PUBLIC

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

In the Matter of	)	
	)	
Louisiana Real Estate Appraisers Board,	)	
	)	DOCKET NO. 9374
Respondents	)	
	)	

NON-PARTY CLARITY APPRAISAL MANAGEMENT COMPANY'S
MOTION FOR *IN CAMERA* TREATMENT

Counsel for non-party Clarity Appraisal Management Company ("Clarity"), pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice. 16 C.F.R. § 3.45(b), respectfully moves this Court for *in camera* treatment for five years for two competitively-sensitive, confidential business documents (the "Confidential Documents").

Respectfully submitted,

/s/ Kelley C. Barnaby

Kelley C. Barnaby
Hilla Shimshoni
ALSTON & BIRD LLP
950 F Street, NW
Washington, DC 20004
Phone: (202) 239-3300
Kelley.Barnaby@alston.com
Hilla.Shimshoni@alston.com

Counsel for Non-Party
Clarity Appraisal Management
Company

DATED: March 12, 2021

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
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NON-PARTY CLARITY APPRAISAL MANAGEMENT COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45(b) of the Federal Trade Commission's Rules of Practice. 16 C.F.R. § 3.45(b), counsel for non-party Clarity Appraisal Management Company ("Clarity" or "the Company") submits this Memorandum of Law in support of Clarity's motion, filed this date, for *in camera* treatment for five years for two competitively-sensitive, Business Documents confidential exhibits (the "Confidential Documents").

Counsel for The Federal Trade Commission ("FTC") and counsel for Respondent Louisiana Real Estate Appraisers Board ("LREAB") have stated that they do not intend to oppose Clarity's Motion. A corresponding Statement Regarding Meet and Confer is appended to this Memorandum.

Clarity produced the Confidential Documents in response to non-party subpoenas in this matter. LREAB has now notified Clarity that it intends to introduce two of the Confidential Documents into evidence at the administrative trial in this matter. *See* Letter from LREAB dated June 19, 2019 (attached as Exhibit A).

The exhibits for which Clarity is seeking *in camera* treatment are confidential business documents that contain information regarding its operations, including fees and methodology for

setting the fees, client names, volumes, and geographic scope of operations. If these documents were to become part of the public record, Clarity would be significantly harmed. For the reasons discussed in this motion, Clarity respectfully requests that the Confidential Documents be afforded *in camera* treatment. In support of the motion, Clarity relies on the Affidavit of Jason Bennett, owner of Clarity ("Bennett Declaration"), attached as Exhibit B, which provides additional details regarding the Confidential Documents.

I. The Documents for Which Protection is Sought

Clarity seeks *in camera* treatment for the following Confidential Documents, copies of which are attached under seal in Exhibit C.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
RX0522	Letter from Tyler Chance Yarbro to Kristen Ward Broz re: Nonparty Clarity Appraisal Management Company's Response to Subpoena Duces Tecum	01/17/2018	CLARITY00000001	CLARITY00000001_00002
RX0523	Clarity Appraisal Management Company data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	01/17/2018	CLARITY00000002	CLARITY00000002

II. Clarity's Documents are Secret and Material to its Business and Their Disclosure Would Result in Serious Injury to the Company

In camera treatment of material is appropriate when its "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting" such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing

that the documents are secret and that they are material to the business. *In re 1-800 Contacts, Inc.*, No. 9372, 2017 FTC LEXIS 55, at *2-3 (Apr. 4, 2017); *In re Gen. Foods Corp.,* 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.,* No. 9292, 1999 FTC. LEX1S 255, at *5 (Dec. 23, 1999). In this context, courts generally attempt "to protect confidential business information from unnecessary airing." *H.P. Hood & Sons, Inc.,* 58 F.T.C. 1184, 1188 (1961).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.,* 90 F.T.C. 455, 456-57 (1977). As discussed in the Bennett Declaration, the Confidential Documents relate to Clarity's fees and its methodology for setting the fees, as well client names, volumes, and geographic scope of operations. Such information is both secret and material to Clarity's business and, as set forth below, satisfies the standard for *in camera* treatment.

The Commission has recognized the propriety of granting *in camera* treatment to business records. *See, e.g., In re McWane, Inc.*, No. 9351, 2012 WL 3862131, at *2 (F.T.C. Aug. 17, 2012); *In re Champion Spark Plug Co.*, No. 9141, 1982 FTC LEXIS 85, at *2 (Apr. 5, 1982); *H.P. Hood & Sons, Inc.*, 58 F.T.C. at 1188-89; *In re Kaiser Aluminum & Chem. Corp.,* 103 F.T.C. 500, 500 (May 25, 1984). Thus, the information for which Clarity seeks *in camera* treatment is eligible to receive it.

