

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



ORIGINAL

Docket No. 9374

---

In the Matter of

Louisiana Real Estate Appraisers Board,  
Respondent

---

**COMPLAINT COUNSEL’S EXPEDITED MOTION FOR AN ORDER THAT  
RESPONDENT HAS WAIVED PRIVILEGE**

Pursuant to Rules 3.22 and 3.31(g), of the Commission Rules of Practice, 16 C.F.R. § 3.22 and 16 C.F.R. § 3.31(g), Complaint Counsel respectfully move the Court for an order that Respondent has waived any claims of privilege as to 425 documents that Respondent is seeking to claw back as inadvertently produced privileged materials (“disputed documents”) and that Complaint Counsel need not return, continue to sequester, or destroy the documents pursuant to Rule 3.31(g).

As set forth in the attached memorandum, Respondent has waived any claims of privilege for these documents. The production of these documents was not inadvertent. Further, Respondent did not take reasonable steps to prevent disclosure of the documents. Finally, Respondent did not promptly rectify its purported error in producing the documents, despite multiple opportunities to do so. *See* Rule 3.31(g) of the Commission Rules of Practice. 16 C.F.R. 3.31(g).<sup>1</sup>

---

<sup>1</sup> As set forth in the attached memorandum, Complaint Counsel has not yet received a privilege log covering these 425 documents. Therefore, should the Court determine that there has not been a blanket waiver of privilege by Respondent for all 425 documents, Complaint Counsel request that the Court direct Respondent to produce within three days of the date of this Court’s order a privilege log setting forth the basis for its claims of privilege for each of the documents. *See* Memorandum at 2 n.4.

A proposed order is attached.

Dated: February 28, 2018

Respectfully submitted,

/s/ Lisa B. Kopchik

Lisa B. Kopchik

Kathleen M. Clair

Christine M. Kennedy

Michael J. Turner

*Counsel Supporting the Complaint*

Federal Trade Commission

Bureau of Competition

600 Pennsylvania Ave., N.W.

Washington, DC 20580

Telephone: (202) 326-3139

Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

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

In the Matter of

Louisiana Real Estate Appraisers Board,  
Respondent

Docket No. 9374

**[PROPOSED] ORDER**

Upon Complaint Counsel's Motion for an Order that Respondent Has Waived Privilege, and having considered the papers in support and in opposition thereto, it is hereby

ORDERED, that Respondent's conduct constituted a waiver of any claim of privilege for the documents produced by Respondent in response to the Civil Investigative Demand in the precomplaint investigation in the above-captioned matter, and it is further

ORDERED, that Complaint Counsel need not return, continue to sequester, or destroy any such documents.

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_, 2018

**STATEMENT OF CONFERENCE**  
**PURSUANT TO PARAGRAPH 4 OF SCHEDULING ORDER**

In a telephone conversation at 5:00 p.m. EST on February 26, 2018, Complaint Counsel (Lisa Kopchik, Kathleen Clair, Michael Turner, and Christine Kennedy) and Respondent's counsel (Steve Cannon, Seth Greenstein, James Kovacks, and Allison Sheedy) met and conferred in an effort in good faith to resolve by agreement the issues raised by the attached motion and were unable to reach an agreement.

Dated: February 28, 2018

/s/ Kathleen M. Clair  
Kathleen M. Clair

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

In the Matter of

Louisiana Real Estate Appraisers Board,  
Respondent

DOCKET NO. 9374

**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S EXPEDITED  
MOTION FOR AN ORDER THAT RESPONDENT HAS WAIVED PRIVILEGE**

Complaint Counsel request that the Court issue an order instructing that Respondent Louisiana Real Estate Appraisers Board has waived attorney-client privilege with regard to 425 documents that were knowingly and deliberately produced to Commission staff in May 2016.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>1</sup> Ex. A (Declaration of Lisa Kopchik, Esq., (Feb. 27, 2018) ¶¶ 5-6).

<sup>2</sup> *Id.*

basis of a more circumscribed evidentiary record, Respondent seeks to claw back 425 documents from its initial production.

This request comes far too late. [REDACTED]

[REDACTED]. Ten months ago, staff gave Respondent's counsel of record copies of these documents; at that time, staff expressly explained to Respondent's counsel its position that, by producing these documents, Respondent had waived any privilege protections. Nevertheless, near the close of fact discovery and on the eve of several depositions of Respondent's personnel,<sup>3</sup> Respondent has suddenly decided to assert a now-waived claim of privilege.

Respondent's production of these documents was deliberate and not inadvertent; Respondent did not take any steps to prevent the disclosure of these documents to Complaint Counsel; and Respondent certainly did not take timely and reasonable steps to rectify its purported error. *See* Rule 3.31(g). Therefore, Complaint Counsel respectfully move the Court for an order rejecting Respondent's belated attempt to claw back these documents.<sup>4</sup> Complaint Counsel also respectfully request expedited consideration of this motion.

---

<sup>3</sup> Depositions of Respondent's members and employees are being held each day this week (February 26, 2018 through March 2, 2018) and have been scheduled since January 30, 2018 (*see* Ex. C), suggesting that the timing of Respondent's clawback notice—after 4:00 p.m. on the Friday before these depositions were set to take place (*see* Ex. B)—was at best reckless.

<sup>4</sup> Complaint Counsel reserves the right to challenge the privilege claim for any of these individual documents at a later date. Upon receiving Respondent's notice, Complaint Counsel sequestered the 425 documents from our document review system. Respondent's list identified by Bates number the documents as to which it asserted a privilege and stated "attorney-client" as the type of privilege asserted. *See* Ex. B (Email from James Kovacs to Lisa Kopchik *et al.* (Feb. 23, 2018 at 4:18 p.m. EST) and attachment).

Respondent did not provide "a schedule which describes the nature of the documents, communications, or tangible things . . . in a manner that . . . will enable other parties to assess the claim." *See* Rule 3.38A(a)(1). As such, Complaint Counsel is unable to assess or challenge the privilege claim for any individual document. Therefore, if the Court determines that there has not been a blanket waiver of privilege for all 425 documents, Complaint Counsel respectfully request that the Court, pursuant to Rule 3.38A, direct Respondent to produce, within three days of the date of this Court's order, a privilege log sufficient to allow both the Court and Complaint Counsel to evaluate—and, if necessary, to permit Complaint Counsel to challenge—the claim of privilege for each of the 425 documents individual documents. *See Union Oil Co.*, 2003 FTC LEXIS 94 at \*12-13 (2003) (order requiring a privilege log pursuant to Rule 3.38A within five business days of order.)

**ARGUMENT**

On February 23, 2018, Respondent served Complaint Counsel a list of 425 documents that it sought to claw back as inadvertently produced privileged materials.<sup>5</sup> Inadvertent disclosure is governed by Rule 3.31(g) of the Commission Rules of Practice, which provides that “[t]he disclosure of privileged or protected information or communications during a Part 3 proceeding or during a Commission pre-complaint investigation shall not operate as a waiver if: (A) The disclosure is inadvertent; (B) The holder of the privilege or protection took reasonable steps to prevent disclosure; and (C) The holder promptly took reasonable steps to rectify the error, including notifying any party that received the information or communication of the claim and the basis for it.” 16 C.F.R. 3.31(g)(1).<sup>6</sup> The party seeking protection from waiver bears the burden of proving that each of these elements has been met. *See Maxtena, Inc. v. Marks*, 289 F.R.D. 427, 444 (D. Md. 2012); *Amobi v. D.C. Dep’t of Corr.*, 262 F.R.D. 45, 53 (D.D.C. 2009).

The disclosure of the 425 documents identified in Respondent’s February 23, 2018 email (the “disputed documents”) was not inadvertent. Taking “reasonable steps to prevent disclosure” would, at minimum, have required Respondent to take some steps to cull privileged documents from its document production, yet Respondent took no such steps. Moreover, Respondent has not acted “promptly” to rectify its purported error. As such, any claim of privilege as to these documents has long since been waived.

---

<sup>5</sup> Ex. B.

<sup>6</sup> Rule 3.31(g) tracks closely the language of Federal Rule of Evidence 502(b) (providing that inadvertent disclosure “does not operate as a waiver in a federal or state proceeding if: (1) the disclosure is inadvertent; (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).”). Federal rules and case law interpreting them may be useful where federal rules are similar to Commission rules. *In re LabMD, Inc.*, 2014 FTC LEXIS 45, at \*6 n.4 (F.T.C. Mar. 10, 2014) (“Commission Rule 3.33(c)(1) mirrors Rule 30(b)(6) of the Federal Rules of Civil Procedure. Where the Federal Rules of Civil Procedure are similar to the Commission’s Rules of Practice, those rules and case law interpreting them may be useful, though not controlling, in adjudicating disputes.”); *see also, e.g.*, FTC Operating Manual §0.6.

**A. The Disclosure Was Not Inadvertent and Respondent Did Not Take Reasonable Steps to Prevent Disclosure**

Inadvertent disclosure, in “comport[ing] with the dictionary definition of the word,” means simply “an unintended disclosure.” *Amobi*, 262 F.R.D. at 53. The question involves the “simple analysis of considering if the party intended to disclose the document.” *Id.*; *see also Coburn Grp., LLC v. Whitecap Advisors LLC*, 640 F. Supp. 2d 1032, 1038 (N.D. Ill. 2009) (same; noting also that “the parallel structure of subparts [of Federal Rule of Evidence 502] contrasts a waiver that is *intentional* with a disclosure that is *inadvertent*”). Applying this simple analysis, it is clear that Respondent intended to produce these 425 documents, as evidenced by the fact that Board Executive Director Bruce Unangst explained to Complaint Counsel, with reference to the Board’s document productions, that “[w]e want to be as transparent as possible” and that Respondent Board wanted FTC staff to see “everything.”<sup>7</sup>

Respondent also did not take reasonable steps to prevent disclosure of privileged materials. In fact, when Respondent produced the disputed documents, it elected not to withhold *any* materials on the basis of privilege, and therefore did not produce any privilege log.<sup>8</sup> Failure to produce a privilege log, mark documents as privileged, or implement any “procedure, protocol or method . . . to prevent disclosure of privileged material” constitutes a failure to “take reasonable steps” under the second prong of the inadvertent disclosure framework. *Barnett v. Hospital*, No. 5:11 CV 399, 2012 WL 12886505, at \*3-4 (N.D. Ohio Apr. 17, 2012).

What is clear, and relevant to both of these tests, is that this is not a case in which a party endeavored to withhold privileged materials but made some mistakes in doing so. This is not a

---

<sup>7</sup> Ex. A (Kopchik Decl.) ¶ 6. It is well established that a client holds—and can waive—the attorney client privilege. *E.g.*, 3-503 Weinstein’s Federal Evidence § 503.20 (2018) (“The client is the holder of the privilege . . .”); 3-511 Weinstein’s Federal Evidence § 511.04 (2018) (“The holder of a privilege can waive the privilege by voluntarily disclosing the privileged information.”).

<sup>8</sup> Ex. A (Kopchik Decl.) ¶ 5.



case in which some privileged materials slipped through the cracks. Here, Respondent did not attempt to withhold any potentially privileged materials but rather intended to—and apparently did—produce “everything.”

