

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
 Rebecca Kelly Slaughter
 Alvaro M. Bedoya

In the Matter of

**FleetCor Technologies, Inc.,
a corporation, and**

**Ronald Clarke,
Individually and as an officer of
FleetCor Technologies, Inc.**

DOCKET NO. 9403

ORDER REGARDING MOTION TO PARTIALLY LIFT STAY

On August 25, 2021, the Commission stayed all proceedings in this matter until further order in light of the parties’ pending litigation in federal court in *FTC v. FleetCor Technologies, Inc.*, No. 1:19-cv-5727-AT (N.D. Ga.). Like the administrative complaint, the complaint in the federal court action alleged that FleetCor Technologies, Inc. and its CEO, Ronald Clarke, (“Respondents”) made deceptive claims regarding consumer savings, fraud controls, and fees in connection with FleetCor’s fuel cards and that Respondents engaged in deceptive and unfair fee and billing practices in violation of the Federal Trade Commission Act.

On August 9, 2022, the U.S. District Court for the Northern District of Georgia granted summary judgment in favor of the FTC on all counts. *FTC v. FleetCor Techs., Inc.*, 620 F. Supp. 3d 1268, 1347 (N.D. Ga. 2022). In June 2023, the court entered a permanent injunction against Respondents and closed the case. *See* Order for Permanent Injunction and Other Relief, *FleetCor Techs.*, No. 19-cv-5727 (N.D. Ga. June 8, 2023); Order, *FleetCor Techs.*, No. 19-cv-5727 (N.D. Ga. June 9, 2023).

Complaint Counsel have now moved the Commission to partially lift the stay of the administrative proceeding to permit them to file a motion for summary decision under the doctrine of issue preclusion based on the determinations made by the district court. *See* Complaint Counsel’s Motion to Partially Lift the Stay of Administrative Proceedings to Permit Dispositive Motion at 1-2, 5-7 (June 23, 2022) (“Motion”). Complaint Counsel assert that the district court’s decision is ripe for preclusive use even if an appeal is pending. Motion at 7-8. Respondents oppose the Motion. *See* Response in Opposition to Motion to Lift Stay of

Administrative Proceedings (July 5, 2023) (“Opposition”). They argue that, given their intent to appeal the district court’s decision, the Commission should maintain the stay. Respondents assert that lifting the stay would prejudice them and lead to unnecessary judicial and procedural chaos, and they urge the Commission to avoid entering an order on the basis of a judgment that may be subsequently overturned. Opposition at 6-7. Following the parties’ submissions, on August 3, 2023, Respondents noticed their appeal to the United States Court of Appeals for the Eleventh Circuit. *See* Civil Docketing Notice, *FTC v. FleetCor Techs., Inc.*, 23-12539-H (11th Cir. Aug. 4, 2023).

The pendency of a related collateral federal court action does not stay the administrative proceeding absent good cause. 16 C.F.R. § 3.41(f)(1). Although we previously found good cause to stay this proceeding in light of the federal litigation, the district court in the federal action has now issued a judgment and closed the case. Nevertheless, in this unique circumstance, in which Complaint Counsel seek a Commission decision based entirely on the preclusive effect of a district court decision that has been appealed and Respondents are already subject to a permanent injunction addressing the challenged conduct, we find good cause to maintain the stay while the district court’s decision is reviewed on appeal. We note, however, that the Commission stands ready to expeditiously consider any motion to restart the administrative process as soon as the court of appeals issues its decision. Accordingly,

IT IS HEREBY ORDERED THAT Complaint Counsel’s Motion to Partially Lift the Stay of Administrative Proceedings to Permit Dispositive Motion is **DENIED**.

By the Commission.

April J. Tabor
Secretary



SEAL:
ISSUED: 8/17/2023