

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

In the Matter of

**FLEETCOR TECHNOLOGIES, INC., a
corporation, and**

**RONALD CLARKE, individually and as
an officer of FLEETCOR
TECHNOLOGIES, INC.**

Docket No. D-9403

**COMPLAINT COUNSEL’S UNOPPOSED MOTION TO STAY ADMINISTRATIVE
PROCEEDINGS**

Pursuant to the Federal Trade Commission’s Rules of Practice 16 C.F.R. § 3.22, Complaint Counsel respectfully requests that the Commission¹ enter an order staying this Part 3 proceeding pending resolution of the FTC’s motion to stay or dismiss without prejudice the Section 13(b) action the Commission is litigating against FleetCor Technologies, Inc. and its CEO Ronald Clarke (collectively, “Respondents”) in federal court, *FTC v. FleetCor Technologies, Inc.*, No. 19-cv-5727 (N.D. Ga.). Respondents have told Complaint Counsel that they do not oppose this motion. Complaint Counsel further respectfully requests expedited consideration of this motion, to ensure that no party is unduly burdened by the existence of parallel proceedings.

* * *

In December 2019, the Commission authorized FTC Staff to file a complaint under Section 13(b) of the FTC Act against Respondents for violations of Section 5 of the FTC Act.

¹ Because this motion seeks relief—a stay, including of the date of the evidentiary hearing—that the Administrative Law Judge lacks the authority to grant, Complaint Counsel respectfully requests that the Administrative Law Judge certify this motion to the Commission “forthwith,” per Rule 3.22(a).

Relying on the then-prevailing law in the Eleventh Circuit—and nearly everywhere else—the FTC sought substantial equitable monetary relief from Respondents in that federal court action, which is still pending.² But on April 22, 2021, the Supreme Court held in *AMG Capital Management v. FTC*, 141 S. Ct. 1341, that the Commission may not obtain monetary relief in cases filed in federal court under Section 13(b) of the FTC Act. The Commission then approved the filing of this administrative proceeding which, if successful, will allow for the possibility of a monetary recovery under the procedures outlined in Section 19(a)(2) of the FTC Act. Complaint Counsel believes that this administrative proceeding can proceed expeditiously: discovery is already complete, the parties have focused their competing theories in recently completed summary judgment briefing, and Complaint Counsel intends to move for summary decision as soon as the Rules permit.

There is still, however, the matter of the pending federal court action. To avoid duplicative proceedings, Complaint Counsel has filed in the pending federal court action (concurrently with this motion) a motion to stay or dismiss without prejudice those proceedings. Respondents have informed Complaint Counsel that they will oppose that motion. Briefing on the motion likely will not close until September.

* * *

The Commission can stay Part 3 proceedings for good cause, as recognized in numerous provisions of its Part 3 Rules. *E.g.*, 16 C.F.R. §§ 3.21(c), 3.41(f).

Here, there is good cause for a brief stay to await the district court’s resolution of the FTC’s motion to stay or dismiss without prejudice the federal court proceedings. Absent a stay,

² See *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 469 (11th Cir. 1996); *FTC v. Simple Health Plans, LLC*, 801 F. App’x 685, 687-88 (11th Cir. 2020). At the time the FTC filed the federal court complaint, the Seventh Circuit was the only circuit holding that Section 13(b) does not permit monetary relief, having recently overturned its longstanding precedent to the contrary. See *FTC v. Credit Bureau Ctr., LLC*, 937 F.3d 764 (7th Cir. 2019).

the parties will be required to expend resources on this Part 3 proceeding, while also litigating the same case in federal court. Complaint Counsel has no desire to subject the parties to litigating in two fora; once the status of the federal court action has been resolved, there will be no need to do so.

* * *

For the foregoing reasons, Complaint Counsel respectfully requests that the Commission stay all proceedings in this Part 3 action pending resolution of the FTC's motion in the federal court action to stay or dismiss without prejudice.

August 13, 2021

Respectfully submitted,

/s/ Brittany K. Frassetto
Brittany K. Frassetto
Christopher B. Leach
Gregory J. Madden
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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2021, I filed the foregoing document electronically using the FTC's E-filing system, which will send notification of such filing to:

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

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

I further certify that on August 13, 2021, I caused the foregoing document to be served via electronic mail to:

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*Counsel for Respondent
FleetCor Technologies, Inc.*

*Counsel for Respondent
Ronald Clarke*

August 12, 2021

By: /s/ Brittany K. Frassetto
Brittany K. Frassetto
Federal Trade Commission

Counsel Supporting the Complaint

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SEPARATE MEET & CONFER STATEMENT

Complaint Counsel, Brittany Frassetto, Christopher Leach, and Gregory Madden, conferred telephonically with Respondents' Counsel, Mark Hopson, Benjamin Mundel, Daniel Hay, John Villafranco, and Levi Downing, on August 12, 2021. Respondents' counsel indicated that Respondents do not oppose the motion.

August 13, 2021

Respectfully submitted,

/s/ Brittany K. Frassetto

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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

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**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S MOTION TO STAY
ADMINISTRATIVE PROCEEDINGS**

Upon consideration of Complaint Counsel’s Motion:

IT IS HEREBY ORDERED that Complaint Counsel’s Motion is GRANTED.

IT IS FURTHER ORDERED that all filing deadlines, hearings, and the date of the evidentiary hearing, are STAYED.

IT IS FURTHER ORDERED that Complaint Counsel shall inform the Commission of the resolution of the motion to stay or dismiss filed in the federal court action, *FTC v. FleetCor Technologies, Inc.*, No. 19 Civ. 5727 (N.D. Ga.), promptly upon issuance.

BY THE COMMISSION

April Tabor, Secretary

Date:

Seal: