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

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

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

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

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

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

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

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

(Continued…)

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

1. The parties shall conditionally file all briefing and proposed findings of fact and conclusions of law regarding Plaintiff's preliminary injunction request, as detailed in the Court's scheduling order, and all supporting materials that contain information designated as confidential by any party or nonparty ("Confidential Preliminary Injunction Material") under seal, accompanied by an interim administrative sealing motion which may simply indicate that the reasons for sealing will be discussed in a forthcoming omnibus sealing motion.
2. At the time of the filing, the parties shall not be required to file redacted versions of any Confidential Preliminary Injunction Material, except for redacted versions of any briefing.
3. Within 14 days after the parties' deadline to submit post-hearing proposed findings of fact and conclusions of law, each party shall:
    a. file a motion to consider sealing that identifies (1) the portions of the Confidential Preliminary Injunction Material designated as confidential by any party or third party, and (2) the party or third party that designated each portion of the Confidential Preliminary Injunction Material as confidential;
    b. serve on each third party that has designated any Confidential Preliminary Injunction Material as confidential: (1) this order, (2) the motion to consider sealing, and (3) versions of the Confidential Preliminary Injunction Material that cites materials the third party has designated as confidential where information designated as

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

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

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

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

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

PURSUANT TO STIPULATION, IT IS SO ORDERED AS MODIFIED.

SIGNED this 20th day of June, 2023.

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

STIPULATED BY:

Dated: June 12, 2023

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