Clarity has taken significant steps to protect the confidential information contained in the Confidential Documents, which was produced pursuant to compulsory processes and under the

terms of the May 31, 2017, Protective Order Governing Confidential Material in this matter (the "Protective Order") that was issued to protect the information contained in the Confidential Documents at question here. Pursuant to the Protective Order, Clarity's counsel designated the documents as "Confidential" to avoid any public disclosure. Furthermore, Clarity takes substantial measures to guard the secrecy of the information contained in the Confidential Documents by limiting the dissemination of that information and taking every reasonable step to protect its confidentiality. The information contained in the Confidential Documents is only disclosed to Clarity management and employees. As described in more detail in the Bennett Declaration, the information contained in the Confidential Documents relates to Clarity's fees and the methodology for setting those fees is not and would not otherwise become publicly available.

Finally, Clarity's status as a non-party is relevant to the treatment of its documents. The FTC has held that "[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible." *H.P. Hood & Sons,* 58 F.T.C. at 1186. This is especially so in the case of a non-party, which deserves "special solicitude" in its request for *in camera* treatment for its confidential business information. *See In re Kaiser Aluminum*, 103 F.T.C. at 500 ("As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests."). Clarity's non-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

III. IN CAMERA PROTECTION SHOULD EXTEND FOR FIVE YEARS

Because of the highly confidential and proprietary nature of the information contained in the Confidential Documents – competitively significant information that Clarity continues to use and considers key to its business strategies, performance, and ongoing operations – lasting

protection is appropriate in order to ensure avoidance of the competitive injuries to Clarity's business outlined above. *See In re 1-800 Contacts*, 2017 FTC LEXIS 55, at *3, *8 (2017) (recognizing that *in camera* treatment is appropriate where the material remains "competitively sensitive."). As the Commission has previously recognized, if such Confidential Documents are disclosed, Clarity will lose the advantages that it currently enjoys based on its efforts to maintain the confidentiality of the information contained in the Confidential Documents. *In re Otto Bock Healthcare N. Am., In*c., No. 9378, 2018 FTC LEXIS 111, at *11 (July 6, 2018) (granting *in camera* treatment for five years from time of order to non-party's ordinary course business documents, including documents containing product level sales data and pricing information); *In re 1-800 Contacts*, 2017 FTC LEXIS 55, *2-3. Therefore, and in recognizing the presumption of a public trial in this proceeding, Clarity respectfully requests that the information contained in the Confidential Documents be afforded narrow *in camera* protection, limited to a period of five years.

IV. Conclusion

For the reasons set forth above and in the accompanying Bennett Declaration, Clarity respectfully requests that this Court grant *in camera* treatment for five years for the information contained in the Confidential Documents.

Respectfully submitted,

/s/ Kelley C. Barnaby

Kelley C. Barnaby
Hilla Shimshoni
ALSTON & BIRD LLP
950 F Street, NW
Washington, DC 20004
Phone: (202) 239-3300
Kelley.Barnaby@alston.com
Hilla.Shimshoni@alston.com

Counsel for Non-Party
Clarity Appraisal Management Company

DATED: March 12, 2021

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Clarity Appraisal Management Company ("Clarity") notified counsel for the parties via email on or about March 5, 2021, that it would be seeking *in camera* treatment of the Confidential Documents. Both counsel for the Federal Trade Commission and counsel for Respondent Louisiana Real Estate Appraisers Board indicated that they did not intend to oppose Clarity's motion.

Respectfully submitted,

/s Kelley C. Barnaby

Kelley C. Barnaby
Hilla Shimshoni
ALSTON & BIRD LLP
950 F Street, NW
Washington, DC 20004
Phone: (202) 239-3300
Kelley.Barnaby@alston.com
Hilla.Shimshoni@alston.com

Counsel for Non-Party
Clarity Appraisal Management
Company

DATED: March 12, 2021

EXHIBIT A

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CONSTANTINE CANNON LLP

WASHINGTON | NEW YORK | SAN FRANCISCO | LONDON

James J. Kovacs
Attorney
202-204-3518
jkovacs@constantinecannon.com

June 19, 2019

Via E-Mail and Mail
Tyler Chance Yarbro
Dodson Parker Behm & Capparella, PC
1310 6th Avenue North
Nashville, TN 37208

