J. Clayton Everett Jr., *pro hac vice*
clay.everett@morganlewis.com
Ryan M. Kantor, *pro hac vice*
ryan.kantor@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004-2541
Telephone: (202) 739-3000
Facsimile: (202) 739-3001

John C. Dodds, *pro hac vice*
john.dodds@morganlewis.com
Zachary M. Johns, *pro hac vice*
zachary.johns@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: (215) 963-5000
Facsimile: (212) 309-6001

Kalpana Srinivasan, Bar No. 237460
ksrinivasan@susmangodfrey.com
Michael Gervais, Bar No. 330731
mgervais@susmangodfrey.com
Jesse-Justin Cuevas, Bar No. 307611
jcuevas@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Attorneys for Defendant
Intercontinental Exchange, Inc.

Elliot R. Peters, Bar No. 158708
epeters@keker.com
R. James Slaughter, Bar No. 192813
rslaughter@keker.com
Khari J. Tillery, Bar. No. 215669
ktillery@keker.com
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

Jonathan M. Moses (*pro hac vice*)
jmmoses@wlrk.com
Adam L. Goodman (*pro hac vice*)
algoodman@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000

Attorneys for Defendant
Black Knight, Inc.

(Additional counsel appear on signature page)

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

NOTICE OF CONSTITUTIONAL CHALLENGE

NOTICE OF CONSTITUTIONAL CHALLENGE

Pursuant to Rule 5.1(a) of the Federal Rules of Civil Procedure, Defendants Intercontinental Exchange, Inc. ("Intercontinental Exchange") and Black Knight, Inc. ("Black Knight"), by and through their counsel, hereby provide notice that this matter involves a constitutional challenge, *inter alia*, to the FTC's administrative adjudicative process and proceedings following the issuance of a complaint by the FTC pursuant to 15 U.S.C. § 45. Defendants raised the question of that provision's constitutionality in Intercontinental Exchange's Answer and Affirmative Defenses and Counterclaims (Dkt. No. 57) and Black Knight's Answer, Affirmative Defenses, and Counterclaims (Dkt. No. 58), where they argue that 15 U.S.C. § 45 as applied violates the Due Process Clause of Fifth Amendment, the Equal Protection Clause of the Fifth Amendment, Article II of the Constitution, Article III of the Constitution, the Seventh Amendment, and the nondelegation doctrine.

Intercontinental Exchange's Answer and Affirmative Defenses and Counterclaims and Black Knight's Answer, Affirmative Defenses, and Counterclaims have been served via certified mail on the Attorney General of the United States and the United States Attorney for the Northern District of California.

Dated: May 9, 2023

By /s/ *R. James Slaughter*

Elliot R. Peters Bar No. 158708
epeters@keker.com
R. James Slaughter, Bar No. 192813
rslaughter@keker.com
Khari J. Tillery, Bar. No. 215669
ktillery@keker.com
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Facsimile: (415) 397-7188

(Cont.)

By */s/ Minna Lo Naranjo*

Minna Lo Naranjo, Bar No. 259005
minna.naranjo@morganlewis.com
Michelle Park Chiu, Bar No. 248421
michelle.chiu@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: (415) 442-1000
Facsimile: (415) 442-1001

(Cont.)

Jonathan M. Moses (*pro hac vice*)
jmmoses@wlrk.com
Adam L. Goodman (*pro hac vice*)
algoodman@wlrk.com
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000

Attorneys for Defendant
Black Knight, Inc.

J. Clayton Everett Jr., *pro hac vice*
clay.everett@morganlewis.com
Ryan M. Kantor, *pro hac vice*
ryan.kantor@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004-2541
Telephone: (202) 739-3000
Facsimile: (202) 739-3001

John C. Dodds, *pro hac vice*
john.dodds@morganlewis.com
Zachary M. Johns, *pro hac vice*
zachary.johns@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone: (215) 963-5000
Facsimile: (212) 309-6001

Harry T. Robins, *pro hac vice*
harry.robins@morganlewis.com
Susan Zhu, *pro hac vice*
susan.zhu@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178-0060
Telephone: (212) 309-6000
Facsimile: (212) 309-6001

Kalpana Srinivasan, Bar No. 237460
ksrinivasan@susmangodfrey.com
Michael Gervais, Bar No. 330731
mgervais@susmangodfrey.com
Jesse-Justin Cuevas, Bar No. 307611
jcuevas@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

(*Cont.*)

Shawn Raymond, *pro hac vice pending*
sraymond@susmangodfrey.com
Alex Kaplan, *pro hac vice*
akaplan@susmangodfrey.com
Adam Carlis, *pro hac vice forthcoming*
acarlis@susmangodfrey.com
Alejandra Salinas, *pro hac vice forthcoming*
asalinas@susmangodfrey.com
Abby Noebels, *pro hac vice forthcoming*
anoebels@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096
Telephone: (713) 651-9366
Facsimile: (713) 654-6666

Attorneys for Defendant
Intercontinental Exchange, Inc.

ATTORNEY ATTESTATION

Pursuant to Civil L. R. 5-1(h)(3), I attest that concurrence in the filing of this document has been obtained from each of the other signatories above.

Dated: May 9, 2023

By: */s/Minna Lo Naranjo*
Minna Lo Naranjo

PROOF OF SERVICE

I, Minna Lo Naranjo, hereby certify that on May 9, 2023, I electronically filed the documents entitled "NOTICE OF CONSTITUTIONAL CHALLENGE" with the Clerk of the Court for the United States District Court, Northern District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court's electronic filing system.

Dated: May 9, 2023

By: */s/Minna Lo Naranjo*
Minna Lo Naranjo