

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF  
D.R. HORTON, INC.

FILE NUMBER 042-3135  
FILE NUMBER P944809  
CONFIDENTIAL

FEDERAL TRADE COMMISSION  
2009 DEC 14 PM 2:31  
MINUTES SECTION

**D.R. HORTON, INC.'S PETITION TO LIMIT  
OR QUASH CIVIL INVESTIGATIVE DEMAND**

**I. INTRODUCTION AND SUMMARY**

On December 15, 2008, the Federal Trade Commission (“FTC” or “the Commission”) opened a non-public investigation of “various unnamed loan brokers, lenders, loan servicers, and other marketers of loans.” Resolution Directing Use of Compulsory Process in Non-Public Investigations of Various Unnamed Loan Brokers, Lenders, Loan Servicers, and Other Marketers of Loans (December 15, 2008) (“12/15/08 Resolution”). The investigation is to determine whether “unnamed persons, partnerships, corporations, or others” violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or whether “various unnamed loan brokers, lenders, loan servicers, and other marketers of loans” have violated the Consumer Credit Protection Act, 15 U.S.C. §1601 *et seq.*, and whether FTC action is warranted. This Resolution provides a five year time period in which the FTC is authorized to serve compulsory process in connection with this investigation. On August 1, 1994, the FTC issued a resolution for the investigation of potential violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and Regulation B, 12 C.F.R. § 202 *et seq.* Resolution Directing Use of Compulsory Process in Nonpublic Investigation (August 1, 1994) (“8/1/94 Resolution”). The 8/1/94

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Resolution does not provide an expiration date on which the FTC's authority under this Resolution ends.

On November 3, 2009, D.R. Horton, Inc. ("D.R. Horton" or "the Company") was served with a civil investigative demand ("CID") in connection with the 12/15/08 Resolution and the 8/1/94 Resolution. Including subparts, this CID contains 221 specifications, ranging from requests for exemplar contracts and corporate structure to complex requests for company policies with as many as nineteen individual subsections of additional information.<sup>1</sup> The CID does not identify any particular practices the FTC may deem to be violative of the statutes and regulations, but instead broadly requests responses to nearly impossible to answer questions and seeks the production of virtually every document created by D.R. Horton since January 1, 2006. D.R. Horton respectfully submits this petition to limit or quash the CID.

On November 20, 2009, D.R. Horton sent a letter to Mr. Joel Winston, Associate Director for the Division of Financial Practices at the FTC. Since this initial letter, counsel for D.R. Horton and FTC counsel, Ms. Rebecca J.K. Gelfond, have corresponded by telephone and formal letters on November 30, December 2, and December 9, 2009, in an attempt to appropriately modify or limit the CID. As of the date of this petition, limitations that are appropriate in the view of D.R. Horton have yet to be agreed upon.<sup>2</sup>

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<sup>1</sup> The CID includes 31 Interrogatories (109 inclusive of subparts); 32 Document Requests (50 inclusive of subparts) and 62 Data Requests. Subparts of Interrogatories are considered separate questions. *See, e.g.* Fed. R. Civ. P. 33(a)(1) (including "all discrete subparts" of interrogatories in the total number allowed). Accordingly, the CID contains 221 separate requests. This number does not even include the subparts that are not listed as such. *See, e.g.*, R-9 (provide a list of all job titles or positions that relate to marketing and sales activity or mortgage lending activity . . . [and] [d]escribe the duties and responsibilities for each such job title or position." (emphasis added)); R-14 (multiple subparts); R-22 (multiple subparts); P-4 (requesting documents responsive to R-5, which has four subparts); P-6 (requesting documents responsive to R-15, which has 19 subparts); P-7 (requesting documents responsive to R-20, which has nine subparts).

<sup>2</sup> Consistent with its obligations under 16 C.F.R. §2.7(d)(2), counsel for petitioner D.R. Horton, Inc. sent two letters to the Staff of the FTC in an effort to resolve the matters raised herein. Those letters are

## **II. D.R. HORTON'S BUSINESS OPERATIONS**

D.R. Horton is a Fortune 500 company and, during the time period at issue here, was ranked as the largest homebuilder by units sold in the United States since 2003. The company employs approximately 3,000 workers nationwide. D.R. Horton builds single-family homes in 83 markets in 27 states. *See* <http://www.drhorton.com/corp/>. The Company has four homebuilding segments: North, South, East, and West, which consist of 33 geographical divisions. These reporting segments, and their divisions, have homebuilding operations located in the following states:

- North: Illinois, Colorado, Nevada, Maryland, Delaware, Minnesota, Wisconsin, New Jersey, Pennsylvania, and Virginia;
- South: Texas, New Mexico, Arizona, Oklahoma, Louisiana, and Mississippi;
- East: Florida, Georgia, Alabama, North Carolina, and South Carolina; and
- West: California, Hawaii, Portland, Washington, Utah, and Idaho.

## **III. LEGAL OBJECTIONS**

### **A. The Challenged CID Specifications Seek Documents and Information That Are Not Relevant to the Inquiry and Are Unreasonable**

#### **1. The Applicable Relevancy and Reasonableness Standard**

Although the FTC has broad statutory authority under 15 U.S.C. § 45(a) to investigate practices which it determines may be deceptive or unfair practices when used in the course of trade, it is well-established that the FTC's subpoena powers are not limitless. While Congress has provided agencies with authority to conduct reasonable investigations through the use of investigatory tools such as administrative subpoenas and CIDs, the federal courts serve as a

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attached hereto as Exhibits A and B and they are incorporated herein as part of D.R. Horton's petition to quash or limit the CID.

safeguard against agency abuse by retaining the power to enforce such subpoenas and CIDs. *See, e.g., SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (“[t]he federal courts stand guard, of course, against abuses of their subpoena-enforcement processes...”) (citing *U.S. v. Powell*, 379 U.S. 48, 58 (1964) and *Oklahoma Press Publ’g Co. v. Walling*, 327 U.S. 186, 216 (1946)). Further, a party is entitled to notice of the conduct deemed to violate FTC regulations. *See, e.g.,* 16 C.F.R. § 2.6 (“Any person under investigation . . . shall be advised of the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation which is under investigation . . .”).

Administrative agencies may not use their subpoena powers to go on fishing expeditions. *FDIC v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997); *FTC v. Nat’l Claims Serv., Inc.*, No. S. 98-283, 1999 WL 819640, at \*1 (E.D. Cal. Feb. 9, 1999). *See also* S. Rep. 96-500 (“The FTC’s broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy its ‘official curiosity.’”). “It is contrary to the first principles of justice to allow a search through all the respondents’ records, relevant or irrelevant, in the hope that something will turn up.” *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924).

The recognized standard in determining whether a CID should be quashed or limited in scope or breadth was adopted by the Supreme Court in *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950). Although the Court enforced the decree in *Morton Salt Co.*, it recognized that “a governmental investigation into corporate matters may be of *such a sweeping nature and so unrelated to the matter properly under inquiry* as to exceed the investigatory power.” *Id.* at 652 (emphasis added). Accordingly, the Court instructed that agency subpoenas or CIDs should not be enforced if it is determined that they demand information that is: (a) not “within the authority of the agency,” (b) “too indefinite,” or (c) not “reasonably relevant to the inquiry.” *Id.* The

agency subpoena enforcement standard enunciated in *Morton Salt Co.* has been consistently applied by the courts. As the court recognized in *SEC v. Arthur Young & Co.*, “[t]he gist of the protection is in the requirement ... that the disclosure sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena’s call is a matter of reasonableness.” *Arthur Young & Co.*, 584 F.2d at 1030 (quoting *Oklahoma Press*, 327 U.S. at 209). The court explained further that “the requirement of reasonableness ... comes down to specification of the documents to be produced adequate, but not excessive, for the purposes of the relevant inquiry.” *Id.* The subpoena request must “not [be] so overbroad as to reach into areas that are irrelevant or immaterial,” the court added: “the test is relevance to the specific purpose.” *Id.* at 1028, 1031.

Following *Morton Salt Co.*, the court in *SEC v. Blackfoot Bituminous, Inc.*, confirmed that “[t]o obtain judicial enforcement of an administrative subpoena, an agency must show that the inquiry is not too indefinite, is reasonably relevant to an investigation which the agency has authority to conduct, and all administrative prerequisites have been met.” 622 F.2d 512, 514 (10th Cir. 1980) (quoting *Morton Salt*, 338 U.S. at 653); accord *SEC v. Wall St. Transcript Corp.*, 422 F.2d 1371, 1375 (2d Cir. 1970), *cert. denied*, 398 U.S. 958 (1970). Other courts following the *Morton Salt Co.* standard have recognized that the disclosure sought by an agency through compulsory process must be both relevant to the inquiry and reasonable. See *U.S. v. Construction Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996) (“the disclosure sought must always be reasonable”); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (CID enforced only “if the information sought is ‘reasonably relevant’”); *FTC v. Texaco, Inc.*, 555 F.2d 862, 881 (D.C. Cir. 1977) (“the disclosure sought shall not be unreasonable”).

## **2. The Challenged CID Specifications Seek Irrelevant Documents And Are Unreasonable**

The CID does not identify any specific actions or business practices it believes D.R. Horton may have pursued in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, the Consumer Credit Protection Act, 15 U.S.C. §1601 *et seq.*, or the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, and Regulation B, 12 C.F.R. § 202 *et seq.* Accordingly, the specifications that ask for “all documents” relating to the various requests noted above mean just that -- all documents. This is more than a fishing expedition; this is equivalent to an open records search of all business conducted by D.R. Horton over the last four years. The FTC may be given wide latitude in its mission, but the inquiry cannot be “too indefinite.” *Morton Salt Co.*, 338 U.S. at 652; *Blackfoot Bituminous*, 622 F.2d at 514. These overbroad specifications will require the production of voluminous amounts of irrelevant material, and will require D.R. Horton to conduct an unreasonable search of all D.R. Horton facilities nationwide. The FTC should limit these requests to a reasonable inquiry based upon the alleged conduct it seeks to prevent or correct, and not based on a hunch that an open records search of D.R. Horton’s business records over the past four years will reveal a violation. *See Construction Prods. Research, Inc.*, 73 F.3d at 471 (“the disclosure sought must always be reasonable”); *Invention Submission Corp.*, 965 F.2d at 1089 (CID enforced only “if the information sought is reasonably relevant”); *Texaco, Inc.*, 555 F.2d at 881 (“the disclosure sought shall not be unreasonable”).

### **B. Compliance With The Challenged CID Specifications Would Be Unduly Burdensome To D.R. Horton**

An administrative subpoena may be deemed unduly burdensome if “compliance threatens to unduly disrupt or seriously hinder normal operations of a business.” *Invention Submission*

*Corp.*, 965 F.2d at 1090 (citing *Texaco, Inc.*, 555 F.2d at 882). The breadth of these document specifications would require D.R. Horton to review every document it has produced in the last four years for relevance, and would require a total of 960 hours by D.R. Horton and/or its attorneys and any third party vendors it may need to employ. Many of the individual specifications themselves will require an unreasonable amount of time to comply with, and D.R. Horton has specified these below in its individual objections.

The specifications objected to in this petition require D.R. Horton and/or its attorneys to engage in an internal investigation that could take months of continuous work to complete. Document Specifications R-11, R-12, and P-25, for instance, would require D.R. Horton and/or its attorneys to interview each of its 3,000 current employees to determine who speaks non-English languages, whether or not those employees had conversations with non-English speaking customers or potential customers, how many non-English speaking customers or potential customers these employees spoke with, and the content of these discussions. Not only does the sweeping breadth of the subpoena require this for D.R. Horton's current employees, but the subpoena would require the same process to be done for any former D.R. Horton employees. In addition to the actual interview process with these employees, D.R. Horton and/or its attorneys would be required to locate all former employees before the interview process could even begin, a process that, in itself, could take months to accomplish, given the fact that D.R. Horton has reduced its workforce substantially in the last year.

In short, compliance with the challenged CID specifications would result in an unreasonable and undue burden upon D.R. Horton in terms of time, cost and resources that would "unduly disrupt or seriously hinder normal operations of [its] business." *U.S. Commodity Futures Trading Commission v. The McGraw-Hill Companies, Inc.*, 390 F. Supp. 2d 27, 35-36

(D.C. Cir. 2005) (citing *FTC v. Texaco, Inc.*, 555 F.2d at 882) (corporation responding to agency subpoena should not have “to cull its files for data” that would “impose an undue burden” and finding subpoena requiring production of “all documents that in any way reference” the issue in question “would be unduly burdensome”). Accordingly, the CID should be modified to limit the demands which are “excessively broad on their face and technically call for a larger volume of data than may have been intended” by the FTC so as to “not impose an impermissible burden” on D.R. Horton. *Id.* at 35. The Commission should modify the excessive CID specifications in this case to limit the impermissible burdens imposed upon D.R. Horton which threaten to seriously disrupt its normal business operations.

Additionally, D.R. Horton would need to employ local personnel and/or its attorneys to travel to each location throughout the country to review physical documents located either on-site at the local branches or at the off-site storage facilities used by the branches. Considering the extraordinary breadth and scope of the specifications demanded, the CID’s return date of December 3, 2009, is wholly unrealistic and does not “provide a *reasonable period of time* within which the material so demanded may be assembled and made available for inspection and copying or reproduction,” as is required under 16 C.F.R. § 2.7(b)(1) (emphasis added).<sup>3</sup>

#### **IV. GENERAL OBJECTIONS**

D.R. Horton objects generally as set forth in the numbered paragraphs below. Each of these objections is hereby incorporated by reference into each specification of the CID.

1. D.R. Horton objects to the scope of the CID in general based upon the authority under which the FTC purports to use its compulsory powers. The 12/15/08 Resolution is

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<sup>3</sup> D.R. Horton incorporates into this Petition the factual information set forth in the declaration of Jennifer Hedgepeth, Vice President/ National Operations Manager for DHI Mortgage Co., Ltd., attached as Exhibit C.

designed to “determine whether unnamed persons, partnerships, corporations, or others have engaged or are engaging in deceptive or unfair acts or practices in or affecting commerce in the advertising, marketing, sale, or servicing of *loans and related products . . .*” (emphasis added). The resolution dated August 1, 1994 is designed to find “discrimination in the extension of credit . . .” Neither of these two resolutions is designed to inquire into homebuilding or the practices related to the sale of home, nor could they reasonably be construed to do so. *See* 16 C.F.R. § 2.6 (“Any person under investigation . . . shall be advised of the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation which is under investigation . . .”).

2. Many definitions set forth in the CID are impermissibly overbroad, unreasonable, and irrelevant to the investigation’s stated purpose. *See Morton Salt*, 338 U.S. at 652-53 (noting that an administrative demand pursuant to compulsory powers must not be “too indefinite” and the information sought “shall not be unreasonable.”). The all-inclusive language used by the FTC in its definitions (*see, e.g.*, definitions 1, 3, 4, 9, 10, and 12) renders every specification in which one of these words is used impermissibly overbroad, even for seemingly innocuous requests. Indeed, some of the definitions are nonsensical. For example, Definition No. 4 states: “And” and “or” are to be construed “both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in the Schedule all information that might otherwise be construed to be outside the specification.” Coupled with the CID’s overly broad definition of “Company,” and the terms “Document” “Marketing and sales activity” and “Mortgage lending activity,” the CID demands information on every aspect of D.R. Horton’s operation and every document in the possession, custody, or control of the Company. *See* S. Rep. 96-500 (“The FTC’s broad investigatory powers have been retained but modified to prevent

fishing expeditions undertaken merely to satisfy ‘official curiosity.’”). Compliance with specifications containing these defined words would require searching all documents, e-mails, letters, internal memos, and other information produced in the normal course of business for any document, in electronic or physical format, that may mention or relate to one of the multitudinous subsections requested by the FTC. *See Nugget Hydroelectric, LP v. Pac. Gas & Elec. Co.*, 981 F.2d 429, 438-39 (9th Cir. 1992) (upholding magistrate judge’s finding that a demand for documents concerning every aspect of the defendant’s business relationships was “unnecessarily burdensome and overly broad.”). Further, these documents are not located in one central location on one central server, but instead are scattered across 33 geographic divisions in 27 states. Each of these offices maintains its own separate databases and would require either local personnel to perform these searches, or would require D.R. Horton to hire a company that specializes in electronic discovery to compile all of the electronic information before a central inquiry could even begin.

3. D.R. Horton also specifically objects to the CID’s inclusion of “agents, consultants, and other persons working for or on behalf of the foregoing that are engage in marketing and sales activity or mortgage lending activity” as overly broad, unduly burdensome, and incomprehensible. Whether an individual or entity is acting as an “agent” is a legal conclusion; the term “consultant” is subject to multiple interpretations; and the demand for information relating to “other persons working for or on behalf of” is unascertainable.

4. The definition of “individuals with ‘limited English proficiency’” assumes that D.R. Horton inquires about the level of English fluency of each of its customers, and makes notations and/or keeps records of such information. Not only does D.R. Horton not keep records on the language capabilities of its customers, but the vague definition provides no insight as to

what constitutes a limited ability to speak English, let alone how one might determine whether other people have such a detriment in language ability.

5. Instruction D, which requires the suspension of “any routine procedures for document destruction” in order to preserve documents “that are in any way relevant to this investigation during its pendency,” when coupled with the scope of the definitions, creates an unreasonable burden upon D.R. Horton to maintain a massive amount of material that is in no way relevant to the investigation at hand. D.R. Horton has taken steps it believes are reasonable and appropriate, but without clarification on what material would be “relevant” to this investigation, instruction D effectively requires D.R. Horton to maintain every document it produces during the pendency of the investigation.

6. Instruction H ostensibly limits the scope to documents in the possession or control of D.R. Horton, but continues to state it is in fact not limited to “documents in the possession, custody, or control of your attorneys, accountants, directors, officers, and employees, whether or not such documents were received from or disseminated to any person or entity.” As written, this request appears to state that the FTC may compel D.R. Horton to produce documents not in its actual possession, custody, or control. To the extent that this instruction in fact purports to require D.R. Horton to obtain and produce documents not in its possession, custody, control, D.R. Horton objects and will not be producing any such documents or data. Any specification that requests information from former employees or companies with whom D.R. Horton no longer works or associates is inappropriate. D.R. Horton cannot be compelled to extract information from people or entities over whom it has no access or control. *Equal Employment Opportunity Commission v. Maryland Cup Corp.*, 785 F.2d 471, 479 (4th Cir. 1986) (“[The subject of an investigation] cannot be compelled to interview former supervisors who are no

longer employed by the company, because the company no longer has access or control over these persons.”). While D.R. Horton is making a general objection to any specification requesting this information, D.R. Horton will renew this objection whenever appropriate and reserves the right to do so when necessary.

7. D.R. Horton objects to Instruction I to the extent it purports to require D.R. Horton to produce all documents at its principal place of business. The Company’s principal place of business is 301 Commerce Street, Fort Worth, TX. However, many of the documents being requested are used (and stored) at different locations throughout the various states where the Company conducts its business. *See, e.g.*, P-13, 14 (produce specific purchase and disclosure documents for every “prospective home buyer[]” and “consumer”). The demand that the Company disrupt its business operations in order to remove files, including working files for ongoing transactions, constitutes an unnecessary, and undue, burden on the Company. Accordingly, D.R. Horton reserves its right to produce responsive documents at the place where such materials are kept. *See In re Copper Market Antitrust Litig.*, 200 F.R.D. 213 (S.D.N.Y. 2001) (noting that a party responding to a subpoena has the option of allowing the requesting party to inspect the documents sought where they are normally kept).

8. D.R. Horton objects to Instruction M to the extent it requires D.R. Horton to redact sensitive personally identifiable information from its production. Because the CID is seeking complete copies of loan files, among many other materials, it is impossible to redact all of the “sensitive personally identifiable information.” Therefore, even though the FTC has provided D.R. Horton with a certificate of compliance with the Right to Financial Privacy Act, D.R. Horton would like assurances of the FTC’s ability to maintain the confidentiality of this information prior to producing it. Further, the Company objects to all specifications to the extent

that they may be construed as seeking the disclosure of confidential commercial or proprietary information protected by the right of privacy, trade secret privilege or any other applicable protection. Finally, the Company objects to any specification to the extent they may be construed to seek information that invades the privacy rights of third-parties, including, but not limited to, borrowers, the Company's current employees, and/or the Company's former employees.

V. THE CHALLENGED CID SPECIFICATIONS

D.R. Horton seeks to quash or limit the entirety of the Commission's broadly worded CID. The specifications therein encompass the entirety of D.R. Horton's business records over the past four years, are impermissibly broad, and would prohibitively hinder D.R. Horton's current and ongoing business operations because of the time and expense involved in responding to them. Illustrative of the expansive approach the Commission has taken with the D.R. Horton CID, the CID includes 31 Interrogatories (109 inclusive of subparts); 32 Document Requests (50 inclusive of subparts) and 62 Data Requests. Subparts of Interrogatories are considered separate questions. *See Fed. R. Civ. P. 33(a)(1)*. Accordingly, the CID contains 221 separate requests. This number does not even include the subparts that are not listed as such. *See, e.g., R-9* (provide a list of all job titles or positions that relate to marketing and sales activity **and** mortgage lending activity operations . . . **[and]** [d]escribe the duties and responsibilities for each such job title or position." (emphasis added)); R-14 (multiple subparts); R-22 (multiple subparts); P-4 (requesting documents responsive to R-5, which has four subparts); P-6 (requesting documents responsive to R-15, which has 19 subparts); P-7 (requesting documents responsive to R-20, which has nine subparts).

In addition, D.R. Horton objects to the production of any privileged material as denoted within the descriptions below, and reserves the right to object on the grounds of privilege to any specification whenever it may become apparent that a particular specification implicates privileged material. Because of the sweeping breadth and scope of the CID, D.R. Horton is reproducing each specification in full and producing its objections immediately thereafter.

### INTERROGATORIES

*R4<sup>4</sup>: State the Company's current net worth, and:*

- a. State the Company's total gross revenues for the most recently ended fiscal year, and*
- b. State the Company's net profit or loss for the most recently-ended fiscal year.*

### OBJECTION

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton is a publicly traded company, and therefore the information sought by specification R-4 is publicly available in D.R. Horton's public financial filings with the SEC. As noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is appropriately limited to marketing, sales, and origination of loans, as discussed with Ms. Gelfond on November 30, 2009.

*R-5: Describe the Company's policies and procedures for ensuring compliance with each of the following, specifying any changes to such policies and procedures and the dates of any such changes:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*

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<sup>4</sup> With regard to specifications R-1, R-2, and R-3, please refer to D.R. Horton's letter to Ms. Rebecca J.K. Gelfond dated December 9, 2009, in which D.R. Horton proposed a schedule for production of these materials.

- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

**OBJECTION:**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is appropriately limited to marketing, sales, and origination of loans as discussed with Ms. Gelfond on November 30, 2009. In addition, while current policies could be provided, D.R. Horton will require additional time to produce prior versions of the policies requested.

*R-6: Identify the name and title of each person responsible for formatting, directing, and controlling the policies, procedures, and practices of the Company relating to compliance with each of the following:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*
- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

*Specify the dates during which each such person held these responsibilities.*

**OBJECTION:**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to

Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is appropriately limited to marketing, sales, and origination of loans, as discussed with Ms. Gelfond on November 30, 2009.

*R-7: Describe the Company's policies and procedures for training its employees with respect to compliance with each of the following, specifying any changes to such policies and procedures and the dates of any such changes:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*
- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

**OBJECTION:**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is appropriately limited to marketing, sales, and origination of loans as discussed with Ms. Gelfond on November 30, 2009.

*R-8: Provide a complete organizational chart illustrating the structure, management, and ownership of the marketing and sales activity and mortgage lending activity operations of the Company, including retail, broker, telemarketing and Internet operations, and all management units for such operations.*

## OBJECTION

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton objects to specification R-8 to the extent it requires D.R. Horton to create documents that do not already exist. D.R. Horton is under no obligation to create documents where none previously existed. *See* Fed. R. Civ. P. 45(d)(1)(a). In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is appropriately limited to marketing, sales, and origination of loans, as discussed with Ms. Gelfond on November 30, 2009.

- R-11<sup>5</sup>: Identify all persons who were ever employed or engaged by the Company (including but not limited to sales brokers) during the relevant time period whose duties or responsibilities involved marketing and sales activity, and for each such individual:*
- a. State the relationship of the individual to the Company (e.g., employee or sales broker);*
  - b. State whether the individual ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the*

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<sup>5</sup> With regard to specifications R-9 and R-10, please refer to D.R. Horton's letter to Ms. Rebecca J.K. Gelfond dated December 9, 2009, in which D.R. Horton proposed a schedule for production of these materials. For specification R-10, D.R. Horton reiterates that, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*English language to Spanish language, or translated documents written in English language to the Spanish language for customers;*

*c. Identify his/her duties or responsibilities;*

*d. State the date that the Company began its relationship with the individual;*

*e. State the date, if any, that the Company ended its relationship with the individual;  
and*

*f. State the unique identifier used by the Company to identify the individual.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton objects to the use of “all” as defined in the definitions and as applied to this specification. *See, e.g., Bennett v. Unum Life Ins. Co. of America*, 321 F. Supp. 2d 925, 937 (E.D. Tenn. 2004) (“No. 15 requests ‘any and all documents that show or describe in any way the relationship between UnumProvident and the Unum Life Insurance Company of America.’ This request is overly broad as there could be any number of documents which might ‘show’ ‘in any way’ the relationship between the two companies. If the plaintiff wants documents which evince the legal relationship between the two companies, the plaintiff must appropriately narrow the request to ask for such documents.”); *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d 1260, 1267-68 (N.D. Okla. 2001) (“A cursory review of Plaintiffs’ request for production of documents establishes that Plaintiffs are in fact seeking to require CSI to respond to very broad discovery requests seeking documents relating to all aspects of CSI’s relationship with CFS and the underlying securities transactions. These are not ‘particularized’ discovery requests.”).

In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions

in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. D.R. Horton currently employs over 3,000 employees, and during the relevant time period, employed more than 10,000 employees. Thousands of these employees were involved in marketing and sales, and putting together this information for each of them would be unduly burdensome and unreasonable. Finally, the Company has no ability to ascertain whether employees speak a foreign language or converse with customers in a foreign language. Accordingly, D.R. Horton has no ability to respond to demands for information relating to those inquiries.

- R-12: Identify each loan originator who has engaged in mortgage lending activity with or on behalf of the Company at any time during the relevant time period, and, for each such individual:*
- a. State the relationship of the individual to the Company (e.g., employee, loan broker, or correspondent lender);*
  - b. State whether the individual ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in English language to the Spanish language for customers;*
  - c. State the date that the Company began its relationship with the individual;*
  - d. State the date, if any, that the Company ended its relationship with the individual; and*
  - e. State the unique identifier used by the Company to identify the individual.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton further objects to the use of “all” as defined in the definitions and as applied to this specification. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

DHI Mortgage Co., Ltd. (“DHI”), D.R. Horton’s mortgage subsidiary, employed more than 900 loan originators who are or have been involved in soliciting, arranging, referring or originating mortgage loans for, by, or on behalf of DHI. Interviewing and collecting the specific information sought by this Interrogatory for each of them would be unduly burdensome and unreasonable. *See* Hedgepeth Decl. ¶¶ 17-18. Additionally, the Company has no ability to ascertain whether employees speak a foreign language or converse with customers in a foreign language. Accordingly, D.R. Horton has no ability to respond to demands for information relating to those inquiries.

Finally, on October 16, 2009, DHI produced to the FTC a CD containing 53,635 pages of loan officer comments for approximately 128,000 loan files for loans originated during the time period covered by the CID. *See* Hedgepeth Decl. ¶ 12, and DHI’s Response to Specification R-15(b) of the 6/25/09 CID.

*R-13: Identify the Company employee(s) responsible for and most knowledgeable about the Company’s relationships with and business practices with respect to the sales brokers, loan brokers, and correspondent lenders with whom the Company did business during the relevant time period.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. This overly broad request does not even identify the specific “relationship” or “business practice” that the FTC is interested in. Accordingly, the request purports to seek the identity of persons “most knowledgeable” about anything having to do with “sales brokers, loan brokers, and correspondent lenders.” This is impossible to ascertain. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden

because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*R-14: Identify and describe all training related to marketing and sales activity or mortgage lending activity provided to employees, brokers, correspondent lenders or persons acting on behalf of the Company, including, but not limited to, the type, timing, and substance of the training, all topics and issues included in the training, the job positions receiving the training, and the individuals or entities providing the training.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton further objects to the scope of this request because it is impermissibly broad, unreasonable, and not designed to garner material relevant to the FTC's investigation. For example, the request is not limited to any specific topics but rather requests the identification of all training, which would include, for example, first aid, retirement, and equal employment opportunity training. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

DHI alone estimates that this specification will require 60 hours of staff time to locate and produce responsive materials.

*R-15: For the relevant period, describe the policies, practices, methods, and procedures of the Company relating to the following, specifying the dates during which the policies, practices, methods, and procedures were effective and any changes to the policies, practices, methods, and procedures:*

- a. Identifying or targeting potential home buyers or borrowers, including methods based on their race, religion, sex or national origin or their limited English proficiency;*
- b. Marketing or advertising homes or mortgages to individuals of a particular race, religion, sex or national origin or with limited English proficiency;*
- c. Permitting customers to use real estate agents;*
- d. Referring actual or potential home buyers to the Company's mortgage affiliate(s), or otherwise recommending the Company's mortgage affiliate(s) to actual or potential home buyers, including but not limited to offering any incentives to the customer for using the Company's mortgage affiliate;*
- e. Determining whether actual or potential home buyers and borrowers have limited English proficiency;*
- f. Engaging in communications with actual or potential home buyers and borrowers with limited English proficiency;*
- g. Providing language assistance in the course of buying a home or the mortgage lending process to actual or potential home buyers and borrowers with limited English proficiency, including but not limited to retaining and offering translators, retaining and offering interpreters, retaining and offering employees who serve as interpreters or translators, or obtaining, creating, and offering translated documents;*
- h. Underwriting loans;*
- i. Computing interest, points, or fees;*
- j. Disclosing mortgage loan terms, prices, rates, monthly payments, types of loan(s), good faith estimates, property taxes, and escrow payments to actual or potential home buyers and borrowers, including but not limited to the time of such disclosure;*
- k. Structuring loan transactions, including but not limited to the type of loan offered, whether a mortgage involves one or two loans, a balloon payment, or an adjustable rate;*
- l. Selecting or approving appraisers of real property;*
- m. Providing appraisal reports used in connection with the mortgage loan to actual or potential home buyers and borrowers;*
- n. Making representations regarding the ability to refinance to actual or potential home buyers and borrowers;*
- o. Making statements to actual or potential home buyers and borrowers regarding the value of the home to be purchased;*
- p. Providing closing documents to borrowers in advance of the closing;*

- q. Closing loans, including but not limited to the provision of documents in languages other than English and the availability of and offering of interpreters or translators to individuals with limited English proficiency;*
- r. Requiring earnest money deposits, including but not limited to instances in which such deposits are returned to actual or potential home buyers; and*
- s. Requiring sales targets or goals of Company employees, retail brokers, or loan originators.*

## **OBJECTION**

This Interrogatory is 19 separate Interrogatories, and D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. In addition, as noted previously, the Company has no ability to ascertain whether “actual or potential home buyers and borrowers have limited English proficiency,” accordingly, it has no ability to respond to demands for information relating to those inquiries. Further, several of the demands are incomprehensible. For example, the demands for “policies, practices, methods and procedures . . . relating to underwriting loans, . . . structuring loan transactions . . . making representations regarding the ability to refinance . . . providing closing documents to the borrowers . . . [and] closing loans” are either insufficiently defined or simply a demand for every policy and procedure of DHI. Either way, absent a narrowing of this request, D.R. Horton objects to the entire Interrogatory.

In addition, advertising is conducted by each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 75 hours of staff time to locate and produce responsive materials.

*R-16: Identify the Company employee(s) responsible for and most knowledgeable about the company's policies, practices, methods, and procedures identified in response to Specification R-15.*

**OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III and in response to R-15. This overly broad request does not even identify the specific conduct that the FTC is interested in, and how it may relate to the various levels of employees the FTC requests information about in this specification. As has been noted, D.R. Horton currently employs approximately 3,000 employees and, including former employees, this number increases well above 10,000. Accordingly, the request purports to seek the identity of persons “most knowledgeable” about anything having to do with the nineteen subparts of R-15. This is impossible to ascertain, and even if it were possible to do so, the breadth would pose an unreasonable burden upon D.R. Horton. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

Advertising is conducted by each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. D.R. Horton currently employs over 3,000 employees, and during the relevant time period, employed more than 10,000 employees. This specification would require D.R. Horton to compile

information about each one of those thousands of individuals employed during the relevant time period.

*R-17: Identify and describe all lists, databases, or other compilations of potential customers maintained by the Company and describe how such lists or databases are compiled and used.*

**OBJECTION:**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton objects to the use of “all” as defined in the definitions and as applied to this specification. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*R-18: Describe the Company's policies, procedures, and calculations for how each category of employee and person acting on behalf of the Company at all levels (including sales and loan brokers and correspondent lenders), either individually or on a branch, group, or team basis, are compensated (including any monetary and non-monetary rewards, penalties, or limits) for the following:*

- a. Referring prospective buyers to the Company;*
- b. Selling homes;*
- c. Referring actual or prospective buyers to the Company's mortgage affiliate(s);*
- d. Originating loans; and*
- e. Soliciting customers;*

**OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. In addition, general terms such as “referring,” “selling,” and “soliciting,” are unduly broad and subject to

multiple interpretations. For example, as drafted, R-18 demands a description of every policy, every procedure for, and calculation of, all compensation for every employee of the Company, which includes every subsidiary, joint venture, unincorporated divisions, as well as all “directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing that are engaged in marketing and sales activity or mortgage lending activity.” There is no legitimate basis for such a demand. D.R. Horton also objects to the use of “all” as defined in the definitions and as applied to this specification. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. D.R. Horton currently employs over 3,000 employees, and during the relevant time period, employed more than 10,000 employees. This specification would require D.R. Horton to compile information about each one of those thousands of individuals employed during the relevant time period. Also, material responsive to this request has previously been produced by DHI in response to specification R-9 of the 2/5/09 CID.

*R-19: Identify the Company employee(s) responsible for and most knowledgeable about the Company's policies and procedures identified in response to Specification R-18:*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in §

III, and those set forth above in response to R-18. This overly broad request does not even identify the specific conduct that the FTC is interested in, and how it may relate to the various levels of employees the FTC requests information about in this interrogatory. As has been noted, D.R. Horton currently employs approximately 3,000 employees and, including former employees, this number increases well above 10,000. Accordingly, the request purports to seek the identity, from amongst tens of thousands of persons, of those “most knowledgeable” about anything having to do with the five subparts of R-18. This is impossible to ascertain, and even if it were possible to do so, the breadth would pose an unreasonable burden upon D.R. Horton. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

*R-20: For each method used by the Company to solicit, market to, or advertise to potential customers for home purchases or mortgage loans, including but not limited to the referral of actual or potential home buyers to the Company's mortgage affiliate(s):*

- a. Identify and describe each such method, including but not limited to methods utilized with respect to individuals with limited English proficiency;*
- b. Identify any scripts used in conjunction with the method;*
- c. Describe how potential customers for the solicitation or advertisement are selected, including but not limited to the extent to which race, religion, sex, national origin, or limited English proficiency is taken into account in any way;*
- d. Identify the source(s) of any compilations of potential customers used for the solicitation or advertisements;*
- e. Describe the geographical distribution of the solicitation or advertisement;*
- f. Describe the timing of the distribution of the solicitation or advertisement.*
- g. Identify the entity or individual that prepares and disseminates or executes the solicitation or advertisement;*
- h. Describe the frequency with which the solicitation or advertisement is executed or disseminated to the same potential customer; and*
- i. Describe any subsequent actions taken after the execution or dissemination of the solicitation or advertisement.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton

objects to the scope of specification R-20. A quick inquiry of several of D.R. Horton's divisions indicates that the number of print advertisements for each individual office will number in the thousands. Moreover, given the passage of time and the closure of many offices, it will be virtually impossible for D.R. Horton to compile four years worth of advertising for all states. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. In addition, advertising is conducted by each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Finally, the Company has no ability to ascertain whether customers are proficient in the English language or speak a foreign language. Accordingly, D.R. Horton has no ability to respond to demands for information relating to those inquiries.

- R-21: Describe how the Company prepares any promotional materials or communications that contain representations that:*
- a. consumer may save money by obtaining a mortgage from the Company's mortgage affiliate; or*
  - b. a consumer will have a specific monthly payment on a mortgage loan.*
- Specify how any numerical figures contained in such promotional materials are calculated.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also objects to the undefined scope of specification R-21 in that it is unclear what is meant by the phrase "how the Company prepares . . . promotional materials or communications." This Interrogatory includes, for example, descriptions as to how print and/or electronic media

communications are physically prepared, which is beyond the scope of the FTC's investigation. In addition, a demand for a description of "communications" that "have a specific monthly payment on a mortgage loan" includes, for example, the disclosure documents that are contained in every specific borrower's loan file. Due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Absent a narrowing of this Interrogatory as discussed in D.R. Horton's letter to Ms. Gelfond on December 9, 2009, it is not possible for D.R. Horton to respond.

*R-22: For each advertisement or promotional document provided in response to Specifications P-19 and P-20, identify the time period during which the Company distributed or used the advertisement or promotional document and the geographic area in which the document was distributed. For each internet advertisement, additionally identify the Internet address(es) used to advertise.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III and the objections set forth in response to R-21. D.R. Horton objects to the scope of this Interrogatory. A quick inquiry of several of D.R. Horton's divisions indicates that the number of print advertisements for each office will number in the thousands. Moreover, given the passage of time and the closure of many offices, it will be virtually impossible for D.R. Horton to compile four years worth of advertising for all states. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. Advertising is conducted by each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations,

this interrogatory presents an undue burden. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 50 hours of staff time to locate and produce responsive materials.

*R-23: Identify and describe any analysis, study, or examination that the Company made of the following:*

- a. The number of individuals with limited English proficiency who may be potential customers of the Company;*
- b. The frequency with which individuals with limited English proficiency are potential or actual customers of the Company; and*
- c. The costs of or resources required for providing interpretation or translation assistance to individuals with limited English proficiency.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. While the Company is not aware of any documents responsive to items a and b of this Interrogatory, without conducting a time consuming survey of every office of every subsidiary, joint venture, unincorporated divisions, as well as all “directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing that are engaged in marketing and sales activity or mortgage lending activity,” the Company cannot provide a full and complete response to this interrogatory. With respect to item c, the request is overly broad and unduly vague because it does not identify the subjects on which the interpretation or translation assistance is being provided. Additionally, Company has no ability to ascertain whether customers are proficient in the English language or speak a foreign language. Accordingly, D.R. Horton has no ability to respond to demands for information relating to those inquiries. To the extent the Company can locate any documents that are responsive to item c, they will be produced.

In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Absent a narrowing of this Interrogatory as discussed in D.R. Horton's letter to Ms. Gelfond on December 9, 2009, it will be unreasonably burdensome for D.R. Horton to respond.

*R-24: Describe all practices and procedures used to monitor, oversee, supervise, inspect, or audit the compliance by employees and persons acting on behalf of the Company with the Company's established policies, procedures, and practices relating to marketing and sales activity and mortgage lending activity.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, as drafted, the Interrogatory demands a description of every practice and procedure of the Company with respect to monitoring, overseeing, supervising, inspecting or auditing of any aspect of the Company as well as every one of its subsidiaries, joint ventures, unincorporated divisions, "directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing." As such, this interrogatory is impossible to answer. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibility for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However,

as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).*

*R-25: Identify all government and/or law enforcement investigations or proceedings concerning the Company's possible violation of laws with respect to marketing and sales activity or mortgage lending activity that occurred during the relevant time period, and for each such investigation:*

- a. State the name of the government and/or law enforcement agency that conducted or is conducting the investigation or proceeding;*
- b. State the resolution or current status of the investigation or proceeding;*
- c. State the legal name of each Company entity or individual subject to the investigation or proceeding; and*
- d. State whether the investigation or proceeding concerned possible violations of any local, state, or federal anti-discrimination or anti-fraud law.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. The terms “marketing and sales activity” and “mortgage lending activity” are defined, respectively, as “all actions, activities, transactions, or communications that involve or are related to the sale of a home, including but not limited to the targeting or identification of potential home buyers for home sales; the marketing or advertising of homes; the solicitation of home buyers, and the referral of actual or potential home buyers to the Company’s mortgage affiliate(s),” as well as “all dealings between an applicant, home buyer or mortgagor and the Company involving a mortgage loan.” Simply stated, the demand for every complaint, legal action, and any regulatory proceeding, as well as every document related to matters, with no regard for the subject matter other than that it relates to a home sale or mortgage loan, is overly broad and unduly

burdensome, and will not be responded to unless and until the Commission narrows this request. *See Moses v. Halstead*, 236 F.R.D. 667, 672 (D. Kan. 2006) (“On numerous occasions this Court has held that a request or interrogatory is overly broad or unduly burdensome on its face if it: (1) uses an omnibus term such as ‘relating to’ or ‘concerning,’ and (2) applies to a general category or group of documents or a broad range of information.”). For example, this request demands every document in any legal action that is identified such that the Company would be required to produce copies of every pleading, as well as all discovery documents and correspondence, regardless of the subject matter of the underlying Complaint. *See Manual for Complex Litigation (Fourth)* § 11.443 (2004) (document requests should not be “sweeping,” such as “those for ‘all documents relating or referring to’ an issue, party or claim,” but should be framed “for production of the fewest documents possible”). Of course, this request also implicates privileged material that D.R. Horton has no obligation to produce, and D.R. Horton objects to the demand for information relating to any non-public investigations or “proceedings” by any other “governmental and/or law enforcement [entity]” as privileged and irrelevant to the scope of the FTC’s investigation.

Further, DHI produced material responsive to this specification in response to specification R-14 of the 2/5/09 CID as well as specification R-27 of the 6/25/09 CID. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*R-26: Describe the Company’s policies, procedures, and software (whether third-party or proprietary), and any changes to such policies, procedures, or software (including the dates of any such changes), for handling consumer complaints related to the Company’s marketing and sales activity or mortgage lending activity.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also specifically objects to the demand for information relating to all consumer complaints relating to any aspect of its homebuilding or mortgage lending activities as beyond the scope of the FTC's investigation. Further, information requested by this specification was provided by DHI in response to specification R-26(a) of the 6/25/09 CID. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*R-27: Identify the Company employee(s) responsible for and most knowledgeable about the Company's policies, procedures, and software for handling consumer complaints related to the Company's marketing and sales activity or mortgage lending activity.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. This overly broad request does not even identify the specific conduct that the FTC is interested in, and how it may relate to the various levels of employees the FTC requests information about in this specification. As has been noted, D.R. Horton currently employs approximately 3,000 employees and, including former employees, this number increases well above 10,000. Accordingly, the request purports to seek the identity, from amongst tens of thousands of persons, of those "most knowledgeable" about anything having to do with consumer complaints. This is impossible to ascertain, and even if it were possible to do so, the breadth would pose an unreasonable burden upon D.R.

Horton. See, e.g., *Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

D.R. Horton currently employs over 3,000 employees, and during the relevant time period, employed more than 10,000 employees. This specification would require D.R. Horton to compile information about each one of those thousands of individuals employed during the relevant time period. Further, information requested by this specification was provided by DHI in response to specification R-26(b) of the 6/25/09 CID. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*R-28: Identify each regulatory agency with which or by which the Company is licensed with respect to its marketing and sales activity or mortgage lending activity, and specify the license number or numbers (or other identifier or identifiers) issued to the Company by each such agency.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, information requested by this specification was provided by DHI in response to specification R-28 of the 6/25/09 CID. In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because D.R. Horton currently operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*R-29: Identify and describe all electronic mail systems used by the Company during the relevant time period, and, for each such system, specify:*

- a. The dates during which the system was used;*
- b. The categories of employees or offices who use or used the system; and*

- c. *The Company's policies and procedures with respect to the retention of the system's electronic mail messages.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, information requested by this specification was provided by DHI in response to specification R-24 of the 6/25/09 CID. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

- R-30: *Identify and describe each database in which the Company has created and/or retained electronic records at any time during the relevant time period relating to marketing homes, selling homes, mortgage loans, mortgage loan applications, or compensating employees, sales or loan brokers, or correspondent lenders engaged in marketing and sales activity or mortgage lending activity, and for each such database:*
- a. *Specify the name of the database;*
  - b. *Describe the purpose of the database;*
  - c. *Describe the type(s) of data retained in the database;*
  - d. *Describe the structure of the database;*
  - e. *Specify the time period covered by the data retained in the database;*
  - f. *Describe any categorical distinctions or limitations on the type of data retained in the database (e.g., whether the data are limited to brokered loans);*
  - g. *Describe the software or software platform used to create, operate, or maintain the database;*
  - h. *Identify the person or persons responsible for maintaining the database;*
  - i. *Specify the time period during which the Company used the database and, if no longer used, the reasons for discontinuing its use; and*
  - j. *Describe data retention policies, procedures, and practices relating to each such database.*

## **OBJECTION**

In response to this interrogatory, which demands information relating to any database used by D.R. Horton, or any of its subsidiaries, joint ventures, unincorporated divisions, "agents," and consultants during the relevant time period, the Company incorporates by

reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, information requested by this specification was provided by DHI in response to specification R-21 of the 6/25/09 CID.

In addition, due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*R-31: If any documents produced in response to the Specifications for Documentary Materials below are in the Spanish language, provide a complete and accurate English-language translation of each such document.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Among other things, this demand would require the Company to produce new documents in response to the CID, to wit, translations of existing documents. To the extent responsive materials are identified and produced, the FTC, not the Company, should bear the expense of translating such materials to English. If the Company has in its possession existing translations of such documents, they will be produced. In addition, to comply with this specification will require an inquiry of each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden. Currently, D.R. Horton operates in 33 geographic

regions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, if during the production of information the Company locates any responsive documents, they will be produced.

### DOCUMENTS

*P-4:<sup>6</sup> Produce all documents that describe, reflect, or relate to the Company's policies, procedures, and practices identified in response to Specification R-5.*

### OBJECTION

D.R. Horton incorporates by reference and renews its objections to specification R-5 as if fully set forth here in response to specification P-4. Further, information requested by this specification was provided by DHI in response to specification P-2 of the 6/25/09 CID. In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

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<sup>6</sup> With regard to specifications P-1, P-2, and P-3, please refer to D.R. Horton's letter to Ms. Rebecca J.K. Gelfond dated December 9, 2009, in which D.R. Horton proposed a schedule for production of these materials. For specification P-2, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

- P-5: *Produce all documents that relate to, analyze, or evaluate the compliance of the Company, its employees, its sales or loan brokers, or its correspondence lenders, or any subset or combination thereof, with each of the following:*
- a. *The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
  - b. *The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
  - c. *The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*
  - d. *The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. This overly broad request does not even identify the specific conduct that the FTC is interested in, and how it may relate to the various levels of employees the FTC requests information about in this specification. Accordingly, the request purports to seek the all documents relating to, analyzing, or evaluating the compliance of thousands of employees. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. D.R. Horton currently employs over 3,000 employees, and during the relevant time period, employed more than 10,000 employees. This specification would require D.R. Horton to review for relevancy and compile documents about each one of those thousands of individuals employed during the relevant time period. To the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-

evaluative reports privilege. *See Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).*

Further, information requested by this specification was provided by DHI in response to specifications R-21 and P-5 of the 6/25/09 CID. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

*P-6: Produce all documents that describe, reflect, or relate to the Company's policies, practices, methods, and procedures identified in response to Specification R-15.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett, 321 F. Supp. 2d at 937; In re CFS-Related Secs. Fraud Litig., 179 F. Supp. 2d at 1267-68.*

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 50 hours of staff time to locate and produce responsive materials.

*P-7: Produce all documents that describe, reflect, or relate to the Company's solicitation, marketing, and advertising methods identified in response to Specification R-20.*

## **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-20 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. In addition, advertising is conducted by each office of D.R. Horton and, because of the decentralized nature of its homebuilding operations, this document request presents an undue burden. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*P-8: Produce all documents that describe, reflect, or relate to the Company’s studies, analyses, or examination identified in response to Specification R-23.*

## **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-23 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibility for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed

by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See* Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).

- P-9: Produce all documents that describe, reflect, or relate to the Company's promotional materials or communications that contain representations that:*
- a. a consumer may save money by obtaining a mortgage from the Company's mortgage affiliate(s); or*
  - b. a consumer will have a specific monthly payment on a mortgage loan.*

### **OBJECTION**

D.R. Horton incorporates by reference its objections to specifications R-20 through R-22 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that subsection (a) of this specification will require 80 hours of staff time to locate and produce responsive materials.

- P-10: Produce all documents and materials used during the relevant time period to conduct training for the Company's employees, retail or loan brokers, or correspondent lenders, relating to the Company's marketing and sales activities or mortgage lending activities.*

### **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-14 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. In addition, as noted in response to R-14,

this demand is not limited to any particular activity of the homebuilder or lender; accordingly, it seeks information that is beyond the scope of the FTC's investigation. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*P-11: Produce all documents relating to the Company's efforts to monitor, oversee, supervise, inspect, or audit the compliance by employees and persons acting on behalf of the Company with the Company's policies, procedures, and practices relating to marketing and sales activities or mortgage lending activities.*

#### **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-24 as if set forth fully herein. Further, requesting "any and all" documents or "all documents relating to" a subject is an impermissibly broad document request. In addition, as noted in response to R-14, this demand is not limited to any particular activity of the homebuilder or lender; accordingly, it seeks information that is beyond the scope of the FTC's investigation. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibility for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Further, information requested by this specification was provided by DHI in response to specification P-

10 of the 6/25/09 CID. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).*

*P-12: Produce all documents relating to the performance evaluation process for all the Company's divisions, branches, employees, and persons acting on behalf of the Company, involved in any way (including in a supervisory or management capacity) in marketing and sales activities or mortgage lending activities, including but not limited to exemplar evaluation forms.*

### **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-24 as if set forth fully herein. D.R. Horton also specifically objects to this demand for every performance appraisal, or any other document related to performance, for every individual in the Company, as well as every individual employed by its subsidiaries, affiliates, etc. Due to the decentralized nature of its homebuilding operations, this interrogatory presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).*

*P-13: Produce all documents, contracts or agreements relating to the referral of actual or prospective home buyers to the Company's mortgage affiliate(s), including but not limited to the following:*

- a. Agreements between the Company and its mortgage affiliate(s); and*
- b. Documents explaining any compensation that the Company may receive for referrals to its mortgage affiliate(s).*

## **OBJECTION**

D.R. Horton incorporates by reference its objection to specification R-15 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. Moreover, in order to comply with this document demand, the Company would be required to review and produce documents from every transaction since January 1, 2006. Accordingly, this demand is unduly burdensome. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that subsection (a) of this specification will require 100 hours of staff time to locate and produce responsive materials. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter.

- P-14: Produce all documents given to consumers which relate to the Company's referrals to its mortgage affiliate(s), including but not limited to the following:*
- a. Disclosures of the relationship between the Company and its mortgage affiliate(s);*
  - b. Description of any effects of using the Company's mortgage affiliate(s), including but not limited to reduced closing costs; and*
  - c. Description of any effects of not using the Company's mortgage affiliate(s).*

## **OBJECTION**

D.R. Horton incorporates by reference its objection to specification P-13 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. Due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this interrogatory will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Moreover, in order to comply with this document demand, the Company would be required to review and produce documents from every transaction since January 1, 2006. Accordingly, this demand is unduly burdensome. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

*P-15: Produce all documents relating to how the Company trains, instructs, or directs its employees and retail brokers on the referral of actual or prospective home buyers to its mortgage affiliate(s), including but not limited to the following:*

- a. Scripts or suggested methods of making a referral;*
- b. Directions on how to quote loan prices or loan terms;*
- c. Materials explaining eligibility criteria for loan products; and*
- d. Materials explaining the terms of loan products.*

## **OBJECTION**

D.R. Horton incorporates by reference its objection to specifications R-14 and P-13 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. Due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document

request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Moreover, in order to comply with this document demand, the Company would be required to review and produce documents from every transaction since January 1, 2006. Accordingly, this demand is unduly burdensome. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

*P-16: Produce all documents relating to the Company's annual sales targets and profit goals with regard to the referral of actual and prospective buyers to its mortgage affiliate(s). If the sales targets and profit goals vary by division or region, produce documents specific to each division or region.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*P-17: Produce all reports produced by or relating to any branch, group, division, region or headquarters office concerning the following:*

- a. The percentage or volume of actual or prospective home buyers who were referred to the Company's mortgage affiliate(s);*
- b. The percentage or volume of loans for which the home buyer was extended a loan by the Company's mortgage affiliate(s), and*
- c. The percentage or volume of home buyers who were not extended a loan by the Company's mortgage affiliate(s).*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. However, as noted in its letter to Ms. Gelfond dated December 9, 2009, D.R. Horton is prepared to produce materials responsive to this specification if the specification is limited appropriately as proposed in that letter. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See Wright & Miller*, 23 Federal Practice and Procedure § 5431 (2009).

*P-18: Produce all documents that describe, reflect, or relate to the policies, procedures, and calculations for compensation identified in response to Specification R-18, including all documents that relate to the Company's decision to implement such monetary or non-monetary rewards, penalties, or limits.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also incorporates by reference its objections to R-18 as if fully set forth

herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 50 hours of staff time to locate and produce responsive materials.

*P-19: Produce all advertisements or marketing materials related to the Company's marketing and sales activities or mortgage lending activities that were used in the States of Arizona, California, Florida, Nevada, North Carolina, or Texas during the relevant time period, including:*

- a. All non-identical printed advertisements and materials used, including, but not limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, direct mail solicitations, electronic mail solicitations, signs, and other materials;*
- b. All telephone scripts, audio tapes, and video tapes (including printed transcripts for such audio and video tapes); and*
- c. In printed form, all information made available on the World Wide Web, including the Internet address (URL) of the site.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also incorporates by reference its objection to specifications R-20 through R-22 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See,*

*e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that subsection (a) of this specification will require 100 hours of staff time to locate and produce responsive materials.

*P-20: Produce all advertisements and marketing materials related to the Company's marketing and sales activities or mortgage lending activities that are in the Spanish language, in whole or in part, and were used during the relevant time period, including:*

- a. All non-identical printed advertisements and materials used, including, but not limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, direct mail solicitations, electronic mail solicitations, signs, and other materials;*
- b. All telephone scripts, audio tapes, and video tapes (including printed transcripts for such audio and video tapes), and*
- c. In printed form, all information made available on the World Wide Web, including the Internet address (URL) of the site.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also incorporates by reference its objection to specification R-22 as if set forth fully herein. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*P-21: Produce all documents relating to the Company's policies, procedures, and practices for the handling of consumer complaints and inquiries related to the Company's marketing and sales activities or mortgage lending activities.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton also specifically objects to the demand for information relating to all consumer complaints relating to any aspect of its homebuilding or mortgage lending activities as beyond the scope of the FTC's investigation. Further, requesting "any and all" documents or "all documents relating to" a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Further, information requested by this specification was provided by DHI in response to specification P-13 of the 6/25/09 CID.

*P-22: Produce all documents that relate to the following:*

- a. Complaints from actual or prospective buyers or borrowers that relate to the Company's marketing and sales activities or mortgage lending activities;*
- b. Private litigation in which claims or counterclaims against the Company that relate to the Company's marketing and sale activities or mortgage lending activities were asserted; and*
- c. Law enforcement and regulatory proceedings, actions, and investigations of the Company that relate to the Company's marketing and sale activities or mortgage lending activities.*

## **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Specifically, this demand is overly broad and beyond the scope of the FTC's investigation. The demand for all complaints, as well as all documents "related" to private litigation and "law enforcement and regulatory proceedings, actions and investigations" that relate to the "Company's marketing and sales activities or mortgage lending activities," is a demand for every complaint, legal action, and any regulatory proceeding, as well as every document related to those matters, with no regard for the subject matter other than that it relates to a home sale or mortgage loan. As such, this demand is overly broad and unduly burdensome. Further, requesting "any and all" documents or "all documents relating to" a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. Further,

information requested by this specification was provided by DHI in response to specification P-13 of the 6/25/09 CID. Finally, D.R. Horton objects to the demand for information relating to any private litigation involving “law enforcement and regulatory proceedings, actions, and investigations” as privileged and irrelevant to the scope of the FTC’s investigation.

*P-23: Produce all documents relating to actual or alleged abuses or violations of law or Company policy by employees, retail or loan brokers, correspondent lenders, and persons acting on behalf of the Company in relation to the Company’s marketing and sales activities or mortgage loan activities, including but not limited to internal investigations, responses to accusations of malfeasance, and the minutes of Executive Committee or Board of Director meetings.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton incorporates by reference its objections to specification R-25 as if set forth fully herein. D.R. Horton also objects to this demand because it seeks information relating to any “actual or alleged abuses of law or Company policy,” regardless of the subject matter; accordingly, this request for production is beyond the scope of the FTC’s investigation. This demand is also overly broad and beyond the scope of the FTC’s investigation. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI

alone estimates that this specification will require 50 hours of staff time to locate and produce responsive materials.

Of course, this request also implicates privileged legal materials that D.R. Horton has no obligation to produce. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. *See* Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).

*P-24: Produce all documents relating to any customer survey taken by or on behalf of the Company.*

### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Moreover, in order to comply with this document demand, the Company would be required to review and produce documents from every transaction since January 1, 2006. Accordingly, this demand is unduly burdensome. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 200 hours of staff time to locate and produce

responsive materials. Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton, D. R. Horton objects based on the self-evaluative reports privilege. See Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).

*P-25: For those individuals identified in response to Specifications R-11 and R-12 that ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in the English language to the Spanish language for customers, produce a copy of the complete consumer loan application and loan file for each consumer who ultimately purchased a home through or was extended a loan by that individual. If more than 1,000 consumer applications files are responsive to this request, please contact us within 10 days of receipt of this CID so that we may discuss the possibility of limiting the request.*

#### **OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. D.R. Horton incorporates by reference its objections to specifications R-11 and R-12 as if set forth fully herein. Moreover, in order to comply with this document demand, the Company would be required to review and produce documents from every transaction since January 1, 2006. Accordingly, this demand is unduly burdensome.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006. DHI alone estimates that this specification will require 50 hours of staff time to locate and produce responsive materials. Finally, the Company has no ability to ascertain whether employees speak

a foreign language or converse with customers in a foreign language. Accordingly, D.R. Horton has no ability to respond to demands for information relating to those inquiries.

*P-27:<sup>7</sup> Produce exemplars of the Company's contracts with its employees who engage in the sale of homes and retail brokers with whom the Company does business.*

**OBJECTION**

In response to this Request, which demands copies of “contracts” for every employee of D.R. Horton, as well as all of its subsidiaries, joint ventures, unincorporated divisions, “agents,” and consultants during the relevant time period, the Company incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III.

In addition, due to the decentralized nature of its homebuilding operations, this document request presents an undue burden because each office has responsibilities for the supervision of its employees and overall operation. Currently, D.R. Horton operates 33 divisions in 27 states nationwide, and a full response to this document request will require the Company to retrieve information from every office that was in existence at any time since January 1, 2006.

*P-28: Produce exemplars of the Company's contracts with its employee loan originators, loan brokers, and correspondent lenders with whom the Company does business.*

**OBJECTION**

In response to this Request, which demands copies of “contracts” for every employee of D.R. Horton, as well as all of its subsidiaries, joint ventures, unincorporated divisions, “agents,” and consultants during the relevant time period, the Company incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and

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<sup>7</sup> With regard to specification P-26, please refer to D.R. Horton’s letter to Ms. Rebecca J.K. Gelfond dated December 9, 2009, in which D.R. Horton proposed a schedule for production of these materials.

relevance set forth in § III. Further, information requested by this specification was provided by DHI in response to specification P-6 of the 6/25/09 CID.

*P-29: Produce all documents that reflect the schema, architecture, and/or design of each database identified in the Company's response to Specification R-30 of this CID.*

#### **OBJECTION**

In response to this Request, which demands information relating to any database used by D.R. Horton, or any of its subsidiaries, joint ventures, unincorporated divisions, "agents," and consultants during the relevant time period, the Company incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, information requested by this specification was provided by DHI in response to specification P-7 of the 6/25/09 CID.

*P-30: Produce all manuals or handbooks related to any software used by the Company in its marketing and sales activity or mortgage lending activity.*

#### **OBJECTION**

In response to this Request, which demands information relating to any software used by D.R. Horton, or any of its subsidiaries, joint ventures, unincorporated divisions, "agents," and consultants during the relevant time period, the Company incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. Further, requesting "any and all" documents or "all documents relating to" a subject is an impermissibly broad document request. *See, e.g., Bennett*, 321 F. Supp. 2d at 937; *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d at 1267-68. Further, information requested by this specification was provided by DHI in response to specification P-8 of the 6/25/09 CID.

*P-31: Produce all manuals or handbooks utilized or made available by the Company to its employees, sales or loan brokers, or correspondent lenders that relate to marketing and sales activity or mortgage lending activity.*

**OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. This demand is over broad in that it seeks information relating to any manuals or handbooks used by D.R. Horton, or any of its subsidiaries, joint ventures, unincorporated divisions, “agents,” and consultants during the relevant time period. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett, 321 F. Supp. 2d at 937; In re CFS-Related Secs. Fraud Litig., 179 F. Supp. 2d at 1267-68.* Further, information requested by this specification was provided by DHI in response to specification P-9 of the 6/25/09 CID.

*P-32: Produce all documents that relate to any third-party audit, report, review, or assessment of the Company's operations that relate to the Company's marketing and sales activity or mortgage lending activity, including any such audit, report, review, or assessment conducted by a government agency or agencies.*

**OBJECTION**

D.R. Horton incorporates by reference all of its general objections set forth in § IV above, as well as its specific objections regarding burden and relevance set forth in § III. In addition, because the request is not limited by subject matter, it exceeds the scope of the FTC's investigation. Further, requesting “any and all” documents or “all documents relating to” a subject is an impermissibly broad document request. *See, e.g., Bennett, 321 F. Supp. 2d at 937; In re CFS-Related Secs. Fraud Litig., 179 F. Supp. 2d at 1267-68.* Finally, to the extent that this specification may require internal audits or self-evaluative analyses performed by D.R. Horton,

D. R. Horton objects based on the self-evaluative reports privilege. *See* Wright & Miller, 23 Federal Practice and Procedure § 5431 (2009).

### DATA REQUESTS

D.R. Horton objects generally to the demands for data on the following grounds. First, the time allowed for production, 30 days, is too short. DHI is required to make a number of changes to its loan origination system based on recent regulatory changes. As a result, the CID allows insufficient time to ascertain whether the information requested is available and, if it is available, to produce that information. Second, a number of the demands for data are vague and incomprehensible. For example, D-44 requests, for each individual loan, “whether the mortgage loan had or could have had a balloon payment.” Whether a loan **has** a balloon payment is one thing, whether it **could have had** a balloon payment is impossible to ascertain. If, for example, the borrower stated that he/she did not want a balloon payment, then does that mean that the loan could not have had a balloon payment? Further, it is impossible to comprehend what relevance the ability to structure a balloon payment into a particular transaction could have on any legitimate topic for investigation by the FTC. Third, as noted above, DHI simply does not collect information regarding “limited English proficiency,” which is undefined by the CID because of the failure to explain what constitutes “limited ability to read, write, speak or understand English.” *See* Definition 19. Fourth, DHI has already determined that a number of the requests can only be responded to by a file-by-file review of, among other things, the credit reports in the file. Specifically, at a minimum, requests D-76A through D-77E, are not available in computer data format. Finally, D.R. Horton objects to the overly broad demands for data in light of the Commission’s refusal to reimburse the Company for the cost of extracting the data.

**VI. CONCLUSION**

The CID served on D.R. Horton by the FTC on November 3, 2009, is impermissibly broad, unreasonable, and large portions of it are irrelevant to the stated purpose of the Resolutions under which the FTC exercises its compulsory power. D.R. Horton realizes the FTC's broad investigatory powers, and is willing to work with the FTC on production of information and documents that will advance its investigation, as was demonstrated in D.R. Horton's letter to Ms. Gelfond dated December 9, 2009. However, the CID, as currently written, places an undue burden on D.R. Horton to comply with it. Therefore, the CID is unenforceable and D.R. Horton respectfully requests that the Commission quash or limit the CID in a manner reasonably designed to extract relevant information.

Respectfully submitted,

By:



Mitchel H. Kider

David M. Souders

WEINER BRODSKY SIDMAN KIDER PC

1300 19th Street, NW, 5th Floor

Washington, DC 20036

Telephone: (202) 628-2000

Facsimile: (202) 628-2011

*Counsel for D.R. Horton, Inc.*

**CERTIFICATION**

Pursuant to 16 C.F.R. §2.7(d)(2), counsel for petitioner D.R. Horton, Inc., hereby certifies that they have conferred with counsel and staff for The Federal Trade Commission by phone, e-mail and letter correspondence in a good faith effort to resolve by agreement the modifications sought by this Petition, but have been unable to reach an agreement. Counsel for D.R. Horton, as listed above in this Petition, corresponded with FTC Counsel Ms. Rebecca J.K. Gelfond on November 30, 2009; December 2, 2009; and December 9, 2009; however, the parties have yet to come to any satisfactory agreement beyond an initial one week extension of the time in which to respond and file this Petition.

  
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David M. Souders

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of December, 2009, I caused the original and twelve (12) copies of the Petition to Quash or Limit with attached Exhibits to be hand delivered with the Secretary of The Federal Trade Commission; and one copy of the of same to be hand delivered to Rebecca J.K. Gelfond. Both deliveries were made at the following address:

Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

  
\_\_\_\_\_  
David M. Souders



November 20, 2009

**BY ELECTRONIC AND FIRST CLASS MAIL DELIVERY**

Joel Winston  
Associate Director  
Federal Trade Commission  
Division of Financial Practices  
601 New Jersey Avenue, N.W.  
Washington, DC 20580

**CONFIDENTIAL COMMUNICATION**

Dear Mr. Winston:

Our firm represents D.R. Horton, Inc. ("D.R. Horton"), in connection with the Civil Investigative Demand that was served on November 3, 2009 ("CID"). We are writing for the purpose of attempting to resolve a number of issues related to the CID in lieu of filing a Petition to Quash or Limit ("Petition") a number of the demands for information, documents, and data. Pursuant to the terms of the CID, D.R. Horton is required to file its Petition on or before November 24, 2009; accordingly, we ask that you contact us immediately to discuss the issues raised herein.

As an initial matter, the demands in the CID are extremely broad and burdensome. Therefore, at a minimum, our client will require substantial time to investigate, gather, and produce materials responsive to a number of the requests.<sup>1</sup> As you are well-aware,

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<sup>1</sup> The CID includes 31 Interrogatories (109 inclusive of subparts); 32 Document Requests (50 inclusive of subparts) and 62 Data Requests. Subparts of Interrogatories are considered separate questions. *See, e.g.* Fed. R. Civ. P. 33(a)(1) (including "all discrete subparts" of interrogatories in the total number allowed). Accordingly, the CID contains 221 separate requests. Please note that this number does not even include the subparts that are not listed as such. *See, e.g.*, R-9 (provide a list of all job titles or positions that relate to marketing and sales activity or mortgage lending activity . . . [and] [d]escribe the duties and responsibilities for each such job title or position." (emphasis added)); R-14 (multiple subparts); R-22 (multiple subparts); P-4 (requesting documents responsive to R-5, which has four subparts); P-6 (requesting documents responsive to R-15, which has 19 subparts); P-7 (requesting documents responsive to R-20, which has nine subparts).

Joel Winston

2

November 20, 2009

these are very difficult times for builders and mortgage lenders and D.R. Horton, and its affiliate, DHI Mortgage Company, Ltd ("DHI Mortgage"), are no exceptions. In addition to the difficult economic market, D.R. Horton, and DHI Mortgage are undergoing substantial changes to their operations in order to comply with new regulations, including, for example, the sweeping changes to the Real Estate Settlement Procedures Act ("RESPA") which require new Good Faith Estimates ("GFEs") and HUD-1 Settlement Statements by January 1, 2010. Moreover, DHI Mortgage already is the subject of two other Civil Investigative Demands from the FTC, dated February 5, 2009, and June 29, 2009.<sup>2</sup> DHI Mortgage is also working with the HUD Office of Inspector General in connection with several ongoing audits of several of its branches. In short, the panoply of demands on these two companies make it even more critical that the scope of the CID be tailored to provide the information that the FTC needs in a time frame that will not cause irreparable disruption to their ongoing business operations.

With respect to our efforts to work with the FTC, we are hampered by the enormous scope and breadth of the CID. Specifically, the CID is requesting virtually every single document within the possession, custody, or control of D.R. Horton that refers or relates to the sale of homes or the origination of mortgages by its affiliate. This is accomplished through the use of excessively broad definitions, *e.g.*, "and" as well as "or" are to be construed to include "all information that otherwise might be construed to be outside the scope of the specification," and the overly broad definition of "D.R. Horton, Inc.," which is defined to include, for example, every subsidiary, joint venture, unincorporated divisions, as well as all "directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing that are engaged in marketing and sales activity or mortgage lending activity."

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<sup>2</sup> With respect to the two previously issued CIDs to DHI Mortgage, we object to the CID issued to D.R. Horton to the extent it seeks information already provided to the FTC. For example, R15-(h) requests the "policies, practices, methods and procedures of the Company" for underwriting loans. All of this information was previously produced to the FTC by DHI Mortgage. The same is true to the extent the CID seeks information from DHI Mortgage relating to the ECOA and Regulation B. There is simply no basis for the Agency to demand another production of the same material.

