in the same room as the Witness during the taking of a Remote Deposition except for: (a) a non-attorney who is present solely for the purpose of providing technical assistance to the Witness in using the Platform, (b) Defending Counsel who represents a Witness, and (c) any Attending Counsel. Such persons must be logged onto the Platform with a separate video connection unless otherwise agreed by the Parties. At the beginning of the Remote Deposition, every person logged onto the Platform or otherwise viewing or listening to the deposition must be identified for the record. Any person joining or leaving the deposition after it begins, with the exception of Complaint Counsel and outside counsel for Respondents, must be identified at the time of their arrival or departure.

35. During a Remote Deposition, the Witness may not communicate with any person regarding the Witness's testimony, except through the Platform, by any means, including through gestures, handwritten communications, email, chat, instant messaging, or text messaging. This restriction does not apply to conversations between the Witness and Defending Counsel during breaks or other recesses not on the record; such conversations can occur in breakout rooms provided by the Platform or other means, to the extent such breaks or recesses and any such conversations taking place during them occur in the manner permitted under applicable federal and local rules and procedures. Notwithstanding the requirements of this Paragraph, a Witness may consult privately with Defending Counsel for the purpose of determining whether a privilege should be asserted so long as the Witness or Defending Counsel states on the record that such consultation is occurring. For the avoidance of any doubt, and in keeping with normal deposition

practice, Deposing Counsel, Defending Counsel, and Third-Party Counsel may engage in private communications or discussion amongst themselves during a Remote Deposition, using any appropriate means (such as email, texting, etc.).

36. While giving testimony, the Witness may not review, read, have before them, or otherwise access any document, including email, text, web pages, social media, video, audio, or any other material, except documents presented to the Witness as exhibits during the Remote Deposition, without the express consent of counsel for all Parties. During the deposition, the Witness shall not consult any outside sources of information, including but not limited to, people, cell phones, smart phones, computers, the Internet, text or instant messaging services, emails, chats, blogs, or websites such as Twitter, Facebook, or LinkedIn, to obtain information in connection with his or her testimony.

37. Based on their experience under this Remote Deposition Protocol and the needs of individual witnesses, (a) the Parties, or the Parties and any Third-Party Witness, may stipulate to modifications of this Remote Deposition Protocol applicable to an individual Remote Deposition; or (b) the Parties may stipulate and submit to the Court for its approval modifications to this Remote Deposition Protocol applicable to depositions to which this Remote Deposition Protocol applies.

38. The Noticing Party shall serve a copy of this Remote Deposition Protocol with any subpoena for deposition testimony in this Action.

39. All persons attending Remote Depositions are reminded that the typical rules of professionalism and etiquette during depositions still apply. All persons attending depositions taken pursuant to this Remote Deposition Protocol who do not have an immediate need to speak shall ensure that their telephone or video conference lines are muted. In addition, all persons attending depositions taken pursuant to this Remote Deposition Protocol shall undertake best efforts to ensure that they can do so in a space that is relatively free from distractions that would interfere with the deposition.

VIII. RESERVATION OF RIGHTS

40. By entering into this stipulation and agreement, the Parties do not intend to limit their rights to seek relief from the Court if, at any time, any one or all of them determine that Remote Depositions are or have become impractical or prejudicial.

41. By entering into this stipulation and agreement, the Parties do not intend for this stipulation to act as a waiver of any Party's rights or protections or applicable procedures under 16 CFR Part 3, Rules of Practice for Adjudicative Proceedings, 16 CFR Part 4, Miscellaneous Rules, the Federal Rules of Civil Procedure and Evidence, or any Order entered in the Litigation.

Dated: April 6, 2023

Respectfully submitted,

/s/ Abby L. Dennis

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Before The Honorable Araceli Martinez-Olguin, District Judge

FEDERAL TRADE COMMISSION,)
)
Plaintiff,)
)
vs.) No. C 23-01710-AMO
)
INTERCONTINENTAL EXCHANGE,)
INC., et al.,)
)
Defendants.)

San Francisco, California
Friday, May 12, 2023

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 10:00 - 10:47 = 47 MINUTES

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1 Friday, May 12, 2023

10:00 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: All rise. This court is now in
5 session, the Honorable Araceli Martinez-Olguin presiding.

6 THE COURT: You may be seated. Good morning,
7 everyone, and I want to thank you for coming in person. You
8 get the pleasure of being the first folks to sit in here
9 with me, so thank you.

10 Can I ask you all -- or, actually, Alexis, if you
11 would.

12 THE CLERK: Calling Case Number 23-CV-1710,
13 Federal Trade Commission versus Intercontinental Exchange,
14 Inc., and Black Knight, Inc.

15 Counsel, please state your appearances for the record,
16 starting with Plaintiff.

17 UNIDENTIFIED SPEAKER: (Audio glitch) of Susman
18 Godfrey on behalf of Defendant Intercontinental.

19 MR. SLAUGHTER: Good morning, your Honor. James
20 Slaughter of Keker, Van Nest and Peters on behalf of Black
21 Knight.

22 MR. TILLERY: Good morning, your Honor. Khari
23 Tillery, (indiscernible).

24 MS. ZUNIGA: Good morning, your Honor. Krisina
25 Zuniga of Susman Godfrey on behalf of (indiscernible).

1 MR. EVERETT: Good morning. Clay Everett, Morgan
2 Lewis.

3 THE COURT: Thank you, all.

4 And so let me give you a sense of what we're doing
5 today, or what I need from you all today. I want to start
6 by confirming with you all some of my understandings from
7 your submissions.

8 I then have some questions for each of you about your
9 prospective proposed schedules, and at the very end here, I
10 will want to chat with you all about some administrative
11 matters that are still pending, right, the sealing motions,
12 and I think I caught somewhere the idea that you might be
13 entering into a protective order. So that will be the
14 cleanup at the end, and anything else that you all may have,
15 but that's my sense of our agenda today.

16 All right. So let me start with my understandings, and
17 I'll look to both of you to some degree for this, and I will
18 say "both of you," although I very much understand you all
19 are different parties. So, if you all could confirm, right?
20 You have a merits trial before the ALJ set for July 12th?
21 Okay.

22 UNIDENTIFIED SPEAKER: That is correct.

23 THE COURT: All right. And -- yes.

24 THE CLERK: (Indiscernible.)

25 THE COURT: The mikes, yes. Does anyone -- yes.

1 Do you all want to stay there, or do you want to come
2 forward to the --

3 MS. SRINIVASAN: We're happy to come forward, if
4 that would be easier for your Honor.

5 THE COURT: However you prefer.

6 Thank you, Melinda (phonetic).

7 MS. SRINIVASAN: Your Honor, that's correct.

8 There is an ALJ proceeding set for the 12th, and I don't
9 want to leap ahead on your questions, but, obviously, our
10 view is that that shouldn't be determinative of how we set
11 and proceed with the preliminary injunction in this court,
12 because, of course, the administrative authority has no
13 ability to relieve the Defendants of a TRO, nor to decide a
14 preliminary injunction, which is the issue before the Court.

15 It is imperative that the Court have before it a full
16 record, and the proposal that the FTC has put forward is
17 completely anomalous from any merger case. In the past 25
18 years, there have been 38 such challenges.

19 THE COURT: Well, I'm going to pause you, because
20 I do have --

21 MS. SRINIVASAN: Sure.

22 THE COURT: -- I do have bits and pieces as we go,
23 and I have read the submissions that I got from you on that.
24 So what I -- the question -- the reason I'm asking about the
25 hearing before the ALJ is whether -- is also just to ask

1 whether you all have sought from the FTC to have that moved
2 up.

3 MS. SRINIVASAN: We have discussed with the FTC
4 whether that deadline could be -- whether the hearing could
5 be moved. And I don't want to speak for the FTC, but my
6 understanding is that the Commission has to move that date,
7 or request to move that date, from the ALJ, and that, in our
8 discussions, that there was not a willingness to do so in
9 the absence of having conflict. If there is a conflict with
10 a proceeding in this Court, that automatically calls for
11 that date to be moved, because that is required under the
12 FTC Rules, under 3.1.

13 So the discussion that we had originally was about
14 being able to potentially set a preliminary injunction
15 hearing first on June 26th. We understand the Court is not
16 available on those days, but our discussion with the
17 Government was that both parties could complete that, at 15
18 hours a side, on June 26th, in advance of the July 12th
19 administrative hearing, but we feel -- and, procedurally, it
20 has always been the case that preliminary injunctions and
21 the evidentiary record developed for that precede the
22 administrative proceeding, because the administrative
23 proceeding has no deadline, in the sense that it is not
24 determining whether or not the merger can go forward. It's
25 not determining whether the TRO can remain in place

1 indefinitely, and so the time sensitivity is with this
2 proceeding, before this Court, rather than with the
3 administrative proceeding.

4 Again, in our discussions, the FTC was amenable to us
5 having a trial or having a proceeding on the preliminary
6 injunction on June 26th, at 15 hours a side. We understand
7 from the Court's calendar it may not be available in that
8 window, but that is the proper protocol, and the one that
9 has been followed in every merger case that one that had
10 unusual circumstances, because that's the real question of
11 the Court, is whether the merger can proceed on the date
12 that is planned for closure. The administrative hearing is
13 not going to answer that question.

14 THE COURT: Ms. Srinivasan, let me ask you,
15 because, as long as you've brought up the merger's outside
16 date, but since this is me confirming my understandings,
17 right, I understand that to have been set between ICE and
18 Black Knight. I guess I'm curious what happens on November
19 5.

20 MS. SRINIVASAN: Well, the parties, they have the
21 ability to terminate that agreement. Either party may do so
22 if it is not consummated by that date. It obviously has
23 enormous economic consequences. The deal has been set for a
24 year, and everybody has been on notice of that, including
25 the Government, but, as you can imagine, the financial

1 conditions under which that deal was set a year ago are
2 dramatically different today, and will be on November 4th.

3 And, for example, as just one, to refinance a deal at
4 entirely new rates, or to restructure a deal at that point
5 in time, has a significant economic impact, to the tune of,
6 potentially, hundreds of millions of dollars, and it is -- I
7 understand the Government has suggested that it's sort of a
8 voluntary or self-imposed deadline. That's not ordinary
9 course, either.

10 Everybody has had visibility for 12-plus months that
11 this was the outside close date, and have been, obviously,
12 moving through the Government's process. We don't control
13 the timing or the decision by the Government to seek a
14 preliminary injunction. The timing and the decision to do
15 so rests solely with the FTC, and that's the timing they
16 chose, but to suggest that there's -- that we somehow
17 created a self-imposed deadline by a longstanding merger
18 close date I don't think is proper, and typically it's not
19 the Government coming in and suggesting that there's
20 flexibility there, given the enormous economic ramifications
21 of moving that.

22 THE COURT: Apart from the Government's assertions
23 about it, I think I'm trying to understand -- my sense is
24 that it is a private -- ultimately a private agreement
25 between you all. It isn't a deadline set from someplace

1 else, and is that correct? If you all want to do a -- I
2 hear you that it may not be preferable, but what I want to
3 get hold of is whether you all have the -- whether it is
4 within your client's agency to choose to move that to -- I
5 mean, right, if they choose to -- if they themselves could
6 choose a different date.

7 MS. SRINIVASAN: Well, I can only speak for
8 Intercontinental Exchange, because, obviously, it's a
9 two-party transaction, and so that itself raises questions
10 about whether the parties could, would be able to reach or
11 restructure the deal in any fashion. There's a lot of
12 uncertainty around, and I so I don't --

13 THE COURT: No, of course.

14 MS. SRINIVASAN: -- I cannot make that
15 representation.

16 THE COURT: I'm not asking if you will. I'm not
17 asking if your client would or will or even want to. I
18 think I'm just trying to confirm whether it's within their
19 power to do it, if they wanted to.

20 MS. SRINIVASAN: The parties are certainly able to
21 discuss it, but whether it's in their power, given that
22 there are two parties involved, and given the structural and
23 economic issues involved, it is hard to say that it is
24 really in their power, but certainly it is a private
25 transaction. That's the date that that was selected by the

1 parties to close.

2 THE COURT: Ms. Dennis, I have one -- I have a
3 couple of questions. Well, I have a question for you, and
4 then I'll have some more questions for Ms. Srinivasan before
5 we get to the schedules.

6 I just wanted to ask for a moment there -- I do note
7 that you've reserved the right to contest the Court's
8 subject matter jurisdiction over the counterclaims, and I'm
9 just -- I would really like to start to get my hands around
10 your theory of that, and if what you're hoping to do is
11 either carve out an exception that acts on, or if there's
12 just -- if you have something else. Okay.

13 MS. DENNIS: I think I have two responses to that,
14 your Honor. One is, right now the FTC can't take a position
15 on those, because the Department of Justice has 45 days,
16 since we provide them notice of those counterclaims to
17 determine whether they want to be involved.

18 Irrespective of that involvement, we have 60 days to
19 answer, I believe from May 9th. That's when the Defendants
20 submitted their notice that they had finally served the
21 United States Attorney. So that would be my first response,
22 is that we're just reserving our right to do so, depending
23 on what the Department of Justice would like to do.

24 THE COURT: Can I ask you -- go ahead, please.

25 MS. DENNIS: Sorry, your Honor.

1 THE COURT: I wanted to ask -- because, right, I
2 have this, too, right? The notice was filed on the 9th. I
3 have from your submissions that you shared the counterclaims
4 with the United States on the 26th. So where -- my question
5 to you is, where does that clock -- where do those 45 days
6 for the DOJ -- when do they run?

7 MS. DENNIS: So the 45 days' notice for the
8 Department of Justice under 16 U.S.C. Section 56(a), where
9 we have to, under the FTC Act, notify the Government or the
10 Department of Justice, that began to run on April 26th. To
11 answer the counterclaims or respond to them ran from May
12 9th, under Federal Rule of Civil Procedure 12.

13 As far as Axon goes, your Honor, I think a number --
14 there's seven as we count them, seven constitutional
15 counterclaims here, or seven constitutional issues. Some of
16 them are covered by Axon. At least one, which is the
17 clearance process between the Department of Justice
18 Anti-Trust Division and the Federal Trade Commission, is
19 expressly not considered by Axon in footnote one of Justice
20 Kagan's opinion. So there's at least one counterclaim.
21 Again, I don't want to speak for what DOJ might ultimately
22 do here, but we think Axon doesn't answer all the subject
23 matter jurisdiction questions.

24 THE COURT: Thank you.

25 MS. SRINIVASAN: And, your Honor, I don't know if

1 you wanted me to address Axon as well, but what I would say
2 is I think the Supreme Court was very clear that the
3 here-and-now injury that is raised by having an
4 administrative proceeding ongoing that is subject to
5 constitutional challenge is one that should and can properly
6 be brought before the District Court, and we are unclear
7 what basis there would be, and, obviously, the Justice
8 Department can respond about contesting subject matter
9 jurisdiction in light of the clear directive from the
10 Supreme Court.

11 The fact that there is a clearance process challenge
12 amount them which wasn't teed up in Axon, it doesn't change
13 the subject matter jurisdiction question, given the Supreme
14 Court's holding that if you have a here-and-now question,
15 you believe that there is an ongoing injury happening by the
16 administrative proceeding, you need not wait to go through
17 the review and appellate process to raise that, and the
18 District Court is your avenue to do so.

19 THE COURT: Thank you for that.

20 So one last question before I jump into the
21 schedules themselves. I noted that, in the joint case
22 management statement, Defendants say that they're amenable
23 to the counterclaims trailing a decision on the FTC's
24 request for preliminary injunction, and I just want to
25 confirm whether that's regardless of the schedule that's

1 ultimately set.

2 MS. SRINIVASAN: Your Honor, no. Just to clarify,
3 that is assuming that the preliminary injunction hearing is
4 not predicated on a record from the administrative process.
5 What we have outlined is for this Court to conduct that
6 independent determination on the FTC's request for a
7 preliminary injunction.

8 I believe the schedule and the proposal that's been
9 submitted by the Government raises immediate constitutional
10 concerns by suggesting that a record developed in the
11 administrative body, which is the subject of the
12 constitutional challenge -- if that is then used here to
13 form the basis for a preliminary injunction decision. Then
14 our constitutional challenge would be at issue, which is
15 part of what we have tried to make clear, is that, if the
16 preliminary injunction proceeds first, as it should and has
17 in really every merger case but one, that that would moot at
18 least certain concerns raised in the constitutional setting.

19 I think to have what the FTC has suggested now, which
20 is that a record is developed in this administrative body to
21 which we have raised constitutional questions, and that that
22 record takes the place of an evidentiary hearing here, or
23 the ability for this Court to take its own evidence and
24 exercise its own independent judgment on the preliminary
25 injunction determination, that does raise constitutional

1 concerns, or magnifies the ones that we've outlined.

2 So we believe that if the preliminary injunction goes
3 first, as it should, then the constitutional question can
4 trail that proceeding. It doesn't have to be done in a
5 manner that jams up the Government if they're going to have
6 the Justice Department involved, but I think, if the notion
7 is that this Court is going to be limited by a record
8 developed in that administrative body, which we have
9 contended has its own issues and is not assuring us an
10 adversarial process, and doesn't apply the same rules of
11 evidence, and is not going to allow this Court to make
12 credibility determinations or ask questions of witnesses,
13 that does raise constitutional questions and due process
14 concerns.

15 THE COURT: Ms. Srinivasan, are your concerns or
16 your client's concerns assuaged if it is the administrative
17 record plus any supplemental evidence that I might ask for?

18 MS. SRINIVASAN: Your Honor, I think, ultimately,
19 the administrative record is not going to be sufficient from
20 which to draw and make a determination on preliminary
21 injunction, and I don't know what the Court has in mind in a
22 hybrid process, but, in these cases, in every one of these
23 cases, there has been the opportunity for or an actual
24 evidentiary hearing in the court, and the reason for that is
25 multi-fold, of course, being able to apply your Honor's

1 rules of evidence and make credibility determinations.

2 There's going to be economic evidence, and experts, and
3 in every proceeding that I've been in, and, I expect, the
4 Government as well, the Court often has questions to direct
5 at the witnesses, and be able to see their live testimony,
6 and make sure they understand what open issues there may be
7 with respect to their testimony.

8 It is absolutely anomalous to suggest that our starting
9 point is an administrative record, rather than having the
10 evidence before this Court, which is how preliminary
11 injunctions are handled, writ large, in this context, and I
12 frankly think it would be a disservice to the Court to have
13 hundreds of pages of transcripts it's supposed to wade
14 through, and try to figure out how to put that together.

15 Both sides have said this case could be done in 15
16 hours a side, if the Court can allocate that time, to allow
17 it to see witnesses, ask questions, be able to take that
18 evidence, as opposed to getting a record and then trying to
19 decide what is left for the Court to figure out.

20 Again, it is so unusual in this context, I don't even
21 imagine how that would play, for the Court to get that
22 hundreds of pages of transcripts, exhibits, things that were
23 subject to a totally different process, under different
24 standards, and then to figure out what additional
25 evidentiary record is needed.

1 These hearings typically proceed in the fashion where
2 the parties who have the burdens of proof are putting that
3 forward in an order in which is it accessible and
4 understandable to the Court.

5 THE COURT: Well, let me ask you --

6 MS. SRINIVASAN: Sure.

7 THE COURT: -- because I think part of what I'm
8 also trying to wrap my head around is the degree to which
9 those processes differ, because you all have agreed you're
10 keeping the discovery, and you're keeping the discovery
11 schedule that you've set before the ALJ, at least in terms
12 of the depositions and the numbers and all of these things,
13 and you've got a protocol in place, all of the -- you seem
14 comfortable with those things, including sort of when the
15 experts will exchange their reports.

16 I think I'm curious how -- I hear you saying something
17 about -- I hear you mention the different rules, that the
18 evidentiary standards are different, and I guess I'm curious
19 if you could enlighten me as to how the rules of evidence
20 play differently at the Commission.

21 MS. DENNIS: They're very similar, your Honor, in
22 the sense of it's a bench trial there, so the Court has
23 discretion to consider all the materials in the record.
24 It's very similar to what transpired -- Defendants often
25 cite to Meta-Within, which the Government tried, the FTC

1 tried, before Judge Davila in December. Judge Davila let in
2 the entire record of the depositions, the declarations, all
3 of that.

4 Same process happens in the administrative law court.
5 There's actually more time there than you would actually
6 have in a PI. Most PIs are very truncated, contrary to what
7 Defendants' counsel is saying. There are some, not just
8 Labcorp. There is Aveanna Health, ProMedica, Libbey, all
9 done on the papers. Some are two to three days long.
10 Steris, in 2015, the Court said no experts. There's not a
11 "one size fits all" for this.

12 We're being flexible by saying, if we go before the
13 administrative trial, which is set to begin July 12th, we'll
14 have a more fulsome PI, 15 hours a side, which is what
15 happened in Meta-Within. If it's afterward, we have a full
16 admin record, plus, if your Honor wants to hear live
17 witnesses, one or two days, and that's what a standard PI
18 actually is, one, two, three days long. They're not these
19 long trials on the merits.

20 So here there's actually a more fulsome record than
21 most defendants would get in these processes, and we
22 actually have had at least one instance in the past five
23 years where the admin -- excuse me -- the PI has come
24 afterwards, and there's been a fulsome administrative record
25 that was submitted to the District Court, and the District

1 Court then heard from three witnesses a side, and I would
2 submit, if your Honor would like to proceed with that, if
3 your Honor wants to hear live witnesses, that's the way to
4 go about doing this, other than -- aside from Defendants'
5 procedure, which would disrupt the administrative trial.

6 A few notes on the constitutional claims as it pertains
7 to the administrative trial. Defendants have not moved for
8 a PI to block that trial, so I don't think there's a "here
9 and now" issue, and the reason why they probably haven't is
10 it will slow down the PI proceeding on the 13(b) claims.

11 We're trying to do something here that will -- we don't
12 think November 4 is a drop-dead date, but we're trying to
13 work with Defendants here, so that we can have a resolution
14 here in the District Court before that date. If your Honor
15 has to hear the constitutional claims as part of Section
16 13(b), or even before that, if there's a PI to stop the
17 administrative proceeding, that will slow up the 13(b)
18 inquiry here in this court.

19 And going back to one thing I wanted to raise from
20 early, the July 12th trial date, we have told Defendants
21 repeatedly that is a decision by the Commission. They can
22 make a motion. We might join that motion. The only draft
23 motion we received from them as part of this did not have a
24 date certain. It was tied to two weeks after the District
25 Court's decision.

1 We didn't have a schedule here. The defendants modeled
2 that again after Meta-Within, but Meta-Within, when that
3 motion was raised to the Commission, it was after Judge
4 Davila's evidentiary hearing, and after Judge Davila said he
5 would have a decision in January.

6 MS. SRINIVASAN: Your Honor, if I may on the last
7 point, and maybe working backwards? We're happy to file a
8 motion, and have the FTC seek to join it, to move the
9 administrative hearing.

10 Prior to seeing this Court's schedule, again, the
11 discussion had been around having a preliminary injunction
12 hearing on June 26th, which both parties agreed, all parties
13 agreed, we could be available and ready to try, and that, at
14 that point, we could make a determination about whether to
15 seek to move the administrative hearing being right on top
16 of and behind that.

17 Obviously, we understand the Court has indicated on its
18 web site it's not available during that period, but, to be
19 clear, everybody was in agreement that this could be an
20 acceptable path of having the preliminary injunction handled
21 first, and then we could file a motion, if we needed to, to
22 move the administrative hearing date after that time. We
23 are happy to do that when we can work around and figure out
24 some path to clarity on the schedule.