Re: *In the Matter of Louisiana Real Estate Appraisers Board*, FTC Dkt. 9374

Dear Mr. Bennett,

This letter will constitute notice to your client Clarity Appraisal Management, pursuant to 16 C.F.R. § 3.45(b) and paragraph 7 of the July 6, 2017 Scheduling Order in the above-captioned matter, that Respondent Louisiana Real Estate Appraisers Board ("LREAB") intends to use the materials referenced on the attached Exhibit A as evidence at the administrative trial scheduled to begin on September 17, 2019. All exhibits admitted into evidence become part of the public record unless *in camera* treatment is granted by Administrative Law Judge D. Michael Chappell.

Pursuant to 16 C.F.R. § 3.45, for documents or testimony that you believe include sensitive or confidential information that you do not want on the public record, you must file a motion for *in camera* status with Judge Chappell. As indicated in paragraph 7 of the July 6, 2017 Scheduling Order, motions for in camera treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re I-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.

Under the Fourth Revised Scheduling Order dated March 26, 2019, the deadline for filing motions seeking in camera status is **August 2, 2019**.

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Please contact me via email or at (202) 204-3518 if you have any questions regarding the foregoing.

Best regards,

/s/ James J. Kovacs
James J. Kovacs

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EXHIBIT A

Exhibit #	Description	Date	Beg Bates	End Bates
RX0522	Letter from Tyler Chance Yarbro to Kristen Ward Broz re: Nonparty Clarity Appraisal Management Company's Response to Subpoena Duces Tecum	1/17/2018	CLARITY00000001	CLARITY00000001_00002
RX0523	Clarity Appraisal Management Company data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	1/17/2018	CLARITY00000002	CLARITY00000002
RX0524	Clarity Appraisal Management Company certification page in response to Constantine Cannon 1/17/2018 subpoena	1/17/2018	CLARITY00000003	CLARITY00000003

EXHIBIT B

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

In the Matter of	)	
	)	
Louisiana Real Estate Appraisers Board,	)	
	)	DOCKET NO. 9374
Respondents	)	
	)	

DECLARATION OF JASON BENNETT
IN SUPPORT OF NON-PARTY
CLARITY APPRAISAL MANAGEMENT COMPANY'S
MOTION FOR *IN CAMERA* TREATMENT

I, Jason Bennett, hereby declare as follows:

1. I am the owner of Clarity Appraisal Management Company ("Clarity"). Clarity is an independent company offering full-service appraisal management services.

2. I make this declaration in support of non-party Clarity's Motion for *in camera* treatment of certain information contained in certain documents (the "Motion").

3. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

4. I have reviewed and am familiar with the documents Clarity produced in the above-captioned matter in response to a subpoena from the Louisiana Real Estate Appraisers Board ("LREAB"). Given my position at Clarity, I am familiar with the type of information contained in the documents at issue and its competitive significance to Clarity. Based on my review of the documents, my knowledge of Clarity's business, and my familiarity with the confidentiality protection afforded this type of information by Clarity, the disclosure of these documents to the public and to competitors of Clarity would cause serious, irreparable competitive injury to Clarity.

5. Respondent LREAB has now notified Clarity that it intends to introduce two of Clarity's competitively-sensitive, confidential documents into evidence at the administrative trial in this matter. As described in the Motion, Clarity seeks *in camera* protection for the information related to its fees and sensitive operational information contained in these documents which are listed below.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
RX0522	Letter from Tyler Chance Yarbro to Kristen Ward Broz re: Nonparty Clarity Appraisal Management Company's Response to	01/17/2018	CLARITY00000001	CLARITY00000001_00002
RX0523	Clarity Appraisal Management Company	01/17/2018	CLARITY00000002	CLARITY00000002

6. Publicly disclosing any of Clarity's confidential financial and strategic information is not necessary in this proceeding and could be detrimental to Clarity whose only involvement in this proceeding is as a non-party.

7. Clarity has taken significant steps to protect the confidential information contained in the documents identified above. Clarity takes substantial measures to guard the secrecy of this confidential information by limiting the dissemination of the information and taking every reasonable step to protect its confidentiality. The information is only disclosed to Clarity management and employees as needed and appropriate. The information is not, and would not, otherwise become publicly available.

