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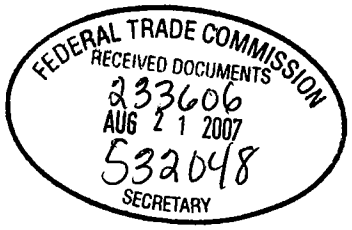

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

		PUBLIC
In the Matter of	)	**Docket No. 9320**
REALCOMP II LTD.	)	**Chief Administrative Law Judge Stephen J. McGuire**

RESPONDENT'S REPLY TO COMPLAINT COUNSEL'S PROPOSED FINDINGS OF FACT

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Dated: August 20, 2007

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY AND THEORY OF THE CASE

1. Realcomp is an organization of real estate brokers who do business in Southeastern Michigan. It is owned by several local boards and associations of Realtors. Brokers who are Realcomp members compete with one another to obtain business from consumers seeking to purchase residential real estate brokerage services in Southeastern Michigan. (CCPF ¶¶ 248-277, 285-298).[1]

Response to CCPF No. 1:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Realcomp members also cooperate with each other, as is the nature of the two-sided platform. (CX 133-036, ¶54).

2. Realcomp operates the largest Multiple Listing Service ("MLS") in Michigan, for the benefit of nearly 14,500 members. The Realcomp MLS offers two key services: first, it allows brokers representing sellers to list homes for sale on a central database, which can be searched by all members representing potential buyers; and second, it transmits listing information from the central database to public websites, thereby exposing these property listings to millions of potential home buyers searching the Internet for homes to purchase. (CCPF ¶¶ 227-247, 278-284, 299-316).

Response to CCPF No. 2:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Realcomp's membership has decreased to 13,800. (RPF ¶ 82; Kage, Tr. 1026) [2]

3. These two services have significant influence on the ability of brokers to compete for the business of home sellers seeking to list their properties on the MLS and find buyers for those homes. Exposure of listings to all cooperating brokers in the Realcomp MLS is critical to doing business as a listing broker in Southeastern Michigan. In addition, the feed of listing information that Realcomp sends to the Approved Websites, including MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, and Realcomp IDX member websites, is important for brokers to compete effectively. Participation in these services enables brokers to sell their client's homes more effectively, and to compete for new listings with potential clients in the market for brokerage services. (CCPF ¶¶ 368-412, 453-676).

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[1]Complaint Counsel's Proposed Findings of Fact are cited by paragraph, as follows: (CCPF ¶¶ __-__). These Responses are sometimes referenced in the same format, as "RCCPF."

[2]Respondent's Proposed Findings of Fact are cited by paragraph, as follows: (RPF ¶¶ __-___).

Response to CCPF No. 3:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that MiRealSource is an MLS that competes with Realcomp in serving Southeastern Michigan (RPF ¶¶40-51, 59-60). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp (RPF ¶61). Brokers can access Realtor.com without the feed and compete effectively, since Realtor.com reaches 90% of all buyers when combined with the Realcomp MLS. (RX 109; Mincy, Tr. 450; RPF ¶¶ 101-112). Sellers and their listing agents can effectively market properties to the public in the Realcomp Service Area under EA and other limited services contracts without access to the Approved Websites (RPF ¶122).

4. The form of competition offered by brokers seeking to sell their services to home sellers is reflected in the listing agreement used by the broker. This contract spells out the services to be performed, the compensation the broker may receive, the offer of compensation to cooperating brokers, and the conditions under which any compensation is due. Traditional full-service brokers use Exclusive Right to Sell ("ERTS") listing agreements, while limited service brokers use Exclusive Agency ("EA" or "non-ERTS") listings. (CCPF ¶¶ 175-187, 328-329, 341).

Response to CCPF No. 4:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that particularly under Realcomp's elimination of the Minimum Service Definition, it is not accurate to equate limited service brokers with EA listings and full service brokers with ERTS listings. (CX 626; Kage, Tr. 1046-1048; RPF ¶133).

5. Exclusive Right to Sell and Exclusive Agency listings share certain important elements. Chiefly, both listing types involve the services of a listing broker, and both require an offer of compensation to cooperating brokers. That offer of compensation is paid to the broker who brings the buyer to the transaction, and Realcomp has rules in place to ensure this gets done. (CCPF ¶¶ 317-326, 350-367, 1153-1155).

Response to CCPF No. 5:
Realcomp incorporates its responses to the referenced paragraphs, but has no specific response.

6. Exclusive Right to Sell and Exclusive Agency listings differ in other ways, however, that are important to competition. Under an Exclusive Right to Sell contract, the home seller must pay the offer of compensation regardless of whether a cooperating broker was involved in transaction or provided any services to the buyer. In addition, the home seller agrees that the listing broker will provide the full range of services in connection with the sale of the home (a "full service" package). As a matter of policy, Realcomp requires that all Exclusive Right to Sell listings involve certain listing services. (CCPF ¶¶ 176-182, 327-340, 1140-1148).

Response to CCPF No. 6:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Realcomp has changed its Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626; Kage, Tr. 1046-1048; RPF ¶133).

7. On the other hand, Exclusive Agency listings "unbundle" both the level of services and the offer of compensation. Under an Exclusive Agency contract, the home seller retains the right to sell their home on their own without further assistance from the listing broker. If the seller finds the buyer through their own efforts, and concludes the transaction, no additional compensation is due to the listing broker. In addition, the absence of services and involvement by any cooperating broker in the sale means that the home seller does not need to pay the offer of compensation specified in the contract. As a result, Exclusive Agency listings provide opportunities for home sellers to save substantially on brokerage fees if they are willing to "self supply" some or most of the services in connection with the sale of their homes that would otherwise be provided by brokers. (CCPF ¶¶ 183-187, 191-193, 199-203, 341-349, 1149-1152).

Response to CCPF No. 7:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that in light of Realcomp's elimination of the Minimum Services Definition, it is not accurate to equate ERTS listings with full service. (CX 626; Kage, Tr. 1046-48; RPF ¶133). Brokers who offer EA listings also offer flat fee ERTS listings for nominally more than the Exclusive Agency Listing. (Kermath, Tr. 729; RX 1; RPF ¶114).

8. Competition between full service and limited service brokers is increasing nationwide. Limited service brokers have put pricing pressure on full service brokers to justify the traditional six percent commission rate. Limited service brokers also allow customers to select and pay for only those brokerage services they want and use. This "fee for service" or "menu-driven" approach is an important innovation in brokerage services, and it impacts the form and intensity of competition in the marketplace. (CCPF ¶¶ 194-198, 213-226).

Response to CCPF No. 8:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Exclusive Agency Listings are not increasing nationwide. (Murray, Tr. 166-67; RPF ¶¶169-170). Competition referred to as "menu-driven" is not accurate under Realcomp's elimination of its Minimum Service Definition. Exclusive Agency Listings have been around "forever" (CX 36 (Kage, IHT at 31); RPF ¶162). (CX 626; Kage, Tr. 1046-48; RPF ¶133). Limited service brokers are not a significant factor in Southeastern Michigan. (Sweeney, Tr. 1326; RPF ¶¶ 168-174).

9. In reaction to the entry of limited service brokers, full service brokers in Realcomp who were represented on the organization's Board of Governors decided to take collective

action. They agreed to exercise Realcomp's market power by imposing rules to restrict MLS services for Exclusive Agency listings, while maintaining these services for Exclusive Right to Sell listings. In particular, the Board of Governors adopted the "Website Policy" in October 2001, and then adopted the "Search Function Policy" in August 2003. The Board also implemented and enforced further rule changes needed to ensure that the policies would have the desired effect on competition from limited service brokers. (CCPF ¶¶ 765-838).

Response to CCPF No. 9:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that the Website and Search Function Policies were created to address concerns about sellers selling their own homes to avoid paying commissions to brokers, and to improve efficiency. (RPF ¶¶137-159). Realcomp has changed its Rules to repeal the Search Function Policy and eliminate its Minimum Service Definition, so full services are no longer required with an ERTS listing. (CX 626; Kage, Tr. 1046-1048; RPF ¶¶133-135).

10. The Website Policy and the Search Function Policy have reduced competition from limited service brokers in Southeastern Michigan. The policies have reduced exposure of Exclusive Agency listings to potential home buyers and the cooperating brokers who represent them. They have directly and significantly affected the ability of limited service brokers to compete for the business of home sellers. Moreover, Realcomp's policies have eliminated entirely a product that consumers want to be available in the marketplace: an Exclusive Agency listing with full exposure. (CCPF ¶¶ 861-940, 1157-1173).

Response to CCPF No. 10:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that the Website and Search Function Policies have not had any significant effect on competition or exposure. (RPF ¶¶ 148, 159, 161). *See also* the Response to CCPF No. 3. Allegations about the Search Function Policy are moot in light of Realcomp's repeal of that Policy (RPF ¶¶133-135), and even prior to the repeal, the Policy was not a significant impediment to brokers acquiring information on Realcomp Online® about limited service contracts (RPF ¶136).

11. The loss of competition resulting from Realcomp's restrictions is substantiated by the testimony of limited service brokers and confirmed by the economic analyses of MLS listing data. The limited service brokers described how the Website Policy and the Search Function Policy caused some firms to exit the Southeastern Michigan market or decide against entering it, and impeded the ability of the remaining firms to compete for business there. More broadly, the empirical evidence across the entire competitive landscape demonstrates that Realcomp's restrictions reduced the overall use of Exclusive Agency listings and the discount brokerage services offered in conjunction with them. (CCPF ¶¶ 941-1122).

Response to CCPF No. 11:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that brokers offering Exclusive Agency Listings testified that their businesses are thriving in Southeastern Michigan despite the alleged "restrictions." (RPF ¶¶ 163-165). No agents offering EA Listings suggested that they left Michigan because of Realcomp's Policies, except YourIgloo.com, which left Michigan for more reasons than Realcomp's Policies, and it has not fully abandoned Michigan as it continues to do a substantial referral business (RPF ¶166). Complaint Counsel's expert's economic analyses are flawed (RFP ¶¶196-248).

12. The Website Policy and the Search Function Policy are the products of a combination or conspiracy of competing brokers that unreasonably restrains trade. (CCPF ¶¶ 855-856).

Response to CCPF No. 12:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that the term "conspiracy" is inflammtory and inaccurate. *See Viazis* v *American Association of Orthodontists,* 314 F.2d 758, 765 (5th Cir. 2002) (recognizing that a trade association, by its nature, is not a "walking conspiracy"). Realcomp acknowledges that it is a combination of its members with respect to the Website and Search Function Policies. Those policies impose no unreasonable restraint of trade. *See generally*, the Response to CCPF ¶10.

13. Realcomp has agreed to rescind the Search Function Policy, but it refuses to remove the Website Policy. (CCPF ¶¶ 859-860).

Response to CCPF No. 13:
Realcomp incorporates its responses to the referenced paragraphs, but has no specific response.

14. Realcomp possesses market power in the market for the supply of multiple listing services to real estate brokers in Southeastern Michigan. These services are a necessary input in the provision of residential real estate brokerage services in that area. Realcomp's market power gives it the ability to restrain competition among its members, competing real estate brokers. (CCPF ¶¶ 677-764).

Response to CCPF No. 14:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Complaint Counsel's expert did not credibly prove a relevant market and therefore did not establish that Realcomp has market power in a relevant market.

15. Realcomp's actions have caused harm to competition and consumers. The Policies reduce competition between brokers, eliminate a competing product in the market for residential real estate brokerage services, and artificially limit consumer choice. (CCPF ¶¶ 1174-1243). They also lack any procompetitive justification. (CCPF ¶¶ 1244-1285).

Response to CCPF No. 15:
Realcomp incorporates its responses to the referenced paragraphs, and notes specifically that Respondent's Policies have not had any significant effect on competition (*see generally*, Response to CCPF ¶¶ 10-11), and have had a net benefit to consumers. (RPF ¶¶ 175-178). A Cost Benefit Analysis demonstrates that Respondent's Policies end up benefitting consumers as they result in a gain for sellers that substantially off-sets any higher brokerage fees that are paid. (Eisenstadt, Tr. 1454-1457; RPF ¶ 175). Further, the Policies have had pro-competitive benefits. (RPF ¶¶ 183-192). Specifically, Respondent's policies enhanced efficiency by increasing selling agents' incentives to show properties listed under Exclusive Agency contracts. (CX 133-031-043, § VIII; RPF ¶ 183).

II. WITNESSES

A. Trial Witnesses

Stephen Murray

16. Stephen Murray was qualified without objection as an expert in the residential real estate brokerage industry, including trends in the real estate industry, based on his experience in the residential brokerage industry. (Murray, Tr. 140).

Response to CCPF No. 16:
Respondent has no specific response.

17. Mr. Murray has worked in the real estate industry for 30 years, and since 1987, has been the President and CEO of REAL Trends and Murray Consulting, which provides research, trends analysis and consulting services to clients in the residential brokerage industry. (Murray, Tr. 121-123).

Response to CCPF No. 17:
Respondent has no specific response.

18. Mr. Murray has represented over 1,700 different clients, including Realtor Associations, MLSs and brokerage firms. (Murray, Tr. 124; RX 154-A-001).

Response to CCPF No. 18:
Respondent has no specific response.

19. For example, Mr. Murray has been a consultant for 32 assignments related to MLSs, including studying MLS policies and "how they can affect the workings of the market." (RX 154-A-001-002).

Response to CCPF No. 19:
Respondent has no specific response.

20. Mr. Murray has worked with "traditional," full service brokerages as well as brokerages offering flat-fee or limited services. (Murray, Tr. 127-128; RX 154-A-002).

Response to CCPF No. 20:
Respondent has no specific response.

21. Mr. Murray's work for brokerage firms, including those in Southeastern Michigan, have required him to learn about their marketplace, their strengths and weaknesses, their competition, how their "agents provide services, what services [] they provide, [and if they are] effective at marketing, education and technology, training. . . ." (Murray, Tr. 127-129; RX 154-A-002).

Response to CCPF No. 21:
Respondent has no specific response.

22. Mr. Murray provides strategic planning advice for brokerage firms, as well as a "considerable amount" of advice regarding Internet marketing, including "effective Internet marketing policies, lead generation, lead capture, [and] which are the right Websites to be on. . . ." (Murray, Tr. 128-129).

Response to CCPF No. 22:
Respondent has no specific response.

23. Mr. Murray must understand the competitive conditions in which brokerage firms operate and what it takes for a broker to compete successfully in order to provide his consulting services to brokerage firms. (Murray, Tr. 137).

Response to CCPF No. 23:
Respondent has no specific response.

24. Mr. Murray, while not a real estate agent or broker, has worked with numerous brokerage firms located in Southeastern Michigan, as recently as 2006. (Murray, Tr. 129-130; RX 154-A-003).

Response to CCPF No. 24:
Respondent has no specific response.

25. Mr. Murray also hosts and actively participates in several conferences each year that relate to understanding housing consumers, best practices in real estate, and trends and strategies in the real estate industry. (Murray, Tr. 130-133).

Response to CCPF No. 25:
Respondent has no specific response.

26. Mr. Murray publishes monthly newsletters that report on trends in the real estate industry, as well as the REAL Trends 500, which analyzes the top 500 brokerage firms' operational and productivity data and creates broker benchmarks and Broker Performance Reports. There are several brokerage firms from Southeastern Michigan in the REAL Trends 500. (Murray, Tr. 133-134).

Response to CCPF No. 26:
Respondent has no specific response.

27. Mr. Murray also has created three separate research reports since 2002 that are relevant to the issues in this case, including Room for Improvement, the Alternative Model study, and the Consumer Tsunami. (Murray, Tr. 134-135; RX 154-A-003-004; CX 534; CX 535, *in camera*; CX 536, *in camera*).

Response to CCPF No. 27:
Respondent has no specific response.

28. In creating his research reports, Mr. Murray used focus groups of housing consumers and real estate professionals as well as consumer surveys implemented by Harris Interactive, one of the world's largest and most respected marketing research firms. (Murray, Tr. 136-137). Brokerage firms pay $35,000-$50,000 for copies of each research report. (Murray, Tr. 137).

Response to CCPF No. 28:
Respondent has no specific response.

29. Mr. Murray also has been retained as an expert in the real estate industry by the National Association of Realtors and the Canadian Bureau of Competition for issues related to MLS and Internet policies. (Murray, Tr. 139-140).

Response to CCPF No. 29:
Respondent has no specific response.

Craig Mincy

30. Craig Mincy is a real estate broker in Southeastern Michigan. (Mincy, Tr. 308). His company is MichiganListing.com, which is located in Livingston county. (Mincy, Tr. 308).

Response to CCPF No. 30:
Respondent has no specific response.

31. Mr. Mincy has been working as a real estate agent or broker in residential real estate since 1995. (Mincy, Tr. 310, 313).

Response to CCPF No. 31:
Mr. Mincy has been working as a real estate agent since 1995. (Mincy, Tr. 310, 313). He became a real estate broker in 1998. (Mincy, Tr. 315).

32. Mr. Mincy started his real estate career at Help-U-Sell Real Estate, which focused on serving Livingston and Western Oakland counties. (Mincy, Tr. 310, 313). He remained at Help-U-Sell from 1995 to 1998. (Mincy, Tr. 310, 314). When he was at Help-U-Sell, Mr. Mincy was a member of Realcomp, and neither he nor his office was a member of any other MLS. (Mincy, Tr. 313).

Response to CCPF No. 32:
Respondent has no specific response.

33. Mr. Mincy is a member of the National Association of Realtors (NAR), which means that he is a "Realtor." (Mincy, Tr. 314). He is not aware of any brokers or agents in his area who are not Realtors. (Mincy, Tr. 314).

Response to CCPF No. 33:
Respondent has no specific response.

34. From 1998 to 2001, Mr. Mincy was the broker and co-owner of a Realty Executives franchise. (Mincy, Tr. 315, 318). He had 7 to 12 agents working for the brokerage at any given time. (Mincy, Tr. 315). Mr. Mincy's Realty Executives brokerage focused on residential properties in Livingston and Western Oakland counties. (Mincy, Tr. 315).

Response to CCPF No. 34:
Respondent has no specific response.

35. In 2001, Mr. Mincy and a partner purchased a RE/MAX franchise. (Mincy, Tr. 318-319). His RE/MAX brokerage had from 6 to 12 agents at any given time, and it specialized in residential properties in Livingston and Western Oakland counties. (Mincy, Tr. 319-320). Mr. Mincy's RE/MAX franchise was a member of Realcomp and no other MLS. (Mincy, Tr. 320).

Response to CCPF No. 35:
Respondent has no specific response.

36. Mr. Mincy's current real estate brokerage, MichiganListing.com, differs from the full-service brokerage business model by offering Exclusive Agency Limited Service listings, which offers "unbundled services." (Mincy, Tr. 322). This type of listing "gives the seller

Response to CCPF No. 57:
Respondent has no specific response.

58. Among the research grants Dr. Williams has received, he received a joint grant from the American Statistical Association and the National Science Foundation for which he used some of the types of analysis he conducted in this case. (D. Williams, Tr. 1090).

Response to CCPF No. 58:
Respondent has no specific response.

59. Dr. Williams served as the vice chair of the Economics Committee of the American Bar Association Antitrust Section. (D. Williams, Tr. 1090). He was also a member of a joint task force that provided the Antitrust Section's response to the FTC and DOJ Antitrust Guidelines for Collaborations Among Competitors. (D. Williams, Tr. 1091).

Response to CCPF No. 59:
Respondent has no specific response.

60. Dr. Williams now serves as a director at the Law and Economics Consulting Group, where 90 percent of his work involves antitrust issues. (D. Williams, Tr. 1091).

Response to CCPF No. 60:
Respondent has no specific response.

61. Dr. Williams has testified in about a half dozen antitrust trials. (D. Williams, Tr. 1091-1092; CX 498-A-061-063).

Response to CCPF No. 61:
Respondent has no specific response.

Kelly Sweeney

62. Kelly Sweeney is the broker/owner, and President and CEO, of Weir, Manuel, Snyder & Ranke. (Sweeney, Tr. 1302). Mr. Sweeney is on the board of directors of Metropolitan Consolidated Association of Realtors (MCAR) and Treasurer for MiRealSource. (Sweeney, Tr. 1304-1305).

Response to CCPF No. 62:
Respondent has no specific response.

63. Mr. Sweeney has been actively engaged in real estate since 1985, entered into management at Weir, Manuel, Snyder & Ranke in 1990 (where he stopped buying and selling real estate himself; but supervised other agents), and became the owner of Weir Manuel in 2000. (Sweeney, Tr. 1302-1303). Weir Manuel has 135 sales people and four

offices: Birmingham, West Bloomfield and Rochester, which are all in Oakland county; and Plymouth, which is in western Wayne county. (Sweeney, Tr. 1303).

Response to CCPF No. 63:
Respondent has no specific response.

64. Mr. Sweeney has never been on the Realcomp Board of Governors, has not been on the Realcomp user committee since at least 2000, and did not attend the Realcomp Board of Governors meetings where the Search Function Policy or Website Policy were adopted. Mr. Sweeney testified to his personal opinions, and not on behalf of the Realcomp Board of Governors. (Sweeney, Tr. 1338-1339).

Response to CCPF No. 64:
While Complaint Counsel's comments are correct regarding Mr. Sweeney's involvement in Realcomp, he is presently on the Board of Directors of MiRealSource and is the treasurer of MiRealSource. (Sweeney, Tr. 1304-1305).

B. Witnesses By Deposition

Realcomp Board of Governors

Alissa Nead

65. Alissa Nead is a member of the Realcomp Board of Governors for the 2007 term. (CX 42 (Nead, Dep. at 14-15); CX 211). She served as the President of Realcomp in 2004 and 2005. (CX 42 (Nead, Dep. at 14-15)). She served as the Vice President of Realcomp in 2003. (CX 42 (Nead, Dep. at 15)).

Response to CCPF No. 65:
Respondent has no specific response.

66. Ms. Nead was on the Board of Directors for the Western Wayne Oakland County Association of Realtors (WWOCAR) from 1997-1999, and she served as the President of WWOCAR in 2000. (CX 42 (Nead, Dep. at 15-16)).

Response to CCPF No. 66:
Respondent has no specific response.

67. Ms. Nead is an associate broker at Coldwell Banker Preferred, where she is the office manager for the brokerage's office in Plymouth, Michigan. (CX 42 (Nead, Dep. at 4-5)). That office has about 110 agents. (CX 42 (Nead, Dep. at 33)). Ms. Nead focuses on residential real estate. (CX 42 (Nead, Dep. at 17-18)). The geographic area that she focuses on as a residential real estate agent is Canton, Michigan. (CX 42 (Nead, Dep. at 5)). She is a Full Service real estate agent. (CX 42 (Nead, Dep. at 7-8)).

Response to CCPF No. 88:
Respondent has no specific response.

89. Mr. Burke was a sales manager for Weir Manuel for 6 years and just recently went to work for Hannet, Wilson & Whitehouse. (CX 409 (Burke, Dep. at 7-8)).

Response to CCPF No. 89:
Respondent has no specific response.

Martin Nowak

90. Martin Nowak was a member of the Realcomp Board of Governors from 2001 to 2006. (CX 415 (Nowak, Dep. at 30)).

Response to CCPF No. 90:
Respondent has no specific response.

91. Mr. Nowak has been an active real estate agent for 29 years. (CX 415 (Nowak, Dep. at 5)). Mr. Nowak currently works for Prudential Great Lakes Realty and has worked there for the past 3 years. (CX 415 (Nowak, Dep. at 5)).

Response to CCPF No. 91:
Respondent has no specific response.

Tom Rademacher

92. From 2000-2002, Tom Rademacher was an alternate Governor and then in 2002 became a voting Governor. (CX 416 (Rademacher, Dep. at 7-8)). In 2004, Mr. Rademacher served as the Realcomp Treasurer. (CX 416 (Rademacher, Dep. at 8)).

Response to CCPF No. 92:
Respondent has no specific response.

93. Mr. Rademacher has been a member of Realcomp since 1992 and started serving on the Board of Governors in 2000. (CX 416 (Rademacher, Dep. at 7)). Mr. Rademacher left the Board of Governors in 2005. (CX 416 (Rademacher, Dep. at 7)).

Response to CCPF No. 93:
Respondent has no specific response.

94. Mr. Rademacher has been involved in the real estate industry since 1992. (CX 416 (Rademacher, Dep. at 5)). He received his license in 1986 but did not practice real estate until 1992. (CX 416 (Rademacher, Dep. at 5)).

Response to CCPF No. 94:
Respondent has no specific response.

Realcomp Shareholder Owner Boards

Walt Baczkowski - MCAR

95. Walt Baczkowski is currently the CEO of MCAR and is in charge of MCAR's professional standards, ethics and arbitrations. (CX 405 (Baczkowski, Dep. at 13-14)).

Response to CCPF No. 95:
Mr. Baczkowski also testified that he is responsible for political lobbying, fundraising, communications, public relations, retail stores, and education in his role as CEO. (CX 405 (Baczkowski, Dep. at 13)).

96. Mr. Baczkowski has been involved in the real estate industry for 27 years. (CX 405 (Baczkowski, Dep. at 6)).

Response to CCPF No. 96:
Respondent has no specific response.

97. Mr. Baczkowski was the Executive Vice President of the Toledo Board of Realtors from 1978 to 1988. He was the chief administrative officer for the organization and ran the MLS. (CX 405 (Baczkowski, Dep. at 6-7)).

Response to CCPF No. 97:
Respondent has no specific response.

98. From 1988 to 1996 Mr. Baczkowksi was the chief administrative officer for the San Diego MLS. (CX 405 (Baczkowski, Dep. at 9)). Mr. Baczkowski administered the San Diego MLS until it was merged with 3 local MLSs. (CX 405 (Baczkowski, Dep. at 9)).

Response to CCPF No. 98:
Respondent has no specific response.

John Cooper - ETAR

99. John Cooper has been the Executive Officer of the Eastern Thumb Association of Realtors ("ETAR") since May 2005. (CX 410 (Cooper, Dep. at 21)). ETAR became a shareholder board of Realcomp in the spring of 2006. (CX 410 (Cooper, Dep. at 27)).

Response to CCPF No. 99:
Respondent has no specific response.

100. Mr. Cooper has been a licensed real estate broker in Michigan for 33 years. (CX 410 (Cooper, Dep. at 5)). From the 1970s through May 2005, Mr. Cooper was a full service broker operating in St. Clair county. (CX 410 (Cooper, Dep. at 6-7)).

Response to CCPF No. 100:
Respondent has no specific response.

Ryan Tucholski - DABOR

101. Ryan Tucholski is currently the Chief Executive Officer of the Dearborn Area Board of Realtors ("DABOR"). (CX 420 (Tucholski, Dep. at 5)).

Response to CCPF No. 101:
Respondent has no specific response.

102. Mr. Tucholski was the Director of the Toledo Board of Realtors' MLS from 2002 through 2006. (CX 420 (Tucholski, Dep. at 5)). As Director of the Toledo Board of Realtors' MLS, Mr. Tucholski was responsible for "policing [the] policies, Rules and Regulations" of the MLS and ensuring that the MLS functioned properly. (CX 420 (Tucholski, Dep. at 5-6, 44)).

Response to CCPF No. 102:
Respondent has no specific response.

103. As Director of the Toledo Board of Realtors' MLS, Mr. Tucholski has experience with the effect that certain rules and regulations would have on the efficient functioning of an MLS. (CX 420 (Tucholski, Dep. at 7)).

Response to CCPF No. 103:
Respondent has no specific response.

Michelle Brant - LCAR

104. Since April 2005, Michelle Brant has been the Executive Vice President of the Livingston County Association of Realtors ("LCAR"), one of the shareholder owner boards of Realcomp. (CX 408 (Brant, Dep. at 5)). Ms. Brant's responsibilities as Executive Vice President of LCAR include the professional standards process and day to day operations. (CX 408 (Brant, Dep. at 9)).

Response to CCPF No. 104:
Respondent has no specific response.

Full-Service Brokers

Doug Whitehouse

105. Doug Whitehouse is a member of MCAR and serves as MCAR's representative on the board of directors for NAR. (CX 421 (Whitehouse, Dep. at 5-6)).

Response to CCPF No. 105:
Respondent has no specific response.

106. In 2005, Mr. Whitehouse was the President of the Michigan Association of Realtors ("MAR"), and he is currently a director of MAR and has been for the last 6 years. (CX 421 (Whitehouse, Dep. at 8-9)).

Response to CCPF No. 106:
Respondent has no specific response.

107. Mr. Whitehouse has been a partner in the brokerage firm Hannet, Wilson & Whitehouse since 1993. (CX 421 (Whitehouse, Dep. at 10)). Hannet, Wilson & Whitehouse has one office in Birmingham, Michigan and has around 45 agents. (CX 421 (Whitehouse, Dep. at 11)).

Response to CCPF No. 107:
Respondent has no specific response.

John Kersten

108. Mr. Kersten has been licensed and working in the real estate industry since 1966. (CX 413 (Kersten, Dep. at 6-8)). He became the broker owner of Century 21 - Town & Country in 1980. (CX 413 (Kersten, Dep. at 6-8)). Century 21 - Town & Country grew from one office with 11 agents in 1980 to 14 offices with about a thousand agents today. (CX 413 (Kersten, Dep. at 9)).

Response to CCPF No. 108:
Respondent has no specific response.

Discount Brokers

Wayne Aronson - YourIgloo

109. Wayne Aronson is the Vice President and general manager of YourIgloo, Inc. (CX 422 (Aronson, Dep. at 4)). Mr. Aronson was the controller of YourIgloo from November 2000 to 2005. (CX 422 (Aronson, Dep. at 5)).

Response to CCPF No. 109:
Mr. Aronson is not licensed in the real estate field in Michigan and he did not have any real estate license until two weeks prior to his deposition on February 16, 2007. (CX 422 (Aronson, Dep. at 33, 52-53)).

110. YourIgloo is a discount real estate company headquartered in Deerfield Beach, Florida. (CX 422 (Aronson, Dep. at 4)).

Response to CCPF No. 110:
Respondent has no specific response.

Anita Groggins - YourIgloo

111. Ms. Groggins is the broker owner of Groggins Realty, and has been the broker owner since 1994. (CX 526 (Groggins, Dep. at 3-4)). Ms. Groggins has been a licensed real estate agent since 1989. (CX 526 (Groggins, Dep. at 5)). Ms. Groggins is licensed in Georgia and Michigan. (CX 526 (Groggins, Dep. at 10)).

Response to CCPF No. 111:
Respondent has no specific response.

112. Prior to owning Groggins Realty, Ms. Groggins worked at Rich Realty, Real Estate One in Detroit, and Prudential Great Lakes in West Bloomfield, where she was a full service broker and used Exclusive Right to Sell contracts. (CX 526 (Groggins, Dep. at 5-7)).

Response to CCPF No. 112:
Respondent has no specific response.

113. From 2002-2004, Ms. Groggins was a broker at Groggins Realty and an associate broker at YourIgloo, where she used Exclusive Agency contracts. (CX 526 (Groggins, Dep. at 7-8)).

Response to CCPF No. 113:
Respondent has no specific response.

Dreu Adams - Help-U-Sell

114. Dreu Adams is one of the owners and a real estate agent of Help-U-Sell Central Market Center. (CX 525 (Adams, Dep. at 4, 8-9)).

Response to CCPF No. 114:
Respondent has no specific response.

115. Help-U-Sell Central Market Center is a real estate brokerage firm located in Royal Oak, Michigan. It has been in operation since February 2006. (CX 525 (Adams, Dep. at 4)).

Response to CCPF No. 115:
Respondent has no specific response.

116. Help-U-Sell Central Market Center is a local franchise of a national corporation. Its business model is providing real estate brokerage services for a set fee. (CX 525 (Adams, Dep. at 5, 18-19)).

Response to CCPF No. 116:
Respondent has no specific response.

MiRealSource

Virginia Bratt

117. Virginia Bratt is the CEO of MiRealSource and has been employed by MiRealSource, or its predecessors, since 1981. (CX 407 (Bratt, Dep. at 5-6)).

Response to CCPF No. 117:
Respondent has no specific response.

118. Ms. Bratt has never been an active or licensed real estate agent or broker in the state of Michigan. (CX 407 (Bratt, Dep. at 83-84)).

Response to CCPF No. 118:
Respondent has no specific response.

National Association of Realtors

119. The National Association of Realtors (NAR) is a trade association of real estate brokers, real estate licensees and other real estate professionals. (CX 414 (Niersbach, Dep. at 7-8)). NAR "is America's largest trade association, representing more than 1.3 million members, including NAR institutes, societies and councils, involved in all aspects of the residential and commercial real estate industries." (CX 373-002). Nearly half of all licensed real estate professionals in the United States are NAR members. (CX 531-004).

Response to CCPF No. 119:
Respondent has no specific response.

120. Members of NAR are referred to as Realtors and agree to abide by NAR's code of ethics. Local associations create the membership qualifications, and once a broker joins the local association of Realtors, they will automatically become members of the state and national

association of Realtors. (CX 414 (Niersbach, Dep. at 8-9, 11) (explaining that NAR members pay dues to their local association, which in turn pays dues to the National Association)).

Response to CCPF No. 120:
Respondent has no specific response.

Robert Goldberg

121. Robert Goldberg is the Senior Vice President for Marketing and Business Development for NAR. (CX 412 (Goldberg, Dep. at 6)). Mr. Goldberg has been employed by NAR since 1995. (CX 412 (Goldberg, Dep. at 7)).

Response to CCPF No. 121:
Respondent has no specific response.

122. Mr. Goldberg testified that, in his role as the Senior Vice-President for Marketing and Business Development for NAR, he is responsible to marketing and outreach to NAR members and business development with NAR partners. (CX 412 (Goldberg, Dep. at 6)).

Response to CCPF No. 122:
Respondent has no specific response.

123. Mr. Goldberg is the President and Chief Executive Officer of the Realtors Information Network ("RIN"), a wholly-owned subsidiary of NAR. (CX 412 (Goldberg, Dep. at 6)). RIN was incorporated in 1994, in part with the intention of operating or overseeing the operation of Realtor.com. (CX 412 (Goldberg, Dep. at 8-10)).

Response to CCPF No. 123:
Respondent has no specific response.

124. Mr. Goldberg testified that, in his role as the President and CEO of RIN, he is responsible for overseeing Move, Inc.'s operation of Realtor.com. (CX 412 (Goldberg, Dep. at 6-7)).

Response to CCPF No. 124:
Respondent has no specific response.

Clifford Niersbach

125. Clifford Niersbach is the Vice President of Board Policy and Programs at NAR, and has worked there since July 1975. (CX 414 (Niersbach, Dep. at 6)). Mr. Niersbach's responsibilities include oversight for the Board Policy and Program Staff, and is the staff liaison to the NAR Professional Standards Committee, the Interpretation and Procedure

subcommittee and the MLS issues and policies committee. (CX 414 (Niersbach, Dep. at 6)).

Response to CCPF No. 125:
Respondent has no specific response.

Paul Bishop

126. Paul Bishop is the Manager of Real Estate Research at NAR. (CX 406 (Bishop, Dep. at 7)). In his position as the Manager of Real Estate Research at NAR, Mr. Bishop "manage[s] the surveys that the research division at NAR produces," works "with some of our outside consultants who produce research products" on behalf of NAR, and serves on NAR committees. (CX 406 (Bishop, Dep. at 7)).

Response to CCPF No. 126:
Respondent has no specific response.

127. Mr. Bishop testified that NAR's Research Division has three economists with training at the PhD level, including himself, along with research and survey analysts, on its staff. (CX 406 (Bishop, Dep. at 9-10)).

Response to CCPF No. 127:
Respondent has no specific response.

Move, Inc.

128. Move, Inc. operates Realtor.com pursuant to an operating agreement with NAR. (CX 497 (Greenspan, Dep. at 8)).

Response to CCPF No. 128:
Respondent has no specific response.

Robert Greenspan

129. Robert Greenspan is employed by Move, Inc. ("Move") as the Vice President of Industry Relations, Realtor.com. (CX 497 (Greenspan, Dep. at 7)).

Response to CCPF No. 129:
Respondent has no specific response.

130. Mr. Greenspan, who has been employed by Move for four years, manages the team that maintains the relationships with the data content providers to Realtor.com. (CX 497 (Greenspan, Dep. at 7-8)).

Response to CCPF No. 130:
Respondent has no specific response.

Paul Simos

131. Paul Simos is the Vice President of Corporate Development, and has worked at Move for 6 years. (CX 417 (Simos, Dep. at 6)). Mr. Simos' responsibilities relate to strategic partnerships and includes general assistance across the company on "key agreements." (CX 417 (Simos, Dep. at 7)).

Response to CCPF No. 131:
Mr. Simos also testified that his current responsibilities deal with merger and acquisition activities. (CX 417 (Simos, Dep. at 7)).

Philip Dawley

132. Philip Dawley is currently the Chief Technology Officer and is responsible for software development for Realtor.com, including enhancements to Realtor.com and other tools used on Realtor.com. (CX 411 (Dawley, Dep. at 8-10)).

Response to CCPF No. 132:
Respondent has no specific response.

133. Mr. Dawley has been employed by Move since August 1994, and was previously a Programmer and Chief Information Officer, where he had direct management responsibility for developing and maintaining the software used by Realtor.com website operations. (CX 411 (Dawley, Dep. at 8-9)).

Response to CCPF No. 133:
Respondent has no specific response.

III. INDUSTRY BACKGROUND

A. The Residential Brokerage Industry: Real Estate Brokers and the Multiple Listing Service

134. Nationwide, the provision of residential real estate brokerage services was at least a $65 billion industry in 2005. (RX154-A-006). Both real estate agents and brokers are involved in buying and selling real estate. (Murray, Tr. 147).

Response to CCPF No. 134:
Respondent has no specific response.

135. A real estate broker is a licensed real estate professional who acts as a representative for either home buyers or home sellers, and who is authorized to engage in the sale of real estate and to provide services in connection with such sales. (JX 1-02). A broker can own and operate their own real estate firm, referred to as a "brokerage." (Mincy, Tr. 312; Murray, Tr. 146).

Response to CCPF No. 135:
Respondent has no specific response.

136. A real estate agent is a licensed real estate professional who works for, or under the supervision of, a real estate broker. (JX 1-02; *See also*, Murray, Tr. 146 (explaining that agents are typically independent contractors who work under the supervision of a broker)). Real estate brokers and agents are collectively referred to as "brokers" in this document.

Response to CCPF No. 136:
Respondent has no specific response.

137. To be licensed as a real estate broker in Michigan, a person must have at least three years of experience in the real estate industry with a certain sales record, a state issued license, 90 hours of education, and must pass a broker's exam. (Mincy, Tr. 312; CX 498-A-008).
Response to CCPF No. 137:
Respondent has no specific response.

138. A transaction coordinator is someone who processes the paperwork for a real estate transaction, but who does not have a fiduciary obligation to either the home seller or home buyer. (RX 154-A-011; CX 42 (Nead, Dep. at 10-11); CX 205-064 (Michigan Association of Realtors agency disclosure form, providing that "a transaction coordinator is a licensee who is not acting as an agent of either the seller or the buyer, yet is providing services to complete a real estate transaction.")).

Response to CCPF No. 138:
Respondent has no specific response.

139. Michigan law also requires brokers to explain the type of agency relationship they have with their client. (Mincy, Tr. 354).

Response to CCPF No. 139:
Respondent has no specific response.

140. Real estate brokers tend to specialize in the provision of either residential or commercial brokerage services. (CX 531-009; CX 415 (Nowak, Dep. at 15-16)). The commercial brokerage industry is "substantially different" than the residential brokerage industry.

(Murray, Tr. 176-177; RX 154-A-006 (describing differences between residential and commercial brokerage industries); CX 415 (Nowak, Dep. at 15-16) (commercial real estate is a "whole new ball game" as compared to residential real estate)).

Response to CCPF No. 140:
Mr. Nowak testified that commercial real estate is a specialty. (CX 415 (Nowak, Dep. at 15)).

141. Realcomp brokers tend to specialize in residential brokerage services. (Mincy, Tr. 312-313; CX 40 (Elya, Dep. at 8); CX 410 (Cooper, Dep. at 17); CX 41 (Mulvihill, Dep. at 6); CX 42 (Nead, Dep. at 17-18)).

Response to CCPF No. 141:
Respondent has no specific response.

142. Sellers of residential properties can either hire a real estate broker to handle parts or all of the transaction, or they can sell their property themselves, which is commonly referred to as "For Sale By Owner," or "FSBO." (Murray, Tr. 149; CX 373-007 ("Home sellers can choose to sell their home themselves or enlist the professional assistance of an agent who can provide various levels of service to best suit each home seller's needs.")). Research has shown that FSBO sellers often do so because they want to save the cost of a commission. (RX 154-A-008; CX 373-088). Additionally, approximately 40% of FSBO sellers know their buyer and may not need most brokerage services. (RX 154-A-008; CX 373-083; CX 534-047).

Response to CCPF No. 142:
Respondent has no specific response.

143. Selling a home as a FSBO can be challenging. (RX 154-A-008; Murray, Tr. 150; *See also* CX 373-089 (listing tasks FSBO sellers reported as "the most difficult" to perform in selling their home, including "understanding and preparing the paperwork" and "attracting potential buyers")). Home sellers often use a real estate broker because they "consider selling their home or buying a home one of the most stressful things they ever do." (Murray, Tr. 150; RX 154-A-008; CX 536-007).

Response to CCPF No. 143:
Respondent has no specific response.

144. The vast majority of home sellers choose to hire a real estate broker to assist with some or all of the tasks associated with the typical residential real estate transaction. In 2006, between 80-88% of sellers nationwide used a real estate broker to sell their property. (Murray, Tr. 149-150; CX 373-071 (finding that 84% of all sellers nationwide, and 81% of sellers in the Midwest, used a broker to sell their home)). "The share of home sellers

who used an agent or broker has risen over time from about 80 percent in the late 1990s to 84 percent [in 2006]." (CX 373-072; CX 406 (Bishop, Dep. at 107)).

Response to CCPF No. 144:
Respondent has no specific response.

145. The Multiple Listing Service, or "MLS," is a database of information about properties for sale (exclusive of FSBO properties) that can be viewed and searched by all other local brokers who practice in the area and participate in the MLS. (RX 154-A-009). As defined by Realcomp, an MLS is "[a] facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public. . . ." (CX 220).

Response to CCPF No. 145:
Respondent's definition of an MLS was created according to the definition established by NAR. (CX 220).

1. Types of Real Estate Brokers

146. A typical residential real estate transaction, i.e., one involving the use of real estate brokers, will involve two brokers: a "listing broker," who works with home sellers; and a "cooperating broker," who works with home buyers. (RX154-A-008).

Response to CCPF No. 146:
The proper citation for the stated proposition is (RX 154-A-008-009).

147. Brokers typically do not specialize as either listing brokers or cooperating brokers. (Murray, Tr. 148; RX 154-A-011). In its 2005 Member Profile, NAR found that only 11% of brokers who specialized in residential real estate brokerage services worked exclusively with buyer clients and only 9% worked exclusively with seller clients. (CX 531-024; CX 456-003 (Research Division concluded, based on its experience in conducting these types of studies and knowledge of the real estate industry, that the findings and analyses in CX 531 were reliable and accurate, and distributed the study with the expectation that it may be relied upon by persons inside and outside NAR)).

Response to CCPF No. 147:
Respondent has no specific response.

a. Listing Brokers

148. A listing broker is the broker hired by the seller as its agent to sell the home to an appropriate buyer. (JX 1-02).

Response to CCPF No. 148:
Respondent has no specific response.

149. There is a "wide variety" of services that a listing broker may provide to a seller, including putting the "listing" (a "collection of information about the seller's property," such as the number of bedrooms and baths) on the MLS, marketing the listing on the Internet, holding open houses, putting a for-sale sign in the yard, and helping the seller with the "closing," i.e., when the title of the home transfers from the seller to the buyer. (Murray, Tr. 145, 148-149; CX 373-070; CX 78-002-006; CX 534-054; RX 154-A-006 (identifying possible additional services by listing brokers to include: determining the initial asking price of the home; showing the property to prospective buyers; and presenting and explaining purchase offers to the seller)).

Response to CCPF No. 149:
Respondent has no specific response.

150. The state of Michigan does not require that a listing broker provide a minimum set of services to a seller. (CX 410 (Cooper, Dep. at 12)). The services provided by a listing broker vary from listing broker to listing broker, and are determined by agreement with the seller. (Murray, Tr. 149).

Response to CCPF No. 150:
Respondent has no specific response.

b. Listing Agreements

151. The agreement between a listing broker and seller, called a "listing agreement," is a contract spelling out the nature of their relationship concerning the sale of the home. (JX 1-02). The listing agreement typically includes provisions that specify the duration of the contract (also known as the "listing period"), the compensation to be paid to the listing broker, and the offer of compensation to any cooperating broker who brings the buyer who purchases the home. (JX 1-02; Murray, Tr. 156; *See also* CCPF ¶¶ 166-172 (defining offer of compensation)).

Response to CCPF No. 151:
Respondent has no specific response.

152. Under the listing agreement, the listing broker owes a fiduciary duty to their client, the home seller. (CX 410 (Cooper, Dep. at 13)).

Response to CCPF No. 152:
Respondent has no specific response.

153. A listing agreement is "valid regardless of the level of services" that a listing broker provides to the seller. (CX 29; CX 36 (Kage, IHT at 139-140); CX 382-001-002 (advising NAR-affiliated MLSs that NAR's "MLS Policy does not allow a listing to be rejected [from entry onto the MLS] on the basis that the listing broker provides only a limited degree of service to the seller, or even no service at all other than submission of the listing to the MLS.")).

Response to CCPF No. 153:
Respondent has no specific response.

154. In its 2006 Profile of Home Buyers and Sellers, NAR acknowledged that, "[h]ome owners have many options to consider when they get ready to sell their home, including whether or not to use an agent. Even when using an agent, sellers can choose the level of service. They can work with an agent who offers a broad range of services and manages the entire transaction or opt for a more hands-on approach by completing some of the tasks themselves." (CX 373-063).

Response to CCPF No. 154:
Respondent has no specific response.

c. Commission Structure

155. Under the listing agreement, listing brokers may be compensated in a variety of ways, including a flat-fee paid up-front at the time the listing agreement is signed, a commission based on a percentage of the selling price of the home to be paid at closing, or some combination of the two. (Murray, Tr. 150-151). Home sellers and listing brokers are "absolutely" free to negotiate the compensation paid by the seller for brokerage services to the listing broker. (Sweeney, Tr. 1358; CX 410 (Cooper, Dep. at 13)).

Response to CCPF No. 155:
Respondent has no specific response.

156. Traditionally, the listing broker is paid a commission that is based on a percentage of the sale price of the home, *e.g.*, 6%. (CX 498-A-010; CX 373-081 (NAR's 2006 Profile of Home Buyers and Sellers, finding that 81% of agents were compensated by the seller and 75% received a percentage of the sales price)).

Response to CCPF No. 156:
Respondent has no specific response.

157. Even though the home seller typically is responsible for the payment of the brokerage commission, the home buyer clearly bears part of the cost of the brokerage fee to the

extent that some or all of the commission is passed on in the sale price of the home. (CX 498-A-011).

Response to CCPF No. 157:
Respondent has no specific response.

2. Cooperating Brokers

158. A cooperating broker is a broker who works with buyers interested in purchasing a home. (JX 1-02). Cooperating brokers assist the buyer by searching the MLS for homes that fit their criteria, going out to tour homes and neighborhoods, and, once their buyer finds the right home and reaches an agreement on the purchase of that home, assist the buyer in the closing of the home. (Murray, Tr. 151).

Response to CCPF No. 158:
Respondent has no specific response.

159. There are two types of cooperating brokers: selling brokers and buyer's brokers. (Murray, Tr. 152). A selling broker is a cooperating broker who works with a buyer, but whose fiduciary duty is to the home seller in the real estate transaction. A selling broker acts as a "sub-agent" of the listing broker. (JX 1-02-03; Murray, Tr. 152).

Response to CCPF No. 159:
Respondent has no specific response.

a. Buyer Agency Agreements

160. A buyer's broker is a cooperating broker who represents the interests of the buyer, and not the seller, either through an agency disclosure or a "buyer's agency agreement." (JX 1-03 (buyer's broker has a fiduciary duty to the buyer)). A buyer's broker works practically, as well as legally, for the buyer. (Murray, Tr. 152; RX 154-A-010 (buyer's agency relationship is "often, but not always, memorialized in a separate written agreement between the buyer and the broker"); CX 38 (Gleason, Dep. at 14-16) (buyer agency relationship can sometimes arise through agency disclosure rather than through a contract)).

Response to CCPF No. 160:
Respondent has no specific response.

161. Buyer agency agreements can be exclusive, which means that the buyer's broker is paid regardless of whether the broker actually helped the buyer find and purchase the home that was ultimately bought. (RX 154-A-010-011). For example, even if the buyer found a property on Realtor.com or another Internet site, went directly to the seller, and

purchased the home without the assistance of the buyer's broker, the buyer's broker would be entitled to compensation. (CX 42 (Nead, Dep. at 113-117)).

Response to CCPF No. 161:
Agents put in considerable effort trying to match buyers up with the Seller, and want to be compensated for their effort. (CX 42 (Nead, Dep. at 117)).

162. Buyers benefit from entering into a buyer's agency agreement because they then have their own legal representative to help them find the right home and negotiate on their behalf. (Murray, Tr. 152-153).

Response to CCPF No. 162:
Respondent has no specific response.

163. Brokers benefit from entering into a buyer's agency agreement because brokers can ensure that they receive a certain amount of compensation for their work and because the agreement may call for the payment of their commission regardless of whether the buyer found the home they wanted to buy or the cooperating broker found it for them. (RX 154-A-010-011; Murray, Tr. 153; Sweeney, Tr. 1359-1360; CX 40 (Elya, Dep. at 11-12) (Mr. Elya's buyer's agreements provide that the buyer's agent is entitled to a commission so long as the buyer consummates a transaction while the contract is in force)).

Response to CCPF No. 163:
A buyer's agency agreement ensures a broker has a right to payment, not that the broker will get the payment. (Sweeney, Tr. 1359-1360).

164. Buyer's agency agreements are common nationwide. (CX 373-051). In its annual Profiles of Home Buyers and Sellers, NAR found that 63-64% of home buyers nationwide worked with an agent who represented only their interests between 2003 and 2006. (CX 373-051; CX 372-047; CX 371-045).

Response to CCPF No. 164:
Respondent has no specific response.

165. Consistent with these national statistics, buyer's agency agreements are also widely used by Realcomp members in Southeastern Michigan. (Sweeney, Tr. 1335, 1360) (testifying that "[m]ost of the time when Realtors are representing purchasers or buyers, they have a buyer agency agreement"); (CX 410 (Cooper, Dep. at 14) (testifying that a cooperating broker "in today's market is typically under a buyer agency contract with a buyer with defined responsibilities"); CX 42 (Nead, Dep. at 11-12); CX 40 (Elya, Dep. at 10-11); CX 416 (Rademacher, Dep. at 23); CX 415 (Nowak, Dep. at 7-8); CX 421 (Whitehouse, Dep. at 146); CX 39 (Taylor, Dep. at 31-33); Mincy, Tr. 350; CX 413 (Kersten, Dep. at 27-28)). For example, Mr. Sweeney testified that his agents enter into buyer agency agreements with over 80% of the buyers his firm represents. (Sweeney, Tr. 1360).

Response to CCPF No. 165:
Respondent has no specific response.

b. Offer of Compensation

166. The cooperating broker is typically paid by the home seller through the listing broker. (Murray, Tr. 153-154). The listing broker makes an offer to compensate, known as an "offer of compensation," to any cooperating broker who is a "procuring cause" of the sale, i.e., finds the buyer that purchases the home. (JX 1-02; Murray, Tr. 153-155; RX 154-A-010).

Response to CCPF No. 166:
Respondent has no specific response.

167. The commission paid by the seller to the listing broker therefore contains two components: the compensation paid by the seller to the listing broker for the listing broker's services; and the offer of compensation paid by the seller to the listing broker that is then offered by the listing broker to potential cooperating brokers through the MLS. (CX 498-A-043).

Response to CCPF No. 167:
Respondent has no specific response.

168. The offer of compensation is unconditional except that the cooperating broker must be the procuring cause of the sale. (JX 1-02; Murray, Tr. 155). The listing broker, and not the home seller, is responsible for paying the offer of compensation to a cooperating broker that is the procuring cause of the sale. (CX 42 (Nead, Dep. at 103-104); CX 37 (Bowers, Dep. at 46); CX 43 (Hardy, Dep. at 115-116); CX 84-001-002; CX 456-006-007 (explaining that NAR anticipated that NAR members would rely on article and that the article "accurately describes the rights, under NAR's MLS Rules and Policies and under NAR's Code of Ethics, of a broker representing a buyer who is the procuring cause of the sale when the listing broker did not collect from the seller the amount of money that was listed in the MLS as the offer of compensation.")).

Response to CCPF No. 168:
Respondent has no specific response.

169. Brokers representing buyers under buyer's agency agreements may be compensated by the buyer or by the offer of compensation, or both, depending on the terms of their agreement with the buyer. (RX 154-A-010; Murray, Tr. 153-154; Mincy, Tr. 351-352).

Response to CCPF No. 169:
Respondent has no specific response.

170. A cooperating broker knows what the offer of compensation is because it is published "very clearly" on the MLS, as is the type of listing agreement in place between the seller and the listing broker, and the level of services being provided by the listing broker. (Murray, Tr. 155, 162-163; RX 154-A-014).

Response to CCPF No. 170:
Respondent has no specific response.

171. Every listing in an MLS must have an offer of compensation associated with it. (JX 1-03; CX 100-010) (Realcomp MLS rule requiring a listing broker "to specify, on each listing field with the MLS, the compensation offered to MLS participants for their services with respect to the sale/lease of the real estate covered by the listing.").

Response to CCPF No. 171:
Respondent has no specific response.

172. In the Realcomp service area, the offer of compensation is usually [redacted]. (CX 498-011, *in camera* (finding from Realcomp's listing data that over [redacted] of new listings had an offer of compensation of [redacted])).

Response to CCPF No. 172:
Respondent has no specific response.

3. Brokers Sometimes Represent Only One Side of the Transaction

173. Listing brokers may sell a property directly to a buyer who is unrepresented by a cooperating broker. (JX 1-05; Sweeney, Tr. 1361, 1364) (admitting that Weir Manuel has sold homes to unrepresented buyers)). For example, Mr. Kersten, President of one of the largest brokerage companies in Southeastern Michigan, testified that when he is working on behalf of a seller, he has encountered an unrepresented buyer, that it "happens all the time in open house," and that he will "absolutely" deal and work with that buyer to close the transaction. (CX 413 (Kersten, Dep. at 9, 45-46); *See also* CX 40 (Elya, Dep. at 55-56) (Realcomp Governor admitting that he deals with unrepresented buyers when acting as a listing broker, that he does not turn the buyer away nor tell them to hire a broker, and that he closes the real estate transaction with unrepresented buyers)).

Response to CCPF No. 173:
It is not common to deal with an unrepresented buyer. (Sweeney, Tr. 1361).

174. It is "not uncommon" for cooperating brokers representing buyers to complete a transaction with a FSBO seller. (RX 154-A-007). In cases where the FSBO seller did not know their buyer, 26% of FSBO sellers reported in 2006 that the buyer was represented by a broker. (CX 373-089). This also occurs in Southeastern Michigan.

(CX 415 (Nowak, Dep. at 9-10); CX 409 (Burke, Dep. at 42); CX 413 (Kersten, Dep. at 45); CX 40 (Elya, Dep. at 58-59)).

Response to CCPF No. 174:
Respondent has no specific response.

B. Types of Listing Agreements

175. There are two different types of listing agreements: Exclusive Right to Sell and Exclusive Agency. (Murray, Tr. 157).

Response to CCPF No. 175:
Respondent has no specific response.

1. Exclusive Right to Sell Agreements

176. An Exclusive Right to Sell listing (ERTS) is a listing agreement whereby the seller appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the broker a commission when the property is sold, whether by the listing broker, the owner or another broker. (CX 32-003-004 (Answer)).

Response to CCPF No. 176:
Respondent has no specific response.

177. In other words, if the home seller finds the home buyer on his or her own (such as through a relative or a friend at work) rather than through the marketing efforts by the listing broker, the listing broker is still entitled to and will receive the entire negotiated commission. (Murray, Tr. 157-158; CX 498-A-015).

Response to CCPF No. 177:
Respondent has no specific response.

178. An example of how an Exclusive Right to Sell listing agreement works when there is and is not a cooperating broker is as follows: Assume the listing agreement calls for a 6% listing commission and an offer of compensation of 3%. If a broker brings a buyer, the seller pays the 6% listing commission and the listing broker keeps 3% and pays the cooperating broker the 3% offer of compensation. (Murray, Tr. 157-158). Under the same assumptions but where there is no cooperating broker, the seller still pays the 6% listing commission and the listing broker will keep the entire 6% commission because there is no cooperating broker to pay. (Murray, Tr. 157-158).

Response to CCPF No. 178:
The assumption is not the only way this works. Amerisell Realty offers flat-fee ERTS listings in Realcomp's service area for $200 more than a non-ERTS listing (Kermath, Tr. 729-31, 791; Eisenstadt, Tr. 1451-1452, 1474; RPF ¶176).

179. Realcomp members' Exclusive Right to Sell contracts are structured so that the listing broker will retain the offer of compensation if there is no cooperating broker in a transaction. (CX 329-001-002; CX 38 (Gleason, Dep. at 37-39); Sweeney, Tr. 1364-1365; D. Moody, Tr. 489-490; Mincy, Tr. 371, 373-374).

Response to CCPF No. 179:
Amerisell Realty is a member of Realcomp (CCPF ¶46). *See also* the Response to CCPF ¶178.

180. Traditionally, brokers using an Exclusive Right to Sell listing provide a full range of real estate brokerage services and charge a commission that is typically between 5-6% of the sales price of the home. (RX 154-A-011-012).

Response to CCPF No. 180:
Respondent has no specific response.

181. There is no minimum services requirement inherent in an Exclusive Right to Sell contract. (CX 43 (Hardy, Dep. at 57-58) (Realcomp President and Governor admitting that Exclusive Right to Sell contracts do not inherently require minimum services); CX 175 (form Exclusive Right to Sell contract from Michigan Association of Realtors); CX 285 (form Exclusive Right to Sell contract for Century 21 Today); CX 43 (Hardy, Dep. at 58-60) (no minimum services required in Century 21 Today Exclusive Right to Sell contract)).

Response to CCPF No. 181:
Respondent has no specific response.

182. Realcomp, however, has required that brokers listing properties under an Exclusive Right to Sell listing provide certain minimum services. (CX 100-004-005). Thus, although there is no inherent requirement that a broker provide "full service" under an Exclusive Right to Sell contract, in the Realcomp MLS, brokers offering fully unbundled or limited services have not been able to use Exclusive Right to Sell listing contracts. (CX 498-A-016).

Response to CCPF No. 182:
Realcomp eliminated its Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626; RPF ¶133).

187. Exclusive Agency contracts are often used by brokers offering an a la carte, or unbundled, menu of brokerage services to the home seller. (RX 154-A-012-013; Murray, Tr. 159, 166). Realcomp members that offer unbundled brokerage services use Exclusive Agency contracts and often charge their clients a flat-fee, payable at the time of listing. (Mincy, Tr. 369-371; Kermath, Tr. 729-731; RX 1-001-002; D. Moody, Tr. 483-485; CX 435-001-002; CX 422 (Aronson, Dep. at 10-11)).

Response to CCPF No. 187:
Realcomp has changed its Rules to eliminate the Minimum Service Definition so that full services are no longer required with an ERTS listing (CX 626; Kage, Tr. 1046-1048; RPF ¶133). Amerisell Realty is a member of Realcomp (CCPF ¶46), and offers flat-fee ERTS listings in Realcomp's service area for $200 more than a non-ERTS listing (Kermath, Tr. 729-731, 791).

C. Brokerage Models

1. Traditional Full Service Brokerage Model

188. Until the advent of widespread Internet usage in the late 1990's and early 2000's, most residential real estate transactions were done through traditional brokerages that provided a full range of services to sellers and buyers. (RX 154-A-015). The vast majority of these transactions were done using Exclusive Right to Sell contracts. (RX 154-A-015; CX 32-003-004 (admitting that the listing agreement traditionally used by full-service brokers is an Exclusive Right to Sell listing)).

Response to CCPF No. 188:
Respondent has no specific response.

189. Brokers in Southeastern Michigan use Exclusive Right to Sell contracts to provide full service brokerage services to their seller clients. (CX 40 (Elya, Dep. at 6, 57); CX 421 (Whitehouse, Dep. at 14); CX 43 (Hardy, Dep. at 23-24, 58) (Century 21 and SKBK full service brokerages; Century 21 uses Exclusive Right to Sell contracts); CX 38 (Gleason, Dep. at 37) (SKBK uses Exclusive Right to Sell contracts); CX 415 (Nowak, Dep. at 8, 12); Sweeney, Tr. 1319, 1322 (describing Weir Manuel as a full-service firm that uses Exclusive Right to Sell contracts); (CX 39 (Taylor, Dep. at 18); Mincy, Tr. 315-316, 320, 371).

Response to CCPF No. 189:
Realcomp eliminated its Minimum Services Definition so that full services are no longer required with an ERTS listing (CX 626; Kage, Tr. 1046-1048; RPF ¶133).

190. Full-service listing brokers in Southeastern Michigan typically charge commission rates between 5-8%. (CX 42 (Nead, Dep. at 8-9) (Suggested commission at Coldwell Banker is

6%); CX 301-004; CX 421 (Whitehouse, Dep. at 15-17) (Hannet, Wilson & Whitehouse has commission rate of 6%); CX 43 (Hardy, Dep. at 37-38) (Century 21 Today commission rate is over 5%); CX 40 (Elya, Dep. at 6-7); CX 38 (Gleason, Dep. at 70-72); CX 331-002 (SKBK Sotheby's has commission rate of 6%); CX 415 (Nowak, Dep. at 14) (Prudential Great Lakes Realty has suggestion commission rate of 6%); CX 378-006 (Weir Manuel Policy Manuel stating that, "The minimum commission acceptable is six (6) percent of the selling price."); CX 410 (Cooper, Dep. at 7-9); CX 413 (Kersten, Dep. at 30-31) (98.5% of his commission rates are 6%)).

Response to CCPF No. 190:
Competition is strong in Southeastern Michigan, in all aspects including commission. (RPF ¶¶ 84,86). CX 331-002 does not state a specific commission rate. On the Realcomp MLS, "traditional" brokers account for a significant proportion (as much as 60^) of the EA listings." (CX 133-014-015, ¶25, n.31). " In the Realcomp service area, discount brokers use ERTS listing contracts with great frequency, and on average at twice the rate of EA contracts. This ratio is about four times higher than in nearby Washtenaw County. (CX 133-030-031, ¶ 45, n.84).