In addition to its lender affiliate, D.R. Horton also has a title company affiliate, DHI Title, which has offices in seven states. From the terms of the CID, DHI Title would be compelled to produce every document in its possession since all of its documents relate to the sale of property and/or the origination of a mortgage loan. That would be true regardless of whether D.R. Horton was the builder or DHI Mortgage was the lender. On that basis, D.R. Horton objects to the CID to the extent that it defines "D.R. Horton, Inc." or "the Company" to include, *inter alia*, all subsidiaries and affiliates.<sup>3</sup>

Further, the Commission's Resolution, dated December 15, 2008, is of no assistance in identifying for D.R. Horton the scope of the investigation. Rather, that Resolution states that the "nature and scope of investigation" is to determine whether "unnamed persons, partnerships, corporations, or others have engaged or are engaging in deceptive or unfair acts or practices in or affecting commerce in the advertising, marketing, sale, or servicing of loans and related products in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended." The Resolution goes on to include an investigation of "acts and practices" that may violate the Consumer Credit Protection Act, 15 U.S.C. § 1601, *et seq.* None of these statements provides any guidance to our client with respect to the type of information that the FTC needs in order to conduct its investigation. For that reason, Instruction F is nonsensical. That instruction states:

If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions with Rebecca Gelfond at (202) 326-2219 or rgelfond@ftc.gov. All such modifications must be agreed to in writing. 16 C.F.R. § 2.7(c)

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<sup>3</sup> We also want to inform you that D.R. Horton currently has 201 active subsidiaries, all of which are subject to the demands of the CID as a result of the overly broad definition of "Company."

Joel Winston

4

November 20, 2009

This invitation to work with the FTC is meaningless because D.R. Horton is unable to ascertain what it could offer that would be "consistent" with the "Commission's need" when it was served with a CID seeking virtually every document in its possession that refers or relates to the sale of homes or the origination of mortgages by its affiliate. In a good faith attempt to comply, however, we are copying Ms. Gelfond on this correspondence and request that she contact us as well to discuss our concerns with the CID.<sup>4</sup>

In addition to being exceedingly overbroad and burdensome, much of the information sought by the CID falls outside the scope of the Commission's Resolution dated December 15, 2008, which refers to "advertising, marketing, sale, or servicing of loans and related products," and the August 1, 1994 Resolution that refers to discriminatory acts in connection with the "extension of credit." The CID is not limited to these topics. Rather, the CID's definitions and many of the requests seek information about the sales and marketing of homes. Thus, it is our position that the CID exceeds the authority and permissible scope of investigation granted by the Resolutions.

Turning to the specifics of the CID, we have serious concerns regarding the scope and breadth of a number of the requests as well as the time period for compliance. We discuss these issues in seriatim:

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<sup>4</sup> Similarly, we have concerns regarding Instruction D, which requires the suspension of "any routine procedures for document destruction" in order to preserve documents "that are in any way relevant to this investigation during its pendency." The FTC's citation to, *inter alia*, 18 U.S.C. §§ 1505, 1519, is telling. A party is entitled to notice of the conduct deemed to violate FTC regulations. *See, e.g.*, 16 C.F.R. § 2.6 ("Any person under investigation . . . shall be advised of the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation which is under investigation . . ."); S. Rep. 96-500 ("The FTC's broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy its 'official curiosity.'"). While D.R. Horton has taken steps it believes appropriate, the fact of the matter is that Instruction D is meaningless as drafted. Accordingly, by this letter we are also requesting that the Agency clarify the information that is "relevant" to its investigation so that our client can ensure that the necessary documents and information are preserved.

**I. OVERLY BROAD REQUESTS**

While we have a number of concerns regarding the scope of many of the requests, for purposes of this letter we have focused on a few of the specific requests with the understanding that this discussion is not intended to detail all of D.R. Horton's objections to the CID.

First, D.R. Horton objects to the demands for information from every subsidiary, unincorporated division, joint venture as well as all "directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing that are engaged in marketing and sales activity or mortgage lending activity," all of which are identified as "D.R. Horton." D.R. Horton is a Fortune 500 company and during the time period at issue here was ranked as the largest homebuilder by units sold in the United States since 2003. D.R. Horton builds single-family homes in 83 markets in 28 states. See <http://www.drhorton.com/corp/>. The Company has six homebuilding segments: East, Midwest, Southeast, South Central, Southwest and West which consist of 33 geographical divisions. These reporting segments, and their divisions, have homebuilding operations located in the following states:

East: Delaware, Georgia (Savannah only), Maryland, New Jersey, North Carolina, Pennsylvania, South Carolina and Virginia

Midwest: Colorado, Illinois, Minnesota and Wisconsin

Southeast: Alabama, Florida and Georgia

South Central: Louisiana, Mississippi, Oklahoma and Texas

Southwest: Arizona and New Mexico

West: California, Hawaii, Idaho, Nevada, Oregon, Utah and Washington

Further, the Company employs approximately 9,000 workers nationwide. Given its size, and the fact that it sells homes in local markets which requires a decentralized

marketing effort, all of the requests in the CID which seek "all documents" relating to the sale of homes, *see, e.g.*, P-4 through P-18, will require a search of each local office in each of the six segments. This task alone will require hundreds of man-hours of effort. *See, e.g., Nugget Hydroelectric, L.P., v. Pac. Gas & Elec. Co.*, 981 F.2d 429, 438-39 (9th Cir. 1992) (upholding a magistrate judge's finding that a demand for documents concerning every aspect of the defendant's business relationships was "unnecessarily burdensome and overly broad").

Second, D.R. Horton objects to the CID's demand that makes "all responsive documents available for inspection and copying at your principal place of business." The Company's principal place of business is 301 Commerce Street, Fort Worth, TX. However, many of the documents being requested are used (and stored) at various locations throughout the various states where the Company conducts its business. *See, e.g.*, P-13, 14 (produce specific purchase and disclosure documents for every "prospective home buyer[]" and "consumer"). The demand that the Company disrupt its business operations in order to remove files, including working files for ongoing transactions, constitutes an unnecessary, and undue, burden on the Company. Accordingly, D.R. Horton reserves its right to produce responsive documents at the place where such materials are kept.

Third, it appears that a number of the requests seek information that is already available to the FTC through the Company's SEC filings. For example, information regarding "all corporate acquisitions and mergers involving the Company during the relevant time period," *see* R-3, is certainly available on the SEC's website: <http://www.sec.gov/edgar.shtml>. In addition, the Company's recently filed 10-Q statement dated August 5, 2009, contains the most recent financial information which should be sufficient for R-4. Given the availability of this information, we fail to see the point in requiring the Company to reproduce the information in response to the CID.

Fourth, D.R. Horton, in its homebuilder capacity, objects to the request for "all advertisements or marketing materials related to the Company's marketing and sales activities or mortgage lending activities that were used in the States of Arizona, California, Florida, Nevada, North Carolina, or Texas [since January 1, 2006]," including all "non-identical . . . newspaper and magazine advertisements, pamphlets, brochures,

flyers, mailers, direct mail solicitations, electronic mail solicitations, signs ... telephone scripts, audio tapes, and videos tapes ... and [i]n printed form, all information made available on the World Wide Web....” P-19. The scope of this request is nothing short of staggering. A quick inquiry of several of D.R. Horton’s divisions indicated that the number of print advertisements for each office will number in the thousands. Moreover, given the passage of time and the closure of so many offices, it will be virtually impossible for D.R. Horton to compile four years worth of advertising for all of the identified states in all of the forms as requested.

Fifth, D.R. Horton also objects to the demand for all complaints, as well as all documents “related” to private litigation as well as “law enforcement and regulatory proceedings, actions and investigations” that relate to the “Company’s marketing and sales activities or mortgage lending activities.” See P-22. These terms are defined as “all actions, activities, transactions, or communications that involve or are related to the sale of a home, including but not limited to the targeting or identification of potential home buyers for home sales; the marketing or advertising of homes; the solicitation of home buyers, and the referral of actual or potential home buyers to the Company’s mortgage affiliate(s)” as well as “all dealings between an application, home buyer or mortgagor and the Company involving a mortgage loan.” Simply stated, the demand for every complaint, legal action, and any regulatory proceeding, as well as every document related to matters, with no regard for the subject matter other than that it relates to a home sale or mortgage loan, is overly broad and unduly burdensome, and will not be responded to unless and until the Agency narrows this request.<sup>5</sup> See also *Moses v. Halstead*, 236 F.R.D. 667, 672 (D. Kan. 2006) (“On numerous occasions this Court has held that a request or interrogatory is overly broad or unduly burdensome on its face if

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<sup>5</sup> For example, this request demands every document in any legal action that is identified such that the Company would be required to produce copies of every pleading as well as all discovery documents and correspondence, regardless of the subject matter of the underlying Complaint. See *Manual for Complex Litigation (Fourth)* § 11.443 (2004) (document requests should not be “sweeping,” such as “those for ‘all documents relating or referring to’ an issue, party or claim,” but should be framed “for production of the fewest documents possible”).

it: (1) uses an omnibus term such as 'relating to' or 'concerning,' and (2) applies to a general category or group of documents or a broad range of information."').<sup>6</sup>

Similarly, the demand for "all documents related to the performance evaluation process for all of the Company's divisions, branches, employees, and persons acting on behalf of the Company, . . . including, but not limited to exemplar evaluation forms" is a demand for every performance appraisal, or any other document related to performance, for every individual in the Company, its subsidiaries, affiliates, etc. See P-12. It is curious that, after demanding every completed form for every employee the FTC is also demanding "exemplars" of the completed forms.

Sixth, other requests are simply impossible to comply with. For example, R-13 demands the identification of "Company employee(s)" most knowledgeable about the "Company's relationships with and business practices with respect to the sales brokers, loan brokers, and correspondent lenders with whom the Company did business." This overly broad request does not even identify the specific "relationship" or "business practice" that the FTC is interested in. Accordingly, the request purports to seek the identity of persons "most knowledgeable" about anything having to do with "sales brokers, loan brokers, and correspondent lenders." This is impossible to ascertain. See, e.g., *Bennett v. Unum Life Ins. Co. of America*, 321 F. Supp. 2d 925, 937 (E.D. Tenn. 2004) ("No. 15 requests 'any and all documents that show or describe in any way the relationship between UnumProvident and the Unum Life Insurance Company of America.' This request is overly broad as there could be any number of documents which might 'show' 'in any way' the relationship between the two companies. If the plaintiff wants documents which evince the legal relationship between the two companies, the plaintiff must appropriately narrow the request to ask for such documents."); *In re CFS-Related Secs. Fraud Litig.*, 179 F. Supp. 2d 1260, 1267-68 (N.D. Okla. 2001) ("A cursory review of Plaintiffs' request for production of documents

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<sup>6</sup> For these same reasons, D.R. Horton also objects to the overly broad demand for "all documents relating to actual or alleged abuses or violations of law or Company policy by employees, retail or loan brokers, correspondent lenders and persons acting on behalf of the Company . . . including internal investigations, responses to accusations of malfeasance, and the minutes of Executive Committee or Board of Director meetings." See P-23.

Joel Winston

9

November 20, 2009

establishes that Plaintiffs are in fact seeking to require CSI to respond to very broad discovery requests seeking documents relating to all aspects of CSI's relationship with CFS and the underlying securities transactions. These are not 'particularized' discovery requests.").

Even what might appear to be a relatively straightforward request for information is rendered ridiculously overbroad by the inclusion of vague and undefined terms. For example, R-3 seeks information regarding "all corporate acquisitions and mergers" and the identification of "the surviving entities and which entities are responsible for the liabilities of the merged entities." What "liabilities" are being referred to? Would this include, for example, the assumption of a lease agreement for office space? If so, what possible relevance could that have to the FTC's investigation? Simply demanding information on irrelevant matters is inappropriate and objectionable.

## **II. TIME FOR COMPLIANCE**

As you know, the CID served on November 3, 2009, did not contain a date by which the documents must be made available. While we were initially encouraged by what we thought was recognition on the part of the Agency that the information identified will require substantial time to identify, gather, review and produce, that belief was extinguished when our client was informed this week that the due date is December 3, 2009. That production date is entirely unrealistic. More to the point, the CID requires that D.R. Horton file its Petition within 20 days of receipt. Accordingly, this places our client in the untenable position of being forced to spend significant resources immediately to analyze what is being sought in the 221 interrogatories, document requests, and their subparts in a manner sufficient to prepare a Petition in the event the Agency refuses to narrow the scope of its demands. In order to alleviate this unfairness, we respectfully request on behalf of D.R. Horton that the time for filing a Petition be extended 30 days, or until December 24, 2009, in order to allow the Company sufficient time to work with the Agency in reaching a mutually agreeable schedule for the production of relevant information that is "consistent with the Commission's needs."

### III. ADDITIONAL CONCERNS

D.R. Horton also objects to definition No. 19, which identifies individuals “with ‘limited English proficiency’” as persons “who do not speak English as their primary language and who have limited ability to read, write, speak or understand English.” First, D.R. Horton is not aware of any documents or other records that would contain information regarding the “English proficiency” of its customers. Further, the CID makes no effort to identify what constitutes a “limited” ability to read, write, speak or understand the English language. Finally, absent interviewing every one of the more than 9,000 employees of D.R. Horton involved “directly or indirectly” in the sale of a home or the origination of a loan,<sup>7</sup> it is impossible for D.R. Horton to respond to any demand that relates to individuals “with ‘limited English proficiency’” *See, e.g.*, R-11 (Identify all persons who were ever employed or engaged by the Company (including but not limited to sales brokers) [since January 1, 2006] whose duties and responsibilities involved marketing and sales activity [which is defined as “all dealings between an actual or prospective home buyer and the Company and all actions, activities, transactions, or communications that involve or are related to the sale of a home”] and for each such individual “[s]tate whether the individual ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in the English language to the Spanish language for customers.” *See also* R-12 (same for loan originators) R-15(e), (f), (g); R-23 (same); P-8; P-25. We will be happy to hear the Agency’s position on this point and to work with you to identify what the Agency actually needs in this regard, but absent additional clarification from

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<sup>7</sup> Considering the fact that D.R. Horton, Inc., is explicitly in the business of selling homes, every employee of the Company would have “indirectly” been involved in the sale of homes. Every job at D.R. Horton is in support of its primary business, and this is yet another example of the breathtaking scope of this CID.

Joel Winston

11

November 20, 2009

the FTC, the Company will not be responding to those requests simply because it would be impossible to do so.<sup>8</sup>

In the Instructions to the CID, Instruction M "Sensitive Personally Identifiable Information" states, among other things, that before sending "sensitive personally identifiable information" the Company should contact Ms. Gelfond to "discuss whether it would be appropriate to redact the sensitive information." Because the CID is seeking complete copies of loan files, among many other materials, it is impossible to redact all of the "sensitive personally identifiable information." Therefore, the Agency must agree to maintain the confidentiality of the information produced. Alternatively, if the FTC is going to insist that the information be redacted, it can anticipate adding several hundred hours to the production dates.

In addition to the concerns raised above, we are concerned about the cost of compliance with the CID. For example, DHI Mortgage's initial rough estimate for the identification, collection, and production of information and documents from it is approximately 960 hours of staff time.

D.R. Horton does not believe that it should bear the entire cost of compliance; accordingly, by this letter, the Company is requesting that the Agency reimburse it for the cost of compliance. Rather than seek the full cost of compliance, however, D.R. Horton is willing to accept reimbursement at the rates charged by the Agency in connection with the time and expense it incurs responding to requests under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* A copy of the Fee Schedule from the FTC's website is attached hereto. Please advise us as to whether the Agency is agreeable to this arrangement.

D.R. Horton reiterates that it is ready and willing to work with the FTC to provide information that the Agency believes that it needs in order to conduct its investigation provided that the production can be on terms and conditions that will not interfere with

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<sup>8</sup> For these reasons as well, the Company cannot respond to the request in P-25 and P-26 that the Company contact the FTC if more than 1,000 "customer application files" or more than "250 consumer application files . . . per state" are identified as "responsive."

Joel Winston

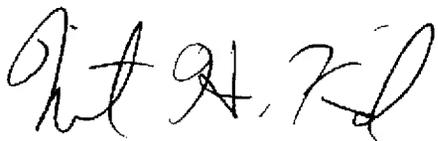
12

November 20, 2009

the operation of the Company. Given the FTC's insistence that a Petition to Quash or Limit be filed within 20 days, absent an extension of that deadline, D.R. Horton will be filing its Petition on or before November 24, 2009. Accordingly, as stated above, we believe that it would be in the best interests to extend this deadline by 30 days in order to allow both the Agency and the Company to work together to resolve the issues outlined above.

Thank you for your consideration of this letter, and we ask that you contact us immediately to discuss the matters raised herein.

Respectfully submitted on behalf of D.R. Horton, Inc.



Mitchel H. Kider

Enclosure

cc: Rebecca Gelfond  
(by electronic mail delivery)

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## Frequently Asked Question #7

## Will I Be Charged Fees?

The FOIA allows the FTC to charge fees to process your FOIA request. If we estimate that the fees for processing your request will exceed \$100, we will not begin to process it without your permission. You may either indicate in your request your willingness to pay fees or wait for us to contact you to discuss the possible fees. In the latter case, however, we will place your request on hold until we have an agreement with you about fees. If you are willing to pay fees only up to a certain amount, you may say that in your letter.

## Fee Schedule

Fees for processing FOIA requests depend on the status of the requestor. To facilitate the FOIA's goal of making government information available to the public, some services are provided without charge, as noted in the table below. Generally, commercial requesters are those who seek information to further the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. An educational institution is a school or institution of higher learning which operates a program or programs of scholarly research. A representative of the news media is a person actively gathering news for an entity that publishes or broadcasts news to the public. More exact definitions of these terms can be found at 16 C.F.R. § 4.8(b).

## Requester Fee Categories

Requester Category	Searching	Reviewing	Copying
Commercial (including law firms)	Fee	Fee	None
Educational institutions	No charge	No charge	No charge for first 100 pages
News media	No charge	No charge	No charge for first 100 pages
Other (General Public)	No charge for first 2 hours	No charge	No charge for first 100 pages

## Search and Review Fees (per Quarter Hour)

Clerical	\$4.50
Other Professional	\$8.00
Attorney/Economist	\$12.00
Minimum charge	\$14.00

## Paper Fees

Paper copy (up to 8.5 x 14 inches)	
Reproduced by Commission	\$0.14
Reproduced by Requestor	\$0.05
Computer Paper	\$0.14

## Microfiche Fees

Film Copy- Paper to 16 mm Film (per frame)	\$0.04
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FAQ 7- Will I Be Charged Fees?

