UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER MOEHRL, MICHAEL COLE, STEVE DARNELL, VALERIE NAGER, JACK RAMEY, SAWBILL STRATEGIC, INC., DANIEL UMPA and JANE RUH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NATIONAL ASSOCIATION OF REALTORS, REALOGY HOLDINGS CORP., HOMESERVICES OF AMERICA, INC., BHH AFFILIATES, LLC, HSF AFFILIATES, LLC, THE LONG & FOSTER COMPANIES, INC., RE/MAX LLC, and KELLER WILLIAMS REALTY, INC.,

Defendants.

THIS DOCUMENT RELATES TO ALL ACTIONS

Civil Action No.: 1:19-cv-01610 and
Civil Action No.: 1:19-cv-2544

PLAINTIFFS' MOTION IN SUPPORT OF (A) DISCOVERY OF CIVIL INVESTIGATIVE DEMAND MATERIALS; AND (B) PRODUCTION OF MANDATORY INITIAL DISCOVERY PROGRAM INITIAL DISCOVERY RESPONSES

Hon. Andrea R. Wood

In accordance with the Court's directions, Plaintiffs filed the Consolidated Amended Complaint ("CAC") on June 14, 2019. Plaintiffs propose that the parties move forward on the following schedule:

- Defendants' renewed motions to dismiss shall be filed by July 12, 2019; Plaintiffs' opposition papers shall be filed by August 9, 2019; and Defendants' replies shall be filed by September 6, 2019.
- Defendants shall produce any Civil Investigative Demands ("CIDs") in their possession, custody or control from the United States Department of Justice that relate to buyer-broker commissions or other conduct alleged in the CAC by July 1, 2019 (or within one week of receipt of any CIDs).
- Plaintiffs shall review the CIDs and, by July 8, 2019, identify to Defendants the requests relevant to this litigation. Defendants shall have one week (i.e., until July 15, 2019) to object to the requests and meet and confer with Plaintiffs. Defendants

shall have until July 29, 2019 to produce documents responsive to requests for which there is no objection, and to file a five-page brief setting forth the basis for any objections. Plaintiffs shall file a five-page opposition brief by August 5, 2019. No reply briefs would be filed.

- Plaintiffs shall file Mandatory Initial Discovery Program ("MIDP") Initial Discovery Responses by August 9, 2019. Defendants shall file MIDP Initial Discovery Responses by September 6, 2019.

Defendants have indicated that they oppose *any* discovery until their anticipated motions to dismiss are resolved, including production of CIDs.[1] In fact notwithstanding the Court's suggestion that the parties begin discussing terms of a Protective Order and Electronic Discovery Protocol in advance of the June 24, 2019 status conference, Defendants have declined even to discuss those subjects.

Defendants' position is inconsistent with the law of this jurisdiction and would substantially and unnecessarily delay the progress of this litigation. Instead, as discussed at the May 29th status conference, Plaintiffs respectfully request leave to proceed with discovery of relevant CIDs and MIDP Initial Discovery Responses so the parties can begin to make material progress in the discovery process. This discovery is appropriate for the following reasons.

First, there is no significant burden on the Defendants in producing CIDs in their possession relating to conduct at issue in this litigation, and the materials they produce in response to those CIDs. It is clear from both news reports and the one CID that has become available to Plaintiffs that the CIDs being issued by the DOJ are *highly* relevant to this litigation. *See* Exhibit A (reporting that the Antitrust Division is actively "investigating potentially anticompetitive practices in the residential real estate brokerage business, with a focus on compensation to brokers and restrictions on their access to listings"); Exhibit B (CID served on

[1] Defendants have proposed that their motions to dismiss should not be filed until August 1, 2019 (i.e., almost seven weeks after the CAC was filed on June 14) and that all discovery be stayed until their motions are resolved.

CoreLogic), and CAC at ¶¶ 70-72 (ECF No. 84) (alleging, *inter alia,* that CoreLogic databases have been misused by Defendants to steer home buyers away from properties offering reduced buyer-broker commissions). Plaintiffs have been advised that the DOJ takes no position on production of the requested CIDs, undermining any objection Defendants may have on confidentiality grounds.[2]

Cases in this jurisdiction strongly support production of these materials. In *In re Dairy Farmers of America, Inc., Cheese Antitrust Litigation,* No. 09 C 3690, MDL No. 2031 (N.D. Ill. March 4, 2010) (ECF No. 75) (appended as Exhibit C), the District Court rejected the defendants' request for a stay pending resolution of motions to dismiss and ruled that "[d]iscovery in the Consolidated Action will not be stayed. Targeted discovery, including, but not limited to the previously produced material in the CFTC investigation shall be allowed to proceed." *Id.* at 4. The Defendants were directed to "produce the documents that the defendants previously produced to the CFTC" within two weeks. *Id.* Similarly, in *In re Broiler Chicken Antitrust Litig.*, No. 1:16-CV-08637, 2017 WL 4417447, at *7 (N.D. Ill. Sept. 28, 2017), the defendants were ordered to produce the subset of documents previously produced to the Florida Attorney General that were relevant to plaintiffs' allegations while motions to dismiss were pending. The Court explained that early production of those materials involved limited burden and would enhance the ability of the plaintiffs "to discuss meaningfully key words and search methodologies, and to understand and discuss with Defendants the appropriate universe of document custodians and other discovery parameters" in preparation for more robust discovery after Defendants' motions to dismiss are resolved. *Id*

[2] Plaintiffs have not communicated with DOJ about production of documents subsequent to production of the actual CIDs. As soon as Defendants produce CIDs and Plaintiffs have identified the relevant requests, Plaintiffs would so notify both the Defendants and DOJ so that DOJ will have an opportunity to raise objections, if any, to production of responsive documents here.

Second, moving forward with MIDP Initial Discovery Responses will allow the parties to establish the foundation for subsequent discovery: identifying witnesses; disclosing the factual basis for claims and defenses; and identifying relevant document sources. If Defendants have particular concerns, Plaintiffs are fully prepared to discuss matters such as entry of a protective order (a subject Defendants have thus far declined even to discuss). Notably, cases relied on by Defendants in previously seeking a stay on all discovery until motions to dismiss are decided, *support* proceeding with Initial Discovery Responses now. *See Tichy v. Hyatt Hotels Corp.*, No. 18-cv-01959 (N.D. Ill. May 7, 2018); *Zhirovetskiy v. Zayo Group, LLC*, No. 17-cv-05876 (N.D. Ill. Jan. 23, 2018); *accord Zak v. Bose Corp.*, No. 17-cv-02928 (N.D. Ill. June 29, 2017), ECF No. 23 (Wood, J.). There is no rule that discovery must or should be stayed pending resolution of a motion to dismiss.

BACKGROUND

This case challenges conduct by the Defendants that has caused the plaintiff class of home sellers to pay supra-competitive buyer-broker commissions (i.e., overcharges). Plaintiffs' case focuses primarily on the rule set forth in the National Association of Realtors' (NAR's) Handbook on Multiple Listing Policy and quoted in paragraph 60 of the Complaint ("the Rule"):

> "In filing a property with the multiple listing service of an association of Realtors®, the participant of the service is making blanket unilateral offers of compensation to the other participants, and shall therefore specify on each listing filed with the service, the compensation being offered to the other MLS participants."

The Rule further provides that:

> "Multiple listing services shall not publish listings that do not include an offer of compensation expressed as a percentage of the gross selling price or as a definite dollar amount, nor shall they include general invitations by listing brokers to other participants to discuss terms and conditions of possible cooperative relationships."

CAC ¶ 60.

Plaintiffs allege that the Rule is manifestly anticompetitive in its terms, application, and entirely predictable adverse impact on competition. Specifically:

- The Rule requires all Sellers using the MLS to make an offer of compensation to "the other MLS participants," which includes all buyer-brokers participating on the MLS. In other words, *it compels the seller to make an offer of payment to the buyer-broker*, even though the buyer-broker is working on behalf of the buyer, not the seller.

- It requires that this be a *blanket* offer – i.e., the exact same compensation terms must be simultaneously offered to every buyer-broker without regard to their experience, the services they are providing to the buyer, or the financial arrangement they have made with the buyer.

- Because this blanket offer must be made available to every buyer-broker using the MLS (i.e., virtually all buyer-brokers) – and can be compared by the buyer-broker with the blanket offers that every other seller-broker must post on the MLS – *the Rule creates tremendous pressure on sellers to offer the high commission that has long been maintained in this industry* so that buyer-brokers will not "steer" buyers to properties offering higher buyer-broker commissions.

- Indeed, *the Rule facilitates anticompetitive steering by buyer-brokers* because it allows them to identify and compare the buyer-broker compensation offered by every seller in the MLS and steer clients to properties offering higher commissions. (The prevalence of such steering – including its anticompetitive impact on consumers and exclusionary impact on agents trying to compete with alternative, lower-cost models -- is widely recognized in the economic literature).

- These effects are magnified by the Rule's requirement that the required compensation must be offered as a percentage of the gross selling price or a definite dollar amount – a requirement that facilitates comparisons and steering by the buyer-broker – and the Rule's *prohibition* on "general invitations by listing [i.e., seller] brokers to other participants to discuss terms and conditions of possible cooperative relationships."

- *These anticompetitive effects are further compounded by the fact that neither the buyer nor the seller is even permitted to view this universe of buyer-broker commission terms* and thus are unlikely to know whether the buyer-broker is engaged in steering to higher commission properties. (The obfuscation for buyers is made even worse by NAR's ethical rule expressly permitting buyer-brokers to tell buyers that the broker's services are "free" for the buyer).

CAC ¶ 4.

The "agreement" that the NAR-controlled multiple listing services ("MLS") offer to agents is thus quite straightforward and readily provable in this case: if a real estate broker wants to participate in the MLS, you must agree to these anti-competitive terms. As alleged in the CAC, each of the Corporate Defendants has joined, facilitated and furthered the conspiracy at issue here in numerous respects, including through their requirements that franchisees, groups and individual realtors comply with the anticompetitive NAR and MLS rules. CAC ¶¶ 6-8, 93-121.

This has resulted in overcharges paid by home sellers to buyer-brokers that are supra-competitive by every relevant measure – they are far higher than the charges in many other countries, they have increased over-time despite the emergence of new technologies that drive down costs, and the overcharges are maintained at this supra-competitive level with little regard to the value of the house being sold, the costs involved, the market, or the experience of the buyer-broker. CAC ¶¶ 9-16, 122-32.

As explained *supra,* the DOJ's Antitrust Division has an ongoing investigation into the residential and real estate brokerage business, "with a focus on compensation to brokers and restrictions on their access to listings." Exh A. A recent article published a copy of the CID served on a third party, CoreLogic, which is the dominant provider of software and databases used by MLSs controlled by NAR and used by the Defendants' real estate brokerages. The subjects of the CID relate directly to conduct challenged in the CAC. *See* CAC at ¶¶ 70-72. To date, Defendants have declined to answer whether they have received CIDs relating to the practices at issue here.

ARGUMENT

As reflected in *Cheese Antitrust Litigation Broiler Chicken, Tichy, Zak* and *Zhirovetskiy,* there are important reasons meaningful progress on discovery should be made during the

pendency of a motion to dismiss. The type of discovery sought now involves only modest, if any, burdens and allows the parties to begin serious discussions about a host of issues that will allow discovery to proceed far more expeditiously and efficiently once Defendants' motions are resolved. Indeed, the need to begin moving forward with such discovery, is evidenced by the Defendants' apparent unwillingness even to discuss standard terms for a Protective Order and ESI Protocol, as suggested by the Court at the May 29, 2019 status conference. On May 31, 2019, Plaintiffs proposed the parties adopt verbatim the Protective Order and ESI Protocol that was approved by the District Court and adopted in the *Broiler Chicken* antitrust litigation. In adopting the ESI Protocol in that case, Magistrate Judge Gilbert explained that the protocol was "the result of extensive negotiation, compromise by both sides, and guidance provided by the Court over many months." *In re Broiler Chicken Antirust Litigation*, No. 1:16-cv-08637 (N.D. Ill. July 17, 2018) (ECF No. 1079). In proposing use of the same Protective Order and ESI Protocol here, Plaintiffs indicated their availability to meet and confer on any convenient date between June 3 and June 14. To date, none of the Defendants has even responded, let alone agreed to meet and confer on this subject.

Defendants' apparent views that discovery should remain at a standstill until their anticipated motions to dismiss are resolved is not in accord with the law of this jurisdiction or principles of sound case management. As the Mandatory Initial Discovery Program (as amended effective December 1, 2018) makes clear, "[u]nder Rule 12(a)(4), even if a motion to dismiss is filed, the Court retains authority to order an answer and/or permit the parties to make Rule 26(a)(1) initial disclosure and commence discovery under the Federal Rules of Procedure."[3] The party seeking a stay of discovery bears the burden of showing that "good

[3] Https://www.ilnd.uscourts.gov/_assets/_documents/MIDP%20Changes%20Effective%2012-1-18.pdf.

cause" exists for such an order.[4] Before a stay may be imposed, the moving party must make a "clear showing of [their] burden or cost with any anticipated discovery."[5] The mere filing of a motion to dismiss is ordinarily not sufficient to justify a stay of discovery.[6] As the Court explained in *New England Carpenters*, "[h]ad the Federal Rules contemplated that a motion to dismiss under Fed. R.Civ. P. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect."[7] Courts have also rejected vague burden objections like the ones Defendants raise here, even in the early stages of antitrust litigation where discovery obligations between the parties may be asymmetrical.[8] Defendants' desire to delay all discovery until their motions are resolved is especially unfounded where, as here, the CAC sets forth very detailed

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[4] *New England Carpenters Health & Welfare Fund v. Abbott Labs.*, No. 12 C 1662, 2013 WL 690613, at **1, 3 (N.D. Ill. Feb. 20, 2013).

[5] *Id.* at *3.

[6] *See, e.g., SK Hand Tool Corp. v. Dresser Indust., Inc.*, 852 F.2d 936, 945 n.11 (7th Cir. 1988); *Tomburo v. Dworkin,* No. 04 C 3317, 2010 WL 4867346, at *2 (N.D. Ill. Nov. 7, 2010).

[7] *New England Carpenters*, 2013 WL 690613, at 1; *see also id.* at *3 ("*Twombly* and *Iqbal* do not *mandate* that a motion to stay should be granted every time a motion to dismiss is filed"); *In re Dairy Farmers of America, Inc., Cheese Antitrust Litigation,* No. 09-cv-03690, at *4 (N.D. Ill. Mar. 4, 2010) (ECF No. 75) (rejecting defendants' argument that *Twombly* and *Iqbal* decisions warranted stay of discovery pending resolution of motions to dismiss (ECF No. 34 at 1), and holding that discovery "will not be stayed" and "[t]argeted discovery, including, but not limited to the previously produce material in the CFTC investigation shall be allowed to proceed"); *In re Flash Memory Antitrust Litig.*, No. 07-cv-0086, 2008 WL 62278, at *3 (N.D. Cal. Jan. 4, 2008) ("While the *Twombly* Court was certainly concerned with the expense of discovery in antitrust cases, its resolution of this concern was to require plaintiffs to plead non-conclusory, factual allegations giving rise to a plausible claim or claims for relief. The Court did not hold, implicitly or otherwise, that discovery in antitrust actions is stayed or abated until after a complaint survives a Rule 12(b)(6) challenge. Such a reading of that opinion is overbroad and unpersuasive.") (citation omitted).

[8] *See, e.g., SOLIDFX, LLC v. Jeppesen Sanderson, Inc.*, No. 11-cv-01468, 2011 WL 4018207, at *3 (D. Colo. Sept. 8, 2011) (denying stay because the defendant "argues generally that antitrust discovery is burdensome, but it fails to point to any pending discovery and provide evidence as to the burden it imposes"); *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, No. 16-cv-6370, 2018 WL 1569811, at *2 (N.D. Cal. Feb. 16, 2018) ("Defendants also rely on ubiquitous comments made in other cases noting that antitrust discovery can be costly, but fail to convincingly explain why those comments resonate here. . . . Discovery is not stayed just because it imposes *some* burden.").

factual allegations about the illegal agreement and conspiracy that provide significantly greater specificity than Rule 8 of the Federal Rules of Civil Procedure requires. *See* CAC ¶¶ 53-121.[9]

A. The Parties Should Promptly Move Forward with Discovery of the CIDs and Materials Produced in Response to the DOJ's CIDs.

Although it has been publicly reported that the DOJ has an ongoing investigation into "potentially anti-competitive practices in the residential real estate brokerage business, with a focus on compensation to brokers and restrictions on their access to listings," Defendants have declined even to indicate whether they have received CIDs (or otherwise have them in their possession, custody or control) or have produced (or are in the process of producing) documents responsive to CIDs. At least one CID – served on CoreLogic – is now in the public domain, and the documents sought in that CID are highly relevant to allegations in the CAC here. Plaintiffs have been advised that the DOJ takes no position regarding production of the CIDs in this litigation.

Accordingly, Plaintiffs propose a two-step process that will allow this discovery to proceed without delay. First, Defendants should produce within one week from the next case management conference (by July 1) any CIDs in their possession, custody or control from the DOJ relating to buyer-broker commissions or other conduct alleged in the CAC (or within one week of receipt of any CIDs). Second, Plaintiffs will promptly review those CIDs and identify to Defendants all relevant requests within one week (by July 8). Defendants would then have until July 29, 2019 to: (a) produce documents responsive to requests for which there is no

[9] *See In re Plasma-Derivative Protein Therapies Antitrust Litig.*, 764 F.Suppp.2d 991 (N.D. Ill. 2011) (explaining that "it is important to recognize that *Twombly* does not call for detailed factual allegations. It only requires enough facts to show that an alleged conspiracy is plausible."). Notably, Defendants' earlier motions to dismiss relied heavily on cases decided at the summary judgment stage following the *completion* of full discovery. Accordingly, those authorities do not provide any basis for delaying discovery here and, to the contrary, support allowing discovery to proceed.

objection, and (b) file a five-page brief explaining the basis for any objections. Plaintiffs would file a five-page opposition brief by August 5, 2019.

Cases in this District and many other federal jurisdictions have agreed that plaintiffs should have access to documents produced in parallel criminal or government investigations early in litigation. For example, in the *Cheese Antitrust Litigation*, the District Court rejected the Defendants' request that all discovery be stayed until motions to dismiss were resolved and Ordered the Defendants to produce within two weeks all documents previously produced to the CFTC.[10] Similarly, in *Broiler Chicken*, the Court ordered defendants to produce – prior to resolution of motions to dismiss – a subset of documents already produced to the Florida Attorney General. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2017 WL 4322823, at *3-4 (N.D. Ill. Sept. 28, 2017); *see also In re Liquid Aluminum Sulfate Antitrust Litig.*, No. 16-md-2687-JLL-JAD (D.N.J. July 5, 2016), ECF No. 209 (order requiring production of documents produced to DOJ); *In re Pool Products Distribution Market Antitrust Litig.*, No. 12-md-02328-SSV-JCW (E.D. La. June 4, 2012), ECF No. 93 (production of FTC-requested documents prior to answer or motion to dismiss); *In re High Tech Employee Antitrust Litig.*, No. 11-cv-2509 (N.D. Cal. Oct. 26, 2011), ECF No. 88 (production of DOJ-requested documents prior to resolution of motion to dismiss); *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-md-02143-RS (N.D. Cal. Apr. 7, 2011), ECF No. 379 (same); *In re Platinum & Palladium Commodities Litig.*, No. 10-cv03617-WHP (S.D.N.Y. Nov. 30, 2010), ECF No. 59 (ordering defendants to produce 250,000 pages of documents already produced to government

[10] Exh. C at 4 (denying defendants' request for a stay and ordering production of documents produced to CFTC). *See also id.*, ECF No. 34 at 4 (defendant's motion arguing that all discovery should be deferred based on the Supreme Court's decision in *Twombly* until motions to dismiss were resolved); ECF No. 60 at 15 (transcript of status conference at which District Court indicated that requested stay would be inefficient and, in such a complicated matter, it was preferable to make progress on discovery).

authorities before the decision on the motion to dismiss); *In re Static Random Access Memory (SRAM) Antitrust Litig.*, 580 F.Supp.2d 896, 899 (N.D. Cal. 2008) (describing case management order allowing discovery of documents already being provided to the Department of Justice while motion to dismiss pending); *In re Pharm. Indus. Average Wholesale Price Litig.*, MDL No. 1456, No. 01-12257-PBS (D. Mass. Oct. 28, 2002), ECF No. 161 (ordering defendants to produce documents previously produced "to any federal or state executive or legislative entity in connection with any investigation" less than two months after numerous related complaints were consolidated).

As these decisions reflect, early production serves the goal of judicial efficiency and the policies underlying Rule 1 of the Federal Rules of Civil Procedure, which directs the Court to construe, administer, and employ the Federal Rules of Civil Procedure "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. Where "there is at most minimal burden involved in producing" documents already produced to the DOJ, "then the benefits of producing those documents now in terms of moving the case forward to a fair and efficient resolution consistent with Rule 1 of the Federal Rules of Civil Procedure weigh in favor of not putting off production until after the motions to dismiss are decided." *Broiler Chicken*, 2017 WL 4322823, at *3-4.

Plaintiffs' proposal is strongly supported by the law of this jurisdiction and would establish a process to facilitate prompt production of relevant materials with limited, if any, burden. Given the great weight of authority favoring production of such materials, there are compelling reasons to produce the CIDs and commence that discussion without delay.

B. The Parties Should Submit MIDP Mandatory Initial Discovery Responses.

Plaintiffs have proposed that the Plaintiffs submit MIDP Initial Discovery Responses by August 9, 2019, and Defendants submit MIDP responses by September 6, 2019. There are

sound reasons to commence that process now, rather than postponing the process for *at least* several months as Defendants have urged.

First, the MIDP responses provide a critical starting point in the discovery process because they will identify the parties' respective claims and defenses; and supporting facts, potential witnesses, and sources of relevant documents. Disclosing this information at an early juncture in the case will allow the parties to engage in a meaningful dialogue about the scope of production, search terms and other matters in order to move discovery forward efficiently and expeditiously.

Second, the CAC in this case provides highly detailed allegations about the challenged conduct and sets forth key terms of the challenged agreement and conspiracy. Defendants' earlier motions to dismiss relied heavily on cases decided *after* the competition of discovery (i.e., at the summary judgment stage).

Third, the Defendants' actions to date – opposing all discovery, declining to discuss the terms of a Protective Order, and declining to discuss an ESI Protocol (even though the proposed terms are *identical* to those approved and used in the *Broiler Chicken* antitrust class action) -- is a further indication of the need to start the discovery process moving forward.

Fourth, commencing that process is especially appropriate where, as here, Plaintiffs are challenging *ongoing* illegal activity and seek significant injunctive relief to protect the plaintiff class.

This conclusion is supported by two of the very cases relied on by Defendants in their earlier stay motion. In *Tichy v. Hyatt Hotels Corp.,* No. 18-cv-01959 (ND. Ill. May 7, 2018), the parties simultaneously *served* the initial disclosures required by Paragraphs (B)(1) through (B)(6) of the MIDP while defendants' motions to dismiss were pending. This allowed the parties to make meaningful progress in the discovery process even though, with the parties'

agreement, the defendants were permitted to defer the actual collection and production of hard copy documents and ESI. *See id.*, ECF No. 52 at 2 (joint motion explaining that the parties were only seeking a "narrowly tailored" order to defer obligation to produce documents within 40 days after serving Mandatory Initial Discovery Responses). Indeed, they made clear that:

> The parties do not seek relief from any of the other MIDP requirements and plan to engage in the expeditious discovery process required by the MIDP. As such, Defendants will answer the Complaint at the same time they move to dismiss, and *the parties will serve timely their initial disclosures* required by Paragraphs (B)(1) through (B)(6) of the MIDP.

Id. at 2-3 (emphasis added); *see also id.*, ECF Nos. 82-87 (Notices of Service of Responses to Mandatory Initial Discovery by the Plaintiff and Defendants).

Similarly, in *Zhirovetskiy v. Zayo Group, LLC,* No. 17-cv-05876 (N.D. Ill. Jan. 23, 2018), also cited favorably in Defendants' earlier motion (Def. Mot. at 6), the parties *did* serve their Mandatory Initial Discovery Responses (ECF Nos. 17 & 18), and subsequently served Amended MIDP Responses (ECF Nos. 34 & 35), notwithstanding the filing of a motion to dismiss. Further discovery was stayed only after *the Plaintiff* filed a motion to have the case remanded to state court.[11] Thus, like *Tichy*, *Zhirovetskiy* supports the position taken by Plaintiffs here.

In *Zak v. Bose Corp.*, No. 17-cv-02928 (N.D. Ill. June 29, 2017), ECF No. 23 (Wood, J.), this Court reached the same conclusion. The Court denied the defendant's request, in a class action case filed prior to effective date of MIDP, that "[f]act discovery should not commence until after the Court rules on Defendant's pending Motion to Dismiss." ECF No. 22. The Court

[11] In *Palmucci* v. Twitter, *Inc.*, No. 1:18-cv-01165 (N.D. Ill. 2018), previously cited by Defendants, the plaintiff had already filed eight similar cases against the defendant and discovery had been stayed in all of them (four times with the plaintiff's consent). In the ninth action, the court stayed discovery after the defendant filed a motion to transfer the case to another jurisdiction – a motion subsequently granted by the court. This case has no bearing on the issues presented here.

ruled that initial disclosures pursuant to FRCP 26(a)(1) and written and document should proceed, except for discovery related only to class certification and deposition discovery.

Plaintiffs are fully prepared to address Defendants' concerns about confidentiality (and, in fact, agreed to utilize the *Broiler Chicken* protective order so any such concerns can be promptly addressed), and are also prepared to discuss and negotiate any other concerns Defendants may have about the most efficient way to proceed with discovery. The policies underlying the MIDP process, recent case law in this jurisdiction, and the circumstances set forth above, all strongly counsel for commencing that process now.

June 19, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019, I electronically filed PLAINTIFFS' MOTION IN SUPPORT OF (A) DISCOVERY OF CIVIL INVESTIGATIVE DEMAND MATREIALS; AND (B) PRODUCTION OF MANDATORY INITIAL DISCOVERY PROGRAM INITIAL DISCOVERY RESPONSES with the Clerk of the Court using the ECF, who in turn sent notice to all counsel of record.

Dated: June 19, 2019

/s/ Kit A. Pierson
Kit A. Pierson

EXHIBIT A

Bloomberg Law

Bloomberg Law

U.S. Opens Antitrust Probe of Real Estate Brokerage Industry

By David McLaughlin and Patrick Clark

May. 22, 2019 4:04PM

- *Justice Department issues investigative demand to CoreLogic*
- *Inquiry follows antitrust lawsuit against industry trade group*

U.S. antitrust officials are investigating potentially anti-competitive practices in the residential real estate brokerage business, with a focus on compensation to brokers and restrictions on their access to listings.

The probe was detailed in a civil investigative demand, which is akin to a subpoena, issued by the Justice Department to CoreLogic Inc., which provides real estate data to government agencies, lenders and other housing-market participants.

The U.S. residential real estate industry has long faced criticism that it stifles competition among brokerages, protecting agent commissions that are higher than those paid by sellers in many other countries. In 2008, the Justice Department reached a settlement with the National Association of Realtors, a trade group, that was designed to lower commissions paid by consumers by opening the industry to internet-based brokers.

The investigative demand to CoreLogic, dated last month, follows a lawsuit filed against the Realtors association and real estate broker franchisors, including Realogy Holdings Corp., claiming they conspired to

prevent home sellers from negotiating commissions they pay to buyers' agents.

The Realtors association filed a motion to dismiss the lawsuit, arguing that it misunderstands the role of brokers. The trade group didn't immediately respond to a request for comment on the lawsuit or the Department of Justice investigation.

"We believe this case has no merit and have moved jointly with the other corporate defendants to dismiss the case," Realogy spokesman Trey Sarten said in an email. "Additionally, we have joined in NAR's motion to dismiss."

CoreLogic spokeswoman Alyson Austin confirmed the company received a civil investigative demand "relating to an investigation of practices of residential real estate brokerages." CoreLogic is not the focus of the investigation, she said.

The Justice Department declined to comment. The investigative demand was posted on the website Notorious R.O.B., which covers real estate matters.

In June 2018, the Justice Department and Federal Trade Commission, which share antitrust jurisdiction in the U.S., held a workshop on the residential real estate brokerage industry that touched on the possible barriers to competition and the impact of past regulatory actions, among other issues.

According to the investigative demand sent to CoreLogic, the Justice Department is seeking information about the ability to search real estate listings on multiple listings services based on compensation offered to buyer brokers as well as practices that restrict CoreLogic's distribution of listings data.

News of the investigation was cheered by REX, an online brokerage that charges flat fees that it says are lower than those charged by traditional brokers.

"Any effort to shed light on these practices is good for the American consumer," REX Chief Executive Office Jack Ryan said in a statement. "Now is the time to drive change in the industry."

To contact the reporters on this story: David McLaughlin in Washington at dmclaughlin9@bloomberg.net; Patrick Clark in New York at pclark55@bloomberg.net

To contact the editors responsible for this story: Sara Forden at sforden@bloomberg.net; Debarati Roy at droy5@bloomberg.net Rob Urban, Daniel Taub

EXHIBIT B

Civil Investigative Demand—Documentary Material and Written Interrogatories

United States Department of Justice

Antitrust Division
Washington, DC 20530

To: Arnold Pinkston
Chief Legal Officer and Corporate Secretary
CoreLogic
40 Pacifica, Suite 900
Irvine, CA 92618

Civil Investigative
Demand Number: -29938

This civil investigative demand is issued pursuant to the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-1314, in the course of an antitrust investigation to determine whether there is, has been, or may be a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 by conduct, activities, or proposed action of the following nature: Practices that may unreasonably restrain competition in the provision of residential real-estate brokerages services in local markets in the United States, including Greater Las Vegas.

You are required by this demand to produce all documentary material described in the attached schedule that is in your possession, custody, or control, and to make it available at your address indicated above for inspection and copying or reproduction by a custodian named below. You are also required to answer the interrogatories on the attached schedule. Each interrogatory must be answered separately and fully in writing, unless it is objected to, in which event the reasons for the objection must be stated in lieu of an answer. Such production of documents and answers to interrogatories shall occur on the 16th day of May, 2019 at 5:00 p.m.

The production of documentary material and the interrogatory answers in response to this demand must be made under a sworn certificate, in the form printed on the reverse side of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production and/or responsible for answering each interrogatory.

For the purposes of this investigation, the following are designated as the custodian and deputy custodian(s) to whom the documentary material shall be made available and the interrogatory answers shall be submitted: Owen Kendler (custodian) and Steven Kramer and Ethan Stevenson (deputy custodians), U.S. Dept. of Justice, Antitrust Division, Media, Entertainment, and Professional Services Section, 450 Fifth Street NW, Suite 4000, Washington, DC 20530.

Inquiries concerning compliance should be directed to Steven Kramer at 202-307-0997 or Ethan Stevenson at 202-598-8091.

Your attention is directed to 18 U.S.C. § 1505, printed in full on the reverse side of this demand, which makes obstruction of this investigation a criminal offense.

Issued in Washington, D.C., this 16th day of April, 2019.

Assistant Attorney General

18 U.S.C. § 1505. Obstruction of proceedings before departments, agencies, and committees

Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress -

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Form of Certificate of Compliance*

I/We have read the provisions of 18 U.S.C. § 1505 and have knowledge of the facts and circumstances relating to the production of the documentary material and have responsibility for answering the interrogatories propounded in Civil Investigative Demand No. _____. I/We do hereby certify that all documentary material and all information required by Civil Investigative Demand No. _____ which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named therein.

If any documentary material otherwise responsive to this demand has been withheld or any interrogatory in the demand has not been fully answered, the objection to such demand and the reasons for the objection have been stated in lieu of production or an answer.

Signature _____

Title _____

Sworn to before me this _____ day of

_____, 20___.

_____

Notary Public

*In the event that more than one person is responsible for producing the documents and answering the interrogatories, the certificate shall identify the documents and interrogatories for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided by 28 U.S.C. § 1746.

CIVIL INVESTIGATIVE DEMAND FOR DOCUMENTS AND ANSWERS TO INTERROGATORIES ISSUED TO CORELOGIC

Unless otherwise indicated or modified by the Department of Justice, each document demand and interrogatory included in this Civil Investigative Demand requires a complete search of the documents and information in your Company's possession, custody, or control. In the Department's experience, modifications to this Demand may reduce the burden of searching for responsive documents and information in a way that is consistent with the Department's needs. The Company is encouraged to propose such modifications, but all modifications must be agreed to in writing by the Department.

DOCUMENT DEMANDS

1. Submit all documents relating to any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on (i) the amount of compensation offered by listing brokers to buyer brokers; or (ii) the type of compensation, such as a flat fee, offered by listing brokers to buyer brokers, including all documents relating to any:
   (a) possible or actual reason, rationale, or basis for adoption, approval, disapproval, maintenance, revision, retention, or elimination of the ability of any member of any MLS to search MLS listings, based on the amount or type of compensation offered;
   (b) complaint about or request to change or eliminate any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on the amount or type of compensation offered;
   (c) possible or actual benefit, drawback, advantage, disadvantage, or effect of any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on the amount or type of compensation offered;
   (d) discussion or other communication, including those internal to the Company or between the Company and any MLS or MLS member, relating to any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on the amount or type of compensation offered.
   (e) training session, video, or materials relating to any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on the amount or type of compensation offered; or
   (f) possible or actual antitrust or other legal or ethical issue, relating to any MLS member's search of, or ability to search, MLS listings on any of the Company's multiple listing platforms, based on the amount or type of compensation offered.

2. Submit all documents relating to any policy, guideline, rule, practice, agreement, or contract term that restricts the Company's usage, distribution, sale, or licensing of any MLS data, including all documents relating to any:
   (a) possible or actual reason, rationale, or basis for adoption, approval, maintenance, revision, or retention of any such policy, guideline, rule, practice, agreement, or contract term;
   (b) complaint about or any request to change, eliminate, or not enforce any such policy, guideline, rule, practice, agreement, or contract term;
   (c) possible or actual implementation or enforcement of any such policy, guideline, rule, practice, agreement, or contract term;
   (d) possible or actual benefit, drawback, advantage, disadvantage, or effect of any such policy, guideline, rule, practice, agreement, or contract term;
   (e) discussion or communication relating to any such policy, guideline, rule, practice, agreement, or contract term, including any:
      i. discussion or communication between the Company and any MLS;
      ii. discussion or communication between the Company and any potential licensee or purchaser of MLS data; and
      iii. internal discussion or communication;
   (f) training session, video, or materials relating to any such policy, guideline, rule, practice, agreement, or contract term; or
   (g) possible or actual antitrust or other legal or ethical issue relating to any such policy, guideline, rule, practice, agreement, or contract term.

3. Submit each database or data set used or maintained by the Company that may be used to measure the frequency of searches of MLS listings by each member of any MLS on the Company's multiple listing platform that condition results based on the amount of compensation or type of compensation offered by listing brokers to buyer brokers.

4. Submit documents sufficient to show all of the Company's rules, policies, and practices existing currently or at any time during 2018 and 2019, relating to:
   (a) the retention and destruction of documents, including the retention, storage, deletion, and archiving of electronically stored information, including e-mail; or
   (b) the use of personal electronic devices for CoreLogic business.

WRITTEN INTERROGATORIES

1. Identify each MLS to which the Company currently provides a multiple listing platform, and for each MLS identified, state:
   (a) whether members of that MLS can condition searches for MLS listings based on the amount of compensation offered by listing brokers to buyer brokers;
   (b) whether members of that MLS can condition searches for MLS listings based on the type of compensation offered by listing brokers to buyer brokers;

(c) whether that MLS has instructed the Company to suppress MLS members' ability to search MLS listings based on the amount of compensation offered by listing brokers to buyer brokers, and the date on which the Company received this instruction;
(d) whether that MLS has instructed the Company to suppress MLS members' ability to search MLS listings based on the type of compensation offered by listing brokers to buyer brokers;
(e) whether that MLS has instructed the Company to enable MLS members to search MLS listings based on the amount of compensation offered by listing brokers to buyer brokers, and the date on which the Company received this instruction;
(f) whether that MLS has instructed the Company to enable MLS members to search MLS listings based on the type of compensation offered by listing brokers to buyer brokers; and
(g) whether that MLS has acted to limit the Company's usage, distribution, sale, or licensing of MLS data to any potential user, licensee, or purchaser.

2. To the extent not fully reflected in documents produced in response to this Demand, describe the Company's rules, policies, and practices existing currently or at any time during 2018 and 2019, relating to:
(a) the retention and destruction of documents, including the retention, storage, deletion, and archiving of electronically stored information, including e-mail; or
(b) the use of personal electronic devices for CoreLogic business.

DEFINITIONS

The following definitions apply for the purposes of this Demand:

A. The terms "**the Company**" or "**your**" means CoreLogic, each of its subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all present and former officers, directors, agents, employees, consultants, or other persons acting for or on behalf of any of it.

B. The term "**agreement**" means any understanding, formal or informal, written or unwritten.

C. The term "**any**" means each and every.

D. The term "**broker**" means a person licensed by a state to provide real-estate brokerage services to either a buyer or seller in a real-estate transaction and includes any listing agent or buyer agent or sales associate who is affiliated with a broker.

E. The term "**collaborative work environment**" means a platform used to create, edit, review, approve, store, organize, share, and access documents and information by and among authorized users, potentially in diverse locations and with different devices. Even when based on a common technology platform, collaborative work environments are often configured as separate and closed environments, each one of which is open to a select group of users with layered access control rules (reader vs. author vs. editor). Collaborative work environments include Microsoft Sharepoint sites, eRooms, document management systems (e.g., iManage), intranets, web content management systems (CMS) (e.g., Drupal), wikis, and blogs.

F. The term "**communication**" means any formal or informal disclosure, transfer, or exchange of information or opinion, however made.

G. The term "**Data Dictionary**" means documentation of the organization and structure of the databases or data sets that is sufficient to allow their reasonable use by the Department, including, for each table of information: (a) the size (number of records and overall volume); (b) a general description; (c) a list of field names; (d) a definition for each field as it is used by the Company, including the meanings of all codes that can appear as field values; (e) the format, including variable type and length, of each field; and (f) the primary key in a given table that defines a unique observation.

H. The term "**documents**" means all written, printed, or electronically stored information ("ESI") of any kind in the possession, custody, or control of the Company, including information stored on social media accounts like Twitter or Facebook, chats, instant messages, and documents contained in collaborative work environments and other document databases. "Documents" includes metadata, formulas, and other embedded, hidden, and bibliographic or historical data describing or relating to any document. Unless otherwise specified, "documents" excludes bills of lading, invoices in non-

electronic form, purchase orders, customs declarations, and other similar documents of a purely transactional nature; architectural plans and engineering blueprints; and documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.

I. The term "**documents sufficient to show**" means documents sufficient to provide the Department with a true and correct disclosure of the factual matter requested.

J. The term "**identify**" means to state a person's name, principal address, and telephone number.

K. The term "**including**" means including but not limited to.

L. The term "**MLS**" means multiple-listing service.

M. The term "**person**" includes the Company and means any natural person, corporate entity, partnership, firm, association, sole proprietorship, joint venture, governmental entity, or trust.

N. The term "**relating to**" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, reflecting, commenting or reporting on, mentioning, identifying, stating, or referring or alluding to.

O. The terms "**and**" and "**or**" have both conjunctive and disjunctive meanings. The singular form of a noun or pronoun includes within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted.

INSTRUCTIONS

Timing

A. All references to year refer to calendar year. Unless otherwise specified, this Demand calls for documents, data, and other information prepared, created, sent, altered, or received by the Company since January 1, 2017.

For responses to document demand 1, submit all responsive documents prepared, created, sent, altered, or received by the Company since January 1, 2014.

For interrogatory responses, submit a separate response for each year or year-to-date unless otherwise specified. If calendar-year data are not available, supply the Company's fiscal-year data indicating the twelve-month period covered, and submit the Company's best estimate of calendar-year data.

Production Format

B. Department representatives must approve the format and production method of any documents, data, or other information before the Company makes an electronic production in response to this Demand. Before preparing its production, the Company must contact the Department to explain what materials are available and how they are stored. This discussion must include Company personnel who are familiar with its electronically stored information and databases/data sets.

C. Before using software or technology (including search terms, predictive coding, de-duplication, or similar technologies) to identify or eliminate documents, data, or information potentially responsive to this Demand, the Company must submit a written description of the method(s) used to conduct any part of its search. In addition, for any process that relies on search terms to identify or eliminate documents, the Company must submit: (a) a list of proposed terms; (b) a tally of all the terms that appear in the collection and the frequency of each term; (c) a list of stop words and operators for the platform being used; and (d) a glossary of industry and Company terminology. For any process that instead relies on predictive coding to identify or eliminate documents, you must include (a) confirmation that subject-matter experts will be reviewing the seed set and training rounds; (b) recall, precision, and confidence-level statistics (or an equivalent); and (c) a validation process that allows for Department review of statistically significant samples of documents categorized as non-responsive documents by the algorithm.

D. If the Department agrees to narrow the scope of this Demand to a limited group of custodians, a search of each custodian's files must include files of their predecessors; files maintained by their assistants or under their control; and common or shared databases or data sources maintained by the Company that are accessible by each custodian, their predecessors, or assistants.

E. Submit responses to this Demand in a reasonably usable format as required by the Department in the letter sent in connection with this investigation. Documents must be

complete and unredacted, except for privilege. Documents must be submitted as found and ordered in the Company's files and must not be shuffled or otherwise rearranged. The Company is encouraged to submit copies of hard-copy documents electronically (with color hard copies where necessary to interpret the document) in lieu of producing original hard-copy documents. Absent a Department request, produce electronic documents in electronic form only. Electronic productions must be free of viruses. The Department will return any infected media for replacement, which may delay the Company's date of compliance with this Demand.

F. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") before discussing the information with the Department representatives. If any document responsive to a particular request contains Sensitive PII or SHI that is not responsive to that request, redact the unresponsive Sensitive PII or SHI before producing the document. To avoid any confusion about the reason for the redaction, produce a list of such redacted documents by document control number. Sensitive PII includes a person's Social Security Number; or a person's name, address, or phone number in combination with one or more of their: (a) date of birth; (b) driver's license number or other state identification number, or a foreign country equivalent; (c) passport number; (d) financial account number; or (e) credit or debit card number. Sensitive Health Information includes medical records and other individually identifiable health information, whether on paper, in electronic form, or communicated orally. SHI relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

G. Provide any index of documents prepared by any person in connection with your response to this Demand. If the index is available in electronic form, provide it in that form.

H. Data called for by this Demand must be submitted electronically in a reasonably useable compilation that will allow the Department to access the information it contains. Producing a database or data set in its entirety often does not satisfy this requirement. For the Department to be able to access and interpret data, the Company must provide, for each database, a description of each database or data set to be produced, including: (1) its software platform; (2) its type (e.g., flat, relational, or enterprise); (3) the sources (e.g., other databases or individuals) used to populate the database; (4) for relational or enterprise databases, documents specifying the relationships among tables (e.g., an entity relationship diagram); (5) any query forms; (6) any regularly prepared reports produced from that database; and (7) a Data Dictionary that includes, for each table in the database:

   a. the name of the table;

   b. a general description of the information contained;

   c. the size in both number of records and megabytes;

d. a list of fields;

e. the format, including variable type and length, of each field;

f. a definition for each field as it is used by the Company, including the meanings of all codes that can appear as field values;

g. the fields that are primary keys for the purpose of identifying a unique observation;

h. the fields that are foreign keys for the purpose of joining tables; and

i. an indication of which fields are populated.

It is likely that only a subset or compilation of the contents of any particular database or data set will need to be produced. After providing the information above, counsel and knowledgeable personnel from the Company should discuss with Department representatives what constitutes a sufficient production from the database or data set in a reasonably useable format.

I. The Company must continue to preserve documents or data contained in disaster recovery systems or back-up media that may contain information responsive to this Demand. Please contact the Division's representative to discuss your obligation to preserve back up media.

J. Produce all non-privileged portions of any responsive document (including non-privileged or redacted attachments) for which a privilege claim is asserted. Each document withheld in whole or in part from production based on a claim of privilege must be assigned a unique privilege identification number and separate fields representing the beginning and ending document control numbers and logged as follows:

a. Each log entry must contain, in separate fields: privilege identification number; beginning and ending document control numbers; parent document control numbers; attachments document control numbers; family range; number of pages; all authors; all addressees; all blind copy recipients; all other recipients; date of the document; an indication of whether it is redacted; the basis for the privilege claim (e.g., attorney-client privilege), including the anticipated litigation for any work-product claim and the underlying privilege claim if subject to a joint-defense or common-interest agreement; and a description of the document's subject matter sufficiently detailed to enable the Department to assess the privilege claim and the facts relied upon to support that claim.

b. Include a separate legend containing an alphabetical list (by last name) of each name on the privilege log, identifying titles, company affiliations, the members

of any group or email list on the log (e.g., the Board of Directors) and any name variations used for the same individual.

c. On the log and the legend, list all attorneys acting in a legal capacity with the designation ESQ after their name (include a space before and after the "ESQ").

d. Produce the log and legend in electronic form that is both searchable and sortable. Upon request, the Company must submit a hard copy of the log and legend.

e. Department representatives will provide an exemplar and template for the log and legend upon request.

Any responsive document asserted to be privileged in its entirety created by the Company's in-house counsel or the Company's outside counsel that has not been distributed outside the Company's in-house counsel's office or the Company's outside counsel's law firm does not have to be logged. But if the document was distributed to any attorney who does not work exclusively in the Company's in-house counsel's office or who has any business responsibilities, it must be logged. Unlogged documents are subject to any preservation obligations the Company or counsel may have.

K. If the Company is unable to answer a question fully, it must supply all available information; explain why such answer is incomplete; describe the efforts made by the Company to obtain the information; and list the sources from which the complete answer may be obtained. If the information that allows for accurate answers is not available, submit best estimates and describe how the estimates were derived. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to estimate, provide an explanation.

L. If documents, data, or other information responsive to a particular request no longer exists for reasons other than the Company's document-retention policy, describe the circumstances under which it was lost or destroyed, describe the information lost, list the specifications to which it was responsive, and list persons with knowledge of such documents, data, or other information.

M. To complete this Demand, the Company must submit the certification on the reverse of the Civil Investigative Demand form, executed by the official supervising compliance with this Demand, and notarized.

Direct any questions you have relating to the scope or meaning of anything in this Demand or suggestions for possible modifications thereto to Steven Kramer at (202) 307-0997 or Ethan Stevenson at (202) 598-8091. The response to this Demand must be addressed to the attention of Steven Kramer and delivered between 8:30 a.m. and 5:00 p.m. on any business day to 450 Fifth Street, NW, Suite 4000, Washington, DC 20001. If the Company wishes to submit its response by U.S. mail, please call Steven Kramer or Ethan Stevenson for mailing instructions.

EXHIBIT C

C4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: DAIRY FARMERS OF AMERICA, INC. CHEESE ANTITRUST LITIGATION	
THIS DOCUMENT RELATES TO:	
***Adam Properties, Inc. v. Dairy Farmers of America, Inc.*, No. 08-cv-7232 (WJH)**	**No. 09-cv-03690**
***Stew Leonard's, Inc. v. Dairy Farmers of America, Inc.*, No. 08-cv-7394 (WJH)**	**MDL No. 2031**
***Valley Gold LLC v. Dairy Farmers of America, Inc.*, No. 09-cv-387 (WJH)**	**Judge William J. Hibbler**
***Indriolo Distributors, Inc. v. Dairy Farmers of America, Inc.*, No. 09-cv-1599 (WJH)**	
***Knutson's, Inc. v. Dairy Farmers of America, Inc.*, No. 09-cv-2074 (WJH)**	

[PROPOSED] PRETRIAL ORDER NO. 1 REGARDING CONSOLIDATION AND MANAGEMENT OF LITIGATION

WHEREAS, Plaintiffs in the above-captioned actions (collectively, "Direct Purchaser Plaintiffs") have filed complaints (the "Complaints") alleging violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 by defendants, and asserting common law claims;

WHEREAS, the Judicial Panel on Multidistrict Litigation assigned to this Court MDL No. 2031, In re Diary Farmers of America, Inc Cheese Antitrust Litigation, for coordinated or consolidated pretrial proceedings;

appear immediately after the words "This Document Relates To:" in the caption set out above. When a pleading or other court paper is intended to be applicable only to some, but not all, of such actions, this Court's docket number for each individual action to which the pleading is intended to be applicable and the last name of the first named plaintiff(s) in said action shall appear immediately after the words "This Document Relates To:" in the caption described above, i.e., "Civil Action No. _____, [Name of plaintiff(s)]."

4. When a pleading or paper is filed and the caption, pursuant to ¶ 2, shows that it applies to "All Actions," the Clerk shall file such pleading or paper in the Master File and note such filing in the Master Docket. No further copies need to be filed or other docket entries made.

5. When a pleading or paper is filed and the caption, pursuant to ¶ 2, shows that it applies to fewer than all of the Actions, the Clerk shall file such pleading or other paper only in the Master File but nonetheless shall note such filing in both the Master Docket and in the docket of each such action.

III. SUBSEQUENTLY FILED RELATED ACTIONS

6. When a case which relates to the subject matter of the Consolidated Action is hereafter filed in this Court or transferred here from another court, the Clerk of Court shall:

a. Make an appropriate entry in the Master Docket;

b. Mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case and to the attorneys for any new defendant(s) named in the newly- filed or transferred case; and

c. Mail a copy of the Order of assignment to counsel for plaintiffs and

allowed to proceed. Defendants shall produce the documents that the defendants previously produced to the CFTC by March 17, 2010. The Dairy Farmers of America, having received a document request from plaintiffs on February, 19, 2010, shall immediately begin to produce documents in response thereto. Any documents requiring a protective order prior to production shall be produced upon the execution of a mutually agreed protective order approved by this Court.

IV. SCOPE OF ORDER

13. The terms of this Order shall not have the effect of making any person, firm or entity a party to any action in which he, she or it has not been named, served or added as such in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the consolidation ordered herein shall not constitute a waiver of any party of any claims or defenses to any action.

SO ORDERED this 4th day of MARCH 2010:

Wm. J. Hibbler

Honorable William J. Hibbler
United States District Court Judge