

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Intercontinental Exchange, Inc.,
a corporation;

and

Black Knight, Inc.,
a corporation.

Docket No. 9413

ANSWER AND DEFENSES OF RESPONDENT BLACK KNIGHT, INC.

Pursuant to Rule 3.12 of the Federal Trade Commission’s (the “FTC” or the “Commission”) Rules of Practice for Adjudicative Proceedings (the “Rules”), Respondent Black Knight, Inc. (“Black Knight”), by and through its undersigned counsel, hereby files the following answer to the Commission’s Administrative Complaint (the “Complaint”) against Intercontinental Exchange, Inc. (“ICE”) and Black Knight.

INTRODUCTION

Through this action, the FTC is seeking to challenge a business combination that will never be. The majority of the Complaint alleges anticompetitive harm that could arise if ICE were to acquire Black Knight’s Empower loan origination system (“LOS”). The Complaint ignores Black Knight’s and ICE’s binding agreement to divest Black Knight’s Empower LOS and other products to Constellation Web Solutions, Inc., a subsidiary of Constellation Software, Inc. (collectively, “Constellation”). Constellation is a large, sophisticated public company with deep experience in the mortgage technology business, and the divestiture provides Constellation everything it needs to compete for the provision of LOS services. Rather than

engage with and consider the divestiture, the FTC rushed to file a Complaint that fails to account for the divestiture's effect. As will be shown in this proceeding, this divestiture preserves—if not enhances—competition in the LOS space.

Even without the divestiture, the proposed transaction (the “Transaction”) would have no substantial anticompetitive effect on an industry that is characterized by dynamic competition and an influx of new entrants. Numerous LOS providers compete to win business from lenders of all sizes and will continue to do so post-Transaction. And when properly accounting for the divestiture, ICE's proposed acquisition of Black Knight certainly does not violate the antitrust laws. Constellation is a public company with a market capitalization of over \$35 billion, over three times *larger* than Black Knight, that is in the business of acquiring, managing, and growing vertical market software businesses. Constellation has successfully deployed this strategy with numerous software businesses, including other businesses in the mortgage technology space. In addition, the agreement between ICE, Black Knight, and Constellation provides Constellation access to sell Black Knight's Optimal Blue pricing product and other services on highly favorable commercial terms for Constellation.

Thus, from day one, Constellation will have everything it needs to compete aggressively in the LOS space with a robust suite of services and is eager to do so. And Constellation's experience and proven track record in mortgage technology ensures that Constellation is well-positioned to not only maintain, but improve upon, Empower's competitive performance in the LOS space. The Commission and the Court must consider this procompetitive LOS divestiture when assessing the likely competitive effects of the Transaction. *See United States v. UnitedHealth Group Inc.*, No. 1:22-cv-0481, 2022 WL 4365867, at *11 (D.D.C. Sept 21, 2022).

The FTC’s remaining allegations with respect to product pricing and eligibility engines (“PPEs”) are based on a fundamental misunderstanding of the competitive dynamics for product and pricing tools. ICE’s native Encompass Product and Pricing Service product (“EPPS”) and Black Knight’s Optimal Blue pricing product are not close substitutes and do not competitively constrain one another. Nearly all LOS providers, including ICE, provide some basic, native product and pricing capabilities within their LOSs. ICE’s EPPS product exists in this category—it is native to ICE’s Encompass LOS, cannot be used with any other LOS, and is offered free or as an inexpensive add-on to Encompass. Separately, third-party commercial PPE providers, including Black Knight’s Optimal Blue, offer enhanced automation and PPE capabilities through LOS-agnostic PPE solutions that a lender may choose to purchase in addition to and to integrate with its LOS. These third-party PPE solutions offer robust and wide-ranging functionality and services that cannot be achieved through the basic native pricing tools. The products cater to different customer segments who pay vastly different prices. Nothing about the Transaction will reduce competition for PPE solutions.

In sum, and as will be demonstrated at trial, ICE’s proposed acquisition of Black Knight, considered together with the divestiture of Black Knight’s Empower LOS to Constellation, is a procompetitive transaction that violates no antitrust law. The FTC’s Complaint should be dismissed and the relief it seeks denied.

