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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

**JOINT STIPULATION AND
[PROPOSED] ORDER MODIFYING
SEALING PROCEDURES FOR
PRELIMINARY INJUNCTION
BRIEFING**

1 The undersigned parties jointly stipulate and agree, subject to the Court’s approval, to a
2 modification of the sealing procedures with respect to all briefing, including pre- and post-
3 hearing proposed findings of fact and conclusions of law.

4 WHEREAS, Plaintiff has requested a preliminary injunction under Section 13(b) of the
5 Federal Trade Commission Act and filed a memorandum of points and authorities in support
6 thereof (Dkt. No. 109), pursuant to a schedule entered by the Court for resolution of Plaintiff’s
7 preliminary injunction request (Dkt. No. 118);

8 WHEREAS, the memorandum of points and authorities in support of Plaintiff’s motion
9 for a preliminary injunction extensively cites to, and attaches as exhibits, materials designated as
10 confidential by Defendants and third parties under the Stipulated Protective Order (Dkt. No. 91);

11 WHEREAS, the parties anticipate that subsequent briefing related to the preliminary
12 injunction request, including pre- and post-hearing proposed findings of fact and conclusions of
13 law, will extensively cite to, or attach as exhibits, materials designated as confidential by
14 Defendants and third parties;

15 WHEREAS, the same materials designated as confidential by third parties are likely to be
16 cited multiple times during the briefing related to the preliminary injunction request and that,
17 under Local Rule 79-5, third parties would likely need to file numerous sealing statements
18 concerning the same materials that they have designated as confidential, which would be highly
19 time consuming and burdensome for the third parties;

20 WHEREAS, the parties seek to streamline the overall sealing process and to reduce
21 burdens on third parties (by, for example, eliminating the need for third parties to file multiple,
22 largely repetitive statements in support of sealing), the parties, and the Court by having a single
23 motion to consider sealing and attendant statements in support of sealing by Defendants and third
24 parties after submission of the post-hearing proposed findings of fact and conclusions of law;¹

25 ¹ The Honorable Jacqueline Scott Corley approved a similar procedure in *In re California Gasoline*
26 *Spot Market Antitrust Litigation*, No. 3:20-cv-03131-JSC, Dkt. No. 511; and the Honorable
27 William H. Orrick III approved a similar procedure in *In re Lidoderm Antitrust Litigation*, No. 14-
(Continued...)

1 NOW THEREFORE, the parties request that the Court modify the sealing procedures
2 under Local Rule 79-5 for the purposes of the preliminary injunction briefing as follows:

- 3 1. The parties shall conditionally file all briefing and proposed findings of fact and
4 conclusions of law regarding Plaintiff’s preliminary injunction request, as detailed
5 in the Court’s scheduling order, and all supporting materials that contain
6 information designated as confidential by any party or nonparty (“Confidential
7 Preliminary Injunction Material”) under seal, accompanied by an interim
8 administrative sealing motion which may simply indicate that the reasons for
9 sealing will be discussed in a forthcoming omnibus sealing motion.
- 10 2. At the time of the filing, the parties shall not be required to file redacted versions
11 of any Confidential Preliminary Injunction Material, except for redacted versions
12 of any briefing.
- 13 3. Within 14 days after the parties’ deadline to submit post-hearing proposed
14 findings of fact and conclusions of law, each party shall:
 - 15 a. file a motion to consider sealing that identifies (1) the portions of
16 the Confidential Preliminary Injunction Material designated as
17 confidential by any party or third party, and (2) the party or third
18 party that designated each portion of the Confidential Preliminary
19 Injunction Material as confidential;
 - 20 b. serve on each third party that has designated any Confidential
21 Preliminary Injunction Material as confidential: (1) this order, (2)
22 the motion to consider sealing, and (3) versions of the Confidential
23 Preliminary Injunction Material that cites materials the third party
24 has designated as confidential where information designated as
25

26 md-2521-WHO, Dkt. No. 520. Another example of modification to the sealing procedures can be
27 found at *In re Google Play Store Antitrust Litigation*, No. 3:21-md-02981-JD, Dkt. No. 246.

1 confidential by any other party or third party has been redacted;
2 and

3 c. file any statements in support of sealing the Confidential
4 Preliminary Injunction Material that the parties have designated as
5 confidential. Such statements shall comply with Local Rule 79-
6 5(c).

7 4. Within 14 days after receiving the materials set forth in 3(b) above, each third
8 party shall file a statement in support of sealing the Confidential Preliminary
9 Injunction Material that the third party has designated as confidential. Such
10 statements shall comply with Local Rule 79-5(c).

11 5. For Plaintiff's pending administrative motion to consider whether another party's
12 material should be sealed with respect to its memorandum of points and
13 authorities in support of a preliminary injunction and documents in support
14 thereof (Dkt. No. 107), the deadline for parties and third parties to file statements
15 in support of sealing the Confidential Preliminary Injunction Material will be 28
16 days after the parties' deadline to file post-hearing proposed findings of fact and
17 conclusions of law.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

SIGNED this _____ day of _____, 2023.

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

STIPULATED BY:

Dated: June 12, 2023

SUSMAN GODFREY L.L.P.

FEDERAL TRADE COMMISSION

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