IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, *et al.*, Plaintiffs, v. **DRAFTKINGS, INC.,** and **FANDUEL LIMITED,** Defendants.	Civil Action No. _____-cv-_____

Plaintiff Federal Trade Commission's Motion to File Complaint Under Seal

Plaintiff, the Federal Trade Commission (the "Commission"), respectfully moves the Court for an order pursuant to Rule 5.2 of the Federal Rules of Civil Procedure and Rule 5.1(h) of the Local Rules of the United States District Court for the District of Columbia, directing the Clerk of the Court to file the Complaint under seal, until further order. The proposed sealing would be temporary, until Plaintiffs can confer with Defendants about appropriate redactions and either file a redacted complaint or allow Defendants to seek a protective order.

The Complaint contains sensitive and confidential business information under 15 U.S.C. §§ 18a, 46, 57b-2 and 16 C.F.R. § 4.10. The filing of these papers under seal is proper under *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980), which controls decisions within this Circuit on whether to seal or redact court records.

After the case is docketed, Plaintiffs will confer with Defendants to determine whether it is practicable to jointly seek court approval of redacted papers, or enable Defendants, at their own instance, the opportunity to seek a protective order. Plaintiffs will then promptly file redacted papers consistent with any resulting order.

In the Complaint, Plaintiffs seek a temporary restraining order and a preliminary injunction to enjoin the merger of DraftKings, Inc., and FanDuel Limited as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. This Complaint is the product of an investigation the Commission conducted during the past seven months pursuant to the FTC Act, 15 U.S.C. §§ 41-58. The Commission voted to authorize its staff to file this Complaint on June 19, 2017. Pursuant to a timing agreement between the parties, absent entry of the temporary restraining order, which the Commission requests in an accompanying motion and to which Defendants have stipulated, Defendants will be able to close the transaction after 11:59 P.M. on June 20, 2017.

The Complaint contains sensitive and confidential business information produced to the Commission by Defendants during the Commission's investigation. This includes confidential information drawn from the business plans, documents, and investigational disclosures of the Defendants, such as paragraphs 13-14, 63, 69, 71, 73-74, 78-80, 87 of the Complaint.

Defendants produced this information in confidence during the Commission's investigation, based upon the statutory and regulatory guarantees that the Commission would treat it as confidential under the Hart-Scott-Rodino Act or the FTC Act. *See* 15 U.S.C. §§ 18a(h), 46(f), 57b-2(b), 57b-2(c), 6 C.F.R. § 4.10(d)-(g). Because information in the Complaint is subject to statutory and regulatory confidentiality protections, the Commission respectfully requests that the Court grant this motion to seal the Complaint temporarily. *See Hubbard*, 650 F.2d at 315-17.

Once this case is assigned to a district judge, Plaintiffs will notify Defendants that the Complaint contains their confidential information. Then, Plaintiffs will initiate negotiations with Defendants to file a joint motion asking the Court to approve a redacted version of the

Complaint. Alternatively, if the parties cannot reach an agreement, Plaintiffs or Defendants may unilaterally move to unseal the Complaint or to file a redacted version of the materials. Additionally, Defendants may file a motion with the Court for an order protecting against disclosure of the portions of the Complaint they believe are entitled to confidential treatment. Fed. R. Civ. P. 26(c).

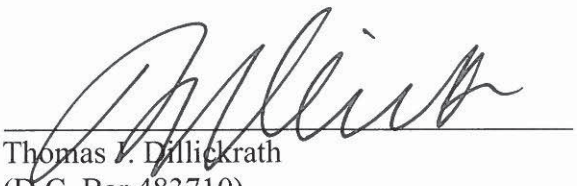
Conclusion

Given the nature of the confidential and competitively sensitive information contained in the Complaint, examples of which are detailed above, the Commission respectfully requests the Court issue an Order directing the Clerk of the Court to file the Complaint under seal, until further order.

A proposed order is attached.

Dated: June 19, 2017

Respectfully submitted,



Thomas J. Dillickrath
(D.C. Bar 483710)
Bureau of Competition
Federal Trade Commission
400 Seventh Street, S.W.
Washington, D.C. 20024
Telephone: (202) 326-3286
Email: tdillickrath@ftc.gov

Attorney for Plaintiff Federal Trade Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2017, I served the foregoing on the following counsel via electronic mail:

Catherine A. Jackson
Assistant Attorney General
Office of the Attorney General
441 Fourth Street, N.W., Suite 630-S
Washington, DC 20001
Tel: (202) 442-9864
catherine.jackson@dc.gov

Counsel for Plaintiff District of Columbia

Michael S. McFalls, Esq.
Ropes & Gray LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006
Tel: (202) 508-4684
Michael.McFalls@ropesgray.com

Counsel for Defendant DraftKings, Inc.

Paul A. Moore III
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94012-7004
Tel: (415) 703-2372
paul.moore@doj.ca.gov

Counsel for Plaintiff State of California

Scott A. Sher, Esq.
Wilson Sonsini Goodrich & Rosati
1700 K St., NW
Washington, DC 20006
Tel: (202) 973-8822
ssher@wsgr.com

Counsel for Defendant FanDuel Limited



Thomas J. Dillickrath
Attorney for Plaintiff Federal Trade Commission

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[PROPOSED] ORDER DIRECTING THAT
THE COMPLAINT AND RELATED PAPERS BE FILED UNDER SEAL

Upon consideration of Plaintiff Federal Trade Commission's Motion to File the Complaint Under Seal, it is hereby

ORDERED, that the Complaint be filed under seal until further Order of the Court, and

ORDERED, that Plaintiff Federal Trade Commission may at any time file on the public record a version of the Complaint that does not reveal Confidential Material; and it is further

ORDERED, that Confidential Material includes material and information contained therein that is defined or treated as confidential under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure; Sections 6(f), 21(b), or 21(c) of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f), 57b-2(b), 57b-2(c), Commission Rule 4.10(d), 16 C.F.R. § 4.10(d), or Section 7A(h) of the Clayton Act, 15 U.S.C. § 18a(h); and it is further

ORDERED, that any party may move to unseal some or all of the Complaint after Defendants have had a full opportunity to review such motion and after the parties have discussed the motion in a good-faith effort to determine whether there is any opposition to such a motion.

ISSUED this _____ day of _____, 2017, at _____ a.m./p.m.

SO ORDERED:

_____

United States District Court Judge

NAMES OF PERSONS TO BE SERVED

Thomas J. Dillickrath
Federal Trade Commission
Bureau of Competition
400 Seventh Street, NW
Washington, DC 20024
Telephone: (202) 326-3286
Email: tdillickrath@ftc.gov

Counsel for Plaintiff Federal Trade Commission

Catherine A. Jackson
Assistant Attorney General
Office of the Attorney General
441 Fourth Street, N.W., Suite 630-S
Washington, DC 20001
Tel: (202) 442-9864
catherine.jackson@dc.gov

Counsel for Plaintiff District of Columbia

Paul A. Moore III
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94012-7004
Tel: (415) 703-2372
paul.moore@doj.ca.gov

Counsel for Plaintiff State of California

Michael S. McFalls, Esq.
Ropes & Gray LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006
Tel: (202) 508-4684
Michael.McFalls@ropesgray.com

Counsel for Defendant DraftKings, Inc.

Scott A. Sher, Esq.
Wilson Sonsini Goodrich & Rosati
1700 K St., NW
Washington, DC 20006
Tel: (202) 973-8822
ssher@wsgr.com

Counsel for Defendant FanDuel Limited