

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

FEDERAL TRADE COMMISSION, ET AL.,

Plaintiffs,

v.

DEERE & COMPANY,

Defendant.

Case No. 3:25-cv-50017

Hon. Iain D. Johnston

**JOINT MOTION FOR ENTRY OF A PROPOSED AGREED
CONFIDENTIALITY ORDER**

Plaintiffs the Federal Trade Commission (“FTC”), the State of Illinois, the State of Arizona, Attorney General Dana Nessel on behalf of the People of Michigan, the State of Minnesota, and the State of Wisconsin (together “Government Plaintiffs”) and Deere & Company (“Deere,” together with Plaintiffs, “Parties”), by and through their undersigned counsel, jointly move for the entry of a Proposed Agreed Confidentiality Order. In support of this Motion, the Parties state as follows:

1. The Parties anticipate that discovery in this matter will involve the exchange of sensitive and confidential documents and information that can properly be designated confidential.

2. On February 7, 2025, the Parties moved for entry of an interim Proposed Agreed Confidentiality Order (“Interim Confidentiality Order”) that is substantially similar to the Confidentiality Order entered in *In re: Deere & Company Repair Services Antitrust Litigation*, Case No. 3:22-cv-50188 (the “MDL Action”), ECF No. 179 (May 9, 2024), which incorporated revisions to the Northern District of Illinois’ Model Confidentiality Order. *See* ECF No. 39. The Interim Confidentiality Order was intended to ensure that there were confidentiality protections

in place while the Parties met and conferred with non-party equipment manufacturers to address their concerns on confidentiality.

3. In February, the parties met and conferred with non-parties CNH Industrial America, LLC, Kubota Tractor Corporation, and AGCO Corporation (together, the “Non-Party OEMs”) about their objection to Deere’s in-house counsel having access to their information and the potential of adding “outside counsel eyes only” provisions. *See* ECF Nos. 37, 46.

4. On February 18, 2025, the Court ordered the Non-Party OEMs to “confirm or refute the Court’s assumption” that the language in the Parties’ Interim Confidentiality Order is not acceptable to them because it permits the disclosure of documents designated as “highly confidential – sensitive information” to in-house counsel. ECF No. 54.

5. On February 19, 2025, Non-Party OEMs informed the Court that they objected to the Parties’ Interim Confidentiality Order because “it would allow in-house counsel (and other internal Deere employees assisting those counsel) to access non-party OEM highly confidential and competitively-sensitive information.” ECF No. 63 at 1. Counsel for Non-Party OEMs also informed the Court that they are meeting-and-conferring with the Parties over the specific terms and anticipate reaching an agreement that would address their objections. *Id.* at 2.

6. Since then, the Parties have continued to meet-and-confer with the Non-Party OEMs throughout February and March, as well as with counsel for plaintiffs in the MDL Action (“MDL Plaintiffs”), to reach a global, final confidentiality order that addresses the Non-Party OEMs’ objections and will provide substantially similar terms to both actions.

7. On March 13, 2025, the Parties, MDL Plaintiffs, and Non-Party OEMs reached an agreement on the terms of a Proposed Agreed Confidentiality Order. The Parties intend to file substantially similar Proposed Agreed Confidentiality Orders in both actions.

8. To address the Non-party OEMs' concerns, the Parties revised the Proposed Confidentiality Order to add "Outside Counsel Eyes Only" provisions, which permits nonparty manufacturers of agricultural equipment, parts, and repair tools to designate highly sensitive business information as "highly confidential – outside counsel eyes only."

9. In addition to a "highly confidential – outside counsel eyes only" designation tier, the Proposed Agreed Confidentiality Order includes other modifications to the Northern District of Illinois' Model Confidentiality Order that the Parties' identified in their prior motion for entry of the Interim Confidentiality Order (*see* ECF No. 39), including:

- a. allowance for parties or non-parties to designate sensitive trade secrets and certain records as "highly confidential – sensitive information";
- b. additional changes to reflect the reporting structure of the Government Plaintiffs by clarifying that (i) the Order does not prevent Government Plaintiffs from sharing confidential information with FTC Commissioners and state plaintiff attorneys general, as well as relevant employees, law clerks, and interns, and (ii) the Order does not prevent the FTC from disclosing confidential information, subject to taking appropriate steps to preserve confidentiality, pursuant to its statutory and legal obligations; and
- c. a provision to ensure that documents and information made available under the Order will not be subject to disclosure under the Freedom of Information Act, or equivalent provisions under state law.

10. In accordance with this Court's Case Procedures governing confidentiality orders and the submission of proposed orders generally, Deere will submit, as **Exhibit A**, the Proposed Agreed Confidentiality Order in Microsoft Word format directly to the Court via the Court's proposed order inbox. Deere will also submit, in Microsoft Word format, (i) as **Exhibit B** a redline comparing the Proposed Agreed Confidentiality Order to the Northern District of Illinois' Model Confidentiality Order and (ii) as **Exhibit C** a redline comparing the Proposed Agreed Confidentiality Order to the Amended Confidentiality Order adopted in the MDL Action.

Respectfully submitted,

Dated: March 17, 2025

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