Fiche Copy-Paper to 105 mm Fiche (per frame)	\$0.08
Film Copy- Duplication of existing 100 ft. roll of 16 mm film	\$9.50
Fiche Copy-Duplication of existing 105 mm fiche	\$0.26
<b>Paper Copy-Converting existing 16mm Film to Paper</b>	
Conversion by Commission Staff	\$0.26
<b>Paper Copy-Converting existing 105 mm Fiche to Paper</b>	
Conversion by Commission Staff	\$0.23
Film Cassettes	\$2.00

**Electronic Services**

Converting paper into electronic format (scanning), per page	\$2.50
Computer programming, per quarter hour	\$8.00

**Other Fees**

Computer Tape	\$18.50
Certification	\$10.35
Express Mail (first pound)	\$3.50
Each additional pound, up to \$15.00	



December 9, 2009

**BY ELECTRONIC AND FIRST CLASS MAIL DELIVERY**

Rebecca J.K. Gelfond  
Division of Financial Practices  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, DC 20580

**CONFIDENTIAL COMMUNICATION**

Dear Ms. Gelfond:

As you know, our firm represents D.R. Horton, Inc. ("D.R. Horton" or the "Company"), in connection with the Civil Investigative Demand ("CID") that was served on November 3, 2009. We are writing to follow up on our conversation of November 30, 2009, and your letter of December 2, 2009. Please note that while we are providing herewith a response and/or objection to each item in the CID, as explained at the end of this letter, we believe that a face-to-face meeting with the Staff would be appropriate in lieu of additional correspondence and a motion to quash or limit the CID.

We continue to take issue with the breadth and scope of the CID, and while we appreciate the opportunity to discuss these issues, we do not think the Agency recognizes the massive burden that it is placing on the Company. For example, in your letter, you state that we "misquoted" certain of the specifications; yet, you concede that the demands are for the identification of individuals who "*directly* communicated with customers in the Spanish language, functioned as an interpreter for customers interpreting the English language to Spanish language, or translated documents written in the English language to the Spanish language for customers." There is no database that contains this information and, absent contacting every employee and former employee who was in a position to have "direct contact" with a customer, there is no way to respond to these requests.

In addition to the overly broad drafting of each request, *e.g.*, the repeated use of the phrase "all documents," the fundamental problem with respect to the demands for information from the homebuilding operations is the decentralized structure of that part of the operation. As we indicated, the homebuilder has 33 separate Divisions operating in 27 states, and there are approximately 12 additional satellite offices that report to some of the Divisions.<sup>1</sup> The bulk of the requests (identified more specifically below) would require the manual collection of information and documents from each separate office. Given the fact that D.R. Horton sold more than 120,000 homes since January 1, 2006, and due to the current economic climate the Company has been forced to operate with a minimum number of employees, the massive search and collection effort required would be prohibitively expensive and time consuming.

Further, while we appreciate the effort to limit the definition of "Company" to the marketing and sale of homes and mortgage lending activity, the problem with the panoply of requests remains the decentralized nature of the homebuilding operations and requirement that each Division be queried for responsive information and documents.

D.R. Horton wants to cooperate with the FTC and produce the requested information in a reasonable manner. To this end, D.R. Horton is suggesting a rolling production

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<sup>1</sup> In our prior letter, we incorrectly stated that there were six regions. That was an earlier structure of the homebuilder operations; there are now four regions, North, South, East and West, and they cover the following states:

- a. North – Illinois, Colorado, Nevada (Las Vegas Division), Maryland, Delaware, Minnesota, Wisconsin, New Jersey, Pennsylvania, Virginia
- b. South – Texas, New Mexico, Arizona, Oklahoma, Louisiana, Mississippi
- c. East – Florida, Georgia, Alabama, North Carolina, South Carolina,
- d. West – California, Hawaii, Portland, Washington, Utah, Idaho

We apologize for any confusion.

schedule to begin on December 18, 2009, primarily with information from DHI Mortgage. D.R. Horton understands that the FTC is amenable to such a modification based on the breadth of the CID. On this first date, the Company would produce all of the information, documents, and data requested by the FTC that is readily available or requires minimal collection efforts, as noted below. D.R. Horton suggests that the second round of production be due by March 19, 2010, due to the numerous religious and federal holidays that occur in the months of December and January, and to allow D.R. Horton employees a reasonable and appropriate amount of time to compile the information, documents, and data requested in the remaining specifications. Further rounds of production could then be scheduled by mutual agreement based on what specifications may remain unfulfilled at that time. However, D.R. Horton suggests these dates because it believes that it can substantially comply with the CID within this timeframe, providing that reasonable limitations are agreed upon between the parties during these negotiations.

Finally, D.R. Horton incorporates by reference the objections set forth in its letter to the FTC dated November 20, 2009. By submitting this letter regarding suggested limitations and potential dates on which the Company may be able to respond to the below specifications, the Company in no way relinquishes its rights to object to the specifications in a subsequent petition to limit or quash. This letter is submitted merely for the purpose of negotiations with the FTC pursuant to conversations with FTC counsel on November 30, 2009, and pursuant to the requirements under 16 C.F.R. §2.7(d).

**Interrogatories**

*R-1: Provide the following information for the Company;*

- a. The correct legal name and principal place of business;*
- b. The date and state of incorporation;*
- c. Each place and state in which the Company does business;*
- d. All trade names under which the Company does business; and*
- e. The names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.*

**Response:**

This information for subsections (a), (b), and (c) is available and could be included in the first suggested production on December 18, 2009, if the specification is limited to marketing, sales, and origination of loans as discussed on November 30, 2009. Please be advised that with respect to the homebuilder operations, , this specification will require a review of each of the subsidiaries of D.R. Horton, as well as the collection of information from each of the 33 Divisions, in order to ascertain the information for subsections (d) and (e), which could be provided by the second round of production.

*R-2: Describe the complete organizational structure of the Company, identifying all parents, subsidiaries, unincorporated divisions, joint ventures, or affiliates, and for each of these state the following:*

- a. The correct legal name and principal place of business;*
- b. The date and state where the business is organized;*
- c. The date, if any, that the business closed and the reason or reasons for which the business closed;*
- d. The nature of the relationship of the parent, subsidiary, unincorporated division, and affiliate to the Company (e.g., wholly-owned subsidiary, partially-owned subsidiary, parent, affiliate, etc.);*
- e. The type of business that the entity engaged in, particularly noting if the entity engages in marketing and sales activity or extends mortgage loans; and*
- f. The names, titles, and dates of employment of all officers, directors, and principal stockholders or owners.*

**Response:**

The information requested by subsections (a), (b), (d), and (e) have already been provided by DHI Mortgage in response to specifications R-1 and R-3 of the 2/5/09 CID. The additional information for DHI Mortgage requested by subsections (c) and (f) is available and could be included in the first suggested production on December 18, 2009. D.R. Horton could provide this information for the corporate parent by December 18, 2009, and additional information relating to those entities that are involved in the marketing and sale of homes by the second round of production.

Rebecca J.K. Gelfond

5

December 9, 2009

*R-3: Identify and describe all corporate acquisitions and mergers involving the Company during the relevant time period, specifying the surviving entities and which entities are responsible for the liabilities of the merged entities.*

**Response:**

The Company believes that the information responsive to this specification is available and can be provided with the first production on December 18, 2009.

*R-4: State the Company's current net worth, and:*

- a. State the Company's total gross revenues for the most recently ended fiscal year; and*
- b. State the Company's net profit or loss for the most recently-ended fiscal year.*

**Response:**

This information is available and could be included in the first suggested production on December 18, 2009, if the specification is limited to marketing, sales, and origination of loans as discussed with FTC counsel on November 30, 2009.

*R-5: Describe the Company's policies and procedures for ensuring compliances with each of the following, specifying any changes to such policies and procedures and the dates of any such changes:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*
- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

**Response:**

The information requested by subsection (d) has been provided by DHI Mortgage in response to specification R-16 of the 6/25/09 CID. The information requested by subsections (a), (b), and (c) as it pertains to DHI Mortgage is available and could be included in the first suggested production on December 18, 2009. As it pertains to the homebuilder operations, if the specification is limited to marketing and sales of homes as discussed with FTC counsel on November 30, 2009, responsive information could be

provided by December 18, 2009. D.R. Horton may require additional time to locate prior versions of any responsive information which could be produced with the second round of production.

*R-6: Identify the name and title of each person responsible for formulating, directing, and controlling the policies, procedures, and practices of the Company relating to compliance with each of the following:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*
- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

*Specify the dates during which each such person held these responsibilities.*

**Response:**

The information requested by subsection (d) has been provided by DHI Mortgage in response to specification R-20 of the 6/25/09 CID. The information requested by subsections (a), (b), and (c) as it relates to DHI Mortgage is available and could be included in the first suggested production on December 18, 2009. As it pertains to the homebuilding operations, responsive information must be gathered from each of the 33 Divisions; accordingly, the Company could provide responsive information with the second round of production. If read literally, this specification would require localized responses from all of the subsidiaries of D.R. Horton involved in the sale and marketing of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates.

*R-7: Describe the Company's policies and procedures for training its employees with respect to compliance with each of the following, specifying any changes to such policies and procedures and the dates of any such changes:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.; and*

- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

**Response:**

The information requested by subsection (d) has been provided by DHI Mortgage in response to specification R-19 of the 6/25/09 CID. The information requested by subsections (a), (b), and (c), as it relates to DHI Mortgage is available and could be included in the first production on December 18, 2009. As it pertains to the homebuilding operations, responsive information must be gathered from each of the 33 Divisions; accordingly, the Company could provide responsive information with the second round of production. If read literally, this specification would require localized responses from all the subsidiaries of D.R. Horton involved in the sale and marketing of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates.

- R-8: Provide a complete organizational chart illustrating the structure, management, and ownership of the marketing and sales activity and mortgage lending activity operations of the Company, including retail, broker, telemarketing and Internet operations, and all management units for such operations.*

**Response:**

This information is available for DHI Mortgage and could be included in the first production on December 18, 2009. For its homebuilder operations, D.R. Horton will be required to gather information in order to create the chart requested, which could be provided with the second round of production, if the specification is limited to marketing, sales, and origination of loans as discussed with FTC counsel on November 30, 2009. If read literally, this specification would require localized responses from all the subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates.

*R-9: Provide a list of all job titles or positions that relate to marketing and sales activity or mortgage lending activity of persons employed by or acting on behalf of the Company. Describe the duties and responsibilities for each such job title or position.*

**Response:**

Much of the information responsive to this request is available, but full compliance with this interrogatory would require considerable time to prepare a description of the duties and responsibilities for each job title or position. Unless this specification is narrowed, the earliest it could be produced would be with the second round of production.

*R-10: Identify each office or branch location from or through which the Company has engaged in marketing and sales activity or mortgage lending activity at any time during the relevant time period, and for each such office or branch location state the following:*

- a. The nature of business conducted at the office or branch location;*
- b. The date the office or branch location opened for business;*
- c. The date, if any, that the office or branch location closed and the reason(s) for which the office or branch location closed; and*
- d. The name(s) and dates of employment of the person(s) who are or were responsible for managing the office or branch location.*

**Response:**

The information requested in this specification was provided by DHI Mortgage in response to specification R-15(a) of the 6/25/09 CID. As it relates to the homebuilding operations, this specification would require localized responses from all offices operated by the 33 Divisions in different geographic regions in the 27 states in which D.R. Horton operates. If this specification is limited to the 33 Divisions, the information could be provided with the second round of production.

*R-11: Identify all persons who were ever employed or engaged by the Company (including but not limited to sales brokers) during the relevant time period whose duties or responsibilities involved marketing and sales activity, and for each such individual:*

- a. State the relationship of the individual to the Company (e.g., employee or sales broker);*

- b. State whether the individual ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in English language to the Spanish language for customers;*
- c. Identify his/her duties or responsibilities;*
- d. State the date that the Company began its relationship with the individual;*
- e. State the date, if any, that the Company ended its relationship with the individual;  
and*
- f. State the unique identifier used by the Company to identify the individual.*

**Response:**

This specification would require localized responses from each of the 33 Divisions and their satellite offices, which is an undue burden on the Company. In addition, as previously noted, there is no database that contains this information. Absent a narrowing of this specification, D.R. Horton is not able to provide a complete response to this specification. D.R. Horton could provide information from a database that would identify dates of employment for employees with a particular job code, *e.g.*, marketing, but absent an office-by-office review, it could not state with certainty that any such individuals actually performed such services, nor could it ascertain whether the individual communicated with customers in Spanish.

*R-12: Identify each loan originator who has engaged in mortgage lending activity with or on behalf of the Company at any time during the relevant time period, and, for each such individual:*

- a. State the relationship of the individual to the Company (e.g., employee, loan broker, or correspondent lender);*
- b. State whether the individual ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in English language to the Spanish language for customers;*
- c. State the date that the Company began its relationship with the individual;*
- d. State the date, if any, that the Company ended its relationship with the individual;  
and*

*e. State the unique identifier used by the Company to identify the individual.*

**Response:**

The information requested in this specification was provided by DHI Mortgage in response to specification R-15(b) of the 6/25/09 CID.

*R-13: Identify the Company employee(s) responsible for and most knowledgeable about the Company's relationships with and business practices with respect to the sales brokers, loan brokers, and correspondent lenders with whom the Company did business during the relevant time period.*

**Response:**

D.R. Horton suggests a modification to this specification limiting it to a response from several of the Divisions rather than the entire Company. On November 30, 2009, FTC counsel clarified that this specification is not intended to be burdensome; however, as written, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the sale and marketing of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If the Company is required to provide the information for each of its 33 Divisions, that information could be included in the second round of production.

*R-14: Identify and describe all training related to marketing and sales activity or mortgage lending activity provided to employees, brokers, correspondent lenders or persons acting on behalf of the Company, including, but not limited to, the type, timing, and substance of the training, all topics and issues included in the training, the job positions receiving the training, and the individuals or entities providing the training.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

- R-15: *For the relevant period, describe the policies, practices, methods, and procedures of the Company relating to the following, specifying the dates during which the policies, practices, methods, and procedures were effective and any changes to the policies, practices, methods, and procedures:*
- a. *Identifying or targeting potential home buyers or borrowers, including methods based on their race, religion, sex or national origin or their limited English proficiency;*
  - b. *Marketing or advertising homes or mortgages to individuals of a particular race, religion, sex or national origin or with limited English proficiency;*
  - c. *Permitting customers to use real estate agents;*
  - d. *Referring actual or potential home buyers to the Company's mortgage affiliate(s), or otherwise recommending the Company's mortgage affiliate(s) to actual or potential home buyers, including but not limited to offering any incentives to the customer for using the Company's mortgage affiliate;*
  - e. *Determining whether actual or potential home buyers and borrowers have limited English proficiency;*
  - f. *Engaging in communications with actual or potential home buyers and borrowers with limited English proficiency;*
  - g. *Providing language assistance in the course of buying a home or the mortgage lending process to actual or potential home buyers and borrowers with limited English proficiency, including but not limited to retaining and offering translators, retaining and offering interpreters, retaining and offering employees who serve as interpreters or translators, or obtaining, creating, and offering translated documents;*
  - h. *Underwriting loans;*
  - i. *Computing interest, points, or fees;*
  - j. *Disclosing mortgage loan terms, prices, rates, monthly payments, types of loan(s), good faith estimates, property taxes, and escrow payments to actual or potential home buyers and borrowers, including but not limited to the time of such disclosure;*
  - k. *Structuring loan transactions, including but not limited to the type of loan offered, whether a mortgage involves one or two loans, a balloon payment, or an adjustable rate;*
  - l. *Selecting or approving appraisers of real property;*

- m. Providing appraisal reports used in connection with the mortgage loan to actual or potential home buyers and borrowers;*
- n. Making representations regarding the ability to refinance to actual or potential home buyers and borrowers;*
- o. Making statements to actual or potential home buyers and borrowers regarding the value of the home to be purchased;*
- p. Providing closing documents to borrowers in advance of the closing;*
- q. Closing loans, including but not limited to the provision of documents in languages other than English and the availability of and offering of interpreters or translators to individuals with limited English proficiency;*
- r. Requiring earnest money deposits, including but not limited to instances in which such deposits are returned to actual or potential home buyers; and*
- s. Requiring sales targets or goals of Company employees, retail brokers, or loan originators.*

**Response:**

This specification will take a considerable amount of time for compliance. The Company does not have specific policies regarding many of the subsections; accordingly, all of the Company's policies would need to be reviewed in order to determine if they are responsive to any of the 19 items identified above. Regarding the subsections for which the Company does maintain policies or procedures, this would require localized responses from all subsidiaries of D.R. Horton involved in the sale and marketing of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. In addition, many of the policies are the subject of varying state laws; accordingly, the collection of all of the responsive information would place an undue hardship on the Company.

*R-16: Identify the Company employee(s) responsible for and most knowledgeable about the company's policies, practices, methods, and procedures identified in response to Specification R-15:*

**Response:**

See response to specification R-15.

*R-17: Identify and describe all lists, databases, or other compilations of potential customers maintained by the Company and describe how such lists or databases are compiled and used.*

**Response:**

This information is not readily available and would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company. In addition, it is likely that individual sales staff could maintain their own lists of "potential customers," and that such information could only be obtained by an individualized inquiry of current and former employees.

*R-18: Describe the Company's policies, procedures, and calculations for how each category of employee and person acting on behalf of the Company at all levels (including sales and loan brokers and correspondent lenders), either individually or on a branch, group, or team basis, are compensated (including any monetary and non-monetary rewards, penalties, or limits) for the following:*

- a. Referring prospective buyers to the Company;*
- b. Selling homes;*
- c. Referring actual or prospective buyers to the Company's mortgage affiliate(s);*
- d. Originating loans; and*
- e. Soliciting customers;*

**Response:**

Some information responsive to (d) and (e) was provided by DHI Mortgage in response to specification R-9 of the 2/5/09 CID. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*R-19: Identify the Company employee(s) responsible for and most knowledgeable about the Company's policies and procedures identified in response to Specification R-18:*

**Response:**

See response to R-18. This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates.

*R-20: For each method used by the Company to solicit, market to, or advertise to potential customers for home purchases or mortgage loans, including but not limited to the referral of actual or potential home buyers to the Company's mortgage affiliate(s):*

- a. Identify and describe each such method, including but not limited to methods utilized with respect to individuals with limited English proficiency;*
- b. Identify any scripts used in conjunction with the method;*
- c. Describe how potential customers for the solicitation or advertisement are selected, including but not limited to the extent to which race, religion, sex, national origin, or limited English proficiency is taken into account in any way;*
- d. Identify the source(s) of any compilations of potential customers used for the solicitation or advertisements;*
- e. Describe the geographical distribution of the solicitation or advertisement;*
- f. Describe the timing of the distribution of the solicitation or advertisement.*
- g. Identify the entity or individual that prepares and disseminates or executes the solicitation or advertisement;*
- h. Describe the frequency with which the solicitation or advertisement is executed or disseminated to the same potential customer; and*
- i. Describe any subsequent actions taken after the execution or dissemination of the solicitation or advertisement.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the sale and marketing of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. For example, D.R. Horton's operations in California alone produced thousands of advertisements during the relevant time period. Each geographic region would need to answer nine subparts about each of hundreds (or potentially thousands) of advertisements it approved during the relevant time period. If this specification is not limited in time and to a smaller number of segments of the Company, it is overly broad and would place an undue burden on the Company.

*R-21: Describe how the Company prepares any promotional materials or communications that contain representations that:*

- a. consumer may save money by obtaining a mortgage from the Company's mortgage affiliate; or*
- b. a consumer will have a specific monthly payment on a mortgage loan.*

*Specify how any numerical figures contained in such promotional materials are calculated.*

**Response:**

This information is available and could be included in the second round of production if the specification is limited to marketing, sales, and origination of loans as discussed with FTC counsel on November 30, 2009. If read literally, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates.

*R-22: For each advertisement or promotional document provided in response to Specifications P-19 and P-20, identify the time period during which the Company distributed or used the advertisement or promotional document and the geographic area in which the document was distributed. For each internet advertisement, additionally identify the Internet address(es) used to advertise.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions operating in 27 states. For the sake of example, D.R. Horton's operations in California alone produced thousands of advertisements during the relevant time period. Each Division would need to answer three subparts of specifications P-19 and P-20, and respond about each of hundreds (or potentially thousands) of advertisements it approved during the relevant time period. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*R-23: Identify and describe any analysis, study, or examination that the Company made of the following:*

- a. The number of individuals with limited English proficiency who may be potential customers of the Company;*
- b. The frequency with which individuals with limited English proficiency are potential or actual customers of the Company; and*
- c. The costs of or resources required for providing interpretation or translation assistance to individuals with limited English proficiency.*

**Response:**

For DHI Mortgage, information responsive to subsection (c) is available and could be included in the first suggested production on December 18, 2009. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*R-24: Describe all practices and procedures used to monitor, oversee, supervise, inspect, or audit the compliance by employees and persons acting on behalf of the Company with the Company's established policies, procedures, and practices relating to marketing and sales activity and mortgage lending activity.*

**Response:**

This information is available and could be included in the second round of production if the specification is limited to marketing, sales, and origination of loans as discussed with FTC counsel on November 30, 2009 and limited to Company-wide practices and procedures. With respect to the practices and procedures of the Divisions and other subsidiaries involved in the marketing and sale of homes, , this specification would require localized responses from a number of subsidiaries of D.R. Horton, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. D.R. Horton does not believe that this information could be retrieved from each of its Divisions and subsidiaries by the date of the second production.

*R-25: Identify all government and/or law enforcement investigations or proceedings concerning the Company's possible violation of laws with respect to marketing and sales activity or mortgage lending activity that occurred during the relevant time period, and for each such investigation:*

- a. State the name of the government and/or law enforcement agency that conducted or is conducting the investigation or proceeding;*
- b. State the resolution or current status of the investigation or proceeding;*
- c. State the legal name of each Company entity or individual subject to the investigation or proceeding; and*
- d. State whether the investigation or proceeding concerned possible violations of any local, state, or federal anti-discrimination or anti-fraud law.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification R-14 of the 2/5/09 CID, and specification R-27 of the 6/25/09 CID. With respect to the homebuilder operations, D.R. Horton suggests a modification limiting this specification only to those government and/or law enforcement investigations specifically regarding mortgage lending activity or any discrimination claims. As currently written, this specification incorporates the whole of the FTC unfair and deceptive trade practices act, which could include many matters wholly unrelated to marketing, sales, and origination of mortgage lending activity. For instance, as discussed with FTC counsel on November 30, 2009, this specification could include any

investigation into the ongoing controversy regarding Chinese drywall. If limited, responsive information could be provided by D.R. Horton with the second round of production.

*R-26: Describe the Company's policies, procedures, and software (whether third-party or proprietary), and any changes to such policies, procedures, or software (including the dates of any such changes), for handling consumer complaints related to the Company's marketing and sales activity or mortgage lending activity.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification R-26(a) of the 6/25/09 CID. With respect to the homebuilder operations, D.R. Horton could provide information with respect to its Company-wide policies by the first production date of December 18, 2009. If the Agency is seeking specific information from each of the Divisions, this additional information could be provided by the second round of production.

*R-27: Identify the Company employee(s) responsible for and most knowledgeable about the Company's policies, procedures, and software for handling consumer complaints related to the Company's marketing and sales activity or mortgage lending activity.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification R-26(b) of the 6/25/09 CID. With respect to the homebuilder operations, D.R. Horton could provide information with respect to its Company-wide policies by December 18, 2009. If the Agency is seeking specific information from each of the Divisions, this additional information could be provided by the second round of production.

*R-28: Identify each regulatory agency with which or by which the Company is licensed with respect to its marketing and sales activity or mortgage lending activity, and specify the license number or numbers (or other identifier or identifiers) issued to the Company by each such agency.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification R-28 of the 6/25/09 CID. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*R-29: Identify and describe all electronic mail systems used by the Company during the relevant time period, and, for each such system, specify:*

- a. The dates during which the system was used;*
- b. The categories of employees or offices who use or used the system; and*
- c. The Company's policies and procedures with respect to the retention of the system's electronic mail messages.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification R-24 of the 6/25/09 CID. With respect to the homebuilder operations, D.R. Horton could provide information regarding the Microsoft Outlook system by the time of the first production date of December 18, 2009.

*R-30: Identify and describe each database in which the Company has created and/or retained electronic records at any time during the relevant time period relating to marketing homes, selling homes, mortgage loans, mortgage loan applications, or compensating employees, sales or loan brokers, or correspondent lenders engaged in marketing and sales activity or mortgage lending activity, and for each such database:*

- a. Specify the name of the database;*
- b. Describe the purpose of the database;*
- c. Describe the type(s) of data retained in the database;*
- d. Describe the structure of the database;*
- e. Specify the time period covered by the data retained in the database;*

- f. Describe any categorical distinctions or limitations on the type of data retained in the database (e.g., whether the data are limited to brokered loans);*
- g. Describe the software or software platform used to create, operate, or maintain the database;*
- h. Identify the person or persons responsible for maintaining the database;*
- i. Specify the time period during which the Company used the database and, if no longer used, the reasons for discontinuing its use; and*
- j. Describe data retention policies, procedures, and practices relating to each such database.*

**Response:**

Information requested in subsections (a) through (i) was produced by DHI Mortgage in response to specification R-21 of the 6/25/09 CID. For the information requested in subsection (j), it is available for DHI Mortgage and could be included in the first production on December 18, 2009. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*R-31: If any documents produced in response to the Specifications for Documentary Materials below are in the Spanish language, provide a complete and accurate English-language translation of each such document.*

**Response:**

This specification requires localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans. In addition, this specification will require localized responses from all of the homebuilder subsidiaries involved in the sale and marketing of loans. Information responsive to this request could be provided with the second round of production.

**Document Requests**

*P-1: For 2007 to the present, produce all annual reports, annual financial statements, and the most recent unaudited finance statement for the Company.*

**Response:**

The most recent financial information is available and could be included in the first suggested production on December 18, 2009. Historical information could be collected and provided by the second round of production.

*P-2: Produce exemplars of all applications, purchase contracts, deposit forms, and any other standardized forms, contracts, or worksheets used by the Company in connection with its marketing and sales activity.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-3: Produce exemplars of all applications, contracts, documents presented to consumers at loan closings, documents used by employees and persons acting on behalf of the Company at or in preparation for loan closings (including but not limited to forms, worksheets, and pre-closing loan summaries), adverse action notices, disclosure forms, and any other standardized forms or worksheets used by the Company in connection with its mortgage lending activity.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-1 of the 6/25/09 CID.

Rebecca J.K. Gelfond

22

December 9, 2009

*P-4: Produce all documents that describe, reflect, or relate to the Company's policies, procedures, and practices identified in response to Specification R-5.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-2 of the 6/25/09 CID. To the extent that the response to specification P-2 of the 6/25/09 CID is not complete, DHI is collecting additional information that will be included in the first production on December 18, 2009. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-5: Produce all documents that relate to, analyze, or evaluate the compliance of the Company, its employees, its sales or loan brokers, or its correspondence lenders, or any subset or combination thereof, with each of the following:*

- a. The Federal Trade Commission Act, 15 U.S.C. § 45, et seq.;*
- b. The Truth in Lending Act, 15 U.S.C. § 1601, et seq., and 12 C.F.R. pt. 226;*
- c. The Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., and*
- d. The ECOA and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements.*

**Response:**

Information requested in subsection (d) was produced by DHI Mortgage in response to specifications R-21 and P-5 of the 6/25/09 CID. The information requested in subsections (a) through (c) is available from DHI Mortgage and will be included in the first production on December 18, 2009. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

Rebecca J.K. Gelfond

23

December 9, 2009

*P-6: Produce all documents that describe, reflect, or relate to the Company's policies, practices, methods, and procedures identified in response to Specification R-15.*

**Response:**

See response to specification R-15.

*P-7: Produce all documents that describe, reflect, or relate to the Company's solicitation, marketing, and advertising methods identified in response to Specification R-20.*

**Response:**

See response to specification R-20.

*P-8: Produce all documents that describe, reflect, or relate to the Company's studies, analyses, or examination identified in response to Specification R-23.*

**Response:**

See response to specification R-23.

*P-9: Produce all documents that describe, reflect, or relate to the Company's promotional materials or communications that contain representations that:*

- a. a consumer may save money by obtaining a mortgage from the Company's mortgage affiliate(s); or*
- b. a consumer will have a specific monthly payment on a mortgage loan.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-10: Produce all documents and materials used during the relevant time period to conduct training for the Company's employees, retail or loan brokers, or correspondent lenders, relating to the Company's marketing and sales activities or mortgage lending activities.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-11: Produce all documents relating to the Company's efforts to monitor, oversee, supervise, inspect, or audit the compliance by employees and persons acting on behalf of the Company with the Company's policies, procedures, and practices relating to marketing and sales activities or mortgage lending activities.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-10 of the 6/25/09 CID. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 different geographic regions in 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-12: Produce all documents relating to the performance evaluation process for all the Company's divisions, branches, employees, and persons acting on behalf of the Company, involved in any way (including in a supervisory or management capacity) in marketing and sales activities or mortgage lending activities, including but not limited to exemplar evaluation forms.*

**Response:**

As discussed with FTC counsel on November 30, 2009, D.R. Horton suggests a modification to this specification limiting it to documents sufficient to describe the evaluation process. Otherwise, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. As limited, documents responsive to this specification could be included with the second round of production.

- P-13: Produce all documents, contracts or agreements relating to the referral of actual or prospective home buyers to the Company's mortgage affiliate(s), including but not limited to the following:*
- a. Agreements between the Company and its mortgage affiliate(s); and*
  - b. Documents explaining any compensation that the Company may receive for referrals to its mortgage affiliate(s).*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

- P-14: Produce all documents given to consumers which relate to the Company's referrals to its mortgage affiliate(s), including but not limited to the following:*
- a. Disclosures of the relationship between the Company and its mortgage affiliate(s);*
  - b. Description of any effects of using the Company's mortgage affiliate(s), including but not limited to reduced closing costs; and*
  - c. Description of any effects of not using the Company's mortgage affiliate(s).*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-15: Produce all documents relating to how the Company trains, instructs, or directs its employees and retail brokers on the referral of actual or prospective home buyers to its mortgage affiliate(s), including but not limited to the following:*

- a. Scripts or suggested methods of making a referral;*
- b. Directions on how to quote loan prices or loan terms;*
- c. Materials explaining eligibility criteria for loan products; and*
- d. Materials explaining the terms of loan products.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-16: Produce all documents relating to the Company's annual sales targets and profit goals with regard to the referral of actual and prospective buyers to its mortgage affiliate(s). If the sales targets and profit goals vary by division or region, produce documents specific to each division or region.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company. In addition, the Company objects to the demand for production of this proprietary data as beyond the scope of the FTC's investigation.

*P-17: Produce all reports produced by or relating to any branch, group, division, region or headquarters office concerning the following:*

- a. The percentage or volume of actual or prospective home buyers who were referred to the Company's mortgage affiliate(s);*
- b. The percentage or volume of loans for which the home buyer was extended a loan by the Company's mortgage affiliate(s); and*
- c. The percentage or volume of home buyers who were not extended a loan by the Company's mortgage affiliate(s).*

**Response:**

Information responsive to subsection (b) is available from DHI Mortgage and could be included in the first production on December 18, 2009. With respect to the remaining demands in the specification, this would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-18: Produce all documents that describe, reflect, or relate to the policies, procedures, and calculations for compensation identified in response to Specification R-18, including all documents that relate to the Company's decision to implement such monetary or non-monetary rewards, penalties, or limits.*

**Response:**

See response to specification R-18.

*P-19: Produce all advertisements or marketing materials related to the Company's marketing and sales activities or mortgage lending activities that were used in the States of Arizona, California, Florida, Nevada, North Carolina, or Texas during the relevant time period, including:*

- a. All non-identical printed advertisements and materials used, including, but not limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, direct mail solicitations, electronic mail solicitations, signs, and other materials;*
- b. All telephone scripts, audio tapes, and video tapes (including printed transcripts for such audio and video tapes); and*
- c. In printed form, all information made available on the World Wide Web, including the Internet address (URL) of the site.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the six states identified. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-20: Produce all advertisements and marketing materials related to the Company's marketing and sales activities or mortgage lending activities that are in the Spanish language, in whole or in part, and were used during the relevant time period, including:*

- a. All non-identical printed advertisements and materials used, including, but not limited to newspaper and magazine advertisements, pamphlets, brochures, flyers, mailers, direct mail solicitations, electronic mail solicitations, signs, and other materials;*
- b. All telephone scripts, audio tapes, and video tapes (including printed transcripts for such audio and video tapes); and*

- c. *In printed form, all information made available on the World Wide Web, including the Internet address (URL) of the site.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-21: Produce all documents relating to the Company's policies, procedures, and practices for the handling of consumer complaints and inquiries related to the Company's marketing and sales activities or mortgage lending activities.*

**Response:**

Information responsive to this specification was previously provided by DHI Mortgage in response to specification P-13 of the 6/25/09 CID. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-22: Produce all documents that relate to the following:*

- a. *Complaints from actual or prospective buyers or borrowers that relate to the Company's marketing and sales activities or mortgage lending activities;*
- b. *Private litigation in which claims or counterclaims against the Company that relate to the Company's marketing and sale activities or mortgage lending activities were asserted; and*
- c. *Law enforcement and regulatory proceedings, actions, and investigations of the Company that relate to the Company's marketing and sale activities or mortgage lending activities.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-13 of the 6/25/09 CID. With respect to the homebuilder operations, this specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company. Please also see response to specification R-25. Finally, the specification is overly broad in its demand for "all documents" relating to any of the specified proceedings.

*P-23: Produce all documents relating to actual or alleged abuses or violations of law or Company policy by employees, retail or loan brokers, correspondent lenders, and persons acting on behalf of the Company in relation to the Company's marketing and sales activities or mortgage loan activities, including but not limited to internal investigations, responses to accusations of malfeasance, and the minutes of Executive Committee or Board of Director meetings.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company. Please also see response to specification R-25.

*P-24: Produce all documents relating to any customer survey taken by or on behalf of the Company.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which

D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company. In addition, the Company believes that the number of responsive documents would be in the thousands, with a limited number in electronic format. The time and effort to collect this information would place a significant and undue burden on the Company.

*P-25: For those individuals identified in response to Specifications R-11 and R-12 that ever directly communicated orally with customers in the Spanish language, functioned as an interpreter for customers, interpreting the English language to Spanish language, or translated documents written in the English language to the Spanish language for customers, produce a copy of the complete consumer loan application and loan file for each consumer who ultimately purchased a home through or was extended a loan by that individual. If more than 1,000 consumer applications files are responsive to this request, please contact us within 10 days of receipt of this CID so that we may discuss the possibility of limiting the request.*

**Response:**

See responses to specifications R-11 and R-12.

*P-26: Produce a copy of the complete consumer loan application and loan file for each applicant who received a mortgage loan from the Company or its mortgage affiliate to the States of Arizona, California, Florida, Nevada, North Carolina, or Texas, and for which the Universal Residential Loan Application (Spanish), Fannie Mae Form 1003S, or other Spanish language loan application was used. If more than 250 consumer application files are responsive to this request per state, please contact us within ten days of receipt of this CID so that we may discuss the possibility of limiting the request.*

**Response:**

The Company is investigating whether any documents responsive to this specification can be located. If any responsive documents are located, they will be produced with the second round of production.

*P-27: Produce exemplars of the Company's contracts with its employees who engage in the sale of homes and retail brokers with whom the Company does business.*

**Response:**

This specification would require localized responses from all subsidiaries of D.R. Horton involved in the marketing and sale of homes and the origination of loans, as well as all branch locations and affiliates in the 33 Divisions in the 27 states in which D.R. Horton operates. If this specification is not limited in time and to a smaller number of Divisions, it is overly broad and would place an undue burden on the Company.

*P-28: Produce exemplars of the Company's contracts with its employee loan originators, loan brokers, and correspondent lenders with whom the Company does business.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-6 of the 6/25/09 CID.

*P-29: Produce all documents that reflect the schema, architecture, and/or design of each database identified in the Company's response to Specification R-30 of this CID.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-7 of the 6/25/09 CID. Due to the voluminous amount of material potentially responsive to this document request, it would take considerable time for D.R. Horton's employees to compile the requested information with respect to the homebuilding operations. If this specification is not limited in time and to specific software, it is overly broad and would place an undue burden on the Company.

*P-30: Produce all manuals or handbooks related to any software used by the Company in its marketing and sales activity or mortgage lending activity.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-8 of the 6/25/09 CID. Due to the voluminous amount of material potentially responsive to this document request, it would take considerable time for D.R. Horton's employees to compile the requested information with respect to the homebuilding operations. If this specification is not limited in time and to specific software, it is overly broad and would place an undue burden on the Company.

*P-31: Produce all manuals or handbooks utilized or made available by the Company to its employees, sales or loan brokers, or correspondent lenders that relate to marketing and sales activity or mortgage lending activity.*

**Response:**

Information requested in this specification was provided by DHI Mortgage in response to specification P-9 of the 6/25/09 CID. Due to the voluminous amount of material potentially responsive to this document request, it would take considerable time for D.R. Horton's employees to compile the requested information with respect to the homebuilding operations. If this specification is not limited in time and to specific topics, it is overly broad and would place an undue burden on the Company.

*P-32: Produce all documents that relate to any third-party audit, report, review, or assessment of the Company's operations that relate to the Company's marketing and sales activity or mortgage lending activity, including any such audit, report, review, or assessment conducted by a government agency or agencies.*

**Response:**

D.R. Horton objects to this specification on the grounds that it is irrelevant to the scope of the FTC's investigation. Specifically, the demand for "any" audit, regardless of the subject matter of the audit is overly broad and unduly burdensome.

*Data Requests*

*For each mortgage loan application for which you submitted data to the Federal Reserve Board pursuant to HMDA and Regulation C for calendar years 2006, 2007, and 2008, other than those mortgage loans for which you correctly indicated that the "action taken" was "purchased," or code "6," produce ESI or other documents reflecting the following data.*

- D-001 through D-018: [Intentionally left blank];*
- D-018A: The name or other unique identifier of the interviewer identified on the loan application;*
- D-018B: The name or other unique identifier of the interviewer identified on the loan document;*
- D-019 through D-026: [Intentionally left blank];*
- D-026A: For adjustable-rate mortgage loans, the index;*
- D-026B: For adjustable-rate mortgage loans, the initial rate of the mortgage loan;*
- D-027 through D-041X: [Intentionally left blank];*
- D-042: The applicant income used in underwriting the mortgage loan or gathered in support of the application;*
- D-043: If applicable, the co-applicant income used in underwriting the mortgage loan or gathered in support of the application;*
- D-044: Whether the mortgage loan had or could have had a balloon payment;*
- D-045: Whether the mortgage loan was a part of a piggy-back loan;*
- D-046: If applicable, whether the mortgage loan's piggy-back loan was a home equity line of credit;*
- D-047: Whether the mortgage loan was an interest-only loan for any period of time.*
- D-048: Whether the mortgage loan allowed negative amortization at any time during the life of the loan;*
- D-049: The applicant's years of school gathered in support of the application;*
- D-050: If applicable, the co-applicant's years of school gathered in support of the application;*
- D-051: Whether the applicant had limited English proficiency;*
- D-052: If applicable, whether the co-applicant had limited English proficiency;*
- D-053: Whether a Universal Residential Loan Application (Spanish), Fannie Mae Form*

*1003S or other loan application form in the Spanish language was used in gathering support for the application;*

- D-054: The language in which the loan transaction was conducted;*
- D-055: Whether the applicant is a U.S. citizen;*
- D-056: If applicable, whether the co-applicant is a U.S. Citizen;*
- D-057: Whether the applicant is a permanent resident alien;*
- D-058: If applicable, whether the co-applicant is a permanent resident alien;*
- D-059: The social security number of the applicant;*
- D-060: If applicable, the social security number of the co-applicant;*
- D-061: The applicant's marital status;*
- D-062: If applicable, the marital status of the co-applicant;*
- D-063A: The name of each employer of the applicant gathered in support of the application;*
- D-063B: For each employer identified in response to Specification D-063A, whether the employer is the applicant's current employer;*
- D-063C: For each employer identified in response to Specification D-063A, the address of that employer;*
- D-063D: For each employer identified in response to Specification D-063A, the position, title, or type of business held or engaged in by the applicant;*
- D-063E: For each employer identified in response to Specification D-063A, the dates the applicant was employed by that employer;*
- D-063F: For each employer identified in response to Specification D-063A, the years the applicant was employed by that employer;*
- D-063G: For each employer identified in response to Specification D-063A, whether the applicant was self-employed;*
- D-064A: If applicable, the name of each employer of the co-applicant gathered in support of the application;*
- D-064B: For each employer identified in response to Specification D-064A, whether the employer is the co-applicant's current employer;*
- D-064C: For each employer identified in response to Specification D-064A, the address of that employer;*
- D-064D: For each employer identified in response to Specification D-064A, the position, title or type of business held or engaged in by the co-applicant;*

- D-064E: *For each employer identified in response to Specification D-064A, the dates the co-applicant was employed by that employer;*
- D-064F: *For each employer identified in response to Specification D-064A, the years the co-applicant was employed by that employer;*
- D-064G: *For each employer identified in response to Specification D-064A, whether the co-applicant was self-employed;*
- D-065: *The FHA Total Scorecard result for the application, if any;*
- D-066: *The combined loan-to-value ratio of the property to be secured by the mortgage loan;*
- D-067: *Whether the applicant indicated that he/she had an ownership interest in a property in the last three years;*
- D-068: *If applicable, whether the co-applicant indicated that he/she had an ownership interest in a property in the last three years;*
- D-069: *All telephone numbers of the applicant;*
- D-070: *If applicable, all telephone numbers of the co-applicant;*
- D-071: *The loan program of the mortgage loan (e.g., CRA special lending programs and Expanded Approval);*
- D-072: *The type of property, at the greatest level of detail, to be secured by the mortgage loan;*
- D-073: *The amount of any credit, refund, or rebate paid or credited by the Company to the applicant;*
- D-074A: *The name of each fee charged to the borrower for the mortgage loan;*
- D-074B: *The amount of each fee identified in response to Specification D-074A;*
- D-074C: *The person or entity to whom each fee identified in response to Specification D-074A was or was to be paid or payable;*
- D-075: *The amount of the yield-spread premium or other payment credited, paid, or payable to the loan originator, for or because of the interest rate of the mortgage loan;*
- D-076A: *Each adverse public record, collection item, delinquency, or account paid as agreed of the applicant that was gathered in connection with the mortgage loan application;*
- D076B: *For each delinquency identified in response to Specification D-076A, how long the account was past due;*

- D-076C: For each delinquency or collection item identified in response to Specification D-076A, the amount past due;*
- D-076D: The time since each adverse public record, collection item, delinquency, or account paid as agreed identified in response to Specification D-076A;*
- D-076E: For each bankruptcy identified to Specification D-076A, the date the bankruptcy was filed;*
- D-077A: If applicable, each adverse public record, collection item, delinquency, or account paid as agreed of the co-applicant that was gathered in connection with the mortgage loan application;*
- D-077B: For each delinquency identified in response to Specification D-077A, how long the account was past due;*
- D-077C: For each delinquency or collection item identified in response to Specification D-077A, the amount past due;*
- D-077D: The time since each adverse public record, collection item, delinquency, or account paid as agreed identified in response to Specification D-077A; and*
- D-077E: For each bankruptcy identified in response to Specification D-077A, the date the bankruptcy was filed.*

**Response:**

To the extent DHI Mortgage has information available in a data format it will be included with the first production on December 18, 2009. DHI Mortgage specifically notes that it does not have information responsive to D-076A through D-077E in data format. Responsive information could be retrieved from credit reports contained in individual loan files; however, that production would require a file-by-file review of approximately 128,000 loan files, which is an undue burden on the Company.

As you can see, we have a number of areas where the scope of the demand exceeds the Company's ability to comply while at the same time remaining in business. The Company will be producing responsive information by December 18, 2009, as noted above. In addition, it will continue with its efforts to collect additional information for production by March 19, 2010. To the extent information can be gathered and reviewed earlier; it will be produced in a rolling basis. However, given the number of issues that remain, please treat this letter as a formal request for an extension of the time for

Rebecca J.K. Gelfond

38

December 9, 2009

compliance, a request to extend the time to file a petition to limit or quash the CID, and a formal request for a face-to-face meeting with the Staff in an effort to reach an amicable resolution of the issues that remain.

Respectfully submitted on behalf of D.R. Horton, Inc.,



David M. Souders

*F:\98002\024\Gelfond Letter 12 9 09 Horton (final).docx*



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

\_\_\_\_\_  
IN THE MATTER OF )  
D.R. HORTON, INC. )  
\_\_\_\_\_ )

FILE NUMBER 042-3135  
FILE NUMBER P944809

**DECLARATION OF JENNIFER HEDGEPEETH IN SUPPORT OF D.R. HORTON,  
INC.'S PETITION TO LIMIT OR QUASH CIVIL INVESTIGATION DEMAND**

I, Jennifer Hedgepeth, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Vice President/National Operations Manager for DHI Mortgage Co., Ltd. ("DHI" or "Company"). I have been employed by DHI since May 1, 2006.

2. DHI is a Texas Limited Partnership and is licensed to do business in 23 states across the United States. DHI is an indirect subsidiary of D.R. Horton, Inc.

3. DHI Mortgage closes both first and second lien residential mortgages in its own name. DHI Mortgage also brokers a small percentage of first and second lien residential mortgages that it originates if it does not offer a particular loan program that is available through another lender. Most all loans closed in the name of DHI Mortgage are sold on a servicing released basis. DHI Mortgage retains and services certain loans that are determined not to be eligible for sale on typical secondary market terms. DHI Mortgage also offers a "Foreign National" loan program in Florida, California, and Hawaii, and loans under the program are retained and serviced by DHI Mortgage.

4. DHI Mortgage offers a second lien product in California and Hawaii and loans under that program are retained and serviced by DHI Mortgage. This second lien program contains broader qualifying parameters than what is offered by the correspondent investors the

Company sells its loans to today, service released. Therefore, the second liens originated under this program must be service retained by DHI Mortgage.

5. DHI Mortgage is not a wholesale lender and does not solicit loan originations from mortgage brokers or purchase loans from other lenders.

6. I have reviewed the Civil Investigative Demand ("CID") that was served on D.R. Horton, Inc. ("D.R. Horton") on November 3, 2009.

7. DHI was previously served with Civil Investigative Demands from the FTC on February 5, 2009, and June 29, 2009. A conservative estimation of the cost incurred by DHI in order to comply with those two Civil Investigative Demands would be approximately 700 hours of staff time.

8. Currently, DHI is undergoing substantial changes to their operations in order to comply with new regulations, including, for example, the sweeping changes to the Real Estate Settlement Procedures Act ("RESPA") which require new Good Faith Estimates ("GFEs") and HUD-1 Settlement Statements by January 1, 2010.

9. DHI Mortgage is also working with the HUD Office of Inspector General in connection with several ongoing audits of several of its branches.

10. The Company does not track whether its employees ever communicated with customers in the Spanish language. Accordingly, the only way to provide the information requested by R-12 would be to interview every employee loan originator of DHI who participated in any loan transaction, including transactions that did not result in a closed loan, during the time period covered by the CID. By way of example, January 1, 2006, to February 23, 2009, DHI employed 942 loan originators who are or have been involved in soliciting, arranging, referring or originating mortgage loans for, by, or on behalf of the Company. Finally,

on October 16, 2009, DHI produced to the FTC a CD containing 53,635 pages of loan officer comments for approximately 128,000 loan files for loans originated during the time period covered by the CID.

11. The Company does not track whether its customers or potential customers are proficient in the English language. The Company does not maintain procedures, policies, or established methods through which it determines if customers or potential customers are proficient in the English language.

12. In connection with the Civil Investigative Demands previously served on DHI, the Company produced to the FTC loan level information for more than 128,000 applications and/or loans originated by DHI since January 1, 2006. Since the CID issued to D.R. Horton includes demands on DHI, and because of the passage of time, the number of applications and/or loans will be greater than the 128,000 already produced.

13. The CID seeks certain information regarding persons with "limited English proficiency." While personally I am not clear as to what constitutes "limited English proficiency," I am not aware of any records kept by DHI that would indicate the ability, limited or not, of any of its customers or potential customers to speak English.

14. The demands for all training materials from January 1, 2006, would be a very difficult demand to comply with since prior to 2007, DHI's corporate training materials were not always stored centrally and the types and amount of training was not always recorded. In addition many of the training materials were not centrally located when the training was conducted by various other departments within the Company.

15. The demands for all advertising materials used since January 1, 2006, would be a extremely difficult demand to comply with because unless there was a particular state law requirement, those materials were not always maintained in any centralized location.

16. Many of the documents responsive to the CID are kept at DHI's headquarters at 12357 Riata Trace Pkwy, Bldg. 7, Austin, Texas. It would be disruptive to the business of DHI if it were compelled to collect and produce the extensive documentation sought by the CID at a location other than DHI's corporate headquarters in Austin, Texas.

17. The Company estimates that the identification, collection, and production of all items responsive to all specifications within the CID would take approximately 960 hours of staff time. This would not only cause a substantial financial burden upon the company, but it would also substantially interfere with D.R. Horton ongoing business activities.

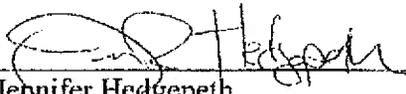
18. As examples of the burden posed by the CID, I have spoken with the staff members who would be responsible for responding to the specifications. The following individual specifications would require more than 50 hours of staff time each:

- a. I spoke with Kathy Bohannon regarding specification R-14, and she has informed me that it would require 90 hours of staff time to compile the responsive material for this specification;
- b. I spoke with Jerry Grennier, Chad Wells, and Karen Leedholm, as well as the Compliance department, regarding specification R-15, and they have informed me that it would require 90 hours of staff time to compile the responsive material for this specification;

- c. I spoke with Monica Tondre regarding specification R-22, and she has informed me that it would require 50 hours of staff time to compile the responsive material for this specification;
- d. I spoke with our compliance department regarding specification P-6, and they have informed me that it would require 10 hours of staff time to compile the responsive material for this specification;
- e. I spoke with Maryanna Allen regarding specification P-9(a), and she has informed me that it would require 80 hours of staff time to compile the responsive material for this specification;
- f. I spoke with our compliance department regarding specification P-13(a), and they have informed me that it would require 100 hours of staff time to compile the responsive material for this specification;
- g. I spoke with Monica Tondre regarding specification P-19(a), and she has informed me that it would require 100 hours of staff time to compile the responsive material for this specification;
- h. I spoke with our information technology department regarding specification P-24, and they have informed me that it would require 75 hours of staff time to compile the responsive material for this specification;
- i. I spoke with our marketing department regarding specification P-25, and they have informed me that it would require 30 hours of staff time to compile the responsive material for this specification;

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 11th day of December, 2009.

  
Jennifer Hedgepeth

**Clark, Donald S.**

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**From:** David Souders [SOUDERS@WBSK.com]  
**Sent:** Thursday, January 21, 2010 11:24 AM  
**To:** Clark, Donald S.  
**Cc:** Rop, Ami  
**Subject:** RE: Processing of Two Petitions to Quash

Don:

I want to confirm my agreement that the two petitions can be treated as public for purposes of the filing date, as stated in your e-mail below.

Thank you for your attention to this matter.

Dave Souders

**David Souders**  
**Weiner Brodsky Sidman Kider PC**  
1300 19<sup>th</sup> Street NW 5<sup>th</sup> Floor  
Washington DC 20036  
office: 202 628 2000  
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**From:** Clark, Donald S. [mailto:DCLARK@ftc.gov]  
**Sent:** Thursday, January 21, 2010 11:15 AM  
**To:** David Souders  
**Cc:** Rop, Ami  
**Subject:** Processing of Two Petitions to Quash

Mr. Souders, thank you for your earlier calls with respect to the petitions to quash you filed on behalf of D.R. Horton and Lennar Corporation on December 11, 2009. This is to confirm, from our earlier discussions, that you have agreed that both petitions are to be treated as public in their entirety, so that they can both be treated as having been filed on Friday, December 11, 2009, in conformity with the requirements of Commission Rule 4.2(d) (4). Please let me know if you have any questions; thank you for your attention.

Don Clark

2/3/2010

Donald S. Clark, Esq., Secretary

Federal Trade Commission Washington, D.C. 20580

Telephone: (202) 326-2514; FAX: (202) 326-2496

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2/3/2010