RESPONSE TO THE SPECIFIC ALLEGATIONS IN THE COMPLAINT

All allegations not expressly admitted herein are denied. Though included herein for reference, Black Knight does not interpret the headings and subheadings throughout the Complaint as well-pleaded allegations to which any response is required. To the extent such a response is required, Black Knight denies all allegations in the headings and subheadings of the Complaint. Use of certain terms or phrases defined in the Complaint is not an acknowledgment

or admission of any characterization the Commission may ascribe to the defined terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgment or admission of any characterization the Commission may ascribe to the capitalized terms.

Black Knight does not concede the truthfulness of third-party sources quoted or referenced in the Complaint. To the extent a response is required, Black Knight denies all allegations of the third-party sources quoted in or referenced in the Complaint. Unless expressly acknowledged below, Black Knight further does not concede the accuracy or completeness of alleged quotations from Black Knight employees, which are provided without the appropriate context or proffered in part to assert truth in a manner that may not be consistent with the declarant's intent. Black Knight additionally denies that the Commission is entitled to any of the relief sought in the Notice of Contemplated Relief on page 25 of the Complaint. Black Knight reserves the right to amend and/or supplement this answer at a later stage of the proceedings as permitted by the Rules. Each paragraph below corresponds to the same-numbered paragraph in the Complaint.

I. NATURE OF THE CASE

1. Paragraph 1 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1, which purport to characterize homebuyers generally, and denies those allegations on that basis.

2. Paragraph 2 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations

contained in Paragraph 2, which purport to characterize all lenders generally, and denies those allegations on that basis.

3. Paragraph 3 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3, which purport to characterize all lenders and LOSs generally, and denies those allegations on that basis.

4. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in the first sentence of Paragraph 4 and denies those allegations on that basis. Black Knight admits that it provides the Empower LOS product and that Empower LOS operates in the United States, but otherwise denies the remaining allegations contained in the second sentence of Paragraph 4.

5. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 5 and denies those allegations on that basis. The second sentence of Paragraph 5 purports to characterize the contents of a statement by Black Knight's CFO, and Black Knight respectfully refers the Court to that statement for a complete and accurate recitation of its contents. To the extent the allegations set forth in the second sentence of Paragraph 5 are inconsistent with the statement, Black Knight denies the allegations. Paragraph 5 otherwise asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the remaining allegations contained in Paragraph 5.

6. Paragraph 6 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight

lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, which purport to characterize all LOS providers and LOSs generally, and denies those allegations on that basis. In addition, Black Knight lacks sufficient knowledge or information regarding the Complaint's use of the vague term "ancillary services" and denies any allegations relating thereto.¹ By way of further response, Black Knight avers that it offers services used to process, underwrite, fund, and close a loan.

7. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 7 and denies the allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 7, except to admit that Black Knight owns Optimal Blue.

8. Black Knight denies the allegations contained in Paragraph 8.

9. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 and denies the allegations on that basis.

10. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and denies the allegations on that basis.

11. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in the second sentence of Paragraph 11 and denies those allegations on that basis. In addition, Paragraph 11 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 11.

¹ Black Knight lacks sufficient knowledge or information regarding the term "ancillary services," as vaguely defined in the Complaint as "tens to hundreds of services" that are "touche[d] on" as a "mortgage moves from application to close," and denies each and every allegation in which that term appears in the Complaint on that basis.

12. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 12 and denies those allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 12.

13. Black Knight denies the allegations contained in Paragraph 13.

14. Black Knight denies the allegations contained in Paragraph 14.

15. Paragraph 15 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 15.

16. Paragraph 16 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 16.

II. JURISDICTION

17. Paragraph 17 asserts legal conclusions to which no response is required.

18. Paragraph 18 asserts legal conclusions to which no response is required.

III. RESPONDENTS AND ACQUISITION

19. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 and denies the allegations on that basis.

20. Black Knight admits the allegations contained in the first sentence of Paragraph 20. Black Knight denies the remaining allegations contained in Paragraph 20, except to admit that Black Knight provides software, data, and analytics in connection with mortgage origination, that Black Knight offers Empower and MSP, that Black Knight acquired Compass Analytics in 2019, and that Black Knight acquired Optimal Blue in 2020. By way of further response, Black Knight avers that it also provides software, data, and analytics for home equity lending and servicing.

IV. THE ACQUISITION

21. Black Knight admits the allegations contained in Paragraph 21. Black Knight avers by way of further response that the purchase price for the Transaction has been reduced to approximately \$11.7 billion.

V. RESIDENTIAL MORTGAGE ORIGINATION

22. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22, which purport to characterize homebuyers and mortgage lending institutions generally, and denies the allegations on that basis. Black Knight avers by way of further response that many homebuyers rely on a mortgage to finance the purchase of a home.

23. Paragraph 23 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23, which purport to describe all LOSs generally, and denies those allegations on that basis. By way of further response, Black Knight avers that LOS technology is used by mortgage lenders to originate home mortgages and to automate residential loan manufacturing.

24. Paragraph 24 asserts general background allegations that do not relate to Black Knight, to which no response is required. To the extent a response is required, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24, which purport to describe all LOSs and lenders generally, and denies those allegations on that basis.

25. Black Knight denies the allegations contained in the third sentence in Paragraph 25. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 25, which purport to characterize all proprietary LOSs and lenders generally, and denies those allegations on that basis.

26. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26, which purport to characterize ancillary services (which the Complaint has defined only vaguely), all LOS providers that offer ancillary services, and lenders generally, and denies the allegations on that basis.

27. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, which purport to characterize all PPEs generally, and denies the allegations on that basis.

28. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 28, which purport to characterize all lenders, LOSs, and PPEs generally, and denies the allegations on that basis.

VI. THE RELEVANT ANTITRUST MARKETS

29. Paragraph 29 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 29.

A. The Commercial LOS Market

30. Paragraph 30 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 30.

31. The first sentence of Paragraph 31 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 31. With respect to the remaining allegations contained in

Paragraph 31, which purport to characterize all lenders, commercial LOSs, and vendors of commercial LOSs generally, Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations and denies the allegations on that basis.

32. Paragraph 32 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 32.

33. The second sentence of Paragraph 33 purports to characterize the contents of Black Knight's Form 10-K for the fiscal year ended December 31, 2021, and Black Knight respectfully refers the Court to that Form 10-K for a complete and accurate statement of its contents. To the extent the allegations set forth in the second sentence of Paragraph 33 are inconsistent with the Form 10-K, Black Knight denies the allegations. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 33 and denies the allegations on that basis.

34. The first sentence of Paragraph 34 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 34. The second sentence of Paragraph 34 purports to characterize the contents of a document prepared by Black Knight in preparation for an earnings call, and Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents. To the extent the allegations set forth in the second sentence of Paragraph 34 are inconsistent with that document, Black Knight denies the allegations.

35. Paragraph 35 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 35.

36. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36, as they assert general background information that does not relate to Black Knight, and denies the allegations on that basis.

37. Black Knight denies the allegations contained in Paragraph 37.

38. Paragraph 38 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 38.

39. Black Knight denies the allegations contained in Paragraph 39.

B. The LOS Market

40. Paragraph 40 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 40.

41. The first sentence of Paragraph 41 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 41. Black Knight otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 41, as they contain general background information concerning all LOSs and mortgage lenders generally and do not relate to Black Knight, and denies those allegations on that basis.

42. The first sentence of Paragraph 42 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 42. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 42, as they contain general background information concerning all LOSs and mortgage lenders generally and do not relate to Black Knight, and denies those allegations on that basis.

43. Paragraph 43 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 43.

44. Paragraph 44 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 44.

45. Paragraph 45 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 45.

46. Paragraph 46 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 46.

C. The Market for PPEs for Users of Encompass

47. Paragraph 47 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 47.

48. The first sentence of Paragraph 48 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 48. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 48, which purport to characterize PPEs generally, and denies the allegations on that basis.

49. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 49 and denies the allegations on that basis.

50. Paragraph 50 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 50.

51. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 51 and denies the allegations on that basis.

52. Paragraph 52 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 52.

53. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 and denies the allegations on that basis.