**B. Respondent Did Not Act “Promptly”**

Even if Respondent’s production of the disputed documents were inadvertent, Respondent has still waived the privilege because of the passage of time. Respondent did not “promptly t[ake] reasonable steps to rectify the error”—for well over a year—despite opportunity after opportunity to assert any privilege claims Respondent may have had for these documents. [REDACTED] Respondent has received repeated notices that the documents it now claims are privileged had been produced. And Respondent received notice that Complaint Counsel considered production of these documents to have waived any privilege at least *nine months* before Respondent took action to claw back the documents. Specifically:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

---

<sup>9</sup> *Id.* ¶ 7.  
<sup>10</sup> *Id.* ¶ 14.  
<sup>11</sup> *Id.* ¶ 10.

- In or around May 2017, after Constantine Cannon received these materials and before the complaint issued, Complaint Counsel and Respondent’s counsel spoke by telephone about the issue of waiver in Respondent’s previous document productions. During this telephone call, Respondent’s counsel asked Complaint Counsel’s position on whether Respondent had waived privilege, and Complaint Counsel responded that it took the position that Respondent had waived privilege for its prior document productions.<sup>12</sup>
- Finally, in November 2017, Complaint Counsel again cited the disputed document with the beginning Bates number FTC-LAB-00003805 as Exhibit 20(c) in support of its motion for partial summary decision.<sup>13</sup>

Each of these events put Respondent on notice of the need to assert privilege claims, if any, in connection with its document production. *See, e.g., Sikorsky Aircraft Corp. v. United States*, 106 Fed. Cl. 571, 585-86 (Fed. Cl. 2012) (use of disputed documents in deposition by opposing counsel put privilege holder on notice); *Preferred Care Partners Holding Corp. v. Humana, Inc.* 258 F.R.D. 684, 700 (S.D. Fla. 2009) (citation to a disputed document by opposing counsel in a motion put privilege holder on notice); *Clarke v. J.P. Morgan Chase & Co.*, No. 08 Civ. 02400, 2009 WL 970940, at \*6 (S.D.N.Y. Apr. 10, 2009) (that opposing counsel re-produced disputed document back to the privilege holder constituted notice). Importantly, a party need not be aware of the full extent of its inadvertent production to be on notice of the need to investigate further. *E.g., Humana*, 258 F.R.D. at 700 (“In light of the fact that Humana was aware that it inadvertently produced a number of documents which it believed to contain privileged information, Humana had an obligation to carefully review the motion for sanctions to ensure that no additional privileged documents were divulged.”).

---

<sup>12</sup> *Id.* ¶ 11.

<sup>13</sup> *Id.* ¶ 15.

Despite these many opportunities to rectify any possible error in producing the disputed documents, Respondent waited until February 23, 2018—three weeks before the close of fact discovery, and on the eve of several depositions of Respondent’s agents and employees—to assert any claim of privilege as to the disputed documents. This is not “prompt” action under Rule 3.31(g)(C). “[O]nce a party realizes a document has been accidentally produced, it must assert privilege with *virtual immediacy*.” *Sikorsky*, 106 Fed. Cl. at 585 (emphasis added); *Clarke*, 2009 WL 970940 at \*6 (“‘Inadvertent disclosure has been held to be remedied when the privilege was asserted *immediately* upon discovery of the disclosure and a prompt request is made for the return of the privileged documents.’ In this case, Defendant’s assertion of privilege was far from immediate.”) (quoting *United States v. Rigas*, 281 F. Supp. 2d 733, 741 (S.D.N.Y. 2003)); *Ceglia v. Zuckerberg*, No. 10-cv-00569, 2012 WL 1392965 at \*9 (W.D.N.Y. Apr. 19, 2012) (“Generally, a request for the return or destruction of inadvertently produced privileged materials *within days* after learning of the disclosure is required” to show a party took reasonable steps to rectify an inadvertent disclosure) (emphasis added).

Delays far shorter than Respondent’s delay here are routinely held to be too long to avoid waiver. *See, e.g., Sikorsky*, 106 Fed. Cl. at 585 (holding that a delay of *ten months* waived privilege); *Clarke*, 2009 WL 970940 at \*6 (holding that *two months* was an “inexplicably long time” to wait before seeking a document’s destruction or return and therefore privilege was waived); *Preferred Care*, 258 F.R.D. at 700 (holding that delay of *three weeks* after an inadvertently disclosed document was used in a motion by opposing counsel was too long a delay to avoid waiver); *LaSalle Bank Nat’l Ass’n v. Merrill Lynch Mort. Lending, Inc.*, No. 04 Civ. 5452, 2007 WL 2324292 at \*3, 5 (S.D.N.Y. Aug. 13, 2007) (holding that waiting *one month* after learning of disclosure was not sufficiently prompt to avoid waiver); *Ceglia*, No. 10-

cv-00569, 2012 WL 1392965 at \*9 (holding privilege waived where party waited *two months* to request return or destruction of materials).

**C. Expedited Treatment is Appropriate**

Absent a Court order, Complaint Counsel cannot use the disputed documents to prepare for depositions, or as deposition exhibits. Complaint Counsel respectfully request that the Court order Respondent to respond to this motion by March 5, 2018. The parties are in the middle of discovery and the deposition of Respondent's executive director Bruce Unangst is scheduled for March 13, 2018. Thus, an expedited resolution of this motion is requested in order to complete depositions before the end of fact discovery.

**CONCLUSION**

For the foregoing reasons, Complaint Counsel respectfully move the Court for an order that Respondent has waived privilege as to the 425 disputed documents.

Dated: February 28, 2018

Respectfully submitted,

/s/ Lisa B. Kopchik

Lisa B. Kopchik

Kathleen M. Clair

Christine M. Kennedy

Michael J. Turner

*Counsel Supporting the Complaint*

Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: (202) 326-3139  
Email: [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

*PUBLIC*

# EXHIBIT A

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

**In the Matter of**

Louisiana Real Estate Appraisers Board,  
Respondent

**DOCKET NO. 9374**

**DECLARATION IN SUPPORT OF COMPLAINT COUNSEL'S  
MOTION FOR AN ORDER THAT RESPONDENT HAS WAIVED PRIVILEGE**

1. I have personal knowledge of the facts set forth in this declaration.
2. My name is Lisa Kopchik, and I am an attorney admitted to practice law in the District of Columbia. I am employed by the Federal Trade Commission and am Complaint Counsel in this proceeding.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15. In November 2017, Complaint Counsel again cited one of these same documents (FTC-LAB-00003805) as Exhibit 20(c) in support of its motion for partial summary decision.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of February, at Baton Rouge, Louisiana.

