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including Respondent's ability to disprove the Complaint's theory of consumer harm, and the reasonableness of Respondent's challenged conduct. The petition should be denied.

Background and Procedural History

The Commission issued an administrative complaint on May 30, 2017 after finding "reason to believe" that Respondent "has violated Section 5" of the FTC Act. The Complaint alleges that Respondent "effectively" fixed the "customary and reasonable"

to the fees paid to Clear Capital by lenders, and (2) information about Clear Capital's advocacy efforts in Louisiana regarding the adoption of laws and regulations about the payment of customary and reasonable fees.

Counsel for Respondent and counsel for Clear Capital met and conferred on February 5, 2018, during which time Clear Capital indicated its objections to Topics 6 and 7 of the deposition notice on grounds of relevancy. Additionally, counsel for Clear Capital expressed

be without the evidence,” and “material,” where “the fact is of consequence in determining the action.” *Cf.* Fed. R. Evid. 401. Administrative Law Judges have applied this standard broadly, highlighting the importance of creating “a full record upon which to appraise [the] theory” of the case. *In re Kellogg Co.*, 99 F.T.C. 8, 30 (1982). Clear Capital’s petition cannot meet this “heavy burden of showing why discovery should be denied.” *In re Polypore Int’l*, 2008 WL 4947490, at *6; *see also In re Rambus Inc.*, 2002 WL 31868184, at *3 (Nov. 18, 2002) (denying third-party’s motion to quash subpoena).

B. Evidence Regarding Lender Fees is Relevant to the Allegations of the Complaint.

The crux of the Complaint is that LREAB’s promulgation of a Board Rule concerning “customary and reasonable” appraisal fees constituted an unreasonable restraint on price competition. Complaint ¶ 1. The Complaint alleges that AMCs were subject to investigation and enforcement actions that “effectively” required AMCs to match or exceed appraisal rates listed in an independent and objective survey, funded by the Board and posted on the Board’s website as a courtesy to AMCs and appraisers. Complaint ¶ 4. Importantly, the Commission alleges that LREAB’s actions *harmed consumers* by raising the prices they paid. Complaint ¶ 44. Respondent disputes each of these contentions.

Information regarding what lenders paid AMCs is directly relevant to consumer harm. Fees for residential appraisal services paid by consumers, as shown on mortgage disclosure and closing documents, include both the fees lenders pay to AMCs for arranging appraisals, and the fees AMCs pay to the appraisers to perform the residential appraisal. Although Clear Capital contends that only “fees paid by AMCs for appraisals in Louisiana” are relevant and not “what AMCs were paid by lenders for arranging the appraisals,” such an argument ignores the Complaint’s allegation of consumer harm. Pet. Quash 3. The Complaint explicitly alleges that

“AMCs act as agents for lenders in arranging for real estate appraisals”; and under LREAB regulations, AMCs may compensate appraisers determined by “a survey of fees recently paid by lenders in the relevant geographic area.” Compl. ¶¶ 1, 3. *See* La. Admin. Code tit. 46, pt. LXVII, Chapter 311 “Compensation of Fee Appraisers,” § 31101(A)(1). The Complaint further states that “lenders increasingly [have] turned to AMCs to arrange for required appraisal services” and that “lenders engage AMCs to obtain an appraisal in most residential real estate

requirements of Dodd-Frank, and further supported the Board's clarification of these requirements (at least initially).

respectfully requests that this Court deny its petition to quash or limit the subpoena *ad testificandum*.

Dated: March 2, 2018

/s/ W. Stephen Cannon

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Real Estate Appraisers Board

Notice of Electronic Service

I hereby certify that on March 06, 2018, I filed an electronic copy of the foregoing Respondent's Opposition to Clear Capital's Motion to Quash - Public, with:

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Donald Clark
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I hereby certify that on March 06, 2018, I served via E-Service an electronic copy of the foregoing Respondent's Opposition to Clear Capital's Motion to Quash - Public, upon:

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