D. The PPE Market

54. Paragraph 54 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 54.

55. The first sentence of Paragraph 55 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 55. Black Knight denies the allegations contained in the second and third sentences of Paragraph 55. The final sentence of Paragraph 55 purports to characterize the contents of an analyst presentation, and Black Knight respectfully refers the Court to the analyst presentation for a complete and accurate statement of its contents. To the extent the allegations set forth in the final sentence of Paragraph 55 are inconsistent with the analyst presentation, Black Knight denies the allegations.

56. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 56, which purport to characterize all PPEs generally, and denies the allegations on that basis, except to admit that Black Knight provides PPEs.

57. Paragraph 57 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 57.

58. Paragraph 58 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 58.

59. Black Knight denies the allegations contained in Paragraph 59.

E. The Relevant Geographic Market Is the United States

60. Paragraph 60 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 60.

VII. MARKET CONCENTRATION AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

61. Paragraph 61 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 61.

62. Paragraph 62 purports to characterize the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (the “Merger Guidelines”), and Black Knight respectfully refers the Court to the Merger Guidelines for a complete and accurate statement of their contents. To the extent the allegations set forth in Paragraph 62 are inconsistent with the Merger Guidelines, Black Knight denies the allegations. Black Knight further denies that the Merger Guidelines are vested with the authority to determine the legality of any acquisition, including through the provision of a presumption of unlawfulness.

63. The first sentence of Paragraph 63 purports to characterize the Home Mortgage Disclosure Act (the “HMDA”), and Black Knight respectfully refers the Court to the HMDA for a complete and accurate statement of its contents. To the extent the allegations set forth in the first sentence of Paragraph 63 are inconsistent with the HMDA, Black Knight denies the allegations. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 63, which purport to characterize lenders and regulators generally, and denies the allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 63.

64. Paragraph 64 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 64.

65. Paragraph 65 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 65.

66. Paragraph 66 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 66.

67. Paragraph 67 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 67.

VIII. EVIDENCE OF REASONABLY PROBABLE ANTICOMPETITIVE EFFECTS

A. Anticompetitive Effects in LOS Markets

68. Paragraph 68 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 68.

69. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 69 and denies the allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 69.

70. Black Knight denies the allegations contained in the first sentence of Paragraph 70. The second sentence of Paragraph 70 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the second sentence of Paragraph 70.

i. ICE and Black Knight Are Each Other's Closest Head-to-Head Competitors

71. Black Knight denies the allegations contained in the first and penultimate sentences of Paragraph 71. The second sentence of Paragraph 71 purports to characterize the contents of certain statements made by Black Knight's current chairman during an event, and the

third sentence of Paragraph 71 purports to characterize certain statements made by Black Knight's CFO made during a conference. Black Knight respectfully refers the Court to the transcripts from those events for a complete and accurate statement of their contents. To the extent the allegations set forth in the second and third sentences of Paragraph 71 are inconsistent with those transcripts, Black Knight denies the allegations. Black Knight otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 71 and denies the allegations on that basis.

72. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 72 and denies the allegations on that basis.

73. Black Knight denies the allegations set forth in the first sentence of Paragraph 73. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 73 and denies the allegations on that basis. The third sentence of Paragraph 73 purports to characterize a statement made in preparation for a 2021 Black Knight earnings call, and Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents. To the extent the allegations set forth in the third sentence of Paragraph 73 are inconsistent with that document, Black Knight denies the allegations.

74. Black Knight denies the allegations contained in Paragraph 74, except to admit that Black Knight attempts to track when mortgage lenders' existing LOS contracts may expire or are up for renewal.

75. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 75 and denies the allegations on that basis.

76. Paragraph 76 purports to characterize certain tracking data maintained by Black Knight, and Black Knight respectfully refers the Court to that data for a complete and accurate statement of their contents. To the extent the allegations set forth in Paragraph 76 are inconsistent with the tracking data, Black Knight denies the allegations.

ii. There Is a Reasonable Probability That the Acquisition Will Eliminate LOS Price Competition Between ICE and Black Knight

77. Black Knight denies the allegations contained in Paragraph 77.

78. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 78 and denies the allegations on that basis. To the extent the allegations contained in Paragraph 78 purport to refer to or characterize certain documents, Black Knight respectfully directs the Court to those documents for a complete and accurate statement of their contents, and denies the allegations to the extent they are inconsistent with those documents. Black Knight lacks knowledge or information sufficient to form a belief as to the remaining allegations, which are general in nature, and denies the allegations on that basis.

79. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 79 and denies those allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 79.

iii. There Is a Reasonable Probability That the Acquisition Will Eliminate Competition for LOS Features and Integrations

80. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 80, as they purport to characterize ancillary services (which the Complaint has defined only vaguely) and lenders generally, and denies the allegations on that basis.

81. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 81 and denies the allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 81.

82. Black Knight denies the allegations contained in the first sentence of Paragraph 82, except to admit that Black Knight acquired Compass Analytics and Optimal Blue and integrated their respective PPEs with Empower. To the extent the allegations contained in the second sentence of Paragraph 82 characterize certain documents, Black Knight respectfully directs the Court to those documents for a complete and accurate statement of their contents, and denies the allegations to the extent they are inconsistent with those documents.

83. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 83 and denies the allegations on that basis.

84. Paragraph 84 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 84.

B. Anticompetitive Effects in PPE Markets

85. Paragraph 85 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 85.

86. Black Knight denies the allegations contained in Paragraph 86.

87. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 87 and denies the allegations on that basis.

88. Black Knight denies that the result of the Acquisition will be to consolidate ownership of the two leading PPEs in the United States. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 88 and denies the allegations on that basis.

i. There Is a Reasonable Probability That the Acquisition Will Eliminate Head-to-Head PPE Competition Between ICE and Black Knight

89. Paragraph 89 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first and second sentences of Paragraph 89, and otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 89 and denies the allegations on that basis.

90. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 90 and denies those allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 90. By way of further response, Black Knight avers that Empower has its own native PPE functionality, and that Black Knight acquired Compass Analytics and Optimal Blue and integrated their respective PPEs with Empower.

91. Paragraph 91 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 91, and avers by way of further response that Optimal Blue is widely used and integrated into LOSs owned by different providers.

92. Black Knight denies the allegations contained in the first sentence of Paragraph 92. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 92 and denies the allegations on that basis.

93. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 93 and denies the allegations on that basis.

94. Black Knight denies the allegations contained in Paragraph 94, except to admit that Black Knight acquired Compass Analytics in 2019.

95. Black Knight denies the allegations contained in Paragraph 95, except to admit that Black Knight acquired Optimal Blue in 2020.

96. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first and second sentences of Paragraph 96 and denies the allegations on that basis. The remaining allegations purport to refer to and characterize statements made by Optimal Blue's CEO in 2017, and Black Knight respectfully refers the Court to those statements for a complete and accurate recitation of their contents. To the extent the remaining allegations set forth in Paragraph 96 are inconsistent with those statements, Black Knight denies the allegations.

97. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 97 and denies those allegations on that basis. Black Knight denies the remaining allegations contained in Paragraph 97. To the extent Paragraph 97 purports to characterize statements made by Optimal Blue and Black Knight, Black Knight respectfully refers the Court to those statements for a complete and accurate recitation of their contents, and further denies the allegations to the extent they are inconsistent with those statements.

98. Black Knight denies the allegations contained in Paragraph 98, except to admit that Black Knight integrated Optimal Blue's PPE with Empower. To the extent Paragraph 98 purports to characterize statements made by Black Knight's CEO during an earnings call, Black Knight respectfully refers the Court to a transcript of that earnings call for a complete and

accurate statement of its contents, and further denies the allegations to the extent they are inconsistent with that transcript.

99. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 99 and denies the allegations on that basis.

100. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 100 and denies the allegations on that basis.

101. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 101 and denies the allegations on that basis.

102. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 102 and denies the allegations on that basis.

103. Black Knight admits that on May 4, 2022, ICE announced its agreement to acquire Black Knight. Black Knight otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 103 and denies the allegations on that basis.

104. Paragraph 104 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 104, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 104 and denies the allegations on that basis.

105. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 105 and denies the allegations on that basis.

ii. There Is a Reasonable Probability That the Acquisition Will Increase ICE's Ability and Incentive to Foreclose Competition from Other PPE Providers

106. Paragraph 106 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 106.

a. ICE Can Disadvantage PPE Competitors by Degrading or Restricting LOS Integration

107. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 107, as they purport to characterize all mortgage lenders generally, and denies the allegations on that basis.

108. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 108, as they purport to characterize all lenders, PPEs, and PPE providers generally, and denies the allegations on that basis.

109. Black Knight denies the allegations contained in Paragraph 109.

110. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 110 and denies the allegations on that basis.

111. Black Knight denies the allegations contained in Paragraph 111. To the extent Paragraph 111 purports to characterize statements made by one of Black Knight's executives, Black Knight respectfully refers the Court to those statements for a complete and accurate recitation of their contents, and further denies the allegations to the extent they are inconsistent with those statements.

112. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 112 and denies the allegations on that basis.

113. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 113 and denies the allegations on that basis. To the extent Paragraph 113 purports to characterize the contents of unidentified

documents, Black Knight respectfully refers the Court to those documents for a complete and accurate statement of their contents, and denies the allegations to the extent they are inconsistent with those documents.

114. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 114 and denies the allegations on that basis.

115. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 115 and denies the allegations on that basis.

b. Post-Acquisition, ICE Will Have a Greater Incentive to Foreclose Competition for PPEs

116. Paragraph 116 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 116.

117. To the extent Paragraph 117 purports to characterize the contents of unidentified documents, Black Knight respectfully refers the Court to those documents for a complete and accurate statement of their contents, and denies the allegations to the extent they are inconsistent with those documents. Black Knight denies the remaining allegations contained in Paragraph 117.

118. The first sentence of Paragraph 118 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 118. Black Knight denies the remaining allegations contained in Paragraph 118.

119. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 and denies the allegations on that basis.

120. Black Knight denies the allegations contained in Paragraph 120.

C. Anticompetitive Effects in Other Relevant Antitrust Markets for Ancillary Services

121. Black Knight denies the allegations contained in Paragraph 121.

122. Black Knight denies the allegations contained in Paragraph 122.

123. Black Knight denies the allegations contained in Paragraph 123.

124. Black Knight admits that it currently offers the Ernst fee service, but otherwise denies the allegations contained in the first sentence of Paragraph 124. Black Knight denies the allegations contained in the third sentence of Paragraph 124. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 124, as they purport to characterize all fee services generally or relate to ICE, and denies those allegations on that basis.

125. Black Knight denies the allegations contained in the second sentence of Paragraph 125, except that Black Knight admits that it offers the Regulatory Assist regulatory compliance service and avers by way of further response that some lenders who use Black Knight's Empower use a third-party regulatory compliance service. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 125 and denies those allegations on that basis.

IX. LACK OF COUNTERVAILING FACTORS

126. Paragraph 126 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 126.

127. The last sentence of Paragraph 127 appears to characterize a submission made in the context of the Commission's investigation into the Transaction. Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents and denies the allegations to the extent they are inconsistent with that document. Paragraph 127 otherwise

asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the remaining allegations contained in Paragraph 127.

128. Black Knight denies the allegations contained in Paragraph 128, except that, to the extent the second sentence of Paragraph 128 purports to refer to or characterize a submission made in the context of the Commission's investigation into the Transaction, Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents, and denies the allegations to the extent they are inconsistent with that document. To the extent the fourth sentence of Paragraph 128 purports to characterize and quote a statement made by Black Knight's CFO during an investor conference, Black Knight respectfully refers the Court to the transcript from that conference for a complete and accurate statement of its contents, and denies the allegations to the extent they are inconsistent with that transcript.

129. Black Knight denies the allegations contained in the first sentence of Paragraph 129. Black Knight otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 129 and denies the allegations on that basis.

130. The first sentence of Paragraph 130 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 130. Black Knight denies the remaining allegations contained in Paragraph 130.

131. The first sentence of Paragraph 131 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 131. Black Knight denies the remaining allegations contained in Paragraph 131.

132. The first sentence of Paragraph 132 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in the first sentence of Paragraph 132. Black Knight otherwise denies the remaining allegations contained in Paragraph 132, except to admit that Black Knight owned Compass Analytics and a native PPE when it acquired Optimal Blue. To the extent the allegations contained in Paragraph 132 purport to refer to or characterize a submission made in the context of the Commission's investigation into the Transaction, Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents, and denies the allegations to the extent they are inconsistent with that document. To the extent Paragraph 132 purports to characterize statements made by Black Knight's CEO during an earnings call, Black Knight respectfully refers the Court to the transcript of that earnings call for a complete and accurate statement of its contents, and denies the allegations to the extent they are inconsistent with those statements.

133. Black Knight denies the allegations contained in Paragraph 133.

134. Black Knight lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding ICE contained in Paragraph 134 and denies those allegations on that basis. To the extent Paragraph 134 purports to refer to or characterize certain documents, Black Knight respectfully refers the Court to those documents for a complete and accurate statement of their contents, and denies the allegations to the extent they are inconsistent with those documents. Black Knight denies the remaining allegations contained in Paragraph 134.

135. Paragraph 135 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 135.

**X. RESPONDENTS' PROPOSED REMEDY WILL NOT FIX
THE ACQUISITION'S ANTICOMPETITIVE EFFECTS**

136. Black Knight denies the allegations contained in the first and last sentences of Paragraph 136 and avers by way of further response that Black Knight and ICE have signed a definitive agreement to divest Empower to Constellation. To the extent the remaining allegations contained in Paragraph 136 purport to characterize the Merger Agreement, as amended, Black Knight respectfully refers the Court to that document for a complete and accurate statement of its contents, and denies the allegations to the extent they are inconsistent with the Merger Agreement.

137. Paragraph 137 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 137.

XI. VIOLATION

Count I – Illegal Agreement

138. Black Knight incorporates all previous responses as though fully set forth herein.

139. Paragraph 139 asserts a legal conclusion to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 139.

Count II – Illegal Acquisition

140. Black Knight incorporates all previous responses as though fully set forth herein.

141. Paragraph 141 asserts legal conclusions to which no response is required. To the extent a response is required, Black Knight denies the allegations contained in Paragraph 141.

AFFIRMATIVE AND OTHER DEFENSES

Black Knight asserts the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the Commission. Black Knight has not knowingly or intentionally waived any applicable

defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Black Knight reserves the right to amend, or seek to amend, its answer, including its affirmative and other defenses.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The alleged market definitions fail as a matter of both fact and law.

THIRD DEFENSE

The Complaint fails to allege any plausible harm to competition, consumers, or consumer welfare.

FOURTH DEFENSE

The Complaint fails to allege undue share in any plausibly defined relevant market.

FIFTH DEFENSE

Any alleged harm to potential competition is not actionable.

SIXTH DEFENSE

The Complaint fails to state a claim because new entrants to the relevant market were (and are) timely, likely, and sufficient to offset any alleged anticompetitive effects of the Transaction.

SEVENTH DEFENSE

The Transaction is procompetitive, and will result in merger-specific efficiencies, cost synergies, product-quality improvements, and other procompetitive effects that benefit consumers. The benefits outweigh any alleged anticompetitive effects.

EIGHTH DEFENSE

The combination of Respondents' businesses is not likely to substantially lessen competition under the analytical framework set forth in the Merger Guidelines promulgated by the FTC and Department of Justice.

NINTH DEFENSE

Black Knight's and ICE's agreement with Constellation to divest Empower as well as certain other products to Constellation would address any purported anticompetitive effects alleged in the Complaint and, consistent with Section 7 of the Clayton Act, 15 U.S.C. § 18, and the decision in *United States v. UnitedHealth Grp. Inc.*, No. 1:22-cv-0481, 2022 WL 4365867 (D.D.C. Sept. 21, 2022), it is inappropriate to consider the transaction in the absence of the divestiture.

TENTH DEFENSE

Neither the filing of this administrative action nor the contemplated relief is in the public interest, pursuant to 15 U.S.C. § 45.

ELEVENTH DEFENSE

The Commission's claims under Section 5 of the Federal Trade Commission Act are unlawful to the extent the Commission purports to apply Section 5 beyond the metes and bounds of the Clayton Act.

TWELFTH DEFENSE

The Commission fails to allege a time frame for the alleged anticompetitive effects.

THIRTEENTH DEFENSE

The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against Black Knight, having prejudged the merits of the

action, violates Black Knight's Fifth Amendment Due Process right to adjudication before a neutral arbiter.

FOURTEENTH DEFENSE

The Commission's procedures violate Black Knight's right to procedural due process under the Due Process Clause of the Fifth Amendment.

FIFTEENTH DEFENSE

The Commission's procedures arbitrarily subject Black Knight to administrative proceedings rather than to proceedings before an Article III judge in violation of Black Knight's right to Equal Protection under the Fifth Amendment.

SIXTEENTH DEFENSE

These Proceedings are invalid because the constraints on removal of the Commissioners and the Administrative Law Judge violate Article II of the Constitution and the separation of powers.

SEVENTEENTH DEFENSE

These administrative proceedings are invalid because Congress unconstitutionally delegated legislative power to the Commission by failing to provide an intelligible principle by which the Commission would exercise the delegated power.

EIGHTEENTH DEFENSE

The adjudication of the Complaint against Black Knight through these administrative proceedings violates Black Knight's Seventh Amendment right to a jury trial.

NINETEENTH DEFENSE

Granting the relief sought would constitute a taking of Black Knight's property in violation of the Fifth Amendment to the Constitution.

TWENTIETH DEFENSE

The Complaint fails to state a claim against Black Knight because Section 7 of the Clayton Act, 15. U.S.C. § 18, applies only to acquirers in a transaction and cannot give rise to liability against sellers.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Black Knight requests that the Commission enter judgment in its favor as follows:

1. That the Complaint be dismissed with prejudice;
2. That none of the requested relief issue to the Commission;
3. That costs incurred in defending this action be awarded to Black Knight; and
4. That the Commission grant Black Knight any and all further relief that is just and proper.

Respectfully submitted,

By: March 20, 2023

By: s/ Jonathan M. Moses

Jonathan M. Moses
Nelson O. Fitts
Sarah K. Eddy
Adam L. Goodman
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Phone Number: (212) 403-1000
Fax Number: (212) 403-2000
JMMoses@wlrk.com
NOFitts@wlrk.com
SKEddy@wlrk.com
ALGoodman@wlrk.com

Counsel for Black Knight, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 20, 2023, I caused a true and correct copy of the foregoing Answer and Defenses to be filed through the Federal Trade Commission's E-Filing platform, which will send notifications of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I HEREBY CERTIFY that, on March 20, 2023, I caused the forgoing Answer and Defenses to be served via email on:

Abby L. Dennis (adennis@ftc.gov)
Daniel Aldrich (daldrich@ftc.gov)
Catharine Bill (cbill@ftc.gov)
Caitlin Cipicchio (ccipicchio@ftc.gov)
Steven Couper (scouper@ftc.gov)
Kurt Herrera-Heintz (kherreraheintz@ftc.gov)
Janet J. Kim (jkim3@ftc.gov)
Christopher Lamar (clamar@ftc.gov)
Ashley Masters (amasters@ftc.gov)
Lauren Sillman (lsillman@ftc.gov)
Nicolas Stebinger (nstebinger@ftc.gov)
Taylor Weaver (tweaver1@ftc.gov)
Abigail Wood (awood@ftc.gov)
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
Telephone: (202) 326-2381

Complaint Counsel

John C. Dodds (john.dodds@morganlewis.com)
Zachary M. Johns (zachary.johns@morganlewis.com)
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000

J. Clayton Everett, Jr. (clay.everett@morganlewis.com)
Ryan Kantor (ryan.kantor@morganlewis.com)
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 739-3000

Harry T. Robins (harry.robins@morganlewis.com)
Susan Zhu (susan.zhu@morganlewis.com)
101 Park Avenue
New York, NY 10178
Telephone: (212) 309-6000

Kenneth Kliebard (kenneth.kliebarb@morganlewis.com)
110 North Wacker Drive, Suite 2800
Chicago, IL 60606
Telephone: (312) 324-1774

Counsel for Intercontinental Exchange, Inc.

By: s/ Jonathan M. Moses

Jonathan M. Moses
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Phone Number: (212) 403-1000
Fax Number: (212) 403-2000
JMMoses@wlrk.com

Counsel for Black Knight, Inc.