

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

In the Matter of)
)
Louisiana Real Estate Appraisers Board,)
)
 Respondents)
_____)

DOCKET NO. 9374

**NON-PARTY TRIDENT SERVICES, LLC’S
MOTION FOR *IN CAMERA* TREATMENT**

Counsel for non-party Trident Services, LLC (“Trident”), 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 one competitively-sensitive, confidential business document (the “Confidential Document”).

Respectfully submitted,

/s Kelley C. Barnaby
Kelley C. Barnaby
Hilla Shimshoni
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*Counsel for Non-Party
Trident Services, LLC*

DATED: March 12, 2021

**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 TRIDENT SERVICES, LLC’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 Trident Services, LLC (“Trident” or “the Company”) submits this Memorandum of Law in support of Trident’s motion, filed this date, for *in camera* treatment for five years for one competitively-sensitive, confidential business document (the “Confidential Document”).

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 Trident’s Motion. A corresponding Statement Regarding Meet and Confer is appended to this Memorandum.

Trident is an appraisal management company providing evaluation solutions for banks, credit unions and mortgage bankers in all 50 states. Trident produced the Confidential Document in response to a non-party subpoena in this matter. Respondent LREAB has now notified Trident that it intends to introduce the Confidential Document into evidence at the administrative trial in this matter. *See* Letter from LREAB dated June 20, 2019 (attached as Exhibit A).

The exhibit for which Trident is seeking *in camera* treatment is a confidential business document that contains information regarding Trident’s fees, lender names, and detailed geographic scope of operations. If this document was to become part of the public record, Trident would be significantly harmed. For the reasons discussed in this motion, Trident respectfully requests that the Confidential Document be afforded *in camera* treatment. In support of the motion, Trident relies on the Affidavit of Leon Juczynski, Chief Executive Officer at Trident (“Juczynski Declaration”), attached as Exhibit B, which provides additional details regarding the Confidential Document.

I. The Document for Which Protection is Sought

Trident seeks *in camera* treatment for the following Confidential Document, a copy of which is attached under seal in Exhibit C.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
RX0739	Trident Services, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	02/07/2018	TRIS00000002	TRIS00000002

II. Trident’s Document is Secret and Material to Trident’s Business and Its 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 document is secret and that it is 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. LEXIS 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 Juczynski Declaration, the Confidential Document relates to Trident’s fees, lender business relationships, and its geographic scope of operations. Such information is both secret and material to Trident’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 Trident seeks *in camera* treatment is eligible to receive it.

Trident has taken significant steps to protect the confidential information contained in the Confidential Document, 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

Document at question here. Pursuant to the Protective Order, Trident's counsel designated the document as "Confidential" to avoid any public disclosure. Furthermore, Trident takes substantial measures to guard the secrecy of the information contained in the Confidential Document by limiting the dissemination of that information and taking every reasonable step to protect its confidentiality. The information contained in the Confidential Document is only disclosed to Trident management and employees. As described in more detail in the Juczynski Declaration, the information contained in the Confidential Document relates to Trident's fees and is not and would not otherwise become publicly available.

Finally, Trident's status as a non-party is relevant to the treatment of its document. 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."). Trident's non-party status therefore weighs in favor of granting *in camera* status to the Confidential Document.

III. IN CAMERA PROTECTION SHOULD EXTEND FOR FIVE YEARS

Because of the highly confidential and proprietary nature of the information contained in the Confidential Document – competitively significant information that Trident 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 Trident's business outlined above. See *In re 1-800 Contacts*, 2017 FTC LEXIS 55, at *3, *8 (recognizing

that *in camera* treatment is appropriate where the material remains “competitively sensitive.”). As the Commission has previously recognized, if such Confidential Information is disclosed, Trident will lose advantages that it currently enjoys based on its efforts to maintain the confidentiality of the information contained in the Confidential Document. *In re Otto Bock Healthcare N. Am., Inc.*, 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, at *2-3. Therefore, and in recognizing the presumption of a public trial in this proceeding, Trident respectfully requests that the information contained in the Confidential Document 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 Juczynski Declaration, Trident respectfully requests that this Court grant *in camera* treatment for five years for the information contained in the Confidential Document.

Respectfully submitted,

/s Kelley C. Barnaby

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*Counsel for Non-Party
Trident Services, LLC*

DATED: March 12, 2021

EXHIBIT A

CONSTANTINE CANNON LLP

WASHINGTON | NEW YORK | SAN FRANCISCO | LONDON

James J. Kovacs

Attorney

202-204-3518

jkovacs@constantinecannon.com

June 20, 2019

Via E-Mail and Mail

Kelley Connolly Barnaby

Alston & Bird LLP

The Atlantic Building

950 F Street, NW

Washington, DC 20004-1404

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

Dear Ms. Barnaby,

This letter will constitute notice to your client Trident Services, LLC, 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 I-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.

CONSTANTINE CANNON LLP

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June 20, 2019

Page 2

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

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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June 20, 2019
Page 3

EXHIBIT A

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June 20, 2019

Page 4

Exhibit #	Description	Date	Beg Bates	End Bates
RX0738	Letter from Kelley Connolly Barnaby to W. Stephen Cannon re: In the Matter of Louisiana Real Estate Appraisers Board, Docket N. 9374	2/7/2018	TRIS00000001	TRIS00000001
RX0739	Trident Services, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	2/7/2018	TRIS00000002	TRIS00000002

EXHIBIT B

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

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

**DECLARATION OF LEON JUCZYNSKI IN SUPPORT OF
NON-PARTY TRIDENT SERVICES, LLC’S
MOTION FOR *IN CAMERA* TREATMENT**

I, Leon Juczynski, hereby declare as follows:

1. I am the Chief Executive Officer at Trident Services, LLC (“Trident”). I make this declaration in support of non-party Trident’s Motion for *in camera* treatment for a certain document (the “Motion”).

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

3. Trident is an appraisal management company providing evaluation solutions for banks, credit unions and mortgage bankers in all 50 states.

4. I have reviewed and am familiar with the documents Trident produced in the above-captioned matter in response to a subpoena from the Louisiana Real Estate Appraisers Board (“LREAB”). Given my position at Trident, I am familiar with the type of information contained in the documents at issue and its competitive significance to Trident. Based on my review of the documents, my knowledge of Trident’s business, and my familiarity with the confidentiality

protection afforded this type of information by Trident, the disclosure of one of these documents to the public would cause serious, irreparable competitive injury to Trident.

5. Respondent LREAB has notified Trident that it intends to introduce two of Trident's documents into evidence at the administrative trial in this matter including one that contains confidential information. As described in the Motion, Trident seeks *in camera* protection for the information related to the fees that Trident pays to appraisers, lender names, and detailed geographic scope of operations contained in the document listed below.

Exhibit No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
RX0739	Trident Services, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	02/07/2018	TRIS00000002	TRIS00000002

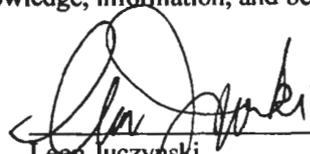
6. Publicly disclosing Trident's confidential strategic information is not necessary in this proceeding and could be detrimental to Trident whose only involvement in this proceeding is as a third party.

7. Trident has taken significant steps to protect the confidential information contained in the document identified above. Trident 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 Trident management and employees as needed and appropriate. The information is not, and would not, otherwise become publicly available.

8. RX0739 contains confidential information regarding its operations, including lender names, detailed geographic scope of operations, and the fees that Trident pays to appraisers. Disclosure of information regarding the fees that Trident pays to appraisers could have a material impact on Trident'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 Trident's competitors to analyze Trident'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 Trident. Therefore, the information related to the fees that Trident pays to appraisers should be given *in camera* protection.

9. 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.



Leon Juczynski
Chief Executive Officer
Trident Services, LLC

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 Trident Services, LLC'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) email (non-public version))

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/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**

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

**NON-PARTY TRIDENT SERVICES, LLC’S
[PROPOSED] ORDER**

Upon consideration of non-party Trident Services, LLC (“Trident”) Motion for *In Camera* Treatment, IT IS HEREBY ORDERED that the following document is 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.
RX0739	Trident Services, LLC data spreadsheet in response to Constantine Cannon 1/17/2018 subpoena	02/07/2018	TRIS00000002	TRIS00000002

ORDERED:

Date:

The Honorable D. Michael Chappell
Chief Administrative Law Judge