/s/ Lisa B. Kopchik  
Lisa B. Kopchik  
Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Ave., N.W.  
Washington, DC 20580  
Telephone: (202) 326-3139  
Email: lkopchik@ftc.gov

*Counsel Supporting the Complaint*



*PUBLIC*

# EXHIBIT B

***PUBLIC***

**From:** Kovacs, James J.  
**To:** [Kopchik, Lisa B.](#); [Kennedy, Christine](#); [Turner, Michael](#); [Clair, Kathleen](#)  
**Cc:** [Cannon, Stephen](#); [Greenstein, Seth](#); [Levine, Richard](#); [Sheedy, Allison](#); [Fore, Wyatt](#)  
**Subject:** LREAB Clawback  
**Date:** Friday, February 23, 2018 4:18:07 PM  
**Attachments:** [LREAB Clawback List.xlsx](#)

---

Lisa,

Attached is an excel spreadsheet listing 425 privileged documents and communications that were inadvertently produced by the Louisiana Real Estate Appraisers Board to Complaint Counsel in response to the Federal Trade Commission's Civil Investigative Demands in the Part II Investigation. Respondent Louisiana Real Estate Appraisers Board requests that Complaint Counsel return all of the original documents and communications to Constantine Cannon and destroy all copies that Complaint Counsel may have in its possession. We respectfully request that the return and deletion of all 425 documents and communications be done by February 28, 2018. Thank you.

Best,  
Jimmy

**James J. Kovacs**  
CONSTANTINE | CANNON  
1001 Pennsylvania Ave NW, 1300N  
Washington, DC 20004  
Direct: 202/204-3518  
Main: 202/204-3500  
Email: [jkovacs@constantinecannon.com](mailto:jkovacs@constantinecannon.com)  
<http://constantinecannon.com>

**Respondent Louisiana Real Estate Appraisers Board Clawback List**

<u>Doc ID</u>	<u>A (Attachment)</u>	<u>Privilege</u>
FTC-LAB-00003790		Attorney-Client
FTC-LAB-00003805		Attorney-Client
FTC-LAB-00003883		Attorney-Client
FTC-LAB-00004053		Attorney-Client
FTC-LAB-00004144		Attorney-Client
FTC-LAB-00006861		Attorney-Client
FTC-LAB-00006862	<b>A</b>	Attorney-Client
FTC-LAB-00006866		Attorney-Client
FTC-LAB-00006867	<b>A</b>	Attorney-Client
FTC-LAB-00006977		Attorney-Client
FTC-LAB-00006980		Attorney-Client
FTC-LAB-0007311		Attorney-Client
FTC-LAB-0007313		Attorney-Client
FTC-LAB-00007315		Attorney-Client
FTC-LAB-00007346		Attorney-Client
FTC-LAB-00007351		Attorney-Client
FTC-LAB-00007355		Attorney-Client
FTC-LAB-00007358		Attorney-Client
FTC-LAB-00007361		Attorney-Client
FTC-LAB-00007368		Attorney-Client
FTC-LAB-00007371		Attorney-Client
FTC-LAB-00007373		Attorney-Client
FTC-LAB-00007402		Attorney-Client
FTC-LAB-00007406		Attorney-Client
FTC-LAB-00007433		Attorney-Client
FTC-LAB-00007494		Attorney-Client
FTC-LAB-00007496	<b>A</b>	Attorney-Client
FTC-LAB-00007498		Attorney-Client
FTC-LAB-00007746		Attorney-Client
FTC-LAB-00007748		Attorney-Client
FTC-LAB-00007751		Attorney-Client
FTC-LAB-00007758		Attorney-Client
FTC-LAB-00007764		Attorney-Client
FTC-LAB-00007771		Attorney-Client
FTC-LAB-00007777		Attorney-Client
FTC-LAB-00007783		Attorney-Client
FTC-LAB-00007788		Attorney-Client
FTC-LAB-00007804		Attorney-Client
FTC-LAB-00007841		Attorney-Client
FTC-LAB-00007916		Attorney-Client
FTC-LAB-00008467		Attorney-Client
FTC-LAB-00008528		Attorney-Client

***PUBLIC***

FTC-LAB-00008539		Attorney-Client
FTC-LAB-00008561		Attorney-Client
FTC-LAB-00009057		Attorney-Client
FTC-LAB-00009058	<b>A</b>	Attorney-Client
FTC-LAB-00009229		Attorney-Client
FTC-LAB-00009255		Attorney-Client
FTC-LAB-00009257		Attorney-Client
FTC-LAB-00009260		Attorney-Client
FTC-LAB-00009391		Attorney-Client
FTC-LAB-00009395		Attorney-Client
FTC-LAB-00009409		Attorney-Client
FTC-LAB-00009424		Attorney-Client
FTC-LAB-00009428		Attorney-Client
FTC-LAB-00009432		Attorney-Client
FTC-LAB-00009645		Attorney-Client
FTC-LAB-00009650		Attorney-Client
FTC-LAB-00009656		Attorney-Client
FTC-LAB-00009662		Attorney-Client
FTC-LAB-00009669		Attorney-Client
FTC-LAB-00009675		Attorney-Client
FTC-LAB-00009682		Attorney-Client
FTC-LAB-00009690		Attorney-Client
FTC-LAB-00009719		Attorney-Client
FTC-LAB-00009811		Attorney-Client
FTC-LAB-00009937		Attorney-Client
FTC-LAB-00009967		Attorney-Client
FTC-LAB-00009984		Attorney-Client
FTC-LAB-00009986		Attorney-Client
FTC-LAB-00009988		Attorney-Client
FTC-LAB-00009995		Attorney-Client
FTC-LAB-00009999		Attorney-Client
FTC-LAB-00010006	<b>A</b>	Attorney-Client
FTC-LAB-00010007		Attorney-Client
FTC-LAB-00010575		Attorney-Client
FTC-LAB-00010641		Attorney-Client
FTC-LAB-00010852		Attorney-Client
FTC-LAB-00010857		Attorney-Client
FTC-LAB-00010858	<b>A</b>	Attorney-Client
FTC-LAB-00010863		Attorney-Client
FTC-LAB-00010867		Attorney-Client
FTC-LAB-00010872		Attorney-Client
FTC-LAB-00010887		Attorney-Client
FTC-LAB-00010890	<b>A</b>	Attorney-Client
FTC-LAB-00010894		Attorney-Client
FTC-LAB-00011024		Attorney-Client
FTC-LAB-00011068		Attorney-Client
FTC-LAB-00011262		Attorney-Client

***PUBLIC***

FTC-LAB-00012474	<b>A</b>	Attorney-Client
FTC-LAB-00012484		Attorney-Client
FTC-LAB-00012669		Attorney-Client
FTC-LAB-00012770	<b>A</b>	Attorney-Client
FTC-LAB-00012832		Attorney-Client
FTC-LAB-00012968		Attorney-Client
FTC-LAB-00012970		Attorney-Client
FTC-LAB-00012972		Attorney-Client
FTC-LAB-00013166		Attorney-Client
FTC-LAB-00013169		Attorney-Client
FTC-LAB-00013173		Attorney-Client
FTC-LAB-00013175		Attorney-Client
FTC-LAB-00013178		Attorney-Client
FTC-LAB-00013181		Attorney-Client
FTC-LAB-00013194		Attorney-Client
FTC-LAB-00013203		Attorney-Client
FTC-LAB-00013205		Attorney-Client
FTC-LAB-00013209		Attorney-Client
FTC-LAB-00013230		Attorney-Client
FTC-LAB-00013786		Attorney-Client
FTC-LAB-00013837		Attorney-Client
FTC-LAB-00013844		Attorney-Client
FTC-LAB-00013851		Attorney-Client
FTC-LAB-00013856		Attorney-Client
FTC-LAB-00013862		Attorney-Client
FTC-LAB-00013866		Attorney-Client
FTC-LAB-00014027		Attorney-Client
FTC-LAB-00014046		Attorney-Client
FTC-LAB-00014173		Attorney-Client
FTC-LAB-00014228		Attorney-Client
FTC-LAB-00014232		Attorney-Client
FTC-LAB-00014236		Attorney-Client
FTC-LAB-00014237		Attorney-Client
FTC-LAB-00014317		Attorney-Client
FTC-LAB-00014354		Attorney-Client
FTC-LAB-00014567		Attorney-Client
FTC-LAB-00014570		Attorney-Client
FTC-LAB-00014605		Attorney-Client
FTC-LAB-00014606	<b>A</b>	Attorney-Client
FTC-LAB-00014615		Attorney-Client
FTC-LAB-00014636		Attorney-Client
FTC-LAB-00014638	<b>A</b>	Attorney-Client
FTC-LAB-00014643		Attorney-Client
FTC-LAB-00014645		Attorney-Client
FTC-LAB-00015010		Attorney-Client
FTC-LAB-00015013		Attorney-Client
FTC-LAB-00016693		Attorney-Client

***PUBLIC***

FTC-LAB-00016694	<b>A</b>	Attorney-Client
FTC-LAB-00016698	<b>A</b>	Attorney-Client
FTC-LAB-00016699	<b>A</b>	Attorney-Client
FTC-LAB-00016701		Attorney-Client
FTC-LAB-00016702	<b>A</b>	Attorney-Client
FTC-LAB-00016706	<b>A</b>	Attorney-Client
FTC-LAB-00016707	<b>A</b>	Attorney-Client
FTC-LAB-00016735		Attorney-Client
FTC-LAB-00016736	<b>A</b>	Attorney-Client
FTC-LAB-00016743		Attorney-Client
FTC-LAB-00016746		Attorney-Client
FTC-LAB-00016883		Attorney-Client
FTC-LAB-00016885		Attorney-Client
FTC-LAB-00016966		Attorney-Client
FTC-LAB-00016969		Attorney-Client
FTC-LAB-00017022		Attorney-Client
FTC-LAB-00017024		Attorney-Client
FTC-LAB-00017026		Attorney-Client
FTC-LAB-00017064		Attorney-Client
FTC-LAB-00017067		Attorney-Client
FTC-LAB-00017113		Attorney-Client
FTC-LAB-00017117		Attorney-Client
FTC-LAB-00017121		Attorney-Client
FTC-LAB-00017125		Attorney-Client
FTC-LAB-00017146		Attorney-Client
FTC-LAB-00017167		Attorney-Client
FTC-LAB-00017396		Attorney-Client
FTC-LAB-00017400		Attorney-Client
FTC-LAB-00017404		Attorney-Client
FTC-LAB-00017407		Attorney-Client
FTC-LAB-00017410		Attorney-Client
FTC-LAB-00017500		Attorney-Client
FTC-LAB-00017507		Attorney-Client
FTC-LAB-00017546		Attorney-Client
FTC-LAB-00017553		Attorney-Client
FTC-LAB-00017559		Attorney-Client
FTC-LAB-00017566		Attorney-Client
FTC-LAB-00017572		Attorney-Client
FTC-LAB-00017578		Attorney-Client
FTC-LAB-00018374		Attorney-Client
FTC-LAB-00018375		Attorney-Client
FTC-LAB-00018466		Attorney-Client
FTC-LAB-00018476		Attorney-Client
FTC-LAB-00018477	<b>A</b>	Attorney-Client
FTC-LAB-00018533		Attorney-Client
FTC-LAB-00018803		Attorney-Client
FTC-LAB-00018805		Attorney-Client

**PUBLIC**

FTC-LAB-00018807	<b>A</b>	Attorney-Client
FTC-LAB-00023592		Attorney-Client
FTC-LAB-00023593		Attorney-Client
FTC-LAB-00023594		Attorney-Client
FTC-LAB-00023833		Attorney-Client
FTC-LAB-00024188		Attorney-Client
FTC-LAB-00024207		Attorney-Client
FTC-LAB-00024210		Attorney-Client
FTC-LAB-00024213		Attorney-Client
FTC-LAB-00024243		Attorney-Client
FTC-LAB-00024247		Attorney-Client
FTC-LAB-00024264		Attorney-Client
FTC-LAB-00024267		Attorney-Client
FTC-LAB-00024465		Attorney-Client
FTC-LAB-00024467	<b>A</b>	Attorney-Client
FTC-LAB-00024469		Attorney-Client
FTC-LAB-00024680		Attorney-Client
FTC-LAB-00024681		Attorney-Client
FTC-LAB-00024687		Attorney-Client
FTC-LAB-00024790		Attorney-Client
FTC-LAB-00024914		Attorney-Client
FTC-LAB-00024915	<b>A</b>	Attorney-Client
FTC-LAB-00025118		Attorney-Client
FTC-LAB-00025211		Attorney-Client
FTC-LAB-00025213		Attorney-Client
FTC-LAB-00025767		Attorney-Client
FTC-LAB-00025858		Attorney-Client
FTC-LAB-00025862		Attorney-Client
FTC-LAB-00025864		Attorney-Client
FTC-LAB-00025882		Attorney-Client
FTC-LAB-00025911		Attorney-Client
FTC-LAB-00026095		Attorney-Client
FTC-LAB-00026104		Attorney-Client
FTC-LAB-00026292		Attorney-Client
FTC-LAB-00026293		Attorney-Client
FTC-LAB-00026323		Attorney-Client
FTC-LAB-00026362		Attorney-Client
FTC-LAB-00026370		Attorney-Client
FTC-LAB-00026372		Attorney-Client
FTC-LAB-00026374		Attorney-Client
FTC-LAB-00026377		Attorney-Client
FTC-LAB-00026379		Attorney-Client
FTC-LAB-00026400		Attorney-Client
FTC-LAB-00026712		Attorney-Client
FTC-LAB-00026772		Attorney-Client
FTC-LAB-00026773	<b>A</b>	Attorney-Client
FTC-LAB-00026788		Attorney-Client

***PUBLIC***

FTC-LAB-00026805		Attorney-Client
FTC-LAB-00026806	<b>A</b>	Attorney-Client
FTC-LAB-00026832		Attorney-Client
FTC-LAB-00026888		Attorney-Client
FTC-LAB-00026920		Attorney-Client
FTC-LAB-00026930	<b>A</b>	Attorney-Client
FTC-LAB-00026931		Attorney-Client
FTC-LAB-00027573		Attorney-Client
FTC-LAB-00027728	<b>A</b>	Attorney-Client
FTC-LAB-00027734		Attorney-Client
FTC-LAB-00027737	<b>A</b>	Attorney-Client
FTC-LAB-00027831	<b>A</b>	Attorney-Client
FTC-LAB-00027833	<b>A</b>	Attorney-Client
FTC-LAB-00027968		Attorney-Client
FTC-LAB-0028246		Attorney-Client
FTC-LAB-00030477		Attorney-Client
FTC-LAB-00030483		Attorney-Client
FTC-LAB-00030485		Attorney-Client
FTC-LAB-00030486	<b>A</b>	Attorney-Client
FTC-LAB-00030490	<b>A</b>	Attorney-Client
FTC-LAB-00030491	<b>A</b>	Attorney-Client
FTC-LAB-00030928		Attorney-Client
FTC-LAB-00030929	<b>A</b>	Attorney-Client
FTC-LAB-00031350		Attorney-Client
FTC-LAB-00031357		Attorney-Client
FTC-LAB-00031378		Attorney-Client
FTC-LAB-00032480		Attorney-Client
FTC-LAB-00032488		Attorney-Client
FTC-LAB-00033083		Attorney-Client
FTC-LAB-00033086		Attorney-Client
FTC-LAB-00033123		Attorney-Client
FTC-LAB-00033142		Attorney-Client
FTC-LAB-00033143	<b>A</b>	Attorney-Client
FTC-LAB-00033160		Attorney-Client
FTC-LAB-00033407		Attorney-Client
FTC-LAB-00033409	<b>A</b>	Attorney-Client
FTC-LAB-00033414		Attorney-Client
FTC-LAB-00034041		Attorney-Client
FTC-LAB-00034043		Attorney-Client
FTC-LAB-00037016		Attorney-Client
FTC-LAB-00037080		Attorney-Client
FTC-LAB-00037193		Attorney-Client
FTC-LAB-00037198		Attorney-Client
FTC-LAB-00037203		Attorney-Client
FTC-LAB-00037329		Attorney-Client
FTC-LAB-00037330	<b>A</b>	Attorney-Client
FTC-LAB-00037334	<b>A</b>	Attorney-Client



***PUBLIC***

FTC-LAB-00037335	<b>A</b>	Attorney-Client
FTC-LAB-00037337		Attorney-Client
FTC-LAB-00037338	<b>A</b>	Attorney-Client
FTC-LAB-00037342	<b>A</b>	Attorney-Client
FTC-LAB-00037343	<b>A</b>	Attorney-Client
FTC-LAB-00037836		Attorney-Client
FTC-LAB-00037837	<b>A</b>	Attorney-Client
FTC-LAB-00037991		Attorney-Client
FTC-LAB-00037993		Attorney-Client
FTC-LAB-00038017		Attorney-Client
FTC-LAB-00038019		Attorney-Client
FTC-LAB-00038247		Attorney-Client
FTC-LAB-00038254		Attorney-Client
FTC-LAB-00038261		Attorney-Client
FTC-LAB-00038267		Attorney-Client
FTC-LAB-00038273		Attorney-Client
FTC-LAB-00038278		Attorney-Client
FTC-LAB-00038287		Attorney-Client
FTC-LAB-00038304		Attorney-Client
FTC-LAB-00038311		Attorney-Client
FTC-LAB-00038318		Attorney-Client
FTC-LAB-00038324		Attorney-Client
FTC-LAB-00038330		Attorney-Client
FTC-LAB-00038335		Attorney-Client
FTC-LAB-00038431		Attorney-Client
FTC-LAB-00038452		Attorney-Client
FTC-LAB-00038473		Attorney-Client
FTC-LAB-00039708		Attorney-Client
FTC-LAB-00039710		Attorney-Client
FTC-LAB-00039712		Attorney-Client
FTC-LAB-00039714		Attorney-Client
FTC-LAB-00039716		Attorney-Client
FTC-LAB-00039855		Attorney-Client
FTC-LAB-00047006		Attorney-Client
FTC-LAB-00047307		Attorney-Client
FTC-LAB-00047798		Attorney-Client
FTC-LAB-00050609		Attorney-Client
FTC-LAB-00050614		Attorney-Client
FTC-LAB-00050615	<b>A</b>	Attorney-Client
FTC-LAB-00050849		Attorney-Client
FTC-LAB-00050876		Attorney-Client
FTC-LAB-00050877		Attorney-Client
FTC-LAB-00050878		Attorney-Client
FTC-LAB-00050939		Attorney-Client
FTC-LAB-00050942		Attorney-Client
FTC-LAB-00050946		Attorney-Client
FTC-LAB-00050950		Attorney-Client

***PUBLIC***

FTC-LAB-00050953		Attorney-Client
FTC-LAB-00050957		Attorney-Client
FTC-LAB-00051008		Attorney-Client
FTC-LAB-00051014		Attorney-Client
FTC-LAB-00051019		Attorney-Client
FTC-LAB-00051025		Attorney-Client
FTC-LAB-00051029		Attorney-Client
FTC-LAB-00051033		Attorney-Client
FTC-LAB-00051035		Attorney-Client
FTC-LAB-00051038		Attorney-Client
FTC-LAB-00051041		Attorney-Client
FTC-LAB-00051044		Attorney-Client
FTC-LAB-00051049		Attorney-Client
FTC-LAB-00051074		Attorney-Client
FTC-LAB-00051076		Attorney-Client
FTC-LAB-00051081		Attorney-Client
FTC-LAB-00051083		Attorney-Client
FTC-LAB-00051096		Attorney-Client
FTC-LAB-00051100		Attorney-Client
FTC-LAB-00051102		Attorney-Client
FTC-LAB-00051105		Attorney-Client
FTC-LAB-00051106	<b>A</b>	Attorney-Client
FTC-LAB-00052045		Attorney-Client
FTC-LAB-00052048		Attorney-Client
FTC-LAB-00052074		Attorney-Client
FTC-LAB-00052078		Attorney-Client
FTC-LAB-00052088		Attorney-Client
FTC-LAB-00052302		Attorney-Client
FTC-LAB-00052309		Attorney-Client
FTC-LAB-00052311		Attorney-Client
FTC-LAB-00052355		Attorney-Client
FTC-LAB-00052357		Attorney-Client
FTC-LAB-00052361		Attorney-Client
FTC-LAB-00052377		Attorney-Client
FTC-LAB-00052380		Attorney-Client
FTC-LAB-00052850		Attorney-Client
FTC-LAB-00052865	<b>A</b>	Attorney-Client
FTC-LAB-00052866	<b>A</b>	Attorney-Client
FTC-LAB-00052887		Attorney-Client
FTC-LAB-00054251		Attorney-Client
FTC-LAB-00054252	<b>A</b>	Attorney-Client
FTC-LAB-00054526		Attorney-Client
FTC-LAB-00054782		Attorney-Client
FTC-LAB-00058231		Attorney-Client
FTC-LAB-00058232	<b>A</b>	Attorney-Client
FTC-LAB-00058390		Attorney-Client
FTC-LAB-00058393		Attorney-Client

FTC-LAB-00058483		Attorney-Client
FTC-LAB-00058487		Attorney-Client
FTC-LAB-00058999		Attorney-Client
FTC-LAB-00059002		Attorney-Client
FTC-LAB-00060046		Attorney-Client
FTC-LAB-00060047		Attorney-Client
FTC-LAB-00060048		Attorney-Client
FTC-LAB-00060128		Attorney-Client
FTC-LAB-00060589		Attorney-Client
FTC-LAB-00060635		Attorney-Client
FTC-LAB-00061181		Attorney-Client
FTC-LAB-00061185		Attorney-Client
FTC-LAB-00061379		Attorney-Client
FTC-LAB-00063624		Attorney-Client
FTC-LAB-00064181		Attorney-Client
FTC-LAB-00064182	<b>A</b>	Attorney-Client
FTC-LAB-00064320		Attorney-Client
FTC-LAB-00064322		Attorney-Client
FTC-LAB-00064585		Attorney-Client
FTC-LAB-00064587		Attorney-Client
FTC-LAB-00064589		Attorney-Client
FTC-LAB-00064593		Attorney-Client
FTC-LAB-00064597		Attorney-Client
FTC-LAB-00064611		Attorney-Client
FTC-LAB-00064640		Attorney-Client
FTC-LAB-00064651		Attorney-Client
FTC-LAB-00067089		Attorney-Client
FTC-LAB-00067094		Attorney-Client
FTC-LAB-00067100		Attorney-Client
FTC-LAB-00067104		Attorney-Client
FTC-LAB-00067109		Attorney-Client
FTC-LAB-00067113		Attorney-Client
FTC-LAB-00067115		Attorney-Client
FTC-LAB-00067341		Attorney-Client
FTC-LAB-00067342		Attorney-Client
FTC-LAB-00067373		Attorney-Client
FTC-LAB-00067374		Attorney-Client
FTC-LAB-00067388		Attorney-Client
FTC-LAB-00067404		Attorney-Client
FTC-LAB-00067409		Attorney-Client
FTC-LAB-00067918		Attorney-Client
FTC-LAB-00068992		Attorney-Client
FTC-LAB-00069590		Attorney-Client
FTC-LAB-00071332		Attorney-Client
FTC-LAB-00071333	<b>A</b>	Attorney-Client
FTC-LAB-00071335		Attorney-Client
FTC-LAB-00071349		Attorney-Client

***PUBLIC***

FTC-LAB-00071350	<b>A</b>	Attorney-Client
FTC-LAB-00071356		Attorney-Client
FTC-LAB-00073157	<b>A</b>	Attorney-Client
FTC-LAB-00071372		Attorney-Client
FTC-LAB-00071377		Attorney-Client
FTC-LAB-00071659		Attorney-Client
FTC-LAB-00072860		Attorney-Client

---

Total: 425 documents

*PUBLIC*

# EXHIBIT C

***PUBLIC***

**From:** Greenstein, Seth  
**To:** [Kopchik, Lisa B.](#); [Turner, Michael](#); [Kennedy, Christine](#)  
**Cc:** [Cannon, Stephen](#); [Levine, Richard](#); [Sheedy, Allison](#); [Kovacs, James J.](#); [Broz, Kristen](#)  
**Subject:** Re: Depositions  
**Date:** Tuesday, January 30, 2018 9:01:32 AM

---

Thank you for your email. Now that the Commission's stay has lifted today, we confirm the following dates for depositions you have requested:

February 26: Michael Graham  
February 27: Clayton Lipscomb  
February 28: Tad Bolton  
March 1: Robert Maynor  
March 2: Henk vanDuyvendijk

We further propose the following dates for depositions of non-parties. We are conferring with you as to availability on these dates at the same time as we are approaching these companies, so we would appreciate the benefit of a prompt response. We have tried to schedule depositions grouped together geographically.

February 13: Accurate Group  
February 14: Real Estate Valuation Partners  
February 15: Nations Valuation Services  
February 19: LRES Corporation  
February 20: Clear Capital  
March 5: Robert Rieger  
March 9: REVAA  
March 12: Don Kelly  
March 15: Coester  
March 16: iMortgage

We anticipate identifying additional deponents, and assuming you also may want additional depositions it may be necessary to double-track.

All of the above proposed dates are contingent upon the decision of the Commission upon LREAB's Renewed Expedited Motion for Stay – which I will email you about momentarily.

Regards,

Seth D. Greenstein  
[Constantine Cannon LLP](#)  
1001 Pennsylvania Avenue, NW  
Suite 1300N  
Washington, D.C. 20004

***PUBLIC***

(w) 202.204.3514

(f) 202.204.3501

(m) 202.285.5000

**From:** Kopchik, Lisa B. [<mailto:LKOPCHIK@ftc.gov>]

**Sent:** Monday, January 29, 2018 12:36 PM

**To:** Greenstein, Seth <[sgreenstein@constantinecannon.com](mailto:sgreenstein@constantinecannon.com)>; Cannon, Stephen <[scannon@constantinecannon.com](mailto:scannon@constantinecannon.com)>; Broz, Kristen <[kbroz@constantinecannon.com](mailto:kbroz@constantinecannon.com)>; Kovacs, James J. <[jkovacs@constantinecannon.com](mailto:jkovacs@constantinecannon.com)>

**Subject:** Depositions

I requested dates for Tad Bolton, Henk, and Robert Maynor depositions. I would still like to schedule them on dates convenient for you.

In the meantime, we are going to serve you with SATs for those depositions. We will be happy to rearrange dates when you get back to us.

Lisa

**Lisa B. Kopchik / Federal Trade Commission / Bureau of Competition**  
Division of Anticompetitive Practices / Washington, DC 20580

Deliveries to 400 7<sup>th</sup> Street, SW / Washington, DC 20024  
202-326-3139 / [LKopchik@ftc.gov](mailto:LKopchik@ftc.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2018, I filed the foregoing document electronically using the FTC's E-Filing System and served the following via email:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
[ElectronicFilings@ftc.gov](mailto: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 also certify that I delivered via electronic mail a copy of the foregoing document to:

W. Stephen Cannon  
Seth Greenstein  
Richard Levine  
James Kovacs  
Allison Sheedy  
Justin Fore  
Constantine Cannon LLP  
1001 Pennsylvania Avenue, NW  
Suite 1300N  
Washington, DC 20004  
[scannon@constantinecannon.com](mailto:scannon@constantinecannon.com)  
[sgreenstein@constantinecannon.com](mailto:sgreenstein@constantinecannon.com)  
[rlevine@constantinecannon.com](mailto:rlevine@constantinecannon.com)  
[jkovacs@constantinecannon.com](mailto:jkovacs@constantinecannon.com)  
[asheedy@constantinecannon.com](mailto:asheedy@constantinecannon.com)  
[wfore@constantinecannon.com](mailto:wfore@constantinecannon.com)

*Counsel for Respondent Louisiana Real Estate Appraisers Board*

Dated: March 6, 2018

By: /s/ Lisa B. Kopchik  
Lisa B. Kopchik, Attorney



**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 6, 2018

By: /s/ Lisa B. Kopchik  
Lisa B. Kopchik, Attorney