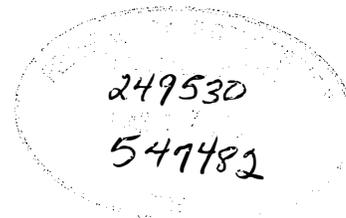


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 **ORIGINAL**

March 17, 2010



BY HAND DELIVERY

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

**Re: *In the Matter of D.R. Horton, Inc.*, File No. 102-3050
Request for Review by the Full Commission**

Dear Mr. Clark:

As you know, on December 11, 2009, D.R. Horton, Inc. ("Horton") filed its Petition to Quash or Limit the Civil Investigative Demand ("CID") that was served on November 3, 2009 ("Petition"). According to your letter of March 9, 2010, Horton's Petition was denied by Commissioner Pamela Jones Harbour (hereinafter the "Decision").¹ Your March 9 Letter was delivered to our firm on March 12, 2010, by certified mail. By this

¹ The decision of Commissioner Harbour to render a single decision on two separate petitions, file nos. 102-3050 and 102-3051, is inappropriate and fundamentally unfair. It is inappropriate because the two entities, Horton and Lennar Corporation, who are competitors in the marketplace while represented by the same counsel, filed separate Petitions and have different factual bases for objecting to their individual CIDs. It is fundamentally unfair because the Decision utilizes snippets from one Petition to undercut the arguments of the other. For example, the Decision completely ignores the fact that the FTC has been investigating one of Horton's subsidiaries, DHI Mortgage, for over a year, and that DHI Mortgage has produced nearly 80,000 pages of documents responsive to a previously issued CID. At bottom, the issuance of one Decision on two entirely separate Petitions was arbitrary, capricious, and an abuse of law.

letter, Horton is formally requesting review of the Decision by the full Commission, as allowed in 16 C.F.R. § 2.7(f).²

Horton incorporates all of its arguments in its previously filed Petition. The purpose of this submission is to demonstrate to the full Commission the errors in Commissioner Harbour's Decision and to highlight the extent to which Horton's concerns have been summarily dismissed by FTC staff counsel.

As is readily apparent, the Decision reflects a genuine hostility towards Horton. At the outset, Commissioner Harbour takes issue with Horton's decision to structure its homebuilding and loan origination businesses in a diversified formation. Because Horton structured its businesses in the most cost effective and efficient manner, and not in a centralized manner more conducive to responding to CIDs, Commissioner Harbour held that the Company loses any right to assert burdensomeness objections. Further, the Decision demonstrates that the FTC has already prejudged the outcome of its investigation by repeated inflammatory statements such as, for example, that Horton's Petition represents a "recurrent law enforcement problem" and the "semantic obfuscation or evasion on the part of CID respondents and counsel." Such statements are unsupported by the record and demonstrate bias on the part of the decision maker. Finally, the finding that, in order to work with the FTC staff on scheduling, the Company must forfeit its right to preserve any objections demonstrates the unfair and overreaching manner in which the FTC has conducted itself in connection with the issuance and enforcement of the CID as against Horton.

² There are no instructions in Chapter 16 of the Code of Federal Regulations, or in the March 9 letter denying the Petition, as to the form or manner in which this appeal to the full Commission shall be submitted. Accordingly, Horton is following the same procedures required for a Petition to Quash or Limit as set forth in the CID. Exhibits A through C were filed with the Petition. Exhibit D, the Supplemental Declaration of Jennifer Hedgepeth, is filed herewith.

I. The FTC Has Dismissed Horton's Attempts at Cooperation

Horton has attempted to cooperate with the FTC on multiple occasions, all to no avail. On November 20, 2009, Horton sent a letter to Mr. Joel Winston, Associate Director of the FTC, expressing its concerns about the breadth and scope of the CID. *See* Letter from Mitchel H. Kider to Joel Winston dated November 20, 2009 (attached to the Petition as Exhibit A). As noted in this letter, Horton's express purpose for writing to Mr. Winston was "to resolve a number of issues related to the CID in lieu of filing a Petition to Quash or Limit . . ." Ex. A at 1. On November 30, 2009, Horton's counsel spoke with Ms. Rebecca J.K. Gelfond, FTC staff counsel assigned to this investigation, regarding Horton's concerns about compliance with the CID as currently written. Ms. Gelfond advised Horton to put these concerns in writing, and to suggest potential limitations or modifications, as well as a potential timeline for production.

On December 9, 2009, Horton sent Ms. Gelfond a thirty-eight page letter addressing specifications Horton believed were particularly burdensome, suggesting modifications, and suggesting a timeline for production of materials in line with Horton's suggested modifications. *See* Letter from David M. Souders to Rebecca J.K. Gelfond dated December 9, 2009 (attached to the Petition as Exhibit B). As a gesture of good faith, Horton subsequently produced responses to several of the specifications in the original CID on December 18, 2009. *See* Letter from David M. Souders to Rebecca J.K. Gelfond dated December 18, 2009 (attached to the Petition as Exhibit C). The FTC did not agree to Horton's suggested modifications or its suggested timeline for responses. When Horton requested an extension on this basis, staff counsel only granted a one-week extension on both the return date and date by which the Petition needed to be filed. Horton filed its Petition on December 11, 2009. Horton also had scheduled a face-to-face meeting with FTC staff to discuss its concerns and work towards a compromise that would allow the FTC to receive responsive information without halting Horton's business operations, but this meeting was cancelled due to the severe winter weather experienced in Washington, D.C., during the month of February.

When Commissioner Harbour issued her Decision, it became abundantly clear that Horton's concerns were ignored, and a meeting with FTC staff likely would not have

served any useful purpose. In fact, Commissioner Harbour used particularly curt language to dismiss Horton's substantial, 124 page submission in a cursory ten page letter. Commissioner Harbour's opinion letter cited only three court opinions in response to Horton's Petition, and made unnecessary and derogatory remarks about its business organization. See Decision at 4 ("Many of the objections expressed in the Petitions appear at bottom to be problems created by the business organization and management philosophies of the companies, not by the CIDs. The Commission is aware of no authority that would excuse a company from complying with law enforcement process because that company elected to create an unwieldy [sic] array of facilities and/or adopted a decentralized management style.") (footnotes omitted).