25 We did raise with the government, "Well, if we can't do

1 it on the 26th, why don't we do it on July 6th? What is the
2 magic on the June 26th date?" If everybody is going to be
3 ready, and it is undisputed that everybody will be done with
4 their discovery and prepared to try this case, why can we
5 not do it, subject to the Court's availability and the
6 Court's convenience, on the next available day? And that
7 would then permit us to go to the Commission, and to seek to
8 move the administrative hearing date out, because, just to
9 be clear -- and I really don't want it to be lost -- the
10 time-sensitive issue is here in this proceeding, not in the
11 administrative proceeding. The ALJ has no ability to enjoin
12 the merger, and we are subject to a TRO.

13 Again, if the FTC elects to seek a preliminary
14 injunction, as they did here, it shouldn't be then saying
15 that "Well, the evidentiary hearing on that should be
16 limited, it should be constrained, and it needs to trail the
17 administrative hearing," which has no time sensitivity
18 associated with it.

19 That can be pushed out, but, just to be clear, the
20 reason, in part, we had not sought to do that is because, at
21 the time, we thought one option might be to have this June
22 26th preliminary injunction hearing. If that date gets set
23 for some time frame, we will seek to, and, hopefully, with
24 the Commission joining us, move out the administrative
25 hearing date.

1 As to the examples of other proceedings, again, an
2 administrative proceeding preceding the preliminary
3 injunction hearing is extremely rare, and the one case that
4 the FTC cited, there were particular reasons, regulatory
5 review that had to happen in order for the party to be able
6 to get through their part three proceeding. There wasn't
7 even a preliminary injunction sought until the
8 administrative hearing was done, but that is one in 38
9 cases. Judge Davila's handling of the Meta case, he had a
10 seven-day evidentiary hearing, a preliminary injunction
11 hearing that was handled in advance of an administrative
12 hearing by the ALJ.

13 In no case that we have seen or that the FTC has cited
14 has the record from the proceeding, an administrative
15 proceeding that went first, simply been handed over and
16 formed the basis for a preliminary injunction decision, and,
17 again, the ordering itself is highly anomalous in those
18 cases, because the administrative hearing has no time
19 sensitivity. There's no clock on it in the way there is for
20 a preliminary injunction. Obviously, the TRO here expires
21 only upon the order of this Court on a preliminary
22 injunction, and we are bound by that until that time.

23 MS. DENNIS: I have just two --

24 THE COURT: Go ahead, please.

25 MS. DENNIS: Two quick things on Meta-Within. It

1 was actually six days, but it was 15 hours per side. Judge
2 Davila met with us in mornings and afternoons. He didn't
3 have full days, necessarily, that entire time.

4 Then, two, importantly, though, from that case,
5 Defendants there had an exploding TRO of December 31st.
6 That wasn't something, I think, the Court wanted. I think
7 Judge Davila originally wanted to hear us in January, but we
8 had to move it up to December, and that made that very
9 different than what we have here.

10 Again, we're not trying to -- we don't think November
11 4th is a drop-dead date, but that's not something -- I think
12 the schedules that we've proposed -- and we've tried to be
13 flexible here, short of conflicting with our administrative
14 trial -- should not run in the way of that November 4th
15 date.

16 THE COURT: Well, let me ask you all this, because
17 there's one thing, and it may be that I took the date down
18 wrong, because I thought somehow that we were talking about
19 June 16th. So we are not talking about June 16th. We're
20 talking about June 26th?

21 MS. DENNIS: Correct, your Honor.

22 MS. SRINIVASAN: We had been talking about June
23 26th, and I believe, when we submitted our statement, we did
24 not realize the Court had indicated its unavailability. Of
25 course, if the Court tells us to go back and work around

1 June 16th, the parties will do that, too.

2 THE COURT: There's nothing magic about June 16th.
3 It's just a typo on my part, which then at least takes away
4 one set of questions I had for you all, because it didn't
5 make sense to me in light of some of the expert reports that
6 you all had. I didn't -- so that at least clarifies that
7 for me.

8 I guess I am -- I'm curious -- I guess the part that
9 I'm trying to sort out is -- well, you may have helped with
10 one of them already, because I wasn't seeing how the
11 discovery you all had agreed to would work with a June 16th
12 date. So the answer is, it doesn't, but I'm then -- but I'
13 not -- that entire week is out of the question for me. So
14 I'm wondering if you all can sort of circle back and see if
15 you can find dates that work.

16 If you have a proposal for something before the week of
17 the 26th, so that I can get eyes on that, that -- to be
18 clear, it's not that I'm sold on that yet. I just want to
19 see what that looks like, because, at this point, as you
20 know, what I have is, let's, you know, set it so that it
21 happens when we're supposed to be before the ALJ, which I'm
22 not keen on, or put it over here, which doesn't work because
23 I'm not here, right, or the week of June 26th, which doesn't
24 work, either.

25 So I want you all to try and talk a little bit more

1 about earlier dates, so that it's something that works for
2 both of you, instead of me, instead of having me slice and
3 dice something, which perhaps -- I mean, I'll do it. I'll
4 gladly give you something that neither of you likes. But
5 I'd rather that you all try and have a conversation about
6 that.

7 Yes.

8 MS. SRINIVASAN: Your Honor, if I may ask? It
9 looked like from the Court's calendar that that week of --
10 after the July 5th, there would be days open. If we're
11 trying to put together days, and I don't -- obviously, we
12 want to do things that are at the Court's convenience, but
13 there can be a way to put together days that are
14 noncontiguous, for example, to start before the block-out
15 dates the Court has, and then to finish in that week of --
16 the first week of July, when the Court resumes.

17 MS. DENNIS: Your Honor, if I may, I think the
18 issue with July 6th, which Defendants raised last night for
19 the first time, is that that again would conflict with the
20 administrative trial, if it goes 15 hours per side.

21 MS. SRINIVASAN: And, your Honor, there's a
22 rule -- there is the FTC Rule 3.1 that says, if there is a
23 scheduling conflict, this Court's schedule should take
24 precedence over that of the administrative hearing.

25 So I think that, respectfully, that is an easy fix, if

1 we are going into some days that overlap with the July 12th
2 administrative hearing, to have that administrative hearing
3 pushed forward. In fact, that is expressly what the FTC
4 rules call for happening, but, you know, we're happy to look
5 at any combination of dates, and, again, I would have
6 explored July 6th earlier with counsel had I recognized the
7 Court's block-out dates for that week.

8 THE COURT: I did not bring the calendar up here.
9 Can you just peek at -- let me see June, just the week -- I
10 have the 16th in my head. I know the 26th -- let me ask you
11 all, if it's 15 hours each, how long -- how many days do you
12 think you need? Is that a week?

13 MS. DENNIS: It depends on your Honor, how long
14 your Honor hears the Court (sic). I believe you have your
15 trial dates, although this is not trial, like six hours a
16 day.

17 THE COURT: Yes. That's, in theory, for a jury.

18 MS. DENNIS: Okay.

19 THE COURT: So, if you --

20 MS. DENNIS: I think it should be --

21 THE COURT: -- to go longer any given day, as long
22 as you all --

23 MS. SRINIVASAN: I was thinking somewhere between
24 five and seven trial days, similarly, if it's 15 hours a
25 side.

1 MS. DENNIS: I think 15 hours a side is -- and we
2 did it in six days in Judge Davila's court, with half-days
3 on some of those.

4 THE COURT: You know, even that's helpful, and
5 then I will spare you all the, like -- I don't have a
6 calendar, so I'll take that with me. I have just a handful
7 more. I feel like I had a handful more questions for you
8 all about the schedules.

9 MS. SRINIVASAN: And, your Honor, are you amenable
10 to having days that are not contiguous, if we end up with
11 part of that before June 26th and part of that on July 6th
12 through, you know, whatever remains, if we need to do that?

13 THE COURT: Yes. Yes, same thing, right. It's
14 just us. There won't be --

15 MS. SRINIVASAN: Okay.

16 THE COURT: There aren't jurors or others to worry
17 about.

18 MS. SRINIVASAN: All right. Thank you.

19 THE COURT: So that should be fine.

20 I have one other question for you, Ms. Dennis, about
21 your proposed schedule. I think I wanted to get a sense
22 of -- right. You're set before the ALJ on the 12th?

23 MS. DENNIS: Correct, your Honor.

24 THE COURT: And I'm wondering if there's a way,
25 also, to move up with the -- you're proposing submitting the

1 record, essentially, and also a memorandum on the PI, on
2 August 18th, and I'm wondering if there is a way to shorten
3 that.

4 MS. DENNIS: We're happy to, your Honor. I think
5 the reason we put in August 18th is to make sure. The
6 parties, when they spoke with Judge Chappell over a month
7 ago about how long it might take for that trial, anticipated
8 about 90 hours, and he hears trial three or four days a
9 week. So we were anticipating being done the first week in
10 August, and that was just to make sure, you know, all the
11 transcripts came in, they were all done.

12 We can certainly start providing things earlier, even
13 if the full record is not available from the court reporting
14 service, and then, as we note in our papers, we're happy to
15 move up the briefing on that, or even do an expedited
16 briefing schedule, if that would help your Honor have more
17 time to resolve these issues.

18 THE COURT: And did I hear you right? I may have
19 noted incorrectly that you're done in front of Judge
20 Chappell August 1.

21 MS. DENNIS: It should be --

22 THE COURT: Estimated?

23 MS. DENNIS: Estimated. I know he has a trial for
24 the Microsoft-Activision merger, which is also proceeding
25 solely in part three. I think that starts about August 5th

1 or so, so we would have to wrap up.

2 THE COURT: Do you all have thoughts on the
3 briefing schedule that was laid out in -- it is Plaintiff's,
4 sorry. I had it -- in the Government's proposed deadline --
5 or proposed schedule?

6 MS. SRINIVASAN: Well, I guess perhaps a point of
7 clarification. It presupposes not having the live
8 evidentiary proceeding. So, if we're talking about a hybrid
9 where the Court is going to take live evidence or have a
10 preliminary injunction hearing first, but might also want
11 the record afterwards, then I believe we can come up with
12 some briefing schedule to accommodate that.

13 I think that the idea behind what I understood from the
14 schedule submitted by the FTC was that the briefing would be
15 about the administrative record, or utilizing the
16 administrative, and, obviously, our view is that's not
17 appropriate, and that we should have something that is
18 presented to this Court for it to make its own
19 determination, but, if the idea is that the Court is going
20 to have the benefit of live evidence in a preliminary
21 injunction hearing, and then, also, anything that has been
22 submitted from the administrative record, then we're
23 amenable to coming up with a briefly schedule after that,
24 and I just want to make sure we understand the bounds of
25 what's going to be included in it.

1 THE COURT: No, that's right. As you're
2 describing it, I'm trying to get your thoughts and position
3 on, if we structure it such that is, get the administrative
4 record, have you all come in, and then something follows,
5 and then briefing follows, what would that look like? So,
6 if we can -- I can get -- or I can -- if I get there, you
7 all can then talk about a schedule.

8 MS. SRINIVASAN: That's right, your Honor. Again,
9 obviously, there are time exigencies associated with the
10 preliminary injunction, and the question really being how
11 much time this Court needs to render a decision. So we are
12 happy to work with the Government on some type of briefing
13 schedule that presupposes there's been a form of an
14 injunctive hearing before the Court, and then the Court has
15 the ability to take whatever it wants to see from the
16 administrative record, if that's the way that Court is
17 leaning, but with sufficient time, of course, for the Court
18 to be able to issue a ruling, because that is, obviously,
19 what we're subject to right now, and need to understand
20 whether we will get relief from the TRO or be subject to a
21 preliminary injunction order.

22 THE COURT: Ms. Srinivasan, I asked Ms. Dennis to
23 talk with me a little bit about the proceedings as they are
24 in front of the ALJ. I'm wondering -- I just want to pose
25 the same question to you, about whether there are more

1 specific concerns that you -- you've raised some concerns
2 that you have about how that proceeding goes, but I'm
3 wondering if you have concerns about -- that you want to
4 express about the evidentiary -- have specific concerns
5 about either the evidentiary standards or if it's -- or if
6 it is just more broadly about my not seeing the witnesses
7 live myself.

8 MS. SRINIVASAN: I would lay out a few issues,
9 your Honor. The first is -- and I know I've referenced
10 this, but I just want to underscore how unusual the request
11 is. There have been 38 unconsummated merger challenges in
12 the past 25 years, and none of them have involved relying on
13 or importing the administrative record for the purpose of
14 determining this very substantial question about whether or
15 not a merger should be enjoined.

16 The ALJ's proceeding in the administrative court, the
17 standard Federal Rules of Evidence generally do not apply.
18 As I've mentioned to you, your Honor, there is the issue of
19 the Court being able to make its own credibility
20 determinations, review evidence, and make evidentiary
21 rulings itself, and the expert component of it, I think,
22 can't be understated. There are going to be multiple
23 experts, present complex analyses, and, as we've witnessed
24 in other proceedings, the Court often likes to be able to
25 examine witnesses itself, or ask questions, which it

1 would -- in the absence of having live witnesses here, would
2 not be able to do.

3 Then, of course, finally, as I've raised in the context
4 of the constitutional claim, we don't view the
5 administrative process and the administrative hearing as
6 being akin to being in federal court and being subject to
7 the adversarial process here, for all of the reasons that
8 we've raised in our counterclaim. There is a real, serious
9 question that we have teed up about the separation of powers
10 issues and the role of the ALJ, and the agency being the one
11 to make the original determination that then gets reviewed
12 by the agency.

13 There's no court review until a much later point in
14 time, and that, in and of itself, creates a fundamental
15 question about what that record is, and how it can be relied
16 on for any purpose outside of the agency's own use, because,
17 if we are talking about whether the process itself -- the
18 here-and-now question of whether the administrative
19 proceeding is fair and affords due process, that is part and
20 parcel of whether the hearing that's conducted there can be
21 fair and equitable, too, and then now we're talking about
22 using that record here.

23 So yes, we do have concerns about that. We understand
24 the Court may look at aspects of the administrative record
25 to supplement whatever it is going to do, but, as Judge

1 Davila made very clear in his order on the preliminary
2 injunction in the Meta case, exercising independent judgment
3 requires the ability to take evidence from both parties, and
4 we believe that that cannot be supplanted by using the
5 administrative record from the FTC.

6 MS. DENNIS: Your Honor, if I may, just one quick
7 thing or two quick things. In Tronox, the Court did import
8 the administrative record, but also had three live witnesses
9 per side, and that was a case from five years ago. We cited
10 to that case. There have been multiple PIs where the courts
11 have expressly said they do not want to hear expert
12 testimony, and Judge Davila said, as part of his independent
13 decision making, that wasn't about that, you know,
14 Defendants get a certain amount of days of trial or a
15 hearing. That was him exercising his own judgment, which we
16 don't disagree with at all.

17 That is a decision that your Honor has to make. Under
18 13(b), the narrow inquiry is whether the FTC has shown a
19 likelihood of success on the merits in the administrative
20 proceeding, and balancing the equities, and we just don't
21 think it makes sense to move -- or to put a PI hearing
22 during the admin trial, when that is the merits hearing,
23 when this Court is only supposed to be determining the
24 likelihood of success in that merits hearing.

25 MS. SRINIVASAN: Your Honor, if I may, just -- the

1 Tronox case is a one-off, in 38 cases in 25 years, and that
2 is only because the preliminary injunction was not filed
3 until after the administrative proceeding was complete. It
4 is not the norm in any sense for the determination in the
5 administrative proceeding to come before the determination
6 of the preliminary injunction, and, again, to be able to
7 exercise that independent judgment and to make a
8 determination about the substantial questions requires the
9 Court's ability to determine the evidence it wants before.

10 I understand, in the Labcorp case, the Court felt
11 comfortable denying the preliminary injunction without
12 having live testimony, and that is the Court's right to do
13 so, but this procedure presupposes what the Court will want
14 to exercise its independent judgment, and that is really not
15 appropriate, again, given that the FTC chose to seek
16 preliminary injunctive relief and a TRO, which it didn't
17 have to do.

18 It could have left this to the administrative
19 proceeding, but it wants to be able to stop and impact the
20 ability of the merger to close, and if you're going to come
21 to this Court and ask for that kind of relief, and invoke
22 this Court's jurisdiction, you can't limit what is before
23 the Court to make that type of decision. It is not at all
24 what has been done in these matters, for that very reason.

25 So I don't want there to be any kind of misconception

1 that the protocol has been for an administrative hearing to
2 take place on the merits, and then decide -- then for the
3 federal court to decide whether a preliminary injunction
4 should obtain. That is not the way that it is worked, and,
5 again, the Court, of course, can decide what it needs, how
6 much it needs to engage in this analysis to exercise its own
7 judgment, but what would not be proper is to completely
8 strip away that protocol and that opportunity for the Court
9 by saying you can simply rely on the administrative record,
10 and that's why it doesn't happen.

11 Normally, the part three hearings, the Government
12 doesn't proceed on them until the preliminary injunction
13 proceeding is done, and I take counsel to suggest that
14 perhaps, if we have a preliminary injunction set and in
15 place, the parties can jointly -- or the Defendants can
16 move, and maybe the Commission will join us, in seeking
17 relief on the deadline that the administrative -- or the
18 hearing date the administrative judge has set now, because
19 that is normally what happens.

20 What normally happens is, when the Government comes and
21 seeks a preliminary injunction, and that gets set, the part
22 three hearing is held off on, and the date is moved, and
23 what I'm concerned about is that we're being constrained by
24 something that is an artificial constraint, this July 12th
25 date, and I do believe that if the Defendants sought to move

1 it, the Government would have the opportunity to join in
2 that request to the Commission, but it shouldn't serve as
3 that, and again because that is not -- the ALJ has no
4 ability to relieve us from a TRO or to decide a preliminary
5 injunction, and we shouldn't be forced to work around that
6 constraint, because that constraint has no time element
7 associated with it.

8 The administrative hearings could certainly be moved a
9 little bit, and could be worked around, a schedule that
10 deals with the imminent issue first, which is the
11 preliminary injunction before this Court.

12 MS. DENNIS: Just briefly, there's no "one size
13 fits all" for merger challenges and PI challenges, and I
14 agree with Defendants. It's ultimately up to what your
15 Honor needs to hear to make this determination, which is why
16 we suggested originally the entire administrative record,
17 with briefing in August.

18 We also suggested having a short evidentiary hearing in
19 August. We were the ones who proposed to have an
20 evidentiary hearing in June. All we heard until last week
21 was "July 12th, July 12th, July 12th" from Defendants.
22 We're flexible with your Honor. We're willing to do
23 whatever your Honor would like to do as far as hearing
24 evidence here. We just don't think it's proper to create a
25 conflict with the part three schedule that is set for July

1 12th.

2 MS. SRINIVASAN: And, your Honor, we're not trying
3 to create a conflict artificially, but the federal -- or the
4 FTC rules are clear that this proceeding shall take
5 precedence if there is any conflict in the schedule. We can
6 try to work to set this preliminary injunction earlier, in
7 accordance with the Court's guidance, but there is time
8 sensitivity around that, and so we really don't believe that
9 we should be waiting for a lengthy administrative
10 proceeding, the importation of a record, and all of these
11 other issues to have evidence heard in this court. That is
12 not the proper protocol to proceed, when the FTC has sought
13 the jurisdiction of this Court to have injunctive relief and
14 a TRO.

15 THE COURT: I appreciate your thoughts on that,
16 both here and in writing, about the schedule. I will get
17 back to you all about that. So I sort of want to wrap up
18 the piece on the scheduling, but do either of you want to
19 say anything else about that before I shift us to the
20 smaller administrative matters?

21 MS. DENNIS: Nothing further for the FTC, your
22 Honor.

23 MS. SRINIVASAN: I don't believe so, your Honor,
24 and we're happy to work with the FTC to try to find dates
25 within the Court's near-term availability, to work on that

1 and put together a schedule.

2 THE COURT: All right. So the housekeeping. I
3 very specifically want to talk with you all about the motion
4 to seal, so -- this way. You know, I wanted to pause and
5 note that, as you know, I'm required to find a compelling
6 reason to seal anything or any of the redactions, and I
7 wanted to note that there are several redactions that have
8 nothing submitted in the declarations in support of that
9 sealing. So I wanted to ask if Defendants would like to
10 amend their joint motion to seal, and make sure that there
11 is something offered for every proposed redaction, rather
12 than leaving some without any basis in the declarations.

13 MS. SRINIVASAN: Yes, your Honor. We will do
14 that, and thank you for flagging that for us.

15 THE COURT: Do you all have anything else that you
16 need from me today? You will hear from me on the
17 scheduling.

18 MS. DENNIS: I believe your Honor had mentioned
19 the protective order earlier.

20 MS. SRINIVASAN: I believe the parties are pretty
21 close.

22 MS. DENNIS: Yes.

23 MS. SRINIVASAN: Hopefully, we will have one
24 submitted today or Monday, maybe not today. Parties are in
25 transit. But, as I understand it, we're relatively close on

1 reaching agreement on that.

2 THE COURT: Okay.

3 MS. SRINIVASAN: I don't think there should be a
4 holdup.

5 MS. DENNIS: That's correct. And I also, I
6 believe, in our joint statement, said we would submit a
7 joint stipulation, proposed order on the remote depo
8 protocol, deposition protocol. We'll do that, too, your
9 Honor, next week.

10 THE COURT: Great. Thank you. And the reason I
11 had connected both the -- that I connected the protective
12 order with the motion to seal is just to remind you all --
13 this is me flagging for you all that I will very diligently
14 be looking, and that I take seriously -- or manage to try
15 and keep as much as possible public, for people to see.

16 MS. SRINIVASAN: That's understood, your Honor. I
17 don't have anything further, just to thank the Court for its
18 time, and, obviously, you know, this issue is very important
19 for our -- for the Defendants, and to make sure that we can
20 have a path to resolution, given that we are subject to a
21 restraining order. So I thank you very much for your time
22 and hearing us out today.

23 THE COURT: Thank you all again for coming in
24 person.

25 MS. DENNIS: Thank you.

1 THE COURT: I appreciate the opportunity.

2 THE CLERK: Court is adjourned.

3 THE COURT: Thank you.

4 MS. SRINIVASAN: Thank you, your Honor.

5 (Proceedings adjourned at 10:47 a.m.)

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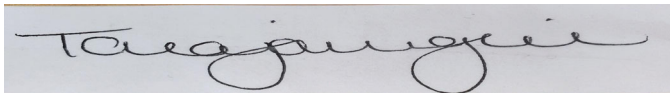
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

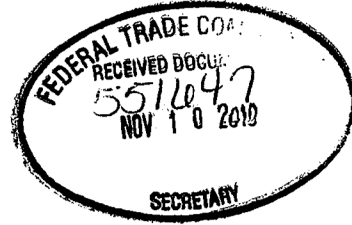


Echo Reporting, Inc., Transcriber
Tuesday, May 23, 2023

EXHIBIT E

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

_____)
In the Matter of)
)
POM WONDERFUL LLC and)
ROLL INTERNATIONAL CORP.,)
 companies, and)
)
STEWART A. RESNICK,)
LYNDA RAE RESNICK, and)
MATTHEW TUPPER, individually and)
 as officers of the companies,)
 Respondents.)
_____)



DOCKET NO. 9344

ORDER GRANTING JOINT MOTION FOR RECESSES

On November 3, 2010, the parties submitted a Joint Motion for Recesses. The parties move for scheduled recesses during the hearing set to commence on May 24, 2011. Complaint Counsel requests a one-day recess, beginning at 5:00 p.m. on Monday, June 13, 2011 and ending at 10:00 a.m. on Wednesday, June 15, 2011, to accommodate an attorney for Complaint Counsel who desires to attend her daughter’s graduation on June 14, 2011. Respondents’ Counsel requests a four-day recess, beginning at 5:00 p.m. on Friday, May 27, 2011 and ending at 10:00 a.m. on Monday, June 6, 2011.¹ Respondents state that the individual Respondents, along with other persons whose presence is critical to the hearing, including in-house legal counsel for Respondents POM Wonderful LLC and Roll International Corp., are scheduled to participate in a previously planned meeting at which their presence is important, and which cannot practically be rescheduled. Each side has no objection to the other side’s request.

Good cause has been demonstrated for the recesses sought. Accordingly, the Joint Motion is GRANTED.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: November 10, 2010

¹ The hearing is already scheduled to be in recess on Memorial Day, Monday, May 30, 2011, which is a Federal Holiday.

EXHIBIT F

April 20, 2023

Via Email

Abby Dennis, Esq.
Ashley Masters, Esq.
Bureau of Competition
Federal Trade Commission
400 7th Street, N.W.
Washington, D.C. 20024

Re: In the Matter of Intercontinental Exchange, Inc.
and Black Knight, Inc., Docket No. 9413

Dear Abby and Ashley:

We write to follow-up on our meet-and-confer yesterday regarding a schedule for the preliminary injunction proceeding in the hope that we can reach agreement.

You put forward a schedule that presumes a Part 3 trial starting on July 12 followed by a preliminary injunction hearing on a cold record before the District Court in late September. We have proposed an evidentiary hearing before the District Court in July, with the parties jointly moving the Commission to stay the Part 3 hearing. Our procedure is consistent with the long-standing approach to pre-closing challenges by the FTC to mergers. Yours not only is essentially unprecedented, it risks violating the law and the Constitution. We look forward to hearing back from you today on whether you will change your position. We urge you to do so for the following reasons:

First, only the District Court can enjoin the merger from closing. 15 U.S.C. § 53(b). The FTC rules recognize this reality by providing that “[i]n the event of a scheduling conflict between a proceeding in which the Commission also has sought or is seeking relief under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), and another proceeding, the proceeding in which the Commission also has sought or is seeking relief under Section 13(b) *shall* take precedence.” 16 C.F.R. § 3.1 (emphasis added). Consistent with the FTC’s own rules, the FTC’s long-standing practice, with one distinguishable exception, has been for the preliminary injunction hearing before the district court to take precedence.¹ This makes practical and legal sense as it allows the district court to render a decision on the preliminary injunction motion *before* any Part 3 hearing occurs. That is exactly how the FTC’s recent challenge to Meta’s acquisition of Within Unlimited proceeded in the Northern District before Judge Davila. *See FTC v. Meta Platforms Inc.*, No. 5:22-CV-04325-EJD, 2023 WL 2346238 (N.D. Cal. Feb. 3, 2023). That there is no preliminary injunction hearing date yet set in the District Court is, we believe, due to your unnecessary delay in initiating that inevitable proceeding. Regardless, the parties here always contemplated that there would be a preliminary injunction proceeding and that it would

¹ *FTC v. Tronox Ltd.*, 332 F. Supp. 3d 187 (D.D.C. 2018) is not to the contrary. In that case, the merger was postponed from closing for approximately one year due to regulatory review overseas, and so the Part 3 proceeding went forward. *See id.* at 196. Even then, the district court held an evidentiary hearing after rejecting the FTC’s proposal to proceed “based solely on the evidentiary record before the ALJ.” *Id.*

precede the Part 3 hearing. Complaint Counsel acknowledged as much in the initial scheduling conference with Judge Chappell, and all parties agreed upon the Part 3 protective order and scheduling order, which both provide that the discovery produced in connection with the already initiated Part 3 proceeding could be used in district court. These mutually agreed upon orders were meant to ensure that there would be no obstacle to switching forums without slowing the process to a decision on the preliminary injunction.

Thus, as we stated on the call, once the District Court sets a preliminary injunction hearing date, we would prepare a joint brief to submit to the Commission requesting that it stay the Part 3 proceeding to allow the preliminary injunction proceeding to be heard and decided. Such a hearing could moot the need for a Part 3 proceeding (if the FTC prevails) or cause the FTC to conclude that it no longer believes a Part 3 proceeding is necessary (if Defendants prevail).

Second, long-standing precedent makes clear that the District Court has an independent obligation to determine whether the FTC can satisfy its burden to determine whether the transaction should be preliminarily enjoined from closing. The district court, as Judge Davila recognized, must “exercise independent judgment” about whether the FTC has met its burden to “raise questions going to the merits so serious, substantial, difficult[,] and doubtful” so as to warrant a preliminary injunction. *Meta Platforms*, 2023 WL 2346238, at *8 (citing *FTC v. Whole Food Market, Inc.*, 548 F.3d 1028, 1035 (D.C. Cir. 2008)). That should not be done on a cold record.

Third, your approach exacerbates the significant constitutional concerns that have been raised about the use of the FTC’s administrative adjudicative process to challenge mergers, which the Supreme Court just ruled 9-0 alleged sufficient constitutionally cognizable injury to justify its immediate challenge in federal court, rather than through the FTC’s administrative process. See *Axon Enter., Inc. v. FTC*, No. 21-1239, 2023 WL 2938328, at *10 (U.S. Apr. 14, 2023) (“here-and-now harm” of undergoing an ALJ proceeding allows for an immediate challenge in district court as to its constitutionality). Allowing the District Court proceeding to go first as is typical may avoid needing to confront those significant issues.

Finally, as to our agreement to stipulate to a TRO during the pendency of a preliminary injunction proceeding, no one is seeking to back out. But the agreement must be read and understood as an agreement to do so consistent with the long-standing practice of the FTC and merging parties—namely, that a TRO would be entered in the context of a proceeding in which the preliminary injunction complaint in federal court would be promptly filed, heard, and decided prior to the Part 3 proceeding. Nothing in our conversations with Staff in conjunction with and leading up to our agreement regarding a TRO suggested that the FTC was intending to deviate from the standard process for preliminary injunction proceedings in merger disputes. If you had a different plan in mind, such as the essentially unprecedented approach being sought here, it was incumbent upon you to be forthright with us before agreeing to it. Again, if the parties follow long-standing practice here in terms of scheduling the preliminary injunction proceeding, any dispute in this regard will be avoided.

In short, we urge you to reconsider and agree to a sensible schedule consistent with the long-standing practice in these cases.

Sincerely,

By: /s/ J. Clayton Everett, Jr.
J. Clayton Everett, Jr.
MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Elliot R. Peters
Elliot R. Peters
R. James Slaughter
KEKER, VAN NEST & PETERS LLP

*Attorneys for Defendant Intercontinental
Exchange, Inc.*

By: /s/ Jonathan M. Moses
Jonathan M. Moses
WACHTELL, LIPTON, ROSEN & KATZ

Attorneys for Defendant Black Knight, Inc.

EXHIBIT G

From: [Everett, Jr., John Clayton](#)
To: [Dennis, Abby](#); [Masters, Ashley](#); [Dodds, Jack](#); [Robins, Harry T.](#); [Kantor, Ryan M.](#); [Jonathan Moses -Contact](#); [Adam Goodman -Contact](#); nfitts@wlrk.com; [Hyman, Rebecca](#); [Artison, Samantha](#); [Thanawala, Nina](#); [Johns, Zachary M.](#); [Zhu, Susan](#); [Eddy, Sarah K.](#); [Slaughter, R. James \(Keker Van Nest & Peters LLP\)](#); [Khari Tillery](#)
Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange
Date: Wednesday, April 19, 2023 10:47:39 AM
Attachments: [ICE-BK -Draft Scheduling Order for ND Cal \(DRAFT 4-19-2023\).DOCX](#)

Abby and all—Here is our draft proposed scheduling order for the PI proceedings in the Northern District of California. This tracks the deadlines in the Part 3 Scheduling Order exactly, culminating in a PI hearing beginning July 12, with the addition of some interim briefing deadlines for the PI motion and opposition.

We look forward to discussing at noon.

Thanks.

Clay

J. Clayton Everett, Jr.

Morgan, Lewis & Bockius LLP

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clay.everett@morganlewis.com | www.morganlewis.com

Assistant: Linda S. Vaonakis | +1.202.739.5297 | linda.vaonakis@morganlewis.com

From: Dennis, Abby <adennis@ftc.gov>
Sent: Tuesday, April 18, 2023 4:21 PM
To: Masters, Ashley <amasters@ftc.gov>; Everett, Jr., John Clayton <clay.everett@morganlewis.com>; Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <algoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>
Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

[EXTERNAL EMAIL]

Clay –

Further to our request to meet and confer regarding the proposed stipulations and scheduling in the federal court proceeding, please see attached a draft proposed case management order. We look forward to discussing with you; please confirm you are available at noon tomorrow.

Best regards,
Abby

Abby L. Dennis

Senior Trial Counsel
Federal Trade Commission
(202) 766-6846

From: Masters, Ashley <amasters@ftc.gov>

Sent: Monday, April 17, 2023 7:47 PM

To: Everett, Jr., John Clayton <clay.everett@morganlewis.com>; Dennis, Abby <adennis@ftc.gov>; Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <agoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>

Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

Thanks, Clay. We disagree that the stipulated TRO was in any way premised on the PI decision occurring before the outside date. ICE and Black Knight proposed and drafted the language to which the parties all agreed, and it makes no reference to the PI decision occurring by a date certain. If ICE and Black Knight wanted to put certain date limits on the TRO, or tied it to the outside date, they could have proposed such language. As it is, the stipulated TRO is clearly tied to “the second (2nd) business day after a U.S. District Court rules on the FTC’s motion for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act, or [] the date set by the District Court, whichever is later.”

Nevertheless, as a general matter, we have no objection to moving expeditiously in federal court, as we have been doing in the Part 3 litigation, which is why we sent over the proposed stipulation on the TRO and the proposed protective order seven days ago when we first filed the federal case. To that end, can you please let us know if you are available to discuss scheduling and the proposed stipulations and orders tomorrow after 3 pm ET or on Wednesday at 9-10 am or 12-1 pm ET?

Regards,
Ashley

From: Everett, Jr., John Clayton <clay.everett@morganlewis.com>

Sent: Monday, April 17, 2023 4:25 PM

To: Masters, Ashley <amasters@ftc.gov>; Dennis, Abby <adennis@ftc.gov>; Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <agoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>

Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

Thanks Ashley. We are happy to meet and confer with you about the proposed stipulation, along

with a schedule for the PI proceedings. We should discuss both together, given that our agreement to enter a TRO was premised on the notion that we would be able to get a PI schedule that will allow for a decision on the PI prior to the parties' outside date. We are working up a draft schedule, which we will send over shortly, and then are happy to meet and confer on these issues.

Regards,

Clay

J. Clayton Everett, Jr.

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From: Masters, Ashley <amasters@ftc.gov>

Sent: Friday, April 14, 2023 1:29 PM

To: Dennis, Abby <adennis@ftc.gov>; Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <agoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Everett, Jr., John Clayton <clay.everett@morganlewis.com>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>

Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

[EXTERNAL EMAIL]

Counsel –

We wanted to follow up on the stipulation and proposed order to enter the parties' stipulated TRO, which we would like to get on file early next week. We reattach it here. Please let us know by noon ET on Tuesday, April 18, whether we have your consent to file; otherwise, we will move for the Court to enter the stipulated TRO. The issue has already unnecessarily taken up the Court's time by requiring Judge Corley to enter the Notice re Unavailability and General Duty Judge (Dkt. 16); we would like to avoid further burdening the Court with motion practice on a straightforward stipulation.

We are, of course, glad to meet and confer about this proposed stipulation, as well as the proposed protective order.

Regards,

Ashley

Ashley Masters

Bureau of Competition

Federal Trade Commission
(202) 326-2291

From: Dennis, Abby <adennis@ftc.gov>

Sent: Tuesday, April 11, 2023 10:31 AM

To: Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <algoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Everett, Jr., John Clayton <clay.everett@morganlewis.com>; Masters, Ashley <amasters@ftc.gov>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>

Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

Counsel –

Pursuant to ND Cal L-R 4-2 and the Order Setting Initial Case Management Conference, please find attached:

1. A copy of the Order Setting Initial Case Management Conference.
2. A copy of the ND Cal brochure re consenting to a magistrate judge.
3. A copy of the a copy of the form allowing a party to consent to assignment of the case to a Magistrate Judge.
4. A copy of the ND Cal Case Management Statement form.

We look forward to hearing back from you about the proposed stip and order re the parties' stipulated TRO and the proposed stip and protective order, which I reattach here. We're glad to discuss if you have questions.

Finally, you may have seen in our admin motion to seal certain portions of the complaint that we take no position on whether the sealed information – which pertains to ICE and Black Knight – should remain under seal. Under L-R 79-5(f), you have seven days to serve a declaration supporting that that information remain under seal.

We will of course keep you posted on docket updates that occur prior to you making your appearances.

Best,
Abby

Abby L. Dennis
Senior Trial Counsel
Federal Trade Commission
(202) 766-6846

From: Dennis, Abby

Sent: Monday, April 10, 2023 5:43 PM

To: 'Dodds, Jack' <john.dodds@morganlewis.com>; 'Robins, Harry T.' <harry.robins@morganlewis.com>; 'Kantor, Ryan M.' <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <algoodman@wlrk.com>; 'nfitts@wlrk.com' <nfitts@wlrk.com>; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; 'Everett, Jr., John Clayton' <clay.everett@morganlewis.com>; Masters, Ashley <amasters@ftc.gov>; 'Johns, Zachary M.' <zachary.johns@morganlewis.com>; 'Zhu, Susan' <susan.zhu@morganlewis.com>; 'Eddy, Sarah K.' <SKEDdy@wlrk.com>

Subject: RE: 23-cv-1710 JCS FTC v. Intercontinental Exchange

Counsel –

The clerk has issued the attached summonses for ICE and Black Knight. I also reattach the waivers of the service of the summonses.

Best,
Abby

Abby L. Dennis
Senior Trial Counsel
Federal Trade Commission
(202) 766-6846

From: Dennis, Abby

Sent: Monday, April 10, 2023 4:50 PM

To: Dodds, Jack <john.dodds@morganlewis.com>; Robins, Harry T. <harry.robins@morganlewis.com>; Kantor, Ryan M. <ryan.kantor@morganlewis.com>; Jonathan Moses -Contact <jmmoses@wlrk.com>; Adam Goodman -Contact <algoodman@wlrk.com>; nfitts@wlrk.com; Hyman, Rebecca <rhyman@ftc.gov>; Artison, Samantha <sartison@ftc.gov>; Thanawala, Nina <nthanawala@ftc.gov>; Everett, Jr., John Clayton <clay.everett@morganlewis.com>; Masters, Ashley <amasters@ftc.gov>; Johns, Zachary M. <zachary.johns@morganlewis.com>; Zhu, Susan <susan.zhu@morganlewis.com>; Eddy, Sarah K. <SKEDdy@wlrk.com>

Subject: FW: 23-cv-1710 JCS FTC v. Intercontinental Exchange

Importance: High

Counsel –

We have received the below correspondence from Judge Spero's chambers.

Thanks,
Abby

Abby L. Dennis
Senior Trial Counsel
Federal Trade Commission
(202) 766-6846

From: Karen Hom <Karen_Hom@cand.uscourts.gov>
Sent: Monday, April 10, 2023 4:45 PM
To: Dennis, Abby <adennis@ftc.gov>; Wood, Abigail <awood@ftc.gov>; Masters, Ashley <amasters@ftc.gov>; Richman, Peter <PRICHMAN@ftc.gov>
Subject: 23-cv-1710 JCS FTC v. Intercontinental Exchange
Importance: High

Good Afternoon Counsel,

The above matter has been assigned to Magistrate Judge Spero. In order for us to proceed we will need consent from all parties, including the unserved defendants, by **Noon tomorrow** or else the case will be reassigned.

The consent/declination form can be found on the court's website at www.cand.uscourts.gov. If you can't locate the form, please let me know and I will email you a copy.

Thank you for your prompt attention.

Karen L. Hom
Courtroom Deputy to Magistrate Judge Joseph C. Spero
450 Golden Gate Avenue, 16th Floor
San Francisco, CA 94102
United States District Court
Northern District of California
<https://cand.uscourts.gov>
Karen_Hom@cand.uscourts.gov
Office: 415-522-2035

DRAFT**PUBLIC**1
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

INTERCONTINENTAL EXCHANGE, INC.

and

BLACK KNIGHT, INC.,

Defendants.

Case No. 3:23-cv-01710-AMO

[PROPOSED] SCHEDULING ORDER

Pursuant to Federal Rules of Civil Procedure 7(b), 16(b), and 26(f), Plaintiff Federal Trade Commission (“FTC”), and Defendants Intercontinental Exchange, Inc. (“ICE”) and Black Knight, Inc. (“BK,” and together with ICE and the FTC, the “Parties”), respectfully move this Court for the entry of this proposed Scheduling Order.

On April 10, 2023, the FTC initiated the above-captioned action, whereby the FTC seeks a preliminary injunction preventing Defendants from completing the proposed transaction between them, under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) (the “PI Action”). *See* Compl. [ECF No. 1]. On March 9, 2023, the FTC initiated an administrative proceeding before the FTC’s Office of Administrative Law Judges challenging the proposed transaction between Defendants as a violation of Section 5 of the FTC Act and/or Section 7 of the Clayton Act (the “Administrative Action”). The Parties are actively litigating the Administrative Action and there will be efficiencies from sharing discovery and other materials across both proceedings.

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Proposed Schedule

Event	Deadline
Fact discovery begins.	Upon filing of this Proposed Order
Answers to Complaint due.	April 24, 2023
Parties to provide updated preliminary witness list identifying those fact witness each side may call, which will include no more than 30 persons total with no more than 7 witnesses who did not appear on that side’s preliminary list exchanged in the Administrative Action, with a brief summary of the proposed testimony.	May 5, 2023
Close of fact discovery, other than depositions of experts, and discovery for purposes of authenticity of exhibits; provided that this deadline will not preclude the parties from completing discovery of third-parties pursuant to timely served subpoenas whose document productions have not been completed by May 23, 2023 and/or who did not make themselves reasonably available for deposition pursuant to a timely subpoena within the fact discovery period.	May 23, 2023
Deadline for Plaintiff to provide expert witness reports and all Backup Materials (as defined below).	May 30, 2023
Plaintiff provides to Defendants final proposed witness list, comprised of no more than 25 witnesses that Plaintiff anticipates will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Plaintiffs’ preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Plaintiffs’ basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.	June 8, 2023
Deadline for Defendants to provide expert witness reports and all Backup Materials (as defined below).	June 13, 2023
Plaintiff’s Motion for Preliminary Injunction and Memorandum of Points and Authorities in Support.	June 15, 2023

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Event	Deadline
Defendants provide to Plaintiff final proposed witness list, comprised of no more than 25 witnesses that Defendants anticipate will be called to testify at the Hearing, with no more than 5 witnesses who did not appear on Defendants' preliminary or updated witness lists, and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), the basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.	June 15, 2023
Plaintiffs to identify rebuttal expert(s) and provide rebuttal expert report(s) and all Backup Materials (as defined below). Any such reports are to be limited to rebuttal of matters set forth in Defendants' expert reports. If material outside the scope of fair rebuttal is presented, Defendants will have the right to seek appropriate relief (such as striking Plaintiff's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Defendants).	June 23, 2023
Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party.	June 16, 2023
Deadline for filing motions <i>in limine</i> to preclude admission of evidence.	June 26, 2023
Deadline for filing motions for <i>in camera</i> treatment of proposed trial exhibits.	June 26, 2023
Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.	June 29, 2023
Exchange final proposed witness lists and exhibit lists.	July 3, 2023
Deadline for filing responses to motions <i>in limine</i> to preclude admission of evidence.	July 18, 2023
Deadline for filing responses to motions for <i>in camera</i> treatment of proposed trial exhibits.	June 30, 2023
Defendants' Opposition to Motion for Preliminary Injunction and Memorandum of Points in Authority.	June 30, 2023
Exchange proposed stipulations of law, facts, and authenticity.	July 7, 2023
Pretrial Conference.	July 11, 2023
Trial begins.	July 12, 2023

Event	Deadline

Additional Provisions

1. The Parties agree to treat their initial disclosures from the Administrative Action as having been served in this PI Action pursuant to Federal Rule of Civil Procedure 26(a)(1) and that the required conference under Rule 26(f) has already occurred.

2. Any Party that obtains a declaration from a non-party will promptly produce it to the other side, and in any event not later than (1) seven days before the non-party is scheduled to be deposed, or (2) May 9, 2023, whichever is earlier, absent a showing of good cause. Each side is limited to 15 declarations by non-parties, except for declarations regarding authenticity and admissibility of exhibits. The Parties reserve all rights and objections with respect to the use and/or admissibility of any declarations.

3. The Parties agree that each side shall be limited to no more than 50 document requests, including all discrete subparts; 20 interrogatories, including all discrete subparts; and 10 requests for admission, including all discrete subparts. Document requests, interrogatories, and requests for admission served in the Administrative Action shall be deemed served also in this proceeding and shall count against the limits on document requests, interrogatories, and requests for admission in this PI Action. Likewise, document requests, interrogatories and requests for admission served in this Action shall be deemed served also in the Administrative Action and shall count against limits on the use of those discovery devices in the Administrative Action.

There shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. The Parties agree to serve any objections to document requests

1 within 5 business days of service of the request, to meet and confer to attempt to resolve any
2 disputes, and to discuss timing of production within 3 business days of the objections being
3 served. The party responding to document requests will make a good-faith effort to produce
4 responsive documents as expeditiously as possible, including by making productions on a rolling
5 basis. All of the foregoing limitations apply to all discovery requests in both the Administrative
6 Action and this PI Action.
7

8 4. Compliance with the scheduled end of discovery requires that the Parties serve
9 subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all
10 responses and objections will be due on or before that date, unless otherwise noted. Any motion
11 to compel responses to discovery requests, or to seek certification of a request for court
12 enforcement of a non-party subpoena, shall be filed within 30 days of service of the responses
13 and/or objections to the discovery requests or within 20 days after the close of discovery,
14 whichever first occurs; except that, where the Parties have been engaging in negotiations over a
15 discovery dispute, including negotiations with any non-party with regard to a subpoena, the
16 deadline for the motion to compel shall be within 5 business days of reaching an impasse.
17

18 5. The final witness lists shall represent counsels' good faith designation of all
19 potential witnesses who counsel reasonably expect may be called in their case-in-chief. Parties
20 shall notify the opposing party promptly of changes in witness lists to facilitate completion of
21 discovery within the dates of the scheduling order. Other than as set forth herein, the final
22 proposed witness list may not include additional witnesses not listed in the preliminary or
23 supplemental witness lists previously exchanged unless by consent of all parties, or, if the parties
24 do not consent, by an order of the Court upon a showing of good cause. Under no circumstances,
25 except by consent of all parties or an order by the Court upon a showing of good cause, may the
26 final proposed witness list include a witness who has not been deposed.
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6. With respect to expert discovery:
- a. At the time an expert is first listed as a witness by a party, that party shall provide to the other party: (i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and (ii) transcripts of such testimony in the possession, custody, or control of the producing party or expert, subject to applicable protective orders or confidentiality restrictions.
 - b. Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons for those opinions; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.
 - c. A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.
 - d. At the time an expert report is produced, the producing party shall provide to the other party the expert's "Backup Materials," including: (i) all documents and other written materials relied upon by the expert in formulating an opinion in this case; (ii) all commercially-available computer programs used by the expert in the preparation of the report; (iii) all data sets used by the expert, in native file format and processed data file format; and (iv) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.
 - e. No party must search, disclose, or otherwise produce: (i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves; (ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s); (iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case; (iv) drafts of expert reports, analyses, or other work product; or (v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert(s) in the opinions contained in their final report.
 - f. It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available to testify at a deposition, at the preliminary injunction hearing, and at any other evidentiary hearings or trials in this PI Action. Unless otherwise agreed to by the parties or ordered by the Court, expert witnesses shall be deposed

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only once and each expert deposition shall be limited to one day for seven hours.

* * *

1 Dated: [REDACTED]

2 Respectfully submitted,

3 FEDERAL TRADE COMMISSION

MORGAN, LEWIS & BOCKIUS LLP

4 By: _____

By: _____

5 Daniel Aldrich
6 Laura Antonini
7 Catharine Bill
8 Steven Couper
9 Caitlin Cipicchio
10 Abby L. Dennis
11 Jessica Drake
12 Kurt Herrera-Heintz
13 Janet J. Kim
14 Christopher Lamar
15 Ashley Masters
16 Lauren Sillman
17 Neal Perlman
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21 Abigail Wood
22 600 Pennsylvania Avenue, NW
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24 *Counsel for Plaintiff*
25 *Federal Trade Commission*

Harry T. Robins
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Kenneth M. Kliebard
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26 *Counsel for Defendant*
27 *Intercontinental Exchange, Inc.*

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WACHTELL, LIPTON, ROSEN & KATZ

By: _____

Jonathan M. Moses
Sarah K. Eddy
Nelson O. Fitts
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New York, NY 10019
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SKEddy@wlrk.com
NOFitts@wlrk.com
ALGoodman@wlrk.com

Counsel for Defendant Black Knight, Inc.

EXHIBIT H

1 Abby L. Dennis, DC Bar # 994476
2 Peter Richman, CA Bar # 149107
3 Ashley Masters, TX Bar # 24041412
4 Abigail Wood, DC Bar # 242239

5 Federal Trade Commission
6 600 Pennsylvania Avenue, NW
7 Washington, DC 20580
8 Tel: (202) 326-2381

9 *adennis@ftc.gov; prichman@ftc.gov;*
10 *amasters@ftc.gov; awood@ftc.gov*

11 [Additional counsel identified on signature page in accordance with Local Rule 3-4(a)(1)]

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 **FEDERAL TRADE COMMISSION,**

16 Plaintiff,

17 v.

18 **INTERCONTINENTAL**
19 **EXCHANGE, INC.**

20 and

21 **BLACK KNIGHT, INC.,**

22 Defendants.

Case No. 3:23-cv-01710-AMO

Hearing: As soon as the matter may be heard.

**PLAINTIFF FEDERAL TRADE
COMMISSION'S NOTICE OF MOTION
AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that, as soon as the matter may be heard, Plaintiff Federal
3 Trade Commission (“FTC” or “Commission”) shall move and hereby does move the Court for
4 entry of the parties’ stipulated temporary restraining order (“TRO”), executed by all parties on
5 February 15 & 16, 2023, pursuant to 15 U.S.C. § 53(b) and Civil L.R. 7-2.

6 Plaintiff respectfully requests this Court enter, prior to 6:59 a.m. Pacific Time on Friday,
7 April 28, 2023, the parties’ stipulated TRO. In the executed TRO stipulation, drafted by
8 Defendants, Defendants and the FTC agreed that, in the event that the FTC filed a lawsuit in
9 federal district court seeking to enjoin Intercontinental Exchange, Inc.’s (“ICE”) acquisition of
10 Black Knight, Inc. (“Black Knight”) (the “Proposed Transaction”) prior to consummation of the
11 Proposed Transaction, the parties would stipulate to entry of a TRO under which ICE and Black
12 Knight will not consummate the Proposed Transaction until after 11:59 p.m. Eastern Time on
13 the second (2nd) business day after the Court rules on the FTC’s motion for a preliminary
14 injunction under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), or a
15 date set by the Court, whichever is later. The stipulation is attached to the Masters Declaration,
16 submitted concurrently herewith at ECF No. 38, as Exhibit A. On April 10, 2023, the FTC filed
17 suit in this Court seeking to enjoin the Proposed Transaction under Section 13(b) of the Federal
18 Trade Commission Act pending resolution of administrative proceedings to determine the
19 Proposed Transaction’s legality. Defendants, however, have refused to agree to submit a joint
20 stipulation to this Court for entry of the TRO, thus necessitating this motion.

21 **ISSUE TO BE DECIDED**

22 Whether the Court should enter a TRO under which ICE and Black Knight will not
23 consummate the Proposed Transaction until after 11:59 p.m. Eastern Time on the second (2nd)
24 business day after the Court rules on the FTC’s motion for a preliminary injunction under
25 Section 13(b) of the Federal Trade Commission Act, or a date set by the Court, whichever is
26 later, when the parties have previously agreed in a signed writing to entry of such a TRO.

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to Section 13(b) of the Federal Trade Commission Act, the FTC has filed this action seeking orders temporarily and preliminarily enjoining Defendants ICE and Black Knight from consummating their Proposed Transaction pending the outcome of an ongoing administrative proceeding to adjudicate the legality of the Proposed Transaction. By this motion, the FTC seeks an order entering the parties’ stipulated TRO for the period of time it takes the Court to decide its request for a preliminary injunction, under Section 13(b) and Civil L.R. 7-2. Section 13(b) of the FTC Act provides that “[u]pon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.”


FACTUAL BACKGROUND

Defendants announced the Proposed Transaction on May 4, 2022, and submitted materials to the Commission under the Hart-Scott-Rodino Act on May 18, 2022, after which the FTC began a nearly 10-month long investigation of the Proposed Transaction. During a meeting between FTC staff and Defendants on February 13, 2023, the FTC requested that, should it file a lawsuit in federal district court seeking to enjoin the Proposed Transaction, each of ICE, Black Knight, and the FTC stipulate to a TRO stating that ICE and Black Knight will not close the Proposed Transaction until the court rules on the FTC’s motion for a preliminary injunction. Masters Decl. ¶ 3. Two days later, on February 15, 2023, ICE and Black Knight sent FTC staff a TRO stipulation, already executed by defense counsel. *Id.* ¶ 4. FTC staff executed the stipulation on February 16, 2023. *Id.* ¶ 4 & Ex. A.

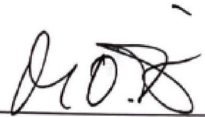
1 The stipulation sets forth an unambiguous agreement to the entry of a TRO, conditioned
2 only upon the FTC filing suit in a federal district court to enjoin the Proposed Transaction prior
3 to closing:

STIPULATION

In the event that the Federal Trade Commission ("FTC") files a lawsuit in federal district court seeking to enjoin Intercontinental Exchange, Inc.'s ("ICE") proposed acquisition of Black Knight, Inc. ("Black Knight") (the "Proposed Transaction") prior to consummation of the Proposed Transaction, the parties set forth below will stipulate to a Temporary Restraining Order enjoining ICE and Black Knight from consummating the Proposed Transaction until after 11:59 PM Eastern Time on the second (2nd) business day after a U.S. District Court rules on the FTC's motion for a preliminary injunction pursuant to Section 13(b) of the Federal Trade Commission Act, or (ii) the date set by the District Court, whichever is later.



Harry T. Robins
Morgan, Lewis & Bockius LLP
On Behalf of Intercontinental Exchange, Inc.



Nelson O. Fitts
Wachtell, Lipton, Rosen & Katz
On Behalf of Black Knight, Inc.

ASHLEY MASTERS

Digitally signed by ASHLEY MASTERS
Date: 2023.02.16 16:09:23 -05'00'

Name:
Federal Trade Commission

17 *Id.*, Ex. A.

18 On March 9, 2023, the Commission unanimously found reason to believe that the
19 Proposed Transaction would substantially lessen competition in violation of Section 7 of the
20 Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45, and commenced
21 administrative proceedings before an Administrative Law Judge on the antitrust merits of the
22 Proposed Transaction, setting a merits trial to begin July 12, 2023. *See generally* Complaint, *In*
23 *the Matter of Intercontinental Exchange, Inc., and Black Knight, Inc.*, FTC Docket No. 9413
24 (Mar. 9, 2023).¹ At that time, the FTC did not seek a preliminary injunction under Section

25 _____
26 ¹ In the administrative proceeding, Complaint Counsel—and not the Commission—litigates the
27 challenge to the Proposed Transaction. Moreover, the parties to the proposed acquisition are
28 termed “Respondents.” We use “FTC” and “Defendants” here for simplicity of reference.

1 13(b) of the Federal Trade Commission Act because closing of the Proposed Transaction was
2 contingent on a vote of the Black Knight shareholders to approve certain amendments to the
3 Proposed Transaction—on a date that had not yet been specified—which was, in turn,
4 contingent on review and approval by the Securities and Exchange Commission (“SEC”) of
5 Black Knight’s proposed Form S-4.

6 On March 30, 2023, Defendants represented to the FTC that Black Knight’s SEC Form
7 S-4 had become effective, clearing the way for a Black Knight shareholder vote to approve
8 amendments to the Proposed Transaction on April 28, 2023, at 10:00 a.m. Eastern Time. *See*
9 *Masters Decl.*, Ex. B. Defendants further represented that ICE and Black Knight intended to
10 close the Proposed Transaction immediately following that vote, despite the pendency of
11 ongoing administrative proceedings regarding the Proposed Transaction’s legality. *Id.*, Ex. B.
12 As the caselaw makes clear, consummation of a transaction later found illegal can result in the
13 “daunting and potentially impossible task” of “unscrambling the eggs.” *FTC v. Peabody*
14 *Energy Corp.*, 492 F. Supp. 3d 865, 918 (E.D. Mo. 2020) (internal quotation marks omitted).
15 To preserve the status quo and safeguard the public interest in the effective enforcement of the
16 antitrust laws, *see, e.g., FTC v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984),
17 the FTC thus filed the instant action before this Court on April 10, 2023, to enjoin
18 consummation of the Proposed Transaction pending the resolution of the administrative
19 proceeding.

20 Over the course of the two months after the parties executed the stipulated TRO and
21 commenced discovery in the administrative proceeding, Defendants never informed the FTC
22 that they did not intend to ask the Court to enter the stipulated TRO, despite their agreement in
23 February. Instead, it was not until April 17, 2023—a full week after the FTC filed the instant
24 suit and following three emails from the FTC requesting that Defendants agree to a joint
25 stipulation and proposed order concerning entry of the stipulated TRO—that counsel for ICE
26 informed the FTC that, contrary to the express language of the stipulation that Defendants
27 drafted, “our agreement to enter a TRO was premised on the notion that we would be able to get

1 a PI schedule that will allow for a decision on the PI prior to the parties’ outside date” of
2 November 4, 2023. Masters Decl., Ex. C. In Defendants’ Request for an Expedited Case
3 Management Conference filed April 20, 2023, Defendants now attempt to wholly disregard
4 their self-drafted and executed stipulation, writing that they have only “*offered* to stipulate to
5 the entry of a temporary restraining order to preserve the status quo.” ECF No. 23 at 4
6 (emphasis added). However, in a footnote to their Request, Defendants even appear to
7 condition their “offer” to enter into a TRO on this Court entering a schedule they find agreeable.
8 *See* ECF No. 23 at 4 n.1 (“FTC counsel insists that this agreement to stipulate to a TRO should
9 apply regardless of when the preliminary injunction proceeds. . .”).

10 To be clear, and as the FTC has repeatedly informed Defendants, the FTC desires to
11 move expeditiously in this proceeding, as it has in the administrative proceeding. For that
12 reason, the FTC has proposed to Defendants a schedule whereby this Court would receive the
13 full record of the administrative proceeding—trial in which is slated to begin on July 12,
14 2023²—by August 18, 2023, with full briefing on the preliminary injunction concluded by
15 September 8, 2023, and argument on September 22, 2023, *see* ECF No. 26 at 13, leaving ample
16 time for a decision by this Court in advance of the voluntary and self-imposed November 4,
17 2023, date that allows, but does not require, either Defendant to terminate their merger
18 agreement.³ Nevertheless, Defendants continue to refuse to agree to entry of the stipulated
19 TRO that they drafted and executed two months ago, thus necessitating the instant motion.

20 _____
21 ² The July 12, 2023, date for the hearing in the administrative proceeding was set by the
22 Commission, pursuant to 16 C.F.R. § 3.11(b)(4), and can only be changed by the
23 Commission on a showing of good cause. *See* 16 C.F.R. § 3.21(c)(1). Complaint Counsel in
the administrative proceeding lacks authority to move that date and intends to present its case
at the administrative hearing as set by the Commission.

24 ³ In their Request for an Expedited Case Management Conference, Defendants argue that
25 “[t]his proposal raises significant issues, including constitutional ones.” ECF No. 23 at 6.
26 This is not so. The FTC does not dispute that the District Court must make its own
27 determination as to whether the FTC is entitled to a preliminary injunction. However, it does
28 not follow that Defendants are entitled to the equivalent of a full merits trial in federal court.
Indeed, in the *Whole Foods Market* case to which Defendants cite, ECF No. 23 at 6, the
(Continued...)

1 The FTC regrets having to burden the Court with an issue that, based on the plain
2 language of the executed TRO stipulation of February 16, 2023, should have been resolved
3 between the parties shortly after the FTC filed this lawsuit on April 10, 2023. In light of
4 Defendants’ continued refusal to abide by the terms of the stipulated TRO, however, the FTC is
5 left with no choice other than to file the instant motion. Allowing Defendants to close the
6 Proposed Transaction after the shareholder vote would impair the FTC’s ability to remedy the
7 resulting competitive harms were the Administrative Law Judge to find the Proposed
8 Transaction to be illegal. Moreover, consummating the Proposed Transaction would affect *this*
9 Court’s ability to fashion appropriate relief in the event it were to resolve the core issue before
10 it—of whether the FTC is likely to succeed on the merits in the underlying administrative
11 proceeding, *see, e.g., FTC v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999)—in the
12 FTC’s favor.

13 The Court should enter the TRO based on the plain, unambiguous language of the
14 parties’ executed stipulation. “Once a stipulation is made, it should generally be enforced
15 absent circumstances tending to negate a finding of voluntary and informed assent of a party to
16 the agreement.” *MDT Corp. v. New York Stock Exch., Inc.*, 858 F. Supp. 1028, 1034 (C.D. Cal.
17 1994) (finding party bound to stipulation allowing intervention where party was “sophisticated
18 litigant and should be held to understand the effect of its stipulations”); *see also, e.g., United*
19 *States v. McGregor*, 529 F.2d 928, 931 (9th Cir.1976) (“Courts . . . enforce stipulations as a
20 general rule . . .”). A litigant should not be allowed to evade its obligations under a stipulation
21 for the entry of a TRO in the absence of extraordinary circumstances. *See, e.g., Lifeng Chen v.*

22
23 evidentiary hearing on the FTC’s request for a preliminary injunction lasted only two days.
24 *See FTC v. Whole Foods Mkt, Inc.*, 502 F. Supp. 2d 1, 3 (D.D.C. 2007), *rev’d on other*
25 *grounds*, 548 F.3d 1028 (D.C. Cir. 2008). Some preliminary injunctions under Section 13(b)
26 have been decided solely on the papers and oral argument where, unlike here, the Court did
27 not have the benefit of the full administrative record. *E.g., FTC v. Lab. Corp. of Am.*, No.
SACV 10–1873 AG (MLGx) (C.D. Cal. Dec. 16, 2010) (declining Defendants’ request for an
evidentiary hearing and setting “a hearing without witnesses” roughly two months after the
FTC filed its complaint) (order submitted as Exhibit D to the Masters Decl.).

1 *New Trend Apparel, Inc.*, No. 11 CIV. 324 GBD MHD, 2012 WL 5896742, at *3-4 (S.D.N.Y.
2 Nov. 19, 2012) (rejecting party’s arguments that they should not be held to stipulation for entry
3 of TRO). No such extraordinary circumstances exist here.

4 Moreover, entry of a TRO is appropriate even had Defendants not expressly stipulated to
5 a TRO. Preliminary injunctions under Section 13(b) of the FTC Act “are meant to be readily
6 available to preserve the status quo while the FTC develops its ultimate case.” *FTC v. Whole*
7 *Foods Mkt., Inc.*, 548 F.3d 1028, 1036 (D.C. Cir. 2008). These same principles apply to the
8 FTC’s request for a TRO under Section 13(b). *FTC v. Universal Premium Servs.*, No. CV 06-
9 0849 SJO, 2006 WL 8442134, at *3 (C.D. Cal. Mar. 14, 2006). Section 13(b) “allows a district
10 court to grant the Commission a preliminary injunction ‘[u]pon a proper showing that, weighing
11 the equities and considering the Commission’s likelihood of ultimate success, such action
12 would be in the public interest.’” *Affordable Media*, 179 F.3d at 1233 (quoting 15 U.S.C.
13 § 53(b)).

14 The statute “places a lighter burden on the Commission than that imposed on private
15 litigants by the traditional equity standard.” *Warner Commc’ns Inc.*, 742 F.2d at 1159. “Under
16 this more lenient standard, ‘a court must 1) determine the likelihood that the Commission will
17 ultimately succeed on the merits and 2) balance the equities.’” *Affordable Media*, 179 F.3d at
18 1233 (quoting *Warner Commc’ns Inc.*, 742 F.2d at 1160)). In evaluating the FTC’s likelihood
19 of success, the Court is tasked “[with making] only a preliminary assessment of the merger’s
20 impact on competition.” *FTC v. Meta Platforms Inc.*, No. 5:22-CV-04325-EJD, 2023 WL
21 2346238, at *8 (N.D. Cal. Feb. 3, 2023) (quoting *Warner Commc’ns Inc.*, 742 F.2d at 1162).
22 The FTC “does not need detailed evidence of anticompetitive effect at this preliminary phase.”
23 *Whole Foods Mkt., Inc.*, 548 F.3d at 1035. The Court rather should examine whether the FTC
24 has raised merits questions sufficient to warrant “thorough investigation, study, deliberation and
25 determination by the FTC.” *FTC v. Meta Platforms Inc.*, No. 5:22-CV-04325-EJD, 2022 WL
26 16637996, at *5 (N.D. Cal. Nov. 2, 2022) (quoting *Warner Commc’ns Inc.*, 742 F.2d at 1162);
27 *see also Whole Foods Mkt.*, 548 F.3d at 1036 (“[A]t this preliminary phase [the FTC] just has to

1 raise substantial doubts about a transaction. One may have such doubts without knowing
2 exactly what arguments will eventually prevail.”). In weighing the equities under Section 13(b),
3 “public equities receive far greater weight” than private interests. *Warner Commc ’ns Inc.*, 742
4 F.2d at 1165. These public equities include effective enforcement of the antitrust laws and
5 ensuring the Commission’s ability to obtain adequate relief if it ultimately prevails on the
6 merits. *Id.*; *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 726 (D.C. Cir. 2001); *FTC v. Univ. Health,*
7 *Inc.*, 938 F.2d 1206, 1225 (11th Cir. 1991).

8 Due to the primacy of public equities over private interests, and taking into
9 consideration the practical challenges of resolving complex factual questions on a limited
10 record, courts in previous merger cases have taken a pragmatic approach to the Commission’s
11 requests for a TRO. *See FTC v. Foster*, No. CIV 07-352 JB, 2007 WL 1302585, at *4 (D.N.M.
12 Apr. 13, 2007) (the court must grant a TRO so long as it finds “there is a serious question”).
13 “[D]oubts are to be resolved against the transaction.” *FTC v. Elders Grain, Inc.*, 868 F.2d 901,
14 906 (7th Cir. 1989) (citing *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 362-63 (1963)).

15 Here, the Commission’s Complaint alone raises “a serious question.”⁴ *See Foster*, 2007
16 WL 1302585, at *4. Therefore, to protect the public interest in effective enforcement of the
17 antitrust laws, as well as this Court’s ability to fashion appropriate relief in the matter before it,
18 Plaintiff requests that the Court enter a temporary restraining order on the terms previously
19 agreed to by Defendants, and prevent consummation of the Proposed Transaction until after
20 11:59 p.m. Eastern Time on the second (2nd) business day after the Court rules on the FTC’s
21 motion for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act,
22 or a date set by the Court, whichever is later.

23
24
25
26 ⁴ In the event the Court believes a fuller factual record is warranted at the TRO stage despite
27 Defendants’ stipulation to entry of a TRO, Plaintiff requests that the Court enter an interim
28 TRO and set an expedited briefing schedule.

CONCLUSION

For the forgoing reasons, Plaintiff respectfully requests that the Court enter a TRO before 6:59 a.m. Pacific Time on April 28, 2023, preventing Defendants from consummating the Proposed Transaction until after 11:59 p.m. Eastern Time on the second (2nd) business day after the Court rules on the FTC’s motion for a preliminary injunction under Section 13(b) of the Federal Trade Commission Act, or a date set by the Court, whichever is later.

Dated: April 21, 2023

Respectfully submitted,

/s/ Abby L. Dennis
Abby L. Dennis
Peter Richman
Ashley Masters
Abigail Wood
Daniel Aldrich
Laura Antonini
Catharine Bill
Caitlin Cipicchio
Steven Couper
Kurt Herrera-Heintz
Janet Kim
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Lauren Sillman
Neal Perlman
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Nina Thanawala
Taylor Weaver

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
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Counsel for Plaintiff Federal Trade Commission

EXHIBIT I

Dennis, Abby

From: Dennis, Abby
Sent: Wednesday, May 24, 2023 7:19 PM
To: 'Kalpana Srinivasan'
Cc: Masters, Ashley
Subject: RE: FTC/ICE - Call

Kalpana –

I wanted to follow up regarding the Part 3 schedule and our discussion on Friday. On our end, we continue to think the Part 3 trial should proceed on July 12, and the parties should endeavor to complete as much live evidence as possible (and maybe even conclude the trial) by July 19; to the extent the P3 trial is not complete then, we could pause the P3 trial from July 20 through July 31 for the federal PI proceeding, and then resume on August 1. Do you have any further information on Respondents' position regarding the Part 3 trial schedule? I'm happy to have a call to discuss tomorrow if that would help.

We had also discussed a few weeks ago submitting a joint motion to Judge Chappell to conform Part 3 pre-hearing deadlines to the federal court schedule. It might make sense to do that for the expert report deadlines, which now are inconsistent between the two proceedings. Please let us know if Respondents are interested submitting a joint motion to Judge Chappell to move the Part 3 expert discovery deadlines to match those in the federal court proceeding.

Finally, I am looping in Ashley here because I will be on vacation from May 26 through June 4 and may be slow to respond. Please feel free to reach out to Ashley directly on anything in my absence.

Thanks –
Abby

From: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>
Sent: Friday, May 19, 2023 2:52 PM
To: Dennis, Abby <adennis@ftc.gov>
Subject: Re: FTC/ICE - Call

Abby - Could we push slightly to 315 pm est?

On May 18, 2023, at 3:10 PM, Dennis, Abby <adennis@ftc.gov> wrote:

EXTERNAL Email

Kalpana –

3pm works – at what number can I reach you?

Thanks,
Abby

From: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>
Sent: Thursday, May 18, 2023 9:22 AM

To: Dennis, Abby <adennis@ftc.gov>

Subject: RE: FTC/ICE - Call

Friday afternoon is good – does somewhere between 300 pm – 400 pm EST work?

From: Dennis, Abby <adennis@ftc.gov>

Sent: Wednesday, May 17, 2023 7:08 PM

To: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>

Subject: Re: FTC/ICE - Call

EXTERNAL Email

Sure. How does Friday look for you?

Thanks,
Abby

From: Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>

Sent: Wednesday, May 17, 2023 11:41 AM

To: Dennis, Abby <adennis@ftc.gov>

Subject: FTC/ICE - Call

Abby – Do you have a few minutes to speak this week re: the new schedule?

Kalpana Srinivasan | Managing Partner | [Susman Godfrey L.L.P.](#)

1900 Avenue of the Stars | Suite 1400 | Los Angeles, CA 90067

310.789.3106 [Bio](#) | [vCard](#)

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

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Counsel for Black Knight, Inc.

Date: June 12, 2023

By: s/ Abby L. Dennis
Abby L. Dennis

Counsel Supporting the Complaint