2. Discount, Limited Service Brokerage Model

191. Brokers offering low-cost, unbundled services ("limited service brokers") "offer a low-cost alternative to consumers of residential real estate brokerage services." (RX 154-A-015; Murray, Tr. 166). The types of unbundled services offered by limited service brokers varies and there is often a menu of services or service packages from which sellers can purchase only those services that they feel they require. (CX 498-A-013 (noting that limited service brokers often charge on a fee-for-service basis); RX 154-A-015; CX 533-040).

Response to CCPF No. 191:
Stephen Murray, Complaint Counsel's industry expert, describes FSBO listings as being a substitute for EA listings. (Murray, Tr. 172-173).

192. In effect, the unbundled brokerage service model allows home sellers to purchase a subset of the full range brokerage services (such as listing in an MLS), while "self-supplying" other services. (CX 498-A-014). For instance, a home seller may wish to list their home on the MLS, but show the property, hold open houses, negotiate with buyers, or close the transaction on their own without broker assistance. (CX 498-A-014; RX 154-A-012-013 (providing example that a broker may offer services separately for sale, such as listing the home on the MLS for $500, helping run an open house for $100, etc.)).

Response to CCPF No. 192:
Respondent has no specific response.

193. As recognized by NAR,

> In the past, consumers faced a stark choice: engage a full-service broker or manage the entire process without a real estate professional. With USPs [Unbundled Service Providers] available, a seller may choose to market and negotiate the deal but could then hire a real estate professional to handle certain portions of the real estate transaction such as preparing the contract and conducting the closing. Alternatively, the seller could use a real estate agent to market the property but could negotiate the deal without assistance. The USP model represents an additional choice for consumers who may be willing to perform some but not all of the tasks involved in selling a home.

(CX 533-041-042 ("USP model may be the best of both worlds. It offers additional choice to buyers and sellers in a more transparent transaction where each service is priced separately."); Murray, Tr. 173 (limited service brokers are "between for-sale-by-owners, which is you get nothing, and full-service brokerage companies, and now there's a middle ground there for people who want some services but don't want to pay the full boat.")).

Response to CCPF No. 193:
Respondent has no specific response.

194. Limited service brokers meet a "consumer demand for lower cost brokerage services where consumers are willing to carry out some of the home selling tasks themselves that otherwise would be performed by real estate professionals." (CX 533-041 (noting that this consumer demand has been identified by "established franchisers and start-up companies alike"); RX 154-019, *in camera* ([redacted]); Mincy, Tr. 381 (starting limited service brokerage in Southeastern Michigan when he realized that some consumers felt comfortable doing some real estate services themselves and therefore did not want to pay for those services); CX 534-012 (Consumers using limited service brokers "are making conscious tradeoffs of price for service.")).

Response to CCPF No. 194:
Respondent has no specific response.

195. Limited service brokers often appeal to cost-conscious sellers who might otherwise have sold their properties as FSBO and who are comfortable performing some of the tasks associated with the real estate transaction themselves. (Murray, Tr. 171-172 (price-conscious consumers "are a big part of the consumer segment"); RX 154-A-018 (explaining that limited service brokers have leveraged an "unexploited and underserved segment" - a demand for low-service marketing, and "may be able to capture consumers who otherwise would not use brokerage services at all"); CX 375-020, 027, 029 (limited

service models are "increasingly popular, especially with home sellers who might otherwise go the FSBO (for sale by owner) route."); CX 534-081 ("Sellers who used FSBO and Non Traditional models were much more likely to say they are willing to do more of the work in selling if they can save a lot of money. . . .")).

Response to CCPF No. 195:
Respondent has no specific response.

196. For example, in its 2006 Catalyst for Change paper, NAR explained that, "[m]any consumers are taking more personal control of the real estate process. These buyers and sellers are willing to do more of the work in the transaction in exchange for a discount on commissions and fees – or simply because they want to do it." (CX 404-005; CX 456-005 (work product of the NAR Strategic Issue Work Group "was made publicly available with the intention to be of assistance for the strategic planning of Associations of Realtors and real estate professionals[,]" and "represents the careful and balanced work product of the Strategic Issues Work Group and accurately describes the Work Group's findings.")).

Response to CCPF No. 196:
Respondent has no specific response.

197. Realcomp members who offer low cost, unbundled services testified that they cater to cost-conscious sellers who might otherwise have sold their properties as FSBO and who are comfortable performing some of the tasks associated with the real estate transaction themselves, such as holding open houses or negotiating their own contract. (D. Moody, Tr. 494-495; Mincy, Tr. 378, 381; CX 526 (Groggins, Dep. at 11)). The Executive of Realcomp's largest shareholder board admitted that consumers are willing to do more of the work in the transaction in exchange for a discount on commission and fees. (CX 405 (Baczkowski, Dep. at 99-100); CX 404-005).

Response to CCPF No. 197:
Respondent has no specific response.

198. From an economic perspective, limited service brokers are significant because they are a relatively new business model, facilitated by the Internet, and because they "compete differently" than traditional brokers. (D. Williams, Tr. 1096). As explained by Dr. Williams, Complaint Counsel's economist, limited service brokers compete first by unbundling listing services – they offer to supply sellers with only a portion of the full range of brokerage services. (D. Williams, Tr. 1096-1097). Second, limited service brokers also compete by unbundling their commission structure. (D. Williams, Tr. 1097).

Response to CCPF No. 198:
Respondent has no specific response.

a. Unbundling of Services

199. Limited service brokers compete by unbundling listing services – they offer to supply sellers with only part of the full range of brokerage services. (D. Williams, Tr. 1096-1097). As a result of this unbundling of brokerage service, limited service brokers allow home sellers (and indirectly home buyers) to significantly reduce the costs of selling a home. (CX 498-A-014; CX 533-041 ("In some cases, consumers can save money if they are willing to show properties, market properties, or hold open houses.")).

Response to CCPF No. 199:
This is inaccurate because Amerisell Realty offers ERTS listings, which encompass full service, for only $200 more than Exclusive Agency Listings that do not have those services at Amerisell. (Kermath, Tr. 729; RX 1; RPF ¶114(a)).

200. As Mr. Sweeney testified at trial, some sellers would "absolutely" benefit from using Exclusive Agency arrangements, particularly if the seller has the time, expertise and wherewithal to do parts of the transaction themselves. (Sweeney, Tr. 1322-1323, 1348; CX 349-001-002). Specifically, Mr. Sweeney testified that sellers using a limited service broker could "save significantly" on the price of a commission. (Sweeney, Tr. 1348; CX 350-003 ("In cases where the seller has the time and the expertise to perform these functions himself, an opportunity truly exists for the seller to save significantly on real estate commissions by doing the work himself.")).

Response to CCPF No. 200:
Mr. Sweeney's testimony that sellers can save significantly on the commission is conditioned on the house selling. (Sweeney, Tr. 1348). Where the broker(s) take the risk of a non-sale through payment only through commission, the seller would pay more through a flat-fee for an EA listing, if the house does not sell.

201. In addition, the limited service brokerage model "may increase efficiency" for the firms that adopt it, with the "obvious advantage of lower costs." (CX 533-041).

Response to CCPF No. 201:
Respondent has no specific response.

b. Unbundling of Commissions

202. Limited service brokers also compete by unbundling the commission structure. (D. Williams, Tr. 1097). Under an Exclusive Right to Sell listing contract, the listing broker's commission is bundled with the cooperating broker's commission (i.e., the offer of compensation). (D. Williams, Tr. 1097). Exclusive Right to Sell contracts therefore have a "take-or-pay provision;" consumers must pay for the services of a cooperating broker whether or not a cooperating broker is used in the transaction. (D. Williams, Tr. 1098).

Response to CCPF No. 202:
Amerisell Realty offers flat-fee Exclusive Right to Sell Listings in Realcomp's service area for $200 more than a non-ERTS listing. (RX 1; Kermath, Tr. 729-31, 791; RPF ¶176).

203. Under an Exclusive Agency contract, consumers of brokerage services only pay the commission for the cooperating broker (i.e., the offer of compensation) if the consumers actually receive services from a cooperating broker. (D. Williams, Tr. 1098; Mincy, Tr. 365-066; CX 439; D. Moody, Tr. 489-490; CX 422 (Aronson, Dep. at 6); CX 205-063 (stating seller will pay 3% commission to cooperating broker but that no commission is due if seller procures buyer)).

Response to CCPF No. 203:
The statements are somewhat imprecise and inconsistent. It is more accurate to say that under an EA contract, a seller pays the commission for the cooperating broker (*i.e.,* the offer of compensation) only if the cooperating broker brought the buyer. (*See* Mincy, Tr. 365-366).

D. Competition Among Brokers

1. Competition and Cooperation Between Brokers

204. Real estate brokers compete to obtain listings (to represent sellers) and to represent buyers. (Mincy, Tr. 360-361; CX 410 (Cooper, Dep. at 63) (brokers compete to obtain listings)).

Response to CCPF No. 204:
Respondent has no specific response.

205. Realcomp admits that its members, including its Realcomp Board of Governors, compete with one another to offer residential real estate brokerage services to consumers. (CX 32-002). For example, with the exception of two firms that are geographically distant, both Century 21 Today and SKBK Sotheby's compete with each of the firms of the other members of the Realcomp Board of Governors. (CX 43 (Hardy, Dep. at 24-27); CX 211; CX 41 (Mulvihill, Dep. at 48-49)).

Response to CCPF No. 205:
Respondent has no specific response.

206. Brokers offering limited services and brokers offering traditional, full services also compete with one another for new listings. (CX 421 (Whitehouse, Dep. at 14-15, 21); CX 525 (Adams, Dep. at 44-45); Mincy, Tr. 357, 359; CX 422 (Aronson, Dep. at 18)).

Response to CCPF No. 206:
Respondent has no specific response.

207. Although brokers compete with one another to secure new listings, once a broker secures that listing, he or she may then potentially be in a cooperative relationship with those same or other brokers who are representing buyers. (Mincy, Tr. 361-363).

Response to CCPF No. 207:
Respondent has no specific response.

a. Competition is Local in Nature

208. In its 2006 Profile of Real Estate Firms, NAR found that, "[g]iven the localized nature of many real estate activities, 59 percent of firms report that they primarily serve clients in a particular geographic area." (CX 370-026; CX 406 (Bishop, Dep. at 34-35)).

Response to CCPF No. 208:
Respondent has no specific response.

209. Buyers tend to look for homes to purchase in specific, concentrated geographic areas. The NAR found, in its 2006 Profile of Home Buyers and Sellers, that the median distance that buyers moved – from their previous residence to the home they purchased – was 13 miles nationally, and 12 miles in the Midwest. (CX 373-025; *See also* (CX 406 (Bishop, Dep. at 62)).

Response to CCPF No. 209:
Respondent has no specific response.

210. Brokers in Southeastern Michigan testified to the often narrow geographic markets in which they compete. (CX 410 (Cooper, Dep. at 64, 61-62) (agreeing that "competition in the real estate industry is local in nature"); CX 40 (Elya, Dep. at 15) ("All real estate is local."); CX 43 (Hardy, Dep. at 20) (Home sellers are more comfortable dealing with a local Realtor); CX 39 (Taylor, Dep. at 6) (Most house sales are within a 3 or 4 mile radius of his office); CX 41 (Mulvihill, Dep. at 10-11) (Selling homes within a 25 mile radius of his office); CX 415 (Nowak, Dep. at 11) (It is important for a real estate agent to have knowledge of the areas where they do business)).

Response to CCPF No. 210:
Respondent has no specific response.

b. Competition for Referrals Is An Important Element of Competition Among Brokers

211. Referrals are important for brokers when competing for business representing buyers or sellers. (CX 373-054, 077; CX 372-043, 065; CX 371-042, 061). "[R]ecommendations from friends or family and use of the agent in a previous transaction were two of the chief ways sellers chose an agent. . ." and over 50% of all buyers nationwide between 2003 and 2006 used an agent they found through a referral from a friend, a neighbor, or a relative, or who the buyer knew personally or from a previous transaction. (CX 373-054, 077; CX 372-043, 065; CX 371-042, 061; CX 406 (Bishop, Dep. at 97-98, 107-108)).

Response to CCPF No. 211:
Respondent has no specific response.

212. Both limited and full-service brokers in Southeastern Michigan testified to the importance of a good reputation and a consequent stream of referral business from satisfied customers to their ability to compete for new business. (Sweeney, Tr. 1318 (Referrals are "the most important" source of new business); CX 42 (Nead, Dep. at 19) (80% of her business is from past clients or referrals); CX 40 (Elya, Dep. at 26) (50% of his business comes from referrals and repeat customers); CX 302-001 (referrals account for 60-70% of Mr. Whitehouse's business)).

Response to CCPF No. 212:
Agents offering EA listings do not provide the same level of personal service, and do not compete well with traditional models for trust and professionalism (Murray, Tr. 292; CX 535-0109; RPF ¶¶172, 181).

2. Competition From Limited Service Brokers

213. NAR found in 2003 that limited service brokerages have "the potential to change the competitive landscape of residential real estate brokerage." (CX 533-040). NAR reasoned that, even though limited service brokers "may not currently command significant market share . . . their significance goes beyond their size. They may be serving a customer need that is not currently being served by the dominant players. In addition, they may play a larger role in selected markets or may serve a particular consumer segment better than the dominant models." (CX 533-038).

Response to CCPF No. 213:
Respondent has no specific response.

a. Growth of the Limited Service Brokerage Model

214. In 2003, limited service brokerages were estimated to have a 2% market share nationwide. (RX 154-A-016). According to national consumer surveys taken in 2005,

however, the use of limited service brokers by sellers had grown to 15% of all brokerage services. (RX 154-A-016; Murray, Tr. 166-167; CX 534-039, 041 (finding 15% used limited service brokers and that 37% of sellers considered using them)). Mr. Murray's own experience buttresses the finding that more sellers are using limited service brokers: two national discount chains, Help-U-Sell and Assist2Sell, grew from 300 to more than 1,400 offices during the 2000-2006 time period. (RX 154-A-015-016).

Response to CCPF No. 214:
Mr. Murray found that alternate service brokers declined from 15% to 8% between 2005 to 2006 and they were not gaining the traction that the industry buzz suggested. (Murray, Tr. 289-291; CX 535-0116; RFP ¶¶ 169, 171).

215. Mr. Murray attributes the growth of limited service brokers in part to the rise of the Internet, which made it more efficient for brokers to reach potential buyers and to perform their services on behalf of sellers. (Murray, Tr. 167; RX 154-A-017 ("The Internet afforded Limited Service Brokers the ability to reach greater real estate professional and housing consumer audiences. . . [which] in turn, enabled firms to establish a real estate brokerage at lower costs than before."); CX 498-A-013 (Internet has contributed to the entry of several new models of real estate brokerage services); CX 375-029 ("The rise of the Internet has seen the emergence of [limited service brokers] as a significant competitor to full-service brokerages."); CX 404-005 (the Internet has empowered consumers); CX 534-018 ("While still feeling that the process of selling a home is stressful, more consumers are feeling confident that they can do it themselves or with less assistance for a reduced cost.")).

Response to CCPF No. 215:
Mr. Murray also attributed the growth of limited service brokers to extraordinarily hot markets on the east and west coasts. (Murray, Tr. 167). See also the Response to CCPF ¶ 214.

216. Mr. Murray also attributes the growth of limited service brokers to market conditions. For example, a strong housing market makes some sellers think that they can sell their homes without the full range of brokerage services while also creating a greater price differential between traditional full-service brokers and limited service brokers. (Murray, Tr. 168; RX 154-A-016-017). Alternatively, limited service brokers are an attractive option in poor housing markets where sellers may not have the equity in their home to afford a traditional commission due to low home price appreciation. (RX 154-A-020-021 ("The lack of equity in the housing market in Southeastern Michigan (due to poor economic conditions and low home price appreciation) may therefore provide a fertile ground for the growth of Limited Service Brokers."); Murray, Tr. 169-171).

Response to CCPF No. 216:
Mr. Murray expects these brokers to decline in a buyer's market (Murray, Tr. 168). Kelly Sweeney testified that limited service brokers do not do as well in a buyer's market as in a seller's market. (Sweeney, Tr. 1307, 1326-1329).

217. In Southeastern Michigan, many people may not have equity in their homes and would therefore be "price-conscious shopper[s]" who "are generally going to look for the lowest cost they can to get their homes sold." (Murray, Tr. 169-171 (explaining that lack of home price appreciation, people taking out a hundred percent financing, and no equity in the home will lead people to look for the "lowest-cost alternative they can to sell their home because, whatever it is, they're going to write a check to get out of their house"); RX 154-A-020-021). As explained by Mr. Murray, the strong buyer's market in Southeastern Michigan may therefore provide growth opportunities for limited service brokers because of the likely "fairly high" incidence of "short sales" (when the seller does not have enough equity in the home to pay the remaining balance on the mortgage or closing costs). (Murray, Tr. 169-171; RX 154-A-020-021).

Response to CCPF No. 217:
In a buyer's market, people will be less inclined to take the risk of having an exclusive agent sell their property. (Murray, Tr. 168-169).

218. Mr. Murray's opinion is supported by an industry publication by NAR. (CX 533-042) ("higher unemployment rates may increase the demand for a lower cost [brokerage] service . . . if home prices have declined, sellers may prefer the less expensive [limited service brokerage model] . . . .")).

Response to CCPF No. 218:
Respondent has no specific response.

219. Brokers in Southeastern Michigan offering limited services testified that their services often appealed to sellers without equity in their homes. (Mincy, Tr. 382; Hepp, Tr. 598-599; G. Moody, Tr. 882 (limited services help people in "tough economic times"). For example, Mr. Hepp testified that he has received referrals from full-service brokers when a seller had little or no equity in their house and could not pay a 6% commission. (Hepp, Tr. 598-599 (noting that when a seller has little or no equity in their house, the seller would have to come up with cash to pay the commission.)).

Response to CCPF No. 219:
Respondent has no specific response.

220. Limited service brokers have established themselves in the real estate industry. (CX 375-029) (limited services brokers "are well-established competitors in the real estate industry that provide alternatives to traditional, full-service brokerage.")). In its recent 2006 Catalyst for Change paper, NAR found that, "[i]n the next few years, the real estate

brokerage business is likely to characterized by growing segmentation, with several distinct business models for serving consumers" including discount and flat-fee brokers. (CX 404-010).

Response to CCPF No. 220:
Respondent has no specific response.

b. Limited Service Brokers Put Price Pressure on Commissions

221. Although limited service brokers may appeal to sellers who otherwise may choose to sell their home themselves, limited service brokerages put price pressure on full-service brokerage commissions. (RX 154-A-018; CX 403-007, 009; Murray, Tr. 174). For example, NAR concluded in 2003 that, "[o]nline brokerage models or low-service market discounters will put continuing pressure on broker and agent commissions." (CX 403-009; CX 456-005 (work product of NAR Strategic Issues Work Group "was made publicly available with the intention that it would be of assistance for the strategic planning of Associations of Realtors and real estate professionals[,]" and "represents the careful and balanced work product of the Strategic Issues Work Group and accurately describes the Work Group's findings."); CX 533-026 (noting that traditional brokerage firms "are often challenged by larger [firms] that provide a broader range of services, or by emerging firms who provide a-la-carte services at a lower price."); CX 404-010 ("Price is the differentiator" or value proposition offered by discount brokers in their competition with traditional, full-service brokerages.)).

Response to CCPF No. 221:
Respondent has no specific response.

222. In its 2003 Change is Relentless paper, NAR found that, "[a] growing percentage of consumers are asking agents to reduce their commissions. This has been sparked by awareness of discounted online and limited-service models, and remains a challenge for full-service agents. 'So far, I have been able to explain to customers why my commission rate is fair – so far,' says a top agent." (CX 403-007; *See also* Murray, Tr. 175-176 (testifying that quote is consistent with his experience with brokers "of all kinds across the country for the last five to seven years.")).

Response to CCPF No. 222:
Respondent has no specific response.

223. "The more well known non-traditional models are, the more they are considered and used." (CX 534-007). [redacted] (CX 535-138, *in camera*). As explained by Mr. Murray, "Any time you have a competitor in the market who is offering perhaps a little bit fewer

services and lower price to some degree, it's going to induce some competition on price into the marketplace." (Murray, Tr. 174; RX 154-A-018-019 ("Limited Service Brokers have been able to apply price pressure on full service brokerages at least in part because sellers have become more aware of these alternatives being available.")).

Response to CCPF No. 223:
Respondent has no specific response.

224. Seller awareness of limited service brokers has been growing steadily, which impacts competition between limited service brokers and full-service brokers because "if more sellers are aware that there are alternatives that are lower cost, the more sellers are going to at least investigate it and see if that fits them." (Murray, Tr. 174-175; RX 154-019-020, *in camera*; CX 535-031, *in camera* (2006 study finding [redacted]); CX 534-028-029 (2005 study showing that 69% of sellers were aware of non-traditional service models); CX 403-007 ("Pricing pressures. A growing percentage of consumers are asking agents to reduce their commissions. This has been sparked by awareness of discounted online and limited-service models and remains a challenge for full-service agents.")).

Response to CCPF No. 224:
Respondent has no specific response.

225. Home sellers have asked full service brokers to explain why their fees are higher than the alternative brokers. (Sweeney, Tr. 1323; CX 350-008 (Mr. Sweeney advised his agents on how to "Protect[] Your Commission" in the face of potential discounting that has become "much more prevalent around the country.")).

Response to CCPF No. 225:
Respondent has no specific response.

226. In Southeastern Michigan, Mr. Whitehouse testified that discount brokers are putting pressure on the commissions of full service brokers, causing full service brokers to have to explain the value of their services to their clients and find ways to resist this pressure. (CX 421 (Whitehouse, Dep. at 25-28); *See also* CX 303-001-002; CX 304). Specifically, Mr. Whitehouse testified as follows:

> Q. So you would agree that full service brokers are in competition with discount brokers, right?
>
> A: Absolutely. We're in competition with every brokerage.
>
> Q: And they have to find ways to resist the pressure from discount brokers, right?

A: I would say so, yes.

Q: One of the things discount brokers are putting pressure on is the commission rates, right?

A: Um-hum. Yes.

(CX 421 (Whitehouse, Dep. at 25)).

Response to CCPF No. 226:
Respondent has no specific response.

E. The Multiple Listing Service

227. Cooperation among brokers operating in almost every local marketplace around the country is facilitated through the local MLS. (RX 154-A-029). A "primary role" of the MLS is to "provide a method for the [member] brokerage firms to cooperate with each other to better serve the buyers and sellers. This has included sharing information on properties that they have listed for sale . . . and creating rules governing how they will work and operate which includes the ability of one broker to offer compensation to another broker." (CX 414 (Niersbach, Dep. at 23-24); CX 380-011).

Response to CCPF No. 227:
Respondent has no specific response.

228. In addition to serving as a database of properties for sale, the MLS facilitates an orderly and efficient marketplace by providing systematic and enforceable rules governing the sale of listed properties. (RX 154-A-025-026; CX 375-021 ("Agents can conduct business confidently [through the MLS] because they are reasonably assured that transactions follow established rules."); CX 414 (Niersbach, Dep. at 27)).

Response to CCPF No. 228:
Respondent has no specific response.

229. As Mr. Murray explained at trial, a purpose of the MLS is to facilitate cooperation between brokers by disseminating information about property listings, not to guarantee employment or compensation to participating brokers. (Murray, Tr. 203). Indeed, the amount of compensation, if any, paid by a seller to a listing broker has no impact on the efficient functioning of the MLS. (Murray, Tr. 203).

Response to CCPF No. 229:
Realcomp is organized for the purpose of serving its members' interests (JX 1, ¶ 43). Realcomp's primary function is the operation of the Realcomp MLS (JX 1, ¶ 44). Accordingly, there is a concern that Realcomp's members are receiving compensation.

(CX 35 (Kage Dep. at 37)). "The purpose of our MLS is to facilitate the sale of properties between listing and selling agents and, in turn, ensure compensation for both parties . . ." (CX 212). *See also,* CCPF ¶ 314 (reflecting the importance of including a unilateral offer of compensation to Realtors for every listing in the MLS).

230. Realcomp members also testified that a purpose of the MLS is to facilitate cooperation between participants. (CX 42 (Nead, Dep. at 134 (The MLS is "there to enhance the sharing of information."); (CX 43 (Hardy, Dep. at 140-141) (The "real reason [for the MLS] is to accumulate and disseminate information between participants.")).

Response to CCPF No. 230:
It is inaccurate to suggest that the identification of one purpose excludes other purposes, or that various purposes are not related. Generally, an MLS levels the playing field between large and small brokers (RPF ¶97), and facilitates the subagency relationship between listing and selling brokers (Realcomp's Proposed Conclusions of Law ¶300).

231. MLSs, such as Realcomp, that are affiliated with NAR must follow the mandatory provisions of NAR's MLS Policies and Rules. (CX 414 (Niersbach, Dep. at 36-37)).

Response to CCPF No. 231:
Complaint Counsel's statement is correct only if the MLS wishes to remain compliant with NAR. One option is to cease being a member of NAR, and another option is to see if an exception can be obtained from NAR. (Kage, Tr. 999-1000).

1. The Closed MLS Database

232. The general public cannot list their home in the MLS – or search the MLS for a home – without using a real estate broker who is a member of the MLS. (JX 1-04; RX 154-A-025).

Response to CCPF No. 232:
Respondent has no specific response.

233. Specifically, FSBO sellers are generally not allowed to list their properties in their local MLS. (RX 154-A-007). For example, FSBO sellers are not allowed to list their properties in the Realcomp MLS. (JX 1-04 (stipulating that a seller must have a listing agreement with a Realcomp member to have their home listed on the Realcomp MLS); JX 1-08 (stipulating that FSBO properties are not permitted on the Realcomp MLS)).

Response to CCPF No. 233:
Respondent has no specific response.

a. Disseminating Information Among Brokers

234. The listing in the MLS will include details about the home, such as the number of bedrooms, baths and square footage, as well as the offer of compensation to any cooperating broker who is the "procuring cause" of a sale of the property, the type of listing agreement, and the level of services being provided by the listing broker. (Mincy, Tr. 327-335; CX 426; Murray, Tr. 155, 162-163; RX 154-A-009).

Response to CCPF No. 234:
Respondent has no specific response.

235. In its Consumed Services White Paper, NAR found that, "[t]he most emphasized function of the MLS is the listings service: a central repository for ads for salable properties. These ads (listings) are submitted by a specific real estate agent or broker and serve as a way to notify other real estate professionals and the home buying public about the availability of a home." (CX 375-021; CX 456-004 (the Consumed Services White Paper was designed to accurately describe the real estate industry and, before distribution, was determined to be accurate and reliable)).

Response to CCPF No. 235:
Respondent has no specific response.

b. Means to Make Offers of Cooperation

236. The MLS is the only mechanism NAR is aware of "that provides a platform and rules or procedures for brokers to cooperate with each other." (CX 414 (Niersbach, Dep. at 48)).

Response to CCPF No. 236:
Respondent has no specific response.

237. The ability to include an offer of compensation, which is enforceable through binding arbitration, separates the MLS from all other aggregations of home listing information. (RX 154-A-026; CX 220 (one of the purposes of the MLS is to provide a "means by which authorized Participants make blanket unilateral offers of compensation to other Participants.")).

Response to CCPF No. 237:
Respondent has no specific response.

238. As Realcomp admits, one of "the most important features that separate the MLS from mainstream advertising options [has] to do with . . . the inclusion of a blanket unilateral offer of compensation to Realtors for every listing in the MLS. While other advertising options may do a good job of providing exposure, their business models do not include protecting your compensation." (CX 220).

Response to CCPF No. 238:
Respondent has no specific response.

239. In its Consumed Services White Paper, NAR stated that, "[e]qually important . . . MLS functions include rules enforcement and a means of agreeing on compensation among MLS participants. Everyone who uses the MLS listings database agrees to the rules of compensation determined by its membership." (CX 375-021 (finding that "[t]he unification of the listings database and a guarantee of compensation create much of the value that the MLS provides to the marketplace.")).

Response to CCPF No. 239:
Respondent has no specific response.

2. Dissemination of Listings to Public Websites

240. In addition to operating a closed database of information about properties for sale that are listed by its members, MLSs also disseminate listing information to certain public websites that can be searched by members of the public. (Murray, Tr. 145-146, 206; RX 154-A-034-035 (explaining that the Internet has "revolutionized" the real estate brokerage industry.)).

Response to CCPF No. 240:
Respondent has no specific response.

241. Through public websites that are fed listing information by MLSs, home buyers have direct access to information regarding the thousands of listings by MLS members and have the ability to search them based on a variety of criteria, such as price, location, type of dwelling (single-unit, multi-unit, etc.), and characteristics of the property. (CX 498-A-012; RX 154-A-039).

Response to CCPF No. 241:
Respondent has no specific response.

242. MLSs do not provide all of the listing information that is on the MLS in their feed to public Internet websites, such as information about offers of compensation and agent remarks. (RX 154-A-035; CX 40 (Elya, Dep. at 81-82)). For example, members of the public searching Realcomp listings online do not typically know what type of listing agreement – whether an Exclusive Agency or Exclusive Right To Sell listing – is in place between the seller and their Listing broker. (JX 1-04).

Response to CCPF No. 242:
Respondent has no specific response.

a. Public Websites

243. Many MLSs, including Realcomp, disseminate listing information to Realtor.com, the official consumer website for the National Association of Realtors. (CX 412 (Goldberg, Dep. at 25, 35); Murray, Tr. 206-207). Realtor.com is operated by Move, Inc., pursuant to an operating agreement with the National Association of Realtors. (CX 412 (Goldberg, Dep. at 6-7, 22-23, 25-26); CX 360 (Operating Agreement)).

Response to CCPF No. 243:
Respondent has no specific response.

244. Many MLSs, including Realcomp, also operate their own public websites, known as MLS public websites. (RX 154-A-047-048; Murray, Tr. 207-208). For example, Realcomp provides an exclusive feed of listing information to MoveInMichigan.com, which Realcomp owns and operates, based on listings in the Realcomp MLS database. (RX 154-A-049; Murray, Tr. 207-208).

Response to CCPF No. 244:
Respondent has no specific response.

b. Internet Data Exchange (IDX)

245. The majority of MLSs, including Realcomp, also provide listing information to the public websites of its broker members, known as "IDX websites." (Murray, Tr. 208-210). IDX (Internet Data Exchange) is a set of rules and policies that set forth how a local brokerage firm may receive and display on the broker's own website the listings of other MLS members. (Murray, Tr. 208-210; RX 154-A-059-060; CX 414 (Niersbach, Dep. at 50, 55)).

Response to CCPF No. 245:
Respondent has no specific response.

246. Through IDX, broker websites are able to display listing information from their local MLS database so that consumers can go to the broker's website and search for available properties of all participating MLS members. (Murray, Tr. 208-210; CX 405 (Baczkowski, Dep. at 85)). In essence, MLSs provide a feed of MLS property listings (referred to as an "IDX feed") that enables MLS members, with the consent of listing brokers, to display MLS listing information on their own broker websites. (Murray, Tr. 208-210; RX 154-A-059-060; CX 414 (Niersbach, Dep. at 50)).

Response to CCPF No. 246:
Respondent has no specific response.

247. For the 91% of firm websites nationwide that contain searchable property listings, the IDX feed is how those firms obtain listings other than their own. (RX 154-A-060). For example, a customer is Southeastern Michigan can visit Remax.com, one of the large franchise brokerage websites, and view properties in Southeastern Michigan that are listed by all different brokers, such as Century 21 Town & Country and Weir Manuel, in Realcomp's MLS that participate in the IDX feed. (Murray, Tr. 209-210; RX 154-A-060).

Response to CCPF No. 247:
Respondent has no specific response.

IV. RESPONDENT: REALCOMP II LTD.

A. Realcomp's Corporate Structure

248. Realcomp is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan. (JX 1-06).

Response to CCPF No. 248:
Respondent has no specific response.

249. Realcomp's office and principal place of business is located at 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334. (JX 1-06).

Response to CCPF No. 249:
Respondent has no specific response.

250. Realcomp was founded in November 1993 and started doing business in January 1994. (CX 36 (Kage, IHT at 10)). Realcomp started out with about 7000 members and in August 2006 Realcomp had grown to 14,850 members. (CX 36 (Kage, IHT at 10)).

Response to CCPF No. 250:
Realcomp presently has approximately 13,800 members. (Kage, Tr. 1026).

251. Realcomp was formed in 1993 after six boards and associations of Realtors merged to form Realcomp. (CX 54; CX 56; CX 88).

Response to CCPF No. 251:
Seven boards and associations merged to form Realcomp. (CX 54)

252. The Birmingham Bloomfield Board had its own MLS, prior to merging into Realcomp. (Kage, Tr. 898).

Response to CCPF No. 252:
Respondent has no specific response.

1. Realcomp's Ownership

253. Realcomp is currently owned by seven shareholder Realtor boards and associations. (Kage, Tr. 900).

Response to CCPF No. 253:
Respondent has no specific response.

254. The seven shareholder owner boards of Realcomp are: The Dearborn Board of Realtors, Detroit Association of Realtors, Eastern Thumb Association of Realtors, Livingston Association of Realtors, Metropolitan Consolidated Association of Realtors, North Oakland County Board of Realtors, and the Western-Wayne Oakland County Association of Realtors. (JX 1-03).

Response to CCPF No. 254:
Respondent has no specific response.

255. Each Realcomp shareholder owner board is comprised of competing Realtor members. (Kage, Tr. 900-901; CX 32-002 (Answer)).

Response to CCPF No. 255:
Respondent has no specific response.

256. A Realcomp shareholder must be a Realtor board or association that is a member in good standing of the National Association of Realtors. (JX 1-03).

Response to CCPF No. 256:
Respondent has no specific response.

2. Realcomp's Governance

257. The Realcomp Board of Governors are made up of representatives from each of the seven shareholder owner associations of Realcomp. (Kage, Tr. 901; CX 36 (Kage, IHT at 7-8)).

Response to CCPF No. 257:
Respondent has no specific response.

258. The business and affairs of Realcomp are conducted by its Board of Governors. (JX 1-03; CX 59-010).

Response to CCPF No. 258:
Respondent has no specific response.

259. Each shareholder board or association selects one Governor and one Alternate to the Realcomp Board of Governors. (JX 1-03).

Response to CCPF No. 259:
Respondent has no specific response.

260. Each Realcomp Governor must be a Realtor. (Kage, Tr. 901).

Response to CCPF No. 260:
Respondent has no specific response.

261. The Realcomp Board of Governors is made up of people from different real estate firms. (Kage, Tr. 901; CX 211).

Response to CCPF No. 261:
Respondent has no specific response.

262. According to the Realcomp Bylaws, the Board of Governors shall consist of "no more than eighteen (18) members, with two (2) Governors and one (1) Alternate Governor to be selected by each of the six Shareholders." (CX 59-010).

Response to CCPF No. 262:
Respondent has no specific response.

263. According to the Realcomp Bylaws, one of the Governors from each Shareholder must be "actively practicing real estate." (CX 59-011).

Response to CCPF No. 263:
Respondent has no specific response.

264. Each shareholder owner of Realcomp selects their representatives on the Realcomp Board of Governors. (CX 36 (Kage, IHT at 12); JX 1-03). Each board member serves a 3 year term. (CX 36 (Kage, IHT at 13)).

Response to CCPF No. 264:
Respondent has no specific response.

265. The 2007 Realcomp Board of Governors are made up of Realtors from numerous different brokerage firms which compete with one another for business in Southeastern Michigan. (JX 1-10; CX 211; CX 35 (Kage, Dep. 19-20)).

Response to CCPF No. 265:
The documents and testimony merely list the Board of Governor members and their contact information. Southeastern Michigan's residential real estate market is, however, very competitive. (RPF ¶¶84-85).

266. According to Realcomp, "The role of the Board of Governors is to be knowledgeable about the challenges and issues, provide oversight of the organization and always focus on the best interests of Realcomp." (CX 217).

Response to CCPF No. 266:
Respondent has no specific response.

267. The Realcomp Board of Governors is ultimately responsible for the actions of Realcomp and its employees. (CX 42 (Nead, Dep. at 56-57)).

Response to CCPF No. 267:
Respondent has no specific response.

268. The Realcomp Board of Governors have the authority to set and approve the MLS rules, to authorize the officers to engage in activities to make the MLS work, and to make sure that the rules are effective for members. (CX 38 (Gleason, Dep. at 19); CX 36 (Kage, IHT at 11-12, 25); CX 415 (Nowak, Dep. at 31)). Karen Kage attends all of the Board of Governors meetings. (Kage, Tr. 902).

Response to CCPF No. 268:
The Board of Governors needs shareholder approval for certain actions. (CX 38 (Gleason, Dep. at 19)). Kage testified that she attended committee and Board of Governors meetings, but not that she was responsible for attending *all* meetings. (Kage, Tr. 899, 902).

269. Karen Kage prepares the information packets for the Realcomp Board of Governors, including any proposed changes to the Realcomp Rules and Regulations that come out of the Realcomp MLS User Committee meetings. (CX 36 (Kage, IHT at 26-27)).

Response to CCPF No. 269:
Respondent has no specific response.

270. The MLS User Committee discusses issues regarding the MLS Rules and Regulations and can then make recommendations to the Realcomp Board of Governors. (Kage, Tr. 901). Karen Kage attends most MLS User Committee meetings. (Kage, Tr. 902).

Response to CCPF No. 270:
Respondent has no specific response.

271. As CEO of Realcomp, Karen Kage needs to be familiar with the Realcomp Rules and Regulations in order to do her job. (CX 36 (Kage, IHT at 25-26)). She stays current with the changes to the MLS Rules and Regulations. (CX 36 (Kage, IHT at 25-26)).

Response to CCPF No. 271:
Respondent has no specific response.

272. The Board of Governors decides whether or not to adopt recommendations from the MLS User Committee. (Kage, Tr. 902; CX 92).

Response to CCPF No. 272:
Respondent has no specific response.

273. The Board of Governors passes a motion with the approval of the majority of the Governors. (CX 59-018; CX 54-027). If the Board of Governors adopts a recommendation from the MLS User Committee, then the Realcomp Rules and Regulations are changed accordingly. (Kage, Tr. 902-903).

Response to CCPF No. 273:
Respondent has no specific response.

274. The October 2006 Realcomp Rules and Regulations are the current Rules and Regulations. CX 35 (Kage, Dep. at 7); CX 100; Kage, Tr. 973).

Response to CCPF No. 274:
Realcomp recently changed its Rules to repeal the Search Function Policy and change the definition of ERTS, so that full services are no longer required with an ERTS listing. (RX 160). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

275. The Realcomp Board of Governors approved the October 2006 Rules and Regulations. (CX 35 (Kage, Dep. at 8)).

Response to CCPF No. 275:
Respondent has no specific response.

276. Realcomp members have to abide by the Realcomp Rules and Policies. (CX 35 (Kage, Dep. at 16); CX 90).

Response to CCPF No. 276:
Respondent has no specific response.

277. The Realcomp Board of Governors approve any changes to the Realcomp Policy Handbook. (CX 35 (Kage, Dep. at 15-16); CX 90).

Response to CCPF No. 277:
Respondent has no specific response.

3. Realcomp's Membership

278. Realcomp currently has over 2,200 real estate office members in Southeastern Michigan. (Kage, Tr. 903).

Response to CCPF No. 278:
Respondent has no specific response.

279. Realcomp currently has about 14,000 members, consisting of both real estate brokers and real estate agents, who "compete with one another to provide residential real estate brokerage service to customers." (CX 32-002 (Answer); Kage, Tr. 903).

Response to CCPF No. 279:
Respondent has no specific response.

280. Realcomp's membership has grown over the years. In January 2004, Realcomp had 11,700 members, "nearly one half of all Realtors in the state." (CX 221-003). In May 2004, Realcomp had 12,248 members and 1,800 subscribing real estate brokerage offices. (CX 219-003).

Response to CCPF No. 280:
Respondent has no specific response.

281. In November 2006, Realcomp told NAR that its members accounted for "almost half of all Realtors in the state." (CX 233).

Response to CCPF No. 281:
Respondent has no specific response.

282. Realcomp is the largest MLS in Michigan, meaning that Realcomp has the most members of any MLS in Michigan. (Kage, Tr. 993; JX 1-06).

Response to CCPF No. 282:
Respondent has no specific response.

283. Realcomp advertises to the public that it is the largest MLS in Michigan. (Kage, Tr. 911).

Response to CCPF No. 283:
Respondent has no specific response.

284. Realcomp told its members that "the goal of the Realcomp Board of Governors is to continue to merge with neighboring MLSs in order to bring you more information and eliminate the need for yet another property search database." (CX 31).

Response to CCPF No. 284:
Respondent has no specific response.

285. A Realcomp member is any person authorized by Realcomp to access, use or enjoy the benefits of the Realcomp MLS in accordance with Realcomp's bylaws, policies, rules and regulations. (JX 1-03).

Response to CCPF No. 285:
Respondent has no specific response.

286. Realcomp's membership is open to any real estate broker who is a member of one of the shareholder boards. (Kage, Tr. 900-901; CX 410 (Cooper, Dep. at 26-28); CX 210 (application for Realcomp membership requiring applicant to submit license number any board affiliation)). Thus, any Michigan licensed real estate broker can join NAR and one of the shareholder boards, and in turn join Realcomp. (D. Williams, Tr. 1100; CX 414 (Niersbach, Dep. at 9) (explaining that once a broker joins the local association of Realtors, they automatically become members of the state and National Association of Realtors)).

Response to CCPF No. 286:
Respondent has no specific response.

287. All Realcomp members are NAR members. (JX 1-03 (providing that a shareholder of Realcomp "must be a Realtor Board or Association that is a member in good standing of the National Association of Realtors."); CX 100-003 (Realcomp MLS rules defining a "Participant" as a "Realtor eligible to receive MLS")).

Response to CCPF No. 287:
Respondent has no specific response.

288. Realcomp is organized for the purpose of serving its members' interests. (JX 1-06).

Response to CCPF No. 288:
Respondent has no specific response.

289. Some of the Realcomp members are appraisal companies, which also have agents. (Kage, Tr. 903; CX 127; CX 138 (example of a Realcomp appraisal agent).

Response to CCPF No. 289:
Appraisers who are members of Realcomp need not have agents. (Kage, Tr. 903).

290. Each Realcomp member is required to hold an active real estate license, an active appraiser license, or both. (JX 1-06).

Response to CCPF No. 290:
Respondent has no specific response.

291. Each broker member has to agree to abide by the Realcomp Rules and Regulations, and the policies and procedures in the Realcomp II Ltd. Policy Handbook. (JX 1-03; CX 212; CX 35 (Kage, Dep. at 20-22)).

Response to CCPF No. 291:
Realcomp notes that the citation to CX 212 is inaccurate.

292. Each Realcomp broker member has to sign a "Realcomp II Ltd. Application for Participation" in order to join Realcomp. (CX 36 (Kage, Dep. at 16-17); CX 210). By signing this application, the Realtor "agrees to abide by the Bylaws, Policies, Rules & Regulations and all official guidelines of the Realcomp II Ltd. Multiple Listing Service." (CX 210-001; CX 35 (Kage, Dep. at 17)).

Response to CCPF No. 292:
Respondent has no specific response.

293. Realcomp fines brokers for violating any of the Realcomp Rules or Policies are assessed to the broker, not the agent, because the broker is responsible for all listings from his or her office. (CX 36 (Kage, IHT at 105-106)).

Response to CCPF No. 293:
Respondent has no specific response.

B. Realcomp's Association With the National Association of Realtors

294. The NAR handles policies, procedures and lobbying on behalf of its over 800 MLS board and association members. (Kage, Tr. 900).

Response to CCPF No. 294:
Respondent has no specific response.

295. Each of the Realcomp shareholder owner boards is affiliated with NAR. (Kage, Tr. 900).

Response to CCPF No. 295:
Respondent has no specific response.

296. Realcomp is affiliated with NAR by virtue of its ownership by NAR-affiliated Associations of Realtors. (CX 36 (Kage, IHT at 10-11)). Therefore, Realcomp has to follow the NAR rules. (CX 36 (Kage, IHT at 11)).

Response to CCPF No. 296:
Respondent has no specific response.

297. Realcomp has been affiliated with NAR since its inception. (Kage, Tr. 972).

Response to CCPF No. 297:
Respondent has no specific response.

298. Karen Kage testified that the Realcomp Bylaws require that Realcomp abide by NAR's rules, so Realcomp adopts NAR changes into its own rules and then sends a communication out to Realcomp members letting them know of the rule changes. (Kage, Tr. 971-972; CX 36 (Kage, IHT at 27-28)).

Response to CCPF No. 298:
Respondent has no specific response.

C. The Realcomp MLS Member Services

299. Realcomp services the territory within Southeastern Michigan, including Livingston county, Oakland county, Macomb county and Wayne county. (JX 1-06).

Response to CCPF No. 299:
Respondent has no specific response.

300. Every Realcomp member pays the same basic fees to become a member: Office fee of $75.00 per quarter per participating office and Usage fee of $99.00 per quarter per Realcomp participant. (Kage, Tr. 903-904; CX 222-002; CX 35 (Kage, Dep. at 41-42)).

Response to CCPF No. 300:
Respondent has no specific response.

301. All members of Realcomp, including members who offer alternative business models, pay the same dues to Realcomp. (Kage, Tr. 903-904; CX 35 (Kage, Dep. at 22); CX 210).

Response to CCPF No. 301:
Respondent has no specific response.

302. Realcomp sends a monthly magazine, Real Solutions to its members to update them on the services offered by Realcomp. (CX 42 (Nead, Dep. at 53-54); CX 279 (marked as CX 105 at deposition)).

Response to CCPF No. 302:
Respondent has no specific response.

1. The Realcomp MLS Database

303. The main service that Realcomp offers its members is the MLS. (Kage, Tr. 907).

Response to CCPF No. 303:
Respondent has no specific response.

304. The purpose of the Realcomp MLS is to represent the best interests of Realtor participants who pay dues to Realcomp. (Kage, Tr. 903; CX 212; CX 35 (Kage, Dep. at 21)).

Response to CCPF No. 304:
Respondent has no specific response.

305. The Realcomp MLS online system is available 24 hours a day. (Kage, Tr. 907). The Realcomp MLS online system enables members with internet access to access the Realcomp MLS online from any computer. (Kage, Tr. 907-908).

Response to CCPF No. 305:
Additionally, in this day in age, MLS systems like Realcomp are entirely computer based. (Murray, Tr. 78).

306. Each Realcomp member has a log-in name and password to access the Realcomp MLS online system. (Kage, Tr. 908).

Response to CCPF No. 306:
Respondent has no specific response.

307. The Realcomp MLS allows members to upload up to six photos per listing. (Kage, Tr. 909).

Response to CCPF No. 307:
Respondent has no specific response.

308. The Realcomp MLS allows each listing to include a virtual tour, which is like a rotating 360-degree photo of the home, enabling consumers or agents to get a better idea of all the rooms in the home. (Kage, Tr. 909).

Response to CCPF No. 308:
Respondent has no specific response.

309. Realcomp enables its members to email MLS listing information to consumers, and these emails include Google Maps, which are popular among consumers. (CX 237-001; CX 35 (Kage, Dep. at 107-109)). Realcomp touted this new feature to its members. (CX 237-001; CX 35 (Kage, Dep. at 107-109)).

Response to CCPF No. 309:
Respondent has no specific response.

310. Realcomp wants the information in the Realcomp MLS to be accurate at all times, because accuracy is important to Realcomp members to be able to "do their job." (Kage, Tr. 908; CX 35 (Kage, Dep. at 30, 35-36)).

Response to CCPF No. 310:
Respondent has no specific response.

311. One of Realcomp's goals is to "maintain the value of the MLS content and provide the highest possible quality of information." (CX 217; CX 35 (Kage, Dep. at 29-30)).

Response to CCPF No. 311:
Respondent has no specific response.

312. Each month, Realcomp sends a newsletter to all of the Realcomp members, and Karen Kage writes an article called "Straight Talk." (Kage, Tr. 909-910 (Karen Kage wants the Straight Talks to be truthful and accurate)).

Response to CCPF No. 312:
Respondent has no specific response.

313. In the February 2007, Straight Talk, Karen Kage stated that the MLS is:

> A facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public; a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law); a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; [a] means by which Participants engaging in real estate appraisal contribute to common databases. (CX 220; CX 35 (Kage, Dep. at 34-35); Kage, Tr. 910-911).

Response to CCPF No. 313:
Ms. Kage's definition of MLS was framed as, "According to NAR . . ." Additionally, there should be parentheses around the "a" after the first semicolon.

314. According to Karen Kage, "the most important features that separate the MLS from mainstream advertising options have to do with: 1) the accuracy and timeliness of the property database that is created and maintained by Realtors for Realtors and 2) the inclusion of a blanket unilateral offer of compensation to Realtors for every listing in the MLS." (CX 220; CX 35 (Kage, Dep. at 34-38)).

Response to CCPF No. 314:
Respondent has no specific response.

315. Karen Kage believes that there is power in the modern MLS. (CX 221-002).

Response to CCPF No. 316:
Respondent has no specific response.

316. Realcomp highlights to consumers the "market power and benefits of Multiple Listing Service." (CX 78-003; CX 35 (Kage, Dep. at 51)).

Response to CCPF No. 316:
CX 78 is an article aimed at consumers regarding the value of a full-service broker. One of the expectations a consumer should have is for the realtor to "explain market power and benefits of MLS."

a. Requirements for Dissemination of Listings Among Members

317. A home seller has to have a contract with a Realcomp member listing agent in order to get their listing onto the Realcomp MLS. (CX 36 (Kage, IHT at 37); Kage, Tr. 972; JX 1-04; CX 35 (Kage, Dep. at 97-98)).

Response to CCPF No. 317:
Respondent has no specific response.

318. Realcomp admitted that "The agreement for services is between the seller and listing broker, and the agreement is valid regardless of the level of these services." (CX 29; CX 36 (Kage, IHT at 139-140)).

Response to CCPF No. 318:
Respondent has no specific response.

319. Realcomp allows only "exclusive listings," which are listings under which the seller is represented by one agent and one agent only. (CX 42 (Nead, Dep. at 98-99)). All listings on the Realcomp MLS are therefore exclusive, regardless of listing type. (CX 42 (Nead, Dep. at 100)).

Response to CCPF No. 319:
Respondent has no specific response.

320. Realcomp requires its members to input all of their listings into the Realcomp MLS, unless a seller chooses not to have their listing in the MLS. (CX 100-004; CX 36 (Kage, IHT at 28); CX 35 (Kage, Dep. at 8)). Realcomp members are fined if they are in violation of this rule. (CX 36 (Kage, IHT at 102)).

Response to CCPF No. 320:
Respondent has no specific response.

321. Any listing submitted to the Realcomp MLS "is subject to the rules and regulations of the Service upon signature of the seller(s)/lessor(s)." (CX 100-004; CX 35 (Kage, Dep. at 9); Kage, Tr. 973).

Response to CCPF No. 321:
Respondent has no specific response.

322. There is no requirement under the Realcomp rules for a member to have a cooperating broker who is a Realcomp member. (Kage, Tr. 979; JX 1-05). A Realcomp member who has a listing in the Realcomp MLS can sell houses to a non-represented buyer, or to a buyer represented by a broker or agent who is not a Realcomp member. (Kage, Tr. 979).

Response to CCPF No. 322:
Respondent has no specific response.

i. Listing Information

323. When a Realcomp member inputs a listing into the Realcomp MLS, the member must fill in the listing type field with either Exclusive Right to Sell, Exclusive Agency, Limited Service or MLS Entry Only. (CX 36 (Kage, IHT at 35); Kage, Tr. 973).

Response to CCPF No. 323:
Respondent has no specific response.

324. The listing type field has been a mandatory field for Realcomp participants for a while. (Kage, Tr. 974). The listing type is shown in bold in the right hand corner of each Realcomp listing, making this information readily available to Realcomp members. (CX 248; CX 35 (Kage, Dep. at 129-130)).

Response to CCPF No. 324:
Respondent has no specific response.

ii. Listing Types

325. Realcomp does not require that brokers who list properties pursuant to any listing agreement on the Realcomp MLS be compensated at all, whether by commission or otherwise. (JX 1-04; CX 42 (Nead, Dep. at 105-107).

Response to CCPF No. 325:
Respondent has no specific response.

326. A listing broker could agree not to receive any form of compensation from the seller. (Kage, Tr. 976).

Response to CCPF No. 326:
Respondent has no specific response.

(1) Exclusive Right to Sell/ Full Service

327. Realcomp admitted that an Exclusive Right to Sell listing (ERTS) is a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner's stated terms, and agrees to pay the broker a commission when the property is sold, whether by the listing broker, the owner or another broker. (CX 32-004 (Answer)).

Response to CCPF No. 327:
Respondent has no specific response.

328. Realcomp admitted that an Exclusive Right to Sell listing is the form of listing agreement traditionally used by listing brokers to provide full service residential real estate brokerage services. (CX 32-004 (Answer)).

Response to CCPF No. 328:
Realcomp has eliminated the Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626).

329. In October 2006, Realcomp defined an Exclusive Right to Sell listing as the "conventional form of listing submitted to the Multiple Listing Service." (CX 42 (Nead, Dep. at 102); CX 100-004).

Response to CCPF No. 329:
Respondent has no specific response.

330. Karen Kage admitted that "Any reference to Exclusive Right to Sell (ERTS) in the MLS also means that the listing is a Full Service listing." (CX 223; CX 35 (Kage, Dep. at 52)).

Response to CCPF No. 330:
Realcomp has eliminated the Minimum Service Definition so that full services are no longer required with an ERTS listing, and notes that the reference to CX 223 should be to CX 29.

331. As Mr. Elya explained, the Realcomp rules impose a minimum set of services for a listing to be considered an Exclusive Right to Sell listing. (CX 40 (Elya, Dep. at 72-73); CX 38 (Gleason, Dep. at 49, 54, 57)).

Response to CCPF No. 331:
Realcomp has eliminated the Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626).

332. Realcomp highlights to consumers all of the services that a typical full service, Exclusive Right to Sell broker does. (CX 78; CX 35 (Kage, Dep. at 48-49)). Realcomp adopted an article that highlights to consumers the great things about typical full service Exclusive Right to Sell listings, and describes alternative business models as "you get what you pay for." (CX 78; CX 35 (Kage, Dep. at 48-51)).

Response to CCPF No. 332:
Realcomp has eliminated the Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626).

333. According to Realcomp, "Full Service" means a listing broker will provide all of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property. (CX 18-003-004; Kage, Tr. 966-967; CX 100-005).

Response to CCPF No. 333:
Realcomp notes that the citation to CX 100-005 is inaccurate, but the statement is accurate (RPF ¶14).

334. In April 2004, Karen Kage sent out a newsletter to the Realcomp members regarding full service listings. (CX 29). Karen Kage testified that she wanted her newsletter to be truthful and accurate. (Kage, Tr. 969).

Response to CCPF No. 334:
CX 29 was a newsletter regarding "listing types," and was not limited to "full service listings."

335. The April 2004 newsletter addressed the issue of what was considered "full service." (CX 29; Kage, Tr. 969). Karen Kage told her members that if a seller schedules their own appointment, the listing could not be full service. (Kage, Tr. 969; CX 29).

Response to CCPF No. 335:
Respondent has no specific response.

336. The April 2004 newsletter further told Realcomp members that if a seller was performing any other duties that fell under "full service umbrella" the listing had to be designated as limited service. (CX 29; Kage, Tr. 969).

Response to CCPF No. 336:
Respondent has no specific response.

337. Karen Kage admitted that it is possible to have an Exclusive Right to Sell contract where no broker is paid a commission. (Kage, Tr. 976-977; CX 35 (Kage, Dep. at 9-10); CX 100-012).

Response to CCPF No. 337:
Karen Kage testified that this is possible, but only in very specific circumstances. (Kage, Tr. 976-977). An exclusion could apply only to a named party in the contract. (CX 100-112).

338. Realcomp has no knowledge of the terms of the compensation arrangements, if any, in place between a listing broker and a home seller whose property is listed in the Realcomp MLS pursuant to an Exclusive Right to Sell listing. (JX 1-04).

Response to CCPF No. 330:
Respondent has no specific response.

339. Realcomp's rules have never prohibited a listing broker from charging a home seller one fee for posting an Exclusive Right to Sell listing in the MLS and another fee for including that listing among the listings transmitted by Realcomp to the Approved Websites. (JX 1-05).

Response to CCPF No. 339:
Respondent has no specific response.

340. When an unrepresented buyer purchases a home from a seller using a Full Service Exclusive Right to Sell Realcomp listing broker, the listing broker will take the full

commission agreed to by the seller, including the portion offered to cooperating brokers. (CX 42 (Nead, Dep. at 119-121)).

Response to CCPF No. 340:
Respondent has no specific response.

(2) Exclusive Agency

341. Exclusive Agency contracts are used by discount brokers to offer unbundled real estate brokerage services. (RX 154-A-012-013; Mincy, Tr. 368-370; Kermath, Tr. 729-731; RX 1-002; D. Moody, Tr. 483-485; CX 453-001-002; CX 422 (Aronson, Dep. at 10)).

Response to CCPF No. 341:
Respondent has no specific response.

342. Realcomp admitted that an Exclusive Agency listing is a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but reserves to the property owner or principal a right to sell the property without further assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold. (CX 32-004 (Answer)).

Response to CCPF No. 342:
Respondent has no specific response.

343. An Exclusive Agency listing can be a full service listing. (CX 36 (Kage, IHT at 121)).

Response to CCPF No. 343:
Respondent has no specific response.

344. NAR believes that "an Exclusive Agency listing is not a FSBO, since it is in fact a listing." (CX 234-002; CX 35 (Kage, Dep. at 95-100); CX 235). NAR further stated that "an Exclusive Agency listing that is placed in the MLS includes an offer of cooperation and compensation to MLS participants." (CX 234-002; CX 35 (Kage, Dep. at 95-100); CX 235).

Response to CCPF No. 344:
Respondent has no specific response.

345. Under an Exclusive Agency listing, a listing agent could sign a contract to receive money up front in order to be compensated even if the seller finds the buyer because a listing agent and seller "can contract for whatever the two agree to." (CX 36 (Kage, IHT at 55-56)).

Response to CCPF No. 345:
Respondent has no specific response.

346. Realcomp has no problem with a listing broker entering into an Exclusive Agency contract with a seller, regardless of whether or not the listing broker is paid. (CX 38 (Gleason, Dep. at 31)).

Response to CCPF No. 346:
Respondent has no specific response.

347. Realcomp has no knowledge of the terms of the compensation arrangements, if any, in place between a listing broker and a home seller whose property is listed in the Realcomp MLS pursuant to an Exclusive Agency listing. (JX 1-05).

Response to CCPF No. 347:
Respondent has no specific response.

i. Limited Service

348. According to Realcomp, "Limited Service" means the listing broker will not provide one or more of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers but instead gives cooperating brokers authority to make such appointments directly with the seller(s); (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers but instead gives cooperating brokers authority to present offers to purchase directly to the seller(s); (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property. (CX 18-003-004; CX 100-005).

Response to CCPF No. 348:
Respondent has no specific response.

ii. MLS Entry Only

349. According to Realcomp, "MLS Entry Only" means the listing broker will not provide any of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on the seller(s) behalf in negotiations leading to the sale of the listed property. (CX 18-004; CX 100-005).

Response to CCPF No. 349:
Respondent has no specific response.

b. Offers of Compensation

350. On each listing filed with the Realcomp MLS, the listing broker must make a unilateral offer of compensation to any Realcomp member who acts as a cooperating broker and procures a buyer who purchases the listing property. (JX 1-03). Offers of compensation to cooperating brokers are made through the Realcomp MLS, and are not displayed on public websites. (JX 1-07).

Response to CCPF No. 350:
Respondent has no specific response.

351. The most common offer of compensation in the Realcomp MLS is 3 percent of the sale price. (CX 42 (Nead, Dep. at 104-105)).

Response to CCPF No. 351:
Respondent has no specific response.

352. Under the Realcomp rules the listing agent does not input the amount of compensation that they're receiving into the Realcomp MLS. (Kage, Tr. 975).

Response to CCPF No. 352:
Respondent has no specific response.

353. Realcomp does not set the commission rates for its members. (Kage, Tr. 976).

Response to CCPF No. 353:
Respondent has no specific response.

354. The compensation paid by a home seller to a Realcomp member listing broker is determined by negotiation between that home seller and that listing broker. (JX 1-04).

Response to CCPF No. 354:
Respondent has no specific response.

355. Realcomp brokers representing buyers can negotiate the offer of compensation with a listing agent – regardless of listing type – before showing a home to the buyer. (CX 42 (Nead, Dep. at 123-124)).

Response to CCPF No. 355:
Negotiating the offer of compensation with a listing agent before showing a home to the Buyer is a rare occurrence. (CX 42 (Nead, Dep. at 123-124)).

i. The Unilateral Offer

356. According to Karen Kage, "Listing commissions are a requirement of the MLS. A commission amount must be entered into at least one of the following commission fields: Sub Agency (SAC), Buyer Agency (BAC), or Non Agency (NAC)." (CX 219-001; CX 35 (Kage, Dep. at 33-34)). This enables Realcomp members to know what commission is due to them if they are the procuring cause of the sale of the home. (CX 219-001; CX 35 (Kage, Dep. at 33-34)).

Response to CCPF No. 356:
Respondent has no specific response.

357. The Realcomp MLS Rules and Regulations, which every Realcomp member must abide by, have a provision laying out the rules regarding compensation. (CX 100-010-011; Kage, Tr. 975). The compensation provision requires Realcomp members to enter the offer of compensation to any Realcomp participant who brings in the buyer. (CX 100-010-011). This provision in the Realcomp Rules and Regulations gives a mechanism for the Selling Agent to attempt to get the commission they earned if there were any problems. (CX 36 (Kage, IHT at 97-98)).

Response to CCPF No. 357:
Respondent has no specific response.

358. Under both an Exclusive Right to Sell Listing and an Exclusive Agency Listing, there is always an offer of compensation to the cooperating broker who brings in the buyer. (CX 36 (Kage, IHT at 79)).

Response to CCPF No. 358:
Respondent has no specific response.

359. Realcomp has no rules specifying the minimum services that a cooperating broker must perform (other than performance as the procuring cause of sale) to be entitled to compensation in the event of a consummated transaction. (JX 1-05).