The Decision is a clear demonstration of the FTC's dismissive attitude towards Horton's concerns, and it completely ignored Horton's desire and willingness to cooperate. The FTC quotes *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950), for the proposition that the FTC's investigative authority is designed to "get information from those who best can give it and who are most interested in not doing so." Decision at 4. This ignores the fact that Horton has attempted to cooperate with the FTC from its first contact with Mr. Winston, not to mention the great amount of material produced in response to the CID directed towards DHI Mortgage. The Decision further glossed over Horton's December 18 gesture of good faith in producing responses to seven specifications to which Horton had already accumulated responses. Horton has never attempted to refute the FTC's investigative authority or subvert the current investigation; instead, Horton wants to cooperate with the FTC in a manner that will satisfy the FTC's investigative concerns while not unduly burdening the business operations of the company. The CID, as currently written, poses an incredible burden upon Horton by requiring the production of virtually every document generated within the relevant time period, much of this duplicative of materials already produced in response to a similar CID to DHI Mortgage. Moreover, the relevant time now exceeds four full years. Horton reiterates its willingness to cooperate with the FTC, but it is not required to shut down a substantial portion of its business operations to do so.

II. The Relevance Standard Cannot Be Construed to Encompass All Documents of a Corporation

Commissioner Harbour's Decision devotes only three paragraphs to Horton's relevance objection, citing sweeping language from *FTC v. Texaco*, 555 F.2d 862 (D.C. Cir. 1977), with no context whatsoever as to the issues raised in *Texaco* or the issues raised by Horton. While the FTC is certainly correct that it "is under no obligation to propound a narrowly focused theory of a possible future case," Decision at 5, it certainly cannot propound requests that require the production of all or substantially all of a company's documents made over the relevant time period. Administrative subpoenas require "a realistic expectation rather than an idle hope that something may be discovered." *EEOC v. United Airlines*, 287 F.3d 643, 653 (7th Cir. 2002). See also S. Rep. 96-500 at 4 (1979) ("The FTC's broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy its 'official curiosity.'").

The Supreme Court recognized in *Morton Salt* that an administrative subpoena "may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power." 338 U.S. at 652. The CID, in its current form, requires the production of virtually every document generated by Horton over the last four-plus years. Although FTC staff contend that this interpretation is a misconstruction, and Commissioner Harbour has reiterated this position in her Decision, the FTC has made no effort, other than sweeping and conclusory statements, to meaningfully challenge Horton's demonstrations of burden. Commissioner Harbour's decision to devote a mere three paragraphs to the subject, selectively quoting language from *Texaco*, only proves the FTC's stubborn position on this. See Decision at 4-5. The FTC simply is not entitled to search through all documents generated by a company through an investigative subpoena. See *CFTC v. McGraw Hill Cos.*, 390 F. Supp. 2d 27, 35 (D.D.C. 2005) ("[T]his Court does agree that some of the Requests are excessively broad on their face and technically call for a larger volume of data than may have been intended by the CFTC."). It is clear "that district courts are not authorized to enforce administrative subpoenas based on a construction of the statutory relevance so broad as to render the requirement a 'nullity.'" *EEOC v. ABM Janitorial-Midwest, Inc.*, No. 09-C-4707, 2009 WL

4342504, at *3 (N.D. Ill. Dec. 2, 2009). The FTC's unreasonable stance on the scope and breadth of this CID does exactly that.

III. The FTC's Cursory Dismissal of Horton's Objections Ignores the Specific-Fact Based Determination that Must be Performed to Determine Horton's Burden to Comply with the CID as Written

The FTC apparently believes that companies should organize themselves in order to most efficiently comply with federal compulsory process: "Petitioners' asserted burden results in large part from their own decentralized management style and document storage." Decision at 6. The FTC mischaracterizes the burden, and acts on the premise that it is Horton's management structure that is the problem, not the overly-broad CID issued by the FTC. Horton is under no obligation, however, to organize its business and management structure in a manner that may one day be beneficial in responding to potential government investigations. Contrary to Commissioner Harbour's contention that "[b]urden caused by Petitioners' own organizational design cannot excuse them from compliance with the CIDs," Decision at 6, the burden analysis is a fact specific inquiry. "What is unduly burdensome depends on the particular facts of each case and no hard and fast rule can be applied to resolve the question." *FTC v. Shaffner*, 626 F.2d 32, 38 (7th Cir. 1980). A decentralized management structure is without a doubt one of these "particular facts" that needs to be factored into a burden analysis. See *EEOC v. McCormick & Schmick's*, No. C 07-80065, 2007 WL 1430004, at *1 (N.D. Cal. May 15, 2007) (finding administrative subpoena to be unduly burdensome where "individual restaurants operate[d] with a great deal of autonomy," unit managers had high degree of responsibility and independence over key parts of the business, and the files requested were located at the individual offices instead of a central location).

McCormick & Schmick's is a particularly apt analog to Horton's current situation. As with Horton, the business in *McCormick & Schmick's* had a decentralized management structure because of its disparate presence across the country. *McCormick & Schmick's*, 2007 WL 1430004, at *1 (noting that the company operates "67 seafood restaurants in 27 states and the District of Columbia."). As with Horton, the employees in the various offices enjoyed, by occupational necessity, a great deal of autonomy from the central

office. *Id.* at *1. As with Horton, a high percentage of the requests required management to respond, the company had employed tens of thousands of employees in the relevant time period, and each response would take a significant amount of time to complete, “representing a significant loss of man hours to respondent.” *Id.* at *7. The court noted: “Compliance with the subpoena in its original form would be a considerable burden . . . management positions are staffed leanly. Taking large amounts of managers’ time away from normal duties would be a significant hardship to its operations.” *Id.* at *7.

Similarly, compliance with this CID in its original form will pose a considerable burden to Horton. Horton has not only provided the FTC with a detailed analysis of how the CID taxes the company, but its subsidiary DHI Mortgage, who is also subject to the instant subpoena, has submitted information regarding 128,000 loan applications to the FTC already. *See* Petition, Declaration of Jennifer Hedgepeth at ¶ 12. As an example of the breadth of the current CID, specification R-22 requires a detailed report of the dates and geographical scope of every advertisement or marketing material, as well as every website used to advertise homes or home mortgage related products. This specification alone would require hundreds of man-hours in order to gather every advertisement used by every division, and then determining and explaining the geographical distribution for each of these advertisements — this analysis would be in addition to the required production of these documents. The court in *Bell Fourche Pipeline Co. v. United States*, 554 F. Supp. 1350 (D. Wyo. 1983), believed that a previous production of 13,000 documents was a substantial burden upon the subject of the investigation in that case. *Bell Fourche*, 554 F. Supp. 2d at 1362. Horton has produced information regarding 128,000 loan applications already to the FTC. Moreover, this production regarding 128,000 loan applications would be responsive only to a small percentage of the requests in the CID, demonstrating the vast scope the FTC is demanding.

The Decision also blithely notes that Horton’s hours estimation, which was written before the FTC staff had made their unreasonable stance on the scope of the CID clear, “amounts to less than a week’s worth of work for 20 people.” Decision at 7. This ignores the reality of the information requested, and which employees would be able to retrieve the information. As in *McCormick Schmick’s*, the information requested would

require this time to be spent by management personnel with the requisite knowledge. And the FTC's alleged narrowing of the scope of the CID to "marketing, sales, or mortgage lending activity" (*See* Decision at 6), is no limitation in scope at all, given that every employee at Horton is involved in the marketing or sales of homes, or mortgage lending activity. Commissioner Harbour's ruling that Horton has provided no evidence to support its assertion that this CID is unduly burdensome is without merit and willfully ignores the multiple conversations, correspondences, and negotiations in which Horton has stated otherwise.

Many courts that have upheld administrative subpoenas have done so only after considerable modification by the issuing agency prior to the judicial review, or considerable modification by the court itself. In *Am. Motors Corp. v. FTC*, 601 F.2d 1329 (6th Cir. 1979), the Sixth Circuit noted that, regarding a third party not involved in the matter, the FTC denied a petition to quash only "after granting 'substantial modifications' of the [] subpoena which the FTC estimates will cut the [] compliance burden in half." *Id.* at 1339. In *McCormick & Schmick's*, the court upheld the subpoena only after noting that the agency "presented a compromise," including using random samples and the use of previously collected documents covered under the subpoena. *McCormick & Schmick's*, 2007 WL 1430004, at *7. Despite Horton's multiple attempts to cooperate with the FTC on a mutually agreeable basis, the FTC has never engaged Horton in any reasonable discussion on cooperation or compliance.

In addition to the FTC's unwillingness to directly address Horton's specific concerns, FTC staff has glossed over DHI Mortgage's continuing compliance with two separate CIDs. In *Bell Fourche*, the court deemed a previous production of 13,000 documents burdensome enough to halt continued production. While Horton is not seeking to halt continued production of any and all materials sought in addition to what has already been produced, the FTC has not once acknowledged the continuing burden that such a duplicative production would cause. The court in *McCormick & Schmick's* upheld the subpoena there only after the EEOC agreed to use responsive materials previously retrieved in other investigations, among other concessions. *McCormick & Schmick's*, 2007 WL 1430004, at *7 ("the Commission has agreed to coordinate with its other offices to obtain documents already produced by respondent instead of having respondent

repeat that process.”). The FTC’s stance has been consistently unreasonable as to the excessive scope of the CID, and the Decision epitomizes this unreasonable approach in its failure to recognize the well-established precedent set by the Seventh Circuit in *Shaffner*. See Decision at 6 (“Petitioners’ asserted burden results in large part from their own decentralized management style and document storage.”).

Finally, administrative subpoenas can just be excessively broad, and this CID is one of those. In *McGraw-Hill*, three separate specifications were stricken and modified because their language was “excessively broad . . . and technically call[ed] for a larger volume of data than may have been intended” 390 F. Supp. 2d at 35. Similar to the specifications Horton cites in its Petition, all three specifications requested “[a]ll documents” reflecting, concerning, discussing, or implementing broadly worded subject areas. *Id.* at 37. In *Bell Fourche*, the court halted all further compliance with an administrative subpoena that requested “virtually all of Plaintiffs’ records and documents in their possession for the last five years.” 554 F. Supp. at 1351. Similar to the current CID, the subpoena request was gaping in its scope, requesting:

all documents generated . . . regarding policies, document distribution, accounting procedures, duties of officers and employees, work records of employees, organization charts, code books, all contracts, leases or agreements, virtually all documents . . . relating to its business . . . all contracts, agreements and correspondence or memoranda . . . relating to its sales . . . or offers . . . and its communications with other [companies].

Id. at 1362. The court finally noted, as Horton has regarding the current CID, that: “If the Court were to try to think of a document that the Plaintiffs might have that is not covered by the subpoena, it could not do so.” *Id.*

Specification R-25 demands the production of every “application and loan file” where there was any direct communication with a customer in Spanish. In order to accomplish this, Horton would need to contact each of its 99 current loan officers, and would be required to review the each of the loans they originated. As of February 23, 2010, these 99 Horton loan officers alone had originated 37,764 loans through its

subsidiary DHI Mortgage. Supplemental Declaration of Jennifer Hedgepeth at ¶ 19 (attached as Exhibit D). In *Bell Fourche*, the court deemed the production of 13,000 documents to be burdensome — in response to specification R-25 alone of the current CID, Horton would be required to search through, and potentially produce, 37,764 loan files. These 37,764 do not even include applications that were begun but not closed with Horton, nor does this number include any loan applications or files for loan officers no longer with the Company. Moreover, given the broad definitions propounded by the CID and reinforced by FTC staff interpretations, Specifications R-15 and P-6 will require the production of full loan files for the more than 128,000 loans that have been originated by Horton's subsidiary DHI Mortgage since January 1, 2006. Hedgepeth Supplemental Declaration at ¶ 20.

Curiously, the reasoning of the Decision serves only to punish those companies, such as Horton, which make serious efforts at compliance. For example, Horton and its affiliates undertake substantial efforts with regard to the training of their employees. Specifications R-5, R-7, P-4 and P-5 demand that the Companies: 1) describe their policies and procedures for ensuring compliance with the Federal Trade Commission Act, 15 U.S.C. § 45, *et seq.*; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* ("TILA"), and 12 C.F.R. pt. 226; the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* ("FCRA"); and the Equal Credit Opportunity Act, 15 U.S.C. 1691, *et seq.* ("ECOA") and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements; 2) describe all policies and procedures for training employees with respect to compliance with these statutory and regulatory provisions; 3) produce all documents that "describe, reflect or relate" to the "policies and procedures" for ensuring compliance with these regulatory provisions; and 4) produce all documents that "relate to, analyze or evaluate the compliance of the Company, its employees, its sales or loan brokers . . ." with these regulatory provisions. In its Petition, Horton described the decentralized nature of training at the Company. Hedgepeth Declaration at ¶ 14. Because of this decentralized nature, the office specific training alone would require 460 hours to collect the information, and an additional 80 hours for an appropriately knowledgeable employee to review the materials and draft a response and prepare the materials in an FTC suitable format. Hedgepeth Supplemental Declaration of at ¶ 8. Additionally, any training that was done by third parties will be

an additional burden to locate — Horton estimates that it will require 100 hours to collect only the training information for Automated Underwriting Certified Loan Processors. Hedgepeth Supplemental Declaration at ¶ 10. Had the Company not conducted training, it could have timely responded to the CID; however, that is not the manner in which the Company has decided to conduct its business, and it should not be punished for conducting such extensive training.

Other portions of the CID are also clearly designed to place an undue burden on Horton. For example, Specification R-3 demands, in narrative form, the identification of “all corporate acquisitions and mergers involving the Company during the relevant time period.” As Horton has explained repeatedly, including in its December 18, 2009, letter, that information is publicly available on the SEC’s website: <http://www.sec.gov/edgar.shtml>. However, the FTC staff made clear that, in spite of the availability of this public information, Horton would be required to download and deliver these materials and prepare a narrative response describing their content as well. The staff’s inability to retrieve this information for itself, or to be directed to where the information may be found, is startling and demonstrates a genuine effort to overburden the Company rather than to make legitimate inquiries for relevant information.

IV. Horton is Not Required to Waive its Objections in Order to Work With the Staff

In her Decision, Commissioner Harbour states as follows:

To the extent Petitioners have specific concerns of burden as to certain specifications those concerns should be addressed to counsel and staff, who in appropriate circumstances and through good-faith negotiations can adjust production schedules, provide additional guidance as to specifications, and even modify certain specifications (footnote omitted).

Decision at 6. This statement reflects a fundamental misunderstanding of the FTC’s process and lack of acknowledgement of the staff’s conduct in this case. The CID only

allowed Horton until December 3, 2009, to file its Petition to Quash or Limit, otherwise, the FTC would deem all of the Company's objections waived. Thereafter, Horton sought in good faith to negotiate a reasonable production schedule and reasonable limits on certain of the specifications. In order to continue to negotiate, however, Horton required a reasonable extension of the time to file a Petition to Quash. The FTC granted only one extension of time, for a period of eight days, from December 3, 2009, to December 11, 2009. To be clear, the FTC **refused to grant any additional extensions of the time period to file a Petition to Quash**, thereby forcing the Company to either waive its rights to object or file its Petition. Given the refusal of the staff to extend the time for filing a Petition, Horton elected the only reasonable course of action. Thereafter, under Commission rules, the filing of the Petition stayed the time for compliance with the CID. *See* 16 C.F.R. § 2.7(e). Horton could not have produced information in response to any of the specifications to which it had objected because such conduct would certainly be waiving its prior objections. Despite the fact that Horton could have simply stood on its Petition, the Company -- not the FTC staff -- initiated a face-to-face meeting in an attempt to resolve the panoply of issues raised by the CID. Unfortunately, this meeting was cancelled due to severe weather in the Washington, DC, area, and no attempt to reschedule was ever made by the FTC.

The FTC staff forced Horton to choose either to comply with the CID as is, or to object to the CID and protect its rights. If it objected, it would be deemed by the FTC to be unwilling to cooperate in the Agency's investigation. Rather than forfeit its rights as demanded by the staff, the Company objected, and continues to object, to this process.

V. Horton's Assertions of Privilege Are Valid

While Horton will not address its privilege arguments in this letter, it does not waive any of these objections by not doing so. Instead, since the FTC merely made sweeping and conclusory statements regarding Horton's arguments, *see* Decision at 8-9, citing to no legal authority, Horton relies on its arguments made in its Petition as to privilege assertions. The FTC's citation to Federal Practice & Procedure § 5431, *see* Decision at 9, supports Horton's assertion of a "self-evaluative reports privilege" by noting that this privilege has been recognized by federal courts. *See* Wright & Graham, Federal Practice

& Procedure § 5431 n.97.1 (Supp. 2009). Despite the Federal Practice & Procedure authors' opinion that "there seems little justification for creating a new privilege," it is the court decisions that carry weight.

In addition, the FTC is attempting to limit Horton's ability to assert appropriate privilege objections through its administrative process. That is so because all objections must be raised through the filing of a Petition to Quash; otherwise, the Commission deems such objections as waived. It was not, and is not, possible to ascertain all of the possible privilege objections in the short time period allowed by the CID and before the responsive materials have been collected. By way of example, Specification P-22 states as follows:

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.*

Horton properly objected to this request on a number of grounds, not the least of which is that it requires the production of, *inter alia*, 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." This is a demand for every complaint, legal action, and any regulatory proceeding, as well as every document related to those matters including entire litigation files which are replete with attorney-client communications, internal attorney work product materials, as well as other potentially privileged materials, with no regard for the subject matter other than that it relates to a home sale or mortgage loan. Until those documents are collected and reviewed, it is not possible to frame all of the potential privilege objections; yet, if such objections are not

specifically detailed by the initial date for filing objections, the FTC deems all such objections to be waived.

Specification P-22 is but one example of the refusal of the FTC staff to work with Horton in good faith to resolve any issues regarding the breadth and scope of the CID. Nowhere in the record is there any written communication from the staff indicating any willingness, for example, to accept something less than full compliance with any single one of the specifications. Indeed, there is simply no reason why the staff could not initially accept just copies of the complaints responsive to P-22 without waiver of any right to request additional information and without requiring Horton to waive its right to assert future objections. FTC staff has yet to show any signs of being receptive to any such compromise, however.

VI. Conclusion

Contrary to a number of statements in the Decision, Horton has continuously represented its willingness to cooperate with the FTC, and the FTC has summarily rejected each of Horton's overtures. Any contention by the FTC otherwise is disingenuous. Horton's intention throughout this process has been to reach an agreement with the FTC by which Horton can furnish the appropriate information to the FTC without effectively shuttering its business operations — of course, Horton has been complying with a CID issued to one of its subsidiaries for nearly a year now, but neither the FTC staff nor the Decision make any mention of this cooperation. Negotiations regarding the instant CID have failed to produce a mutually agreeable resolution because the FTC staff has insisted on an "all or nothing" approach. The FTC has repeatedly rejected any proposal that would allow Horton to produce documents in an orderly fashion while preserving its right to assert future objections based on a review of the materials gathered or unforeseen circumstances. Indeed, the FTC's hostility towards Horton, and even the manner in which it structures its business operations, is clear from the tone and content of the Decision. Contrary to the statements in the decision, this is not a case of an "attempt to 'get information from those who best can give and who are most interested in not doing so.'" *See Decision at 4.* Rather, this is now a case of the abuse of the investigatory process whereby the ends

Donald S. Clark

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March 17, 2010

of impairing Horton's and its subsidiaries' ability to operate is achieved through improper means.

For all of the foregoing reasons, and for the reasons set forth in its Petition, Horton requests that the full Commission review and set aside the Decision and direct the staff to engage in good faith negotiations with Horton with regard to the CID and without prejudice to Horton's right to assert objections to the FTC's demands for information.

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



Mitchel H. Kider

Enclosures

cc: Rebecca J.K. Gelfond
Division of Financial Practices
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580
(by electronic and federal express delivery with enclosure)

Exhibit D

D.R. Horton, Inc.'s Request for Review by the Full Commission

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

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

FILE NUMBER 102-3050

**SUPPLEMENTAL 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 the "Company"). I have been employed by DHI since May 1, 2006.

2. I have reviewed the Civil Investigative Demand ("CID") that was served on D.R. Horton, Inc. ("D.R. Horton") on November 3, 2009. DHI is an indirect subsidiary of D.R. Horton.

3. I previously submitted a Declaration in connection with this matter. In my prior Declaration, I estimated that the identification, collection, and production of all items responsive to all specifications within the CID would take approximately 960 hours of staff time for DHI alone. Since the filing of that Declaration, I have conducted additional investigations regarding the documents retained by DHI. Based on my fuller understanding of the demands of the CID, I now submit this Supplemental Declaration in support of D.R. Horton's Petition to Limit or Quash the Civil Investigative Demand.

4. Specification P-4 demands all documents that "describe, reflect or relate" to the "policies and procedures" for ensuring compliance with the Federal Trade Commission Act, 15

U.S.C. § 45, *et seq.*; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* (“TILA”), and 12 C.F.R. pt. 226; the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (“FCRA”); and the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.* (“ECOA”) and Regulation B, including its anti-discrimination, record keeping, and adverse action notice requirements. Specification P-5 demands all documents that “relate to, analyze or evaluate the compliance of the Company, its employees, its sales or loan brokers . . .” with these same regulatory provisions. In connection with the prior CID issued to DHI Mortgage, the Company has already produced its policies for ensuring compliance with TILA, the FCRA, and ECOA.

5. In addition, to ensure compliance with the cited statutory and regulatory provisions, DHI performs a number of audits and reviews. For example, DHI performed a quality control reviews on approximately 11,973 loans from January 1, 2006, through December 2009. The review contains specific questions relating to compliance with TILA, FCRA and ECOA. Since January 1, 2006, DHI has originated over 128,000 loans, most of which were on properties with homes built by D.R. Horton. In order to produce all of the quality control reviews performed on this pool of loans and which are requested by the CID, it would take approximately 40 hours and cost approximately \$800.00 based on the hiring of a temporary worker at the cost of \$20.00 per hour.

6. Specifications P-4 and P-5 also demand the production of post-state audits, Quality Control (“QC”) target audits, (Regional Operations Manager/Trainer (“ROM/T”) on-site spot audits, as well as any other internal audits of DHI on any of its operations. I estimate that it would take approximately 40 hours to collect and review all of the other internal audit reports created since January 1, 2006, to determine which ones are responsive to the CID.

7. The CID's demand for all training materials is particularly burdensome and difficult. Prior to December 2007, DHI's training programs were primarily conducted from the training department at the corporate office. There were also less centralized types of training conducted in the field at the regional level by regional trainers. This type of training was not always recorded, nor were the training materials used to conduct such training maintained in any central location. DHI is not aware of any legal requirement to maintain information related to past training provided by the Company; accordingly, there was no dedicated effort made to retain any training materials. Moreover, before December 2007, there were multiple individuals at the regional training level, and many of these individuals are no longer employed with DHI. Much of the regional level training was done on an individual basis, and documentation as to the material may be difficult if the individual is no longer employed with DHI Mortgage, as there may not be tangible material available.

8. At DHI, training has taken generally one of two forms, either centralized training utilizing, among other things, on-line capability or decentralized office-specific training. For the first category, DHI conducts training through Web Meetings, which is on-line training that is available to every employee or customized training targeted to certain job functions in on-line training sessions. Materials for training conducted via Web Meeting were typically e-mailed to the participants ahead of time. Collecting this information will involve first being able to identify the training dates, and then locate the e-mail containing the materials. This hinges on archived e-mails being accessible back to January 1, 2006, and locating the specific e-mails that contained the materials. The materials were voluminous and typically had to be sent in several e-mails. In addition, D.R. Horton and DHI distribute via the Company's intranet, information designed to train D.R. Horton and DHI employees. In order to comply with the CID, it will be

necessary for someone to review all of the on-line training to determine whether it falls within the scope of the CID. In reference to the office specific training, the Company would need to interview each DHI Division Manager as to how they perform on-going training, training on new products, and training on new regulations and to collect whatever material they might have used during their office training to determine if it falls within the scope of the CID. I estimate that it would take approximately 460 hours for all of the training department and production managers to review all of their hard copy files and electronic mail documents in order to collect the information set forth above. This number is based on eight hours spent by all training department personnel, production managers, and operations managers reviewing e-mails and hard copy documents for responsive materials. I estimate that it would take an additional 80 hours by one person knowledgeable with the materials to collect, review and prepare all of the collected documents in a format that can be produced to the FTC.

9. DHI also conducts training on specific investor loan products. This type of training was typically conducted through the Underwriting Special Projects Department, the Secondary Marketing Department, and/or the Training Department, which could be distributed through the Company's e-mail system or provided in a classroom setting. Materials were revised and/or updated prior to each training session based on investor and agency guidelines, Automated Underwriting System changes, new/revised Company policies and Automated Underwriting program changes, *etc.* Many times, these training materials were updated by overwriting the previous versions; to the best of my knowledge, there was not a new set of materials saved for each of the trainings. Some of the materials were in paper form and were not retained as they became outdated. The dates of revision are unknown and most likely occurred on numerous dates. If retrieval of previous versions is even possible, it would be extremely

time-consuming for IT to go through the server back up for each day prior to the identified training date searching for revisions. Prior to a recent move, all remaining Automated Underwriting materials were sent to storage with Iron Mountain. The appropriate boxes would have to be identified and sorted through for materials, dates, trainer and attendance and would likely not be all inclusive. Prior to DHI Mortgage suspending the Automated Underwriting Certified Loan Processor program, training assistance was provided by several individuals. It most likely would not be possible to reconstruct who provided or assisted with each of the trainings. Access to previous Underwriting Special Projects employees Outlook and documents would be needed, and it would involve going through each month on their Outlook calendar, all e-mail correspondence and documents. Prior employees' Outlook documents are available and depending on age, may be pulled from a backup tape and anything that was on their H drive will need to be pulled from a backup as well. I estimate that it would take approximately 35 hours to locate and collect materials related to training provided by DHI on specific investor loan products and, for the reasons set forth above, it is likely that even after this significant expenditure of time and resources, all of the training and training materials would not have been gathered.

10. By way of example of some specific training that was offered, the Underwriting Special Projects department provided on-going training for the Automated Underwriter Certified Loan Processors. Determining the specific dates for the Automated Underwriting Certified Processor training will require a search through the archived Outlook calendar, assuming it is available back to January 1, 2006. Moreover, after the initial group training class, each participant was required to complete Credit Approval and Final Approval test cases on three to five conventional loans and ten FHA loans. One-on-one training sessions were also conducted

with each of these test cases. All test case files are stored either electronically in the loan file or in paper form and stored with Iron Mountain. The files stored electronically will most often not include a record of what the trainer reviewed with the Loan Processor. At one time there were over 100 Loan Processors that obtained Automated Underwriting Certification; this could easily mean thousands of test cases used as training materials. Further, some of the training provided to Automated Underwriting Certified Loan Processors was conducted by Triad, a private mortgage insurance provider. DHI's ability to collect this information from Triad and verify/certify the accuracy of the dates, materials, attendees, *etc.*, would be extremely limited. Finally, monthly Automated Underwriting Certified Loan Processor calls were conducted during certain time periods. There were agendas for these calls; however the time involved retrieving the dates and agendas is cumbersome, and it involves searching all archived e-mails, Outlook invitations and documents in the given time frame. In the end, there would also be no method to verify that DHI was able to identify all dates and retrieve all of the agendas for these calls. I estimate that it would take approximately 100 hours just to collect the information related to the training of Automated Underwriting Certified Loan Processors for the period of time since January 1, 2006.

11. Similarly, the Underwriting Special Projects Department (when it was in existence) and now the underwriter corporate trainer position also provides training to new underwriters and underwriting managers. The same challenges apply to this training; locating dates, attendees and training materials is time consuming and may not be all inclusive. Moreover, as noted above, the training materials were updated prior to each training session and previous versions were overwritten with the new materials. Not all materials were electronically stored and paper copies of some were not retained as there was continual change in the content. Numerous training sessions were provided to select underwriters to train them to review files for

chain of title exception approval. These trainings typically contained documents from actual loan files that had previously been reviewed for exceptions. However, in order to ensure privacy, those documents from the loan files were not retained, nor were the loan numbers recorded. "Live" test cases were also performed as part of the training process. These loans would be difficult to identify, the test case training was verbal, and the dates were not scheduled/documented since the training occurred as the loans came in for review. Again, the ability to provide each training date would depend on the ability to locate the training dates on the archived calendars of the individuals who either provided or received the training.

12. As I previously stated, prior to December 2007, DHI conducted many trainings that were not through the centralized training department, but through the regional trainers. Although many of the regional trainers are no longer with the Company, I believe it is likely that individual employees retained materials from the training that was offered during the period from January 1, 2006. In order to comply with the requests for training materials, DHI will need to contact every current employee of the Company and ascertain whether any of the employees have in their possession, custody, or control any of the training materials used at any time since January 1, 2006. Currently, DHI has approximately 497 employees. I estimate that it would take approximately 40 hours to contact every current employee to request any training information they may have retained and to review and produce the requested information. This estimate does not include the time spent by every individual employee which, assuming each employee took 30 minutes to search their own files, would cost the Company approximately 250 hours of lost time, and this figure would not include the time that would be needed to review e-mails for employees who are no longer with the Company in an attempt to identify and locate any additional training materials those former employees may have kept.

13. DHI currently has 40 offices in addition to its principal place of business in Austin, Texas. In order to ascertain the training that has been conducted in each of these offices, I estimate that it would take approximately 25 hours to contact each office and, depending on what information and/or materials are provided, additional contacts and follow up would be necessary. This estimate does not include the time spent by each individual office collecting and documenting all of the training the office has conducted since January 1, 2006. Assuming that each office spent 5 hours on this specific task, which I believe is a reasonable estimate, the cost to the Company would be 200 hours of lost time.

14. The fact that regional trainings were and are decentralized poses additional challenges to the identification and collection of the training materials demanded by the CID. As an initial matter, the compositions of the Regions have changed several times and many of the employees involved in trainings with the Branches are no longer with DHI. Further, because of consolidation and reorganizations, the Regions today are comprised of Branches that may have, at one time, belonged in other Regions with different Branch Managers and Regional Managers. For example, California was a Region on its own until October 2007 when it became part of the Southwest Region. Based on the time line my staff has been able to put together, the California Region has had three Regional Operations Managers and two Regional Trainers from January 2006 until October 2007. The current Regional Operations Manager does not have knowledge of, or access to, training materials that were provided or used by the original training team.

15. I also am aware of the fact that some Branches had Branch Operation Managers before processing became centralized for certain branches, so there would be Loan Processor meetings/trainings in those specific branch locations. It is my understanding that agendas and training materials were updated prior to each training session and previous versions were

overwritten with the new materials. Not all materials were electronically stored and paper copies of some were not retained as there was continual change in the content. There is also follow up training conducted with branch new hires that is completed by the Regional Trainers once the corporate training has occurred. Generally this individualized training is initiated with a telephone call inquiry to ascertain what areas the new hire feels he or she needs additional work on. Then training is created based on the individual's specific needs. There are also specific training e-mails. Some of the e-mails are follow up communications relating to specific training bulletins or new policies, but some are based on weekly calls with the closing/underwriting departments and relate to certain deficiencies that they are seeing in the field.

16. It will also be difficult for DHI's Quality Control Department to identify all of the training sessions it conducted for the time period beginning January 1, 2006. Quality Control identifies Branches or Departments for training based on certain factors such as higher Quality Control scores or upon the request of various branch and departmental managers. Some training sessions were requested, and subsequently conducted, with minimal notification via teleconference which adds to the challenge of locating the support data. Quality Control training materials were generally produced through a query of the specific Branch or Department and in connection with specific Quality Control issues, which were then discussed during the training. Many of the training materials covered during training sessions were compiled on an "as needed" basis and saved electronically. However, I believe that in some instances, the training material would be printed and distributed. In cases where the information was distributed electronically, it will be necessary for the IT Department to search and identify responsive e-mails. This effort will require the search of thousands of e-mail transmissions which would then need to be reviewed to determine their relevance.

17. Training of DHI personnel also takes place at conferences, or through webinars, that are put on by entities such as the Mortgage Bankers Association (“MBA”), the Real Estate Services Providers Council, Inc. (“RESPRO”), *etc.* These conferences/webinars are held several times a year and frequently include sessions on TILA, FCRA and ECOA. In order to ascertain what training was provided to whom as demanded by the specification, it will be necessary to contact every employee in the Company, identify all training that he or she obtained at any time since January 1, 2006, collect and review the training materials to ascertain what, if any, relate to the identified statutes, and produce that information. With respect to training materials that may have been received by individuals who are no longer employed by DHI, the IT Department will be required to search the files of each such former employee in an attempt to ascertain whether that individual stored the training data. DHI server systems are compiled with hundreds of folders and files during the time period requested, and this effort will take hundreds of hours to complete.

18. In my prior Declaration, I had estimated that it would take approximately 60 hours to collect the training information required by R-14; however, that estimate did not include contacting every employee as I now believe is required, nor was I aware of the specific collection issues explained above. Accordingly, my original estimate was too low and an estimate of approximately 740 hours to compile the information for training is more realistic and does not include time lost by individuals searching for documents in their possession.

19. Specification R-12 demands information relating to every loan originator of DHI including the hire and termination (if applicable) dates, identification of duties and responsibilities, and 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.” Specification P-25 demands the production of every “application and loan file” where there was any “direct” communication with the customer in Spanish. Since January 1, 2006, DHI employed approximately 772 loan originators. As of the date of this Declaration, DHI employs 99 loan officers. In order to ascertain whether any current employees communicated with any customers in Spanish, or functioned as an interpreter, each employee would need to be contacted because this information is not maintained in any record kept by the Company. In order to collect this information, each of the current employees would be required to review the loans they originated and, according to the records of DHI Mortgage, these current 99 originated 37,764 loans from January 1, 2006 to February 23, 2010. I estimate that the time to contact all current loan officers and to collect the requested information would take approximately 100 hours to contact every employee individually to ascertain the information requested, which would include gathering the responses received and putting them into a format that can be produced to the FTC. This estimate does not include the time it would take each loan officer to review the loans and make the determination if it met the CID specifications. In reference to P-25, it is impossible to estimate the time required to pull the individual application and loan files until the information responsive to R-12 is obtained.

20. Specification R-15 and P-6 require the identification and production of all “policies, practices, methods, and procedures of the Company” relating to 19 separate topics. The topics are extremely broad and include every aspect of DHI’s business including for example, marketing, underwriting loans, “computing interest, points, or fees,” disclosures, loan products, appraisals, earnest money deposits, and the closing of the individual loan. Several of the items are incomprehensible. For example, the demand for policies that concern “[m]aking

statements to actual or potential home buyers and borrowers regarding the value of the home to be purchased,” subpart (o), is nonsensical. During the course of the origination of any loan, there is likely to be discussions between the loan officer and the borrower(s) regarding the “value” of the home since the loan amount is based on that figure. Accordingly, I do not understand what is sought by this specification. Similarly, other items such as earnest money deposits are frequently the topic of conversations between loan officers and borrowers since different loan products have different down payment requirements and the amount of earnest money deposit frequently figures into that calculation. However, the amount of the earnest money deposit is also a matter that is determined between the seller and the buyer. Thus, while the amount of the earnest money deposit is frequently decided before the buyer speaks with a loan officer, the documents that reflect the earnest money deposit, and the conditions on which it may be returned, are contained in the loan files of the lender. In my prior Declaration, I estimated that providing just the narrative response to R-15 would require approximately 75 hours and 10 hours to produce the documents responsive to P-6. However, those estimates were based on the production of exemplars and a description of just those materials, they did not include the production of “all documents that describe, reflect, or relate” to the items in R-15, as stated by P-6, which I believe will require the production of every loan file for approximately 128,000 loans that have been originated by DHI since January 1, 2006. The production of every loan file will take hundreds of hours.

21. Specification R-18 demands information related to the “policies, procedures, and calculations for how each category of employee and person acting on behalf of [DHI] 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 referring or soliciting customers or originating loans. Specification R-19 demands identification of the employee(s) most knowledgeable about the foregoing information. Due to the fact that different levels of associates have been and are compensated differently, this would require a review of each respective associate’s personnel file. In addition, individual offices may have some additional incentive programs, *e.g.*, contests, which because of their de minimis nature would not necessarily be known to the corporate office. Therefore, in order to respond to these questions, it will be necessary to contact every office of DHI. I anticipate that this effort will require an additional 80 hours to contact each office and gather the information. Moreover, as I indicated previously, DHI has closed a number of offices. There may be information within the possession, custody, or control of current employees that may be responsive to these Specifications. .

22. Specifications R-20, R-22, P-7, P-9 and P-19 demand information related to advertising. Specifically, R-20 seeks the identification of all methods used to advertise, the distribution of each particular advertisement, the “timing” of each advertisement, and the individual or entity that prepared and disseminated each advertisement. In my prior Declaration, I stated that I had spoken with Monica Tondre regarding specification R-22, and that she had informed me that it would require 50 hours of staff time to compile the information necessary to respond to this particular Specification. I now believe, for the reasons discussed below, that that estimate was too low. R-22 demands the identification of the time period each advertisement was used as well as the geographic distribution of each such advertisement. The production requests, P-7 and P-9, seek copies of every advertisement used by D.R. Horton and/or DHI since January 1, 2006. D.R. Horton and DHI advertise through the Internet, television, radio, and print. DHI generally advertises in conjunction with D.R. Horton. However, DHI does advertise

on its own on as well and I estimate it would take approximately 63.5 hours to conduct an initial search through contacting each Branch Manager, Branch Sales Manager and Loan Officer to ascertain what advertising they conducted during the relevant time period. Depending on the information provided, additional time would be necessary to follow up on the production of the information and to review and produce the advertising done solely on behalf of DHI. That being said, however, for the reasons discussed below, I do not believe that, even with that effort, DHI will be able to produce all of the requested information.

23. Current DHI marketing methods utilized include advertising in both electronic and printed forms, including printed flyers, brochures, newsletters, newspaper and magazine (publication) advertising, postcards, signage and business cards, letter campaigns, websites (including video and podcasts), e-mail marketing as well as telemarketing and advertising for Realtor ® events, homebuilder sales events and buyer seminars. Advertising and marketing is created either by the Company's centralized Marketing Department at the request of a Branch Manager or Originator, by the Branch Manager or Originator or by the Builder's localized Marketing Department. Under current policy, all materials are subject to Compliance Department approval. Company policy requiring Compliance Department approval was introduced in June of 2005; however, centralized record retention of approvals and documents was not introduced into practice until April 2008. Prior to this date record retention was shared among the local branches and corporate offices. A formal written policy for centralized record retention was published in January 2009. In addition, employee turnover will make it even more difficult to provide the requested advertising information for the required time frame. Moreover, any advertising material that was created at the Branch and individual loan originator level may

have only been stored on local hard drives of past employees, or saved to a shared drive that is no longer in use, making it nearly impossible to identify.

24. Company policy requiring Compliance Department approval was introduced in June 2005; however, centralized record retention of approvals and documents was not introduced into practice until April 2008. Prior to this date, record retention was shared among the local branches and corporate offices. A formal written policy for centralized record retention was published in January 2009.

25. E-mail marketing is subject to the same current procedure as print advertising. Any documents created for e-mail marketing or advertising are saved locally. Company policy requiring Compliance Department approval was introduced in June 2005; however, centralized record retention of approvals and documents was not introduced into practice until April of 2008. Prior to this date record retention was shared among the local branches and corporate offices. A formal written policy for centralized record retention was published in January 2009. Any lists or addresses used for the purposes of e-mail marketing are saved on an individual Branch or loan originator basis. Accordingly, retrieving all lists used would require surveying all branch level current employees and, to the extent possible, reviewing any remaining records of past employees.

26. The demand for the production of information related to electronic advertising, which includes websites, e-mail marketing, digital videos and flash animation, presents additional difficulties and problems. DHI does produce electronic advertising in some formats in both English and Spanish. The current Company website, *www.dhimortgage.com*, is updated on a weekly basis. Change requests are submitted via e-mail to the Marketing Department on a daily basis where they are collected and submitted to the IT Department weekly for

implementation to the live website. It is not uncommon to submit anywhere from five to fifteen changes per week. It is not a regular practice for the Company to save or archive previous versions of the website in a readily accessible format. Rather, retrieving past versions of the website is done from tape back-ups of the system. In order to provide the information sought by the CID, DHI would be required to re-catalogue and restore hundreds of tapes worth of data which are only stored at the corporate level. This could require thousands of hours of dedicated searches. Without exact dates of the changes being pushed to the live website, it is possible that some searches may result in no usable documentation or data. As of the date of this Declaration, exact dates for website changes can only be provided for the last four months, *i.e.*, since November 1, 2009. Any videos or flash animation created for the website, podcasts or e-mail advertising would have been created by third party designers and contractors, in which case, DHI would likely not have a copy of what was created or when it was published, as these types of records are generally kept by the third party vendor. In addition, due to the extended time frame, these firms may have experienced a significant amount of turnover and others are no longer in business, making it impossible to locate any archived documents.

27. In addition, in order to identify any and all scripts used, all Branch level corporate departments would have to be surveyed to determine what documents, videos, podcasts, *etc.*, had been created outside of the Marketing Department and what is archived locally. I estimate that just to conduct this survey would require approximately 30 hours of time at the corporate level, and literally hundreds of additional hours at each Branch.

28. Specifications R-24 and P-11 are particularly burdensome. R-24 demands a narrative describing "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." DHI Mortgage has produced copies of its policies in connection with a prior CID; however, P-11 demands the production of "all documents relating" to the information identified in R-24. Generally, DHI supervises its operations and employees in a number of ways including, for example, quality control audits on individual loan files, internal audits, quality control reviews of operations, as well as the general oversight responsibility of supervisors for their employees which in many cases are monitored by daily focus reports related to mortgage lending activity. What is particularly troubling is the demand for "all documents" relating to every item identified in response to R-24. I anticipate that it would take hundreds of hours of time to compile the information necessary to draft the response to this particular specification as well as to find and collect all of the material to be produced.

29. Specification P-3 requires the production of "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." Specifically, this demand seeks exemplars for every document for every loan program offered by DHI during the period of time from January 1, 2006, to the present. During this time period, DHI estimates that there were roughly 1,500 different loan products that it offered, however, many of those loan products are no longer offered by any investors. While it may be that some loan products shared the same documents, until the specific documents are retrieved, one cannot tell if that is the case. In order to produce this information, the Company will be required to spend approximately four hours of

administrative time to set up a loan for purposes of retrieving exemplars of the loan documents. Assuming an hourly rate of \$35.00, this effort would cost the Company approximately \$210,000 to retrieve all of the documents requested by Specification P-3.

30. Specification P-12 requires the production of “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.” This specification requires the production of every appraisal or other review given to any employee of the Company since January 1, 2006, including “exemplars” of every form that was used. I estimate that the time necessary to collect and produce these documents will exceed 1,500 hours since DHI Mortgage employed a total of approximately 2,257 employees during the relevant time period. This calculation assumes that the performance evaluations of the employees can be retrieved from the individual employee files at the rate of 45 minutes per file.

31. Specifications P-13 seeks all documents, contracts, or agreements relating to the referral of actual or prospective home buyers to DHI. In my prior Declaration, I indicated that my staff anticipated that it would take approximately 100 hours just to comply with P-13 (a). P-14 seeks “all documents given to consumers which relate to the Company’s referrals to its mortgage affiliate.” These demands will require DHI to review the file of every loan applicant and borrower to determine if there are documents responsive to these specifications. Specifically, under section 8 of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607 (“RESPA”), which prohibits the giving and accepting of kickbacks or referral fees in connection with the provision of settlement services, Congress exempted certain business arrangements

between affiliated entities, as long as certain disclosures are made to borrowers, borrowers are not required to use the affiliated business, and the affiliated business arrangement refrains from exchanging the types of kickbacks and referral fees otherwise prohibited by section 8. D.R. Horton frequently offers RESPA-compliant incentives to its buyers in exchange for using DHI as the lender for the transaction. A disclosure of the affiliated relationship between the builder and the mortgage company is always provided to the customer. In addition, the customer is informed that the use of the lender is never required as a condition of purchase. Accordingly, in the more than 128,000 loans that DHI originated, most of which were on properties with homes built by D. R. Horton, I expect that there is at least one disclosure form, as well as other documents relating to any incentive that might have been offered (even if not accepted by the customer). For this reason, P-13 and P-14 will require the search of every loan file. I anticipate that it will take thousands of hours to review every loan file to retrieve the information requested by P-13 and P-14.

32. Specification P-23 requires the production of “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.” Compliance with this demand will require that the Company contact every supervisor and every office of the Company. In addition, the Company will be required to review numerous documents including, for example, personnel files for each associate employed from January 1, 2006, to the present, internal audit reports produced by Special Resolutions, quality control reviews, as well as the specified “minutes of Executive

Committee or Board of Director meetings” in order to ascertain whether there are materials responsive to this demand.

33. The estimates for retrieving, collecting, and producing information set forth in the foregoing paragraphs do not include the additional time necessary to remove “sensitive personally identifiable information,” as required by Instruction M. The amount of time necessary to remove that information may be from several hours to several hundred hours depending on the amount of information that is ultimately required to be produced. For example, if DHI is required to produce all of its loan files as demanded by Specifications P-13 and P-14, then every such file has “sensitive personally identifiable information,” and assuming approximately one hour per file to review and remove that information, then depending on the number of loan files required to be produced, the amount of time necessary to perform this task could be extraordinary.

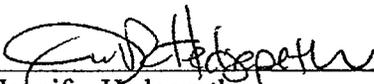
34. Based on the foregoing, I estimate that compliance with the CID by DHI will require far in excess of the approximately 960 hours of time I estimated previously. In addition I believe that the amount of time could be even higher if there are difficulties in retrieving certain materials. I believe that the demands placed on DHI by the CID will cause a substantial financial burden upon the Company and substantially interfere with DHI’s ongoing business activities.

35. In addition, the demand that all documents be either copied or made available in a single location will further disrupt the operations of the Company. Currently, DHI does not have the staff available to copy the hundreds of thousands of pages of material that would be required to be produced. In addition, to the extent the CID seeks information from individual offices of D.R. Horton and DHI, those materials would be required to be copied at those individual offices.

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 17th day of March, 2010.

Austin, Texas



Jennifer Hedgepeth