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Although Clear Capital objected to the scope of the Board's Subpoena Duces Tecum, it participated in a dialogue with the Board's counsel, and produced documents accordingly.

On January 30, 2018, Board counsel communicated by email an intent to depose a Clear Capital representative. Clear Capital's counsel objected to the scope of the deposition, and communicated objections to Board counsel. A meet and confer took place on Monday, February 5, 2018. Clear Capital indicated its objections, through counsel, that Deposition Topics 6 and 7 were outside the scope of permissible discovery in this case because they were not relevant to

discovery sought. 16 C.F.R. § 3.31(d) (“The Administrative Law Judge may also deny discovery or make any other order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.”).

Here, as outlined below, the information sought by the Board is not relevant to the claims or defenses at issue. In addition, the information calls for confidential and proprietary information, and the protective order in place is not sufficient to protect Clear Capital’s interests. Accordingly, Clear Capital therefore respectfully requests that the Deposition Subpoena be quashed, or alternatively, limited in several respects.

A. Topic 6: Fees Paid to Clear Capital By Lenders Are Not Relevant to the Complaint or Any Defense

Deposition Topic 6 requests testimony regarding the following: “Fees paid to you by lenders for appraisals of covered transactions in Louisiana.”

These fees are not relevant to the Complaint or to any Board defense. The Complaint alleges that the Board has suppressed competition among appraisers and has displaced market forces. Compl. ¶ 29. The Complaint is centered on the Board’s activities in “effectively requiring AMCs to match or exceed appraisal rates listed in a published survey.” *Id.* ¶ 4. M Lin ee d p l rvM . s / M s/ t n

B. Topic 7: Advocacy Efforts By Clear Capital in Louisiana Are Not Relevant to the Complaint or Any Defense.

Deposition Topic 7 requests testimony regarding the following: “Advocacy efforts by you or any association regarding the adoption of laws and regulations in Louisiana regarding payment of customary and reasonable fees.”

First, this deposition topic is overly broad because it calls for testimony regarding advocacy efforts by “any association.” “Association” is not a defined term in the Deposition Subpoena. Clear Capital therefore objects to this deposition topic as vague and confusing.

More fundamentally, though, Clear Capital’s advocacy efforts in Louisiana are not relevant to the Complaint or to any defense in this matter. The Complaint is centered on the Board’s actions

Thus, advocacy efforts by AMCs, of which Clear Capital is one, with respect to the interpretation of customary and reasonable fees are not a factor in determining whether the Board's anticompetitive conduct can be deemed state action. The Board makes only four arguments in its Opposition to Complaint Counsel's Motion for Partial Summary Decision with

Opposition at 21. Indeed, the Board repeats several times that the written comments submitted to it by AMCs are not relevant or material to Louisiana's active supervision over promulgation and enforcement of Prior Rule 31101. *See* Opposition at 19-27. Thus, by the Board's own admission, Clear Capital's advocacy efforts with respect to the adoption of laws and regulations in Louisiana regarding the payment of customary and reasonable fees are therefore irrelevant to the Board's state action defense.

In addition, Clear Capital's advocacy efforts with respect to payment of customary and reasonable fees have

possession of a party or a third party.” *Id.* Significantly, the definition of “document” does *not* include the deposition testimony itself. Thus, while the deposition transcript resulting from the deposition may be designated confidential, and is therefore “attorney eyes only” (Protective Order

Dated: February 26, 2018

/s/ David M. Souders

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Notice of Electronic Service

I hereby certify that on February 26, 2018, I filed an electronic copy of the foregoing CLEAR CAPITAL'S PETITION TO QUASH OR LIMIT RESPONDENT'S SUBPOENA AD TESTIFICANDUM, with:

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Chief Administrative Law Judge
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Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on February 26, 2018, I served via E-Service an electronic copy of the foregoing CLEAR CAPITAL'S PETITION TO QUASH OR LIMIT RESPONDENT'S SUBPOENA AD TESTIFICANDUM, upon:

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I hereby certify that on February 26, 2018, I served via other means, as provided in 4.4(b) of the foregoing CLEAR CAPITAL'S PETITION TO QUASH OR LIMIT RESPONDENT'S SUBPOENA AD TESTIFICANDUM, upon:

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