

¹ Respondent now makes its fourth motion for a stay² effectively a motion for reconsideration of the Commission's order dated January 20. Nothing has changed in the 91 days since the Commission ruled. There is not a single new fact. There has been no change in the applicable law. Instead, Respondent asks the

treatment. Whatever the merits of allowing immediate appeals of state action denials—which is not at issue here, and which the Commission has previously opposed⁴—the amici briefs add nothing new for the Commission to consider in this case. The Commission should again deny Respondent’s motion for a stay.

BACKGROUND

On January 12, 2018, the Commission denied Respondent’s motion for a stay, considering and rejecting Respondent’s arguments that (1) a stay would

decided matters.” *In re Intel Corp.*, No. 9341, 2010 FTC LEXIS 47, at *4 (May 28, 2010) (citation omitted).

To meet its burden, Respondent must show “(1) a material difference in fact or law from that presented to the [court] before such decision, that in the exercise of reasonable diligence could not have been known to the moving party; (2) the emergence of new material facts or a change of law occurring after the time of such decision; or (3) a manifest showing of a failure to consider material facts presented to the [court] before such decision.”⁵ *In re Intel Corp.*, 2010 FTC LEXIS 47, at *5.

Respondent satisfies none of these conditions. Respondent admits that it cannot show any new fact: “LREAB recognizes that . . . the filing of *amicus* briefs by State and local governmental officials across the country is not *per se* a new fact.” Respondent’s Renewed Expedited Motion for a Stay at 2 (“Respondent’s Renewed Motion”), *In re La. Real Estate Appraisers Bd.*, Docket No. 9374 (Jan. 31, 2018). And Respondent has previously argued that

CONCLUSION

There has been no showing of any new fact or law relevant to the Commission's order denying a state of discovery during the pendency of dispositive motions in this matter.

Accordingly, this most recent request for a stay should be denied.

Dated: February 12, 2018

EXHIBIT 1

DECISION BELOW: 859 F.3d 720

LOWER COURT CASE NUMBER: 15-17302

QUESTION PRESENTED:

Whether orders denying state-action immunity to public entities are immediately appealable under the collateral-order doctrine.

CERT. GRANTED 12/1/2017

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that on F

CERTIFICATE FOR ELECTRONIC FILING

I 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 the parties and the adjudicator.

Date: February 12, 2018

By: /s/ Lisa B. Kopchik
Lisa B. Kopchik, Attorney