

ORIGINAL

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

232 044
530527

**In the Matter of
REALCOMP II LTD.,
a corporation.**

Docket No. 9320

PUBLIC

JOINT STIPULATIONS OF LAW AND FACT

In accordance with the Scheduling Order in this matter, Complaint Counsel and Respondent Realcomp II Ltd. ("Realcomp") stipulate as follows:

1. Neither Complaint Counsel nor Respondent have any objections to the admission into evidence of the documents listed in Exhibit A to these stipulations. [Joint Exhibit List]
2. Each document that is (a) generated by any party or non-party, and which comes from the producing person's files; and (b) produced, whether pursuant to a subpoena, document request or voluntarily (i) as part of discovery in the above-captioned matter, or (ii) to the Commission as part of its investigation related to the above-captioned matter, will be deemed to be authentic.

STIPULATIONS OF FACT

3. A real estate broker is a licensed real estate professional who acts as a representative for either home sellers or home buyers, and who is authorized to engage in the sale of real estate and to provide services in connection with such sales.

4. A real estate agent is a licensed real estate professional who works for, or under the supervision of, a real estate broker.

5. A listing broker is the broker hired by the seller as its agent to sell the home to an appropriate buyer.

6. A listing agreement is the contract between the seller and the listing broker that spells out the nature of their relationship concerning the sale of the home. Usually the listing agreement will include provisions that specify the duration of the contract (also known as the "listing period"), the compensation to be paid to the listing broker, and the offer of compensation to any cooperating broker.

7. A cooperating broker is a broker who works with buyers interested in purchasing a home.

8. The offer of compensation is the amount of money or commission percentage that will be paid by the listing broker to any cooperating broker who is the procuring cause of the sale, i.e., finds the buyer that purchases the home.

9. The offer of compensation is unconditional except that the cooperating broker must be the procuring cause of the sale.

10. A selling broker is a cooperating broker whose fiduciary duty is to the home seller in the real estate transaction. A selling broker acts as what is called a "sub-agent" of the listing

broker.

11. A buyer's broker is a cooperating broker who has a fiduciary duty to the buyer in the real estate transaction, either through an agency disclosure or a "buyer's agency agreement."

12. A Realcomp member is any person authorized by Realcomp to access, use or enjoy the benefits of the Realcomp MLS in accordance with Realcomp's bylaws, policies, rules and regulations.

13. Realcomp is owned by seven Shareholder Boards and Associations: The Dearborn Board of Realtors, Detroit Association of Realtors, Eastern Thumb Association of Realtors, Livingston Association of Realtors, Metropolitan Consolidated Association of Realtors, North Oakland County Board of Realtors, and Western-Wayne Oakland County Association of Realtors.

14. A Realcomp Shareholder must be a Realtor Board or Association that is a member in good standing of the National Association of Realtors.

15. The business and affairs of Realcomp are conducted by its Board of Governors.

16. Each Shareholder Board or Association selects one Governor and one Alternate to the Realcomp Board of Governors.

17. On each listing filed with the Realcomp MLS, the listing broker must make the unilateral offer of compensation to any Realcomp member who acts as a cooperating broker and procures a buyer who purchases the listing property.

18. All members of the Realcomp MLS must agree to abide by the Realcomp II Ltd. Rules and Regulations, and the policies and procedures in the Realcomp II Ltd. Policy Handbook.

19. Only a seller who has a listing agreement with a licensed real estate broker who is a Realtor and member of Realcomp may have his or her home listed on the Realcomp MLS.

20. Each Realcomp member broker who submits a listing to the Realcomp MLS agrees to comply with the Realcomp Rules and Regulations with respect to that listing.

21. Realcomp does not require that brokers who list properties pursuant to any listing agreement on the Realcomp MLS be compensated at all, whether by commission or otherwise.

22. "Approved Websites" are those websites to which Realcomp provides information concerning Realcomp MLS listings for publication.

23. Realcomp does not require that brokers whose listings are transmitted by Realcomp to the Approved Websites be compensated at all, whether by commission or otherwise.

24. Realcomp does not identify the type of listing agreement in place between a home seller and a Realcomp member listing broker when transmitting listings to the Approved Websites.

25. The type of listing agreement in place between a home seller and a Realcomp member listing broker is not displayed to home buyers viewing Realcomp MLS listings on the Approved Websites.

26. The compensation paid by a home seller to a Realcomp member listing broker is determined by negotiation between that home seller and that listing broker.

27. Realcomp has no knowledge of the terms of the compensation arrangements, if any, in place between a listing broker and a home seller whose property is listed in the Realcomp MLS pursuant to an Exclusive Right to Sell Listing.

28. Realcomp has no knowledge of the terms of the compensation arrangements, if any, in place between a listing broker and a home seller whose property is listed in the Realcomp MLS pursuant to an Exclusive Agency Listing.

29. Realcomp does not require that transactions facilitated through the Realcomp MLS involve a cooperating broker.

30. Realcomp does not require that transactions facilitated through the Approved Websites involve a cooperating broker.

31. Realcomp does not require that transactions facilitated through the Realcomp MLS involve a cooperating broker who is a Realcomp member.

32. Realcomp does not require that transactions facilitated through the Approved Websites involve a cooperating broker who is a Realcomp member.

33. Realcomp has no rules specifying the minimum services that a cooperating broker must perform (other than performance as the procuring cause of sale) to be entitled to compensation in the event of a consummated transaction.

34. Realcomp has no rule prohibiting a cooperating broker from contacting the listing broker associated with a property listed on the Realcomp MLS prior to showing and attempting to negotiate a change in the compensation offered to the cooperating broker.

35. Realcomp's rules have never prohibited a listing broker from charging a home seller one fee for posting an Exclusive Right to Sell Listing in the MLS and another fee for including that listing among the listings transmitted by Realcomp to the Approved Websites.

36. For the basic services, Realcomp charges identical dues and fees to all its members, regardless of the listing type used with their clients.

37. Realcomp's merger talks with MiRealSource were motivated, at least in part, by a desire to minimize the need for Realcomp members to pay dues to two or more MLSs.

38. Realcomp's data sharing arrangements were motivated, at least in part, by a desire to increase the number of listings available to Realcomp members.

39. Realcomp's data sharing arrangements were motivated, at least in part, by a desire to minimize the need for Realcomp members to pay dues to two or more MLSs.

40. Realcomp is the largest real estate Multiple Listing Service in Michigan, in terms of the number of members and the number of listings.

41. Realcomp is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan.

42. Realcomp's office and principal place business is located at 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334.

43. Realcomp is organized for the purpose of serving its members' interests.

44. The primary function of Respondent is the operation of the Realcomp Multiple Listing Service.

45. Each Realcomp member is required to hold an active real estate license, an active appraiser license, or both.

46. Realcomp services the territory within Southeastern Michigan, including Livingston County, Oakland County, Macomb County and Wayne County.

47. In 2001, Realcomp adopted and approved a rule that stated: "Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis."

48. In 2001, Realcomp adopted and approved rules to exclude listing information for Exclusive Agency, Limited Service and MLS Entry Only Listings from the data it provides to the Approved Websites.

49. The Realcomp IDX is the Internet Data Exchange service that affords Realcomp members the option of authorizing display of their active listings on other Realcomp members' web sites.

50. The rules adopted and approved by Realcomp in 2001 that prevent Exclusive Agency, Limited Service and MLS Entry Only Listings on the Realcomp MLS from being transmitted to, or displayed on, Realtor.com, Moveinmichigan.com, and Realcomp member IDX websites are known for purposes of this case as the "Web Site Policy."

51. After adopting the Web Site Policy, Realcomp had to make certain technical changes, including changing its data extract program to pull only Exclusive Right to Sell Listings.

52. Before Respondent implemented the Search Function Policy, the Realcomp MLS search screen defaulted to all available listings, including Exclusive Agency Listings.

53. Moveinmichigan.com is the exclusive provider of real estate listing information for clickondetroit.com.

54. A for-sale-by-owner real estate transaction does not have a listing broker.

55. An Exclusive Agency Listing involves the services of a listing broker.

56. Offers of compensation to cooperating brokers are made through the Realcomp MLS, and are not displayed on public web sites.

57. Realcomp at all times pertinent to this matter has permitted agents: 1) to enter

what are referred to as “Exclusive Agency Listings” in the Complaint into the Realcomp Multiple Listing Service; and 2) who enter “Exclusive Agency Listings” to be members of Realcomp.

58. At all times pertinent to this matter, there has been another Multiple Listing Service, MiRealSource, in addition to Realcomp, servicing at least part of Southeastern Michigan.

59. MiRealSource, prior to April 2007 and prior to entering into a Consent Decree with the Federal Trade Commission, did not allow Exclusive Agency Listings to be entered into its Multiple Listing Service and as such MiRealSource did not forward its listings to public websites.

60. For Sale By Owner (FSBO) homes, where the seller does not retain a realtor, are not permitted to be listed on Realcomp’s MLS as all listings must be entered by realtors.

STIPULATIONS OF LAW

61. Realcomp is, and at all relevant times has been, a corporation as “corporation” is defined by Section 4 of the FTC Act, 15 U.S.C. § 44.

62. At all times relevant herein, Realcomp has been, and is now, engaged in commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

63. The acts and practices of Respondent have been or are in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. Among other things, the acts and practices of Respondent:

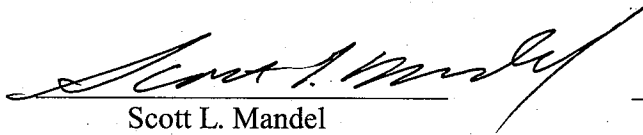
(A) affect the purchase and sale of real estate by persons moving into and out of Southeastern Michigan; and

(B) affect the transmission of real estate listing information to public real estate web sites that are intended for a national audience, including Realtor.com.


64. The elements of a combination or conspiracy of that unreasonably restrains trade are: (1) the existence of a contract, combination, or conspiracy among two or more separate entities, that (2) unreasonably restrains trade, and (3) affects interstate or foreign commerce. *See, e.g., Law v. NCAA*, 134 F.3d 1010, 1016 (10th Cir. 1998) (identifying elements of a violation of Section 1 of the Sherman Act); *Fashion Originators' Guild, Inc. v. FTC*, 312 U.S. 457, 463-64 (1941) (Section 5 of the FTC Act violations may be based on conduct that violates the Sherman Act).

65. Respondent is a combination of its members with respect to the policies at issue (the "Web Site Policy" and the "Search Function Policy"). *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978).

66. The purpose of the antitrust laws is to protect competition, not competitors. *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962).



Scott L. Mandel
Steven H. Lasher
Webb A. Smith
Stephen J. Rhodes
Kirsten M. McNelly
Emily L. Matthews



Sean Gates
Peggy Bayer Femenella
Joel Christie
Linda Holleran
Christopher Renner

Counsel for Respondent Realcomp II, Ltd.

Foster, Swift, Collins & Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193
smandel@fosterswift.com
(517) 371-8185
Facsimile: (517) 371-8200

Counsel Supporting the Complaint

Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, NW
Washington, D.C., 20580
sgates@ftc.gov
(202) 326-3711
Facsimile: (202) 326-3496

Dated: June 14, 2007

EXHIBIT A

JOINT EXHIBIT LIST REALCOMP DOCKET NO. 9320

Exhibit Number	Document Date	Document Title	Beginning Document Number	Ending Document Number
CX 1	3/22/06	Realcomp Part II Document Production Response		
CX 2	7/2/01	Minutes from the Board of Governors Meeting, June 22, 2001 (also used as CX 91 with Gerry Burke and Robert Gleason)		
CX 3	9/28/01	Minutes from the Board of Governors Meeting, September 28, 2001 (also used CX 92 with Gerry Burke and Robert Gleason)		
CX 4	7/03	Realcomp Rules and Regulations July 2003 (also used as CX 93 with David Elya)	RC0001	RC0024
CX 5	9/03	Realcomp Policy Handbook, September 2003	RC0079	RC0090
CX 6	1/04	Realcomp Rules and Regulations January, 2004	RC0025	RC0052
CX 7	9/05	Realcomp II Ltd. Rules and Regulations, Revised September, 2005	RC0053	RC0078
CX 8	9/05	Realcomp II Ltd. Policy Handbook, Revised: September, 2005	RC0091	RC102
CX 9	8/27/03	Minutes from the Board of Governors Meeting, August 22, 2003 (also used as CX 94 with Gerry Burke, CX 166 with Doug Hardy, CX 136 with Nead)	RC0122	RC0126
CX 10	8/28/02	Minutes from the Board of Governors Meeting, August 23, 2002 (also used as CX 95 with Alissa Nead and Gerry Burke)	RC0108	RC0111

Case Exhibit Number	Document Date	Document Title	Beginning Document Number	Ending Document Number
CX 11	10/2/02	Minutes from the Board of Governors Meeting, September 27, 2002 (also used as CX 96 with Gerry Burke)	RC0112	RC0116
CX 12	10/29/02	Minutes from the MLS/User Committee Meeting October 14, 2002 (also used as CX 162 with Nowak)	RC0103	RC0107
CX 13		Realcomp Website: IDX for Vendors		
CX 14	11/03	RealSolutions Regarding Listing Type Change	RC0170	RC0172
CX 15	2002	Realcomp Notice to Brokers About MoveinMichigan.com 2002	RC0210	RC0210
CX 16		Reserved		
CX 17	11/17/03	RealFax Regarding Listing Type Changes, November 17, 2003	RC0176	RC0176
CX 18	11/03	Memorandum from Karen Kage to Realcomp Brokers Regarding Plans for Implementing Listing Type Data into the Realcomp MLS	RC0177	RC0187
CX 19	9/15/03	Letter from Jaime Ashmore of Realtor.com to Karen Kage Regarding Amendment to Realtor.com Agreement	RC0202	RC0203
CX 20	7/11/05	Realtor.com Data Content Provider Agreement Amendment	RC0204	RC0205
CX 21	12/31/97	Realtor.com Data Content Provider Agreement	RC0188	RC0196

Exhibit Number	Document Date	Document Title	Beginning Document Number	Ending Document Number
CX 22	6/11/04	Letter from Karen Thomas to Karen Kage About Complaints Regarding GreaterMichiganRealty	RC0138	RC0157
CX 23	7/19/04	Fax Regarding GreaterMichiganRealty Exclusive Agency Listings from S Nelson to Tora	RC0158	RC0166
CX 24	8/3/04	Email from Mike Gladchun to Karen Kage Regarding Greater Michigan Realty	RC0167	RC0169
CX 25	8/16/05	Fax from Lee Jaffke to Karen Kage Regarding Exclusive Agency Listings	RC0131	RC0137
CX 26	2002-2003	Data Sharing Agreements Between Realcomp and Ann Arbor Area Board of Realtors, Down River Association of Realtors, Flint Area Association of Realtors, Jackson Multiple Listing Service, Inc., Lapeer and Upper Thumb Association of Realtors, Lenawee County Association of Realtors, and Monroe County Association of Realtors	RC0211	RC0243
CX 27	12/03	Realcomp Data Sharing Pamphlet	RC0244	RC0245
CX 28	7/04	Straight Talk July 2004 Regarding Listing Types		
CX 29	4/04	Straight Talk April 2004 Regarding Listing Types (also used as CX 98 with David Elya and CX 223 with Karen Kage)		
CX 30	4/07	Video Clips from ClickonDetroit.com with Karen Kage Discussing Moveinmichigan.com		
CX 31	5/07	Straight Talk: Michigan Property Data Query for Realtors		

Case Entry Number	Document Date	Document Title	Beginning Document Number	Ending Document Number
CX 32	11/20/06	Realcomp's Answer to the Complaint		
CX 33	1/11/07	Respondent's Responses and Objections to Petitioner's First Set of Interrogatories and Attachments	RC1376	RC1378
CX 34	12/11/06	Realcomp II Ltd.'s Response to Claimant Counsel's First Request for Production of Documents and Things		
CX 35	2/20/07	Excerpts of Deposition of Karen Kage, CEO of Realcomp		
CX 36	8/23/06	Excerpts of Investigational Hearing of Karen Kage, CEO of Realcomp		
CX 37	2/21/07	Excerpts of Deposition of Darralyn Bowers, Realcomp Board of Governor		
CX 38	2/23/07	Excerpts of Deposition of Robert Gleason, Realcomp Board of Governor		
CX 39	3/14/07	Excerpts of Deposition of Robert Taylor, Realcomp Board of Governor		
CX 40	1/2/07	Excerpts of Deposition of David Elya, Realcomp Board of Governor		
CX 41	1/31/07	Excerpts of Deposition of Daniel Mulvihill, Realcomp Board of Governor		
CX 42	1/2/07	Excerpts of Deposition of Alissa Nead, Realcomp Board of Governor		

Case Exhibit Number	Exhibit Date	Exhibit Title	Beginning Document Number	Ending Document Number
CX 43	2/21/07	Excerpts of Deposition of Douglas Hardy, Realcomp Board of Governor		
CX 44	1/17/07	Excerpts of Deposition of Carl Williams, Realcomp Board of Governor		
CX 45	1/18/02	Important Meeting Notice Regarding One MLS in Southeast Michigan with Attachments	RC0486	RC0501
CX 46 - CX 47		Reserved		
CX 48	7/26/06	Realcomp Active Member Subscribing Offices		
CX 49		Reserved		
CX 50	8/03	Letter from Karen Kage and Alissa Nead to Virginia Bratt and Charles Reaume, August and September, 2003	RC0437	RC0441
CX 51	9/10/03	Email from Sue Kracht to Karen Kage Regarding Joint Operating Agreement Proposal with MiRealSource	RC0395	RC0414
CX 52		Reserved		
CX 53	03/07	Straight Talk: Pros and Cons of Data Distribution		
CX 54	12/21/93	Realcomp Restated Subscription/Service Agreement	RC0246	RC0290
CX 55	10/25/04	Letter from Karen Kage to John Kersten, October 25, 2004	RC0432	RC0436
CX 56	12/23/93	Restated & Superseding Realcomp Shareholders Agreement	RC0332	RC0346

Case Number	Case Date	Case Title	Beginning Document Number	Ending Document Number
CX 57		Reserved		
CX 58	5/4/06	Realcomp Listing Profile Forms Used by Agents and Brokers Submitting Information to Realcomp		
CX 59	11/04	Realcomp Fifth Amended Bylaws	RC0300	RC0331
CX 60	2/15/00	Award of Arbitrators, North Oakland County Board of Realtors	000001	000027
CX 61	2/22/07	Realcomp Training Services: PRD/CMA Public Records Data & Comparative Market Analysis		
CX 62	3/27/07	Realcomp Online and Listing Load Upgrade		
CX 63	8/16/04	Award of Arbitrators, Western Wayne Oakland County Association of Realtors	WWOC0000181	WWOC0000183
CX 64	11/3/05	Award of Arbitrators, Western Wayne Oakland County Association of Realtors	WWOC0000141	WWOC0000145
CX 65	10/26/06	Decision of the Ethics Hearing Panel of the Professional Standards Committee	WWOC0000087	WWOC0000088
CX 66	6/9/05	Decision of the Ethics Hearing Panel of the Professional Standards Committee	WWOC0000156	WWOC0000158
CX 67	7/29/04	Decision of the Ethics Hearing Panel of the Professional Standards Committee	WWOC0000189	WWOC0000192

Exhibit Number	Exhibit Date	Document Title	Beginning Document Number	Ending Document Number
CX 68	5/06	Newsline: "President's Report: Election Time is Right Around the Corner"		
CX 69 - CX 73		Reserved		
CX 74	9/20/06	Realcomp Shareholder Update for August & September	000587	000587
CX 75	10/16/06	Email from Michelle Brant to brussell@michigangroup.com Regarding Update on FTC	000663	000664
CX 76	11/10/06	Email from Fran Green Regarding Memo Regarding Proposed MLS Rules Change	000653	000655
CX 77		List of Web Sites Pulled Together by Realcomp	RC1376	RC1377
CX 78	6/12/06	The Critical Role of the Realtor in the Real Estate Transaction		
CX 79	1/17/07	Search For Homes, Realty Executive Group		
CX 80	1/17/07	Property Search, Coldwell Banker Preferred Regarding MLS #26208189		
CX 81		Map of Southeast Michigan Counties and Cities		
CX 82		Map of Michigan		
CX 83	5/3/07	MLS Express Real Estate Web Page		