8. RX0522 contains Clarity's confidential, written response to LREAB's subpoena. The response contains confidential information regarding Clarity's methodology for setting the fees that it pays to appraisers. Disclosure of information regarding Clarity's methodology for setting the fees could have a material impact on Clarity's ability to conduct its business and its

ability to compete. Disclosure of this information could also be used by Clarity's competitors to analyze Clarity's place in the market and its confidential business strategies, giving those competitors an unfair competitive advantage over Clarity. Therefore, the information related to Clarity's methodology for setting the fees that Clarity pays to appraisers should be given *in camera* protection.

9. RX0523 contains confidential information regarding Clarity's operations, including client names, the fees it pays to appraisers, and detailed information about its volume and geographic footprint. It would very difficult, if not impossible, for anyone outside of Clarity to recreate this information. Disclosure of information regarding Clarity's fees and scope of operations could have a material impact on Clarity's ability to conduct its business and its ability to compete. Even though the fees are several years old, disclosure of this information could still be used by Clarity's competitors to analyze Clarity's current place in the market, the scope and details of its appraisal operations including detailed geographic footprint, and its confidential business strategies, giving those competitors an unfair competitive advantage over Clarity. Therefore, the information related to the fees that Clarity paid to appraisers should be given *in camera* protection.

10. Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Jason Bennett
Owner
Clarity Appraisal Management Company

Signed this 10th day of March 2021.

EXHIBIT C

DOCUMENTS MARKED CONFIDENTIAL
REDACTION IN THEIR ENTIRETY REQUESTED

CERTIFICATE OF SERVICE

I, Hilla Shimshoni, declare under penalty of perjury that the following is true and correct. On March 12, 2021, I caused to be served the following documents on the parties listed below by the manner indicated:

- Non-Party Clarity Appraisal Management Company's Motion for *In Camera* Treatment, with accompanying Memorandum of Law and all Exhibits, and Statement Regarding Meet and Confer
- [Proposed] Order Granting *In Camera* Treatment

The Office of the Secretary (via FTC E-Filing System (public version) and email (non-public version))
April Tabor
Acting Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-172
Washington, DC 20580
ElectronicFilings@ftc.gov

The Office of the Administrative Law Judge (via FTC E-Filing System (public version) and email (non-public version))
The Honorable D, Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-106
Washington, DC 20580

Complaint Counsel for Federal Trade Commission (via FTC E-Filing System (public version) and email (non-public version))
Daniel J. Matheson
Lisa B. Kopchik
J. Alexander Ansaldo
Wesley G. Carson
Nathaniel M. Hopkin
Kenneth H. Merber
Thomas H. Brock Federal Trade Commission
400 7th Street, SW
Washington, DC 20024
dmatheson@ftc.gov
lkopchik@ftc.gov
jansaldo@ftc.gov

wcarson@ftc.gov
nhopkin@ftc.gov
kmerber@ftc.gov
tbrock@ftc.gov

Counsel for Louisiana Real Estate Appraisers Board (via FTC E-Filing System (public version) and email (non-public version))

W. Stephen Cannon
Seth D. Greenstein
Richard O. Levine
Allison F. Sheedy
James J. Kovacs
J. Wyatt Fore Constantine Cannon
1001 Pennsylvania Ave NW, 1300N
Washington, DC 20004
scannon@constantinecannon.com
sgreenstein@constantinecannon.com
rlevine@constantinecannon.com
asheedy@constantinecannon.com
jkovacs@constantinecannon.com
wfore@constantinecannon.com

/s Hilla Shimshoni

CERTIFICATE FOR ELECTRONIC FILING

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

Dated: March 12, 2021.

/s Hilla Shimshoni

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

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	)	
Louisiana Real Estate Appraisers Board,	)	
	)	DOCKET NO. 9374
Respondents	)	
	)	

NON-PARTY CLARITY APPRAISAL MANAGEMENT COMPANY'S
[PROPOSED] ORDER

Upon consideration of non-party Clarity Appraisal Management Company ("Clarity"), Motion for *In Camera* Treatment, IT IS HEREBY ORDERED that the following documents are to be provided *in camera* treatment under 16 C.F.R. § 3.45 for five years from the date of this order.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
RX0522	Letter from Tyler Chance Yarbro to Kristen Ward Broz re: Nonparty Clarity Appraisal Management Company's Response to Subpoena Duces Tecum	01/17/2018	CLARITY00000001	CLARITY00000001_00002
RX0523	Clarity Appraisal Management Company data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	01/17/2018	CLARITY00000002	CLARITY00000002

ORDERED:

The Honorable D. Michael Chappell
Chief Administrative Law Judge

Date: