

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTUIT INC.

and

CREDIT KARMA, INC.,

Defendants.

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

A. “Acquirer” or “Acquirers” means the entity or entities to whom defendants divest the Divestiture Assets.

B. “Intuit” means Defendant Intuit Inc., a Delaware corporation with its headquarters in Mountain View, California, its successors and assigns, and its subsidiaries, divisions, groups,

affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Credit Karma” means defendant Credit Karma, Inc. a Delaware corporation with its headquarters in San Francisco, California, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees

D. “CKT” means Credit Karma Tax, Inc., a wholly owned subsidiary of Credit Karma, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Divestiture Assets” means all of Defendants’ rights, titles, and interests in and to all property and assets, tangible and intangible, wherever located, related to or used or held for use in connection with CKT, including, but not limited to:

1. the CKT Products;
2. the CKT IP;
3. the Credit Karma IP License;
4. the Credit Karma Trademarks License;
5. all tangible personal property, including, but not limited to, servers and other computer hardware; research and development activities; all fixed assets, personal property, inventory, office furniture, materials, and supplies;
6. all contracts, contractual rights, and customer relationships; and all other agreements, commitments, and understandings;

7. all licenses, permits, certifications, approvals, consents, registrations, waivers, and authorizations issued or granted by any governmental organization, and all pending applications or renewals;

8. all records and data, including (a) customer lists, accounts, sales, and credit records, (b) manuals and technical information Credit Karma provides to its own employees, customers, suppliers, agents, or licensees, (c) records and research data concerning historic and current research and development activities, and (d) drawings, blueprints, and designs; and

9. all other intangible property, including (a) commercial names and d/b/a names, (b) technical information, (c) computer software and related documentation, know-how, trade secrets, design protocols, quality assurance and control procedures, (d) design tools and simulation capabilities, and (e) rights in internet web sites and internet domain names.

F. “Divestiture Date” means the date on which the Divestiture Assets are divested to Acquirer.

G. “CKT IP” means all intellectual property owned by CKT.

H. “CKT Products” means all products and services, including all digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services developed, manufactured, delivered, made commercially available, marketed, distributed, supported, sold, offered for sale, imported or exported for resale, or licensed out by, for, or on behalf of CKT.

I. “Credit Karma IP” means all intellectual property, except for the Credit Karma Trademarks, owned by Credit Karma that is used or held for use in connection with Credit

Karma Products and which is embodied in or related to the development, provision, operation, or support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

J. “Credit Karma IP License” means a non-exclusive, worldwide, fully paid-up, perpetual, irrevocable, non-transferable license to the Credit Karma IP for Acquirer’s use in the development, provision, operation, and support of all existing and future digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

K. “Credit Karma Products” means all products and services, excluding CKT Products, provided by Defendants using the “Credit Karma” brand name.

L. “Credit Karma Trademarks” means all trademarks, service marks, internet domain names, trade dress, trade names, other names, or source identifiers, including all such registrations, applications for registrations, and associated goodwill, owned by Credit Karma that is used or held for use in connection with Credit Karma Products and which is embodied in or related to the development, provision, operation, or support of digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services.

M. “Credit Karma Trademarks License” means a limited, non-exclusive, non-transferrable, non-assignable, non-sublicensable license to the Credit Karma Trademarks for Acquirer’s use in the development, provision, operation, and support of all existing and future

digital do-it-yourself personal United States federal or state income tax return preparation and e-filing products and services during the Year 1 Period.

N. “Year 1 Period” means the period beginning on the Divestiture Date and ending on October 16, 2021.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the development, provision, operation, and support of digital do-it-yourself (DDIY) personal United States federal or state income tax return preparation and e-filing products and services in order to remedy the effects that the United States alleges would otherwise result from Intuit’s acquisition of Credit Karma. This Stipulation and Order ensures, prior to divestiture, that the Defendants will preserve and maintain the Divestiture Assets, that the Divestiture Assets will remain an independent, economically viable, and ongoing business concern that will remain uninfluenced by Defendants, and that the level of competition for the development, provision, operation, and support of DDIY personal United States federal or state income tax return preparation and e-filing products and services that existed between Defendants prior to the Transaction is maintained during the pendency of the ordered divestiture of the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue for this action is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

IV. CONSUMMATION OF THE TRANSACTION

Defendants will not consummate the Transaction before the Court has signed this Stipulation and Order.

V. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a Final Judgment in the form attached as Exhibit A may be filed with and entered by the Court, upon the motion of the United States or upon the Court's own motion, after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) ("APPA"), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent. The United States may withdraw its consent at any time before the entry of the proposed Final Judgment by serving notice on Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper or newspapers within which the publication must be made. Defendants must promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper or newspapers within which the notice was published.

C. From the date of the signing of this Stipulation and Order by Defendants and the United States until the proposed Final Judgment is entered by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment,

Defendants will comply with all the terms and provisions of the proposed Final Judgment. From the date on which the Court enters the Stipulation and Order, the United States will have the full rights and enforcement powers set forth in the proposed Final Judgment just as if the proposed Final Judgment were in full force and effect as the final order of the Court.

D. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.

E. Defendants represent that the divestiture ordered by the proposed Final Judgment can and will be made, and that Defendants will not later raise a claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of its provisions.

VI. ASSET PRESERVATION AND HOLD SEPARATE PROVISIONS

From the date of the signing of this Stipulation and Order by the United States and Defendants until the divestiture required by the proposed Final Judgment has been accomplished:

A. Defendants must preserve, maintain, and continue to operate the Divestiture Assets as an independent, ongoing, economically viable, and competitive business, with management, sales and operations of such assets held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants must not coordinate their production, marketing, or terms of sale of any products with those produced by or sold by the Divestiture Assets.

B. Defendants must take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, ongoing, economically viable, and active competitor in the development, provision, operation, and support of DDIY personal United

States federal or state income tax return preparation and e-filing products and services; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution, or sales of products by the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants must maintain at 2020 or previously approved levels for 2021, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants must provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an economically viable and competitive, ongoing business, consistent with the requirements of Paragraphs VI.A. and VI.B.

E. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition with the same level of quality, functionality, access, and customer support, and must maintain and adhere to normal software update and maintenance schedules for the Divestiture Assets.

F. Defendants must maintain all licenses, permits, approvals, authorizations, and certifications related to or necessary for the operation of the Divestiture Assets and must operate the Divestiture Assets in compliance with all regulatory obligations and requirements.

G. Defendants must not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

H. Defendants must maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income for the Divestiture Assets.

I. Defendants must maintain the working conditions, staffing levels, and work force training and expertise of all Relevant Personnel. Relevant Personnel must not be transferred or reassigned. Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by the United States and Defendants; however, financial incentives may not be structured so as to disincentivize individuals from accepting employment with an Acquirer.

J. Defendants must appoint, subject to the approval of the United States in its sole discretion, a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this Section VI. This person will have complete managerial responsibility for the Divestiture Assets for the duration of this Stipulation and Order, subject to the provisions of the proposed Final Judgment. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets, including by any trustee appointed to complete the divestiture pursuant to the proposed Final Judgment.

L. Within twenty (20) days after the entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

**VII. DURATION OF ASSET PRESERVATION AND
HOLD SEPARATE OBLIGATIONS**

Defendants' obligations under Section VI of this Stipulation and Order will remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court. In the event that (1) the United States has withdrawn its consent, as provided in Paragraph V.A.; (2) the United States voluntarily dismisses the Complaint in this matter; or (3) the Court declines to enter the proposed Final Judgment, the time has expired for all appeals of any ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, Defendants are released from all further obligations under this Stipulation and Order and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

Dated: November 25, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT
INTUIT INC.

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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, _____.

United States District Judge