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U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION  
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CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

D.R. HORTON, INC.,

Plaintiff,

v.

JON LEIBOWITZ, Chairman,  
in his official capacity, and  
FEDERAL TRADE COMMISSION,

Defendants.

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No. 4:10-CV-547-A

**MOTION TO DISMISS OF THE FEDERAL TRADE COMMISSION  
AND CHAIRMAN JON LEIBOWITZ, IN HIS OFFICIAL CAPACITY**

Defendants, the Federal Trade Commission and Chairman Jon Leibowitz  
(collectively, “FTC” or “the Commission”), respectfully move to dismiss this case  
pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(3), and 12(b)(6).

D.R. Horton’s (Horton) claims must be dismissed for lack of subject-matter  
jurisdiction. Fed. R. Civ. P. 12(b)(1). The FTC activities that Horton challenges – the  
agency’s adoption of resolutions authorizing investigations, issuance of a Civil  
Investigative Demand (“CID”) to Horton, and denial of Horton’s petition to quash the  
CID – are not “final agency actions” that can be reviewed under the Administrative  
Procedure Act, 5 U.S.C. § 704. Horton’s claims are also “unripe” and unfit for judicial  
resolution.

The complaint fails to state claims upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Apart from their substantive lack of merit – which this Motion does not address<sup>1</sup> – Horton’s claims are an improper attempt to circumvent the procedure prescribed by Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, for adjudicating the enforcement of a CID. And the Declaratory Judgment Act, 28 U.S.C. § 2201, cannot be used to anticipate defenses that Horton otherwise could present in response to an FTC CID enforcement proceeding.

Finally, dismissal is warranted because venue is improper in this judicial district. Fed. R. Civ. P. 12(b)(3). The FTC does not reside here; the FTC’s activities complained of by Horton did not occur here; and Horton resides, not here, but in Delaware, where it is incorporated. *See* 28 U.S.C. § 1391(e).<sup>2</sup>

In support of this Motion to Dismiss, the Commission respectfully refers the Court to the accompanying Memorandum of Points and Authorities.

<sup>1</sup> If this Court were to conclude that the issues raised herein are appropriate for judicial resolution in this forum, the Commission would then address the Complaint’s substantive merits (or lack thereof).

<sup>2</sup> In the event this Court denies this motion to dismiss, it should transfer this action under 28 U.S.C. § 1404(a) to either of the two judicial districts where it could have been brought – Delaware (where Horton resides) or the District of Columbia (where the purported cause of action arose and defendants reside).

Respectfully submitted,

JAMES T. JACKS  
UNITED STATES ATTORNEY

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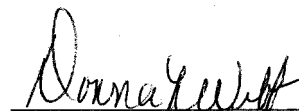
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CERTIFICATE OF SERVICE

I, Donna K. Webb, Assistant United States Attorney for the Northern District of Texas certify that on the 26th day of August, 2010, the foregoing document was sent by Certified Mail to the following:

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