Response to CCPF No. 359:
Respondent has no specific response.

ii. Protections for Cooperating Brokers

360. According to Realcomp's President, under the Realcomp rules, the listing broker must stand behind an offer of compensation; the listing broker is a guarantor of the offer. (CX 43 (Hardy, Dep. at 115-116); CX 42 (Nead, Dep. at 103-104); CX 421 (Whitehouse, Dep. at 136-137)).

Response to CCPF No. 360:
Respondent has no specific response.

361. Under the Realcomp rules, a listing broker and a cooperating broker are free to negotiate a new commission. (Kage, Tr. 979-980; JX 1-05).

Response to CCPF No. 361:
Respondent has no specific response.

362. The cooperating broker can rely on the offer of compensation. (CX 37 (Bowers, Dep. at 41)). Even if the listing broker decides to discount the total commission paid by the seller, the cooperating broker is still entitled to the offer of compensation put on the Realcomp MLS. (CX 37 (Bowers, Dep. at 41)).

Response to CCPF No. 362:
Respondent has no specific response.

363. If a cooperating broker is not paid a commission that is rightfully due to them, the cooperating broker can file a grievance or arbitration through their shareholder board to resolve the issue. (CX 36 (Kage, IHT at 97-98)).

Response to CCPF No. 363:
Respondent has no specific response.

364. Realcomp does not handle commission disputes. (CX 36 (Kage, IHT at 85)).

Response to CCPF No. 364:
Respondent has no specific response.

365. The Realcomp Board of Governors does not get reports on grievance and arbitration proceedings from the Realcomp shareholder owner boards. (CX 36 (Kage, IHT at 86)).

Response to CCPF No. 365:
Respondent has no specific response.

366. The NAR Code of Ethics governs grievances against Realcomp members. (CX 42 (Nead, Dep. at 138); CX 126).

Response to CCPF No. 366:
Respondent has no specific response.

367. A selling agent may protect themselves and ensure that they receive a commission by entering into a contract with a buyer client that requires the buyer to compensate the agent even if the agent is not the procuring cause of sale. (CX 42 (Nead, Dep. at 113-

114)). Thus, even if the buyer found a property on Realtor.com or another internet site, went directly to the seller, and purchased the home without the assistance of the agent, the agent would be entitled to compensation even though the agent was not the procuring cause of the sale. (CX 42 (Nead, Dep. at 114-117)).

Response to CCPF No. 367:
Respondent has no specific response.

2. The Realcomp Feed of Listing Information to Approved Websites

368. One of the services that Realcomp offers its members is free internet advertising to "Approved Websites." (Kage, Tr. 925).

Response to CCPF No. 368:
Respondent has no specific response.

369. "Approved Websites" are those websites to which Realcomp provides information concerning Realcomp MLS listings for publication including, MoveInMichigan.com, ClickOnDetroit.com, Realcomp IDX participant websites, and Realtor.com. (Kage, Tr. 925-926; JX 1-04).

Response to CCPF No. 369:
ClickOnDetroit.com frames MoveInMichigan.com, but Realcomp does not actually send data to ClickOnDetroit.com. (RPF ¶89(b)).

370. Realcomp highlights its service of internet advertising to its current and potential members: "**FREE Internet Advertising -** Brokers have the option of automatically advertising their office's active listing inventory through Realcomp II Ltd. on Realtor.com and MoveInMichigan.com Websites. Once Broker approval is received, the Broker's office inventory is exported to both Websites on a daily weekday basis." (CX 222-006; CX 35 (Kage, Dep. at 44-45); CX 224-002-003).

Response to CCPF No. 370:
Respondent has no specific response.

371. In order to send Full Service, Exclusive Right to Sell listings to MoveInMichigan.com, ClickOnDetroit.com, Realcomp IDX participant websites, and Realtor.com, Realcomp creates a feed of data each day "which we would put on an FTP site," so that Realcomp members can "call in and grab the data and then load it onto their system." (Kage, Tr. 928).

Response to CCPF No. 371:
ClickOnDetroit.com frames MoveInMichigan.com, but Realcomp does not actually send data to ClickOnDetroit.com. (RPF ¶89(b)). It is inaccurate to equate full service listings with ERTS listings, since Realcomp eliminated its Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626; Kage, Tr. 1046-1048).

372. Realcomp assembles the MLS data from all brokers that have requested their listings be included. (Kage, Tr. 929).

Response to CCPF No. 372:
Respondent has no specific response.

373. Realcomp does not require that brokers whose listings are transmitted by Realcomp to the Approved Websites be compensated at all, whether by commission or otherwise. (JX 1-04).

Response to CCPF No. 373:
Respondent has no specific response.

374. Realcomp does not require that transactions facilitated through the Approved Websites involve a cooperating broker. (JX 1-05).

Response to CCPF No. 374:
Respondent has no specific response.

375. Realcomp does not identify the type of listing agreement in place between a home seller and a Realcomp member listing broker when transmitting listings to the Approved Websites. (JX 1-04).

Response to CCPF No. 375:
Respondent has no specific response.

a. Public Websites

376. The internet is critically important to the marketing and sale of homes, and thus to brokers' commissions. (CCPF ¶¶ 536-676). The "majority of home buying and selling now begins on the Internet," so "if you miss that consumer connection, you miss a lot of potential commissions and fees." (CX 221-001; CX 35 (Kage, Dep. at 38-39)).

Response to CCPF No. 376:
Respondent has no specific response to the general statements, but incorporates its responses to the referenced CCPF.

377. Realtors benefit from having their listings shown on the Realcomp Approved Websites. (CX 254-002 ("If you consider the fact that the majority of home buyers and sellers want to be able to search for homes on the Internet before they buy or sell, it makes sense for Realtors to not only have Websites, but to also have their listings on those Websites and to provide 'listing search capabilities.'"); CX 35 (Kage, Dep. at 146-147)).

Response to CCPF No. 377:
Respondent has no specific response.

378. The majority of home buyers and sellers want to be able to search for homes on the internet before they buy or sell. (Kage, Tr. 925).

Response to CCPF No. 378:
Respondent has no specific response.

379. One of the pros of marketing properties through the internet is "additional exposure for sellers." (CX 53). Additional marketing exposure is a benefit to Realcomp members. (CX 35 (Kage, Dep. at 153)).

Response to CCPF No. 379:
Respondent has no specific response.

380. Realcomp advertises the importance of MoveInMichigan.com, ClickOnDetroit.com and Realtor.com. (CX 98).

Response to CCPF No. 380:
Respondent has no specific response.

381. MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, and Realcomp IDX websites provide value to MLSs and their member brokers. (CX 221-003 ("The existence of sophisticated database capabilities and Internet access pave the way to value-added services for MLSs and their member subscribers.")).

Response to CCPF No. 381:
The next sentence in the quoted text for CX 221-03 states: "One of the most successful for our system has been the Public Record Data access, where users can search among properties in ten Michigan counties."

382. One of the services that Realcomp provides its members is taking all of a broker's listing data and sending it in one feed, "rather than each office having to have the technology within their own office to provide that service." (CX 36 (Kage, IHT at 50)).

Response to CCPF No. 382:
Respondent has no specific response.

383. Realcomp started giving its members the option of having MLS listing information on public real estate websites at the request of its broker members. (CX 36 (Kage, IHT at 50)).

Response to CCPF No. 383:
Respondent has no specific response.

384. When a listing is added or updated in the Realcomp MLS, the listing is automatically updated on Realtor.com, MoveInMichigan.com, ClickOnDetroit.com and all of the IDX websites. (Kage, Tr. 931-932; CX 35 (Kage, Dep. at 30)).

Response to CCPF No. 384:
Respondent has no specific response.

i. MoveInMichigan.com

385. MoveInMichigan.com is a Realcomp-owned and operated publicly accessible website for showing Realcomp members property listings for sale. (Kage, Tr. 932; CX 36 (Kage, IHT at 48)). MoveInMichigan.com is "a valuable portal for any Michigan home buyer or seller," because it allows consumers to search for Realcomp real estate listings in Southeast Michigan. (CX 36 (Kage, IHT at 71); CX 15; CX 222-009).

Response to CCPF No. 385:
Respondent has no specific response.

386. Realcomp unveiled MoveInMichigan.com in August 2002, telling members that it was an "additional value-added service and expanded Internet exposure!" (CX 102).

Response to CCPF No. 386:
Respondent has no specific response.

387. Realcomp controls all of the content on MoveInMichigan.com. (Kage, Tr. 932).

Response to CCPF No. 387:
Respondent has no specific response.

388. Realcomp highlights the importance of MoveInMichigan.com to its members and potential members: "This public Website allows consumers to search for Michigan real estate that has been listed by Realcomp II Ltd. Subscribers. . . . This value-added service is offered to Realcomp II Ltd. Subscribers free of charge." (CX 222-009; CX 224-002-003; CX 272; CX 35 (Kage, Dep. at 52-55); CX 15; CX 272; CX 36 (Kage, IHT at 68-69)).

Response to CCPF No. 388:
Respondent has no specific response.

389. Realcomp describes MoveInMichigan.com to consumers as "one of the most comprehensive real estate listing sites in all of Southeastern Michigan." (CX 15). Realcomp does not inform consumers that MoveInMichigan.com only includes Exclusive Right to Sell listings. (CX 15).

Response to CCPF No. 389:
CX 15 is sent to brokers; not consumers, and merely tells brokers to see the attached authorization form to sign up for MoveInMichigan.com.

390. The "maintenance and promotion of MoveInMichigan.com is a value-added service for Realcomp Realtors– provided by Realcomp at no charge to [its] subscribers." (CX 267-003). Realcomp is always trying to improve MoveInMichigan.com to make it even better. (Kage, Tr. 934-935; CX 254; CX 35 (Kage, Dep. at 148)).

Response to CCPF No. 390:
Respondent has no specific response.

391. Realcomp highlighted to its members that Open Houses added to the Realcomp MLS would automatically be added to MoveInMichigan.com: "Open Houses display complete with a photo, property details, a map driving directions and more." (CX 266-001-003; *See also* CX 257; CX 258-004). This service only applies to full service Exclusive Right to Sell Listings. (CX 257; CX 35 (Kage, Dep. at 150-152)).

Response to CCPF No. 391:
Realcomp eliminated the Minimum Service Definition, so it is inaccurate to equate "full service" with Exclusive Right to Sell Listings. (CX 626; Kage, Tr. 1046-1048).

ii. ClickOnDetroit.com

392. ClickOnDetroit.com is a Michigan website owned by a local TV station. (Kage, Tr. 936; CX 36 (Kage, IHT at 48)).

Response to CCPF No. 392:
Respondent has no specific response.

393. Realcomp is the exclusive provider of real estate listing information to ClickOnDetroit.com, so ClickOnDetroit.com only contains real estate listing information from the Realcomp MLS. (Kage, Tr. 936; CX 36 (Kage, IHT at 48-49); JX 1-07; CX 165; (CX 415 (Nowak, Dep. at 54)).

Response to CCPF No. 393:
ClickOnDetroit.com frames MoveInMichigan.com, but Realcomp does not actually send data to ClickOnDetroit.com (RPF ¶89(b)).

394. All of the Board of Governors were in agreement that Realcomp should enter into an exclusive advertising agreement with ClickOnDetroit.com, and exclusivity was important to Realcomp. (CX 41 (Mulvihill, Dep. at 29, 32-33); CX 179).

Response to CCPF No. 394:
Respondent has no specific response.

395. ClickOnDetroit.com actually frames the MoveInMichigan.com website, allowing consumers to see all of the listings available on MoveInMichigan.com through the ClickOnDetroit.com website. (CX 36 (Kage, IHT at 49)).

Response to CCPF No. 395:
Respondent has no specific response.

396. Realcomp notified its members that "Realcomp's comprehensive home buyer's search site, MoveInMichigan.com, is now available via WDIV's Real Estate page of ClickOnDetroit.com." (CX 263).

Response to CCPF No. 396:
Respondent has no specific response.

397. Realcomp highlights the importance of ClickOnDetroit.com to its current and potential members:

> MoveInMichigan.com is the exclusive provider of data for WDIV's real estate page on ClickOnDetroit.com. This public website operated by WDIV Channel 4 is the #1 local website in Southeast Michigan receiving over 3.3 million clicks a month. The ClickOnDetroit.com website actually frames specific functions of Realcomp's MoveInMichigan.com website, sending consumers searching for Realtors, properties and Open Houses to you and your listings.
>
> (CX 222-009-010; *See also* CX 224-002-003; CX 35 (Kage, Dep. at 52-55, 157-167); CX 259-CX 263; CX 272; Kage, Tr. 937 (Karen Kage admitted that she wanted the information that Realcomp advertises to the public to be truthful and accurate.)).

Response to CCPF No. 397:
Respondent has no specific response.

iii. Realtor.com

398. Realcomp sends MLS listing information to Realtor.com, a national publicly accessible website affiliated with the National Association of Realtors, that contains for sale listings. (CX 36 (Kage, IHT at 46); Kage, Tr. 949; CX 20; CX 21). Realtor.com contains listing information from anywhere in the country. (Kage, Tr. 949).

Response to CCPF No. 398:
Respondent has no specific response.

399. Realcomp has an agreement with Realtor.com to allow Realcomp's MLS listings to be included on Realtor.com. (CX 19-CX 21).

Response to CCPF No. 399:
Respondent has no specific response.

400. The majority of Realcomp members send their listings to Realtor.com through the Realcomp MLS. (Kage, Tr. 931; CX 36 (Kage, IHT at 47)).

Response to CCPF No. 400:
Respondent has no specific response.

401. In January 2007, Realcomp had 1,723 offices representing 13,184 Realcomp members participating in Realtor.com. (CX 33-014; CX 228-007; CX 35 (Kage, Dep. at 79-83)).

Response to CCPF No. 401:
Respondent has no specific response.

402. Realcomp sends listing information to Realtor.com by producing "a file of listing information based on those brokers that have given us permission, and we place it on a secure site that Realtor.com will log into to extract that information." (CX 36 (Kage, IHT at 50)).

Response to CCPF No. 402:
Respondent has no specific response.

b. The Realcomp IDX

403. Realcomp member IDX websites are key websites for listing brokers and home sellers intending to reach home buyers directly. (CX 557-A-027). Realcomp IDX broker websites are important because they are among the 4 most popular types of websites searched by consumers. (CX 373-046).

Response to CCPF No. 403:
Complaint Counsel's witness, Gary Moody, the owner of Greater Michigan Realty in Southeastern Michigan, who is experienced, knowledgeable and trained with respect to the Internet, expects that Google Base will be more important than the IDX in the near future. (RPF ¶ 121; G. Moody, Tr. 886-888).

404. The Realcomp IDX is the Internet Data Exchange service that affords Realcomp members the option of authorizing display of their active listings on other Realcomp members' websites. (JX 1-07; CX 36 (Kage, IHT at 51); Kage, Tr. 947). Sellers have a choice on whether or not they want their listings included in the Realcomp IDX feed. (CX 35 (Kage, Dep. at 11-12); CX 100-024).

Response to CCPF No. 404:
Respondent has no specific response.

405. Realcomp broker members can use the Realcomp IDX feed to populate their own websites. (Kage, Tr. 947-948).

Response to CCPF No. 405:
Respondent has no specific response.

406. According to Karen Kage, an IDX FTP feed is "an electronic feed of the data that we would put out on a server and make available for, again, the technical person or somebody in the office to come and grab that data and then feed it back to their own website, in whatever format they choose." (Kage, Tr. 948).

Response to CCPF No. 406:
Respondent has no specific response.

407. Realcomp broker members can then allow their agents to "frame" the broker website. (Kage, Tr. 945; CX 13-002).

Response to CCPF No. 407:
Respondent has no specific response.

408. "Framing" means displaying third-party information (such as MLS listing data) within a company's or individuals proprietary border. (Kage, Tr. 947) (The "border of the site you're looking at would remain, and in the middle would open up a different site. . . and that would be where you would be searching for that listing information, the property information.").

Response to CCPF No. 408:
Respondent has no specific response.

409. Agents can frame the MLS listing information received by their broker. (Kage, Tr. 946) ("If a consumer accesses an agent's website, and there's an option there that says search for property, the consumer could choose that option and what would open up would be a new box that would be actually the broker's website that would then have that listing data in it.").

Response to CCPF No. 409:
Respondent has no specific response.

410. Realcomp highlights the importance of internet advertising to its current and potential members: "**Internet Data Exchange (IDX)** - IDX is an optional service that enables Realcomp II Ltd. Broker participants to display their active listings on Realtor Websites affiliated with Realcomp II Ltd.'s IDX program." (CX 222-009; CX 35 (Kage, Dep. at 47); CX 224-002-003).

Response to CCPF No. 410:
Respondent has no specific response.

411. The inclusion of photos in Realcomp's IDX feed is a significant benefit to Realcomp members: "IDX now includes the availability of multiple property photos. The ability to display multiple photos on listings being advertised through Internet Data Exchange has long been awaited and is now available." (CX 259-002; CX 35 (Kage, Dep. at 159-160); Kage, Tr. 949; CX 13-003). This benefit is only available for Exclusive Right to Sell Listings. (CX 259-002; CX 35 (Kage, Dep. at 159-160; CX 13-003)).

Response to CCPF No. 411:
See the Response to CCPF ¶ 403.

412. The majority of Realcomp member brokers participate in IDX. (Kage, Tr. 931; CX 245). As of January 2007, 82% of Realcomp members participated in the Realcomp IDX. (Kage, Tr. 948-949; CX 33-003).

Response to CCPF No. 412:
As of January 2007, 82% of agents were licensed to brokers who said they would participate in the Realcomp IDX. (Kage Tr. 948-949).

3. Other Realcomp MLS Member Services

a. Data Sharing

413. One of the ways Realcomp is able to have so many MLS properties in its database is through data sharing agreements. (Kage, Tr. 914).

Association of Realtors told Karen Kage that Flint is no longer sending MLS listing information to Realtor.com. (CX 270-004; CX 35 (Kage, Dep. at 185-188)).

Response to CCPF No. 431:
Phil Dawley, Chief Technology Officer of Move, Inc., testified that the Flint Area Association of Realtors continues to send listings to Realtor.com. (CX 601 (Dawley, Dep. at 93)).

b. The Latest Technology

432. Realcomp offers its members the latest technology. (CX 214-002; CX 225; CX 35 (Kage, Dep. at 55-58); Kage, Tr. 956-957).

Response to CCPF No. 432:
Realcomp offers its members certain technological advancement, but the record does not reflect the fact these are always the "latest" technology. (CX 214-002; CX 225; CX 35 (Kage, Dep. at 55-58); Kage, Tr. 956-957).

433. Realcomp now offers its members ShowingAssist, which "truly revolutionizes how home showings are scheduled, confirmed and recorded. A more efficient showing process means improved productivity for Realcomp Realtors, and ultimately more homes being bought and sold." (CX 214-002; CX 225; CX 35 (Kage, Dep. at 55-58); Kage, Tr. 956-957).

Response to CCPF No. 433:
Respondent has no specific response.

434. Realcomp offers its members Realcomp Mobile, which enables members to access the Realcomp MLS on any hand-held device that has internet access. (Kage, Tr. 957; CX 377).

Response to CCPF No. 434:
Respondent has no specific response.

435. Realcomp gives its members the opportunity to advertise their listings on the Home Preview Channel, a cable television channel in Michigan that showcases real estate properties. (Kage, Tr. 953; CX 222-008; CX 35 (Kage, Dep. at 46, 183-185); CX 269; CX 272). According to Realcomp members can "pay less for cable-TV advertising than you'd pay for a small newspaper ad." (CX 222-008; CX 35 (Kage, Dep. at 46, 183-185); CX 269; CX 272; Kage, Tr. 954).

Response to CCPF No. 435:
Respondent has no specific response.

436. The Home Preview Channel is a "television channel that showcases properties if the agent or broker has purchased that service." (Kage, Tr. 953).

Response to CCPF No. 436:
Ms. Kage testified that the Home Preview Channel is a "television channel that showcases properties if the agent or broker has purchased that service through the Home Preview Channel." (Kage, Tr. 953).

c. The Most Information

437. Realcomp puts out a Statement of Real Property Information Services, aimed at giving information about Realcomp to potential members. (Kage, Tr. 911-912; CX 627). Karen Kage wants the Statement of Real Property Information Services to be truthful and accurate so that current and potential members know what services Realcomp is offering. (Kage, Tr. 953).

Response to CCPF No. 437:
Respondent has no specific response.

438. In January 2007 and in May 2007, Realcomp put out a Statement of Real Property Information Services on the Realcomp website. (CX 222; CX 627).

Response to CCPF No. 438:
Respondent has no specific response.

439. As of May 2007, the Realcomp MLS included 548,441 MLS properties. (Kage, Tr. 912-913).

Response to CCPF No. 439:
Respondent has no specific response.

440. Realcomp offers its members a public record database which contains information on every single parcel of land within a particular county so that members can see taxes, dimensions, mortgage, and other information. (Kage, Tr. 954; CX 61).

Response to CCPF No. 440:
Respondent has no specific response.

441. The Realcomp public record database contains over 6,799,000 public records. (CX 222-004; Kage, Tr. 955).

Response to CCPF No. 441:
Respondent has no specific response.

442. In January 2007, Realcomp advertised that it was "the ONLY Multiple Listing Service in Michigan that offers integrated MLS and PRD information. . . at NO ADDITIONAL COST to the MLS Subscriber." (CX 222-004; Kage, Tr. 955).

Response to CCPF No. 442:
Respondent has no specific response.

443. Realcomp members can use the public record database, in conjunction with the MLS database to determine comparables for a particular property. (Kage, Tr. 955-956).

Response to CCPF No. 443:
Respondent has no specific response.

444. The Realcomp MLS enables members to send on-market listings and comparative market analysis reports to their customers through email. (Kage, Tr. 956).

Response to CCPF No. 444:
Respondent has no specific response.

445. Members of Realcomp also benefit because they have access to historical sales information and information about the prices of comparable homes. (CX 42 (Nead, Dep. at 37-38)). There is no other good source of information regarding comparable active listings. (CX 42 (Nead, Dep. at 39-40)).

Response to CCPF No. 445:
Historical sales information and information regarding comparables can also be obtained directly through municipalities. (CX 42 (Nead, Dep. at 37-40)).

D. Adjacent Multiple Listing Services

446. A sort of the Realcomp data by county would reveal where the majority of the Realcomp listings are located. (CX 36 (Kage, IHT at 13-14)).

Response to CCPF No. 446:
Respondent has no specific response.

447. MiRealSource is the MLS located to the east of Realcomp. (CX 36 (Kage, IHT at 17)).

Response to CCPF No. 447:
MiRealSource moved its main office in August 2006 from Macomb County to Oakland County, and its serves Southeastern Michigan not merely an area east of Realcomp. (JX 1, ¶58; Kage, Tr. 1057-58; CX 407 (Bratt Dep. at 8-9, 73-74), RPF 40-41, 48-51). Even Complaint Counsel's antitrust economist acknowledges that there is an overlap in the service areas. (Williams, Tr. 1244).

448. There are numerous members of MiRealSource who are also members of Realcomp, because of the small overlapping areas in Macomb county and parts of Oakland county. (CX 36 (Kage, IHT at 17); CX 55).

Response to CCPF No. 448:
The record does not support the assertion that there are "small overlapping areas," as indicated in the response to CCPF 447. About one-third of MiRealSource's members do not belong to Realcomp, and they compete in Southeastern Michigan (RPF, ¶¶ 59-61).

449. Realcomp and MiRealSource do not completely overlap. (CX 42 (Nead, Dep. at 96-97)). Because each MLS requires the payment of dues, it only makes sense for Realcomp brokers and agents who operate in geographic areas in which the two MLS's overlap to join both Realcomp and MiRealSource. (CX 42 (Nead, Dep. at 96-97)).

Response to CCPF No. 449:
See RPF ¶116. *See also* Response to CCPF ¶¶ 732, 733.

450. Realcomp and MiRealSource had numerous discussions over several years to discuss the possibility of merging to create one giant MLS. (CX 36 (Kage, IHT at 17-18); CX 14-001; CX 45, CX 51).

Response to CCPF No. 450:
Respondent has no specific response.

451. Realcomp and MiRealSource discussed data sharing and merger possibilities in part so that their members could stop paying double MLS dues. (CX 36 (Kage, IHT at 192, 198); CX 50; CX 51; CX 55; JX 1-06).

Response to CCPF No. 451:
Respondent has no specific response.

452. The Ann Arbor MLS focuses on Washtenaw county, and does not service Oakland, Livingston, or Macomb counties. (Hepp, Tr. 655, 658-659).

Response to CCPF No. 452:
Mr. Hepp's testimony only reflects his understanding that the Ann Arbor MLS focuses on Washtenaw county, and does not service Oakland, Livingston, or Macomb counties. (Hepp, Tr. 655, 658-659). However, Mr. Hepp testified that the Ann Arbor MLS does have a data sharing agreement with Realcomp, and that data sharing allows Realcomp viewers to be able to see listings inputted in the Ann Arbor MLS. (Hepp, Tr. 703). Additionally, Jeff Kermath, a real estate broker at AmeriSell Realty in Ann Arbor, places his Southeastern Michigan listings into the Ann Arbor MLS. (Kermath, Tr. 789).

V. REALCOMP'S MLS MEMBER SERVICES ARE SIGNIFICANT TO BROKERS' ABILITY TO COMPETE

453. To compete for listings, Realcomp members will typically explain the "market power" of the MLS, "the market power of web marketing, MoveInMichigan.com, IDX and Realtor.com." (CX 78-003; CX 42 (Nead, Dep. at 86, 88-90)).

Response to CCPF No. 453:
CX 78 explains the critical role of a "Realtor" in a real estate transaction and lists over 200 items a typical Realtor may do in a transaction, one of which is explain the market power of the MLS.

A. "Exposure" is Critical to Selling a Home

1. Greater Exposure of a Home to Potential Buyers Increases the Likelihood of Selling a Home

454. Exposure is one of the keys to selling real estate. (Sweeney, Tr. 1341-1342; CX 352-001 ("The key is to expose your home to as many potential qualified buyers as possible.")). Exposing homes for sale to potential buyers "is 'key' to being able to match a willing seller and a willing buyer." (RX 154-A-028; (CX 35 (Kage, Dep. at 153) (admitting that additional marketing exposure benefits Realcomp members)).

Response to CCPF No. 454:
Respondent has no specific response.

455. Brokers in Southeastern Michigan uniformly testified to the importance of exposure in selling a home. For example:

- Mr. Hardy admitted that, all things being equal, a listing's greater exposure will lead to a quicker sale. (CX 43 (Hardy, Dep. at 77)).

- Mr. Rademacher admitted that he wants his customers' listings to have the maximum exposure possible because that maximizes the chances that their listings will sell. (CX 416 (Rademacher, Dep. at 36)).

- Mr. Mincy testified that, based on his experience as a broker and agent since 1995, what really sells homes is "exposing the property to as many buyers as possible" because it "increases the chances of selling a home." (Mincy, Tr. 336).

Response to CCPF No. 455:
Respondent has no specific response.

456. Mr. Murray, an expert in the real estate industry, confirmed that, "[e]xposure is critical in our industry." (Murray, Tr. 183). Mr. Murray explained, "based on history and experience and the practice of brokerage companies, regardless of what kind of broker they are, that getting the information about a home for sale on behalf of a client to as many people who may be interested in that home as soon as possible is critical to your ability to compete and to get your job done." (Murray, Tr. 183).

Response to CCPF No. 456:
Respondent has no specific response.

457. Put simply, more exposure increases "the chances [that a broker is] going to get [their] home sold faster and at a better price than otherwise." (Murray, Tr. 183).

Response to CCPF No. 457:
Respondent has no specific response.

2. Less Exposure Can Have a Negative Impact on Selling a Home

458. As Realcomp Governor Robert Gleason admitted, less exposure of a home for sale "means less price, more marketing time, more expenses involved, lower price on your home, more days on the market, more carrying costs; in other words, it's more expensive for everybody concerned." (CX 38 (Gleason, Dep. at 123-124)).

Response to CCPF No. 458:
Respondent has no specific response.

459. "If a company wants to sell a property cutting exposure isn't the way to do it. Pricing is governed by supply and demand, so why would you constrict demand? Why would anyone be looking to restrict demand with supply mounting? It's inexplicable." (CX 608-001 (Realty Times article quoting Allan Dalton, CEO of Realtor.com)).

Response to CCPF No. 459:
Mr. Dalton's comments were made regarding some MLSs choosing to withdraw listing feeds from Realtor.com. (CX 608-01). Brokers will be able to provide direct feeds to Realtor.com themselves. (CX 608-01).

3. Home Sellers Recognize the Importance of Exposure

460. As recognized by Allan Dalton, CEO of Realtor.com, "This is an information age where consumers are more demanding that their properties be given a great amount of exposure. . . ." (CX 608-001).

Response to CCPF No. 460:
Respondent has no specific response.

461. The Executive of Realcomp's largest Shareholder Board confirmed that home sellers "want their property exposed to as many people as possible. . . ." (CX 405 (Baczkowski, Dep. at 38-39)).

Response to CCPF No. 461:
Respondent has no specific response.

462. In a buyer's market where there is excess housing inventory, "[i]t will be a great challenge to persuade sellers why their properties are getting less exposure." (CX 608-001 (Allan Dalton, President and CEO of Realtor.com, explaining the difficulties to brokers if they have to explain to clients why their listings are not on Realtor.com)).

Response to CCPF No. 462:
Respondent has no specific response.

B. Access to the Realcomp MLS Database is Important for Brokers To Be Able to Compete Effectively in Southeastern Michigan

1. MLSs Are Generally Important for Brokers to Compete Effectively

a. MLSs Allow Brokers to "Better Serve" Their Clients

463. The MLS is an important tool for real estate agents, and is a useful tool specifically in Southeastern Michigan. (Sweeney, Tr. 1340; G. Moody, Tr. 870 ("The MLS is critical to success, especially in Michigan.")).

Response to CCPF No. 463:
Respondent has no specific response.

464. The MLS allows brokers to "better serve" their clients who want to buy or sell a home. (RX 154-A-025; CX 380-011 ("A primary role of the MLS has always been to provide a method for the brokerage firms to cooperate with each other to better serve the buyers and sellers."); CX 380-011 (describing the MLS as a "potent tool" that serves buyers and sellers equally)).

Response to CCPF No. 464:
Respondent has no specific response.

465. To be effective, listing brokers must put their listings on an MLS because it enables them to reach the other MLS members, which is important because approximately 85% of transactions are cooperative with another broker bringing in a buyer. (CX 39 (Taylor, Dep. at 42-43); CX 43 (Hardy, Dep. at 78)).

Response to CCPF No. 465:
Respondent has no specific response.

466. One of the first things brokers typically do after agreeing to represent a new client is, if acting as a listing broker, post the seller's property on the MLS, or if acting as a cooperating broker, search the MLS for homes matching the buyer's criteria. (RX 154-A-049; Sweeney, Tr. 1340-1342 (testifying that placing a client's listing on the MLS was "his responsibility to the seller"); CX 526 (Groggins, Dep. at 40-41); D. Moody, Tr. 475 (explaining that she never considered not listing a client's home on the local MLS because that is where other brokers who have buyers will be searching to find properties to show them)).

Response to CCPF No. 466:
Complaint Counsel's cite should be RX 154-A-027 not RX-154-A-049.

467. Access to the MLS allows brokers representing buyers to search "the most inventory possible" in order to be able to find the buyer "just the right home that might fit their needs" because "every buyer's needs are somewhat different, just like every home is a little different." (Murray, Tr. 181-182).

Response to CCPF No. 467:
Respondent has no specific response.

468. As Ms. Nead explained, the MLS "is there to share so that we all have access to each other's information . . . . As a buyer, if I had to call Real Estate One to look at theirs, then you had to call Coldwell Banker to look at theirs, and call Century 21 to look at theirs, it would be very inefficient to buy a home." (CX 42 (Nead, Dep. at 133)).

Response to CCPF No. 468:
Respondent has no specific response.

469. The "value of an MLS is it's a single comprehensive source of information about listings from other brokers in the area." (Sweeney, Tr. 1343; CX 405 (Baczkowski, Dep. at 17-18) (testifying that the MLS benefits brokers by being able to access all of the listing information in one place)). Thus, as a general rule, Mr. Sweeney does not search Internet websites for homes for sale on behalf of buyers because the websites might not have all available listings for sale. (Sweeney, Tr. 1342-1343).

Response to CCPF No. 469:
Respondent has no specific response.

470. Realcomp Governor David Elya would not recommend that a seller not list their home on the MLS: "I wouldn't recommend it. I feel like one of the things that I provide is the ability to market the property, and it would be like tying my hands behind my back. . . .

It's like why even bother going through the motions if they're not going to help me out." (CX 40 (Elya, Dep. at 35-36)).

Response to CCPF No. 470:
Respondent has no specific response.

471. Home "buyers and sellers benefit from having access to practitioners who have access to a Multiple Listing Service." (CX 410 (Cooper, Dep. at 28)).

Response to CCPF No. 471:
Respondent has no specific response.

472. Realcomp itself highlights to consumers "the market power and benefits of Multiple Listing Service," and admits that "the most important features that separate the MLS from mainstream advertising options have to do with: 1) the accuracy and timeliness of the property database that is created and maintained by Realtors for Realtors and 2) the inclusion of a blanket unilateral offer of compensation to Realtors for every listing in the MLS." (CX 78-003; CX 220; CX 35 (Kage, Dep. at 34-38, 51)).

Response to CCPF No. 472:
Respondent has no specific response.

b. MLSs Provide Key Exposure for Selling Homes

473. MLSs provide listings with exposure to the other MLS members who may have a buyer for the specific property. (CX 413 (Kersten, Dep. at 23-24); CX 43 (Hardy, Dep. at 77) (testifying that he would never advise a seller to not put a listing into the MLS because the MLS offers market exposure)). "If you don't multi-list the property then it's going to go out to a very small market share." (CX 38 (Gleason, Dep. at 123)).

Response to CCPF No. 473:
Respondent has no specific response.

474. The MLS is "[o]ne of the most effective networks of buyers available to them" and is the "only way" for home sellers "to reach all of those brokers who would be interested in selling their property." (CX 525 (Adams, Dep. at 76-77) (recommending that his customers "absolutely leverage" the MLS to gain exposure to additional buyers)).

Response to CCPF No. 474:
Respondent has no specific response.

475. As Mr. Sweeney testified to on behalf of Realcomp at trial, Weir Manuel markets properties on the MLS because "it's important for us to make sure that those real estate

agents, through which there's a huge buyer stream available to purchase our listings, are aware of the listing opportunities we have." (Sweeney, Tr. 1315).

Response to CCPF No. 475:
Respondent has no specific response.

476. Mr. Mulvihill highlights the importance of the MLS to prospective clients because his "philosophy is that I need to give it as much exposure as I possibly can because I want whoever is out there with the buyer to bring that buyer to buy my customer's listing, house." (CX 41 (Mulvihill, Dep. at 12); CX 177-001).

Response to CCPF No. 476:
Respondent has no specific response.

477. By listing their property with a broker who can market their property on an MLS, "[s]ellers benefit from a broader exposure of their listings of their offerings, their property per se through a system that communicates with multiple brokerages the availability of a property for sale." (CX 410 (Cooper, Dep. at 28)).

Response to CCPF No. 477:
Respondent has no specific response.

c. Sellers Demand and Expect Their Homes to Be Placed on the MLS

478. As demonstrated by broker experience and industry studies, sellers want their home on the MLS. (Murray, Tr. 187).

Response to CCPF No. 478:
Respondent has no specific response.

479. Brokers in Southeastern Michigan repeatedly testified that they could not recall a single instance where a customer did not want their home placed on the MLS. (*e.g.*, CX 41 (Mulvihill, Dep. at 13) (testifying that he never represented a customer that did not want their listing on the MLS); CX 410 (Cooper, Dep. at 64) (testifying that, in over thirty years of practicing real estate, he has never had a listing that was not posted on the MLS); CX 413 (Kersten, Dep. at 24) (testifying that he can't recall any client asking to be excluded from MLS because "I think you want to have the best exposure you want to; otherwise, you're not going to get it sold.")).

Response to CCPF No. 479:
Respondent has no specific response.

480. The Real Estate Consumer Service Model Assessment for Sellers was conducted by Murray Consulting in partnership with Harris Interactive, a globally recognized market research firm. In addition to the 1,300 survey replies, focus groups were conducted to augment the survey research. (RX 154-A-007; CX 534-024-025 (describing methodology); Murray, Tr. 136-137 (testifying that brokerage firms pay $35,000-$50,000 for copies of this report)).

Response to CCPF No. 480:
Respondent has no specific response.

481. According to a 2005 study by Murray Consulting and Harris Interactive, The Real Estate Consumer Service Model Assessment for Sellers, over 70% of sellers expected their home to be listed on the MLS. (CX 534-054, 056 (71% of sellers using a discount brokerage model, and 76% of sellers using a traditional brokerage model, expected that their home would listed on the MLS); *See also* RX 154-A-027).

Response to CCPF No. 481:
Respondent has no specific response.

482. The 2006 National Association of Realtors Profile of Home Buyers and Sellers (CX 373) was produced by NAR's Research Division as a service to NAR members and with the intention of producing "reliable and credible information about real estate brokerage." (CX 406 (Bishop, Dep. at 42-43); CX 456-002).

Response to CCPF No. 482:
Respondent has no specific response.

483. The methods utilized by the Research Division in producing the 2006 NAR Profile of Home Buyers and Sellers were chosen to "assure that there are minimal biases in the results and that lead to a[s] consistent and as credible a survey as possible." (CX 406 (Bishop, Dep. at 48-49)); *See also* (CX 406 (Bishop, Dep. at 46-49)) (describing methodologies associated with the study). The results of the 2006 NAR Profile of Home Buyers and Sellers are representative, within a margin of error, of the behavior of buyers and sellers of residential real estate across the country between 2005 and 2006. (CX 406 (Bishop, Dep. at 48-50, 66, 90); CX 373-006).

Response to CCPF No. 483:
Respondent has no specific response.

484. Before distributing the 2006 NAR Profile of Home Buyers and Sellers, the Research Division reaches a conclusion, based on its experience in conducting surveys and other studies, that the results of the study accurately stated its findings and are reliable. (CX 406 (Bishop, Dep. at 50-51); CX 456-003); *See also* (CX 406 (Bishop, Dep. at 58) (testifying that the Research Division is "confident of the results" of the surveys

published in the NAR Profiles of Buyers and Sellers, and that this confidence is "conveyed to the staff and leadership"of NAR.)).

Response to CCPF No. 484:
Respondent has no specific response.

485. The 2005 NAR Profile of Home Buyers and Sellers (CX 372) and the 2004 NAR Profile of Home Buyers and Sellers (CX 371) were produced by NAR's Research Division using the same methodologies used in the 2006 NAR Profile of Home Buyers and Sellers, with the intention of producing "reliable and credible information about real estate brokerage." (CX 406 (Bishop, Dep. at 42-43); CX 456-002). The Research Division determined that the 2004 and 2005 NAR Profiles of Home Buyers and Sellers were an accurate and reliable study of the behavior of buyers and sellers of residential real estate between 2003 and 2005. (CX 406 (Bishop, Dep. at 55-56; 68-69); CX 456-002-003).

Response to CCPF No. 485:
Respondent has no specific response.

486. In its 2006 Profile of Home Buyers and Sellers, NAR found that 88% of sellers who had a real estate agent nationwide reported that their home was listed in an MLS. (CX 373-080); *See also* (CX 406 (Bishop, Dep. at 109)). This percentage of sellers reporting that their home was listed on the MLS has been consistent over time. (CX 372-067 (89% of sellers in 2005 reported that their home was listed on the MLS); CX 371-063 (87% of sellers in 2004 reported that their home was listed on the MLS)).

Response to CCPF No. 486:
Respondent has no specific response.

d. The Industry Expert Confirms the Importance of the MLS

487. As summarized by Mr. Murray at trial, access to the MLS is important to a broker's ability to compete in Southeastern Michigan because "Sellers expect to be on an MLS. It helps a listing broker to be more effective at serving the customer. It helps them provide better service to that seller. It helps them get new listings to be on the MLS. It helps them be more effective for that seller. It does all those things. Plus on top, of all the sellers, basically a huge percentage who are going to use a listing broker require it or demand it." (Murray, Tr. 188).

Response to CCPF No. 487:
Mr. Murray has never worked with MLSs in southeastern Michigan. (Murray, Tr. 127).

488. The MLS is so competitively advantageous to brokers that MLSs are used across the United States – to the best of Mr. Murray's knowledge, there is only one major

metropolitan area in the entire country that does not have an MLS. (Murray, Tr. 184; RX 154-A-025-032 (explaining the benefits of the MLS to brokers and consumers)).

Response to CCPF No. 488:
The metropolitan area to which Mr. Murray referred as not having an MLS is New York City. (Murray, Tr. 253-254). According to RX 154-A-029, there are only "two" major metropolitan areas that do not have MLSs, New York City and the Hamptons of New York. (RX 154-A-029).

489. Of the top 500 most successful brokerage firms in the country, Mr. Murray is unaware of any brokerage firm that does not belong to at least one MLS. (Murray, Tr. 184-185; RX 154-A-029-030). In fact, many of the major national franchise real estate brokerages, such as Re/Max and Keller Williams, require membership in an MLS in order to comply with their franchise agreement. (Murray, Tr. 184-185; RX 154-A-029-030).

Response to CCPF No. 489:
Respondent has no specific response.

490. Participation in the local MLS is "critical to a broker." (Murray, Tr. 185). As explained by Mr. Murray, "[a] Listing Broker whose properties were not displayed on an MLS would be at a significant competitive disadvantage to those brokers whose properties were listed on the MLS." (RX 154-A-032 (explaining that such brokers would be limited to their own efforts and could no longer count on the thousands of other participating brokers to procure a buyer)).

Response to CCPF No. 490:
Respondent has no specific response.

491. Belonging to an MLS "absolutely" impacts a broker's ability to get new listing agreements. (Murray, Tr. 186; RX 154-A-027). If a broker told a potential client that their home may not be seen on the MLS, "you can best be sure the seller is first going to say, Well, why not? And/or secondly, the next listing broker that came in to make a presentation will be sure to highlight [this difference]. . . . So that is all critically important to a listing broker to get new listings." (Murray, Tr. 186-187 (discussing the ability of obtaining new listings in the context of participating in the MLS and marketing properties on certain key Internet websites)).

Response to CCPF No. 491:
Respondent has no specific response.

492. "Without the MLS, smaller brokerages would have to contact individually each of the hundred or thousands of brokerage firms to obtain information about those firms' listings in order to share the listings with their buyer clients, and to provide information about their own listings to those brokers. This would have to be done repeatedly so as to

account for new homes being sold or being put on the market for sale. These transaction costs would be cost prohibitive for all but the largest brokerage firms, which would have a large stock of their own listings and be able to primarily offer those listings to their buyer clients." (RX 154-A-028-030 (discussing how the MLS is also important for brokers to be able to compete effectively because it levels the playing field between large and small brokers); Murray, Tr. 257 (same)).

Response to CCPF No. 492:
Respondent has no specific response.

493. Based on Mr. Murray's 30 years of experience in the real estate industry, review of industry publications, and extensive discussions with real estate brokers and other leaders in the real estate industry, Mr. Murray does not believe that there is any dispute in the industry as to the importance of an MLS to a broker. (Murray, Tr. 121-124, 137-138, 185 ("And it's – that is not a – to the best of my knowledge, I could state that issue is not contended at all in this industry as to how important [an] MLS is to a broker.")).

Response to CCPF No. 493:
Respondent has no specific response.

e. Notwithstanding the Benefits of MLS Participation, Brokers Try To Avoid Participating In More Than One MLS If Possible

494. Brokers will avoid participating in two or more MLS services "if they can help it" because it "costs more and it's complex. . . ." (Murray, Tr. 183-184; RX 154-A-031 ("Brokers generally will avoid participating in more than one MLS if possible.")).

Response to CCPF No. 494:
See the Response to CCPF ¶883.

495. The costs of participating in more than one MLS include: "the payment of multiple MLS user and office fees; duplication of efforts in terms of data entry, system access and training sessions; having to perform multiple searches over the same geographic area on behalf of buyers; learning different terms and terminology; and following multiple policies, rules and data display requirements." (RX 154-A-031-032; CX 414 (Niersbach, Dep. at 30-32) (discussing costs of belonging to multiple MLSs); CX 380-012 (same)).

Response to CCPF No. 495:
Respondent has no specific response.

496. The per-agent monthly costs of belonging to two MLSs is a "significant cost only to be incurred if necessary." (Sweeney, Tr. 1340; CX 413 (Kersten, Dep. at 27 (testifying that

the double dues and costs associated with inputting listings twice were "absolutely" an important cost)).

Response to CCPF No. 496:
See the Response to CCPF ¶883.

497. With respect to the costs of belonging to two MLSs, "actually a bigger cost is the administrative hassle of entering the listings in both systems." (Sweeney, Tr. 1312). As Mr. Sweeney further explained at trial, "It's not just the double entry, on the entry, it's the maintenance, every time there's a price change, you have to do it in two systems, any time there's any change whatsoever at least reported in the system, you have to do it twice. Yes, that is a burden. An administrative burden." (Sweeney, Tr. 1340; CX 40 (Elya, Dep. at 22-24 (admitting that listing on two MLSs entails double the cost and double the work)).

Response to CCPF No. 497:
See the Response to CCPF ¶883.

498. Although some brokers in Southeastern Michigan list properties on both Realcomp and MiRealSource "to get maximum exposure," brokers in Southeastern Michigan also try to avoid participating in two MLSs when possible. (CX 40 (Elya, Dep. at 22-24); Sweeney, Tr. 1339 (testifying that one of his four offices does not belong to both Realcomp and MiRealSource because it is not "cost justified" for his Plymouth office to belong to MiRealSource); CX 38 (Gleason, Dep. at 86-87 (testifying that SKBK Sotheby's International dropped their membership in MiRealSource because the agents got tired of paying dual fees); CX 43 (Hardy, Dep. at 17-18) (testifying that Century 21 Today agents "don't really need to belong to two MLSs," and therefore his office has not joined MiRealSource "to save my agents money and not have them pay two fees"); CX 348-001 (Letter from Cranbrook Associates - Bloomfield Hills withdrawing from MiRealSource because "Our agents have become increasingly upset with paying two MLS fees into the unforeseeable future" because there was no merger of Realcomp and MiRealSource)).

Response to CCPF No. 498:
Respondent has no specific response.

499. Realcomp and MiRealSource explored a merger, in part, so that those brokers who were members of both MLSs would pay less in fees overall and have "less duplication of time, energy, [and] effort with the listings." (CX 40 (Elya, Dep. at 29-30); CX 413 (Kersten, Dep. at 26-27); CX 37 (Bowers, Dep. at 63-64); (CX 238-013 (Realcomp admission that merger talks with MiRealSource were motivated, at least in part, by a desire to minimize the need for Realcomp members to pay dues to two MLSs)). Belonging to both MiRealSource and Realcomp was perceived as a disadvantage for those agents who had to pay double dues. (CX 42 (Nead, Dep. at 96-97)).

Response to CCPF No. 499:
Respondent has no specific response.

500. Realcomp and MiRealSource also discussed data sharing possibilities so that their members could stop paying double MLS dues. (CX 36 (Kage, IHT at 192, 198); CX 50; CX 51; CX 55; CX 238-013 (Realcomp admission)). One of the main reasons that Realcomp signed data sharing agreements with 8 other MLSs was to help Realcomp members avoid paying duplicate MLS fees. (CX 274-276, CX 278; CX 35 (Kage, Dep. at 192-199)).

Response to CCPF No. 500:
Respondent has no specific response.

501. Indeed, much of Mr. Murray's recent consulting work relating to MLSs has been to "get rid of duplicate MLSs, merge MLSs that overlap each other in a marketplace," which has been the trend in the real estate industry over the last 15 years. (Murray, Tr. 183-184). Likewise, NAR has encouraged the formation of regional MLSs in order for brokers to be more cost effective by not having to incur the costs associated with participating in two or more MLSs. (CX 414 (Niersbach, Dep. at 30-32); CX 380-012).

Response to CCPF No. 501:
Respondent has no specific response.

2. Access to the Realcomp MLS Database Allows Brokers to Compete Effectively by Exposing Listings to Thousands of Cooperating Brokers

502. Participation in the Realcomp MLS is "critical" for a broker to do business in the Realcomp service area. (G. Moody, Tr. 856-857 ("[F]or Southeast Michigan, Realcomp is the MLS, and that's where all the Realtors go to find the houses, and what they do is search the MLS for their buyers' criteria, and so this is where all the Realtors go to find out what's available in the market for sale."); Mincy Tr. 340-341; CX 405 (Baczkowski, Dep. at 20); illustrated in DX 5-001).

Response to CCPF No. 502:
MiRealSource is an MLS that competes with Realcomp in serving Southeastern Michigan (RPF ¶¶ 40-51, 59-60). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp. (RPF ¶61).

503. The proprietary portion of the Realcomp MLS allows brokers to search for properties and obtain certain information about the property that is not published on public websites, such as the offer of compensation and the listing type. (Mincy, Tr. 338-339). Thus, even though listing information from the Realcomp MLS is published on websites, the proprietary portion of the Realcomp MLS is still the "primary tool" that agents and

brokers use to search for properties. (Mincy, Tr. 340-341) (explaining why he always advises sellers to put their listings onto the Realcomp MLS)).

Response to CCPF No. 503:
Respondent has no specific response.

504. It is important for a home seller to have their listing in the Realcomp MLS because the seller will receive "immediate availability and access to all the Realtors in the Southeastern Michigan area that are subscribers to the system to be able to immediately see that their property is available, and if they have customers or clients to be able to show it to them." (CX 405 (Baczkowski, Dep. at 20); *See also* CX 224-001 (Realcomp's size -- 2,230 participating offices and "nearly 15,000" participating agents -- allows brokers to "[m]ake more sales through co-op arrangements with nearly one half of all REALTORS in Michigan."); CX 222-007 (describing "cooperative opportunities" available to Realcomp members as "priceless")).

Response to CCPF No. 504:
Realcomp has seen its membership decrease from 15,000 at the end of 2005 to 13,800 members (Kage, Tr. 1026).

a. Broker Testimony and Realcomp Documents Show that Access to the Realcomp MLS Database is Necessary to Effectively Compete

i. Realcomp Brokers Recognize that the Realcomp MLS Provides Its Members' Listings with Key Exposure

505. By placing a listing on the Realcomp MLS, a broker exposes the listing to the thousands of Realcomp members working with buyers, which is "great exposure for a house that's for sale." (Mincy, Tr. 318; CX 410 (Cooper, Dep. at 29) (Listing a property for sale on the Realcomp MLS allows a seller to enlist the assistance of potentially thousands of cooperating brokers in locating a buyer for that property)). For example:

- Realcomp Governor, Alissa Nead, testified that her firm, Coldwell Banker Preferred, puts all of its active listings onto the Realcomp MLS to expose the listings to Realcomp's 14,000 members. (CX 42 (Nead, Dep. at 22-24)).

- Realcomp Governor, Martin Nowak, testified that Realcomp members want their listings on the Realcomp MLS for the exposure to almost 15,000 members. (CX 415 (Nowak, Dep. at 26-27)).

- The Executive of the largest Realcomp shareholder board, Walter Baczkowski, testified that having a listing on the Realcomp MLS gives sellers a big audience for potential buyers. (CX 405 (Baczkowski, Dep. at 20-21)).

- Realcomp Governor, Robert Gleason, testified that he has never advised a seller not to put their listings on the Realcomp MLS because the Realcomp MLS has 14,000 members and "you want as many of those buyers as possible to be able to view your home." (CX 38 (Gleason, Dep. at 122)).

- Realcomp Governor, Darralyn Bowers, puts all of her listings onto the Realcomp MLS because "I need all of the Realtors working for me I can get." (CX 37 (Bowers, Dep. at 48-49)). As she explained, by placing a listing on the Realcomp MLS, all other Realcomp members can view the listing, and "[i]t raises my likelihood of getting a sale. The quicker I get a sale, the quicker I can get another listing." (CX 37 (Bowers, Dep. at 49)).

- Denise Moody testified that the Realcomp MLS is "the largest MLS in Michigan" that covers "one of the more populous areas in the state," making it necessary to belong to Realcomp. (D. Moody, Tr. 543, 567-568 (The Moody's would be "los[ing] half of our business if we choose to not work with Realcomp.")).

Response to CCPF No. 505:
Respondent has no specific response.

506. Other means used by brokers to advertise listings do not reach nearly as many other agents as does the Realcomp MLS. For example, Ms. Nead explained that she sometimes emails listings directly to other agents, but this would only include about 200 agents. (CX 42 (Nead, Dep. at 24)). She also sometimes sends flyers, but these will reach only 75 to 80 agents. (CX 42 (Nead, Dep. at 24)).

Response to CCPF No. 506:
Respondent has no specific response.

507. Listings that do not go into the Realcomp MLS suffer from a "lack of exposure" and miss "potentially thousands of buyers" working with brokers who are members of the Realcomp MLS. (Mincy, Tr. 310-311, 317-318 (explaining the problems of "in-house listings" that did not go onto the MLS)).

Response to CCPF No. 507:
Respondent has no specific response.

ii. Realcomp Members Also Recognize That Realcomp's Membership Size Is At Least Twice

the Size of Any Other MLS in Southeastern Michigan Increasing Its Value to Brokers

508. Realcomp listing agents benefit from Realcomp's high market share. (CX 42 (Nead, Dep. at 46); CX 43 (Hardy, Dep. at 78) (testifying that because Realcomp has more members than MiRealSource, it makes more sense to put listings on the Realcomp MLS than on the MiRealSource MLS)).

Response to CCPF No. 508:
Respondent has no specific response.

509. The more agents that are members of an MLS, the better it is for a seller and the listing agent because it increases the likelihood of a sale. (CX 42 (Nead, Dep. at 35-36)). Specifically, the larger the membership of an MLS, the better it is for home sellers because more agents and brokers representing potential buyers will see the listing. (CX 40 (Elya, Dep. at 28-29); Sweeney, Tr. 1343 (If an "MLS doesn't have the majority of the listing data, then it has little or no value.")). Likewise, the more listings there are on an MLS, the more likely the cooperating broker will be able to find a property that their buyer wants to purchase. (CX 408 (Brant, Dep. at 38)).

Response to CCPF No. 509:
Respondent has no specific response.

510. Some Realcomp members also advertise to potential clients the benefits of their membership in the largest MLS in Southeastern Michigan. For example, the Century 21 Today website refers to the Realcomp MLS when it advertises to consumers that it is "a member of the largest multiple listing service in Southeast Michigan, representing an average of 18,000 properties in the metropolitan Detroit market." (CX 289-001; CX 43 (Hardy, Dep. at 87); *See also* CX 309-002 (advertising benefits of belonging to the Realcomp MLS); CX 421 (Whitehouse, Dep. at 51-53)).

Response to CCPF No. 510:
Respondent has no specific response.

iii. Realcomp is the Local MLS for Brokers in Southeastern Michigan

511. Realcomp members recognize the importance of belonging to the local MLS. For example, Mr. Whitehouse advertises to consumers that "An absolute must is that the Realtor subscribes to the local computerized multiple listing service, MLS, so that your property's exposed to the maximum number of potential buyers." (CX 307-001; CX 421 (Whitehouse, Dep. at 46-48); CX 39 (Taylor, Dep. at 17) (testifying that it only makes sense to list properties on the local MLS)).

Response to CCPF No. 511:
Respondent has no specific response.

512. For brokers in Southeastern Michigan, their local MLS is Realcomp. For example:

- Mr. Taylor has never listed properties in Ann Arbor or Flint because "it never made sense" because his local MLS is Realcomp. (CX 39 (Taylor, Dep. at 15-17, 44-45) (also explaining that he only searches the Realcomp MLS, and not the MiRealSource MLS, when representing a buyer because MiRealsource typically services an area other than the ones his buyers are looking in)).

- Mr. Rademacher practices in Livingston county, so he has never belonged to any MLS besides Realcomp because Realcomp serves the area he practices in. (CX 416 (Rademacher, Dep. at 9, 37)).

- Ms. Groggins testified that almost every listing she had as an associate broker for YourIgloo in Southeastern Michigan went onto the Realcomp MLS. (CX 526 (Groggins, Dep. at 14)).

- In explaining why YourIgloo would not consider reentering Michigan even though MiRealSource entered into a consent decree with the Commission to allow Exclusive Agency listings onto its MLS and to be fed to public websites, Mr. Aronson testified that, "the primary MLS in the state of Michigan is Realcomp, and until they change their ways, I am not going to consider doing business in Michigan." (CX 422 (Aronson, Dep. at 40-41); *See also* (CCPF ¶¶ 709-720 (The geographic market section demonstrates that brokers who have listings in Oakland, Wayne, Livingston and Macomb counties enter the listings into the Realcomp MLS)).

Response to CCPF No. 512:
MiRealSource is an MLS that competes with Realcomp in serving Southeastern Michigan (RPF ¶¶ 40-51, 59-60). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp (RPF ¶61). YourIgloo.com left Michigan for more reasons than Realcomp's Policies, and it has not fully abandoned Michigan as it continues to do a substantial referral business (RPF ¶166).

b. Industry Expert Testimony Confirms the Importance of Access to the Realcomp MLS Database

513. Although Mr. Murray recognizes that there are other MLS's adjacent to Realcomp, Mr. Murray does "not know of any effective alternatives that provide the geographic coverage or membership size that is offered by Realcomp." (RX 154-A-032).

Response to CCPF No. 513:
MiRealSource is an effective alternative to Realcomp. (RPF ¶¶ 40-51) (CX 407 (Bratt, Dep. 9-10, 30-31, 35, 73-74); MiRealSource is a competitor to Realcomp. (Kage, Tr. 1057); *see also* the Response to CCPF ¶512.

514. Based on discovery from this case, Mr. Murray's own research and other industry research and publications, Mr. Murray concluded that access to the Realcomp MLS is "significant" or "very important to brokers to be able to compete effectively in Southeast Michigan." (Murray, Tr. 178; RX 154-A-005-006).

Response to CCPF No. 514:
See the Responses to CCPF ¶¶ 513 and 518.

515. Realcomp is the local MLS for brokers operating in Wayne, Livingston, Oakland and Macomb counties, so placing listing information on Realcomp "is critical" to allowing listing brokers to reach the local cooperating brokers who are working with buyers searching for homes in those counties. (Murray, Tr. 179-180).

Response to CCPF No. 515:
See the Responses to CCPF ¶¶ 513 and 518.

516. Mr. Murray concluded that access to the Realcomp MLS allows brokers representing sellers "to put listing information into the Realcomp MLS and to have it reach potentially these 15,000 other members who represent buyers who are looking for homes." (Murray, Tr. 179). This exposure "dramatically increases" the listing broker's marketing reach. (RX 154-A-026-027).

Response to CCPF No. 516:
Realcomp has seen its membership decrease from 15,000 at the end of 2005 to 13,800 members (Kage, Tr. 1026).

517. Realcomp's 14,000 - 15,000 membership was important to Mr. Murray in forming his opinion because "[t]he larger the MLS, the more cooperating members, the more effective that is at helping" brokers serve their clients. (Murray, Tr. 182). A larger MLS in terms of the number of members and number of listings can be "more efficient" within its service area. (Murray, Tr. 182; RX 154-A-031 ("The value of an MLS increases with the more listings it has because that increases the likelihood that brokers will be able to match a willing buyer with a willing seller.")).

Response to CCPF No. 517:
Respondent has no specific response.

518. A larger MLS also will be "more effective" at helping brokers serve their clients because "if you're a listing broker, you've got more potential cooperating brokers with more

buyers to help sell your home. If you're a cooperating broker, you've got more inventory to look at. If you're working with a buyer, I mean, it would be as if – if I were a cooperating broker in those four counties and there were another MLS with only 3,000 participants, well, where would I list my home? I would list it on the bigger one, because there's more cooperating brokers, more people and chances to get my client's home sold." (Murray, Tr. 182-183).

Response to CCPF No. 518:
MiRealSource has approximately 7,000 members (CX 407 (Bratt Dep. at 85)), with that membership increasing 40% in the last four years, (CX 407 (Bratt, Dep. at 74)). See also the Response to CCPF ¶ 513.

519. An MLS with [redacted] (RX 154-031, *in camera*). Realcomp's market shares, as identified by Complaint Counsel's economist, is "sufficiently high" that brokers would want their homes listed on the Realcomp MLS in order to be able to compete. (Murray, Tr. 189).

Response to CCPF No. 519:
MiRealSource is an MLS that competes with Realcomp in serving Southeastern Michigan (RPF ¶¶ 40-51, 59-60). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp (RPF ¶61).

c. The Economic Evidence Shows that Access to the Realcomp MLS Database is Necessary to Effectively Compete

520. It is widely known in economics and in antitrust that a firm can have considerable market power without being a monopoly. (CX 557-A-009-010). This is particularly true in the case of MLS listing services that exhibit network effects. (CX 557-A-009-010). Due to network effects, the value of the MLS to brokers is directly related to the number of listings in the MLS on the selling side and the number of cooperating brokers on the buying side. (CX 557-A-009-010). Dr. Eisenstadt agrees with these conclusions. (CX 557-A-009-010; CX 133-036; Eisenstadt, Tr. 1530).

Response to CCPF No. 520:
Dr. Eisenstadt only agrees that the MLS exhibits indirect Network Effects and that a firm can have market power without being a monopoly. (Eistenstadt, Tr. 1530); (CX 133-036, FN 93).

521. Within a given geographic market, the value of an MLS with a high market share will be much greater to brokers and to the home buyers and sellers that they assist than to the value of an MLS with a small market share. (CX 557-A-010). Moreover, the viability of

competitive threats to an incumbent MLS from entrants diminishes as market share increases. (CX 557-A-010). This is the case because the incentive to switch between MLSs requires individual users to overcome collective switching costs, the magnitude of which increases as the number of users (reflected by market share) increases. (CX 557-A-010).

Response to CCPF No. 521:
There is no significant cost of switching from one MLS to another. (*Sweeney*, Tr. 1313-1314).

522. Regardless of how the property was sold, the fact that the property was listed in Realcomp shows the value of the Realcomp MLS to home sellers and listing brokers. The fact that home sellers and their listings brokers may list on more than one MLS (*i.e.*, dual list) or advertise the home in newspapers shows that these other channels are not effective substitutes to the Realcomp MLS. (CX 557-A-016).

Response to CCPF No. 522:
Respondent has no specific response.

523. Dr. Eisenstadt's conclusion about the two-sided nature of the MLS and the presence of network effects shows that access to the Realcomp MLS database is necessary for brokers to compete effectively. (CX 133-036). Dr. Eisenstadt states that "all else equal, listing agents will have a higher demand for an MLS platform that also attracts more selling agents." Likewise, he states that "selling agents' usage and demand for an MLS will increase with the number of listing agents on the opposite side of the platform." (CX 133-036).

Response to CCPF No. 523:

The proposal is inaccurate and its reliance on Dr. Eisenstadt is misplaced. Dr. Eisenstadt's Expert Report reflects that MiRealSource provides an effective alternative to Realcomp. (CX 133-010-011; CX 0133-013). *See also* the Response to CCPF ¶513.

524. Brokers using Exclusive Agency listings (non-ERTS listings) in the Realcomp area cannot circumvent Realcomp's Website Policy effectively, by dual-listing in another MLS. (Kage, Tr. 989) (admitting that there is no way for brokers using these listings to post on MoveInMichigan.com or ClickOnDetroit.com). Dual-listing in other MLSs, including MiRealSource, does not allow brokers to display Exclusive Agency listings in MoveInMichigan.com and the majority of Realcomp member IDX websites. (Murray, Tr. 236-237; RX 154-A-065; *See also* CX 498-033, *in camera* (concluding that no more than of [redacted] of Realcomp member offices who took an IDX feed could be reached through double listing in MiRealSource)).

Response to CCPF No. 524:
Brokers offering Exclusive Agency Listings can bypass Realcomp's Web Site Policy (RPF ¶¶102-108, 111-113). Jeff Kermath, Denise Moody and Craig Mincy do so and are successful (RPF ¶¶106-107, 163).

525. The value of an MLS to cooperating brokers working with buyers increases with the number of homes for sale that are listed in the MLS. (CX 498-A-019). This is because the greater the number of listings, the greater the likelihood that a cooperating broker will be able to match a particular buyer with a property for sale and/or the shorter will be the search period necessary to achieve this match. (CX 498-A-019).

Response to CCPF No. 525:
Respondent has no specific response.

526. The value of an MLS to listing brokers increases with the number of cooperating brokers that search the MLS. (CX 498-A-019). The greater the number of cooperating brokers using the MLS to search for homes, the shorter will be the expected time to sell a home and/or the higher will be the expected sales price. (CX 498-A-019). This discussion is a description of what economists call "network effects," which are a type of demand-side economies of scale that occur when the value of a product or service to a customer to depends on the number of other customers who also use the product or service. (CX 498-A-019).

Response to CCPF No. 526:
Respondent has no specific response.

527. Only an MLS provides an offer of compensation to a cooperating broker. (CX 498-A-024). As a result, cooperating brokers need access to the MLS to determine the amount of any brokerage commission being offered by either a listing agent on behalf of the home seller. (CX 498-A-024). Without access to the MLS, cooperating brokers would be required to directly contact (*e.g.*, by phone, fax, or e-mail) the broker or home seller, significantly increasing the time involved in searching on behalf of home buyers and thus the cost of search. (CX 498-A-024).

Response to CCPF No. 527:
Respondent has no specific response.

528. The presence of network effects results in the MLS being a necessary input in the provision of real estate brokerage services. (CX 498-A-024-025). Because efficiencies grow with the number of users, other sources of listing services with fewer users are not economically viable substitutes for an MLS. (CX 498-A-024-025).

Response to CCPF No. 528:

The statement "listing services with fewer users" is unclear, as are the references to "the MLS" and "an MLS." To the extent that the proposal suggests a comparison between Realcomp and MiRealSource, Respondent maintains that real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp. *See* the Response to CCPF ¶513.

529. Listing brokers that do not have access to the MLS, and thus are required to advertise their listing by means other than a MLS, can expect that fewer cooperating brokers will see the property such that, at a given asking price, the likelihood of a sale will be lower and, if a sale occurs, the expected time to sell will be longer, all else equal. (CX 498-A-024-025).

Response to CCPF No. 529:
Respondent has no specific response.

530. Cooperating brokers who are unable or unwilling to use the MLS will need to contact listing brokers or home sellers directly to learn the compensation offer and at the same time may need to search over multiple sources in order to identify the same number and type of houses being offered for sale that are available on the MLS. (CX 498-A-024 and 498-A-025). As a result, search costs, including time costs, would increase significantly compared to the search costs using the MLS. (CX 498-A-024-025).

Response to CCPF No. 530:
Respondent has no specific response.

531. Therefore, brokers without full access to an MLS would be at a significant competitive disadvantage. (CX 498-A-024 and 498-A-025). Consistent with these benefits of using an MLS, the overwhelming majority of real estate brokers are members of an MLS and list all homes for sale in an MLS. (CX 498-A-024-025).

Response to CCPF No. 531:
Respondent has no specific response.

532. Realcomp's market power in the relevant geographic areas can be exercised by hindering or excluding competitors in the market for real estate brokerage services. (CX 498-A-030).

Response to CCPF No. 532:
Realcomp at all times pertinent to this matter has permitted agents: (1) to enter Exclusive Agency Listings into the Realcomp MLS, and (2) who enter Exclusive Agency Listings to be members of Realcomp (JX 1, ¶57).

533. For most brokers there are no reasonable substitutes to the Realcomp MLS in these areas. (CX 498-A-030). Realcomp therefore has the ability to anticompetitively exclude certain

competitors, such as low-cost unbundled service brokers, from the real estate brokerage services market by implementing rules that exclude such competitors or inhibit their ability to compete. (CX 498-A-030).

Response to CCPF No. 533:
Realcomp does not exclude brokers. *See* the response to CCPF ¶532. Brokers can also compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp. *See* the Response to CCPF ¶513. YourIgloo.com is the only agent offering Exclusive Agency Listings that suggested that it left Michigan because of Realcomp's Policies, and it has not abandoned Michigan, as it continues to do a substantial business. (RPF ¶166).

534. Excluded or disadvantage competitors cannot costlessly switch to listing in an alternative MLS, such as MiRealSource or the data sharing partners. (CX 498-A-030). This is because the value of listing a home located in the relevant geographic areas in an alternative MLS would be significantly lower than the value of listing that home in Realcomp. (CX 498-A-030). The number of cooperating brokers searching alternative MLSs for homes in the relevant areas is likely to be much smaller than the number of cooperating brokers searching for homes in the Realcomp MLS. (CX 498-A-030). Thus, such brokers would be significantly disadvantaged competitively relative to brokers that are not restricted from access to the full services of Realcomp. (CX 498-A-030).

Response to CCPF No. 534:
See the Response to CCPF ¶513 concerning brokers being able to successfully compete in Southeastern Michigan by belonging to MiRealSource, and the Response to CCPF ¶524 concerning agents offering Exclusive Agency Listings who dual-list and are successful. Furthermore, brokers searching the Realcomp database also have access to the data share partners' listings and information.

535. The Realcomp MLS should be viewed as an input to the brokers who use that input in the supply of brokerage services to consumers. (D. Williams, Tr. 1099).

Response to CCPF No. 535:
Respondent has no specific response.

B. Access to Realcomp's Feed of Listings to Approved Websites Allows Brokers to Compete Effectively by Exposing Listings Directly to Buyers

1. Internet Marketing of Listings Provides Key Exposure of Homes for Sale

a. Buyers Now Use the Internet to Search for Homes More Than Any Other Source of Information

536. As explained by the industry expert, "[m]arketing properties on the Internet has become a significant factor in a broker's ability to compete effectively because, first and foremost, it is where buyers are searching for homes for sale, even before they meet with a broker." (RX 154-A-041). "[I]nternet marketing is necessary to reach the potential buyers on the Internet." (RX 154-A-041).

Response to CCPF No. 536:
Respondent has no specific response.

537. Industry surveys confirm that "buyers are using the Internet as an integral part of their home search." (RX 154-A-035). In fact, one industry study has determined that the "typical buyer is now the Internet buyer." (CX 532-005; CX 456-003 (attesting that CX 532 was prepared by the California Association of Realtors in 2005, and has been used by NAR's MLS Future Presidential Advisory Group for discussion purposes)).

Response to CCPF No. 537:
Respondent has no specific response.

538. [redacted] (CX 535-001, 014, *in camera*).

Response to CCPF No. 538:
Respondent has no specific response.

539. The Consumer Tsunami study [redacted] (RX 154-007, *in camera*; Murray, Tr. 136-137 (testifying that brokerage firms pay $35,000-$50,000 for copies of this report)).

Response to CCPF No. 539:
Respondent has no specific response.

540. According to the 2006 Consumer Tsunami study, [redacted] (CX 535-006, 024-025, *in camera*) ([redacted]). [redacted] (CX 365-006, 024, *in camera*).

Response to CCPF No. 540:
Respondent has no specific response.

541. In its 2006 Profile of Home Buyers and Sellers, NAR found that 80% of all home buyers – 83% of first-time buyers and 78% of repeat buyers – used the Internet in their home search. (CX 373-036). This percentage has been steadily increasing over the past decade, and has risen from 2% in 1995 and 41% in 2001. (CX 373-039; CX 617-007 (citing the NAR Profile of Home Buyers and Sellers); CX 623-002). Buyers are using the Internet to search for information about properties for sale. (CX 373-045 (96% of buyers are using Internet to search for homes for sale); CX 406 (Bishop, Dep. at 87)).

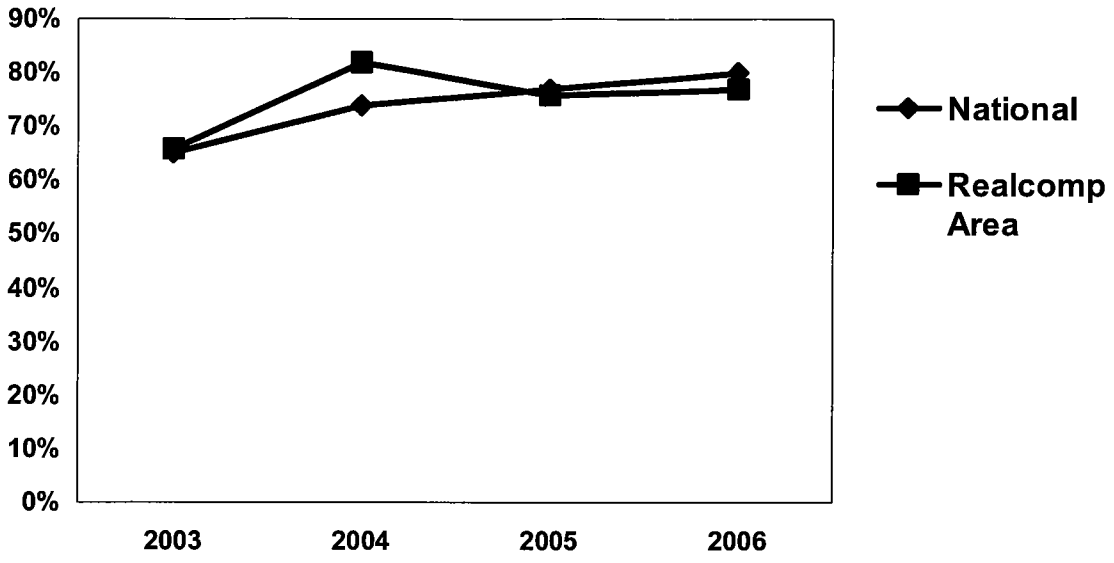
Response to CCPF No. 541:
Respondent has no specific response.

542. Home buyers in the 2006 NAR Profile of Home Buyers and Sellers reported using the Internet in their home search more often than they used yard signs, print newspaper advertisements, open houses, or home books or magazines. (CX 373-036; Murray, Tr. 213-214 (buyers use the Internet "substantially above other sources of information")). The percentage of buyers using the Internet was only surpassed by the percentage of buyers using a real estate agent (85%). (CX 373-036).

Response to CCPF No. 542:
Respondent has no specific response.

543. Data collected by NAR from survey responses of buyers located in Southeastern Michigan to NAR's Profile of Home Buyers and Sellers is consistent with the national trends. (RX 154-A-036; Murray, Tr. 212-213 (noting that there were an insufficient number of survey responses from Southeastern Michigan to be statistically significant, but that the numbers were relevant to show consistency with the national statistics)). The following graph illustrates the percentage of buyers who used the Internet in their home search on a national basis and in Realcomp's area:

Percentage of Buyers Who Used the Internet in Their Home Search



(RX 154-A-036; CX 550 (NAR Data Collected from Survey Responses to the 2003 – 2006 NAR Profile of Home Buyers & Sellers)).

Response to CCPF No. 543:
Respondent has no specific response.

544. In its 2006 Profile of Home Buyers and Sellers, NAR also found that 59% of all home buyers used the Internet in their home search "frequently," while another 21% of home buyers used the internet in their home search "occasionally." (CX 373-037). The percentage of home buyers who used the Internet "frequently" in their home search has increased since 2003. (CX 373-037; CX 372-032; CX 371-032).

Response to CCPF No. 544:
Respondent has no specific response.

545. In its 2006 Profile of Home Buyers and Sellers, NAR further found that 73% of buyers who used the Internet found it to be a "very useful" source of information, while another 25% of buyers found the Internet to be a "somewhat useful" source of information. (CX 373-037). The percentage of home buyers who found the Internet to be a "very useful" information source increased between 2003 and 2006. (CX 373-037; CX 372-033; CX 371-031). The Internet is a useful tool for consumers because it "allows far more property information to be displayed and searched than any prior marketing tools available to real estate professionals or consumers." (RX 154-A-039).

Response to CCPF No. 545:
Respondent has no specific response.

546. By way of comparison, with the exception of a real estate agent, which was found to be "very useful" by 69% of home buyers, "[n]o other information sources were considered 'very useful' by more than half of home buyers." (CX 373-037).

Response to CCPF No. 546:
Respondent has no specific response.

547. Younger home buyers – the future of real estate – use the Internet more frequently than older buyers. (CX 373-038; RX 154-A-038). Specifically, 87% of buyers between 18 and 44 used the Internet to search for homes, with 69% of such buyers using the Internet "frequently." (CX 373-038; CX 406 (Bishop, Dep. at 72-73)). For buyers aged 45 to 64, 76% of buyers used the Internet to search for homes, with 49% searching the Internet "frequently." (CX 373-038). Forty-four percent of buyers aged 65 and older used the Internet, with 21% using it "frequently." (CX 373-038).

Response to CCPF No. 547:
Respondent has no specific response.

548. In its 2006 Profile of Home Buyers and Sellers, NAR found that, "[f]irst-time buyers use the Internet more often and also more frequently than repeat buyers. While 83 percent of first-time buyers used the Internet, 62 percent report that they used it frequently. In contrast, 78 percent of repeat buyers used the Internet, with 57 percent reporting that they used it frequently." (CX 373-038). The percentage of first-time buyers who used the Internet in their home search "frequently" increased between 2003 and 2006. (CX 373-038; CX 372-032; CX 371-032).

Response to CCPF No. 548:
Respondent has no specific response.

549. These consumer studies are also supported by website statistics, which show an increasing use of real estate websites by consumers. ComScore Media Metrix measures website usage for the leading real estate websites in the United States. (CX 609-001; CX 364-367 (ComScore Media Metrix is considered the "number one" or "gold standard" for Internet reporting, to provide the monthly statistics for Realtor.com); CX 412 (Goldberg, Dep. at 104-107) (testifying that comScore website statistics were accurate, reliable and "viewed as an industry standard")). Move, Inc., the company that operates Realtor.com, relies on the website statistics compiled by comScore Media Metrix. (CX 411 (Dawley, Dep. at 35)).

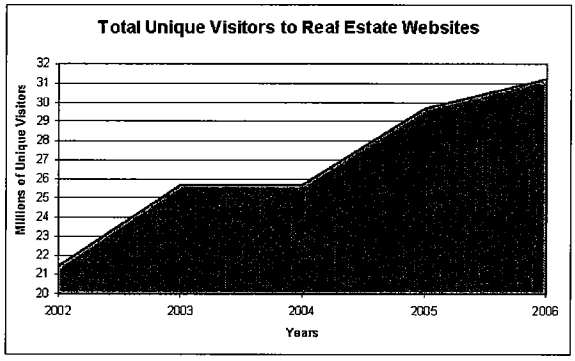
Response to CCPF No. 549:
Respondent has no specific response.

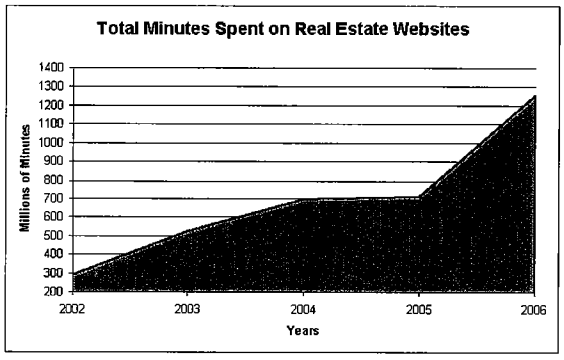
551. Specifically, comScore Media Metrix statistics show that between December 2002 and December 2006, the number of Unique Visitors to real estate websites increased from

21.44 million in December 2002 to 31.23 million in December 2006, the number of Total Visits to real estate websites increased from 46.19 million in December 2002 to 115.54 million in December 2006, and the Total Minutes spent on real estate websites increased from 294.2 million in December 2002 to 1.259 *billion* minutes in December 2006. (CX 609-001, 016; (a compilation by comScore Media Metrix of monthly statistics for real estate websites for each December between December 2002 and December 2006.)).

Response to CCPF No. 551:
Respondent has no specific response.

552. The following graph illustrates the increase in consumer usage of all real estate websites since 2002:





(CX 609; CX 412 (Goldberg, Dep. at 109-111)).

Response to CCPF No. 552:
Respondent has no specific response.

b. Buyers View and Purchase Homes They First Found on the Internet

553. As a result of using the Internet in their home search, buyers reported that they drove by, viewed, or walked through a home they first found online. (CX 373-039; CX 406 (Bishop, Dep. at 76-77); Murray, Tr. 215-216 (because buyers are "doing serious shopping online" for homes to purchase, brokers want to be sure that their listings are on the websites visited by buyers)).

Response to CCPF No. 553:
Respondent has no specific response.

554. In its 2006 Profile of Home Buyers and Sellers, NAR found that 24% of all buyers first learned about the home they ultimately purchased on the Internet. (CX 373-040). NAR

reported that although this percentage was "unchanged from the previous year's results, the percentage [of buyers who first learned about the home they purchased on the internet] has increased sharply from 2 percent in 1997, clearly signaling the increasing importance of online information in the search process for most buyers." (CX 373-040; CX 406 (Bishop, Dep. at 79)).

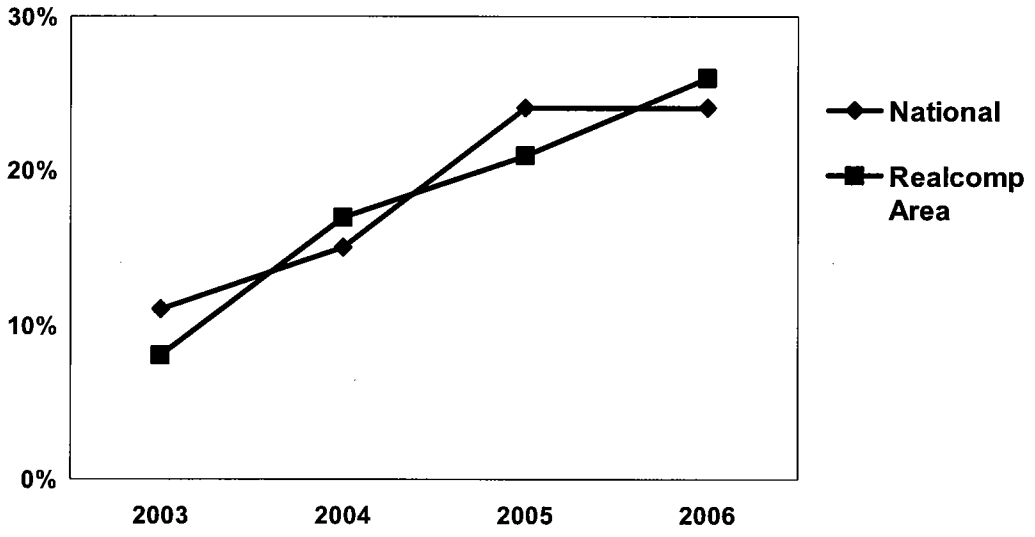
Response to CCPF No. 554:
Respondent has no specific response.

555. By way of comparison, 36% of buyers reported in the 2006 NAR Profile of Home Buyers and Sellers that they first learned about the home they ultimately purchased from a real estate agent – down from 50% in 1996, and only 15% of buyers reported that they first learned about the home they ultimately purchased from a yard sign. (CX 373-040).

Response to CCPF No. 555:
CX 373-04 reflects it is "down from 50% in 1997," not down from 50% in 1996".

556. Data collected by NAR from survey responses of buyers located in Southeastern Michigan to NAR's Profile of Home Buyers and Sellers is consistent with the national trends. (RX 154-A-039). The following graph illustrates the percentage of buyers who first found the home they purchased on the Internet on a national basis and in Realcomp's area:

Percentage of Buyers Who First Found the Home They Purchased on the Internet



(RX 154-A-039; CX 550 (NAR Data Collected from Survey Responses to the 2003 – 2006 NAR Profile of Home Buyers & Sellers); *See also* Mincy, Tr. 350 (testifying that, in his experience, buyers are more and more often finding on the Internet the home that they end up purchasing)).

Response to CCPF No. 556:
Respondent has no specific response.

c. Industry Studies and Publications Confirm the Importance to Brokers of Marketing Properties on the Internet

557. CX 533, The Future of Real Estate Brokerage: Challenge and Opportunity for Realtors ("Future of Real Estate Brokerage"), was prepared in 2003 by NAR's Research Division "as an examination of the impact of a changing regulatory, technological, economic, and competitive environment on the real estate industry and describes current and likely future brokerage business models." (CX 456-004). The Research Division concluded, based on its experience in conducting these types of studies and knowledge of the real estate industry, that the findings and analyses in CX 533 were reliable and accurate, and distributed the study with the expectation that it may be relied upon by persons inside and outside NAR. (CX 456-004).

Response to CCPF No. 557:
Respondent has no specific response.

558. Industry publications by NAR have repeatedly emphasized the importance of the Internet to brokers in generating leads, or buyers interested in specific properties. For example, in its 2003 Future of Real Estate Brokerage study, NAR found that "[i]nvesting in the Internet is not without cost, but firms who make investment have been rewarded with business leads." (CX 533-027). In a 2006 Discussion Paper on the Future of the MLS, NAR explained, "The brokerage firm of the future will need to embrace the realities of the new world order and learn to convert internet leads to paying customers in order to compete effectively." (CX 380-008).

Response to CCPF No. 558:
Respondent has no specific response.

559. A White Paper by Cendant, the largest real estate brokerage company in the United States and which owns and operates such franchises as Century 21 and Coldwell Banker, emphasized the importance of Internet marketing of listings to its associated agents and brokers. (CX 617-008; Murray, Tr. 172). "The Internet offers an unprecedented opportunity for agents to 'sell' the best attributes of a house before the buyer ever sets foot in it. No other medium can make the same claim." (CX 617-008).

Response to CCPF No. 559:
Respondent has no specific response.

560. As Cendant explained, "Consumers have made it a business imperative" for brokers to be more effective in marketing their clients' home listings on the Internet. (CX 617-003-004; CX 417 (Simos, Dep. at 70) (explaining that not marketing properties on the Internet would "ignore the opportunities that the Internet can provide.")).

Response to CCPF No. 560:
Respondent has no specific response.

561. Cendant explained in its White Paper that Internet marketing is "more effective" than off-line methods and that, "The Internet is emerging as one of the most valuable customer lead generation tools available for Realtors today." (CX 617-007, 004 (explaining that the consumer is driving this trend); CX 417 (Simos, Dep. at 70-71)). "Again, the issue is information. Gone are the days when agents could hoard listing information in MLS books from customers. Now is the time for us to deliver more information to consumers, not less." (CX 617-009; CX 417 (Simos, Dep. at 71)).

Response to CCPF No. 561:
There is a [sic] in the quote.

562. A 2006 study that surveyed brokers and agents confirms that brokers also recognize the importance of marketing properties on the Internet. Specifically, in the 2006 Consumer Tsunami study, [redacted] (CX 535-149, *in camera*). [redacted] to their first meeting with a broker. (CX 535-149, *in camera*; Murray, Tr. 151-152 (Buyers are searching the Internet and going to their first meeting with the cooperating broker with profiles on seven to ten homes)).

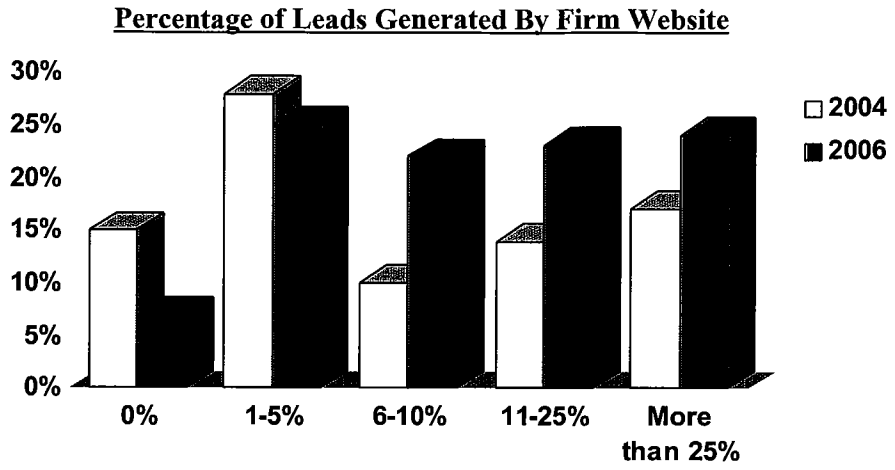
Response to CCPF No. 562:
Respondent has no specific response.

563. In the 2006 Consumer Tsunami study, brokers reported that, [redacted] (CX 535-151, *in camera*). [redacted] (CX 535-180, *in camera*). [redacted] (CX 535-188, *in camera*). [redacted] (CX 535-156, *in camera*).

Response to CCPF No. 563:
Respondent has no specific response.

i. Data Support the Effectiveness of Internet Marketing

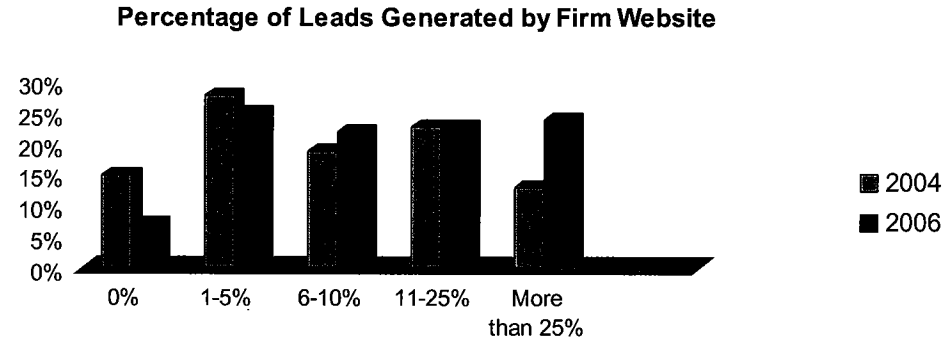
564. Data show that brokerage firms have been gaining a growing percentage of business leads from marketing their clients' listings on the Internet. The following graph illustrates the growth of leads generated by firm websites from 2004 to 2006:



(CX 369-045; CX 406 (Bishop, Dep. at 14-15, 22-23, 28) (explaining that Research Division produced reports and concluded that the findings were accurate and reliable); CX 370-057; CX 406 (Bishop, Dep. at 38-40); RX 154-A-043).

Response to CCPF No. 564:

The 2004 percentages utilized in the above-referenced graph and in ¶75 of Murray's report (CX 154-A-043) are inconsistent with the percentages reported by NAR in CX 369-045. The bar for 6-10% should be at 19%, the bar for 11-25% should be at 23% and the bar for more than 25% should be at 13%. The following graph illustrates the correct information:



565. As Mr. Murray explained, the data show that there was approximately a 40% growth in the number of firms who attributed more than 25% of their leads to their website. (Murray, Tr. 217-218). Even for the approximately 50% of brokers who generated 10% of less of their leads from their own website, this is still considered "a huge chunk of business in our industry" to be attributed to one marketing source. (Murray, Tr. 218).

Response to CCPF No. 565:
Respondent has no specific response.

566. Data also show that brokerage firms are generating sales, not just leads, from their Internet marketing efforts. Specifically, the 2006 Profile of Real Estate Firms found that the median residential brokerage firm with a website derived 7% of their actual sales volume from that site. (CX 370-058; CX 406 (Bishop, Dep. at 14-15, 22-23, 28) (explaining that Research Division produced reports and concluded that the findings were accurate and reliable); *See also* CX 623-011 (Move, Inc. study determining that every 10% increase in Internet search activity today correlated to a 4.3% increase in closings at or above list price 12 weeks downstream). This is a "big chunk of business. (Murray, Tr. 218-219 (explaining that attributing "7% of your sales from one marketing channel is huge, "given that most brokers' business comes through their agents and not from marketing efforts)).

Response to CCPF No. 566:
The Internet does not necessarily generate more sales, as real estate business is often generated strictly on referrals. (CX 41 (Mulvihill, Dep. at 69-71)). Most business is based on referrals and from the MLS. (CX 41 (Mulvihill, Dep. at 70-71)).

567. The 2006 Profile of Real Estate Firms also found that 15% of residential brokerage firms generated 25% or more of their sales volume from their brokerage website. (CX 370-058). In a 2005 NAR Member Profile, NAR had found that 12% of brokers generated 25% or more of their business from their own personal business websites. (CX 531-031).

Response to CCPF No. 567:
Respondent has no specific response.

568. These statistics may understate the generation of leads of Internet marketing. (RX 154-A-043). First, these studies only measure leads generated from a firm website and not from other potential Internet marketing activities. (RX 154-A-043; CX 370-057; CX 531-031). Second, Move, Inc., which operates Realtor.com, believes that some brokers may not know how to track leads generated they receive from websites such as Realtor.com – in part because many consumers may call the broker, rather then sending an e-mail inquiry after viewing a home online – and brokers do not always follow up on leads from Realtor.com. (CX 417 (Simos, Dep. at 66-67)).

Response to CCPF No. 568:

Respondent has no specific response.

569. Internet marketing has become "more effective" at reaching more real estate consumers than print advertising. [redacted] (CX 535-189, *in camera*; RX 154-041, *in camera*; CX 541-004 (Move, Inc. study finding that only 4% of a newspaper's circulation reads the real estate classified section)).

Response to CCPF No. 569:
Respondent has no specific response.

ii. Case Studies Show the Cost-Effectiveness of Internet Marketing

570. In one Broker Case Study, the different modes of advertising a home and their comparative costs and effectiveness in generating leads were studied. (CX 621-007; CX 417 (Simos, Dep. at 64-65). The Case Study found that Yard Signs, while generating the highest percentage of leads at 35%, cost $163,384. (CX 621-007; CX 417 (Simos, Dep. at 64-65). In comparison, the Internet was able to generate the second highest percentage of leads, at 20% of all leads, at a cost of only $10,000. (CX 621-007; CX 417 (Simos, Dep. at 64-65). Newspaper advertising, which cost $631,836, generated only 8% of leads, and direct mail and home magazines together cost over $320,000 and generated only a negligible amount of leads. (CX 621-007; CX 417 (Simos, Dep. at 64-65) (explaining that, "[i]nquiries means leads," or people interested in the property)).

Response to CCPF No. 570:
Respondent has no specific response.

571. In another case study, [redacted] (CX 535-187, *in camera*; *See also* CX 542-065 (comparing ad in newspaper with photos for 90 days as costing $27,000, with cost of posting ad on Realtor.com with 6 color photos for life of the listing as $50)).

Response to CCPF No. 571:
Complaint Counsel's reliance upon this case study is misplaced because New York is one of the only places in the country without an MLS (Murray, Tr. 252-254). Dr. Murray also acknowledged that the cost of an ad in the New York Times would be higher than the ad rate for a newspaper in Southeastern Michigan (Murray, Tr. 255).

572. A Move, Inc. survey reported in April 2005, showed that large brokerages were able to generate 13% of their "Closed Leads" at a cost of $200,000 – in comparison to 3.5% of leads from print advertising at a cost of $5.4 million. (CX 623-013).

Response to CCPF No. 572:
CCPF ¶ 572 lacks fundamental factual background (*i.e.,* where the leads were generated from). CX 623-013 lists a variety of sources for "closed leads," and Complaint Counsel only references indirectly one such source. (CX 623-013).

iii. Data on the Use of Internet Marketing by Brokers Reflects the Importance of Internet Marketing

573. Outside of the MLS, marketing homes on the Internet is the most used marketing tool by real estate brokers. (CX 373-079). Specifically, the 2006 NAR Profile of Home Buyers and Sellers found that 85% of sellers nationwide who used a real estate broker to sell their home had their home marketed on the internet – an increase from 73% in 2004. (CX 373-079 ("[t]he Internet has become one of the most-used marketing tools by real estate agents in all four regions of the country, and in 85 percent of home sales nationally."); CX 406 (Bishop, Dep. at 108-109); CX 371-063). By way of comparison, 78% of sellers who used a real estate agent had their home marketed via a yard sign. (CX 373-079).

Response to CCPF No. 573:
CX 373-079 reflects "an increase from 72% in 2004", not "an increase from 73%."

574. NAR found, in its 2006 Profile of Real Estate Firms, that 78% of all brokerage firms had a website, and that another 5% planned to develop a web presence – an increase from 52% of residential brokerage firms who had a website as reported in NAR's 2004 Profile of Real Estate Firms. (CX 370-055; CX 369-045).

Response to CCPF No. 574:
Respondent has no specific response.

iv. Data Show That Buyers Do Not Use the Internet as a Substitute for Real Estate Brokers

575. In its 2006 Profile of Home Buyers and Sellers, NAR found that "[t]he Internet is not a substitute for the knowledge and experience of real estate professionals. . . ." (CX 373-043; CX 372-036 ("Use of the internet has not diminished the role of real estate professionals in the home purchase process. In fact, home buyers who used the Internet when searching for a home are much more likely to use a real estate agent when purchasing a home."); Murray, Tr. 214 ("Interestingly enough, the more buyers use the Internet, the likelier they are to use and buy a home through a broker.")).

Response to CCPF No. 575:

Respondent has no specific response.

576. More buyers who use the Internet in their home search use, and ultimately purchase a home through, a broker than do buyers who do not use the Internet. (CX 373-043, RX 154-A-040 ("Significantly, the data does not support a contention that buyers or sellers are using the Internet as a means to avoid using a real estate agent."). This trend has been consistent since at least 2004. (CX 373-043-044; CX 372-035-036; CX 371-034-035; *See also* CX 406 (Bishop, Dep. at 83-84)).

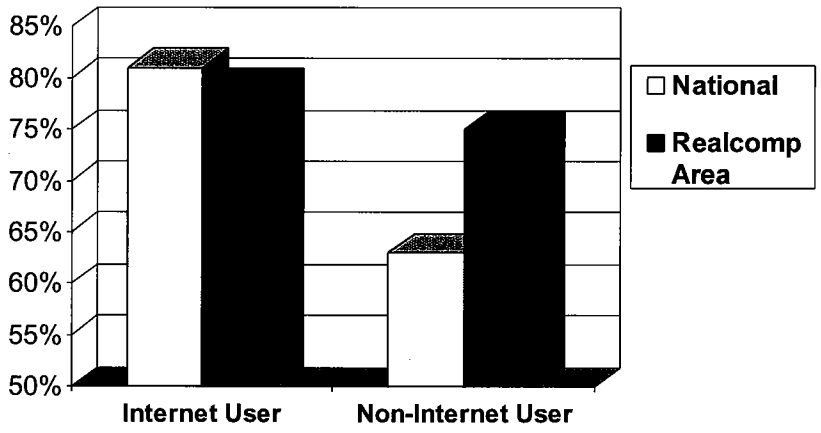
Response to CCPF No. 576:
Respondent has no specific response.

577. Specifically, 87% of buyers who used the Internet in their home search also used a broker, as compared to 74% of buyers who did not use the Internet. (CX 373-043; CX 406 (Bishop, Dep. at 81-82)). In addition, 81% of buyers who used the Internet in their home search purchased the home they ultimately selected with the assistance of a broker, as compared to 63% of buyers who did not use the Internet. (CX 373-044); *See also* (CX 406 (Bishop, Dep. at 84-85)).

Response to CCPF No. 577:
Respondent has no specific response.

578. Data from survey responses from consumers in Southeastern Michigan is consistent with these national trends and is reflected in the following graphs:

Percentage of Buyers Who Purchased Their Home Through a Broker



(CX 373-044; CX 550; RX 154-A-040-041; Murray, Tr. 214 (testifying that this data is a "powerful statement about the fact that the Internet is not reducing the use of real estate brokerage companies for buying and selling homes)).

Response to CCPF No. 578:
Respondent has no specific response.

579. In addition, Cendant, the largest real estate brokerage firm in the United States, has explained to its membership that "the role of the traditional real estate professionals will be complemented – *not displaced* – by any and all enhancements we make in the online marketing of our work product, home listings." (CX 617-007 (citing NAR studies on the use of real estate agents by buyers using the Internet to search for homes)).

Response to CCPF No. 579:
Respondent has no specific response.

d. Internet Marketing Is Also Important to Compete Effectively in Southeastern Michigan

580. Karen Kage, CEO of Realcomp, admitted that Realcomp has informed its member that the "majority of home buying and selling now begins on the Internet." (CX 221-001; CX 35 (Kage, Dep. at 38-39); Kage, Tr. 925 (admitting that the majority of home buyers want to be able to search for homes on the Internet before they buy)).

Response to CCPF No. 580:
Respondent has no specific response.

581. Realcomp Governors and members consistently testified that brokers want to have their listings on public real estate websites to expose their listings to potential buyers. *e.g.,* (CX 38 (Gleason, Dep. at 123); (CX 421 (Whitehouse, Dep. at 53) (testifying that marketing through the Internet is a "good way to get in contact with buyers and sellers"); CX 309; CX 42 (Nead, Dep. at 78-79) (agreeing that most home buyers want to be able to search listings on the internet); Sweeney, Tr. 1362-1363 (testifying that some buyers are searching the Internet for homes for sale); CX 413 (Kersten, Dep. at 35) (websites helps seller-clients because it provides more exposure to their property and they benefit buyers by providing more information about the specific property)).

Response to CCPF No. 581:
Respondent has no specific response.

582. Realcomp Governors and members also testified that their personal experience is consistent with national trends on the use of real estate websites by buyers. (CX 42 (Nead, Dep. at 78-79) (testifying that her actual experience is consistent with survey results that show 76 percent of buyers search for listings on the internet); CX 421 (Whitehouse, Dep. at 54) (finding that "most of buyers and sellers have gone to the internet"); CX 43 (Hardy, Dep. at 79-80) (NAR statistics that 80% of home buyers search for homes on the Internet is consistent with the experience of agents at Century 21

Today); CX 320; CX 421 (Whitehouse, Dep. at 92-93) (advertising to potential clients that 80% of all home buyers access information about properties on the Internet)).

Response to CCPF No. 582:
Respondent has no specific response.

583. As Mr. Hardy admitted, the Internet has become an increasingly important avenue for marketing homes in recent years. (CX 43 (Hardy, Dep. at 79)). Mr. Hardy further explained that marketing homes through the Internet is an important part of the Century 21 Today marketing plan. (CX 43 (Hardy, Dep. at 97); *See also* CX 421 (Whitehouse, Dep. at 64-67) (testifying that brochures and mailings are no longer effective in selling real estate; using technology and a multimedia presentation is the key to getting sellers and to sell their homes); CX 310 (describing multimedia presentation to include multiple photographs, virtual tours, and posting listing on website)).

Response to CCPF No. 583:
Respondent has no specific response.

584. Brokers in Southeastern Michigan have also testified to the growth in leads generated by their Internet marketing. For example, Mr. Kersten, the President and CEO of one of the largest brokerage firms in Southeastern Michigan, invested in a new appearance and features to the Century 21 Town & Country website and saw an increase in leads for properties generated from his website skyrocket to 31% of all leads. (CX 413 (Kersten, Dep. at 34-36) (testifying that the new website increased the number of hits per month from 7,500 to 120,000 and that this has "helped immensely" in generating leads for listings – "The growth from nothing to 31% of leads is significant.")).

Response to CCPF No. 584:
Respondent has no specific response.

585. As Mr. Baczkowski admitted, more money is being spent on Internet advertising today than ever before: "you have a lot of dollars being spent in that medium now to attract consumers." (CX 405 (Baczkowski, Dep. at 114)). For example, [redacted] (CX 323-CX 324, *in camera*; (CX 421 (Whitehouse, Dep. at 98-100), *in camera*).

Response to CCPF No. 585:
Respondent has no specific response.

586. Consumers also are driving this trend in Southeastern Michigan. As John Cooper testified, "Consumers today have become very internet savvy. The way in which consumers approach a real estate transaction has evolved. They do a fair amount of research before they contact a human being, and so we're finding . . . we were finding a

more knowledgeable consumer coming through the door." (CX 410 (Cooper, Dep. at 29-30); *See also* Mincy, Tr. 345 (testifying that he encourages buyers to search real estate websites because "it really gives them the opportunity to kind of do their own search" and often "buyers will tell me they're looking for this particular house and then they'll end up buying something different.")).

Response to CCPF No. 586:
Respondent has no specific response.

587. Many Realcomp members advertise the importance of Internet marketing and their expertise in Internet marketing to potential clients who are looking to sell their homes. For example:

- In advertising his services to potential client-sellers, Mr. Kersten highlights the importance of Internet marketing. (CX 357).

- Mr. Whitehouse tells sellers that they want their listings on the Internet, and that he is one of best Realtors at using technology to sell homes. (CX 310-006; (CX 421 (Whitehouse, Dep. at 59-61, 69); CX 310)).

- Century 21 Today employs an internet specialist, and advertises this fact to potential clients. (CX 287; (CX 43 (Hardy, Dep. at 80-81)). The first point in Century 21 Today's web marketing materials to potential home seller clients is that Century 21 Today will provide internet marketing of their home to reach "tens of millions of Internet users." (CX 288-001; CX 43 (Hardy, Dep. at 82-83)).

- Realcomp Governor David Elya tells potential sellers that he will advertise their home extensively through the Internet. (CX 40 (Elya, Dep. at 30-31); CX 109-001 (advertising Internet marketing in first point made to potential clients).

Response to CCPF No. 587:
Respondent has no specific response.

2. Buyers Search for Homes On Four Key Categories of Websites

a. Consumers Want and Benefit From Real Estate Websites With Comprehensive Listing Data

588. Websites with a comprehensive set of listings are likely to attract buyers and to keep them on the site for longer periods of time. (RX 154-A-037; CX 412 (Goldberg, Dep. at 74, 85, *in camera*) ([redacted]); CX 405 (Baczkowski, Dep. at 38, 115-116) ("The site that a consumer feels they can go to to get the most information as easily as possible is typically a site that they will go back to.")).

Response to CCPF No. 588:
Respondent has no specific response.

589. Websites with a current, complete and accurate set of listings "produces a more educated consumer" and a "more knowledgeable purchase decision." (CX 411 (Dawley, Dep. at 63-64, 66-67) (explaining that accuracy of a website refers to updating the website to correctly reflect any updates to the listing on the MLS)).

Response to CCPF No. 589:
Respondent has no specific response.

590. A website with a comprehensive set of listings benefits buyers by allowing them to be more efficient in the home search process by visiting one website. (CX 412 (Goldberg, Dep. at 74); CX 497 (Greenspan, Dep. at 21) (providing the best consumer experience possible means "to have the greatest number of available properties so that consumers can go to one location and find as much information as they can about properties on the market in any given area.")). In addition, "[m]ore listings increase the amount of time potential buyers spend on a real estate site and increases the likelihood of them finding a home that they would like to purchase." (CX 533-013).

Response to CCPF No. 590:
The last sentence quoted by Complaint Counsel, which starts with "[m]ore listings . . . " is not reflected in CX 533-013.

591. Sellers benefit from exposure of their listings on websites with comprehensive listing data because those sites were likely to attract and retain interested buyers, which in turn would give the listings of sellers who advertised on the site greater exposure. (CX 412 (Goldberg, Dep. at 74-75); *See also* Murray, Tr. 245 (broker does not benefit from putting listings on sites without a lot of listings because that is not where the buyers are)).

Response to CCPF No. 591:
Respondent has no specific response.

b. Studies Repeatedly Find That Buyers Most Use The Same Four Categories of Websites

592. "[S]ellers want their information at the site that is going to best market them and best attract the consumer." (CX 405 (Baczkowski, Dep. at 38-39, 46) (testifying that home sellers always want their listings "to be at the best site possible."). No matter how great a real estate website may be, if consumers are not visiting it, then it does not provide much value to the brokers who post their listings on it. (CX 417 (Simos, Dep. at 18-19); Murray, Tr. 245; RX 154-A-067 ("Internet marketing is only a competitive advantage to

brokers to the extent that a significant number of buyers in the relevant geographic area are actually visiting the relevant website.")).

Response to CCPF No. 592:
Respondent has no specific response.

593. As explained by Mr. Murray, it is "critical" to target your listings on the Internet websites where consumers in a broker's service area are most likely to be looking for homes. (Murray, Tr. 221-222). Studies, at separate times, reached the same conclusions as to the four main websites that buyers visit in their search for homes. (Murray, Tr. 221-222).

Response to CCPF No. 593:
Respondent has no specific response.

594. In its 2006 Profile of Home Buyers and Sellers, NAR found that buyers visited four categories of websites in their home search much more than any others: MLS websites; Realtor.com; and the websites of real estate companies and real estate agents, also referred to as "IDX websites". (CX 373-046 (40-50% of buyers reported visiting these four categories of websites); CX 406 (Bishop, Dep. at 89-90)). NAR reached these same findings in its 2004 and 2005 Profile of Home Buyers and Sellers. (CX 372-039 (most visited websites by buyers in 2005 were Realtor.com, MLS websites, and IDX websites); CX 371-038 (most visited websites reported by buyers in 2004 were Realtor.com, MLS websites, and the IDX websites)).

Response to CCPF No. 594:
See the Response to CCPF ¶868.

595. By way of comparison, whereas 40-50% of buyers reported visiting MLS websites, Realtor.com, and the websites of real estate companies and agents (IDX websites); newspaper websites with real estate listings were the fifth most visited websites with 14% of buyers reporting that they searched those types of websites as part of their home search; home magazine websites were ranked sixth with 6% of buyers reporting that they searched those types of websites; and *all other* websites were searched by a total of 10% of buyers. (CX 373-046).

Response to CCPF No. 595:
CX 373-046 reflects a range of 40% - 53%, not "40% - 50%" as Complaint Counsel asserts.

596. NAR's findings are consistent with the findings of the 2006 Consumer Tsunami. Specifically, the Consumer Tsunami study found that, [redacted] (CX 535-007, 029, *in camera*); *See also* CX 405 (Baczkowski, Dep. at 37) (consumers generally will look at only three public real estate websites)).

Response to CCPF No. 596:
Gary Moody, who has considerable Internet experience and training, expects GoogleBase will be more important than the IDX in the near future. (RPF ¶ 121(d)).

597. Data collected from survey responses by buyers located in Southeastern Michigan were consistent with these national statistics. Specifically, buyers in Southeastern Michigan also ranked Realtor.com, MLS websites, and real estate company and agent websites as the top four most visited websites. (CX 550; RX 154-A-047)

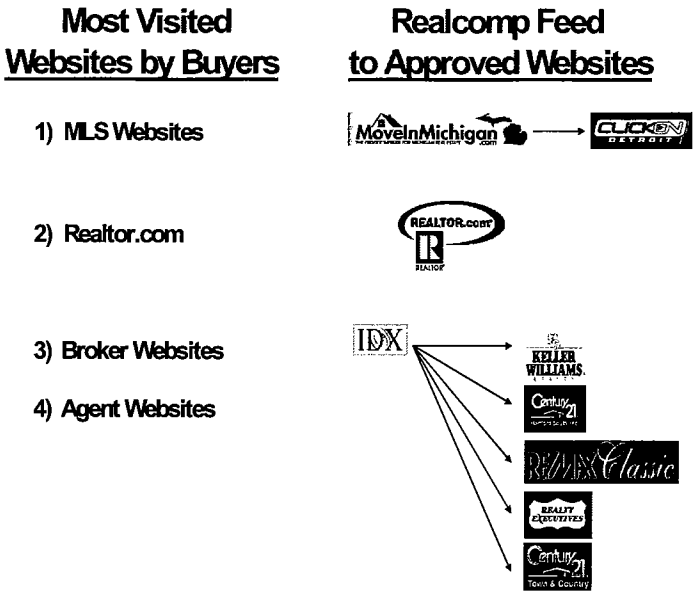
Response to CCPF No. 597:
Respondent has no specific response.

598. These categories of websites that are most used by buyers have a comprehensive set of listings in the geographic area in which they are looking to purchase a home. (CX 411 (Dawley, Dep. at 64-65) (testifying comprehensive websites include Realtor.com, an MLS-sponsored website or a broker website that participates in an IDX feed)). In addition, Realtor.com, MLS websites and broker websites provide "more accurate" and complete data than other websites. (CX 411 (Dawley, Dep. at 66)).

Response to CCPF No. 598:
Respondent has no specific response.

C. Realcomp's Feed of Listings to Approved Websites Goes to Each of the Four Key Categories of Websites

599. As explained above in CCPF ¶¶ 368-372, 382-384, Realcomp provides a feed of listing information to each of the four categories of websites most visited by buyers. This is illustrated in DX 1-010, below:



Response to CCPF No. 599:
See the Response to CCPF ¶868.

600. When a listing is added or updated in the Realcomp MLS, the listing is automatically updated on MoveInMichigan.com, ClickonDetroit.com, all of the IDX websites, and Realtor.com. (Kage, Tr. 931-932; CX 35 (Kage, Dep. at 30)). "Realcomp's feed of listing information to these websites is not only a free benefit to its members, but it is also an efficient way to update the websites with any changes to the MLS listings because these changes are automatically updated as part of Realcomp's feed to the websites." (RX 154-A-047-048; CX 222-006, 009).

Response to CCPF No. 600:
Respondent has no specific response.

601. The Realcomp feed of listing information to the Approved Websites is a "value-added" service for Realcomp members. (CX 221-003 ("The existence of sophisticated database capabilities and Internet access pave the way to value-added services for MLSs and their member subscribers."); CX 272 (advertising as a benefit of Realcomp membership that there are "millions of internet users shopping for homes on MoveInMichigan.com, Realtor.com, and Realcomp Subscribing Broker's IDX (Internet Data Exchange) websites.")).

Response to CCPF No. 601:
Respondent has no specific response.

602. MLS websites benefit consumers because they provide a neutral site for consumers to view a comprehensive set of listings of the MLS members. (RX 154-A-048; Murray, Tr.

222-223). MLS websites benefit brokers, particularly smaller brokerages who may not be able to afford their own website with a property search feature, because brokers generally have significant control over the MLS website in determining which information is displayed, and its prices and policies. (RX 154-A-048; Murray, Tr. 223).

Response to CCPF No. 602:
Respondent has no specific response.

603. Realcomp told its members that one of the benefits of having listings on MoveInMichigan.com is that it "is accessed by thousands of consumers each week as a primary source of obtaining real estate information for Southeastern Michigan." (CX 267-003; CX 35 (Kage, Dep. at 178-181)).

Response to CCPF No. 603:
Respondent has no specific response.

604. Realtor.com benefits brokers because it can generate leads, it does not charge referral fees, it is cheaper to market than print advertisement, is more effective at reaching real estate consumers than newspapers, there's no third party coming between the consumer and the broker, and it helps educate the consumer about the types of homes they're interested and the value and home sale prices that they can afford before they even contact a broker. (CX 417 (Simos, Dep. at 67-69); CX 497 (Greenspan, Dep. at 38-39)).

Response to CCPF No. 604:
Realtor.com is losing its competitive advantage because the content is available on other websites. (CX 497 (Greenspan, Dep. at 21)). Realtor.com's share of the market is decreasing. (CX 412 (Goldberg, Dep. at 129)).

605. Realtor.com also benefits brokers by exposing their listings to consumers who visit websites that have entered into "co-branding" relationships with Realtor.com, including AOL, MSN and Excite. (CX 417 (Simos, Dep. at 13-15, 19-22, 25-27)).

Response to CCPF No. 605:
Respondent has no specific response.

606. As recognized by Mr. Greenspan, a Vice President at the company that operates Realtor.com, the IDX can be a powerful marketing tool for brokers because it allows for "a broker to provide consumers that might view a broker's website, the inventory beyond their own inventory, provide a better service for consumers." (CX 497 (Greenspan, Dep. at 12)).

Response to CCPF No. 606:
Respondent has no specific response.

607. The IDX website is a benefit to both buyers and sellers. (Sweeney, Tr. 1344). The website attracts buyers by having properties available to be searched on its website, which then benefits sellers through the increased exposure of their listings. (Sweeney, Tr. 1344; CX 351-001 (advertising the Weir Manuel website to potential seller-clients)).

Response to CCPF No. 607:
Respondent has no specific response.

608. The IDX feed is more valuable if it is more comprehensive. (Sweeney, Tr. 1317). As explained by Mr. Sweeney at trial, brokers want their "website to be known as having all of the content." (Sweeney, Tr. 1344). As recognized by Mr. Sweeney, more data and content on their website will attract business and gather prospective buyer leads because– "If we didn't have valuable content, there would be no reason for the public to come and view that website." (Sweeney, Tr. 1317).

Response to CCPF No. 608:
Respondent has no specific response.

1. MLS Website: MoveInMichigan

a. Realcomp Marketing of MoveInMichigan

609. MoveInMichigan.com is the Realcomp-owned and operated websites that includes Realcomp member listings for consumers to search. (CCPF ¶¶ 385-391).

Response to CCPF No. 609:
Respondent has no specific response.

610. Realcomp has an entire marketing document devoted to telling current and potential Realcomp members about the benefits of MoveInMichigan.com. (CX 258; CX 35 (Kage, Dep. at 152-157)).

Response to CCPF No. 610:
Respondent has no specific response.

611. Realcomp highlighted to its current and potential members that "MoveInMichigan.com provides additional marketing exposure for you and your listings." (CX 258-002; Kage, Tr. 934). Moreover, "Realcomp promotes the MoveInMichigan.com website using many different advertising mediums which continue to drive Internet traffic to Realcomp Realtors and their listings." (Kage, Tr. 935; CX 258-002; CX 35 (Kage, Dep. at 152-153)).

Response to CCPF No. 611:
Complaint Counsel omitted a portion of the first quote, which should read: "MoveinMichigan.com is a public search site maintained by Realcomp which provides additional marketing . . ." (emphasis added to highlight omitted portion).

612. Realcomp advertises to the public that MoveInMichigan.com is "the most comprehensive real estate listing database in all of Southeastern Michigan." (Kage, Tr. 934). The MoveInMichigan.com website does not say that it only includes Exclusive Right to Sell listings. (Kage, Tr. 934).

Response to CCPF No. 612:
Respondent has no specific response.

613. Realcomp member dues help pay for MoveInMichigan.com, even though all members do not get to have their listings included on it. (CX 415 (Nowak, Dep. at 43, 55)).

Response to CCPF No. 613:
The Complaint challenges the Web Site Policy, which prohibits Exclusive Agency Listings from being sent to MoveInMichigan.com (Complaint, ¶15). Realcomp's members can, and do, offer different types of listings. Amerisell Realty offers flat-fee ERTS listings in Realcomp's service area for $200 more than a non-ERTS listing (Kermath, Tr. 729-31, 791; Eisenstadt, Tr. 1451-1452, 1474; RPF 176). The suggestion that Realcomp discriminates against some of the members is inaccurate. (See, e.g., JX 1, ¶57).

614. Realcomp stated to current and potential members that MoveInMichigan.com "Not only is a great source for finding Realtors and their listings, but the website also features multiple photos, virtual tours, and Open Houses that have been scheduled on the Realcomp Online system." (CX 258-002; CX 35 (Kage, Dep. at 154); CX 272).

Response to CCPF No. 614:
Complaint Counsel omitted a portion of the quote. The quote should read: "Not only is it a great source for finding REALTORS® and their listings, but the website also features multiple photos, virtual tours, and Open Houses that have been scheduled on the Realcomp Online® system." (emphasis added to corrections).

615. MoveInMichigan.com can be considered to be "a very local version of Realtor.com," as it contains only listings from Southeastern Michigan. (Kage, Tr. 933, 949; CX 258-006; CX 35 (Kage, Dep. at 156-157)).

Response to CCPF No. 615:
Respondent has no specific response.

616. Realcomp has a 9 person IT team to help maintain MoveInMichigan.com and deal with any issues regarding the Realcomp IDX feeds. (CX 35 (Kage, Dep. at 173-175)).

Response to CCPF No. 616:
Respondent has no specific response.

617. In September 2005, Realcomp put together a marketing plan aimed solely at increasing consumer awareness of MoveInMichigan.com, including radio, television, and internet advertising. (CX 178).

Response to CCPF No. 617:
Respondent has no specific response.

618. Realcomp stated to its members that "these marketing efforts [related to ClickOnDetroit.com] are expected to raise consumer awareness of the benefits of MoveInMichigan.com and ultimately, Realcomp REALTORS®." (CX 267-003; CX 35 (Kage, Dep. at 178-181)).

Response to CCPF No. 618:
Respondent has no specific response.

619. Realcomp has sought to make more people aware of MoveInMichigan.com through a recent marketing campaign. (Mincy, Tr. 446, 448 (A lot of his clients are now aware of MoveInMichigan.com, and he therefore considers it "at least equally important as the IDX.")). [redacted] (Kage, Tr. 943, *in camera*; CX 264, *in camera*).

Response to CCPF No. 619:
Mr. Mincy testified at his deposition that there was a significant gap between IDX and MoveInMichigan.com. (Mincy, Tr. 446-448).

620. Realcomp spends over [redacted] promoting MoveInMichigan.com. (CCPF ¶¶ 622-623, 629-630).

Response to CCPF No. 620:
Respondent has no specific response.

621. As Ms. Nead, a Realcomp Governor, put it, Realcomp believes that MoveInMichigan is a benefit to its members "or they wouldn't spend the money" to maintain the website. (CX 42 (Nead, Dep. at 63)).

Response to CCPF No. 621:
Respondent has no specific response.

622. [redacted] (Kage, Tr. 941-942, *in camera*; CX 264, *in camera*). [redacted] (Kage, Tr. 943, *in camera*; CX 264, *in camera*).

Response to CCPF No. 622:
Respondent has no specific response.

623. [redacted] (Kage, Tr. 943, *in camera*; CX 264, *in camera*).

Response to CCPF No. 623:
Respondent has no specific response.

b. MoveInMichigan and ClickOnDetroit

624. ClickOnDetroit.com actually frames the MoveInMichigan.com website, so that consumers can see the MoveInMichigan.com real estate listings on ClickOnDetroit.com. (CX 36 (Kage, IHT at 49)).

Response to CCPF No. 624:
Respondent has no specific response.

625. ClickOnDetroit.com receives over 3.3 million hits per month. (Kage, Tr. 937-938). Realcomp advertises this information to their current and potential members. (Kage, Tr. 937-938).

Response to CCPF No. 625:
Respondent has no specific response.

626. MoveInMichigan.com and ClickOnDetroit.com not only include Realcomp MLS listing information, but there are also links to mortgage and financial services, school districts, Michigan jobs, and state, county, city and community links. (CX 261-CX 262). Realcomp added this information to make the websites easier for consumers. (CX 35 (Kage, Dep. at 162-163)).

Response to CCPF No. 626:
Respondent has no specific response.

627. In May 2007, there were 2 short videos touting the importance of MoveInMichigan.com on ClickOnDetroit.com, and the fact that MoveInMichigan.com is the most comprehensive website in Southeastern Michigan. (Kage, Tr. 938; CX 260; CX 35 (Kage, Dep. at 161-162)).

Response to CCPF No. 627:
Respondent has no specific response.

628. Realcomp pays ClickOnDetroit.com to be the exclusive provider of real estate information on the website. (Kage, Tr. 938).

Response to CCPF No. 628:
Respondent has no specific response.

629. [redacted] (Kage, Tr. 940-941, *in camera*).

Response to CCPF No. 629:
Respondent has no specific response.

630. [redacted] (Kage, Tr. 941, *in camera*; CX 264-265, *in camera*; CX 35 (Kage, Dep. at 167-172, 173, *in camera*)). [redacted] (Kage, Tr. 935, 941, *in camera*; CX 264-265, *in camera*; CX 35 (Kage, Dep. at 167-172, 173, *in camera*)).

Response to CCPF No. 630:
Respondent has no specific response.

c. MoveInMichigan Site Statistics Show Significant Usage

631. From January 2006 - October 2006, MoveInMichigan.com averaged about 748,000 hits per month, with the summer months having the highest number of hits. (CX 268). For example, in July 2006, MoveInMichigan.com received 862,386 hits and in August 2006, it received 896,934 hits. (CX 268; CX 35 (Kage, Dep. at 181-183)).

Response to CCPF No. 631:
Respondent has no specific response.

d. Broker Testimony Confirms the Growing Importance of MoveInMichigan

632. The majority of Realcomp members send their listings to MoveInMichigan.com through the Realcomp MLS, with over 12,700 Realcomp members participating in MoveInMichigan.com. (Kage, Tr. 931, 935-936; CX 33-014; CX 36 (Kage, IHT at 48)).

Response to CCPF No. 632:
Respondent has no specific response.

633. Mr. Nowak, a Realcomp Governor until December 2006, testified that MoveInMichigan.com receives a significant amount of hits from potential buyers and sellers. (CX 415 (Nowak, Dep. at 25)).

Response to CCPF No. 633:
Respondent has no specific response.

634. Mr. Baczkowski, the CEO of MCAR, believes that MoveInMichigan.com receives a large number of views. (CX 150; CX 151; (CX 405 (Baczkowski, Dep. at 109-110)).

Response to CCPF No. 634:
Respondent has no specific response.

635. Mr. Whitehouse makes sure his listings are on MoveInMichigan.com. (CX 315 - 319; (CX 421 (Whitehouse, Dep. at 89-92)).

Response to CCPF No. 635:
Respondent has no specific response.

636. Mr. Kermath tells his customers that they should upgrade to Exclusive Right to Sell/Full Service in Realcomp to get exposure on MoveInMichigan.com. (Kermath, Tr. 773; RX 12-7). He tells customers that this is Realcomp's "public MLS site where thousands of people search" for property listings. (RX 12-7). He also tells his customers that Realcomp promotes this "very popular" website through the newspaper and other forms of advertising. (Kermath, Tr. 773).

Response to CCPF No. 636:
Mr. Kermath also tells the public and testified that his company has great success with Limited Service Listings, but that it has better success with Exclusive Right to Sell Listings. (RX 2-Page 1; Kermath, Tr. 796-797). MoveInMichigan.com is not well-known by the public, although with recent advertising, exposure is increasing. (Mincy, Tr. 446-448).

2. Realtor.com

637. Between December 2002 and December 2006, the number of Unique Visitors to Realtor.com increased from 2.94 million to 3.91 million; the number of Total Visits to Realtor.com increased from 6.1 million to 8.6 million; the number of Total Page Views on Realtor.com increased from 213 million to 313 million; and the Total Minutes spent on Realtor.com increased from 39.5 million to 119 million. (CX 609-001, 016; Murray, Tr. 226 (explaining that the information provided in CX 609 "are all critical measurements of a website's effectiveness")). The majority of searches performed on Realtor.com were made by consumers searching in their local area for homes for sale. (CX 412 (Goldberg, Dep. at 61-62)).

Response to CCPF No. 637:
Realtor.com's share of the market is decreasing. (CX 412 (Goldberg, Dep. at 129)). Pursuant to CX 609-001, 016, the Total Page views on Realtor.com decreased from 313 million to 212 million, not increased from 213 to 313 million as Complaint Counsel stated.

638. Based on data collected by Realtor.com internal servers, consumers in Southeastern Michigan also frequently use Realtor.com. (RX 154-A-054 (explaining that Move, Inc. is able to collect data from internal servers related to the usage of Realtor.com based on specific geographic areas and MLSs)). Specifically, for the last quarter of 2003, consumers performed over 1.6 million property searches and had over 35 million property views on Realtor.com in Realcomp's geographic area. (RX 154-A-054; CX 544). This represented the 11th most property views of the approximately 900 MLSs or other providers of listings to Realtor.com. (RX 154-A-054; CX 544; CX 612-001; CX 411 (Dawley, Dep. at 82-83)). In the last quarter of 2006, consumers performed over 1.6 million property searches and had over 54 million property views on Realtor.com in Realcomp's geographic area. (RX 154-A-054; CX 545).

Response to CCPF No. 638:
Respondent has no specific response.

643. Over time, Realtor.com has had an increasing number of unique visitors, but is capturing a smaller market share because of increased competition from major real estate franchise websites and other websites. (CX 417 (Simos, Dep. at 46, 48-49)).

Response to CCPF No. 643:
Respondent has no specific response.

3. The Realcomp IDX: Real Estate Company and Agent Websites

a. Website Statistics Show the Importance of IDX Websites

644. Since at least 2002, comScore Media Metrix's measurement of the most used real estate websites has included IDX websites. (CX 609). The term "IDX Website" refers to a brokerage company's or agent's website that operates with an IDX data feed from their MLS. (CX 497 (Greenspan, Dep. at 13)). Some brokers have created a "national IDX website," such as Remax, which is when a national franchise's website is populated by IDX feeds from their individual affiliates (*e.g.*, either through a feed to Remax.com directly or through a link to their individual affiliate's website). (CX 497 (Greenspan, Dep. at 13-15)).

Response to CCPF No. 644:

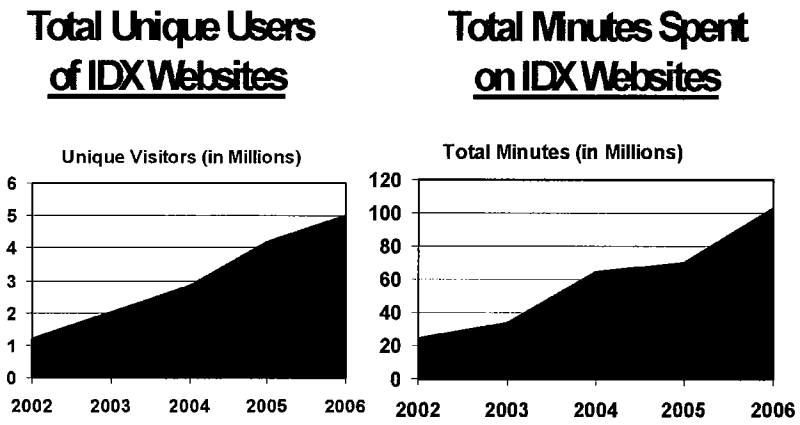
CX 609 does not support Complaint Counsel's assertion that the information contained in the document applies to the IDX.

645. The comScore Media Metrix data "shows that the competitive significance of IDX Websites is large and growing." (RX 154-A-062). Between December 2002 and December 2006, the number of Unique Visitors to IDX websites increased from 1.22 million to 5 million; the number of Total Visits increased from 2.01 million to 9.28 million; and the Total Minutes spent on franchise and brokerage sites increased from 24.4 million minutes to 103 million minutes. (CX 609-001, 016).

Response to CCPF No. 645:

It is unclear how CX 609 supports the proposition that IDX websites increased from 1.22 million to 5 million in 2006, as CX 609 does not support Complaint Counsel's assertion that the information contained in the document applies to the IDX.

646. The following graph illustrates the growth of IDX websites from 2002 to 2006:



(RX 154-A-062-063; CX 609).

Response to CCPF No. 646:

CX 609 does not contain the foregoing graphs.

647. By way of comparison, the total number of Unique Users of IDX websites reached 5 million in 2006, the total number of unique users to Realtor.com was 3.92 million. (Murray, Tr. 232). Put simply, there has been a proliferation of IDX websites. (CX 497 (Greenspan, Dep. at 13)).

Response to CCPF No. 647:

Gary Moody, who has considerable Internet experience, expects Google Base to surpass IDX in terms of popularity on the Internet in residential real estate. (RPF ¶¶ 117-118, 121(d)).

648. The national data for usage of IDX websites underestimates the total usage for IDX websites because it does not include local brokerage websites that receive a significant number of hits locally. (Murray, Tr. 230-231). For example, Real Estate One is one of the largest brokerage firms in Southeast Michigan and their website, which would not be reflected in the comScore Media Metrix statistics, received 400,000 unique visitors a month. (Murray, Tr. 230-232).

Response to CCPF No. 648:
Respondent has no specific response.

b. Broker Testimony Shows the Importance of the Realcomp IDX

649. In a NAR study, brokers ranked the four most preferred sites for advertising listings on the Internet as the websites of brokers, agents, franchise sites and Realtor.com. (CX 412 (Goldberg, Dep. at 134-135)). Real estate brokers want consumers to go to their broker IDX websites. (CX 148; *See also* CX 412 (Goldberg, Dep. at 56) (brokers "will become more savvy" about developing their own websites because "[t]hat's where they want the customer to come first because real estate is local. . . .")).

Response to CCPF No. 649:
Respondent has no specific response.

650. While the importance of Realtor.com has gone down, this has come about because of the growth of local broker websites. . . "people would rather go to the local sites." (CX 413 (Kersten, Dep. at 51-52, 54); (CX 412 (Goldberg, Dep. at 143) (testifying that franchise, brokerage, and agent sites are "trending upwards in importance."); Mincy, Tr. 349) ("pretty much all the local offices has a local Web site that you can then search the IDX database"); CX 413 (Kersten, Dep. at 39) ("the bigger Websites locally are drawing more business.")).

Response to CCPF No. 650:
Respondent has no specific response.

651. Realcomp Governors and members have testified that the IDX is an "important tool" for exposure of their listings. (CX 41 (Mulvihill, Dep. at 81-82); CX 40 (Elya, Dep. at 36-37) (the IDX feed "is an important tool that helps market their home to the maximum number of potential buyers."); CX 421 (Whitehouse, Dep. at 58) (testifying that his listings are included on other brokers' websites through IDX because it gets the listings more exposure); CX 415 (Nowak, Dep. at 20-21) (Realcomp's IDX feed gives a larger market exposure for its listings); D. Moody, Tr. 493; CX 433 (customers benefit from the additional exposure of the Realcomp IDX feed because then "there's more chance that somebody will see their home and be interested in possibly purchasing it.")).

Response to CCPF No. 651:

Respondent has no specific response.

652. The Realcomp IDX provides additional exposure for Realcomp listings to the public so that buyers can become aware of the property on multiple different websites. (CX 42 (Nead, Dep. at 77)). For example, through the Realcomp IDX, Coldwell Banker Preferred listings go to the Yahoo Real Estate website as well as competitor broker websites such as Century 21 Hartford South, Century 21 Town & Country, Remax Classic, Keller Williams Realty. (CX 42 (Nead, Dep. at 73-76); CX 121, CX 122, CX 123, CX 124, CX 125).

Response to CCPF No. 652:
Respondent has no specific response.

653. Mr. Sweeney testified at trial that he considers his participation in Realcomp's IDX feed as "important to [his] company." (Sweeney, Tr. 1317, 1343). In addition to the importance of using the IDX feed to populate the Weir Manuel website with listings for buyers to search for properties, Mr. Sweeney also recognized it as important for Weir Manuel to also use the IDX to get their listings out to other brokerage websites. (Sweeney, Tr. 1317-1318, 1343).

Response to CCPF No. 653:
Respondent has no specific response.

654. Some sellers in Southeastern Michigan expect their listings to be on the IDX websites. (CX 413 (Kersten, Dep. at 40); CX 43 (Hardy, Dep. at 91-92, 97) (home sellers wanted their listings to show up on other Realcomp IDX participant websites)). Exposure of their listings through Internet data exchange ("IDX") is becoming "more and more" important to customers of Greater Michigan Realty, especially over the last 12 to 18 months. In fact, "as the public gets more educated," customers understand what the IDX feed is and ask for their listings to be included in it. (G. Moody, Tr. 827, 831; CX 435-001).

Response to CCPF No. 654:
Respondent has no specific response.

655. Put simply, brokers not placing their listings on the IDX feed when their competitors did would place brokers at a "competitive disadvantage in the marketplace." (Sweeney, Tr. 1344-1345).

Response to CCPF No. 655:
Respondent has no specific response.

4. Realcomp Documents and Broker Testimony Confirm the Importance of MoveInMichigan.com, Realtor.com and IDX Websites for Competing Effectively in Southeastern Michigan

656. According to one Realcomp member, the most effective marketing tools outside of the MLS for selling homes are exposure on Realtor.com, MoveInMichigan.com and their brokerage website. (CX 525 (Adams, Dep. at 32-34, 39-41)). The Realcomp IDX feed, which supplies listing information to other brokers within the Realcomp system (*e.g.*, Century 21, Re/Max, Keller Williams, Realty One) is also "an important marketing tool" for his business. (CX 525 (Adams, Dep. at 75-76)).

Response to CCPF No. 656:
80% of all buyers are reached by the MLS, and if one combines that with Realtor.com, the combination reaches 90% of all buyers. (RPF ¶101).

657. Realcomp Governor Darralyn Bowers testified that she authorizes all of her listings to go from Realcomp to public websites and onto the Realcomp IDX because it raises the "likelihood of getting a sale." (CX 37 (Bowers, Dep. at 49-50)). Ms. Bowers explained that she wants her listings on popular websites such as Realtor.com, ERA.com, and Remax.com because it increases the likelihood that the listings will sell and sell quickly. (CX 37 (Bowers, Dep. at 50-51)).

Response to CCPF No. 657
Respondent has no specific response.

658. Mr. Whitehouse testified that when representing a seller it is important to market their home on the Internet, including on Realtor.com and the IDX broker websites, and that he makes sure that his listings are on Realtor.com, MoveInMichigan.com and the IDX. (CX 421 (Whitehouse, Dep. at 55-58, 89-92; CX 315-319)).

Response to CCPF No. 658
Respondent has no specific response.

659. Mr. Nowak testified that having your listings on Realtor.com, MoveInMichigan.com and Realcomp broker IDX websites gives listings market exposure to a number of potential buyers. (CX 415 (Nowak, Dep. at 24)).

Response to CCPF No. 659
Respondent has no specific response.

660. Ms. Nead's brokerage, Coldwell Banker Preferred participates in the Realcomp feed to Realtor.com, MoveInMichigan.com, and the Realcomp IDX to obtain greater exposure for its listings to attract more potential buyers. (CX 42 (Nead, Dep. at 78-79)).

Response to CCPF No. 660
Respondent has no specific response.

661. Mr. Rademacher makes sure his clients have the maximum exposure possible by including their listings on the Realcomp IDX websites and Realtor.com. (CX 416 (Rademacher, Dep. at 36)).

Response to CCPF No. 661
Respondent has no specific response.

662. For the period of 2001 to 2004 in Michigan, Mr. Aronson ranked the most effective internet-based marketing tools as the MLS, followed by Realtor.com, followed by the IDX, followed by the YourIgloo website, and in a distant fifth place was "everybody else." (CX 422 (Aronson, Dep. at 21-22)).

Response to CCPF No. 662
Respondent has no specific response.

663. Mr. Mincy testified has had buyers find the homes that they purchased on Realtor.com, MoveInMichigan.com, and Realcomp IDX websites such as Coldwell Banker's website. (Mincy, Tr. 349-50).

Response to CCPF No. 663
Respondent has no specific response.

664. At least some sellers in Southeastern Michigan want to find their listings on MoveInMichigan.com, Realtor.com and on the Realcomp IDX sites. (CX 526 (Groggins, Dep. at 49-51)). In fact, some brokers compete for listings by advertising to sellers that they would advertise their home "extensively on the internet," meaning Realtor.com, broker IDX websites, MoveInMichigan.com, ClickOnDetroit.com, and other sites. (CX 40 (Elya, Dep. at 31-34); CX 109-001; CX 288-001; CX 357; CX 310)).

Response to CCPF No. 664
Respondent has no specific response.

665. The significance of participating in Realcomp's feed of listing information to the Approved Websites is reflected in the high participation levels by Realcomp's members. As explained by Mr. Murray, "anytime we have 85% agreement in our industry on anything, it's a big – it's a big moment. It must be a great tool. . . . So that's a huge percentage. It shows that most of them must believe this is pretty important because this is not mandatory." (Murray, Tr. 230 (also explaining that Realcomp has some members who are appraisers or buyer agents who do not have listings and therefore would not participate in the Realcomp feed of listing information to public websites)).

Response to CCPF No. 665:
Respondent has no specific response.

666. Eighty-two percent of Realcomp members authorize their listings to be included in the Realcomp IDX feed, which is then sent to [redacted] of IDX websites of Realcomp members. (Kage, Tr. 948-949; CX 33-003; CX 245, *in camera*).

Response to CCPF No. 666:
Respondent has no specific response.

667. Realcomp's fact witness at trial, Mr. Sweeney, testified to the competitive harm to brokers for not participating in Realcomp's feed of listing information to the Approved Websites. (Sweeney, Tr. 1345-1347). In prior sworn testimony, Mr. Sweeney testified that it would be "business suicide" for a broker to not participate in the IDX feed when his competitors did. (Sweeney, Tr. 1345-1347). However, Mr. Sweeney clarified at trial that he was referring to a broker not using Realcomp's feed of listings to all of the public websites, including the IDX and Realtor.com, and "that probably would be business suicide. . . . Business suicide might have been a little strong, but it would definitely put them at a severe competitive disadvantage." (Sweeney, Tr. 1345-1347).

Response to CCPF No. 667:
Respondent has no specific response.

5. Demonstrating the Importance of the IDX, NAR Requires Associated MLSs to Offer IDX Service

668. NAR adopted an IDX policy in May 2000 to become effective on January 1, 2002. (CX 414 (Niersbach, Dep. at 53, 65) (explaining that it was a "pretty unanimous" decision to adopt an IDX policy)). NAR's IDX policy is mandatory – it requires all MLSs affiliated with NAR to offer an IDX feed for its members. (CX 414 (Niersbach, Dep. at 72). As explained by NAR, with the "increased dependence on the Internet to market properties, NAR's Board of Directors wanted to offer all listing brokers the opportunity to display on their public Websites the same full list of properties derived from their local MLS that consumers can view on aggregators' sites." (CX 391-002; (CX 414 (Niersbach, Dep. at 72) (further explaining that the NAR Board of Directors "felt that it was essential that we have rules consistent from one association to the next, from one MLS to the next so that our members would be treated the same in one jurisdiction over the other. . . .")).

Response to CCPF No. 668:
Respondent has no specific response.

669. NAR adopted an IDX policy in recognition that "on-line Internet identities" for its members would become an "integral part" of their marketing programs and because NAR has a "vital, immediate interest in facilitating Internet real estate applications by

REALTORS so their clients and customers are better informed and better served." (CX 384-002; CX 414 (Niersbach, Dep. at 60-62, 64); CX 391-001 ("According to NAR's Board Programs and Policies department, 'There is no question that such online identities are an increasingly integral element in the prospecting and marketing programs of Realtor companies.'")).

Response to CCPF No. 669:
Respondent has no specific response.

670. In introducing its new IDX policy to members, NAR explained that IDX "is the next stage in the evolution of MLS as the primary means of enhancing cooperation between REALTORS to facilitate the purchase and sale of real property." (CX 390-004; CX 414 (Niersbach, Dep. at 86) (explaining that NAR wanted to tell its membership that it believed that IDX was "the direction that cooperative relationships between real estate professionals were heading."); CX 414 (Niersbach, Dep. at 84) (CX 390 "is a virtual kit of information to assist associations and MLSs in understanding and implementing the IDX policy.")).

Response to CCPF No. 670:
Respondent has no specific response.

671. Laurie Janik, NAR's general counsel, has stated that the IDX "is a powerful tool to enable brokers with a business presence on the Internet to attract consumers." (CX 391-001). NAR has communicated that the benefits of the IDX policy include allowing brokers to "fully market their services on the internet." (CX 392; CX 414 (Niersbach, Dep. at 93-94); CX 391-004 (identifying "top" benefits of IDX, including "1. All Realtor members become empowered to deal with the real estate consumer of the future.")).

Response to CCPF No. 671:
Respondent has no specific response.

672. While NAR's IDX Policy allowed MLSs to limit participation in IDX to a certain extent, NAR advised that MLSs should use "caution" when employing these limitations. (CX 392-002). "IDX benefits from having the highest percentage of listings in the market, and makes broker sites the best places to go for listing information on the Web. If, by excluding non-member participants, your MLS excludes a substantial percentage of listing inventory, the value and utility of IDX will diminish as a result." (CX 392-002).

Response to CCPF No. 672:
Respondent has no specific response.

6. Industry Expert Testimony Confirms the Competitive Significance of the Realcomp MLS Feed of Listings to Public Websites

673. Based on discovery produced in this case, as well as his own research and other industry studies and publications, Mr. Murray concluded Realcomp's feed of listing information to the Approved Websites is important for brokers in Southeastern Michigan to compete effectively. (RX 154-A-041-045; Murray, Tr. 210-211). While there are "tens of thousands of real estate Websites . . . and its okay to be on some of those, but the ones you really have to be on to compete effectively are the four major sites where 40 to 50 percent of buyers are going." (Murray, Tr. 238).

Response to CCPF No. 673:
See the Responses to CCPF ¶¶ 868 and 899.

674. The importance of Internet marketing is reflected in the high frequency in which brokers use the Internet to market homes, the growing expenditure on Internet marketing by brokerages, and the fact that brokers advertise their skill and expertise in Internet marketing to potential seller-clients. (RX 154-A-045-046). Internet marketing is also more effective than print advertising at reaching potential buyers, is becoming more effective at generating leads and sales, and is a cost-effective means to market homes. (RX 154-A-041-045). "Leading real estate brokerage firms understand well the importance of the Internet to their businesses, and plan to invest more in their Internet capabilities." (RX 154-A-046 (explaining that Internet marketing is considered to be a "significant cost" by brokerage firms, but that brokerages make this investment because they view it as a "significant benefit")).

Response to CCPF No. 674:
Respondent has no specific response.

675. As explained by Mr. Murray, marketing homes on certain key websites – including MoveInMichigan.com, Realtor.com and IDX websites – is "significant to a broker's ability to compete effectively because it exposes homes for sale to potential buyers who are now using the Internet as an integral part of their home search." (RX 154-A-005, 041; Murray, Tr. 211-213 (explaining that the Realcomp feed is significant because it feeds the websites "where the buyers are.")).

Response to CCPF No. 675:
Brokers can access Realtor.com without the feed, and compete effectively, since Realtor.com reaches 90% of all buyers when combined with the Realcomp MLS (RPF ¶¶101-112).

676. Providing listings on the top websites in Southeastern Michigan is important to the ability of brokers to compete effectively because their listings obtain "valuable exposure" to the potential buyers on those websites. (RX 154-A-051). Without this exposure, homes may take longer to sell and lead to a lower satisfaction with the broker's services, which may thereby limit the broker's ability to expand their business through referrals. (RX 154-A-005, 051, 056, 065). Placing listings on these key websites is therefore also important to

Response to CCPF No. 684:
Respondent has no specific response.

685. Realcomp competes in the multiple listing services market. (D. Williams, Tr. 1107). Realcomp's members are in the real estate brokerage services market. (D. Williams, Tr. 1107).

Response to CCPF No. 685:
Respondent has no specific response.

a. Real Estate Brokerage Services: the Output Market

686. The relevant output product market is the supply of real estate brokerage services to sellers and buyers of residential real estate. (CX 498-A-022). For the majority of home buyers and sellers, there are no reasonable substitutes to real estate brokerage services. (CX 498-A-022).

Response to CCPF No. 686:
Realcomp does not provide real estate brokerage services to buyers and sellers. Realcomp operates an MLS for real estate professionals. (JX 1, ¶¶43,44) (*See also* the Response to CCPF ¶684 above).

687. For a home seller, the only alternative to selling a home using a real estate broker is to sell the home on his or her own, which is typically referred to as for-sale-by-owner ("FSBO"). (CX 498-A-022). For the majority of home sellers, selling FSBO is not a reasonable substitute for using a real estate broker because there are significant advantages to using a real estate broker in selling a home. (CX 498-A-022).

Response to CCPF No. 687:
Respondent has no specific response.

688. Mr. Taylor, the associate broker at Weir, Manuel and currently an alternate on the Realcomp Board of Governors, testified that a FSBO house is "not having it on the market." (CX 39 (Taylor, Dep. at 38)).

Response to CCPF No. 688:
Respondent has no specific response.

689. One primary benefit of using a real estate broker is the ability to list the home in an MLS. (CX 498-A-022; CCPF ¶¶ 227-247). FSBO properties cannot be listed in an MLS because only members of the MLS, which must be real estate brokers, are permitted access to the MLS. (CX 498-A-022; CCPF ¶¶ 227-247). The MLS is the primary channel to expose listings to cooperating brokers, and most home buyers are assisted by a

cooperating broker. (CX 498-A-022; CCPF ¶¶ 227-247). Statistics from NAR show that 85% of home buyers in 2006 used the services of a cooperating broker. (CX 498-A-022; CX 373-036).

Response to CCPF No. 689:
Respondent has no specific response.

690. The evidence shows that the vast majority of home sellers hire the services of a listing broker to assist in the sale of their home. (CX 498-A-022). For example, in 2006, FSBO transactions comprised only about 12% of real estate transactions. (CX 498-A-022; CX 373-083). The evidence also shows that the vast majority of houses sold by real estate brokers are listed on a MLS. (CX 498-A-022; CX 373-080 (showing 88% of sellers using agents had homes listed on MLS)).

Response to CCPF No. 690:
Respondent has no specific response.

691. In addition, the evidence shows that selling FSBO is not a viable substitute for most sellers because a significant portion of FSBO properties are sold to persons known by the home seller. (CX 498-A-022-023). For example, in 2006, of the 12% of houses sold by home owners without the assistance of a broker (i.e. FSBO sales), approximately 40% were sold to persons known to the home seller such as family members or friends. (CX 498-A-022-023; CX 373-072).

Response to CCPF No. 691:
Respondent has no specific response.

692. In 91% of all residential real estate transactions, the home seller did not know the home buyer. (CX 498-A-023; CX 373-072). In these instances, only 4% of home sellers sold the property without a real estate broker. (CX 498-A-023; CX 373-072). These statistics show that listing a home in an MLS is particularly important. (CX 498-A-023). Because FSBO sellers cannot list on the MLS, most home sellers will not perceive FSBO as a viable substitute for brokerage services. (CX 498-A-023).

Response to CCPF No. 692:
Respondent has no specific response.

693. As Dr. Williams concluded, a hypothetical monopolist of real estate brokerage services would be able to profitably increase commissions significantly above competitive levels. (CX 498-A-023). Such a price increase would be profitable because the vast majority of home sellers would not be willing to switch to selling their homes on their own (FSBO) in response to a price increase by a hypothetical monopolist of brokerage services. (CX 498-A-023). Applying the standard market definition framework, this implies that the

relevant product market is real estate brokerage services and does not include FSBOs. (CX 498-A-023).

Response to CCPF No. 693:
Respondent has no specific response.

694. Respondent's expert did not contest Dr. Williams' conclusion that the relevant output market in this case is the market for real estate brokerage services. (CX 557-A-008).

Response to CCPF No. 694:
Complaint Counsel did not credibly prove a relevant market and therefore did not establish that Realcomp has market power in a relevant market.

b. Multiple Listings Services: the Input Market

695. The relevant input market is the supply of multiple listing services to real estate brokers. (CX 498-A-023).

Response to CCPF No. 695:
See Response to CCPF ¶684 above.

696. There are various outlets where a real estate broker can list a property for sale (*e.g.*, print classified ads), but only an MLS uniformly provides for an offer of compensation to a cooperating broker. (CX 498-A-023-024; CCPF ¶¶ 236-239). As a result, cooperating brokers need access to the MLS to determine the amount of any brokerage commission being offered by a listing agent on behalf of the home seller. (CX 498-A-024; CCPF ¶¶ 236-239). Without access to the MLS, cooperating brokers would be required to directly contact (*e.g.*, by phone, fax, or e-mail) the listing broker or home seller, significantly increasing the time involved in searching on behalf of home buyers. (CX 498-A-024).

Response to CCPF No. 696:
Respondent has no specific response.

697. Because the MLS is an important input for cooperating brokers searching on behalf of home buyers, the MLS is also an attractive venue for listing brokers to advertise houses being sold. (CX 498-A-024).

Response to CCPF No. 697:
Respondent has no specific response.

698. The greater the number of cooperating brokers using the MLS to search for homes, the shorter the expected time required to sell a home and/or the higher the expected offer price and thus the greater the value of the MLS to listing brokers. (CX 498-A-024; CCPF ¶¶ 520-535).

Response to CCPF No. 698:
Respondent has no specific response.

699. The greater the number of listing brokers that list homes on the MLS, the greater the number and variety of homes available to cooperating brokers to choose from, which makes it more likely that cooperating brokers will quickly find a match for a home buyer and hence the greater the value of the MLS to cooperating brokers. (CX 498-A-024; CCPF ¶¶ 520-535).

Response to CCPF No. 699:
Respondent has no specific response.

700. Multiple Listing Services therefore exhibit "network effects." (D. Williams, Tr. 1108; CX 498-A-024; CCPF ¶¶ 520-535). Network effects exist where the value or quality of a service to one user increases as the number of other users of the same service increases. (D. Williams, Tr. 1108; CX 498-A-024). The classic example of network effects is a telephone network – the value of the telephone network increases as more users join the network, allowing a user to be able to call more persons. (D. Williams, Tr. 1108).

Response to CCPF No. 700:
Respondent has no specific response.

701. An MLS exhibits network effects from both sides of the market. (D. Williams, Tr. 1109). From a home seller's (or listing broker's) point of view, the MLS is more valuable the more home buyers (or cooperating broker's) are viewing the MLS. (D. Williams, Tr. 1109-1110). The value of the MLS to listing brokers increases as the number of cooperating brokers increases because (a) the expected selling price increases with the number of home sellers that demand the house and/or (b) the time required to sell the house at a given asking price decreases. (CX 498-A-024).

Response to CCPF No. 701:
Respondent has no specific response.

702. From the home buyer's (or cooperating broker's) perspective, the MLS becomes more valuable as more sellers (or listing brokers) have listed their properties on the MLS. (D. Williams, Tr. 1109-1110). The value of the MLS to cooperating brokers searching for homes increases as the number of listings increases because (a) the closeness of the match between home characteristics will be greater for a given amount of time devoted to search and/or (b) the expected amount of time required to achieve a given match will decrease. (CX 498-A-024).

Response to CCPF No. 702:
Respondent has no specific response.

few brokers could withdraw from participating in an MLS even if the fees or other costs associated with participation substantially increased. (CX 498-A-025).

Response to CCPF No. 707:
Respondent has no specific response.

708. Although some home sellers and their listing brokers may list on more than one MLS (*i.e.*, dual list) or advertise their homes in newspapers, this shows that these other channels are not effective substitutes to the Realcomp MLS. The fact that the properties are listed in Realcomp shows the value of the Realcomp MLS to home sellers and listing brokers, and highlights the necessity of MLS listings as a means of marketing homes. (CX 557-A-016).

Response to CCPF No. 708:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp; this is true for Wayne County and Oakland County. (CX 407 (Bratt, Dep. at 32-33)).

B. Geographic Market

709. The relevant geographic market defines the geographic scope of competition within a relevant product market. (CX 498-A-025). The economic framework for defining the relevant geographic market is similar to the framework for defining the relevant product market. (CX 498-A-025). In particular, the objective is to identify the smallest geographic area in which a "hypothetical monopolist" could profitably impose a SSNIP above competitive levels. (CX 498-A-025). This assessment involves an examination of whether consumers could substitute to suppliers in other geographic areas in response to such a price increase. (CX 498-A-025).

Response to CCPF No. 709:
Respondent has no specific response.

710. In the case of multiple listing services, the scope of the geographic market will largely be determined by degree of substitutability between neighborhoods for home buyers. (CX 498-A-026). Suppose that a hypothetical monopolist of multiple listing services in a particular geographic area, implements a supracompetitive price increase for all houses listed in that MLS that are located in that area. (CX 498-A-026). For brokers representing home buyers and sellers in that particular area, MLSs prevalent in adjoining geographic areas are not effective substitutes to the hypothetical monopolist of MLS services in that particular area because a listing in an adjacent MLS will not be seen by the majority of cooperating brokers and home buyers searching for a home in the

particular area. (CX 498-A-026). Listing in an adjacent MLS would therefore have significantly lower value to listing in the MLS that has the monopoly. (CX 498-A-026).

Response to CCPF No. 710:
Respondent has no specific response.

711. Under this example, listing brokers representing the sellers of homes located in the relevant geographic area cannot substitute away from MLS listing services in that area. (CX 498-A-026). Any broker representing the seller of a home located in that particular area would face the supracompetitive price for MLS listing services for houses located in that area. (CX 498-A-026). The higher cost of MLS listing services in the relevant area will be passed on in the form of higher brokerage fees for brokerage services supplied in that particular area. (CX 498-A-026).

Response to CCPF No. 711:
Respondent has no specific response.

712. Similarly, for cooperating brokers working with home buyers in the relevant area, MLSs in adjacent geographic areas are not effective substitutes because the vast majority of homes for sale in the relevant area will be listed in the MLS of the hypothetical monopolist in the relevant area. (CX 498-A-026; CCPF ¶¶ 208-210).

Response to CCPF No. 712:
Respondent has no specific response.

713. In essence, network effects make the geographic markets for MLS listing services local in nature. (CX 498-A-026). For example, Karen Kage explained in an article that "location, location, location remains a guiding principle in real estate." (CX 221-001).

Response to CCPF No. 713:
Respondent has no specific response.

714. Moreover, the National Association of Realtors put out a report stating that real estate markets are local in nature. (CX 137-007).

Response to CCPF No. 714:
Respondent has no specific response.

715. The Realcomp Governors admit that real estate markets are local in nature. (CX 40 (Elya, Dep. at 15)). According to David Elya, "all real estate is local." (CX 40 (Elya, Dep. at 15)).

Response to CCPF No. 715:
Respondent has no specific response.

716. Home buyers can defeat the increase in the price of brokerage services in the relevant area only by buying a house in a neighborhood other than that particular area where the supracompetitive listing fees apply. (CX 498-A-026). If, for example, many home buyers consider an adjacent neighborhood a substitute for the relevant area in terms of house location then that area is not the relevant geographic market. (CX 498-A-026). If, however, most home buyers are unwilling to purchase a house in a neighborhood other than the given area where supracompetitive MLS listing fees lead to elevated brokerage fees, then the particular area is a relevant geographic market for MLS listing services. (CX 498-A-026).

Response to CCPF No. 716:
Respondent has no specific response.

717. Applying the hypothetical monopolist framework more generally to various subsets of a MLS service area, starting with any local geographic area (*e.g.*, neighborhoods or groups of neighborhoods), the relevant geographic markets will be determined by the degree of substitutability between neighborhoods for home buyers. (CX 498-A-026-027). Competition occurs within geographic markets at the county level, and may even occur in more local areas. (CX 498-A-027).

Response to CCPF No. 717:
Respondent has no specific response.

718. The relevant geographic markets in this case are four counties in Michigan: Wayne, Oakland, Livingston, and Macomb counties. (D. Williams, Tr. 1106). Data from Realcomp shows that over [redacted] of the listings on Realcomp are in those four counties. (D. Williams, Tr. 1113, *in camera*; CX 498-028, *in camera*; CX 499, *in camera*; illustrated in DX 6-001, *in camera*). Each of the other counties in which Realcomp has listings account for less than [redacted] of Realcomp's listings. (D. Williams, Tr. 1113, *in camera*; CX 498-028, *in camera*; CX 499, *in camera*; illustrated in DX 6-001, *in camera*).

Response to CCPF No. 718:
Respondent has no specific response.

719. In fact, Karen Kage admitted that the "main counties" that Realcomp services include Livingston, Wayne, Macomb, and Oakland counties. (Kage, Tr. at 1059).

Response to CCPF No. 719:
Respondent has no specific response.

720. Karen Kage also admitted that the Realcomp shareholders are located in Livingston, Wayne, Macomb and Oakland counties. (Kage, Tr. 1059).

Response to CCPF No. 720:
Respondent has no specific response.

C. Network Effects in the Multiple Listing Service Market

721. The network effects inherent in MLSs suggest that market share is a good indicator of market power because the value of the MLS increases with the number of users. (D. Williams, Tr. 1110; CX 498-A-027). This is because the value of an MLS to cooperating brokers (and their customers) is directly related to the number of listings in the MLS. (CX 498-A-027). The value of the MLS to listing brokers also is related to the number of listings in the MLS because the larger the number of listings, the greater the number of cooperating brokers that are likely to search the MLS for listings. (CX 498-A-027). And, listing brokers will place a greater value on the MLS the greater the number of cooperating brokers (and home buyers) that they can reach by listing in the MLS. (CX 498-A-027).

Response to CCPF No. 721:
Respondent has no specific response.

722. On cross-examination, Dr. Eisenstadt (Realcomp's economist) admitted that the MLS exhibits network effects. He further agreed that for an MLS, more listing agents and therefore more listings attract more cooperating brokers (i.e., "selling agents"), and more cooperating brokers attract more listing agents. (Eisenstadt, Tr. 1530).

Response to CCPF No. 722:
Respondent has no specific response.

723. Because of these "network effects" in MLS listing services, the value of an MLS with a high market share in a given geographic market will be much greater to brokers (and home buyers and sellers) than the value of an MLS with a small market share. (CX 498-A-027). The greater the market share, the bigger the network effects and then the more likely the MLS is going to have much greater value to users. (D. Williams, Tr. 1110).

Response to CCPF No. 723:
Respondent has no specific response.

724. Network effects in the market for multiple listing services therefore create barriers to entry. Because of network effects, competitors cannot easily expand their share of listings. (CX 498-A-027).

Response to CCPF No. 724:
Respondent has no specific response

725. Network effects create barriers to entry because such a shift in shares would require that both cooperating brokers and listing brokers simultaneously switch to the competing MLS. (CX 498-A-027-028). A listing broker has little incentive to list a property in an MLS with a small market share in a given area because there will be few cooperating brokers searching such an MLS for homes in that area. (CX 498-A-027). Similarly, a cooperating broker has little incentive to search an MLS with a small share of listings. (CX 498-A-028).

Response to CCPF No. 725:
Respondent has no specific response.

726. Successful entry by a rival MLS is improbable because of high collective switching costs. (CX 498-A-029). Because of network effects, an individual broker has little or no incentive to list in an alternative MLS unless other brokers do also. (CX 498-A-030). Consider the incentives of an individual listing broker choosing between Realcomp in an area where it has a large market share and a new MLS entrant. (CX 498-A-030). An individual listing broker has little or no unilateral incentive to switch to an alternative MLS (if one were available) in response to, *e.g.*, an increase in listing fees by the MLS, because there would be few, if any, cooperating brokers working with home buyers using the alternative MLS. (CX 498-A-030). Likewise, an individual cooperating broker has little or no incentive to switch in response to an increase in the price of MLS listing services because there would be few, if any, listings to search. (CX 498-A-030).

Response to CCPF No. 726:
MiRealSource is a competitor of Realcomp, competing for business throughout Southeastern Michigan. (Kage, Tr. 1057-58). MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp; this is true for Wayne County and Oakland County. (CX 407 (Bratt, Dep. at 32-33)). The costs of belonging to MiRealSource are similar to belonging to Realcomp, and there is not a significant cost difference to change membership from one to another. (Sweeney, Tr. 1313-1314).

727. Consequently, brokers on both the selling and buying sides will not perceive an alternative MLS as an economically viable substitute to the hypothetical MLS monopoly. (CX 498-A-030). In fact, comparable efficiencies can be achieved only if the vast majority of brokers switched collectively. (CX 498-A-030). But there are substantial costs of coordinating collective switching by brokers and, as long as these coordination costs exceed the increase in listing costs, there is no incentive for any broker to incur them. (CX 498-A-030).

Response to CCPF No. 727:
See the Response to CCPF ¶726.

728. Because of these economic factors in the market for MLS listing services, high market shares are indicative of market power. (CX 498-A-028). An MLS with significant market share in a relevant geographic market would be able to engage in anticompetitive conduct without losing a significant share of brokers. (CX 498-A-028).

Response to CCPF No. 728:
Respondent has no specific response.

729. For instance, in this case, the data clearly show that MiRealSource is not an effective substitute for Realcomp. A map showing Realcomp listings and MiRealSource listings by zip code demonstrates that MiRealSource had [redacted] listings in each area of Livingston county, most of Wayne county, and the majority of Oakland county. (D. Williams, Tr. 1123-1124, *in camera*; CX 559, *in camera*; CX 557-017-018, *in camera*). In contrast, these data show that Realcomp had [redacted] listings in almost all of Wayne, Oakland, and Livingston counties and in a majority of Macomb county. (CX 559, *in camera*). In fact, Realcomp had [redacted] listings in substantial portions of each of these counties. (CX 559, *in camera*).

Response to CCPF No. 729:
See the Response to CCPF ¶726.

730. The maps of Realcomp's and MiRealSource's listings are set forth below:

(CX 559, *in camera*).

Response to CCPF No. 730:
These maps do not take into account the growth trend of MiRealSource which moved its main office from Macomb County to Oakland County in August 2006 to expand its membership. (CX 407; Bratt Dep. at 9). MiRealSource intends to continue to grow, targeting Oakland and Livingston Counties for its growth. (CX 407; Bratt Dep. at 9-10). MiRealSource's membership has increased 40% in the past four years. (CX 407; Bratt Dep. at 74). MiRealSource's growth in members has come mainly from counties other than Macomb. (CX 407; Bratt Dep. at 73). The growth in MiRealSource's membership in the past four years is coming from all over Southeastern Michigan. (CX 407; Bratt Dep. at 74). MiRealSource has approximately 7,000 members. (CX 407 (Bratt Dep. at 85)).

731. If MiRealSource sought to compete head-to-head in the four county area, it would face substantial impediments due to network effects. (D. Williams, Tr. 1125-1126, *in camera*). For instance, because MiRealSource has so few listings in [redacted], it would not be in the individual interest of a home seller in that county to list on the MiRealSource MLS because there are so few cooperating brokers in that area who would see the listing. (D. Williams, Tr. 1126, *in camera*). The same is true for cooperating brokers in that county, who are not going to join MiRealSource unless there

are lots of listings in that county, which can only happen if large groups of home sellers switch to MiRealSource. (D. Williams, Tr. 1126, *in camera*). For MiRealSource to really enter that county, it would have to convince large groups to switch and overcome these "collective switching costs." (D. Williams, Tr. 1126-1127, *in camera*)

Response to CCPF No. 731:
See the Responses to CCPF ¶¶ 726 and 730.

732. The evidence shows that [redacted] of MiRealSource members are also members of Realcomp. (CX 557-017, *in camera*). This fact suggests that for these brokers that are dual members, MiRealSource is *not* an effective substitute to Realcomp in certain geographic areas. (CX 557-A-017). If MiRealSource and Realcomp were effective substitutes in all areas where these brokers operate, then such dual membership would not be necessary. (CX 557-A-017).

Response to CCPF No. 732:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp. (CX 407 (Bratt, Dep. at 32-33)). *See also* the Response to CCPF ¶733.

733. A simple explanation for the phenomenon of dual membership that is consistent with the economic evidence in this case is that certain brokers provide brokerage services within relevant geographic markets located within the Realcomp service area and they also provide brokerages services within relevant geographic markets located within the MiRealSource service area and hence the need for membership in both MLSs. (CX 557-A-018).

Response to CCPF No. 733:
Dual membership and dual listing also occurs as a way for agents with exclusive agency listings to have their listings sent to Realtor.com by listing the property on another MLS that downloads Exclusive Agency Listings to Realtor.com. (Kage, Tr. 991). The cost associated with joining such an MLS are nominal. (RPF ¶ 109). Exclusive Agents incur no or minimal additional cost to dual list, inasmuch as "dual listing" is a prevalent practice among brokerage firms. (CX 133-014-015, ¶ 25).

D. Realcomp Market Shares

734. Generally, the goal of a market share analysis is to estimate the share of output in the relevant market that is accounted for by a particular seller or group of sellers. (CX 557-A-011). The focus of the calculation in this case should be the estimation of Realcomp's share of output in the market for MLS listings services – *i.e.* its share of residential

property listings – which corresponds to the relevant product market definitions offered in this case. (CX 557-A-011).

Response to CCPF No. 734:
Respondent has no specific response.

735. As Dr. Eisenstadt, Realcomp's economist, admitted on cross-examination, in markets with entry barriers, significant market power may be inferred based on market shares above 33% (in some markets, shares above 25%). (Eisenstadt, Tr. 1529-1530).

Response to CCPF No. 735:
Respondent has no specific response.

736. By any measure, Realcomp's market shares [redacted]. (CCPF ¶¶ 738-756).

Response to CCPF No. 736:
Respondent has no specific response.

737. Realcomp highlights their market share to potential members. (CX 222-007).

Response to CCPF No. 737:
Respondent has no specific response.

1. Realcomp's Market Share of New Listings

738. To calculate Realcomp's market share, Dr. Williams used the listing data from Realcomp, MiRealSource, and all of Realcomp's data-sharing partners. (D. Williams, Tr. 1111). Dr. Williams first calculated Realcomp's share of "new listings" – homes that were newly listed during a particular month. (CX 498-A-028; *See also* D. Williams, Tr. 1114, *in camera*). New listings include all listings types (*e.g.*, Exclusive Right to Sell and Exclusive Agency listings). (CX 498-A-028; *See also* D. Williams, Tr. 1120, *in camera*).

Response to CCPF No. 738:
Respondent has no specific response.

739. Realcomp's market share in terms of new listings for Wayne, Oakland, Livingston, and Macomb counties for 2002 through 2006 was [redacted]. (D. Williams, Tr. 1114, *in camera*; CX 498-028, *in camera*; CX 505, *in camera*; illustrated in DX 6-003, *in camera*).

Response to CCPF No. 739:

Complaint Counsel did not credibly prove a relevant market and therefore did not establish that Realcomp has market power in a relevant market. Respondent's expert anti-trust expert economist, David Eisenstadt, Ph.D., disagrees with this analysis, CX 133-008-024, ¶¶ 16-37, explaining that there is competition for Realcomp and alternatives for searching for residential real estate listings by real estate professionals in Southeastern Michigan and for publicizing and distributing those listings to real estate websites for the purpose of advertising listings to the general public. Those alternatives include other MLSs, including MiRealSource, as well as MLSs in Ann Arbor, Flint, Down River, Lapeer and Shiawassee (CX 133-010-011, 014, ¶¶18, 24). Publicly available websites include Trulia and Google. (CX 133-017-018, ¶ 28).

740. Since competition is likely to occur at the county level, and may even occur in more local areas, Dr. Williams also calculated market shares on a by county basis. (CX 498-A-028-029). These calculations show that Realcomp's market share in terms of new listings in Wayne county is [redacted], in Oakland County it is [redacted], in Livingston county it is [redacted], and in Macomb county it is [redacted]. (D. Williams, Tr. 1115, *in camera*; CX 498-028, *in camera*; CX 506, *in camera*; *See also* CX 501-05, *in camera*; illustrated in DX 6-004, *in camera*).

Response to CCPF No. 740:
There is no evidence in the record that any of these counties is a relevant antitrust market.

741. Realcomp's market shares of new listings are set forth in the chart below:

[redacted]

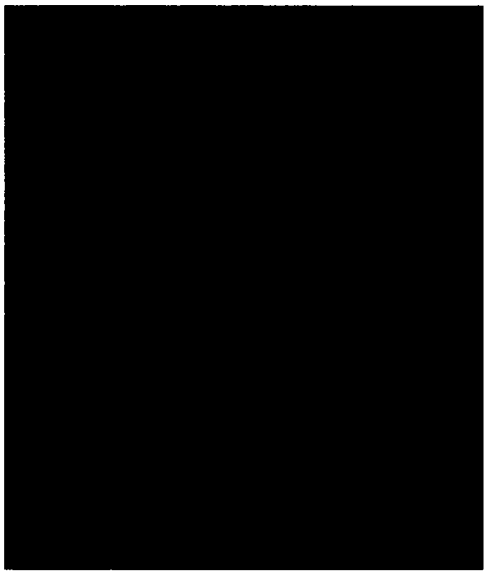
(CX 506, *in camera*).

Response to CCPF No. 741:
See the Response to CCPF ¶ 740.

742. A map showing Realcomp's market share in terms of new listings on a zip code basis demonstrates that Realcomp has a large market share in each county. (D. Williams, Tr. 1115-1116, *in camera*; CX 498-028, *in camera*; CX 507, *in camera*; illustrated in DX 6-005, *in camera*). This map shows that Realcomp has an over [redacted] market share of new listings in almost all of Wayne county and the vast majority of Oakland and Livingston counties. (D. Williams, Tr. 1115-1116, *in camera*; CX 498-028, *in camera*; CX 507, *in camera*; illustrated in DX 6-005, *in camera*).

Response to CCPF No. 742:
There is no evidence in the record that any zip code is a relevant anti-trust market.

743. The map showing Realcomp's shares of new listings is set forth below:



(CX 507, *in camera*).

Response to CCPF No. 743:
Respondent has no specific response.

2. Realcomp's Market Share of Unique Listings

744. Market shares based on new listings, however, may understate the extent to which the Realcomp MLS is important to brokers. (CX 498-A-028; *See also* D. Williams, Tr. 1116, *in camera*). Particularly in areas in which two MLSs overlap, brokers may list on both MLSs. (CX 498-A-028; *See also* D. Williams, Tr. 1116-1117, *in camera*). For instance, at the border of Macomb and Oakland counties, Realcomp has a [redacted] of new

listings because Realcomp and MiRealSource overlap in that area. (D. Williams, Tr. 1117, *in camera*).

Response to CCPF No. 744:
Respondent has no specific response.

745. If there were 100 total listings and each was listed on both Realcomp and MiRealSource, Realcomp's share of new listings would only be 50% even though 100% of the listings are on Realcomp. (CX 498-A-029; *See also* D. Williams, Tr. 1117-1118, *in camera*; illustrated in DX 6-006, *in camera*). The fact that 100% of the listings in that area are on the Realcomp MLS indicates that the Realcomp MLS is very important for the purpose of marketing the homes. (CX 498-A-029; *See also* D. Williams, Tr. 1118, *in camera*).

Response to CCPF No. 745:
Respondent has no specific response.

746. Because the share of new listings may understate the importance of the Realcomp MLS, Dr. Williams also calculated Realcomp's share of "unique" listings – the share of all listed homes that are listed on Realcomp (whether or not listed on another MLS). (CX 498-A-028-029; D. Williams, Tr. 1118-1119, *in camera*). Unique listings include all listings types (*e.g.*, Exclusive Right to Sell and Exclusive Agency listings). (CX 498-A-028-029; *See also* D. Williams, Tr. 1120, *in camera*).

Response to CCPF No. 746:
Respondent has no specific response.

747. Realcomp's market share in terms of unique listings for Wayne, Oakland, Livingston, and Macomb counties for 2002 through 2006 was [redacted]. (D. Williams, Tr. 1120-1121, *in camera*; CX 498-029, *in camera*; CX 512, *in camera*; illustrated in DX 6-008, *in camera*).

Response to CCPF No. 747:
See the Response to CCPF ¶ 740.

748. Realcomp's market share in terms of unique listings in Wayne county is [redacted], in Oakland county it is [redacted], in Livingston county it is [redacted], and in Macomb county it is [redacted]. (D. Williams, Tr. 1121, *in camera*; CX 498-029, *in camera*; CX 513, *in camera*; *See also* CX 508-012, *in camera*; illustrated in DX 6-009, *in camera*). These shares demonstrate the importance if the Realcomp MLS to brokers listing homes in those four counties. (D. Williams, Tr. 1121).

Response to CCPF No. 748:
See the Response to CCPF ¶ 740.

749. Realcomp's market shares of unique listings are set forth in the chart below:

(CX 513, *in camera*).

Response to CCPF No. 749:
There is no evidence in the record that any of these counties is a relevant antitrust market.

750. A map showing Realcomp's market share in terms of unique listings on a zip code basis demonstrates that Realcomp has a large market share in each county. (D. Williams, Tr. 1121-1122, *in camera*; CX 498-029, *in camera*; CX 514, *in camera*; illustrated in DX 6-010, *in camera*). This map shows that Realcomp has an over [redacted] market share of new listings in almost all of Wayne county, Oakland, and Livingston counties. (CX 507, *in camera*; illustrated in DX 6-010, *in camera*). The map also shows the importance of listing homes on Realcomp that are located Macomb county even though those homes are also listed on MiRealSource. (D. Williams, Tr. 1122, *in camera*).

Response to CCPF No. 750:
There is no evidence in the record that any zip code is a relevant market.

751. The map showing Realcomp's shares of unique listings is set forth below:

(CX 514, *in camera*).

Response to CCPF No. 751:
Respondent has no specific response.

3. Realcomp's Market Share of "Listed and Sold" Properties

752. Although he did not present it at trial, Dr. Eisenstadt also conducted market share calculations. (CX 133-012-013). Dr. Eisenstadt calculated this share based on the number of homes listed on the Realcomp MLS that were sold as a share of all homes sold in Oakland, Wayne, Livingston, and Macomb counties. (CX 133-012).

Response to CCPF No. 752:
Dr. Eisenstadt calculated the percent of residential real property sales in four counties that are attributable to Realcomp. (CX 133-012-013).

753. Dr. Eisenstadt's market shares do not correspond to any market definition that has been offered in this case and ignore a portion of the relevant output – namely, listings for unsold properties. As a result, his market shares cannot be indicative of market power even if the calculation itself were correct. (CX 557-A-011).

Response to CCPF No. 753:
Complaint Counsel did not credibly prove a relevant market and therefore did not establish that Realcomp has market power in a relevant market.

754. Although his estimates likely understate Realcomp's market share, Dr. Eisenstadt found that Realcomp's market share in the same four counties for the period November 2004 through October 2006 is as high as [redacted] but is no lower than [redacted], which he describes as "by any measure, a significant share." (CX 133-013; CX 557-010-014, *in camera* (discussing why estimates understate market share)).

Response to CCPF No. 754:
Dr. Eisenstadt's partially-quoted sentence continued: "it also indicates that distributing information via MiRealSource and/or systems other than an MLS database (which may nevertheless ultimately involve real estate professionals in some part of the selling process) are viable alternatives to Realcomp for many home sellers." (CX 133-013).

755. Thus, Dr. Eisenstadt's own market share calculations {[redacted] the 25-33% threshold that he admitted could be indicative of market power in the presence of entry barriers. (Eisenstadt, Tr. 1529-1530; CX 557-010-014, *in camera*).

Response to CCPF No. 755:
Respondent has no specific response.

756. Using public records data, Dr. Williams recalculated Dr. Eisenstadt's market share calculations by excluding non-arms-length transactions and non-residential property transactions. (CX 557-A-014). The corrected data show that Realcomp's share of properties listed and sold (using Dr. Eisenstadt's definitions) in Oakland county is [redacted], in Wayne county [redacted], in Macomb county [redacted], in Livingston county [redacted], and in all four counties combined, [redacted]. (CX 557-014, *in camera*; CX 558, *in camera*).

Response to CCPF No. 756:
There is no evidence in the record that any of these counties is a relevant antitrust market.

E. Realcomp's Market Power in the Input Market Gives it the Ability to Restrain Competition in the Output Market

757. Based on all of the analysis, Dr. Williams concluded that Realcomp possesses substantial market power in the market for multiple listing services in Livingston, Wayne, and Oakland counties and to a lesser extent in Macomb county. (D. Williams, Tr. 1128). Realcomp's [redacted] within the relevant geographic markets means that it is clearly a key input in the provision of real estate brokerage services that are supplied within those relevant geographic markets. (D. Williams, Tr. 1123, *in camera*).

Response to CCPF No. 757:
Dr. Williams did not prove a relevant antitrust market.

758. Realcomp's market power over a key input for the provision of brokerage services means that it can restrict competition in the market for real estate brokerage services. (D. Williams, Tr. 1128). Realcomp can therefore adversely affect consumers as well. (D. Williams, Tr. 1128-1129).

Response to CCPF No. 758:
Dr. Williams did not properly define a relevant market, so there can be no conclusion of market power.

759. Realcomp's market power in the relevant geographic areas can be exercised by hindering or excluding competitors in the market for real estate brokerage services. (CX 498-A-030). For most brokers there are no reasonable substitutes to the Realcomp MLS in these areas. (CX 498-A-030). Realcomp therefore has the ability to anticompetitively exclude certain competitors, such as low-cost unbundled service brokers, from the real estate brokerage services market by implementing rules that exclude such competitors or inhibit their ability to compete. (CX 498-A-030).

Response to CCPF No. 759:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as in Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp. (CX 407 (Bratt, Dep. at 32-33)). *See also* the Responses to CCPF ¶¶ 726 and 730.

760. Excluded or disadvantage competitors cannot costlessly switch to listing in an alternative MLS, such as MiRealSource or the data sharing partners. (CX 498-A-030). This is because the value of listing a home located in the relevant geographic areas in an alternative MLS would be significantly lower than the value of listing that home in Realcomp. (CX 498-A-030). The number of cooperating brokers searching alternative MLSs for homes in the relevant areas is likely to be much smaller than the number of cooperating brokers searching for homes in the Realcomp MLS. (CX 498-A-030). Thus, such brokers would be significantly disadvantaged competitively relative to brokers that are not restricted from access to the full services of Realcomp. (CX 498-A-030).

Response to CCPF No. 760:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as in Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp. (CX 407 (Bratt, Dep. at 32-33)). The costs of belonging to MiRealSource are similar to belonging to Realcomp, and there is not a significant cost difference to change membership from one to another (Sweeney, Tr. 1313-1314). *See also* the Responses to CCPF ¶¶726, 730, and 733.

761. The ability to restrict competition in the brokerage services market also implies that the Realcomp MLS can exercise market power over home buyers and sellers. (CX 498-A-031). That is, the Realcomp MLS can implement rules that anticompetitively harm home buyers and sellers in the relevant geographic markets. (CX 498-A-031).

Response to CCPF No. 761:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as in Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp. (CX 407 (Bratt, Dep. at 32-33)). *See also* the Responses to CCPF ¶¶726, 730 and 733.

762. Most home sellers in the relevant geographic areas do not have effective alternatives to selling homes through Realcomp-affiliated brokers. (CX 498-A-031). Brokers affiliated with alternative MLSs (and not affiliated with Realcomp) are not effective substitutes from the perspective of home buyers and home sellers in the relevant geographic areas because such brokers cannot offer the value of access to a critical mass of home listings and home buyers in the relevant areas. (CX 498-A-031). Home sellers in the relevant geographic areas must use a Realcomp listing broker in order to list their property on the Realcomp MLS and have their listing reach brokers working with home buyers in the relevant geographic areas. (CX 498-A-031).

Response to CCPF No. 762:
MiRealSource has members who belong only to it and not to Realcomp. This is true not only in Macomb County, but also elsewhere in Southeastern Michigan, such as in Oakland and Wayne counties. (CX 407 (Bratt, Dep. at 18-19)). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not to Realcomp. (CX 407 (Bratt, Dep. at 32-33)). *See also* the Responses to CCPF ¶¶726, 730 and 733.

763. Neither can most home sellers costlessly switch to FSBO. (CX 498-A-031). For the vast majority of home sellers FSBO sales are not an adequate substitute for the services of a professional real estate broker that is a member of an MLS with a critical mass of brokers. (CX 498-A-031).

Response to CCPF No. 763:
Respondent has no specific response.

764. Realcomp therefore has the power to restrict competition among residential real estate brokers and harm consumers in the relevant geographic market. (CCPF ¶¶ 757-763).

Response to CCPF No. 764:
Realcomp faces competition in Southeastern Michigan from MiRealSource and also from other publicly available websites, as is discussed in length in CX 133-008-011, 015-016,

¶¶16-18, 26. *See also* RPF ¶¶ 44-51, 60-61, and the Responses to CCPF ¶¶726, 730 and 733.

VII. REALCOMP ADOPTED POLICIES TO LIMIT EXPOSURE FOR EXCLUSIVE AGENCY AND LIMITED SERVICE LISTINGS

765. In 2001, Realcomp adopted and approved rules to exclude listing information for Exclusive Agency, Limited Service and MLS Entry Only listings from the data it provides to the Approved Websites (MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, Realcomp IDX websites). (JX 1-07).

Response to CCPF No. 765:
"Approved Websites" are those websites to which Realcomp provides information concerning Realcomp MLS listings for publication (JX 1, ¶22). ClickOnDetroit frames MoveInMichigan.com, but Realcomp does not actually send data to ClickOnDetroit (RPF ¶89(b)).

766. For the purposes of this case, the term "Website Policy" refers to the rules adopted and approved by Realcomp in 2001 that prevent Exclusive Agency, Limited Service and MLS Entry Only listings on the Realcomp MLS from being transmitted to, or displayed on, Realtor.com, MoveInMichigan.com, and Realcomp member IDX websites. (JX 1-07).

Response to CCPF No. 766:
Respondent has no specific response.

767. Realcomp, however, does not advertise to its potential members that only Exclusive Right to Sell listings are able to take advantage of having their listings on MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, or the Realcomp IDX websites. (CX 222; CX 35 (Kage, Dep. at 44-45, 47-48); CX 224-002-003).

Response to CCPF No. 767:
Respondent has no specific response.

768. In 2003, the Realcomp Board of Governors agreed to adopt a default setting in the Realcomp MLS database, whereby all searches automatically are configured to include only Full Service/Exclusive Right to Sell listings. (CX 415 (Nowak, Dep. at 44); CX 36 (Kage, IHT at 72)).

Response to CCPF No. 768:
Realcomp changed its Rules to repeal the Search Function Policy and change the definition of ERTS, so that full services are no longer required with an ERTS Listing (CX 626; Kage, Tr. 1045-47).

769. In order to see all of the available listing types in the Realcomp MLS, Realcomp members need to take an additional step, and specifically select the different listing types. (CX 36 (Kage, IHT at 73)).

Response to CCPF No. 769:
The "additional step" was one click of a computer mouse. (RPF ¶¶ 126, 138(b)).

770. For the purposes of this case, the term "Search Function Policy" refers to the default setting adopted by Realcomp in 2003, whereby all MLS searches automatically are configured to include only Full Service/Exclusive Right to Sell listings.

Response to CCPF No. 770:
Respondent has no specific response.

771. These Policies were adopted in response to the entry of limited service brokers into the market. (CX 17 (Realcomp is making changes because of new levels of service); CX 36 (Kage, IHT at 39-40)).

Response to CCPF No. 771:
Respondent has no specific response.

A. Realcomp Excludes Listings Used by Limited Service Brokers From Its Feed of Listings to Public Websites And Adopted a Default Search Function That Includes Only Exclusive Right to Sell/ Full Service Listings

772. The Realcomp Board of Governors are made up of Realtors from numerous full service brokerage firms, including Century 21, SKBK Sotheby's, Coldwell Banker, Re/Max, and Realty Executives, which compete with one another for business in Southeastern Michigan. (JX 1-10; CX 211; CX 35 (Kage, Dep. 19-20); CX 43 (Hardy, Dep. at 23-24) (Century 21 and SKBK Sotheby's are full service brokerage firm); CX 42 (Nead, Dep. at 7-8) (Coldwell Banker a full service brokerage firm); Mincy, Tr. 320 (Re/Max a full service brokerage); CX 40 (Elya, Dep. at 6) (Realty Executives a full service brokerage)).

Response to CCPF No. 772:
Respondent has no specific response.

1. The Board of Governors Adopt the Website Policy and Start Pondering the Search Function Policy

773. The Realcomp Board Minutes accurately describe the actions that the Realcomp Board of Governors took at each of their meetings. (Kage, Tr. 958, 960). Karen Kage approves all of the Board of Governor meeting minutes for accuracy prior to sending them to the

Board of Governors. (Kage, Tr. 958, 960). The Realcomp Board reviews and votes to accept Board minutes as accurate. (CX 42 (Nead, Dep. at 129)).

Response to CCPF No. 773:
Respondent has no specific response.

774. The relevant Realcomp Board minutes stated that on June 22, 2001, the Realcomp Board of Governors passed several motions regarding Exclusive Agency listings, Limited Service listings, and MLS Only listings, including adopting the Website Policy:

> A MOTION was made, SECONDED, and CARRIED to approve the recommendation from the MLS/User Committee to add three new feature options under "Compensation Arrangements" for all property types. These options are:
>
> > Exclusive Agency Listing
> > Limited Service Listing
> > MLS Entry Only Listing.
>
> It was further agreed that listings falling within these categories, will not be included in the data that is sent to the real estate Internet advertisers. (CX 2-003; CX 36 (Kage, IHT at 125-128); (Kage, Tr. 959)).

Response to CCPF No. 774:
Respondent has no specific response.

775. At the June 2001 Board of Governors meeting, Realcomp decided to research options to limit the exposure of Exclusive Agency, Limited Service and MLS Entry Only listings in the Realcomp MLS. (CX 2-003 (Realcomp CEO Karen Kage, "was directed to research the option of including these types of listings [Exclusive Agency, Limited Service, and MLS Only] in a separate property category when searching the MLS database on Realcomp*Online*," the Realcomp MLS system.); CX 36 (Kage, IHT at 129-130)).

Response to CCPF No. 775:
Respondent has no specific response.

776. The Realcomp Board of Governors adopted further measures to refine the Website Policy. (CX 3). On September 28, 2001, after a discussion with legal counsel regarding Limited Service and MLS Entry Only listings, Realcomp adopted another Motion regarding the listing information that would be included on the real estate websites:

> A MOTION was made, SECONDED and CARRIED to exclude MLS only and limited service listings from all data extracts to the

Internet real estate Websites publishing Realcomp data. (CX 3-003).

Response to CCPF No. 776:
Respondent has no specific response.

777. At the same Board meeting in September 2001, the idea of the Search Function Policy was again discussed. (CX 3-002). At this meeting, the Realcomp Board of Governors passed a Motion "to establish separate search requirements on Realcomp*Online* in order to include MLS only and/or limited service listings in a basic search." (CX 3-003).

Response to CCPF No. 777:
Respondent has no specific response.

778. Realcomp chose to first implement the Website Policy, implementing it in October 2001. (Kage, Tr. 959).

Response to CCPF No. 778:
The Web Site Policy was not enforced and effective until May of 2004. (RPF ¶¶91, 92).

779. In order to implement the Website Policy, Realcomp had to change their extract program (the MLS program that determined what data was included) to only pull listings that were marked Exclusive Right to Sell listings. (CX 36 (Kage, IHT at 57-58)).

Response to CCPF No. 779:
Respondent has no specific response.

780. After the data extract was changed, Realcomp amended its MLS Rules and Regulations in two separate sections stating that these listings were going to be excluded from the real estate websites and also be excluded from the Realcomp IDX member websites:

> Exclusive Agency, Limited Service and MLS Entry Only listings will not be distributed to any Real Estate Internet advertising sites. (CX 4-012; *See also* CX 5-007 ("only Exclusive Right to Sell listings will be included on the Internet advertising sites that include Realcomp II. Ltd. listings.")).

Response to CCPF No. 780:
Respondent has no specific response.

781. In order to make sure that only Exclusive Right to Sell/Full Service listings were included on Realcomp IDX websites, Realcomp defined the IDX Database in its Rules and Regulations to confirm that all listings other than Full Service Exclusive Right to Sell listings are excluded:

> The 'IDX Database' is the current aggregate compilation of all active, full service, exclusive right to sell listings of all IDXPs [IDX Participants]. . . .

(CX 4-021; CX 36 (Kage, IHT at 107-108) (The IDX rules were adopted separately from the rest of the Realcomp rules, so Realcomp had to make clear that they only included Exclusive Right to Sell listings)).

Response to CCPF No. 781:
The reference to full service is no longer applicable in light of Realcomp's rule change, under which full services are no longer required with an ERTS Listing. (CX 626; Kage, Tr. 1046-1048).

782. Therefore, under the Realcomp MLS Rules and Regulations, only Full Service Exclusive Right to Sell listings are included in the IDX feeds to broker member websites. (CX 36 (Kage, IHT at 52); (CX 100-025).

Response to CCPF No. 782:
The reference to full service is no longer applicable in light of Realcomp's rule change, under which full services are no longer required with an ERTS Listing. (CX 626; Kage, Tr. 1046-1048).

783. Realcomp's decision to exclude Exclusive Agency, Limited Service, and MLS Entry Only listings was deliberate. (CX 36 (Kage, IHT at 53)). Prior to adopting the rule, the Board of Governors discussed only allowing Exclusive Right to Sell listings to be included in the Realcomp feeds to MoveInMichigan.com, ClickOnDetroit.com, Realtor.com and Realcomp IDX websites. (CX 36 (Kage, IHT at 53)).

Response to CCPF No. 783:
Respondent has no specific response.

2. In 2002, Realcomp Considered Excluding Exclusive Agency Listings From the Realcomp MLS

784. In August 2002, the Realcomp Board of Governors considered a more drastic measure against Exclusive Agency listings and "reviewed a request to disallow Exclusive Agency, Limited Service, and MLS Entry Only Listings as part of the MLS database." (CX 10-003; CX 36 (Kage, IHT at 142-143)). This request came from Kelly Sweeney, a Realcomp member and long-time MiRealSource board member. (CX 36 (Kage, IHT at 142-143)).

Response to CCPF No. 784:

Realcomp at all times pertinent to this matter has permitted agents to enter Exclusive Agency Listings in the Realcomp MLS (JX 1, ¶57).

785. During the August 2002 Board of Governors meeting, the Board discussed the current method of "flagging these listings in Realcomp and the fine for failure to comply." (CX 10-003). During this meeting, the Board discussed NAR's requirement to include Exclusive Agency, Limited Service and MLS Entry Only listings into the MLS. (CX 10-002-003).

Response to CCPF No. 785:
Respondent has no specific response.

786. NAR's MLS Antitrust Compliance Policy bars MLSs from "prohibit[ing] or discourag[ing] participants from taking Exclusive Agency listings." (CX 381-019, 023 ("Multiple listing services shall not establish or maintain any rule or policy prohibiting inclusion of Exclusive Agency listings that would be otherwise acceptable for inclusion in the compilation of current listing information."); *See also* CX 382 (advising MLSs that NAR "requires" MLSs to include Exclusive Right to Sell and Exclusive Agency listings on the MLS)).

Response to CCPF No. 786:
Realcomp at all times pertinent to this matter has permitted agents to enter Exclusive Agency Listings in the Realcomp MLS (JX 1, ¶57).

787. As explained by NAR's Vice President of Board Policy and Programs, "MLSs have no role in telling the members what types of listings that they will take. If it's legal, if it's acceptable under state law, then they're free to accept that listing and every listing should be included in the MLS compilation of current listing information." (CX 414 (Niersbach, Dep. at 41-42)).

Response to CCPF No. 787:
Respondent has no specific response.

3. Realcomp Then Considered a Policy to Require Listing Type to Make the Website Policy More Effective and the Search Function Policy Possible

788. Realcomp discussed other options to hinder the use of these alternative listings short of complete exclusion from the MLS. (CX 11-003; CX 12-003; CX 97-003; CX 36 (Kage, IHT at 144, 146, 149)). On September 27, 2002, the Board revisited the issue of labeling Exclusive Agency, Limited Service, and MLS Entry Only listings in the Realcomp MLS. (CX 11-003; CX 36 (Kage, IHT at 144,146,149)).

Response to CCPF No. 788:

Respondent has no specific response.

789. In September 2002, the Board approved the following motion from the MLS/User Committee Meeting, increasing the fines for failing to indicate the proper listing type for Exclusive Agency, Limited Service and MLS Entry Only listings:

> To recommend that the Board of Governors approve the addition of a mandatory field to the profile form for all property types that would indicate the type of listing being entered (exclusive right to sell, exclusive agency, MLS entry only or limited service). The first offense for failure to indicate the type of listing would be a fine of $250, 2nd offense $1000, 3rd offense $2500, 4th offense would result in possible 45 day suspension from service for the entire office and 5th offense would be dismissal from Realcomp. (CX 11-003; CX 36 (Kage, IHT at 144); Kage, Tr. 959-961).

Response to CCPF No. 789:
Respondent has no specific response.

790. In 2002, Realcomp's Policy Handbook stated that "MLS Entry Only, Limited Service or Exclusive Agency listings must be indicated with the proper flag in the Compensation Arrangements field." (CX 5-007).

Response to CCPF No. 790:
Respondent has no specific response.

791. In July 2003 Realcomp added language to its Rules and Regulations to better enforce the Website Policy and to set up enforcement of the Search Function Policy, by giving the Realcomp CEO the ability to change the listing type of a Realcomp listing if it was incorrectly labeled. (CX 4-015 ("Listing will be updated with the proper flag and removed from any public sites.")).

Response to CCPF No. 791:
Complaint Counsel's reference to CX 4-015 is incorrect, and Respondent is not aware of any citation to support CCPF ¶ 791 or the quotation.

4. Realcomp Then Adopted the Search Function Policy in 2003 After Finding Out that MiRealSource Was No Longer Accepting Exclusive Agency Listings

792. In August 2003, Karen Kage informed the Realcomp Board of Governors that MiRealSource was no longer accepting Limited Service listings, including Exclusive Agency listings. (CX 9-003; Kage, Tr. 962; CX 36 (Kage, IHT at 146-147, 152, 154)).

Response to CCPF No. 792:
Respondent has no specific response.

793. After the discussion of MiRealSource no longer accepting Limited Service listings, the Realcomp Board discussed the priority of defaulting all searches in the Realcomp MLS to Exclusive Right to Sell listings. (CX 9-003; Kage, Tr. 962-963).

Response to CCPF No. 793:
Respondent has no specific response.

794. After this discussion, the Board voted to expedite the enhancement of defaulting all searches to include only Exclusive Right to Sell listings and that the other listing types, including Exclusive Agency, Limited Service, and MLS Entry Only listings be shown only by specific request. (CX 9-003 (The Board passed a motion to expedite the enhancement of defaulting all searches to include only Exclusive Right to Sell listings and that the other listing types are shown only by request."); Kage, Tr. 963).

Response to CCPF No. 794:
Respondent has no specific response.

795. The MLS "search screen had to be changed to include the various listing types as an option, and then automatically choose the exclusive right to sell or unknown at that time as the options that were the default." (CX 36 (Kage, IHT at 90)).

Response to CCPF No. 795:
Respondent has no specific response.

796. The Search Function Policy was implemented in November or December of 2003. (Kage, Tr. 963).

Response to CCPF No. 796:
Respondent has no specific response.

797. Prior to the adoption of the Search Function Policy, the MLS search automatically defaulted to all available listing types, including Exclusive Agency, Limited Service, and MLS Entry Only listings. (CX 36 (Kage, IHT at 74); JX 1-07).

Response to CCPF No. 797:
Respondent has no specific response.

798. In November 2003, Realcomp officially notified its membership of the Search Function Policy through its Real Solutions Newsletter. (CX 14-002). In its Newsletter, Realcomp noted the change and laid out the additional steps that would be necessary to search for

Exclusive Agency listings, Limited Services listings and/or MLS Entry Only listings. (CX 14-002; *See also* (CX 36 (Kage, IHT at 160)).

Response to CCPF No. 798:
Respondent has no specific response.

799. After November 2003, Realcomp has not issued additional written instructions to its members explaining how to include Exclusive Agency, Limited Service, and MLS Entry Only listings in the search results. (CX 36 (Kage, IHT at 93, 112); CX 100; CX 90). There is no mention of the Search Function Policy in the Realcomp MLS Rules and Regulations. (CX 36 (Kage, IHT at 93)).

Response to CCPF No. 799:
Respondent has no specific response.

800. The Realcomp Policy Handbook describes how to submit and how to make changes to a listing. (CX 36 (Kage, IHT at 109)). The Realcomp Policy Handbook does not contain any reference to the Search Function Policy. (CX 36 (Kage, IHT at 112); CX 100; CX 90). The Realcomp Online Basics Training Workbook does not contain a written explanation on the steps the Realcomp members need to take in order to see all available listing types. (CX 35 (Kage, Dep. at 131-133); CX 249). The Realcomp Online Basics Training Workbook does, however, explain how to see all property types, such as Residential, and Condos. (CX 35 (Kage, Dep. at 131-133); CX 249).

Response to CCPF No. 800:
Respondent has no specific response.

801. The only way Realcomp members find out about the Search Function Policy is through one training class at the very beginning of their membership. (CX 36 (Kage, IHT at 94)).

Response to CCPF No. 801:
Ms. Kage's testimony is limited to how new members are initially trained. (CX 36 (Kage, IHT at 94)). Overriding the search default to search to include all listings is very simple. (G. Moody, Tr. 878; Kage, Tr. 1048-49; RX 159). It does not require extra steps to search "all listings." (CX 415 (Novak Dep. at 46)). Agents with Exclusive Agency Listings have acknowledged they did not require any special training to learn how to override the search default. (D. Moody, Tr. 551; CX 526 (Groggins, Dep. at 43).

802. In his entire career, Mr. Murray has never encountered a similar search default even though he has worked with twelve different MLS technology systems. (Murray, Tr. 194-195; RX 154-A-033 ("In all of my MLS-related consulting services, including reviewing over 12 MLS technology systems, I have never encountered a search function that defaulted in a systemic way to exclude certain types of listings from view."); Murray, Tr.

196 ("Every MLS I've ever interacted with, the only choice was to search all listings.")).

Response to CCPF No. 802:
Respondent has no specific response.

803. The Search Function Policy is "directly contrary to one of the central benefits of an MLS: to include as many listings as possible for its members to search in order to match willing buyers and sellers." (RX 154-A-033).

Response to CCPF No. 803:
The Search Function Policy was designed to make it easier for Realcomp users and to improve efficiency. (CX 421 (Whitehouse, Dep. at 142-143); Kage, Tr. 1039)). Review of the old search screen (RX 159) and the fact that if someone wanted to see all listings, he or she just had to click one other button with the mouse (Kage, Tr. 1039) demonstrates that this was not an inhibiting factor. In any event, Realcomp has changed its Rules to repeal the Search Function Policy. (RX 160; CX 626; Kage Tr. 1045-47). Counsel have signed a Joint Stipulation Regarding Respondent's Search Function Policy, dated July 30, 2007, which has been submitted to this Court.

804. The Search Function Policy affects other aspects of the Realcomp MLS, including Comparative Market Analyses. (CX 251-CX 253). The Realcomp training book regarding Comparative Market Analysis does not tell Realcomp members how to include all listing types in their analyses. (CX 251-CX 253).

Response to CCPF No. 804:
The Search Function Policy was designed to make it easier for Realcomp users and to improve efficiency. (CX 421 (Whitehouse, Dep. at 142-143); Kage, Tr. 1039)). Review of the old search screen (RX 159) and the fact that if someone wanted to see all listings, he or she just had to click one other button with the mouse (Kage, Tr. 1039) demonstrates that this was not an inhibiting factor. In any event, Realcomp has changed its Rules to repeal the Search Function Policy. (RX 160; CX 626; Kage Tr. 1045-47). Counsel have signed a Joint Stipulation Regarding Respondent's Search Function Policy, dated July 30, 2007, which has been submitted to this Court.

805. At least some Comparative Market Analysis reports generated by brokers through the Realcomp MLS default to Exclusive Right to Sell listings. (CX 253).

Response to CCPF No. 805:
CX 253 does not support Complaint Counsel's proposed finding of fact. When conducting a Comparative Market Analysis from the Comparative Market Analysis screen, defaults do not apply.

5. To Ensure the Website Policy and Search Function Policy Are Effective, Realcomp Added Heavy Fines for Not Properly Indicating the Listing Type and Implemented a Policy Tying Exclusive Right to Sell to Full Service Listings

806. In November 2003, Karen Kage sent a memo to the Realcomp brokers reiterating that listing type was now a mandatory field in the Realcomp MLS. (CX 18; Kage, Tr. 964-965; CX 58-002; CX 17).

Response to CCPF No. 806:
Respondent has no specific response.

807. In 2004, the Realcomp Policy manual was amended to include the following language:

> The Listing Type field must be properly indicated to show the amount of contracted services that are to be provided as part of the listing agreement. The Listing Type must indicate if the listing is an Exclusive Right to Sell/Full Service, MLS Entry Only, Limited Service or Exclusive Agency contract. . . . (CX 8-007).

Response to CCPF No. 807:
Respondent has no specific response.

808. Not only did Realcomp make listing type a mandatory field, but Realcomp then tied the amount of services offered by a broker to the listing contract. (CX 18-003; Kage, Tr. 965-966). As of November 2003, Exclusive Right to Sell listings must be Full Service listings. (CX 18-003; Kage, Tr. 965-966).

Response to CCPF No. 808:
Realcomp recently changed its Rules to change the definition of Exclusive Right to Sell so that full services are no longer required with an ERTS listing. (Kage, Tr. 1046-1047). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

809. Realcomp currently requires Realcomp members to check a box disclosing the listing type for every listing entered into the Realcomp MLS. (CX 36 (Kage, IHT at 44)). A listing will not be accepted into the Realcomp MLS unless a listing type box is checked. (CX 36 (Kage, IHT at 45)).

Response to CCPF No. 809:
Realcomp recently changed its Rules to change the definition of Exclusive Right to Sell so that full services are no longer required with an ERTS listing. (Kate, Tr. 1046-1047). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

810. The Realcomp Policies were targeted at listing contracts that were not of the traditional full-service form. (CX 29). According to Karen Kage, "if the seller is scheduling their own appointments or performing other duties normally associated with those that fall under the 'full service' umbrella, that listing must be designated as 'Limited Service' - even if the contract is an Exclusive Right to Sell Agreement." (CX 29).

Response to CCPF No. 810:
Realcomp recently changed its Rules to change the definition of Exclusive Right to Sell so that full services are no longer required with an ERTS listing. (Kage, Tr. 1046-1047). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

811. If a Realcomp listing is changed from Exclusive Right to Sell to Limited Service, it is pulled from the extract so that only Exclusive Right to Sell listings go to the public real estate websites. (CX 36 (Kage, IHT at 58-59)).

Response to CCPF No. 811:
It is inaccurate to equate ERTS Listings with full service, to the exclusion of limited service, since Realcomp recently changed its Rules to change the definition of Exclusive Right to Sell so that full services are no longer required with an ERTS listing. (Kage, Tr. 1046-1047). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

812. Realcomp has fines in place for violators of the Website Policy and Search Function Policy, who try to circumvent the Policies by indicating the wrong listing type. (CX 36 (Kage, IHT at 59-60); CX 100-015).

Response to CCPF No. 812:
Respondent has no specific response.

813. In 2004, the fine for not properly identifying a listing on the Realcomp MLS as MLS Only, Limited Service or Exclusive Agency was the following:

First Occurrence - $250.00;
Second Occurrence - $1000;
Third Occurrence - $2500;
Fourth Occurrence - 45 day suspension from service for entire office;
Fifth Occurrence - dismissal from service.
The Occurrences are tallied by office during each calendar year.

(CX 6-014; CX 7-015).

Response to CCPF No. 813:

Respondent has no specific response.

814. These are the current fines in the October 2006 Realcomp Rules and Regulations for not properly identifying Exclusive Agency listings. (CX 100-015; Kage, Tr. 988).

Response to CCPF No. 814:
Respondent has no specific response.

815. Realcomp has fined its members for not checking the right listing type box, such as checking Exclusive Right to Sell when the Exclusive Agency box should be checked. (CX 36 (Kage, IHT at 59-60)).

Response to CCPF No. 815:
Respondent has no specific response.

816. Karen Kage admitted that if a listing was not considered "full service" it was not included in the feed to Realtor.com, MoveInMichigan.com, IDX websites, and not included in the Realcomp MLS search default. (Kage, Tr. 967-968).

Response to CCPF No. 816:
This is not applicable because Realcomp changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160; CX 626; Kage, Tr. 1045-47).

817. In January 2004, Realcomp retained the first part of the Website Policy but changed the language of the second part to conform with NAR's optional rule. The revised rule provided: "Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties on an exclusive right to sell basis." (CX 6-021; CX 36 (Kage, IHT at 123-124)).

Response to CCPF No. 817:
Respondent has no specific response.

6. In 2004 Realcomp Was Advised by Legal Counsel and NAR Not to Bar Exclusive Agency and Limited Service Listings Entirely From the MLS

818. In April 2004, Realcomp again addressed the issue of excluding Exclusive Agency listings from the Realcomp MLS. (CX 29; CX 36 (Kage, IHT at 167)). Ms. Kage testified that she received several questions a week from Realcomp members challenging her as to why Realcomp accepts Exclusive Agency listings, Limited Service listings and MLS Entry Only listings. (CX 36 (Kage, IHT at 138)).

Response to CCPF No. 818:

At all times pertinent to this matter, Realcomp has permitted agents to list Exclusive Agency Listings on its Multiple Listing Service. (JX 1, ¶ 57).

819. In April 2004, Karen Kage also told Realcomp members that one of the reasons that Realcomp accepts these listings into its MLS is that NAR "requires MLSs to accept all listing types (i.e. Exclusive Right to Sell (Full Service), Exclusive Agency, Limited Service, and MLS Entry Only)." (CX 29; Kage, Tr. 970-971; CX 36 (Kage, IHT at 138-139)).

Response to CCPF No. 819:
Respondent has no specific response.

820. The second reason why Realcomp accepts Exclusive Agency listings, Limited Service listings and MLS Entry Only listings is because "Realcomp has been advised from more than one legal counsel to accept and include these listings." (CX 29; Kage, Tr. 971; CX 36 (Kage, IHT at 139-140)).

Response to CCPF No. 820:
Respondent has no specific response.

821. In July 2004, Karen Kage told Realcomp members that she spoke with several MLSs across the country to determine if any of them had adopted rules "that would prohibit listings that are not 'Full Service/Exclusive Right to Sell' from being in their database." (CX 28-001). Karen Kage learned that none of the MLSs had adopted such a rule. (CX 28-001).

Response to CCPF No. 821:
Respondent has no specific response.

7. Realcomp's Current Rules Continue to Enable Realcomp to Implement and Enforce the Website Policy

822. The current Realcomp Rules and Regulations were adopted in October 2006. (CX 100-001). The current Realcomp Rules and Regulations continue to implement the Website Policy: "Exclusive Agency, Limited Service and MLS Entry Only Listings will not be distributed to any Real Estate Internet advertising sites." (CX 100-005; CX 35 (Kage, Dep. at 9); Kage, Tr. 974-975). Realcomp continues to enforce this rule. (CX 100-005, 013-016; CX 35 (Kage, Dep. at 9); CX 90).

Response to CCPF No. 822:
The reference to Limited Service and MLS Entry Only listings is no longer applicable under Realcomp's current rules in light of the changes described in the Response to CCPF ¶808.

823. "Real Estate Internet advertising sites" refers to MoveInMichigan.com, Realtor.com and ClickOnDetroit.com. (Kage, Tr. 975).

Response to CCPF No. 823:
Respondent has no specific response.

824. Moreover, the Realcomp Rules and Regulations preclude Exclusive Agency, Limited Service and MLS Entry Only listings from being included on the Home Preview Channel, a local cable television channel that shows real estate listings. (D. Moody, Tr. 530-531).

Response to CCPF No. 824:
The reference to Limited Service and MLS Entry Only listings is no longer applicable under Realcomp's current rules in light of the changes described in the Response to CCPF ¶808.

825. The October 2006 Realcomp Rules and Regulations continue to set forth the fines for incorrectly entering listing type in the Realcomp MLS: The first offense for failure to indicate the type of listing would be a fine of $250, 2nd offense $1000, 3rd offense $2500, 4th offense would result in possible 45 day suspension from service for the entire office and 5th offense would be dismissal from Realcomp. (CX 100-015; Kage, Tr. 980-981).

Response to CCPF No. 825:
Albert Hepp, an agent with exclusive agency listings who was called as a witness by Complaint Counsel, testified that the National Association of Realtors has approved MLSs to fine their members up to $15,000. (Hepp, Tr. 711-712).

826. The October 2006 Realcomp Rules and Regulations continue to state: "Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis." (CX 100-025; CX 35 (Kage, Dep. at 13-14); Kage, Tr. 984-986). Realcomp currently enforces this rule. (CX 100-025; CX 35 (Kage, Dep. at 13-14); CX 90).

Response to CCPF No. 826:
Respondent has no specific response.

827. The October 2006 Realcomp Rules and Regulations further state that: "Non-MLS listings shall not be co-mingled with MLS listings on the Participant's Internet Web site." (CX 100-026; CX 28-001). The rule "means properties that are not listed through an MLS [such as For Sale By Owner listings] cannot be co-mingled with the Realcomp listings," on a broker's website. (CX 35 (Kage, Dep. at 14-15); Kage, Tr. 986).

Response to CCPF No. 827:
Respondent has no specific response.

828. Karen Kage admitted that Realcomp enforces the Website Policy through the October 2006 Rules and Regulations. (Kage, Tr. 989-989).

Response to CCPF No. 828:
Respondent has no specific response.

829. Karen Kage admitted that Realcomp enforces the Search Function Policy through the October 2006 Rules and Regulations. (Kage, Tr. 989).

Response to CCPF No. 829:
Realcomp has repealed its Search Function Policy as reflected in its April 27, 2007 minutes. (CX 626; Kage, Tr. 1046-1048). Realcomp is agreeable to making that change part of a Consent Decree. (June 22, 2007 Agreement of counsel, Tr. 1022; Kage, Tr. 1047). In fact, Realcomp's counsel signed a Joint Stipulation Regarding Respondent's Search Function Policy on July 30, 2007, which has been submitted to this Court. Likewise, Realcomp has changed the definition of the ERTS, so that full services are no longer required with an ERTS listing. That change was also adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

B. Realcomp Actively Enforces the Website Policy

830. Realcomp actively enforces the Website Policy and Realcomp members have been fined if they try to submit an Exclusive Agency listing as an Exclusive Right to Sell listing. (CX 36 (Kage, IHT at 58-60, 117-118); CX 22 - CX 25). For example, Karen Thomas, an associate broker for Coldwell Banker in Michigan, filed a complaint with Realcomp regarding three listings by Greater Michigan Realty, an unbundled service provider in Michigan who offers both flat fee service and full service at a substantial discount. (CX 22-001; CX 36 (Kage, IHT at 169-171)). Ms. Thomas argued in her letter that all of the listings of Greater Michigan Realty should be "dropped from Realtor.com" because she assumed the listings were limited service. (CX 22-001).
Response to CCPF No. 830:
Respondent has no specific response.

831. In response to this complaint, Realcomp changed the listing type from Exclusive Right to Sell/Full Service to Limited Service, causing the listings to be removed from MoveInMichigan.com, Realcomp IDX websites, and Realtor.com. (CX 22-007).

Response to CCPF No. 831:
Respondent has no specific response.

832. Greater Michigan Realty was targeted with numerous complaints because of the fact that some of the listings were on www.fsbo.com, had a FSBO sign in front of the property, and listed the seller as the contact reference. (G. Moody, Tr. 841-842; RX 25-004; CX 24-001-002 ("Letter from Realcomp to Denise Marek Moody" (Aug. 4, 2004); CX 22-

001 ("Letter from Karen Thomas to Realcomp" (June 11, 2004); CX 25 ("Fax from Realty Executives to Realcomp" (July 19, 2004)).

Response to CCPF No. 832:
Complaint Counsel's reference to CX 25 should be to CX 23.

833. Realcomp threatened to impose a $21,000 fine on Greater Michigan Realty ($1000 fine per listing, with 21 listings at issue) because some sellers who had entered into Exclusive Right to Sell/Full Service listing agreements with the company, and thus were obligated to pay their listing broker a full commission if the house was sold regardless of whether the broker or seller located the buyer, had also taken steps themselves to try to find a buyer. (D. Moody, Tr. 504-507; CX 24-002). Such activity may have included displaying a "for sale by owner" yard sign on the property or advertising the home on a website that featured "for sale by owner" properties. (D. Moody, Tr. 504-507; CX 24-002).

Response to CCPF No. 833:
No such fine was ever imposed on Greater Michigan Realty. (G. Moody, Tr. 782; D. Moody, Tr. 507).

834. In another example of enforcing the Website Policy, Realcomp told a member: "Please be aware Realcomp has received notice that the above referenced listing may have an incorrectly identified Listing Type because it [sic] the seller is the contact and is making arrangements for showings and was submitted as an Exclusive Right to Sell/FS Listing Type. This listing has been updated to reflect a Listing Type of Exclusive Agency and a fine has been assessed." (CX 25-002 at 2; CX 36 (Kage, IHT at 58-59)).

Response to CCPF No. 834:
Respondent has no specific response.

835. Realcomp also told its members that the listing agent/office had to be the "exclusive provider" of each required service mandated by Realcomp's rules in order to be considered a full service listing. (CX 25-003). For example, because in some listings Denise Moody's listing contract said "We are responsible (with you) for. . ." this did not constitute the listing agent providing that service, and it must be considered limited service. (CX 22-007).

Response to CCPF No. 835:
Respondent has no specific response.

836. If the listing was designated as limited service, it was not sent to Realtor.com, MoveInMichigan.com, ClickOnDetroit.com, IDX websites or included in the Realcomp MLS search default. (Kage, Tr. 969-970).

Response to CCPF No. 836:
This is no longer applicable, and it is inaccurate to equate ERTS Listings with full service, to the exclusion of limited service, since Realcomp recently changed its Rules to change the definition of Exclusive Right to Sell so that full services are no longer required with an ERTS listing. (Kage, Tr. 1046-1047). This change was adopted by Realcomp's Board as reflected in its April 27, 2007 minutes. (CX 626).

837. Karen Kage admitted that there is no way for discount brokers to circumvent the Website Policy. (CX 36 (Kage, IHT at 60)).

Response to CCPF No. 837:
Discount brokers can circumvent the Web Site Policy by using a by-pass MLS to place Exclusive Agency listings into Realtor.com (RPF ¶¶105-112). Consumers can avoid the effect of the Policy by paying slightly more to Exclusive Agents to have their listings sent to Realtor.com (RPF ¶113), or to upgrade to a flat-fee ERTS listing (RPF ¶114).

838. Karen Kage admitted that there is no way for a Realcomp member with an Exclusive Agency listing to get their listing onto MoveInMichigan.com or ClickOnDetroit.com. (Kage, Tr. 989).

Response to CCPF No. 838:
Respondent has no specific response.

C. The National Association of Realtor's New Policy Requires Associated MLSs to Include Exclusive Agency Listings in MLS Feeds to Public Websites, but the Realcomp Board of Governors Voted to Refuse to Comply

839. In November 2006, NAR amended its IDX rules to require MLSs to "include all current listings" in their IDX feeds. (CX 400-002). NAR's rule amendment eliminated the ability of NAR member MLSs to exclude Exclusive Agency listings from their IDX feeds. (CX 400-002; CX 393-003-005, 009; CX 414 (Niersbach, Dep. at 95-96)).

Response to CCPF No. 839:
Respondent notes that NAR's Vice President of Board Policy and Programs, Clifford Niersbach, testified that the reason NAR changed its IDX Policy was that "it wasn't worth fighting about" in light of the Federal Trade Commission's enforcement actions initiated against various MLSs around the country. (CX 414 (Niersbach, Dep. At 95-96)).

840. In November 2006, NAR also amended its IDX rules to allow individual brokers to *independently* choose which IDX listings will be displayed on their firm website based on objective criteria, such as geography, list price, and type of listing. (CX 401-003 (amendments reflected in Rule 18.2.4); CX 414 (Niersbach, Dep. at 102, 118-120) (testifying that CX 400 and 401 are excerpts from the current 2007 MLS handbook that

reflects NAR's amended IDX policy)). This rule was effective immediately upon its publication. (CX 414 (Niersbach, Dep. at 118-119)).

Response to CCPF No. 840:
Respondent has no specific response.

841. The November 2006 IDX rule amendments are mandatory. (CX 400-002 (MLSs "must" include all current listings on their IDX feeds); CX 401-003 (designating rule change as "M," or Mandatory). Mandatory rules must be followed in order to remain a member of NAR and to be covered by NAR's errors and omissions insurance policy. (CX 414 (Niersbach, Dep. at 36-37); Kage, Tr. 1005-1006). NAR designates model MLS rules as "mandatory" if it determines that the rule is necessary for the proper operation of the MLS. (CX 414 (Niersbach, Dep. at 39)).

Response to CCPF No. 841:
See the Response to CCPF ¶839.

842. Karen Kage was aware that in November 2006 NAR adopted a new IDX rule and that the new NAR IDX rule is contained in the NAR Handbook on Multiple Listing Policy for 2007. (CX 401; Kage, Tr. 996).

Response to CCPF No. 842:
Respondent has no specific response.

843. Karen Kage admitted that NAR is no longer allowing any of its 800 plus MLSs to preclude from IDX websites certain listing types. (Kage, Tr. 996; CX 401-003).

Response to CCPF No. 843:
Respondent has no specific response.

844. Karen Kage admitted that NAR adopted a mandatory rule that now requires all NAR-affiliated MLSs to allow Exclusive Right to Sell, Exclusive Agency, Limited Service and MLS Entry Only listings to be included in the feed from the MLS to IDX websites. (Kage, Tr. 996; CX 330; CX 38 (Gleason, Dep. at 62-65)).

Response to CCPF No. 844:
Respondent has no specific response.

845. On April 27, 2007, the Realcomp Board of Governors voted against adopting the new NAR IDX policy. (CX 626-003; Kage, Tr. 998-999).

Response to CCPF No. 845:
Respondent has no specific response.

846. The Realcomp Board of Governors, through Karen Kage, tried, unsuccessfully, to get NAR to postpone its rule change requiring NAR affiliated MLSs to include all listing types on Realtor.com, IDX websites and any other website in which the MLS sends listing information. (CX 232 - 235; CX 35 (Kage, Dep. at 86-100, 102-105,107)).

Response to CCPF No. 846:
CX 232 does not support Complaint Counsel's proposed finding of fact.

847. Karen Kage sent an email to NAR trying to convince NAR to defeat or postpone the "proposed MLS Rule Changes Concerning Exclusive Agency Listings on Public Websites." (CX 233-001).

Response to CCPF No. 847:
Respondent has no specific response.

848. Karen Kage received an email response from Laurie Janik, stating NAR's position regarding the new mandatory IDX rule. (Kage, Tr. 1006-1008; CX 234; CX 235 (NAR's response from Realcomp's files); CX 414 (Niersbach, Dep. at 100-101)).

Response to CCPF No. 848:
Respondent has no specific response.

849. Karen Kage, on behalf of Realcomp, argued that Exclusive Agency listings are in essence For Sale By Owner properties, because the seller retains the right to the sell the home on their own. (CX 234-002).

Response to CCPF No. 849:
Respondent has no specific response.

850. NAR's position is that an Exclusive Agency listing is not a FSBO since it is in fact a listing, with a listing broker and an offer of compensation to a cooperating broker (if any). (Kage, Tr. 1010; CX 234-002).

Response to CCPF No. 850:
Respondent has no specific response.

851. NAR noted that if an Exclusive Agency listing is sold by a cooperating broker, that broker is entitled to the compensation communicated to the MLS participants by the listing broker (i.e. the offer of compensation). (Kage, Tr. 1011; CX 234-002).

Response to CCPF No. 851:
Respondent has no specific response.

852. Karen Kage, on behalf of Realcomp, argued that without the Website Policy, the MLS would become a public utility. (CX 234-003).

Response to CCPF No. 852:
Respondent has no specific response.

853. NAR's position is that the removal of the Website Policy would in no way cause the MLS to become a public utility or distract from a purpose of the MLS. (CX 234-003).

Response to CCPF No. 853:
Respondent has no specific response.

854. Karen Kage, on behalf of Realcomp, argued that the NAR rule change merely shifts the burden and costs to individual brokers to decide if they want to remove any listing types from their websites. (CX 234-003).

Response to CCPF No. 854:
Respondent has no specific response.

855. NAR's position distinguished between a rule that is made by a group of competitors functioning in their capacity as the board of directors of an MLS, and a rule based on individual business decisions. (Kage, Tr. 1017-1018; CX 234-003). NAR's position was that a group of competitors functioning in their capacity as the Board of Directors, should not make a collective decision that certain listing types would not be distributed to public websites. (CX 234-003).

Response to CCPF No. 855:
Respondent has no specific response.

856. Karen Kage admitted that the decision by Realcomp to adopt the Website Policy was a group decision. (Kage, Tr. 1018).

Response to CCPF No. 856:
Respondent has no specific response.

857. Karen Kage, on behalf of Realcomp, argued that NAR should postpone the rule change since it could affect the operation of MLSs all over the country. (CX 234-004).

Response to CCPF No. 857:
Respondent has no specific response.

858. NAR's position is that "since NAR's existing policy is deemed to produce anticompetitive effects by the DOJ and the FTC, it would have been irresponsible for NAR to do nothing." (Kage, Tr. 1021; CX 234-004).

Response to CCPF No. 858:
NAR's position was based, at least in part, on its desire to avoid the costs of litigation. (Kage, Tr. 1019). See also the Response to CCPF ¶839.

D. Realcomp Voted to Change Its Search Function Policy

859. On April 27, 2007, the Realcomp Board of Governors voted to change the Search Function Policy, to no longer have the Realcomp MLS default to Exclusive Right to Sell/ Full Service listings. (CX 626-003; Kage, Tr. 998-999).

Response to CCPF No. 859:
Respondent has no specific response.

860. On April 27, 2007 the Realcomp Board of Governors passed the following motion:

> A **MOTION** was made, **SECONDED**, and **CARRIED** to adopt Ms. Kage's recommendation to remove the "Listing Type" defaults that are currently on the search screen of Realcomp*Online*® and separate "Listing Type" from "Service Levels" making these mandatory fields that must be answered when users perform searches for properties and load listings. Additionally, a feature group for "Services Offered" will be added to all listings. (CX 626-003).

Response to CCPF No. 860:
Respondent has no specific response.

VIII. REALCOMP'S POLICIES IMPACTED THE ABILITY OF LIMITED SERVICE BROKERS TO COMPETE

861. The Realcomp Website Policy prevents Realcomp from sending Exclusive Agency listings to MoveInMichigan.com, ClickOnDetroit.com, the Realcomp IDX websites and Realtor.com, thereby limiting the exposure of Exclusive Agency listings to buyers. (CCPF ¶¶ 868-898).

Response to CCPF No. 861:
Exclusive Agency Listings can be listed in Realtor.com by listing the property in another MLS that downloads those listings to Realtor.com, and the costs associated with doing that are nominal. (RPF ¶¶102-112). Realcomp has always permitted Exclusive Agency listings to be placed onto Realcomp's Multiple Listing Service. (JX 1, ¶ 57). As a result, the alleged limitation of exposure is not material as 80% of all buyers are reached by the

MLS, and if one combines the MLS with Realtor.com, the combination reaches 90% of all buyers. (Mincy, Tr. 449-450; RX 109; Kermath, Tr. 795; RX 4; RX 5).

862. Realcomp provides the only means of including a listing on MoveInMichigan.com and ClickOnDetroit.com. (CCPF ¶¶ 875-877).

Response to CCPF No. 862:
Respondent incorporates its responses to CCPF ¶¶875-877.

863. There are no alternative practical means to provide Exclusive Agency listings onto the Realcomp IDX websites. (CCPF ¶¶ 878-880).

Response to CCPF No. 863:
Respondent incorporates its responses to CCPF ¶¶878-880.

864. To have Exclusive Agency listings for properties in the Realcomp service area included in Realtor.com, a Realcomp member must join another MLS, and spend the time and money to enter and maintain those listings in 2 MLSs. (CCPF ¶¶ 881-889).

Response to CCPF No. 864:
The costs associated with joining another MLS for this purpose are nominal, and the "time cost" associated with listing on another MLS is very small. (RPF ¶¶109-110).

865. Barring Exclusive Agency listings from the Approved Websites, significantly impacts the ability of limited service brokers to compete, because alternative websites are not acceptable substitutes for the Approved Websites. (CCPF ¶¶ 890-907, 941-1068).

Response to CCPF No. 865:
Respondent incorporates its responses to CCPF ¶¶890-907, 941-1068. Briefly, the Web Site Policy does not create a significant effect on Exclusive Agency Listings, since 90% of all buyers are reached by the combination of the MLS and Realtor.com (RPF ¶101). Brokers offering Exclusive Agency Listings can bypass Realcomp's Web Site Policy (RPF ¶¶102-108, 111-113). Jeff Kermath, Denise Moody and Craig Mincy do so and are successful (RPF ¶¶106-107, 163). Realcomp's rule change makes this no longer applicable to limited service brokers, since full services are no longer required with an ERTS listing (CX 626; Kage, Tr. 1046-1048). The suggestion that Realcomp discriminates against some of its members is inaccurate. (See, e.g., JX 1, ¶57). Brokers can, and do, offer different types of listings (see Response to CCPF ¶178).

866. The Realcomp Search Function Policy makes it harder for Exclusive Agency listings to be seen by Realcomp members. (CCPF ¶¶ 908-940).

Response to CCPF No. 866:

The Search Function Policy's ease of being by-passed is demonstrated by looking at the old screen (RX 159) and considering that if someone wanted to see all listings, he or she just had to click one other button with the mouse. (Kage, Tr. 1039). Searching all listings was very simple, and it was not difficult to override the search default (RPF ¶¶131, 136). In any event, the Search Function Policy has been repealed and this is no longer applicable. (RPF ¶¶133-136).

867. The Realcomp Search Function Policy impacts the ability of limited service brokers to compete by restricting their listings' exposure to cooperating brokers and thereby to home buyers. (CCPF ¶¶ 941-1068).

Response to CCPF No. 867:
Respondent incorporates its Responses to CCPF ¶¶941-1068, and states in summary: The Search Function Policy's ease of being by-passed is demonstrated by looking at the old screen (RX 159) and considering that if someone wanted to see all listings, he or she just had to click one other button with the mouse. (Kage, Tr. 1039). Searching all listings was very simple, and it was not difficult to override the search default (RPF ¶¶131, 136). In any event, the Search Function Policy has been repealed and this is no longer applicable. (RPF ¶¶133-136).

A. The Realcomp Website Policy Limits the Exposure of Exclusive Agency Listings to Buyers

868. Realcomp's Website Policy prevents Exclusive Agency listings from being included on the four most popular types of real estate websites, limiting the exposure of Exclusive Agency listings to potential buyers. (CCPF ¶¶ 869-889).

Response to CCPF No. 868:
Respondent incorporates its Responses to CCPF ¶¶869-889 and states in summary: The Web Site Policy does not prevent Exclusive Agency Listings from being included in the two most popular forms of Internet exposure, the MLS and Realtor.com which, as set forth above, are seen by 90% of home buyers. (RPF ¶ 101). Additionally, Gary Moody expects Goodle to pass IDX, which he ranks third after the MLS and Realtor.com in terms of importance of exposure for Internet sites, in the near future. (RFP ¶ 121(d)). *See also* the Response to CCPF ¶ 899.

869. Realcomp members, who pay the same exact dues as everyone else, but who use Exclusive Agency, Limited Service or MLS Entry Only listings, do not have their listings sent to public internet websites through Realcomp including Realtor.com, MoveInMichigan.com, ClickOnDetroit.com, and broker IDX websites. (CX 35 (Kage, Dep. at 22-23)).

Response to CCPF No. 869:

Based upon Realcomp's change in the Minimum Service Definition, as set forth above, this does not apply to limited service or MLS Entry Only listings. (CX 626; Kage, Tr. 1045-1047).

870. Under the Website Policy, the service provided by Realcomp "is severely degraded" for Exclusive Agency listings by "really limit[ing]" the sellers' listings "to not as much exposure as they would like to have." (CX 525 (Adams, Dep. at 78-79)). In fact, customers expect their properties will be displayed on the public websites to which Realcomp sends its listings. (CX 525 (Adams, Dep. at 80-81)).

Response to CCPF No. 870:
As set forth above, the Web Site Policy does not result in a "severely degraded" service, and "really limiting" the sellers' listings, since agents are able to get their Exclusive Agency listings into the MLS and Realtor.com. (RPF ¶¶ 102-112).

871. As a broker offering full and limited services, Mr. Kermath has been able to observe that his full service listings "get better exposure and they typically have better call activity, showing activity." (Kermath, Tr. 741-742 (monitoring activity by receiving emails concerning appointments scheduled to show his clients' homes to prospective buyers)). Mr. Kermath estimates that his full service listings receive about 25-30% more exposure than Exclusive Agency or Limited Service listings. (Kermath, Tr. 768-771). Mr. Kermath explains to his customers that "better exposure means better odds at a successful sale." (Kermath, Tr. 767; RX 12-007).

Response to CCPF No. 871:
The references to full and limited services are no longer applicable with respect to these matters in light of Realcomp's Rule change, as described above. (RPF ¶133, CX 626; Kage, Tr. 1046-1048). Additionally, Mr. Kermath explained that Realcomp's change of its Search Function Policy levels the playing field and resolves the Exclusive Agent's problems and concerns. (RFP ¶134; Kermath Tr. 771-772).

872. Realcomp's Website Policy may cause sellers to have their homes spend longer times on the market due to their lower exposure to potential buyers and cause sellers to "either sell their home with less key exposure – thereby risking that the home will not be sold or will take longer to sell – or else purchase services that they do not want or need." (RX 154-A-072).

Response to CCPF No. 872:
The only expert to analyze Days on Market was David Eisenstadt, who found that the Web Site Policy did not adversely affect sellers with EA listings, since in the Realcomp MLS, the Days on Market are lower for EA listings than for comparable ERTS listings. (RPF ¶¶ 158-159).

873. The Website Policy disadvantages brokers with Exclusive Agency or Limited Service listings by reducing their effectiveness with consumers. (Murray, Tr. 245-248 (brokers with Exclusive Agency listings will not be as effective at their marketing, will not get as many leads, and will not be as competitive in getting listings.)).

Response to CCPF No. 873:
Mr. Murray did not look at days on market, and the only expert to look at days on market and sales price was David Eisenstadt who found that the Web Site Policy did not reduce the effectiveness with consumers. (RPF ¶¶ 157-158, 161). Additionally, the proposal does not apply to limited service listings in light of Realcomp's Rule change as discussed above. (RPF ¶133, CX 626; Kage, Tr. 1045-1047).

874. Realcomp's Website Policy would still disadvantage brokers with Exclusive Agency or Limited Service listings even if Realcomp changed its policy to allow a feed to one of the four key types of websites, such as Realtor.com, but maintained its policy regarding the other websites. (Murray, Tr. 245-248).

Response to CCPF No. 874:
Mr. Murray did not look at days on market, and the only expert to look at days on market and sales price was David Eisenstadt who found that the Web Site Policy did not reduce the effectiveness with consumers. (RPF ¶¶ 157-158, 161). Additionally, the proposal does not apply to limited service listings in light of Realcomp's Rule change as discussed above. (RPF ¶133, CX 626; Kage, Tr. 1045-1047). See also the Response to CCPF ¶ 899.

1. There Are No Alternative Means to MoveInMichigan.com and ClickOnDetroit.com

875. Karen Kage admitted that there is no way for limited service brokers to circumvent the Website Policy. (CX 36 (Kage, IHT at 60)).

Response to CCPF No. 875:
Exclusive Agency Listings can be listed in Realtor.com by listing the property in another MLS that downloads those listings to Realtor.com, and the costs associated with doing that are nominal. (RPF ¶¶102-112). Additionally, the proposal does not apply to limited service listings in light of Realcomp's Rule change as discussed above. (RPF ¶133, CX 626; Kage, Tr. 1045-1047).

876. Realcomp is the exclusive provider of real estate listing information to ClickOnDetroit.com, so the only way to get a listing included on ClickOnDetroit.com is through the Realcomp MLS. (Kage, Tr. 936-937; CX 36 (Kage, IHT at 48-49)). Realcomp only includes Exclusive Right to Sell listings in the data it supplies to ClickOnDetroit.com. (Kage, Tr. 936-937).

Response to CCPF No. 876:
Respondent has no specific response.

877. MiRealSource does not send listings to MoveInMichigan.com, ClickOnDetroit.com, or the Home Preview Channel. (CX 407 (Bratt, Dep. at 86-87)). Similarly, MiRealSource does not send non-member listings (guest listings) to any public real estate websites, including Broker Data Sharing websites. (CX 407 (Bratt, Dep. at 93-94)).

Response to CCPF No. 877:
Respondent has no specific response.

2. There Are No Practical Means to Put a Listing on the Realcomp IDX Websites Apart From Realcomp's IDX Feed

878. As Mr. Murray concluded, there is "no viable alternative" for brokers offering Exclusive Agency or Limited Service listings to circumvent Realcomp's Website Policy and place their listings on the IDX websites of Realcomp members. (RX 154-A-065-066). Because Realcomp has sole control over its IDX feed, the only theoretical way to replicate the competitive advantage of Realcomp's IDX feed would be to negotiate with all of Realcomp's members for access to post their listings on the other members' IDX websites. (RX 154-A-065-066). The transaction costs of individually negotiating such access to the Realcomp member IDX websites, however, would be cost prohibitive. (RX 154-A-065-066).

Response to CCPF No. 878:
Exclusive Agency Listings can be listed in Realtor.com by listing the property in another MLS that downloads those listings to Realtor.com, and the costs associated with doing that are nominal. (RPF ¶¶102-112). Additionally, the proposal does not apply to limited service listings in light of Realcomp's Rule change as discussed above. (RPF ¶133, CX 626; Kage, Tr. 1045-1047).

879. For example, Greater Michigan Realty has not considered emailing his customers' Exclusive Agency listings to all other Realcomp brokers, as a way to overcome the Website Policy. (G. Moody, Tr. 850-852). The logistical challenges of such arrangements "would be almost impossible." (G. Moody, Tr. 852-853). Moreover, the reason why IDX was created was so individual brokers "wouldn't have to recreate the wheel" to get their companies' listings to show up on other brokers' websites. (G. Moody, Tr. 853).

Response to CCPF No. 879:
Respondent has no specific response.

880. When NAR first implemented its IDX policy, it acknowledged that "brokers have always had the right to allow other brokers to advertise their listings on the Internet, the new

NAR policy ensures more consistent and widespread access to this Internet marketing option." (CX 391-002). "To encourage uniform Internet listing opportunities for all REALTORS, NAR's Board of Directors made reciprocal Internet Data Display a mandatory policy effective Jan. 1, 2002." (CX 391-002).

Response to CCPF No. 880:
Respondent has no specific response.

3. Limited Service Brokers Can Obtain Access to Realtor.com, But Only By Double Listing Their Properties

a. There Are Significant Costs for Brokers in Southeastern Michigan to Double List Their Properties

881. Brokers offering Exclusive Agency or Limited Service listings have been able to get their listings onto Realtor.com by double listing, entering their listings on another MLS that does not have a Website Policy. (D. Moody, Tr. 537-538).

Response to CCPF No. 881:
Respondent has no specific response.

882. As discussed in findings 496-497, 896, 1021-1022, and 1067, there are "significant" costs associated with double-listing. *See also* (D. Moody, Tr. 538-542; CX 443-001) (testifying that the additional time and money to double-list a property is approximately 75 minutes over the life of such a listing); Mincy, Tr. 415-416 (estimating that double-listing takes about an "hour or so" to input and update per listing over a six-month listing period). As discussed by Mr. Murray, these costs are noteworthy because brokers are cognizant of the fact that they need to be efficient and cost-conscious. (RX 154-A-059 (Costs associated with circumventing Website Policy to access Realtor.com is "particularly troublesome" because most brokers have a primary goal to boost "productivity and efficiency"); CX 414 (Niersbach, Dep. at 21-22); CX 146-007).

Response to CCPF No. 882:
Respondent incorporates its Responses to CCPF ¶¶ 496-97, 896, 1021-1022 and 1067, and states in summary: The costs associated with joining a by-pass MLS to have the listings placed on Realtor.com are nominal (not significant as Complaint Counsel contends) as are the "time costs," and some agents offering Exclusive Agency listings charge customers additional fees to cover those costs. (RPF ¶¶ 109-113).

883. Brokers avoid participating in two or more MLS services "if they can help it" because it "costs more and it's complex. . . ." (Murray, Tr. 184; RX 154-A-031). As explained by Mr. Sweeney on behalf of Realcomp at trial, the per-agent monthly costs of belonging to two MLSs is a "significant cost only to be incurred if necessary," and that the actual "bigger cost [of double-listing] is the hassle of entering the listings in both systems."

(Sweeney, Tr. 1312, 1340). As Mr. Sweeney further explained, "It's not just the double entry, on the entry, it's the maintenance, every time there's a price change, you have to do it in two systems, any time there's any change whatsoever at least reported in the system, you have to do it twice. Yes, that is a burden. An administrative burden." (Sweeney, Tr. 1340; CX 40 (Elya, Dep. at 22-24 (admitting that listing on two MLSs entails double the cost and double the work); *See also* CCPF ¶¶ 494-501).

Response to CCPF No. 883:
Respondent incorporates its responses to CCPF ¶¶ 494-501 and states in summary: The costs associated with joining a by-pass MLS to have the listings placed on Realtor.com are nominal (not significant as Complaint Counsel contends) as are the "time costs," and some agents offering Exclusive Agency listings charge customers additional fees to cover those costs. (RPF ¶¶ 109-113). Further, Mr. Sweeney acknowledged that the economic cost is justified by the benefits his agency receives from belonging to more than one MLS. (Sweeney, Tr. 1312). There is value associated with belonging to both MiRealSource and Realcomp, and if it were perceived that there was no such value to belonging to one or the other, the agency's salespeople would pressure the organization to change its practices. (Sweeney, Tr. 1314).

884. In addition, brokers who post a listing onto Realtor.com through a second MLS will appear on Realtor.com with a different MLS number than their Realcomp MLS number. (Mincy, Tr. 412-414; illustrated in DX 2 and DX 3). If a buyer finds the listing on Realtor.com, their broker may not know how to search for the listing on the Realcomp MLS because the listing will have the MLS number of the second MLS, rather than a Realcomp MLS number. (Mincy, Tr. 414-415).

Response to CCPF No. 884:
Respondent has no specific response.

885. The option of double listing in a second MLS is also problematic because it relies on an assumption that the second MLS will not adopt the same Website Policy as Realcomp in the future. (RX 154-A-057). This problem was experienced by Denise Moody, who had to begin double-listing her Exclusive Agency and limited service listings on the Flint MLS after the Ann Arbor MLS briefly stopped sending Exclusive Agency listings to Realtor.com. (D. Moody, Tr. 557-558 (testifying that she continues to double-list on the Flint MLS even after Ann Arbor resumed sending Exclusive Agency listings to Realtor.com because she is "not sure if Ann Arbor is going to turn them off again.").

Response to CCPF No. 885:
Agents offering Exclusive Agency listings actually place their listings on another MLS, so that the listings are then placed on Realtor.com. (Mincy, Tr. 438, 442; D. Moody, Tr. 552-3; CX 422 (Aronson, Dep at 36); Kermath, Tr. 79)).

b. No Broker in Southeastern Michigan Posts Listings Directly Onto Realtor.com

886. A real estate broker who is a NAR member could – at least theoretically – post listings directly onto Realtor.com under the terms of the Realtor.com Operating Agreement. (CX 412 (Goldberg, Dep. at 120, 122)). However, if the "MLS does not facilitate the individual broker's feed of listing data to Realtor.com, this second option may be more theoretical than practical." (RX 154-A-058).

Response to CCPF No. 886:
Respondent has no specific response.

887. There are no brokers from Southeastern Michigan – or anywhere in the State of Michigan, for that matter, who send their listings directly to Realtor.com. (CX 411 (Dawley, Dep. at 22-23, 25)). In addition, no brokers offering limited services in any of the other jurisdictions in which the Federal Trade Commission obtained consent orders barring the MLS from enforcing similar Web Site Policies availed themselves of this option, notwithstanding the testimony of the importance of marketing properties on Realtor.com. (RX 154-A-058-059).

Response to CCPF No. 887:
Respondent has no specific response.

888. Realtor.com obtains listings mostly through a licensing arrangement with a data content provider who is an MLS, and who then delivers the listing to Realtor.com. "In most cases, the MLS is licensing the data and they're also technically delivering the data to [Realtor.com]." (CX 497 (Greenspan, Dep. at 54-55)).

Response to CCPF No. 888:
Respondent has no specific response.

889. Move, Inc. has had a few situations where an MLS has decided that they would prefer individual brokers sign a licensing agreement directly with Realtor.com, however, the MLS continues to be the data supplier. (CX 497 (Greenspan, Dep. at 55)). While the cost of contracting with a vendor to submit listing information to Realtor.com has not been quantified, it would entail some measure of cost to brokers offering Exclusive agency and limited service listings – as compared to Realcomp submitting property listings to Realtor.com for free. (RX 154-A-059).

Response to CCPF No. 889:
Respondent has no specific response.

4. Because of the Characteristics of the Market, Barring Exclusive Agency Listings from MoveInMichigan and the Realcomp IDX

909. The Search Function Policy puts any broker offering any listing agreement other than an Exclusive Right to Sell at a significant disadvantage in the marketplace. (Murray, Tr. 190-191).

Response to CCPF No. 909:
See the Response to CCPF ¶ 908.

910. Realcomp's Search Function Policy places Exclusive Agency listings and non-full service listings at a disadvantage similar to that if they were excluded from Realcomp altogether. (RX 154-A-032; Murray, Tr. 196-199 ("A Listing Broker whose properties were not displayed on an MLS" – such as through a search default that resulted in their listings not being viewed – "would be at a similar competitive disadvantage to those brokers whose properties were not listed on the MLS.")).

Response to CCPF No. 910:
See the Response to CCPF ¶ 908.

1. Realcomp Data Show That Exclusive Agency Listings Were Viewed and Emailed by Cooperating Brokers Far Less Than Were Exclusive Right to Sell Listings

911. The term Exclusive Agency listings encompasses all non-ERTS listings referred to in Dr. Williams' reports and testimony, including Limited Service and MLS Entry Only Listings. At trial, Dr. Williams used the term "EA" or "Exclusive Agency" listings synonymously with "non-ERTS" listings. (D. Williams, Tr. 1093-1094).

Response to CCPF No. 911:
Respondent has no specific response.

912. Realcomp brokers testified that Limited Service and MLS Entry Only listings are considered to be Exclusive Agency listings. (G. Moody, Tr. 853-856; Kermath, Tr. 719, 740 (referring to "Exclusive Agency" and "Limited Service" as one and the same type of listing); Mincy, Tr. 407-408).

Response to CCPF No. 912:
Respondent has no specific response.

913. Realcomp's own data show that Exclusive Agency listings are viewed less often by brokers on the Realcomp MLS than are Exclusive Right to Sell listings. (CX 498-A-036).

Response to CCPF No. 913:
Respondent has no specific response.

914. Realcomp kept statistics for each listing within the Realcomp MLS showing the number of times a Realcomp MLS user viewed the detailed report for that listing. (CX 228-006 (Response to Interrogatory No. 11)). Realcomp reported these statistics for each listing as "RCO Agent Views." (CX 228-006; *See also* RX 27-006, 007 (example of statistics for listing); D. Moody, Tr. 531-532).

Response to CCPF No. 914:
Respondent has no specific response.

915. Between January 2004 and October 2006, the time period during which Realcomp appears to have systematically tracked the viewing of listings by Realcomp member brokers, Dr. Williams calculated that Exclusive Right to Sell listings were viewed, on average, 5.1 times per day, compared to only 3.2 times per day for Exclusive Agency listings. (CX 498-A-036-037; CX 517; CX 518).

Response to CCPF No. 915:
Respondent has no specific response.

916. Realcomp calculated that residential and condominium Exclusive Right to Sell listings were viewed by Realcomp MLS users on average a total of 201 times per month. (CX 228-006-007). In contrast, Realcomp calculated that residential and condominium Exclusive Agency listings were viewed by Realcomp MLS users on average a total of only 94 times per month. (CX 228-006-007).

Response to CCPF No. 916:
Respondent has no specific response.

917. Realcomp also kept statistics for each listing within the Realcomp MLS showing the number of times a listing was sent out via email by Realcomp MLS users, either as an individual listing or part of a group of listings. (CX 228-006 (Response to Interrogatory No. 11)). Realcomp reported these statistics for each listing as "Sent Via Email." (CX 228-006; *See also* RX 27-006, 007 (example of statistics for listing); D. Moody, Tr. 531-532).

Response to CCPF No. 917:
Respondent has no specific response.

918. Based on data from the Realcomp MLS, Dr. Williams calculated that in 2006, Exclusive Right to Sell listings were sent via email from the Realcomp MLS an average of 6.9 times per day on market, but Exclusive Agency listings were sent via email from the Realcomp MLS an average of only 1.9 times per day on market. (CX 498-A-036; CX 519; CX 520).

Response to CCPF No. 918:
Respondent has no specific response.

919. Realcomp calculated that residential and condominium Exclusive Right to Sell listings were emailed by Realcomp MLS users on average a total of 286 times per month. (CX 228-006-007). In contrast, Realcomp calculated that residential and condominium Exclusive Agency listings were emailed by Realcomp MLS users on average a total of only 1 time per month. (CX 228-006-007).

Response to CCPF No. 919:
Respondent has no specific response.

920. In her experience as a broker, Ms. Moody has observed that her customers' limited service listings are viewed less often by other Realcomp members and emailed to potential buyers less frequently than her customers' Exclusive Right to Sell/Full Service listings. (D. Moody, Tr. 531-533; RX 27-006-007).

Response to CCPF No. 920:
Respondent has no specific response.

921. The fact that Exclusive Agency listings are viewed by other brokers and e-mailed to clients a fraction of the time as are Exclusive Right to Sell listings suggests to Mr. Murray that the results are due to the default of the Realcomp Search Function Policy. (Murray, Tr. 194). Mr. Murray has "never heard of this kind of decline by agents choosing saying [sic] I'm not going to look at that listing because it's Exclusive Agency." (Murray, Tr. 194). "And everything I've ever understood in my entire career is that cooperating brokers want to see every single home that's available on that MLS." (Murray, Tr. 195-196).

Response to CCPF No. 921:
Respondent has no specific response.

922. The fact that Exclusive Agency listings are viewed by brokers and e-mailed to clients a fraction as often as Exclusive Right to Sell listings would "disadvantage" Listing Brokers "in their ability to compete effectively and find buyers for their clients' homes." (RX 154-A-033).

Response to CCPF No. 922:
Respondent has no specific response.

2. Although Brokers Can Override the Search Default, Consistent Broker Testimony Shows That Many Brokers Did Not Find Exclusive Agency Listings Through Their MLS Searches

923. Even though a broker has the ability to change the default setting, the evidence shows that many brokers actually do not. (CX 498-A-036). First, data from the Realcomp MLS show that Exclusive Agency listings are not viewed by brokers on the Realcomp MLS as often as Exclusive Right to Sell listings (which are included in the default search). (CCPF ¶¶ 911-922). Second, broker testimony demonstrates that brokers often miss or cannot find Exclusive Agency listings on the Realcomp MLS. (CCPF ¶¶ 931-936).

Response to CCPF No. 923:
The "evidence" needs to be viewed in the context of the old search screen (CX 159) and if someone wanted to see all listings under the old search screen, he or she just had to click one other button with the mouse. (Kage, Tr. 1039). It was also easy to change the search default (*see* RPF ¶¶128-132). In any event, Realcomp repealed its Search Function Policy, as reflected in its Board's April 27, 2007 Minutes. (CX 626). The new search screen is reflected in RX 160 (Kage, Tr. 1045-1047).

924. The fact that Realcomp makes no mention of the search default other than in orientation for new Realcomp members may have an impact on brokers who are not technologically savvy or only practice part-time. (Murray, Tr. 191-192).

Response to CCPF No. 924:
Agents with Exclusive Agency Listings have acknowledged they did not require any special training to figure out how to override the search default. (D. Moody, Tr. 551; CX 526 (Groggins, Dep. at 43)).

925. Although Mr. Murray notes that the search default appears easy to change, he finds that there is an appreciable risk that brokers would be unaware of an unwritten policy because there is a lot of turnover in the real estate brokerage industry, including in Southeastern Michigan. (RX 154-A-033).

Response to CCPF No. 925:
Mr. Murray acknowledges that anyone who uses the Realcomp MLS must know how to use a computer and be familiar with a mouse. (Murray, Tr. 79).

926. Mr. Murray explained that about half of the 1.3 million Realtors in the U.S. are part-time practitioners, which means that a third or up to a half of Realtors may not remember to click on the icon for "all listings" to change the search default – it is "safe" to know that the brokers know how to move a mouse, but it is uncertain whether they know about the default and will remember to change it. (Murray, Tr. 192-193).

Response to CCPF No. 926:
When presented with the proposition that between one-third and one-half of real estate agents lack computer skills necessary to search for EA listings on the Realcomp website, Mr. Sweeney responded: "Well, that sounds like a pretty ludicrous statement on its face" (Sweeney, Tr. 1337).

927. The Board of Governors was made aware that at least one Realcomp member requested that Realcomp change the Search Function Policy, stating that Realcomp members do not realize that they are only seeing Exclusive Right to Sell Listings. (CX 35 (Kage, Dep. at 133-138); CX 250-002-003).

Response to CCPF No. 927:
Respondent has no specific response.

928. A Realcomp Governor, Mr. Nowak, even voted against the Search Function Policy because he wanted the default to include all available listing types. (CX 415 (Nowak, Dep. at 44-45)).

Response to CCPF No. 928:
Respondent has no specific response.

929. Mr. Nowak testified that although it is a Realtor's obligation to search all available listings for their clients, only Exclusive Right to Sell listings are automatically shown through Realcomp's default search mechanism. (CX 415 (Nowak, Dep. at 45)).

Response to CCPF No. 929:
Respondent has no specific response.

930. According to Mr. Nowak, "Whether a Realtor is Exclusive Agency or not, they pay dues and since this is a system that is searched by Realtors only, I think that indeed their listings should just automatically show up, period, and if you don't want them you should take them out." (CX 415 (Nowak, Dep. at 62-63)).

Response to CCPF No. 930:
Realcomp has recently changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160). This change was adopted by Realcomp's board as reflected in its April 27, 2007 minutes. (CX 626). The new proposed website screen reflecting the change to the Search Function Policy is exemplified in RX 160. (Kage, Tr. 1045-47). Realcomp's counsel signed a Joint Stipulation Regarding Respondent's Search Function Policy that has been (or will be) submitted to this Court.

931. Other brokers testified that they received complaints from customers saying that their listings were not showing up on the Realcomp MLS. For example, in 2003, customers called Mr. Hepp to complain that agents were telling them their listings were not on the Realcomp MLS. (Hepp, Tr. 604-605).

Response to CCPF No. 931:
Respondent has no specific response.

932. Ms. Groggins testified that when she was an associate broker for YourIgloo, there were Realcomp agents looking on the MLS for her customers' listings and could not find them, and this was because of Realcomp's Search Function Policy. (CX 526 (Groggins, Dep. at 29-31)).

Response to CCPF No. 932
Respondent has no specific response.

933. Mr. Aronson received complaints from customers who were told by real estate agents that their listings were not on the Realcomp MLS. (*See, e.g.,* RX 67-006). For example, an email from one of YourIgloo's customers reads, "I've called 2 separate real estate agents just to see if they could locate my listing on the MLS. In both of their searches my listing did not come up. The only way it was found was by entering the MLS number. Can you tell me why this is happening??? What good is it to have it on the MLS if it doesn't come up in a search??" (RX 67-006; RX 73-001 (Complaint from customer reads: "not pleased: says he can't be seen on MLS."); CX 422 (Aronson, Dep. at 75-76)).

Response to CCPF No. 933:
Respondent has no specific response.

934. Mr. Moody, one of the owners of Greater Michigan Realty, gets calls "weekly" from customers with listings in Realcomp indicating they have been contacted by another Realtor who claims that the customer's listing can't be found or "didn't show up" on the MLS system. (G. Moody, Tr. 821-823, 825-826; CX 443-002). In the Realcomp area, this type of customer complaint is "one of the most significant challenges" that Greater Michigan Realty faces. (G. Moody, Tr. 821-823, 825-826; CX 443-002). Mr. Moody attributes this problem to Realcomp's Search Function Policy, which allows competing brokers to "specifically [target] our EA customers to list their property by searching the MLS database for EA listings, calling our customers and telling them they cannot find their listing in the MLS." (G. Moody, Tr. 825-826; CX 443-002).

Response to CCPF No. 934:
Respondent has no specific response.

935. Mr. Kermath, the broker owner of AmeriSell Realty, testified that he receives complaints from clients in the Realcomp service area "several times per week" that other Realtors "can't find the listing" on the MLS. (Kermath, Tr. 741).

Response to CCPF No. 935:
Respondent has no specific response.

936. Mr. Mincy testified that because of the Search Function Policy, he receives a half dozen calls per week from Realcomp brokers, including Realcomp Governors, that did not find

MichiganListing.com properties listed under Exclusive Agency contracts on the Realcomp MLS. (Mincy, Tr. 401-402, 404-405).

Response to CCPF No. 936:
Respondent has no specific response.

3. The Data and Testimony is Consistent With Studies Showing That Defaults Matter

937. The Realcomp data and broker testimony is consistent with studies showing that default settings do matter to choices made by consumers, even when such default settings are easy to change and consumers are aware of the choices. (CX 557-A-030-031).

Response to CCPF No. 937:
Respondent has no specific response.

938. In one study relied on by Dr. Williams, respondents were asked in three different ways whether they would be organ donors. (CX 557-A-030-031). The first was an "opt-in" condition, where participants were told that the default was not to be an organ donor and they were given a choice to confirm or change that status. (CX 557-A-031). The second was the "opt-out" condition, in which the default was to be a donor. (CX 557-A-031). The third had no prior default. (CX 557-A-031). About 42% of the participants consented to be donors when they had to "opt-in," compared to 82% of donors that had to "opt-out," and 79% of participants for which there was no default. (CX 557-A-031).

Response to CCPF No. 938:
Respondent has no specific response.

939. In another study relied on by Dr. Williams, respondents were asked about whether they wanted to be contacted about health surveys. (CX 557-A-030-031). When "Do NOT notify me about more health surveys" was unchecked, 96.3% of the participants agreed to be contacted about more health surveys compared to 69.2% when the box for the above question was checked. (CX 557-A-031).

Response to CCPF No. 939:
Respondent has no specific response.

940. Another study relied on by Dr. Williams regarding 401(k) savings decisions of employees of a Fortune 500 company in the health care and insurance industry found that 71% of newly hired employees that participated in the 401(k) plan did not change the 3% default contribution rate or the allocation of their savings into a money market fund. (CX 557-A-031).

Response to CCPF No. 940:

Respondent has no specific response.

C. The Impact of Realcomp's Policies on Limited Service Brokers

1. The Realcomp Policies Restrict the Ability of Limited Service Brokers to Obtain Listings and Expand Their Businesses

941. The growth of Exclusive Agency listings has been slower than it would have been absent Realcomp's Website Policy and Search Function Policy. (CCPF ¶¶ 959-963, 968-969, 1000, 1004-1006, 1190-1199).

Response to CCPF No. 941:
Respondent incorporates its Responses to the referenced CCPF ¶¶ and notes in summary that the reduction in the percentage of non-ERTS listings in Realcomp attributable to the Respondent's Policies was, at most, 1%, which is not significant. (RPF ¶ 148).

942. Realcomp limited service brokers have to disclose to potential clients that Exclusive Agency listings receive less exposure on the Realcomp MLS and are not included on the Approved Websites. (CCPF ¶¶ 991, 1059-1067).

Response to CCPF No. 942:
The reference to limited service brokers is no longer applicable in light of Realcomp's change to its rules, which deletes the Minimum Service Definition. (CX 626; Kage, Tr. 1046-1047). Additionally, with this disclosure, the clients have the choice of whether they want additional exposure for a nominal additional amount, either by having the listing entered into Realtor.com, or having an ERTS listing. (RPF ¶ 114).

943. Limited service brokers have lost business because of this disclosure, because sellers want their listings to be easily seen on the Realcomp MLS and included on the most popular websites. (CCPF ¶¶ 873, 949, 953, 992, 1025-1028, 1046-1049).

Response to CCPF No. 943:
Any such loss of business is reasonably avoidable in light of the matter set forth in the Response to CCPF ¶ 942. Additionally, agents offering Exclusive Agency listings are thriving in Southeastern Michigan as set forth in RPF ¶ 163-164. Finally, the reference to limited service is inapplicable in light of Realcomp's change in its Minimum Service Definition. (CX 626; Kage, Tr. 1046-1047).

944. Realcomp charges identical dues and fees to all its members for its basic services, regardless of the listing type used with their clients. (CX 238-008).

Response to CCPF No. 944:
Respondent has no specific response.

945. Although they pay the same Realcomp fees, members that offer Exclusive Agency, Limited Service or MLS Entry Only Listings do not receive the full services that Realcomp offers to its other members. (CX 415 (Nowak, Dep. at 43)).

Response to CCPF No. 945:
Complaint Counsel's reference to limited service and MLS Entry Only is inapplicable under Realcomp's change to its Minimum Service Definition (CX 626; Kage Tr. 1046-1047). Mr. Nowak testified that a person with an LS, EA, or MLS entry only listing is getting, in his opinion, the full service from Realcomp (CX 415 (Nowak, Dep. 43)).

946. Under the Website Policy, the service provided by Realcomp "is severely degraded" for Exclusive Agency listings by "really limit[ing]" the sellers' listings "to not as much exposure as they would like to have." (CX 525 (Adams, Dep. at 78-79)). In fact, customers expect their properties will be displayed on the public websites to which Realcomp sends its listings. (CX 525 (Adams, Dep. at 80-81)).

Response to CCPF No. 946:
The Web Site Policy does not result in a "severely degraded" service and "really limiting" the sellers' listings, since agents are able to get their Exclusive Agency listings into the MLS and Realtor.com. (RPF ¶¶ 102-112).

947. Realcomp provides internet advertising for some, although not all, of its members' listings at no additional costs. (CX 238-013).

Response to CCPF No. 947
Respondent has no specific response.

948. Brokers can search for property listings in the Realcomp MLS by several different methods. (G. Moody, Tr. 856-858; illustrated in DX 5). These include searches by MLS number, address of the property, and map location, as well as saved searches, open houses and tour searches, and listing history searches, in addition to the "Quick Search." (G. Moody, Tr. 858; illustrated in DX 5). Realcomp's search default to Exclusive Right to Sell/Full Service listings applies to all of these search methods. (G. Moody, Tr. 867-868; illustrated in DX 5).

Response to CCPF No. 948:
Respondent has no specific response.

949. Listing Brokers using Exclusive Agency listings also would be "competitively disadvantaged" by the Search Function Policy "in obtaining listing agreements with potential clients looking to sell their homes once this policy was disclosed and sellers learned that their property may not have the widest exposure possible through the MLS because of the Search Function Policy." (RX 154-A-034).

Response to CCPF No. 949:
Realcomp has recently changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services no longer require an ERTS listing. (RX 160). This change was adopted by Realcomp's board as reflected in its April 27, 2007 minutes. (CX 626). The new proposed website screen reflecting the change to the Search Function Policy is exemplified in RX 160. (Kage, Tr. 1045-47).

950. The Search Function Policy is likely to hinder limited service brokers in particular from being able to expand their business if they are new to the market and have not yet built up a strong referral base of prior clients. (RX 154–A-034).

Response to CCPF No. 950:
Realcomp has recently changed its rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160). This change was adopted by Realcomp's board as reflected in its April 27, 2007 minutes. (CX 626). The new proposed website screen reflecting the change to the Search Function Policy is exemplified in RX 160. (Kage, Tr. 1045-47).

951. The discount brokers in Southeastern Michigan consistently testified that they have lost business due to the Realcomp Policies, thereby restricting their growth potential. (CCPF ¶¶ 954-1068).

Response to CCPF No. 951:
Agents offering Exclusive Agency listings testified that their businesses are thriving in Southeastern Michigan (RPF, ¶ 163).

952. Absent the Realcomp rules concerning listing types, Help-U-Sell Central would not provide under its MLS Entry Only listing agreement the additional five services needed to qualify as an ERTS listing. (CX 525 (Adams, Dep. at 78); RX 18-001). Without the need to offer those five services, Mr. Adams could direct more of his effort and time to "selling additional homes and driving additional people to the model that I'm trying to sell," which would make his company more competitive. (CX 525 (Adams, Dep. at 81-82, 89)).

Response to CCPF No. 952:
This is no longer applicable in light of Realcomp's recent Rule change, so that full services are no longer required with an ERTS Listing. (CX 626).

953. Because he explains the impact of the Website Policy and the Search Function Policy to potential customers of MichiganListing.com, Mr. Mincy has "lost a substantial amount of business." (Mincy, Tr. 425).

Response to CCPF No. 953:

Mr. Mincy has never measured or quantified the amount of business he claims to have lost. (Mincy, Tr. 425-26). Additionally, Mr. Mincy's business grew by 30% in 2005-2006 and was trending upward in 2007, and he expects it to keep growing throughout Southeastern Michigan. (Mincy, Tr. 428-430).

2. The Realcomp Policies Caused Market Exit: YourIgloo

954. Realcomp's Website Policy and Search Function Policy caused YourIgloo to exit the market for real estate brokerage services in Southeastern Michigan. (CCPF ¶¶ 955-971).

Response to CCPF No. 954:
YourIgloo.com left Michigan for more reasons than Realcomp's Policies, and it continues to do a substantial referral business in Michigan. *See* RPF ¶ 166 (e)(1)-(6).

955. Under the YourIgloo business model, sellers can list their homes on the local MLS, post their listings on the YourIgloo website, and by listing on the MLS, their listings are uploaded to various public websites such as Realtor.com and IDX. (CX 422 (Aronson, Dep. at 5-6)). YourIgloo uses Exclusive Agency contracts. (CX 422 (Aronson, Dep. at 30); CX 205-063 (example of YourIgloo contract)). If the seller sells the property on his own, the seller does not pay a commission. (CX 422 (Aronson, Dep. at 6); CX 205-063 (stating seller will pay 3 percent commission to cooperating broker but that no commission is due if seller procures buyer)). If a cooperating broker bring a buyer, then the seller will pay an offer of cooperation, generally between 2 and 3 percent of the sale price. (CX 422 (Aronson, Dep. at 6)).

Response to CCPF No. 955:
Respondent has no specific response.

956. YourIgloo works with several brokers throughout the country who act as subcontractors to YourIgloo. (CX 422 (Aronson, Dep. at 8-9)). YourIgloo does not have any broker in Michigan at this time. (CX 422 (Aronson, Dep. at 9)).

Response to CCPF No. 956:
Respondent has no specific response.

957. From 2001 to 2004, YourIgloo had a company called YourIgloo.com of Detroit, and Anita Groggins was the broker for that company. (CX 422 (Aronson, Dep. at 9)).

Response to CCPF No. 957:
Respondent has no specific response.

958. In Michigan, YourIgloo primarily served Oakland and Wayne counties, and it was therefore a member of Realcomp from 2001 to 2004. (CX 422 (Aronson, Dep. at 14-15)).

Response to CCPF No. 958:
Respondent has no specific response.

959. YourIgloo's business in Michigan began in 2001, slightly increased in 2002, and toward the tail end of 2003 dropped off significantly, and in 2004 was "almost gone." (CX 422 (Aronson, Dep. at 28)). YourIgloo's drop-off in revenue in Michigan from 2003-2004 "was due to the fact that Realcomp prevented [the company] from performing [its] business model." (CX 422 (Aronson, Dep. at 28-29)).

Response to CCPF No. 959:
YourIgloo's problems in Michigan are attributable to factors other than Realcomp as reflected in RPF ¶ 166(e)(1)-(6). Notably, YourIgloo faced additional competition in Michigan that "popped up" in 2003 or 2004, which it did not face when it first started in Michigan in 2001, as there were fewer competitors at that point. (CX 422 (Aronson, Dep. at 9-10)).

960. The impact of Realcomp's Policies began in 2003. (CX 422 (Aronson, Dep. at 29)). Because YourIgloo used Exclusive Agency contracts, Realcomp "prevented those types of agreements from uploading to public websites such as Realtor.com." (CX 422 (Aronson, Dep. at 29, 102 (explaining that Exclusive Agency listings were barred from Realtor.com, IDX, and MoveInMichigan.com)).

Response to CCPF No. 960:
Respondent has no specific response.

961. In addition, Realcomp's search default meant that "a broker would have to know to include these types of listings in their search; otherwise they would not be found." (CX 422 (Aronson, Dep. at 29, 102-103)).

Response to CCPF No. 961:
Respondent has no specific response.

962. YourIgloo's customers complained that their listings were not included in Realtor.com and other public real estate websites. (CX 422 (Aronson, Dep. at 38-39); ("By having customers complain that they were not getting what they paid for," YourIgloo "found out the hard way" that the Website Policy excluded its customers' Exclusive Agency listings from Realtor.com and other public websites.)).

Response to CCPF No. 962:
Respondent has no specific response.

963. Despite the work-around resulting in YourIgloo's listings getting through to Realtor.com, in the end "many people decided not to list with [the company]" and its business in

Michigan declined. (CX 422 (Aronson, Dep. at 39)). In addition, placing listings in a second MLS did not help YourIgloo with respect to Realcomp's search default or getting the listing to the Realcomp IDX sites. (CX 422 (Aronson, Dep. at 103)).

Response to CCPF No. 963:
YourIgloo's problems in Michigan are attributable to factors other than Realcomp as reflected in RPF ¶ 166(e)(1)-(6).

964. Mr. Aronson estimated that YourIgloo had between 50 and 100 customer complaints while it was doing business in Michigan. (CX 422 (Aronson, Dep. at 44-45)). The complaints concerned (a) customers who were told that local brokers were not able to find the customers' listings in the MLS (because of the search default), (b) listings not appearing on Realtor.com and other public websites, or both of these concerns. (CX 422 (Aronson, Dep. at 44-45, 104); RX 67-006).

Response to CCPF No. 964:
Respondent has no specific response.

965. The volume of complaints that YourIgloo received from customers in Michigan was much more than from any other state. (CX 422 (Aronson, Dep. at 105-106)).

Response to CCPF No. 965:
Respondent has no specific response.

966. To circumvent the Realcomp Website Policy, YourIgloo started double listing its properties on MiRealSource without charging any extra. (CX 422 (Aronson, Dep. at 34-35)). After a time, however, MiRealSource excluded Exclusive Agency listings from uploading to public sites. (CX 422 (Aronson, Dep. at 35)). YourIgloo also started double listing properties on the Down River MLS to bypass the Realcomp Website Policy, but this cost additional time and money. (CX 422 (Aronson, Dep. at 36-37)).

Response to CCPF No. 966:
Respondent has no specific response.

967. YourIgloo's documents show that it placed listings on both MLSs "until we solve the Realcomp problem." (RX 70; CX 205-058, 062, 077; *See also* RX 69-001 (customer order asking to be placed on "both realcomp and the other MLS listing in Michigan in order to receive listing in Realtor.com."); CX 422 (Aronson, Dep. at 68-70)).

Response to CCPF No. 967:
Respondent has no specific response.

968. During 2002 and early 2003, the Michigan market was one of the top two or three markets for YourIgloo. (CX 422 (Aronson, Dep. at 119). Yet, YourIgloo exited that

market wholly due to Realcomp's Policies. (CX 422 (Aronson, Dep. at 119 (attributing YourIgloo's exit "[o]ne hundred percent" to Realcomp's rules)).

Response to CCPF No. 968:
YourIgloo.com left Michigan for more reasons than Realcomp's Policies, and it continues to do a substantial referral business in Michigan. *See* RPF ¶ 166 (e)(1)-(6).

969. YourIgloo withdrew from Realcomp effective April 20, 2004. (CX 206; CX 422 (Aronson, Dep. at 111)). YourIgloo dissolved YourIgloo.com of Detroit, Inc. in 2004. (CX 207; CX 422 (Aronson, Dep. at 111-112)).

Response to CCPF No. 969:
Respondent has no specific response.

970. If Realcomp were to get rid of its Search Function Policy, leaving in place its Website Policy, YourIgloo would still probably not reenter Michigan. (CX 422 (Aronson, Dep. at 41-43)).

Response to CCPF No. 970:
Respondent has no specific response.

971. Since YourIgloo withdrew from Michigan due to Realcomp's Policies, YourIgloo refers customers interested in listing a house in Michigan to other brokers who remain in Michigan. (CX 422 (Aronson, Dep. at 92-93)). YourIgloo receives a fee for these referrals. (CX 422 (Aronson, Dep. at 95-96)). This referral relationship is very different from the business model YourIgloo used when it was competing in Michigan, under which YourIgloo was the brokerage responsible for the listing, paying the offer of compensation, and adhering to MLS rules. (CX 422 (Aronson, Dep. at 96-97, 107-108)). It is also more profitable for YourIgloo to be competing directly in an area than simply referring customers to other brokers. (CX 422 (Aronson, Dep. at 107)).

Response to CCPF No. 971:
There are other factors that caused or contributed to YourIgloo's withdrawal from the State of Michigan, as reflected in RPF ¶ 166(e)(1)-(6).

3. The Realcomp Policies Deterred Entry: BuySelf Realty

972. Realcomp's Website Policy and Search Function Policy deterred BuySelf Realty from entering the market for real estate brokerage services in Oakland, Livingston, Wayne and Macomb counties. (CCPF ¶¶ 973-1006).

Response to CCPF No. 972:
Respondent incorporates its Responses to CCPF ¶¶ 973-1006; and notes specifically that Mr. Hepp is still doing business in the Michigan market through referrals, but elected not

to join the direct listing business in Michigan. Mr. Hepp testified that Southeastern Michigan is a difficult market. (Hepp, Tr. 700).

973. Mr. Hepp makes the high level business decisions for BuySelf Realty. (Hepp, Tr. 585).

Response to CCPF No. 973:
Respondent has no specific response.

974. BuySelf Realty only represents sellers and handles the listing side of the real estate business. (Hepp, Tr. 585).

Response to CCPF No. 974:
Respondent has no specific response.

975. BuySelf Realty offers two types of services to consumers: (1) direct listing business, where BuySelf Realty is the main contact with the seller from the beginning to the end of the sales process, including inputting the listing into the local MLS; (2) referral business, where BuySelf Realty is not licensed, they seek referral brokers to work with sellers in specific geographic areas. (Hepp, Tr. 586).

Response to CCPF No. 975:
Respondent has no specific response.

a. Direct Listing and Referral Business

976. Realcomp's Website Policy and Search Function Policy were significant factors causing BuySelf Realty not to enter the market for real estate brokerage services in Oakland, Livingston, Wayne, and Macomb counties. (CCPF ¶¶ 977-1006).

Response to CCPF No. 976:
Respondent incorporates its Responses to CCPF ¶¶ 977-1006, and notes specifically that BuySelfRealty's business has grown 10% to 35% since 2004 in Southeastern Michigan. (Hepp, Tr. 699).

977. Under the direct listing business, BuySelf Realty offers its customers a MLS listing, listing on Realtor.com and IDX websites appropriate to the MLS, the state forms required to sell a property, signage and answers to questions. (Hepp, Tr. 587).

Response to CCPF No. 977:
Respondent has no specific response.

978. Prior to deciding whether to enter a local market for the direct listing business, Mr. Hepp does some due diligence and requests the MLS rules to see if the BuySelf Realty business

Respondent has no specific response.

990. Mr. Hepp only received complaints like these in the Realcomp area. (Hepp, Tr. 634).

Response to CCPF No. 990:
Mr. Hepp testified that he has never received credit card chargebacks in other areas, not that he has never received any other complaints in other areas. (Hepp, Tr. 634).

991. After dealing with customer complaints in the Realcomp area, Mr. Hepp created a special process where he went out of his way to let potential customers know that they wouldn't have their listings on Realtor.com or the IDX websites. (Hepp, Tr. 606). Mr. Hepp testified that because of Realcomp's rules he has to tell potential customers when they ask that they will not have their listing on MoveInMichigan.com or Realtor.com. (Hepp, Tr. 649-650).

Response to CCPF No. 991:
Mr. Hepp testified that he was a member of the Ann Arbor MLS, which has a data sharing agreement with Realcomp, and that he could have his listings posted on Realtor.com by double-listing. (Hepp, Tr. 680, 702-703).

992. Notifying customers that their listings would not be on MoveInMichigan.com, Realtor.com or IDX websites hurt sales and BuySelf Realty lost business because of the customer complaints. (Hepp, Tr. 606-607, 650).

Response to CCPF No. 992:
BuySelf Realty's Exclusive Agency business in Southeastern Michigan has grown between 10-35% since 2004. (Hepp, Tr. 699).

993. Mr. Hepp knew there was a demand for flat-fee services because in the Realcomp area, he received lots of submissions with interest from potential customers. (Hepp, Tr. 609-610).

Response to CCPF No. 993:
Respondent has no specific response.

994. In response to the difficulty in locating referred brokers, Mr. Hepp later considered entering the Realcomp market for his direct listing business, and requested the Realcomp rules and began to speak with as many flat-fee brokers in the area as possible, to determine if it would be a good business decision to enter the direct listing business in Realcomp. (Hepp, Tr. 609-610).

Response to CCPF No. 994:
Mr. Hepp also investigated joining Realcomp because of the demand for his services. (Hepp, Tr. 609-610). As for his research of the Realcomp MLS, Mr. Hepp could only

specifically remember speaking with Jeff Kermath for insight on Realcomp, and only testified to reviewing material on Mr. Kermath's website to figure out the Realcomp MLS. (Hepp, Tr. 623-24).

995. During this "due diligence" Mr. Hepp spoke with Jeff Kermath and received information about the Realcomp rules from Mr. Kermath's website. (Hepp, Tr. 611-612).

Response to CCPF No. 995:
Respondent has no specific response.

996. Mr. Kermath's website stated: "Realcomp does not allow these listings to export to Realtor.com. In order for us to get your home Realtor.com we must input you into another board which does not discriminate." (RX 42-001). Mr. Hepp testified that this affected his decision not to enter the direct listing business in the Realcomp area because customers want their listings on Realtor.com. (Hepp, Tr. 613).

Response to CCPF No. 996:
Respondent has no specific response.

997. Mr. Hepp charges an additional fee to sellers that want their listing in more than one MLS because there is additional work to input and maintain a listing in two separate databases, and that the respective MLS rules have to be monitored closely so that there are no violations. (Hepp, Tr. 614-615).

Response to CCPF No. 997:
Respondent has no specific response.

998. Mr. Kermath's website further stated: "Realcomp further discriminates as to how agents search for and find your listing." (RX 42-001; Hepp, Tr. 616). Mr. Hepp testified that this affected his decision not to enter the direct listing business in the Realcomp area because he "knew from talking to referral brokers that we had sent business to in this area that this was a big problem. . . ." (Hepp, Tr. 617).

Response to CCPF No. 998:
Respondent has no specific response.

999. In his experience working for buyers, buyers don't care what the listing type is and want to see all of the available listings that meet their criteria. (Hepp, Tr. 627).

Response to CCPF No. 999:
Respondent has no specific response.

1000. Mr. Hepp testified that customer complaints regarding Realcomp's Website Policy and Search Function Policy, influenced his decision not to enter the Realcomp area for his direct listing business. (Hepp, Tr. 635).

Response to CCPF No. 1000:
Respondent has no specific response.

1001. Mr. Hepp does not offer full-service and therefore his listings would be considered limited service listings in the Realcomp MLS. (Hepp, Tr. 643-645). Additionally, Mr. Hepp does not collect a commission at the closing and testified that if there is no cooperating broker he does not receive any additional money. (Hepp, Tr. 644-645).

Response to CCPF No. 1001:
Complaint Counsel's reference to not offering "full service" listings and having listings be considered "limited service listings" is not applicable with respect to analyzing whether a listing will be treated as an Exclusive Agency as opposed to an Exclusive Right to Sell Listing in light of Realcomp's Rule change so that full services are no longer required with an ERTS listting. (CX 626; Kage, Tr. 1046-1048).

1002. Mr. Hepp testified that he considered the Realcomp fine amounts in determining whether to enter because the fines can make a difference between it being a profitable transaction or not. (Hepp, Tr. 645-646).

Response to CCPF No. 1002:
Mr. Hepp acknowledged that Respondent's fine was well below the $15,000 NAR allows. (Hepp, Tr. 711-712).

1003. Mr. Hepp testified that customers value having their listings on the IDX websites because "exposure is key"and the sellers want to be on the popular websites. (Hepp, Tr. 647). Mr. Hepp testified that the IDX websites are considered to be "popular" websites. (Hepp, Tr. 647-648).

Response to CCPF No. 1003:
Respondent has no specific response.

1004. Mr. Hepp testified that the Website Policy was one of the reasons why he chose not to enter the direct listing business in the Realcomp area. (Hepp, Tr. 651-653).

Response to CCPF No. 1004:
Mr. Hepp also acknowledged that Southeastern Michigan is a difficult market. (Hepp, Tr. 700).

1005. Mr. Hepp testified that the Search Function Policy was also one of the reasons why he did not enter the direct listing business in the Realcomp area. (Hepp, Tr. 641-642).

seeking to expand in Southeastern Michigan, and he expects his business to keep growing throughout Southeastern Michigan. (Mincy, Tr. 429-430).

1009. MichiganListing.com offers three programs for home sellers, which are set forth in a brochure. (CX 439). The first program, the "EZ-Listing," uses an Exclusive Agency contract. (Mincy, Tr. 364). Under this type of contract, the seller will "still retain the ability to sell by yourself or not compensate a buyer's broker if there's no buyer's broker involved." (Mincy, Tr. 365). Thus, a seller using the EZ-Listing program need only pay the offer of compensation (3 percent) if a cooperating broker brings the buyer. (Mincy, Tr. 365-366; CX 439).

Response to CCPF No. 1009:
Respondent has no specific response.

1010. Under the Exclusive Agency EZ-Listing program, for $495, MichiganListing.com enters the listing onto the MLS, provides a "for sale" sign, provides the necessary disclosures, takes six color pictures of the home, creates a virtual tour, provides an agent-accessed lockbox on the house, and coordinates all showing appointments. (Mincy, Tr. 367-368).

Response to CCPF No. 1010:
Respondent has no specific response.

1011. Because of the Realcomp Policies, MichiganListing.com will ensure that the listing also goes to Realtor.com by double listing in another MLS, but Mr. Mincy has to charge an extra $100. (Mincy, Tr. 368, 411; CX 439).

Response to CCPF No. 1011:
It is correct that Mr. Mincy charges an extra $100 for this service, but not that he "has to charge" an extra $100. (*See* Mincy, Tr. 367-368, 411).

1012. MichiganListing.com also offers full-service listings, which use Exclusive Right to Sell contracts. (Mincy, Tr. 371, 373-74). Under these full-service listings, there is no savings to the seller if a buyer is not represented by a cooperating broker; in such a case, the offer of compensation goes to MichiganListing.com. (Mincy, Tr. 371, 374). Because these full-service listings are automatically posted on MoveInMichigan.com and Realtor.com, the seller does not have to pay any extra. (Mincy, Tr. 373).

Response to CCPF No. 1012:
Respondent has no specific response.

1013. Mr. Mincy advertises the potential savings of the MichiganListing.com Exclusive Agency listings through an example of the sale of a $300,000 home. (Mincy, Tr. 374; illustrated by DX 4). Under a traditional full-service listing at 6 percent commission, a seller would pay a commission of $18,000, even if there is no cooperating broker

involved in the transaction. (Mincy, Tr. 375-376; illustrated in DX 4). In contrast, under the MichiganListing.com Exclusive Agency listing, the EZ-Listing, the seller would only pay $495 if there is no cooperating broker involved, a savings of $17,505. In the event a cooperating broker is involved, a seller using the EZ-Listing would pay $9495 (The $495 fee to MichiganListing.com and a 3% cooperating commission, or $9000, to the cooperating broker, for a savings of $8,505). (Mincy, Tr. 376-377). Mr. Mincy puts this example on his website to "show the general public they don't necessarily have to pay 6 percent to sell their home." (Mincy, Tr. 377-378).

Response to CCPF No. 1013:
Respondent has no specific response.

1014. Mr. Mincy started MichiganListing.com because he realized that some consumers feel completely comfortable doing some real estate services themselves and therefore don't want to pay for those services. (Mincy, Tr. 381).

Response to CCPF No. 1014:
Respondent has no specific response.

1015. According to Mr. Mincy, a growing number of sellers in Southeast Michigan do not have any equity in their homes because of depreciation or because they borrowed too much. (Mincy, Tr. 382). Instead of full-service listings, these sellers often use the Exclusive Agency EZ-Listings program because they can't afford or don't feel they have to pay the large 6 percent commission. (Mincy, Tr. 382, 384)

Response to CCPF No. 1015:
Respondent has no specific response.

1016. Mr. Mincy was not aware of the Realcomp Website Policy until after he started MichiganListing.com. (Mincy, Tr. 389-390). He was not aware of the policy when he was a full-service broker. (Mincy, Tr. 390). He only became aware of the Policy in February or March 2005 when a customer informed Mr. Mincy that the customer's listing was not on Realtor.com. (Mincy, Tr. 390-391).

Response to CCPF No. 1016:
Respondent has no specific response.

1017. Mr. Mincy only became aware of the Search Function Policy in early 2005. (Mincy, Tr. 391-392). As a full-service broker, he was not aware of the default – he never paid attention to it. (Mincy, Tr. 392). He now believes that he missed properties when doing searches on behalf of buyers, in part, due to the Search Function Policy. (Mincy, Tr. 393, 400).

Response to CCPF No. 1017:

Mr. Mr. Mincy's assistant can input the data for the double-listings, and she earns $10.00 per hour. (Mincy, Tr. 436-437). Denise Moody testified that it takes 75 minutes over the life of the listing for dual-entry. (D. Moody, Tr. 561). The cost of data entry is $12.50. Mr. Mincy also pays the Shiawassee Board $350 per year and $37.00 a month for membership. (Mincy, Tr. 442). Thus, even with the cost of time entry and the membership fees, Mr. Mincy still makes money on double-listing.

1022. Over the course of a year, the double listing of Exclusive Agency listings due to Realcomp's Website Policy costs MichiganListing.com approximately 80 hours (2 weeks) of work. (Mincy, Tr. 417-418).

Response to CCPF No. 1022:
Respondent has no specific response.

1023. Even though his Exclusive Agency listings get to Realtor.com through the Shiawassee MLS, they appear on that site with a different MLS number than their Realcomp MLS number. (Mincy, Tr. 412-414; illustrated in DX 2 and DX 3). If a buyer finds the listing on Realtor.com, their broker will likely not know to search for the listing on the Realcomp MLS because the listing will have a Shiawassee MLS number. (Mincy, Tr. 414-415).

Response to CCPF No. 1023:
Respondent has no specific response.

1024. Mr. Mincy does not send his listings to alternative websites because the cost and time involved. (Mincy, Tr. 419-420). Listings fed by the Realcomp MLS to public websites are automatically updated when a listing is updated on the Realcomp MLS. (Mincy, Tr. 420). In contrast, any listings sent to alternative websites would have to be updated separately. (Mincy, Tr. 421).

Response to CCPF No. 1024:
Respondent has no specific response.

1025. Because of the Realcomp Policies, Mr. Mincy explains to potential customers for his Exclusive Agency EZ-Listings that there are limitations placed on those listings. (Mincy, Tr. 422). He tells his potential customers about the Realcomp Website Policy, explaining that there is no way of getting Exclusive Agency listings onto MoveInMichigan.com or the IDX system. (Mincy, Tr. 422-423). In fact, most of Mr. Mincy's customers ask whether the Exclusive Agency EZ-Listings will be "as accessible as everyone else's listings." (Mincy, Tr. 423).

Response to CCPF No. 1025:
Respondent has no specific response.

1026. Potential customers also routinely ask Mr. Mincy whether brokers need to take any extra steps to find the Exclusive Agency EZ-Listings. (Mincy, Tr. 423-24). Thus, Mr. Mincy has to tell his potential customers that, due to the Realcomp Search Function Policy, brokers must take an extra step to see those listings and that "if they don't take it, they're not going to see your listing." (Mincy, Tr. 423-24).

Response to CCPF No. 1026:
Respondent has no specific response.

1027. Mr. Mincy has also had to tell his potential customers that their Exclusive Agency listings on Realtor.com will have a different MLS number than its Realcomp MLS number. (Mincy, Tr. 425). He tells these customers that "there are going to be missed opportunities because maybe an agent is not able to find it." (Mincy, Tr. 425).

Response to CCPF No. 1027:
See the Response to CCPF ¶ 1028.

1028. Because of these issues and having to explain the impact of the Realcomp Policies to potential customers, Mr. Mincy has "lost a substantial amount of business." (Mincy, Tr. 425).

Response to CCPF No. 1028:
Mr. Mincy has not quantified the amount of business that he allegedly "lost". (Mincy, Tr. 453). Likewise, Mr. Mincy's business increased 30 percent in its last full year of business, between 2005 and 2006, and was trending upward in 2007. He expects his business to keep growing throughout Southeastern Michigan. (Mincy, Tr. 428-430).

1029. After Mr. Mincy explains the Realcomp Policies, some of his potential customers opt for the more expensive full-service programs that MichiganListing.com offers. (Mincy, Tr. 425-26).

Response to CCPF No. 1029:
The additional cost to consumers of Mr. Mincy's ERTS program from his base EA listing is the difference between $495 and $6,995 or 2%; whichever is less. (CX 439).

1030. Mr. Mincy cannot simply leave Realcomp and go to another MLS because "there is no other MLS that covers [his] general area." (Mincy, Tr. 428).

Response to CCPF No. 1030:
Mr. Mincy has not looked into MiRealSource and its growth. (Mincy Tr. 454).

b. Greater Michigan Realty

1031. Realcomp's Website Policy and Search Function Policy restricted Greater Michigan Realty's ability to compete effectively in the market for real estate brokerage services in Oakland, Livingston, Wayne and Macomb counties. (CCPF ¶¶ 824, 882, 920, 934, 1032-1049, 1121, 1243).

Response to CCPF No. 1031:
Respondent incorporates its Responses to CCPF ¶¶ 824, 882, 920, 934, 1032-1049, 1121 and 1243, and notes specifically that Greater Michigan Realty has done very well, and is growing. (G. Moody, Tr. 881-884; RX 25-Page 3). Denise Moody, of Greater Michigan Realty, had approximately 500 listings last year, when the industry average was 25. (G. Moody, Tr. 881-882; RX 29). Greater Michigan Realty generated $23,275,000 in home sales in its first year of operation. (D. Moody, Tr. 567; RX 25).

1032. Greater Michigan Realty offers five listing packages to home sellers. (D. Moody, Tr. 480-481; CX 435). Three of these involve Exclusive Agency contracts, while the remaining two packages use Exclusive Right to Sell contracts. (D. Moody, Tr. 490-491; CX 435-002 ("Seller retains the right to sell house" with bronze, silver and sterling silver Exclusive Agency packages, but not gold or platinum Exclusive Right to Sell packages)).

Response to CCPF No. 1032:
Respondent has no specific response.

1033. The prices that Greater Michigan Realty charges to consumers for its Exclusive Agency packages are $299 (bronze, MLS Entry Only), $349 (silver, Limited Service) and $499 (sterling silver, Limited Service with Realtor.com "Showcase Package" and additional photos in MLS). (D. Moody, Tr. 483-485; CX 435-001-003).

Response to CCPF No. 1033:
Respondent has no specific response.

1034. The prices that Greater Michigan Realty charges to consumers for its Exclusive Right to Sell packages are $599 (gold, Exclusive Right to Sell/Full Service) and $799 (platinum, Exclusive Right to Sell/Full Service with Competitive Market Analysis and Virtual Tour). (D. Moody, Tr. 485-487; CX 435-003). Compliance with Realcomp's rules and regulations concerning Full Service listings means that Greater Michigan Realty must provide at least five mandatory services to home sellers under these two listing packages. (D. Moody, Tr. 482-483; CX 434).

Response to CCPF No. 1034:
In light of Respondent's recent change of its Minimum Service Definition (CX 626; Kage, Tr. 1046-1047), Greater Michigan Realty does not need to provide at least the five mandatory services under its ERTS listing packages.

1035. Customers that "want to be more in control of the selling process" cannot do so with one of Greater Michigan Realty's Exclusive Right to Sell/Full Service listing packages. (D. Moody, Tr. 495). With a Full Service listing, as defined by Realcomp's rules, home sellers are not able to talk with Realtors who have buyers, talk to interested buyers directly, or negotiate on their own behalf for the sale of their property. Realcomp requires that brokers provide such services under Full Service contracts. (D. Moody, Tr. 495).

Response to CCPF No. 1035:
In light of Respondent's change of its Minimum Service Definition, customers do not need to select a plan requiring full service by the realtor. (CX 626; (Kage, Tr. 1046-1047)).

1036. By itself, an Exclusive Right to Sell form contract supplied by the North Oakland County Board of Realtors is not sufficient to demonstrate to Realcomp that a limited service listing broker has provided full services to a seller. An additional acknowledgment form listing the five mandatory services under Realcomp's rules and initialed by the seller is required. (D. Moody, Tr. 502-504; CX 23-004; CX 454). When Greater Michigan Realty created this form and began presenting it to customers, some of them accepted it as necessary while others "were not interested in it because they wanted to retain control of the selling process." (D. Moody, Tr. 512).

Response to CCPF No. 1036:
Realcomp changed its Minimum Service Definition so that full services are no longer required with an ERTS listing. (CX 626; Kage, Tr. 1046-1047).

1037. The Exclusive Agency/Limited Service listings of Greater Michigan Realty are more successful in other Michigan MLSs than in Realcomp, based on customer satisfaction and home sales. (D. Moody, Tr. 533). Greater Michigan's Exclusive Agency listings in other MLSs that do not have discriminatory rules receive as much activity as Exclusive Right to Sell listings in the Realcomp MLS. (D. Moody, Tr. 533).

Response to CCPF No. 1037:
Denise Moody qualified her testimony about activity in other MLSs by adding that it depends on the MLS. (D. Moody, Tr. at 553).

1038. A summary of how the Realcomp Website Policy and Search Function Policy have reduced the quality of brokerage services that Greater Michigan Realty can offer to home sellers under Exclusive Agency listing contracts is found in CX 443. (D. Moody, Tr. 538-539; G. Moody, Tr. 824; CX 443-001-004).

Response to CCPF No. 1038:
Respondent has repealed its Search Function Policy and deleted its Minimum Service Definition. (CX 626; Kage, Tr. 1046-1047).

1039. In order to provide customers' Exclusive Agency listings with exposure on Realtor.com, Greater Michigan Realty must go through a process of "dual entry," which involves listing the property both in Realcomp and a second MLS that does not prevent EA listings from being sent to that website. (D. Moody, Tr. 537-539; CX 443-001). The added costs of dual data entry include other MLS membership fees and dues, wages for data entry personnel, and the use of company resources that could otherwise go toward additional advertising, marketing and growth opportunities. (D. Moody, Tr. 538-542; CX 443-001). Over the life of an average listing, dual entry requires an additional 75 minutes of employee time, on average, to enter and update the required information. This comes out to a total of almost eleven (11) extra weeks of staff time each year. (D. Moody, Tr. 539-541; CX 443-001).

Response to CCPF No. 1039:
Greater Michigan Realty would incur some of these costs for dual listing regardless, as they have customers who want a listing in more than one MLS. (D. Moody, Tr. 558-559). Additionally, Greater Michigan Realty makes a profit off of its dual listings by charging an additional $50 (D. Moody, Tr. 553), which is more than they cost. Assuming a $30,000 salary, Greater Michigan Realty's data entry staff earns $14.42 an hour. (G. Moody, Tr. 832). Ms. Moody testified that it takes 75 minutes over the life of the listing for dual entry. (D. Moody, Tr. 561). It costs $50 per month to be a member of the Flint Board, where Greater Michigan Realty dual lists. (G. Moody, Tr. 873-874). The cost of data entry is $12.50 per listing, and Greater Michigan Realty only pays $600 per year for membership to the Flint MLS for the approximately 500 exclusive agency listings. (G. Moody, Tr. 884).

1040. Even with dual entry as a way to get to Realtor.com, Exclusive Agency listings of Greater Michigan Realty still face a host of other limitations on their exposure due to Realcomp's Rules and Regulations. (CX 443-002). For example, Denise Moody testified that it was impossible to get her customers' Exclusive Agency listings to Realcomp member IDX websites and to MoveInMichigan.com. (D. Moody, Tr. 524, 529-530; RX 27).

Response to CCPF No. 1040:
Respondent has no specific response.

1041. Within Realcomp, the Exclusive Agency/Limited Service listings of Greater Michigan Realty are not included in the search default of the MLS and not sent to IDX websites in Realcomp, nor are these listings displayed on MoveInMichigan.com, making the Exclusive Agency listings less successful than their Exclusive Right to Sell/Full Service listings. (G. Moody, Tr. 845; D. Moody, Tr. 533-535; CX 443-002).

Response to CCPF No. 1041:

Ms. Moody qualified her testimony by saying it depends on the Listing Service. (D. Moody, Tr. 553). Greater Michigan Realty has done very well, and is growing. (G. Moody, Tr. 881-84; RX 25-Page 3). Denise Moody, of Greater Michigan Realty, had approximately 500 listings last year, when the industry average was 25. (G. Moody, Tr. 881-882; RX 29). Greater Michigan Realty generated $23,275,000 in home sales in its first year of operation. (D. Moody, Tr. 567; RX 25). Greater Michigan Realty has not done an analysis on how long it takes its listings to sell. (D. Moody, Tr. 563). The citations referenced by Complaint Counsel do not support its proposition that the Exclusive Agency listings of Greater Michigan Realty are less successful than their Exclusive Right to Sell/Full Service Listings.

1042. Mr. Moody handles customer complaints for Greater Michigan Realty. (G. Moody, Tr. 810). Mr. Moody gets calls from customers with Exclusive Agency listings in the Realcomp area asking him to explain why their listings do not show up on local real estate company websites, through the Realcomp IDX feed. (G. Moody, Tr. 827-828; CX 443-002). He informs these customers, if IDX is really important to them, that they must upgrade to an Exclusive Right to Sell/Full Service listing. (G. Moody, Tr. 827-828). Depending on the customer and their level of understanding, in some cases Mr. Moody explains at the outset that if a customer in the Realcomp area selects an Exclusive Agency listing, it will not show up on local broker IDX websites. (G. Moody, Tr. 828-830).

Response to CCPF No. 1042:
Respondent has no specific response.

1043. In the Realcomp service area, of all customer calls concerning Exclusive Agency listings not showing up on local broker IDX websites, about twenty (20) percent are from customers that Mr. Moody had previously advised that such listings would not receive IDX exposure. (G. Moody, Tr. 835-836). Based on this experience, Mr. Moody has found that spending extra time with Exclusive Agency home sellers at the beginning of their listings to apprise them that in Realcomp Exclusive Agency listings will not get exposure on IDX websites, whereas Exclusive Right to Sell/Full Service will get IDX exposure, usually is not worthwhile. (G. Moody, Tr. 855-856).

Response to CCPF No. 1043:
Respondent has no specific response.

1044. Outside the Realcomp service area, Greater Michigan Realty customers with Exclusive Agency listings "are less likely to call in" about their listings not appearing on local broker IDX websites. (G. Moody, Tr. 832-833). For the most part, the other MLS systems in Michigan do not exclude Exclusive Agency listings from the IDX feed. (G. Moody, Tr. 832-833). As a result, the customers' listings are being displayed "where they think they should be" and so the complaints that occur regularly in Realcomp occur "not nearly as much" elsewhere. (G. Moody, Tr. 832-833).

Response to CCPF No. 1044:
Respondent has no specific response.

1045. In fact, Mr. Moody did not recall ever receiving a complaint that a customer with a property outside Livingston, Oakland, Wayne and Macomb counties could not find their limited service listing in local real estate company websites. (G. Moody, Tr. 834-835).

Response to CCPF No. 1045:
Respondent has no specific response.

1046. Realcomp's Search Function Policy causes Mr. Moody to spend more time on the phone responding to customer complaints. His Exclusive Agency/Limited Service listing customers in Realcomp are concerned when they see similar houses down the street selling, but theirs isn't, even though "they were offering three percent just like the people down the street." (G. Moody, Tr. 854; CX 443-002).

Response to CCPF No. 1046:
Respondent has no specific response.

1047. As a result, Mr. Moody takes the time to explain, when customers call him, how the "Realcomp MLS search criteria is done" and why it causes Exclusive Agency/Limited Service listings to "have less showing traffic than the neighbor down the street with the ERTS listing." (G. Moody, Tr. 853-854; CX 443-002).

Response to CCPF No. 1047:
Respondent has no specific response.

1048. Gary Moody gets calls "weekly" from customers with listings in Realcomp indicating they have been contacted by another realtor who claims that the customer's listing can't be found or "didn't show up" on the MLS system. (G. Moody, Tr. 821-823, 825-826; CX 443-002). In the Realcomp area, this type of customer complaint is "one of the most significant challenges" that Greater Michigan Realty faces. (G. Moody, Tr. 821-823, 825-826; CX 443-002).

Response to CCPF No. 1048:
Respondent has no specific response.

1049. Customers of Greater Michigan Realty are more likely to cancel an Exclusive Agency/Limited Service listing in Realcomp than an Exclusive Agency/Limited Service listing in another MLS. (D. Moody, Tr. 535). In addition, customers of Greater Michigan Realty are more likely to cancel an Exclusive Agency/Limited Service listing in Realcomp than an Exclusive Right to Sell/Full Service listing in Realcomp. (D. Moody, Tr. 535-537).

Response to CCPF No. 1049:
Ms. Moody had only experienced such cancellations twice over the past few years. Accordingly, there is limited basis for her statement that they are "more likely to cancel." (D. Moody, Tr. at 537).

c. AmeriSell Realty

1050. Realcomp's Website Policy and Search Function Policy restricted AmeriSell Realty's ability to compete effectively in the market for real estate brokerage services in Oakland, Livingston, Wayne and Macomb counties. (CCPF ¶¶ 871, 895, 935, 1051-1068, 1122, 1243).

Response to CCPF No. 1050:
Respondent incorporates its responses to CCPF ¶¶ 871, 895, 935, 1051-1068, 1122 and 1243, and notes specifically that AmeriSell Realty has thrived with the Web Site and Search Function Policies, as evidenced by substantial growth since 2003-2004, with over $46 million in listings and more listings statewide than any other company. (RPF ¶ 163(b)). Additionally, Jeff Kermath of AmeriSell Realty has acknowledged that Respondent's change of its Search Function Policy nullifies the Exclusive Agent's problems, and gives Exclusive Agency sellers the same level playing field and exposure. (RPF ¶ 134).

1051. Mr. Kermath, the broker for AmeriSell Realty, summarized how Realcomp's Website Policy and Search Function Policy have (1) reduced the quality of brokerage services that he can offer to home sellers under Exclusive Agency listings, and (2) increased the cost of ERTS listings, in his response to a document subpoena from Realcomp's counsel. (RX 12-001-002; *See generally* RX 12).

Response to CCPF No. 1051:
See the Responses to CCPF ¶¶ 1050 and 1053.

1052. AmeriSell Realty customers with properties outside the Realcomp service area can purchase either of the two Exclusive Agency listing packages for the same prices ($349 or $499) as customers with properties in the Realcomp service area. (Kermath, Tr. 730-731, 738). The only difference is that, under Realcomp's rules, the latter customers' listings will not be transmitted to Realtor.com, the MLS-sponsored public website (in this case, MoveInMichigan.com), and local broker IDX websites. (Kermath, Tr. 730-731).

Response to CCPF No. 1052:
Respondent has no specific response.

1053. Because Realcomp does not send Exclusive Agency/Limited Service listings to Realtor.com, MoveInMichigan.com and local broker IDX websites, AmeriSell offers an

Exclusive Right to Sell/Full Service listing agreement as an option to customers with properties in Livingston, Oakland, Wayne and Macomb counties. (Kermath, Tr. 719, 735-736; RX 1-001-002; CX 187). Realcomp requires that brokers such as AmeriSell provide five mandatory services in connection with Exclusive Right to Sell/Full Service listings. (Kermath, Tr. 719-720, 736-737; CX 187-001 ("ASR Realty agrees to: arrange appointments for cooperating brokers to show the property, accept and present offers procured by cooperating brokers, [p]articipate on sellers behalf in negotiations leading to the sale of the property and will advise as to the merits of the offers and assist the seller(s) in developing, communicating or presenting counteroffers.")).

Response to CCPF No. 1053

Respondent no longer requires that brokers provide five mandatory services in connection with Exclusive Right to Sell Listings in light of Respondent's change of its Minimum Service Definition. (CX 626; Kage, Tr. 1046-1048). It costs $200 to upgrade from AmeriSell's $499 silver limited service listing to its ERTS package at $699 (RX 1). Since consumers can purchase an ERTS listing for $200 more than an EA listing, the measure of any damages (even assuming the alleged restraint of trade) is $200 (by analogy, the difference in price between a Kia and a Hyundai, not a Kia and a Cadillac). (RPF ¶ 177).

1054. The AmeriSell website informs potential customers in the Realcomp service area that an Exclusive Right to Sell/Full Service listing "gives you the best possible odds of a successful sale" and "is a must have for this MLS!" (Kermath, Tr. 739-740; RX 1-002). This statement is based on Mr. Kermath's knowledge "from many, many phone conversations" with consumers in the Realcomp area and his experience as the broker for AmeriSell over the past three years involving "close to a thousand listings and speaking with hundreds of people." (Kermath, Tr. 740-741).

Response to CCPF No. 1054:

The AmeriSell website also informs potential customers that they are successful with Exclusive Agency Listings. (Kermath, Tr. 796-797; RX 1; RX 4).

1055. Mr. Kermath testified that consumers in the Realcomp service area with Exclusive Right to Sell/Full Service listings have "a better success rate" than those with Exclusive Agency/Limited Service listings. (Kermath, Tr. 740). He has observed that "a large percentage" of his clients that select one of his Exclusive Agency/Limited Service listing packages in Realcomp will later upgrade to Exclusive Right to Sell/Full Service listings. (Kermath, Tr. 740, 742).

Response to CCPF No. 1055:

Mr. Kermath has not performed any study or analysis concerning any more activity or exposure resulting from Exclusive Right to Sell Listings. (Kermath, Tr. 741).

1056. In addition, he receives complaints from clients in the Realcomp service area "several times per week" that they are having a difficult time finding their Exclusive Agency/Limited Service listing on public websites, or that other Realtors "can't find the listing" on the MLS. (Kermath, Tr. 741-742).

Response to CCPF No. 1056:
Respondent has no specific response.

1057. When an AmeriSell customer with an Exclusive Agency/Limited Service listing in Realcomp has upgraded to an Exclusive Right to Sell/Full Service listing, Mr. Kermath has noticed that "[t]hey get better exposure and they typically have better call activity, showing activity." (Kermath, Tr. 741-742). He is able to monitor this activity by receiving emails concerning appointments scheduled to show his clients' homes to prospective buyers. (Kermath, Tr. 742).

Response to CCPF No. 1057:
Mr. Kermath has not performed any study or analysis concerning any more activity or exposure resulting from Exclusive Right to Sell Listings. (Kermath, Tr. 741).

1058. In the Realcomp service area, an AmeriSell client with an Exclusive Right to Sell/Full Service listing will get about 25 to 35 percent more exposure for their property than a client with an Exclusive Agency/Limited Service listing. (Kermath, Tr. 768-771). Mr. Kermath explains to his customers that "better exposure means better odds at a successful sale." (Kermath, Tr. 767; RX 12-007).

Response to CCPF No. 1058:
Mr. Kermath has not performed any study or analysis concerning any more activity or exposure resulting from Exclusive Right to Sell Listings. (Kermath, Tr. 741).

1059. Mr. Kermath tries to communicate to all of his customers in Realcomp that if they select an Exclusive Agency/Limited Service listing package with AmeriSell, "[t]hey're missing a significant amount of exposure for their listing." (Kermath, Tr. 742). He includes detailed information on his company's website to explain why "the seller should be exclusive right to sell in the Realcomp system." (Kermath, Tr. 743; RX 12-007 and 12-008; RX 12-001 (*See* Item 5, stating that the screenshot of the page from the AmeriSell website at RX 12-007-008 "explain[s] the additional rules from Realcomp" and "shows the obvious advantages [to an Exclusive Right to Sell/Full Service listing] from a much better level of exposure")).

Response to CCPF No. 1059:
Mr. Kermath's website also informs customers that AmeriSell is successful with Exclusive Agency listings. (Kermath, Tr. 796-797).

1060. Mr. Kermath testified that he wants customers choosing Exclusive Agency/Limited Service listings to know that they can avoid the problems caused by Realcomp's rules by upgrading to Exclusive Right to Sell/Full Service listings. (Kermath, Tr. 743-744; RX 12-007-008). Nevertheless, AmeriSell still gets "tons of phone calls from home sellers that are limited service that have not thoroughly read" the information on his website explaining how Realcomp's rules reduce exposure. (Kermath, Tr. 744).

Response to CCPF No. 1060:
Respondent has no specific response.

1061. The typical complaints about Exclusive Agency/Limited Service listings in Realcomp from his customers are "I can't find my listing, or it's not working, or I have a friend that's a real estate agent who is attempting to find it, and they can't even find it." (Kermath, Tr. 744). Mr. Kermath hears these sorts of complaints "several times per week." (Kermath, Tr. 741).

Response to CCPF No. 1061:
Respondent has no specific response.

1062. AmeriSell customers that initially choose Exclusive Agency/Limited Service listings in the Realcomp service area will "upgrade because they know they're going to be exposed better, and again, increasing the likelihood of success" in selling their home. (Kermath, Tr. 778). The AmeriSell website informs the public that in Realcomp, customers' listings "have much better success when you are ERTS." (Kermath, Tr. 767-768; RX 12-007). Based on Mr. Kermath's experience, when a customer upgrades to Exclusive Right to Sell/Full Service in Realcomp, "[m]ore people are going to find them, so you have better odds of successful sale." (Kermath, Tr. 767-768).

Response to CCPF No. 1062:
Mr. Kermath's website also informs customers that AmeriSell is successful with Exclusive Agency listings. (Kermath, Tr. 796-797).

1063. The information about Realcomp's rules that Mr. Kermath provides to his customers on the AmeriSell website (shown in RX 12-007-008) lists "4 Reasons to select the [ERTS/Full Service] upgrade." (Kermath, Tr. 772; RX 12-007). The first of these four reasons involves the Search Function Policy. (Kermath, Tr. 772; RX 12-007). Reasons two, three and four involve the Website Policy. (Kermath, Tr. 773-777; RX 12-007).

Response to CCPF No. 1063:
Mr. Kermath's website also informs customers that AmeriSell is successful with Exclusive Agency listings. (Kermath, Tr. 796-797). Realcomp has recently changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160). This change was adopted by Realcomp's board as reflected in its April 27, 2007 minutes. (CX 626). The

new proposed website screen reflecting the change to the Search Function Policy is exemplified in RX 160. (Kage, Tr. 1045-47). Realcomp's counsel signed a Joint Stipulation Regarding Respondent's Search Function Policy that has been (or will be) submitted to this Court. Realcomp's changing of its Search Function Policy nullifies the Exclusive Agent's problems, and gives Exclusive Agency sellers the same level playing field and exposure. (Kermath, Tr. 771-772; RPF ¶ 134).

1064. With respect to the Search Function Policy, Mr. Kermath explains to his customers in the Realcomp service area that Exclusive Agency/Limited Service listings "will not be found some of the time when Realtors do searches" in the MLS. (Kermath, Tr. 752; RX 12-007). Because AmeriSell's customers are not Realtors, they are not able to search the Realcomp MLS themselves to verify that their listings are in the system. (Kermath, Tr. 751-752). As a result, customers with Exclusive Agency/Limited Service listings "will typically contact a friend, who is a Realtor, and often times that Realtor can't find the listing, because they don't know how to search properly, because of the button" that defaults to Exclusive Right to Sell/Full Service instead of all listing types. (Kermath, Tr. 751-752). Mr. Kermath also hears from sellers that traditional Realtors have contacted them and attempted "basically to steal the listing" from AmeriSell by claiming Exclusive Agency/Limited Service listings can't be found in the MLS. (Kermath, Tr. 755-756).

Response to CCPF No. 1064:
See the Response to CCPF ¶ 1063.

1065. According to Mr. Kermath, the second reason customers should upgrade to Exclusive Right to Sell/Full Service in Realcomp is that only Exclusive Right to Sell/Full Service listings get exposure on MoveInMichigan.com. (Kermath, Tr. 773; RX 12-007). This is Realcomp's "public MLS site where thousands of people search" for property listings. (RX 12-007). Realcomp promotes this "very popular" website through the newspaper and other forms of advertising. (Kermath, Tr. 773).

Response to CCPF No. 1065:
See the Response to CCPF ¶ 1063.

1066. The third reason customers should upgrade is that Realcomp includes Exclusive Right to Sell/Full Service listings in its IDX feed to members, but denies such access to Exclusive Agency/Limited Service listings. (Kermath, Tr. 774-775; RX 12-007). Sellers will tell Mr. Kermath "sometimes three [times] a week" that they can't find AmeriSell Exclusive Agency/Limited Service listings on other Realcomp brokers' websites. (Kermath, Tr. 775). Mr. Kermath also testified that "most people out there now go to public IDX sites" of local brokerage offices that "they might be familiar with" to search for property listings. (Kermath, Tr. 769). He is aware of the popularity of IDX websites from his experience "speaking with many people" and asking them "specifically where they're searching." (Kermath, Tr. 769, 771). The complaints that AmeriSell receives from sellers who cannot find their listings on broker IDX websites in the Realcomp service

area are unique to the Realcomp MLS; Mr. Kermath does not get these complaints from customers in any other part of Michigan. (Kermath, Tr. 771).

Response to CCPF No. 1066:
See the Response to CCPF ¶ 1063.

1067. The fourth reason customers should upgrade is that "Realcomp will not let your [Exclusive Agency/Limited Service] listing go to Realtor.com." (Kermath, Tr. 775; RX 12-007). AmeriSell must enter each Exclusive Agency/Limited Service listing in a second MLS, usually the Ann Arbor MLS, in order for the listing to appear on Realtor.com. (Kermath, Tr. 775-776). While this "double entry" exercise may "provide sellers with data transfer to Realtor.com," it also involves "double the workload on our end meaning higher cost of doing business on the way in, double price adjustments and double entry upon sale." (RX 12-001 (Item 7)).

Response to CCPF No. 1067:
See the Response to CCPF ¶ 1063.

1068. Because of these reasons, Mr. Kermath encourages his customers to use the Exclusive Right to Sell/Full Service listings in order to get the exposure they need to sell their homes. (CCPF ¶¶ 1050-1068).

Response to CCPF No. 1068:
See the Response to CCPF ¶ 1063.

IX. REALCOMP'S POLICIES HAVE REDUCED THE USE OF LIMITED SERVICE BROKERS

1069. The share of Exclusive Agency listings (i.e. "non-ERTS" listings including Exclusive Agency, Limited Service, and MLS Entry Only) in an MLS is important from an economic perspective for two reasons. (D. Williams, Tr. 1149). First, the share of Exclusive Agency listings gives some indication of consumer demand for these types of listings. (D. Williams, Tr. 1149). Second, the share of listings is not as subject to variations in economic conditions as the total number of Exclusive Agency listings. (D. Williams, Tr. 1149). For instance, if the market slows and the total number of listings (of all types) drops, there may be no reason to expect that the share of Exclusive Agency listings will also drop. (D. Williams, Tr. 1149).

Response to CCPF No. 1069:
Respondent has no specific response.

1070. Economists use two general approaches to assess the effects of a restriction. (D. Williams, Tr. 1147). The first is a "before-and-after" approach, in which the economist uses as a benchmark some period before a restriction is put into place. (D. Williams, Tr.

1147-1148). If there is a change after the restriction is put into place, you may be able to attribute the change to the restriction. (D. Williams, Tr. 1148). This approach is also called a "time series" approach. (D. Williams, Tr. 1148).

Response to CCPF No. 1070:
Respondent has no specific response.

1071. The second approach is a "benchmark approach," in which the economist will compare the market with the restriction to a sample of other, similar markets without the restriction. (D. Williams, Tr. 1148). If there is a difference, it may be attributable to the restriction. (D. Williams, Tr. 1148-1149).

Response to CCPF No. 1071:
Respondent has no specific response.

1072. Using each of these different approaches to measure the effect of Realcomp's Policies, in connection with the real-world data available in this case, increases the confidence in these conclusions. (D. Williams, Tr. 1149-1150).

Response to CCPF No. 1072:
Respondent has no specific response.

A. Time Series Analysis of Realcomp's Data show a Decrease in the Use of Exclusive Agency and Limited Service Listings After the Policies Were Implemented

1073. Because of reporting and data issues, a full time series analysis of the share of Exclusive Agency listings in the Realcomp MLS is not possible. (CCPF ¶¶ 1074-1080). Nonetheless, the data that are available show a decrease in the share of Exclusive Agency listings after Realcomp's Policies were implemented and enforcement improved. (CCPF ¶¶ 1080-1084, 1192).

Response to CCPF No. 1073:
Respondent has no specific response.

1074. Prior to the end of 2003, brokers were expected to include the listing type in any listing. (CCPF ¶¶ 788-791). Brokers were able, however, to enter listings into the Realcomp MLS database without inputting a listing type. (CCPF ¶¶ 788-791). At the end of 2003, however, Realcomp made the inclusion of listing type "mandatory" – the Realcomp MLS database was programmed to no accept a listing without listing type. (CCPF ¶¶ 806-809).

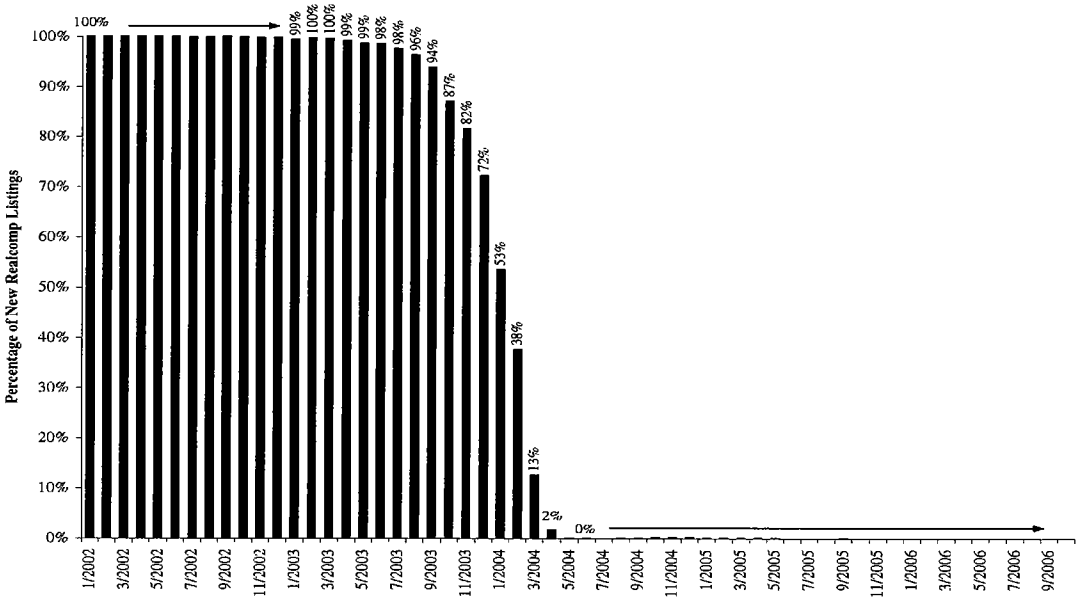
Response to CCPF No. 1074:
Respondent has no specific response.

1075. This change is reflected in the Realcomp MLS data. The Realcomp listing data show that listing type was not reported in the data until late 2003. (D. Williams, Tr. 1150-1153; CX 522; illustrated in DX 7-008). These data show that Realcomp achieved full compliance with the listing type reporting requirement in early 2004. (D. Williams, Tr. 1152-1153; CX 522; CX 498-A-039; illustrated in DX 7-008).

Response to CCPF No. 1075:
Respondent has no specific response.

1076. A chart showing the percentage of listings in the Realcomp MLS that did not report listing type is set forth below:

Percent of Realcomp Listings with "Blank" or "Unknown" Listing Type



(CX 522).

Response to CCPF No. 1076:
Respondent has no specific response.

1077. With listing type being reported, the percentage of Exclusive Agency listings (i.e. "non-ERTS" listings, including Exclusive Agency, Limited Service, and MLS Entry Only) in the Realcomp MLS may be measured. The Realcomp listing data show that the percentage of Exclusive Agency listings peaked in 2004 at approximately 1.7%. (D. Williams, Tr. 1150-1151; CX 521; illustrated in DX 7-007).

Response to CCPF No. 1077:
Respondent has no specific response.

1078. Combining these data with the data regarding the reporting of listing type shows that the reason for an increase in the percentage of Exclusive Agency listings from nearly 0% in mid-2003 to 1.7% in 2004 is attributable to reporting of listing type. (D. Williams, Tr. 1154; CX 523; illustrated in DX 7-009).

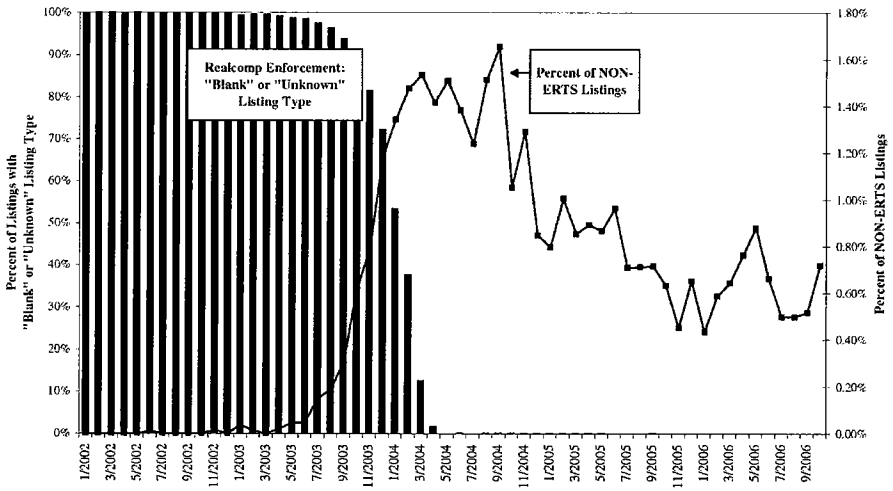
Response to CCPF No. 1078:
Respondent has no specific response.

1079. In other words, there is no reliable data regarding the percentage of Exclusive Agency listings in the Realcomp MLS before 2004. (CCPF ¶¶ 1073-1079).

Response to CCPF No. 1079:
Respondent has no specific response.

1080. The percentage of Exclusive Agency listings in the Realcomp MLS as well as the percentage of listings that failed to report listing type is set forth in the chart below:

The Percent of NON-ERTS Listings in the Realcomp MLS Decreased Steadily Since Realcomp Began to Enforce that Brokers Indicate the Listing Type



(CX 523).

Response to CCPF No. 1080:
Respondent has no specific response.

1081. As the chart shows, beginning in 2004 (the earliest time for which we have reliable data regarding the number of Exclusive Agency listings in the Realcomp MLS), the percentage of Exclusive Agency listings in the Realcomp MLS fell from approximately 1.7% in 2004 to less than 0.8% in late 2006. (D. Williams, Tr. 1155-1156; CX 523; CX 498-A-040; illustrated in DX 7-009).

Response to CCPF No. 1081:
Dr. Williams' report indicates that between May 2004 and the end of 2006, Exclusive Agency Listings in the Realcomp MLS fell from approximately 1.5% to less than 0.8%. (CX 498-A-40, ¶ 84).

1082. Because the Website Policy was adopted in 2001, the time-series analysis likely understates the effect of Realcomp's restrictions on the share of Exclusive Agency listings. (D. Williams, Tr. 1157). Prior to late 2003, Realcomp "required" that brokers show the listing type, but Realcomp made this "mandatory" in late 2003. (Kage, Tr. 960-961, 964-965). To the extent that the presence of the Website Policy was deterring the use of Exclusive Agency listings prior to the "mandatory" reporting requirement in late 2003, the time-series analysis of the listing data understates the impact of the Policy. (D. Williams, Tr. 1157).

Response to CCPF No. 1082:
There is no reliable data regarding the percentage of Exclusive Agency Listings in the Realcomp MLS before 2004 (CCPF, ¶ 1079). It is unknown what the effect is, since there is no reliable data. (CCPF, ¶ 1079).

1083. Because of these facts, the time series analysis is biased against finding an economic effect from Realcomp's Policies using Realcomp data. (CX 498-A-038). This bias favors Realcomp in the sense that it makes it less likely that an effect from the restrictions will be detected in an analysis based on Realcomp data, even if an effect occurred. (CX 498-A-038).

Response to CCPF No. 1083:
It is unknown what the effect is, since there is no reliable data. (CCPF, ¶ 1079).

1084. Nonetheless, the time series analysis of the Realcomp MLS data show that the percentage of Exclusive Agency listings (i.e. non-ERTS listings, including Exclusive Agency, Limited Service, and MLS Entry Only listings) fell after Realcomp implemented its Policies. As Realcomp's economist admitted, this decrease cannot be attributed to conditions in the real estate market. (Eisenstadt, Tr. 1621-1622).

Response to CCPF No. 1084:
Complaint Counsel mischaracterizes Mr. Eisenstadt's testimony, which states: "Now, there may be some housing market changes or characteristics in the Realcomp service area that could account for some of the drop, but I don't think that drop from 1.5% down to .75 % is likely due to, say, the economic demographic characteristics of the Realcomp service area, because it's hard for me to imagine during this period of time those economic demographic characteristics changed all that much, although the market characteristics – the market did change somewhat, the market did become softer in southeast Michigan some time in 2006, I believe, maybe even slightly before. And it is

possible that the softening of the real estate market in southeast Michigan could explain some of that drop, rather than just Realcomp's policies." (Eisenstadt, Tr. 1621-1622).

B. Benchmark Analyses Comparing Realcomp to MLSs With and Without Similar Restrictions Shows that Realcomp's Policies Have Reduced the Use of Exclusive Agency and Limited Service Listings

1085. Benchmark analyses comparing the share of Exclusive Agency listings in the Realcomp MLS with the share of Exclusive Agency listings in other MLSs also show that Realcomp's Policies reduced the use of Exclusive Agency and Limited Service listings in the Realcomp MLS. (CCPF ¶¶ 1086-1097).

Response to CCPF No. 1085:
Respondent incorporates its Responses to CCPF ¶¶ 1086-1097, and notes specifically that the referenced benchmark analysis is entirely questionable based upon Dr. Williams' flawed selection of MSAs, and flaws in his analysis and methods of making comparisons with respect to Exclusive Agency percentage shares as detailed in RPF ¶¶ 198-214.

1086. Dr. Williams conducted a benchmark analysis, using data from nine other MLSs. (D. Williams, Tr. 1158; CX 498-A-041). These MLSs were selected based on a number of economic variables that theoretically may be related to the use of Exclusive Agency listings. (D. Williams, Tr. 1158; CX 498-A-041, 070). Dr. Williams used these variables to rank as "similar" to Detroit, all Metropolitan Statistical Areas (MSAs) around the country and then selected to the top seven MLSs that did not have any restrictions on the use of Exclusive Agency listings. (D. Williams, Tr. 1158-1159; CX 498-A-041, 070-071; RX 162).

Response to CCPF No. 1086:
Respondent has no specific response.

1087. Dr. Williams obtained data from the following MLSs without restrictions in the following six geographic areas (one MLS did not provide useable data): Charlotte, NC; Dayton, OH; Denver, CO; Memphis, TN, Toledo, OH; Wichita, KS. (CX 498-A-073; RX 162).

Response to CCPF No. 1087:
Respondent has no specific response.

1088. There was variation in the percentage of Exclusive Agency listings in the MLSs without restrictions, which shows that the sample is unbiased. (D. Williams, Tr. 1289-1290). There was no way to determine in advance which MLSs would have more Exclusive Agency listings, and there is no reason to believe that the sample is biased toward one outcome or another. (D. Williams, Tr. 1289-1290).

Response to CCPF No. 1088:

There is significant variation between the MLSs without restrictions, which demonstrated that Dr. Williams has not accounted for the factors that are actually determinants of the Exclusive Agency shares in the control MSAs. For example, the calculation of average Exclusive Agency percentage share in the control group uses a weighted average based on the number of listings. Thus, Denver is allotted substantially more weight than Dayton. (RPF ¶¶ 203 and 204).

1089. In addition, Dr. Williams obtained data from three MLSs that had and enforced restrictive policies that prevented Exclusive Agency listings from being included in the MLS feed of listings to public websites and the MLS's IDX. (CX 498-A-041, 073; D. Williams, Tr. 1283-1287). The MLSs with restrictions were located in Williamsburg, VA; Green Bay/Appleton, WI; and Boulder, CO, and had entered into consent decrees with the Commission. (CX 498-A-041, 073; D. Williams, Tr. 1283-1287). The Boulder MLS changed its policy near the middle of the time period for which data was collected. (CX 498-A-041, 073).

Response to CCPF No. 1089:
Dr. Williams' selection of three MLSs that had restrictions were not based upon the same criteria, as they included MLSs with populations of less than 500,000 and were selected by the FTC rather than Dr. Williams following any procedure. (RPF ¶ 207).

1090. The resulting data set included over 1.08 million listings for the five year period 2002-06, with an average of 17,000 new listings per month. (CX 498-A-041; D. Williams, Tr. 1161).

Response to CCPF No. 1090:
Respondent has no specific response.

1091. Instead of simply comparing Realcomp to one or two of the MLSs without restrictions, Dr. Williams used the entire sample of MLSs without restrictions to generalize the results. (D. Williams, Tr. 1163, 1288). For economic analysis, it is better to use the larger sample with lots of different conditions, control for those conditions, and then see if you still get the answer – this gives a greater confidence for the results. (D. Williams, Tr. 1163, 1288).

Response to CCPF No. 1091:
In addition to the flaws noted in the Response to CCPF ¶ 1088, Dr. Eisenstadt noted: "This is like saying you pick six types of fruit to compare to an orange, and even though a watermelon is a form of fruit, and you may think it's a control, it's a lot farther from an orange than is a tangelo. And if you are going to do something like average the way Dr. Williams has done his average, then you want to compare apples to apples or oranges to oranges, and I believe Dayton is a closer orange to Detroit than Denver." (Eisenstadt, Tr. 1427).

1092. These data show that the MLSs with restrictions that prevented Exclusive Agency listings from being sent from the MLS to public websites had lower usage of Exclusive Agency listings. (D. Williams, Tr. 1162). For the MLSs with restrictions, the data show that Realcomp had 0.9% Exclusive Agency listings, Williamsburg 1.7%, and Greenbay/Appleton 1.3%. (D. Williams, Tr. 1162; illustrated in DX 7-010). The share of Exclusive Agency listing in all three MLS listing data combined (i.e., the "weighted average") was 1.4%. (D. Williams, Tr. 1162, 1291-1292; illustrated in DX 7-010).

Response to CCPF No. 1092:
Respondent has no specific response.

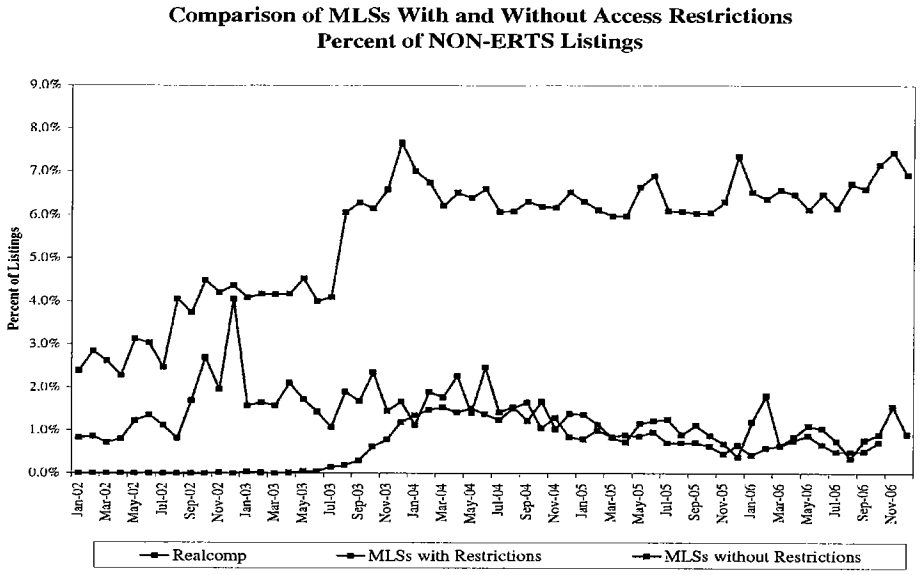
1093. In contrast, the share of Exclusive Agency listings in the data from the six MLSs without any restrictions that prevented Exclusive Agency listing from being fed from the MLS to public websites was 5.6%. (D. Williams, Tr. 1162; illustrated in DX 7-010).

Response to CCPF No. 1093:
Dr. Williams' use of a weighted average placed emphasis on the number of listings and, as a result, the MLS furthest away from Realcomp in terms of the factors used by Dr. Williams to select his MLSs, Denver, with an approximate 14% share of non-ERTS listings, skewed the result. (RX 161-Page 36).

1094. A comparison of the share of Exclusive Agency listings over time in Realcomp, the average share in the two other MLSs with restrictive policies, and the average share in the six MLSs without restrictive policies shows that in every month during a five year period, the share of Exclusive Agency listings in the six MLSs without restrictions is higher than that in Realcomp and that in the MLSs with restrictions. (D. Williams, Tr. 1165-1166; CX 524; illustrated in DX 7-011).

Response to CCPF No. 1094:
The analysis is based on Dr. Williams' flawed selection process and weighted average, which have the problems described in the Responses to CCPF ¶¶ 1085, 1088, 1089, 1091 and 1093.

1095. A graph setting forth the share of Exclusive Agency listings over time in Realcomp, the average share in the two other MLSs with restrictive policies, and the average share in the six MLSs without restrictive policies from January 2002 to the end of 2006 is set forth below:



(CX 524).

Response to CCPF No. 1095:
Respondent has no specific response.

1096. The data also show that in MLSs without restrictions, the percentage of Exclusive Agency listings increased from a little more than 2% in January 2002 to approximately 7% at the end of 2006. (CX 524; D. Williams, Tr. 1165-1166; illustrated in DX 7-011). These data, and this upward trend, are consistent with the idea that limited service brokerage models are new and still in the early stages of development. (D. Williams, Tr. 1166).

Response to CCPF No. 1096:
CX 524 actually indicates that there was an increase from approximately 2.2% to 8.0% in the percentage of Exclusive Agency Listings in the Control Group MLSs without restrictions from January 2002 until the end of 2003, but then it appears that the percentage declined and remained relatively flat with no upward trend. *See also* the Responses to CCPF ¶¶ 1149 and 1178.

1097. The benchmark data unambiguously show that where there are no restrictions on Exclusive Agency listings being fed from the MLS to public websites and IDX sites, the extent to which Exclusive Agency listings are used is greater. (D. Williams, Tr. 1166-1167; CX 524). Where there are restrictions, the use of Exclusive Agency listing is lower. (D. Williams, Tr. 1167; CX 524).

Response to CCPF No. 1097:
Respondent has no specific response.

C. Statistical Analyses Confirm That Realcomp's Rules are Associated With a Substantial Reduction in the Use of Exclusive Agency and Limited Service Listings

1098. Dr. Williams conducted a statistical analysis to determine whether the unambiguous greater use of Exclusive Agency listing in MLSs without restrictive policies was due to the policies or to some other factor. (D. Williams, Tr. 1167-1168). The analysis therefore controlled for such factors as particular housing characteristics, changes over time, demographic factors, the state of the housing market, and economic factors. (D. Williams, Tr. 1168-1169, 1290-1291; illustrated in DX 7-012).

Response to CCPF No. 1098:
The statistical analysis referenced to in this paragraph has been referred to as a Probit Analysis. Further, Dr. Williams' methodology was flawed as detailed in RPF ¶¶ 216-225.

1099. In other words, the statistical analysis isolates the effect of the policies versus the effect of other factors. (D. Williams, Tr. 1169). For example, Dr. Williams's statistical analyses include a variable on the state of the housing market; it thus controls for the effect of a slow housing market on the use of Exclusive Agency listings. (D. Williams, Tr. 1271-1272).

Response to CCPF No. 1099:
The statistical analysis referenced to in this paragraph has been referred to as a Probit Analysis. Further, Dr. Williams' methodology was flawed as detailed in RPF ¶¶ 216-225.

1100. Dr. Williams conducted a number of statistical analyses, controlling for different factors that may affect the share of Exclusive Agency listings. (D. Williams, Tr. 1170; CX 498-A-041-042, 071; CX 560-011-014, 019-020).

Response to CCPF No. 1100:
Dr. Williams also measured some variables at two levels., e.g., the percentage change in one-year and five-year housing price index (CX 560-Page19), as well as house size measured by the number of bedrooms and square footage. (CX 498-A-71).

1101. Dr. Williams also reran his own statistical analysis adding the economic and demographic variables that Dr. Eisenstadt believed were significant. (CX 560-013). Dr. Williams did this using both his own data set (which included the MLSs that had restrictions similar to Realcomp's) and the data set selected by Dr. Eisenstadt (which did not include those MLSs). (CX 560-012-013).

Response to CCPF No. 1101:
Dr. Williams used some, but not all, of Dr. Eisenstadt's additional variables, and this accounted for the different result. Dr. Eisenstadt testified at trial as to Dr. Williams'

omissions and explained the reasons for including all of the additional variables in the analysis. (Eisenstadt Tr. 1466-1472).
More specifically, Dr. Williams did not think it necessary to include economic and demographic variables at both the MSA and zip code levels, which he deemed "double-counting." (Eisenstadt, Tr. 1471-1472). However, Dr. Eisenstadt explained that the factors should be measured at both the county or zip code level, as appropriate, as well as at the MSA level, "because there could be metropolitan-wide effects that would affect a seller's decision as to what type of listing contract to choose, and there could be more localized effects that you would want to also control for in the analysis." (Eisenstadt Tr. 1471-72). He went on to explain that controlling for the same factor at both the MSA and zip code level is not "double counting" (as Dr. Williams opined): "You are not measuring the same variable twice as I just explained. There are both neighborhood characteristics of buyers and sellers that you want to control for, and there may be metropolitan-wide characteristics of buyers and sellers that you want to control for in the analysis. It's not completely duplicative." (Eisenstadt Tr. 1472).

1102. Each of these analyses resulted in substantially similar results. (CX 560-013-014). The analyses showed that Realcomp's restrictions were associated with a reduction in Exclusive Agency listings of 5.5 to 5.8 percentage points. (D. Williams, Tr. 1678-1679; CX 560-013-014, 019-020).

Response to CCPF No. 1102:
Analysis demonstrates that Respondent's Policies' effect on the non-ERTS share in Realcomp was at most a 1.0% decrease in percentage of non-ERTS listings. This is set forth, in detail, in RPF ¶ 148.

1103. These analyses show that, no matter how you run the data, the one consistent result is that the presence of a Website Policy has a statistically significant effect on the share of Exclusive Agency listings, reducing that share by at least 5.5 percentage points. (D. Williams, Tr. 1170-1172; CX 498-A-041-042, 071; CX 560-011-014, 019-020).

Response to CCPF No. 1103:
Analysis demonstrates that Respondent's Policies' effect on the non-ERTS share in Realcomp was at most a 1.0% decrease in percentage of non-ERTS listings. This is set forth, in detail, in RPF ¶ 148.

1104. Based on these statical analyses, but for the Realcomp restrictions, the expected share of Exclusive Agency listings in the Realcomp MLS would be approximately 6 to 7%. (D. Williams, Tr. 1679).

Response to CCPF No. 1104:
Analysis demonstrates that Respondent's Policies' effect on the non-ERTS share in Realcomp was at most a 1.0% decrease in percentage of non-ERTS listings. This is set forth, in detail, in RPF ¶ 148.

D. Respondent's Expert's Time Series and Benchmark Analysis Also Show that Realcomp's Policies Have Reduced the Use of Exclusive Agency and Limited Service Listings

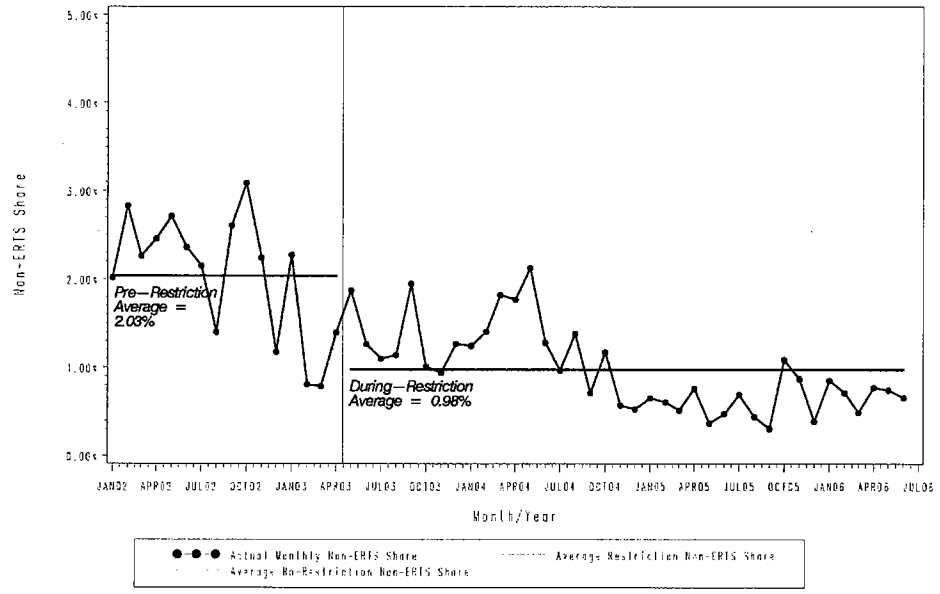
1105. Dr. Eisenstadt also conducted a time series and a benchmark analysis, each of which are consistent with Dr. Williams's conclusions. (D. Williams, Tr. 1172-1173).

Response to CCPF No. 1105:
Dr. Eisenstadt's analysis demonstrates that Respondent's policies' effect on the non-ERTS share in Realcomp was at most a 1.0% decrease in the percentage of non-ERTS listings. (Eisenstadt, Tr. 1408).

1106. Dr. Eisenstadt conducted a time series analysis for the Boulder MLS, which imposed a Website Policy around April 2003. (D. Williams, Tr. 1173-1174; RX 161-037; illustrated in DX 7-015). This analysis shows that the percentage of Exclusive Agency listings decreased after the MLS imposed the restriction, from an average of 2.03% prior to the restriction to an average of 0.98% after the restriction. (D. Williams, Tr. 1173-1176; RX 161-037; illustrated in DX 7-015).

Response to CCPF No. 1106:
Respondent has no specific response.

1107. Dr. Eisenstadt's time series analysis of the Boulder MLS is set forth below:



RX 161 - Page 37 of 52
Restrictions for the Boulder MLS were implemented April 30, 2003 and were lifted in July 2006 (Report of Darrell Williams 41–42)

(RX 161-037)

Response to CCPF No. 1107:
Respondent has no specific response.

1108. Dr. Eisenstadt also conducted a benchmark analysis, comparing the share of Exclusive Agency listings in Realcomp against the share of Exclusive Agency listings in the Ann Arbor MLS, which did not have any restrictive policies on Exclusive Agency listings. (D. Williams, Tr. 1176-1177). These data show that for the entire Ann Arbor MLS during 2005-06, the share of Exclusive Agency listings is 4.2% compared to 0.74% for Realcomp. (D. Williams, Tr. 1176-1177; CX 133-064).

Response to CCPF No. 1108:
Dr. Eisenstadt explained that use of the entire Ann Arbor MLS in this context is improper since it would take into account listings from Realcomp that are being placed into Ann Arbor as a by-pass. Therefore, a more appropriate comparison between Realcomp and Ann Arbor is to look at Washtenaw County (Eisenstadt, Tr. 1417-1418). Washtenaw County home sellers who list their homes on the Ann Arbor MLS choose non-ERTS listings approximately 1.6% of the time (Eisenstadt, Tr. 1418-1419).

1109. Dr. Eisenstadt also took some of the data out of the Ann Arbor MLS to calculate the Exclusive Agency share in the Ann Arbor MLS for just Washtenaw county. (D. Williams, Tr. 1177; CX 133-027-028). Dr. Eisenstadt claimed that he did this adjustment because some brokers may have listed Exclusive Agency listings in the Ann Arbor MLS because of the Realcomp Policies. (Eisenstadt, Tr. 1590-1591; CX 133-027-028).

Response to CCPF No. 1109:
Respondent has no specific response.

1110. After this adjustment, the data show a 1.6% share for Exclusive Agency listings in the Ann Arbor MLS in Washtenaw county. (D. Williams, Tr. 1177; CX 133-065). Thus, even after these adjustments, Dr. Eisenstadt still found that the percentage of Exclusive Agency listing in the Ann Arbor MLS was twice as high as that in the Realcomp MLS. (D. Williams, Tr. 1177-1178).

Response to CCPF No. 1110:
Respondent has no specific response.

1111. Dr. Eisenstadt's revised calculations exclude listings in the Ann Arbor MLS that were for properties in Oakland, Wayne, Livingston, and Macomb counties. (Eisenstadt, Tr. 1591-1592). He did this even though Livingston, Oakland, and Wayne counties border Washtenaw county. (CX 101).

Response to CCPF No. 1111:

Respondent has no specific response.

1112. Moreover, Dr. Eisenstadt's revised calculations exclude listings from the Ann Arbor MLS from other counties, even though they are not in the Realcomp service area. (CX 133-065 (excluding listings from "All other counties")). On cross-examination, Dr. Eisenstadt admitted that he had no idea whether listings from these other counties that border Washtenaw county, for example Lenawee and Monroe, were affected by Realcomp's Policies. (Eisenstadt, Tr. 1594-1595; CX 101). Dr. Eisenstadt thus excluded 263 Exclusive Agency and 1,567 Exclusive Right to Sell listings from his calculations, even though these listings were from counties outside of Realcomp's service area and he had no idea whether they were affected by Realcomp's rules. (Eisenstadt, Tr. 1593-1595).

Response to CCPF No. 1112:
Dr. Eisenstadt did not say that he had "no idea," but instead responded to Complaint Counsel's questions by testifying that he "can't be sure" and explaining, for example, that Monroe County listings may have been placed on the Ann Arbor MLS to bypass another MLS. (Eisenstadt, Tr. 1593-1595).

1113. Recalculating the share of Exclusive Agency listings in the Ann Arbor MLS by including the listings from "all other counties" (i.e., all counties other than Oakland, Wayne, Livingston, and Macomb) results a 3.59% share of Exclusive Agency listings for the Ann Arbor MLS. (Eisenstadt, Tr. 1595-1596).

Response to CCPF No. 1113:
Respondent has no specific response.

E. The Data From Other MLSs Show That a Website Policy Alone Reduces the Use of Exclusive Agency Listings

1114. Although the Realcomp data does not allow for the separation of the effects of Realcomp's Website and Search Function Policies, the data from the other MLSs show that website policies standing alone, have an anticompetitive effect by reducing the use of Exclusive Agency listings. (D. Williams, Tr. 1237-1238).

Response to CCPF No. 1114:
Respondent has no specific response.

1115. The restrictions in the Williamsburg MLS, the Green Bay/Appleton MLS, and the Boulder MLS were website policies. (D. Williams, Tr. 1284-1287). None of these MLSs had a Search Function Policy. (D. Williams, Tr. 1284-1287). Thus, the data from these MLSs show that a Website Policy reduces the share of Exclusive Agency listings. (D. Williams, Tr. 1286-1287).

Response to CCPF No. 1115:
Respondent has no specific response.

Dr. Williams did not have first hand knowledge of this proposition. (D. Williams, Tr. 1285).

F. The Conclusions of the Economic Analyses are Corroborated by the Testimony of Market Participants

1116. All of the analyses – the time series analysis of Realcomp, the benchmark analyses comparing Realcomp to six MLSs without similar restrictions and two with similar restrictions, Dr. Williams's statistical analysis, Dr. Eisenstadt's time series analysis of the Boulder MLS, and Dr. Eisenstadt's benchmark analysis of the Ann Arbor MLS – show that a Website Policy reduces the use of Exclusive Agency listings and limited-service brokers. (D. Williams, Tr. 1178).

Response to CCPF No. 1116:
Dr. Williams' analysis does not make a conclusion about the Web Site Policy as Dr. Williams' analysis is based upon the combined effect of the Web Site Policy, Search Function Policy, and Minimum Service Definition (RPF ¶141). Dr. Williams did not, and cannot, disentangle the effects because he did not have data available that is sufficient to analyze the impact of eliminating the Search Function Policy and the Minimum Service Definition. (RPF ¶¶ 142-145).

1117. The testimony of market participants confirms the results of each of the economic analyses. (CCPF ¶¶ 1118-1122).

Response to CCPF No. 1117:
The testimony of the market participants shows that Craig Mincy, an Exclusive Agent called by Complaint Counsel, does not notice a difference in Days on Market between Exclusive Agency Listings and Exclusive Right to Sell Listings (Mincy, Tr. 450), and that despite Michigan's economic downturn, agents offering Exclusive Agency Listings are thriving in Southeastern Michigan.

(a) BuySelf's Exclusive Agency business has grown 10% to 35% since 2004. (Hepp, Tr. 699).
(b) AmeriSell has grown substantially since 2003-2004, with over $46 million in listings and more listings statewide than any other company. (Kermath, Tr. 788, 793; RX 5; RX 6).
(c) MichiganListing.com has grown by 30% in its last full year of business, between 2005 and 2006, and was trending upward in 2007. Mr. Mincy is seeking to expand in Southeastern Michigan, and he expects his business to keep growing throughout Southeastern Michigan. (Mincy, Tr. 428-430).

(d) Greater Michigan Realty has done very well, and is growing. (G. Moody, Tr. 881-884; RX 25-Page 3). Denise Moody, of Greater Michigan Realty, had approximately 500 listings last year, when the industry average was 25. (G. Moody, Tr. 881-882; RX 29). Greater Michigan Realty generated $23,275,000 in home sales in its first year of operation. (D. Moody, Tr. 567; RX 25).

1118. MichiganListing.com has more Exclusive Agency listings outside of the Realcomp area, than in it. (Mincy, Tr. 386). Mr. Mincy testified that he has lost a substantial number of Exclusive Agency listings in the Realcomp area as a consequence of the Realcomp Policies. (Mincy, Tr. 422-425).

Response to CCPF No. 1118:
Mr. Mincy has not done any study or analysis concerning the number of Exclusive Agency Listings that he has allegedly lost. (Mincy, Tr. 453). Additionally, MichiganListing.com has grown 30% in its last full year of business, between 2005 and 2006, and is trending upward in 2007. Mr. Mincy is seeking to expand in Southeastern Michigan, and expects his business to keep growing throughout Southeastern Michigan. (Mincy, Tr. 428-430).

1119. YourIgloo uses Exclusive Agency listings successfully in many MLSs across the country. (CX 422 (Aronson, Dep. at 8)). Mr. Aronson testified that YourIgloo had many more complaints in Michigan (as a result of the Realcomp Policies) than in any other state, and after the number of Exclusive Agency listings declined, stopped doing business in the Realcomp area. (CX 422 (Aronson, Dep. at 38-41, 44-47, 103-107, 111-112)).

Response to CCPF No. 1119:
YourIgloo has encountered problems in other states, pulling out of two of the nine states in which it is licensed, Pennsylvania and New Jersey. (CX 422 (Aronson, Dep. at 31-32)). YourIgloo left New Jersey because it was required to inspect the property if it listed it. (CX 422 (Aronson, Dep. at 32)). YourIgloo left Pennsylvania because its operation was not profitable. (CX 422 (Aronson, Dep. at 32)). These factors, and others, indicate that YourIgloo.com withdrew from Michigan for reasons other than Realcomp's Policies. (RPF ¶ 166(e)).

1120. BuySelf Realty offers Exclusive Agency listings in Minnesota, Ohio, Missouri, and Ann Arbor, Michigan through its direct business model and in other locations through its referral business model. (Hepp, Tr. 586-589). Mr. Hepp testified that, at times, he was unable to offer Exclusive Agency listings on a referral basis in the Realcomp area because Realcomp's Policies caused brokers offering such listings to stop doing business there. (Hepp, Tr. 604-609). He testified further that he received customer complaints as a result of the Realcomp rules that he did not receive in other locations where he did business, and that he ultimately decided not to enter the Realcomp area with his Exclusive Agency direct listing business, despite customer demand, because of

Realcomp's Policies and the resulting customer complaints. (Hepp, Tr. 609-613, 615-622, 629-635).

Response to CCPF No. 1120:
BuySelf Realty's Exclusive Agency business has grown 10% to 35% since 2004. (Hepp, Tr. 699). Mr. Hepp testified that he was unable to do business because he could not locate a broker two times. (Hepp, Tr. 605). At the time of his deposition, he could only recall one broker leaving. (Hepp, Tr. 697-698).

1121. Greater Michigan Realty offers Exclusive Agency listings in various MLSs in Michigan. (D. Moody, Tr. 470-471, 474-475, 480-487). Denise Moody testified that Greater Michigan Realty's Exclusive Agency listings are far more successful in other MLSs than in the Realcomp, and that customers in the Realcomp area are more likely to cancel Exclusive Agency listings. (D. Moody, Tr. 535-537).

Response to CCPF No. 1121:
Greater Michigan Realty has done very well, and is growing (G. Moody, Tr. 881-884; RX 25-Page 3). Denise Moody, of Greater Michigan Realty, had approximately 500 listings last year, when the industry average was 25. (G. Moody, Tr. 881-82; RX 29). Greater Michigan Realty generated $23,275,000 in home sales in its first year of operation. (D. Moody, Tr. 567; RX 25; RPF ¶ 163(d)). Denise Moody's testimony that EA listings are more likely to cancel should be balanced against her acknowledgement that she experienced such cancellations only twice over the past few years. (D. Moody, Tr. 537).

1122. AmeriSell Realty offers customer Exclusive Agency listings in the Realcomp MLS and in other MLSs. (Kermath, Tr. 719, 731). Because of the Realcomp Policies, AmeriSell Realty also offers Exclusive Right to Sell/Full Service listings in the Realcomp MLS. (Kermath, Tr. 719, 739-741). Mr. Kermath testified that, because of the Realcomp Policies, a large percentage of customers who want and initially select an Exclusive Agency listing, end up switching to an Exclusive Right to Sell listing. (Kermath, Tr. 740-742).

Response to CCPF No. 1122:
AmeriSell has grown substantially since 2003-2004, with over $46 million in listings and more listings statewide than any other company (Kermath, Tr. 788, 793; RX 5; RX 6; RFP ¶ 163(b)). Realcomp's changing of its Search Function Policy nullifies the Exclusive Agent's problems and gives Exclusive Agency sellers the same level playing field and exposure. (Kermath, Tr. 771-772; RPF ¶ 134).

X. BY REDUCING THE USE OF EXCLUSIVE AGENCY AND LIMITED SERVICE LISTINGS, REALCOMP'S POLICIES HARM COMPETITION AND CONSUMERS

1123. The weight of the evidence shows that Realcomp's Policies have harmed competition and consumers. (CCPF ¶¶ 861-1243).

Response to CCPF No. 1123:
The weight of the evidence shows that Respondent's challenged policies have procompetitive benefits (RPF ¶¶ 183-192), create additional efficiencies (RPF ¶¶ 246-248), and have a net benefit to consumers. (RPF ¶¶ 175-178).

1124. The evidence shows that Realcomp's Policies have harmed competition and consumers by limiting consumer choice. The Policies eliminate, through an agreement among competitors, a particular package of brokerage services -- an Exclusive Agency listing that has full exposure through the Realcomp MLS. The Policies therefore harm consumers by eliminating consumers' preferred choice. (CCPF ¶¶ 193, 890-898, 1157-1173, 1200-1206).

Response to CCPF No. 1124:
Respondent incorporates its Responses to CCPF ¶¶ 193, 890-898, 1157-1173, and 1200-1206, and states in summary that the evidence shows that Respondent's Policies create additional efficiencies and demonstrates the absence of consumer harm. (RPF ¶¶ 175-178; 183-192; 232-241; 246-248).

1125. The evidence shows that Realcomp's Policies have harmed competition and consumers by limiting the price pressure that limited service brokers place on commission rates in the real estate brokerage services market. (CCPF ¶¶ 191-203, 221-226).

Response to CCPF No. 1125:
Respondent incorporates its Responses to CCPF ¶¶ 101-203, 221-226, and states in summary that the evidence shows that Respondent's policies also have procompetitive benefits. (RPF ¶¶ 183-192). Dr. Williams did not analyze whether commission rates are lower for ERTS listings on MLSs with restrictions. (Williams, Tr. 1272). Dr. Eisenstadt is not aware of any evidence in the record that indicates that in no-restriction MLSs brokerage fees of traditional brokers are lower than brokerage fees of traditional brokers in the restriction MLSs. (Eisenstadt, Tr. 1459-1460).

1126. The evidence shows that Realcomp's Policies have harmed competition and consumers by maintaining higher real estate brokerage commission rates. (CCPF ¶¶ 1130, 1140-1152, 1207-1227).

Response to CCPF No. 1126:
Respondent incorporates its Responses to CCPF ¶¶ 1130, 1140-1152, and 1207-1227, and states in summary that the evidence shows that Respondent's policies also have procompetitive benefits. (RFP ¶¶ 183-192). Dr. Williams did not analyze whether commission rates are lower for ERTS listings on MLSs with restrictions. (Williams, Tr.

1272). Dr. Eisenstadt is not aware of any evidence in the record that indicates that in no-restriction MLSs brokerage fees of traditional brokers are lower than brokerage fees of traditional brokers in the restriction MLSs. (Eisenstadt, Tr. 1459-1460).

1127. The evidence shows that Realcomp's Policies have harmed competition and consumers by forcing consumers to purchase more expensive brokerage services using Exclusive Right to Sell contracts. (CCPF ¶¶ 1029, 1051, 1053-1055, 1062-1068, 1122, 1201, 1228).

Response to CCPF No. 1127:

Respondent incorporates its Responses to CCPF ¶¶ 1029, 1051, 1053-1055, 1062-1068, 1122, 1201 and 1228; and states in summary that the evidence shows that Respondent's policies also have procompetitive benefits. (RFP ¶¶ 183-192). Dr. Williams did not analyze whether commission rates are lower for ERTS listings on MLSs with restrictions. (Williams, Tr. 1272). Dr. Eisenstadt is not aware of any evidence in the record that indicates that in no-restriction MLSs brokerage fees of traditional brokers are lower than brokerage fees of traditional brokers in the restriction MLSs. (Eisenstadt, Tr. 1459-1460). Jeff Kermath's AmeriSell offers an Exclusive Right to Sell listing for $699, which is $200 more than one of his Exclusive Agency listings (RX 1; *see also*, Eisenstadt, Tr. 1452).

1128. The evidence shows that Realcomp's Policies have harmed competition and consumers by forcing consumers to purchase brokerage services that they did not want. (CCPF ¶¶ 1034-1035, 1201, 1228-1244).

Response to CCPF No. 1128:

Respondent incorporates its Responses to CCPF ¶¶ 1034-1035, 1201, and 1228-1244, and states in summary that the evidence shows that Realcomp's Policies also have procompetitive benefits (RPF ¶¶ 183-192). Moreover, Dr. Eisenstadt compared the sale prices of EA properties listed and sold in Realcomp to those listed and sold in the five of the control MSAs used by Dr. Williams. (CX 458-page 21 - CX 458-page 22, ¶ 33). Dr. Eisenstadt's analysis showed that, after accounting for home characteristics, locational effects, and differences in the sale prices of ERTS properties, the Realcomp Policies did not depress the expected sale prices that home sellers using EA contracts received for their residential properties. Instead, on average, residential sellers in Realcomp's service area using EA contracts realized approximately six percent higher sale prices for their homes than sellers in the Control MSAs that used EA contracts. (CX 458-Page 22 - CX 458-Page 23, ¶35). Dr. Eisenstadt demonstrated that, under conservative assumptions, the aggregate increased brokerage fees would be approximately $280,000, which would be more than offset by the expected higher home sale prices realized by EA sellers in the same area, which Dr. Eisenstadt estimated to be approximately $1,700,000. (Eisenstadt, Tr. 1454-1458; CX 458-Page 23 - CX 458-Page 25, ¶¶37-39).

from 15% to 8% between 2005 and 2006. (Murray, Tr. 289-290; CX 535-0116). The alternative models are not getting the "traction" that industry buzz would suggest (Murray, Tr. 291; CX 535-0116). From September 2003 through the end of 2006, the non-ERTS listing share has been roughly flat in Dr. Williams' control MLSs (Esisenstadt, Tr. 1464; CX 524). *See also* the Responses to CCPF ¶ 1096 and 1178. Realcomp changed the definition of ERTS, so that full services are no longer required with an ERTS listing (CX 626; Kage, Tr. 1045-47). Limited service brokers are not economically significant. (Sweeney, Tr. 1326; RPF ¶¶ 168-174).

1150. Limited service brokers allow consumers to pick and choose which listing services they want to purchase. (CCPF ¶¶ 187, 191-201, 1009, 1032, 1052-1053).

Response to CCPF No. 1150:
Respondent has no specific response.

1151. Limited service brokers unbundle the listing broker commission from the cooperating broker commission. (D. Williams, Tr. 1188-1189). Limited service brokers typically use Exclusive Agency contracts. (CCPF ¶¶ 183-187). Under an Exclusive Agency contract, the payment of a cooperating broker commission (i.e., the offer of compensation), is contingent on whether the home buyer actually uses a cooperating broker. (D. Williams, Tr. 1189, 1098).

Response to CCPF No. 1151:
Respondent has no specific response.

1152. In other words, Exclusive Agency agreements do not require the home seller to commit to an unconditional payment of the expected commission to a cooperating broker. (CX 498-A-048; CCPF ¶¶ 183-187).

Response to CCPF No. 1152:
Respondent has no specific response.

1153. Other than unbundling services and commissions, the listing contracts of limited service brokers are similar to those of full service brokers in important ways. (CX 498-A-046). Specifically, there is an offer of compensation to a cooperating broker, just as is the case with a traditional brokerage contract. (CX 498-A-046; CCPF ¶¶ 171). The offer is published in the MLS and competition dictates that the offer be competitive, which usually implies [redacted], just as with offers by traditional brokers. (CX 498-046, *n camera*; CCPF ¶¶ 172).

Response to CCPF No. 1153:
Respondent has no specific response.

1158. Of all Exclusive Agency listings with Mr. Mincy's firm, MichiganListing.com, only one or two sellers have ever opted to purchase the Exclusive Agency listing without the $100 upgrade to have their listing go to Realtor.com. (Mincy, Tr. 385-386).

Response to CCPF No. 1158:
Respondent has no specific response.

1159. Under the Website Policy, the service provided by Realcomp "is severely degraded" for Exclusive Agency listings by "really limit[ing]" the sellers' listings "to not as much exposure as they would like to have." (CX 525 (Adams, Dep. at 78-79)). In fact, customers expect their properties will be displayed on the public websites to which Realcomp sends its listings. (CX 525 (Adams, Dep. at 80-81)).

Response to CCPF No. 1159:
As set forth repeatedly above (e.g., in the Response to CCPF ¶ 870), the Web Site Policy does not result in a "severely degraded" service and "really limiting" the sellers, since agents are able to get their Exclusive Agency listings into the MLS and Realtor.com. (RPF ¶¶ 102-112).

1160. Exposure of their listings through Internet data exchange ("IDX") is becoming "more and more" important to customers of Greater Michigan Realty, especially over the last 12 to 18 months. (G. Moody, Tr. 827, 831; (CX 435-001)). In fact, "as the public gets more educated," customers understand what the IDX feed is and ask for their listings to be included in it. (G. Moody, Tr. 827, 831 (CX 435-001)).

Response to CCPF No. 1160:
Gary Moody believes that Google Base will surpass IDX in importance in the near future. (RPF, ¶ 121(d)).

1161. Mr. Aronson estimated that YourIgloo had between 50 and 100 customer complaints while it was doing business in Michigan. (CX 422 (Aronson, Dep. at 44-45)). The complaints concerned (a) customers who were told that local brokers were not able to find the customers' listings in the MLS (because of the search default), (b) listings not appearing on Realtor.com and other public websites, or both of these concerns. (CX 422 (Aronson, Dep. at 44-45, 104)). The volume of complaints that YourIgloo received from customers in Michigan was much more than from any other state. (CX 422 (Aronson, Dep. at 105-106)).

Response to CCPF No. 1161:
Respondent has no specific response.

1162. Home sellers "want their property exposed to as many people as possible. . . . [S]ellers want their information at the site that is going to best market them, and best attract the consumer." (CX 405 (Baczkowski, Dep. at 38-39)).

Response to CCPF No. 1168:
There is a [sic] in the quote of Cooper, Dep. at 29-30.

1169. Mr. Kersten testified that customers expect to have their properties on the Century 21 website. (CX 413 (Kersten, Dep. at 40)).

Response to CCPF No. 1169:
Respondent has no specific response.

1170. Ms. Groggins testified that customers want to find their listings on Realtor.com, and on the Realcomp IDX sites. (CX 526 (Groggins, Dep. at 49-51)).

Response to CCPF No. 1170:
Respondent has no specific response.

1171. Mr. Whitehouse tells sellers that they want their listings on the internet. (CX 421 (Whitehouse, Dep. at 68-69); CX 310-023)).

Response to CCPF No. 1171:
Respondent has no specific response.

1172. Mr. Mulvihill testified that he provides internet advertising on Realtor.com, DanMulvihill.com and Realestateone.com to all of his listings, and he has never had a customer request that their listing not be advertised on the internet. (CX 41 (Mulvihill, Dep. at 12-13); CX 177-001). Mr. Mulvihill gives all of his seller customers a weekly report of the web traffic to their listings. (CX 41 (Mulvihill, Dep. at 26)).

Response to CCPF No. 1172:
Respondent has no specific response.

1173. All listings taken by the Saturn Realty Group must be entered in the Realcomp MLS, except where the seller specifically states that they do not want their property listed in the MLS. (CX 44 (C. Williams, Dep. at 65-66)). Mr. Williams has never had a customer request that he not include their property in the IDX database of Realcomp. (CX 44 (C. Williams, Dep. at 67)).

Response to CCPF No. 1173:
Carl Williams testified that he has had sellers request that their property not be listed in the MLS, however. (C. Williams, Dep. at 66).

B. The Economic Context and Characteristics of Realcomp's Policies

1174. Several economic factors are important in evaluating the effect of Realcomp's Policies on competition and consumers. (D. Williams, Tr. 1184-1187).

Response to CCPF No. 1174:
Respondent has no specific response.

1. The Economic Context of Realcomp's Policies

1175. First, the Policies are the product of a collaboration among competitors. (D. Williams, Tr. 1184; JX 1-10). The Realcomp MLS is a collaboration of competitors, its members, who are competing in the market for brokerage services. (D. Williams, Tr. 1098-1099; JX 1-10). The Realcomp MLS is a supplier of multiple listing services to those competitors. (D. Williams, Tr. 1099; CCPF ¶¶ 303-316). The Realcomp MLS sells its input downstream to brokers who use the input in the supply of brokerage services. (D. Williams, Tr. 1099; CCPF ¶¶ 677-764). The Realcomp Policies are therefore affecting competition between the members who are collaborating in the Realcomp MLS. (D. Williams, Tr. 1184).

Response to CCPF No. 1175:
The MLS is more than simply a collaboration of competitors. The MLS is a two-sided platform and, as such, there is also cooperation as it relates to the cooperating brokers working in cooperation with listing brokers. (Eisenstadt, Tr. 1405-1407)

1176. The fact that a competitor collaboration controls a key input for competition between the collaborators raises concerns from an economic perspective. As Respondent's economist wrote in a Department of Justice, Antitrust Division publication, "Competitors naturally will try to restrict each other's output, either by forming a collusive combination or by driving one another out. Consequently, antitrust is rightly suspicious of any horizontal 'restraint of trade.'" (Eisenstadt, Tr. 1523-1524).

Response to CCPF No. 1176:
Dr. Eisenstadt testified: "Well, I certainly agree with the second sentence, unless of course there are pro-competitive justifications for restraint, a restraint of trade. I think the sentence before that you asked me to read, while you've read it correctly, it's probably inarticulately written, for the reason that I have indicated before." (Eisenstadt, Tr. 1524-1525).

1177. Second, from an economic perspective, restrictions within a collaboration are more of a concern when there are network effects, which limit intersystem competition. (D. Williams, Tr. 1184-1185). In this case, the data show that there are no adequate alternatives to which brokers and consumers can switch. (D. Williams, Tr. 1185-1186; CCPF ¶¶ 890-907). Realcomp therefore has the ability to restrict competition among brokers. (CCPF ¶¶ 765-791).

Response to CCPF No. 1177:

MiRealSource is a substantial and growing MLS that competes with Realcomp. (RPF ¶¶ 40-51). Real estate brokers can compete in Southeastern Michigan by belonging to MiRealSource and not Realcomp. (RPF ¶ 61). The costs of joining MiRealSource are nominal - $29 per licensee and broker and $24 per office after the $100 initiator fee is paid. (CX 407 (Bratt, Dep. at 19-20)). The costs of belonging to MiRealSource are similar to belonging to Realcomp, and there is not a significant cost difference to change membership from one to the other. (Sweeney, Tr. 1313-1314). Williams also testified: "We're going to be more concerned about restrictions when there are these network effects within a system when there's not very much competition from other systems, when there is not very much intersystem competition." (Williams, Tr. 1184-1185). *See also* the Responses to CCPF ¶¶ 518, 708 and 726.

1178. Third, limited service brokers are a new business model. (D. Williams, Tr. 1186). Thus, even though they represent a small share of total listings, restrictions that impact these brokers may have a big effect on the overall competitive trend. (D. Williams, Tr. 1186-1187).

Response to CCPF No. 1178:
Exclusive Agency listings have been around "forever" (CX 36 (Kage, 1HT at 31)). Exclusive Agency Listings are not increasing nationwide as evidenced by their decrease from 15% to 8% between 2005 and 2006. (Murray, Tr. 289-290; CX 535-0116). The alternative models are not getting the "traction" that industry buzz would suggest (Murray, Tr. 291; CX 535-0116). From September 2003 through the end of 2006, the non-ERTS listing share has been roughly flat in Dr. Williams' control MLSs (Esisenstadt, Tr. 1464; CX 524). *See also* the Responses to CCPF ¶¶ 1096 and 1149. Realcomp changed the definition of ERTS, so that full services are no longer required with an ERTS listing (CX 626; Kage, Tr. 1045-47). Limited service brokers are not economically significant. (Sweeney, Tr. 1326; RPF ¶¶ 168-174).

2. The Economic Characteristics of Realcomp's Policies

1179. Realcomp's Website and Search Function Policies are significant from an economic perspective because they affect each of the key channels through which buyers can become aware of homes under Exclusive Agency contracts listed on the Realcomp MLS – public websites, broker and agent (IDX) websites, and cooperating brokers who search the MLS. (D. Williams, Tr. 1129-1131; CX 498-A-031-032; illustrated in DX 7-002).

Response to CCPF No. 1179:
Respondent has no specific response.

1180. Realcomp's Policies restrict or otherwise impede the ability of brokers that access the Realcomp MLS using Exclusive Agency listings to reach home buyers on behalf of the home sellers that they represent. (CX 498-A-048; CCPF ¶¶ 765-791). Realcomp's

Website Policy prevents Exclusive Agency listings from being disseminated to public websites that reach home sellers directly. (CX 498-A-048; CCPF ¶¶ 765-791).

Response to CCPF No. 1180:
Realcomp's policies have no significant effect as evidenced, for example, by agents offering Exclusive Agency listings thriving in Southeastern Michigan. (*See* RPF, ¶ 163), and non-ERTS homes having fewer Days on Market than comparable ERTS homes in Realcomp's MLS (RPF ¶¶ 158-159).

1181. Realcomp's Search Function Policy, by establishing the default search results on the Realcomp MLS to exclude only Exclusive Agency, gives Exclusive Agency listings a lower priority in the search architecture hierarchy than is given to listings that fail to identify the listing type at all. (CX 498-A-048; CCPF ¶¶ 792-805, 908-940). Realcomp's MLS search function affects the listings that cooperating brokers view and thus affects the other means of reaching home buyers. (CX 498-A-049; CCPF ¶¶ 792-805, 908-940).

Response to CCPF No. 1181:
Respondent has no specific response.

1182. In particular, it is significant from an economic perspective that Realcomp's Website Policy restricts Exclusive Agency listings from the most popular websites: MLS websites, Realtor.com, real estate company websites, and real estate agent websites. (D. Williams, Tr. 1132-1133; illustrated in DX 7-003; CX 516; CX 373-046; CX 498-A-032-035). These four categories of websites are not only the most popular, but the most popular by a very large margin. (D. Williams, Tr. 1133; illustrated in DX 7-003; CX 516; CX 373-043; CX 498-A-032-035).

Response to CCPF No. 1182:
Realcomp's Web Site Policy does not restrict Exclusive Agency listings from being placed onto the Realcomp MLS. (JX 1, ¶ 57). The Web Site Policy also can be bypassed: agents with Exclusive Agency listings can have their listings put onto Realtor.com by joining another MLS for a nominal charge. (RPF ¶¶ 102-109). The combination of the MLS and Realtor.com reaches 90% of all home buyers. (RPF ¶ 101).

1183. Industry studies demonstrate the importance of reaching buyers through the Internet; those studies show that 24% of all buyers in 2006 found the home that they purchased on the Internet. (D. Williams, Tr. 1145-1146; illustrated in DX 7-004; CX 373-040). This percentage has been growing over time, climbing from 2% in 1997 to 24% in 2006. (D. Williams, Tr. 1146; illustrated in DX 7-005; CX 373-040). The 24% of all buyers who found the home that they purchased on the internet includes buyers using cooperating brokers; in fact, statistics show that buyers who used the internet to search for homes are more likely to use a cooperating broker than those buyers who do not use the internet. (D. Williams, Tr. 1146; CX 373-043).

Response to CCPF No. 1183:
Respondent has no specific response.

1184. Even if discount brokers can (through double listing) get their Exclusive Agency listings to Realtor.com, the foreclosure caused by the Website Policy is still extremely significant because of the characteristics of the real estate market. (D. Williams, Tr. 1133-1134, 1144; CCPF ¶¶ 890-907).

Response to CCPF No. 1184:
Complaint Counsel has not established anything "extremely significant" about the Web Site Policy, as evidenced, for example by agents offering Exclusive Agency listings thriving in Southeastern Michigan. (*See* RPF, ¶ 163), and non-ERTS homes having fewer Days on Market than comparable ERTS homes in Realcomp's MLS (RPF ¶¶ 158-159). (*See also* RPF ¶¶ 162-167).

1185. The market for real estate is very different from other markets because buyers have very different preferences and homes are different from each other. (D. Williams, Tr. 1134). These factors mean that, even though there may be thousands of buyers looking for homes, for any particular home, there are likely only a few potential buyers who would be interested in purchasing the house. (D. Williams, Tr. 1138-1140). This is because people are very specific about the type of house that they want (*e.g.*, location, size, price, number of bedrooms, size of the garage, etc.). (D. Williams, Tr. 1138-1139). If a particular home does not match those criteria, the buyer will not be interested in the home. (D. Williams, Tr. 1138-1139).

Response to CCPF No. 1185:
Respondent has no specific response.

1186. In other markets, such as commodities, a foreclosure of 20% of retail outlets, for example, may not have competitive effects. (D. Williams, Tr. 1135). But because buyers are heterogeneous and houses differentiated, such a foreclosure in the real estate market may be significant. (D. Williams, Tr. 1136-1137).

Response to CCPF No. 1186:
Respondent has no specific response.

1187. To illustrate, suppose a telephone network foreclosed access to one in five homes. That would only be a 20% foreclosure, but if the people you need to talk to are in that 20%, the foreclosure is very significant. (D. Williams, Tr. 1136-1137). The same principle applies in the real estate market. (D. Williams, Tr. 1137). The fact that you have access to 80% of buyers is irrelevant if you miss the few potential buyers that would prefer your home. (D. