

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.: 1:20-cv-03441-ABJ

INTUIT INC.

and

CREDIT KARMA, INC.,

Defendants.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF
UNITED STATES' UNOPPOSED MOTION TO APPOINT A MONITORING TRUSTEE**

The United States hereby files this Memorandum in support of its unopposed motion to appoint Wan J. Kim, Esq., as monitoring trustee in this case.

Pursuant to the Asset Preservation Stipulation and Order entered by the Court on December 1, 2020 (Docket No. 3), which, in Paragraph V.C, requires Defendants to comply with the proposed Final Judgment (Docket No. 2-2) pending its entry by the Court, the United States has the sole discretion to propose to this Court the appointment of a monitoring trustee. The United States understands that Defendants have closed their proposed transaction and completed the divestiture of Credit Karma's digital do-it-yourself ("DDIY") tax preparation business to Square. The proposed Final Judgment imposes certain obligations on Defendants designed to preserve the competitive viability of the divested business during the transition to Square occurring during the 2021 tax filing season. Therefore, the United States submits that the appointment of a monitoring trustee at this time is appropriate and necessary. The prompt

appointment of Mr. Kim will enable him to begin overseeing Defendants' compliance with the Asset Preservation Stipulation and Order and the proposed Final Judgment during the 2021 tax filing season. Accordingly, the United States recommends that Mr. Kim be appointed at this time. As described below, Mr. Kim is well-qualified to serve as a monitoring trustee and to monitor Defendants' compliance with the proposed Final Judgment and the Asset Preservation Stipulation and Order.

I. Background

The United States filed a civil antitrust complaint on November 25, 2020 (Docket No. 1), seeking to enjoin Intuit's proposed acquisition of Credit Karma. The Complaint alleges that the proposed acquisition would have substantially lessened competition for digital do-it-yourself ("DDIY") tax preparation products used to help individuals file U.S. federal and state tax returns, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

On November 25, 2020, the United States also filed the Asset Preservation Stipulation and Order (Docket No. 2-1) and a proposed Final Judgment that were agreed to by all parties and that are designed to eliminate the likely anticompetitive effects of the acquisition. The Court entered the Asset Preservation Stipulation and Order on December 1, 2020. The Asset Preservation Stipulation and Order requires Defendants to comply with all the terms and provisions of the proposed Final Judgment from the date of entry by the Court of the Asset Preservation Stipulation and Order.

To facilitate the transition of the divested business to Square, and to ensure the continued competitiveness of the divested assets, the proposed Final Judgment gives certain rights to Square—rights that, as explained below, may be overseen through the appointment of a monitoring trustee. For example, Paragraph IV.L. of the proposed Final Judgment requires

Defendants, at Square's option, to enter into various transition services agreements. Section Paragraph IV.H. of the proposed Final Judgment gives Square the right to attempt to hire certain employees of Credit Karma without interference from Defendants for a period of 12 months after the divestiture closing date. Additionally, the proposed Final Judgment imposes certain obligations and restrictions on Defendants that are designed to preserve the ongoing viability of the divested business during the transition to Square. For example, Paragraph IV.M.1 requires Defendants to distribute marketing content created by Square to individuals that have previously filed tax returns with Credit Karma. In addition, Paragraphs IV.M.6 and IV.M.7 restrict Defendants' ability to market competing DDIY tax preparation products, including Intuit's TurboTax, on the Credit Karma website and mobile applications for a certain period of time. These obligations and restrictions imposed on Defendants to facilitate the divestiture of a viable competitive business may be overseen by the monitoring trustee.

Because Defendants have already closed Intuit's acquisition of Credit Karma and divested Credit Karma's DDIY tax preparation business to Square, and because the 2021 tax filing season is about to begin, the appointment of a monitoring trustee as soon as possible will best protect competition.

II. The Monitoring Trustee's Role and Obligations

Section X of the proposed Final Judgment provides for the appointment of a monitoring trustee with "the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order," and "any other powers that the Court deems appropriate."

As explained in Paragraph X.I. of the proposed Final Judgment, the monitoring trustee's responsibilities include investigating and reporting on Defendants' compliance with their

responsibilities under, and their efforts to effectuate the purposes of, the proposed Final Judgment and Asset Preservation Stipulation and Order. Among other things, the monitoring trustee must review Defendants' implementation and execution of the transition services agreements required by Paragraph IV.L. of the proposed Final Judgment. The monitoring trustee must also monitor Defendants' compliance with the affirmative obligations regarding the operation and availability of the divested business and restrictions on the marketing of competing products, such as Intuit's TurboTax, on the Credit Karma websites and mobile applications imposed by Paragraph IV.M. of the proposed Final Judgment. The monitoring trustee also must file periodic reports with the United States on Defendants' compliance with the proposed Final Judgment and Asset Preservation Stipulation and Order.

III. Wan J. Kim's Qualifications to Serve as Monitoring Trustee

Mr. Kim is highly qualified to serve as monitoring trustee in this matter, having been appointed as the monitoring trustee in another antitrust case filed by the U.S. Department of Justice in this district, *United States vs. CenturyLink Inc., et al.*, Case No. 1:17-cv-02028-KBJ (Docket No. 16-3, order granted by minute entry on November 10, 2020), as well as serving in senior management in public companies and government and as a prosecutor and lawyer in private practice. He has a strong background and experience in the development and implementation of company policies and protocols, including effective corporate compliance programs, having served as the Senior Vice President and Deputy General Counsel of Cognizant Technology Solutions. Mr. Kim also served as the Assistant Attorney General for the Civil Rights Division where he was responsible for the enforcement of consent decrees with longstanding compliance obligations, and as Assistant U.S. Attorney for the District of Columbia, where he investigated and prosecuted a wide variety of federal and D.C. criminal

violations. He has also been a partner at the law firm of Kellogg, Hansen, Todd, Figel & Frederick, PLLC, specializing in complex civil litigation and investigations. Mr. Kim has no conflicts of interest that would disqualify him from fulfilling his role as the Monitoring Trustee in this case.

A professional biography of Mr. Kim is attached.

IV. Conclusion

For the foregoing reasons, the United States respectfully requests this Court to approve the appointment of Wan J. Kim as the Monitoring Trustee pursuant to Section X of the proposed Final Judgment.

Dated: December 23, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/
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CERTIFICATE OF SERVICE

I, Brian Hanna, hereby certify that on December 23, 2020, I caused a copy of the Plaintiff United States' Unopposed Motion to Appoint a Monitoring Trustee, Memorandum of Points and Authorities in Support of Plaintiff United States' Unopposed Motion to Appoint a Monitoring Trustee, and Proposed Order to be served on Defendants Intuit Inc. and Credit Karma, Inc., via the CM/ECF system.

/s/
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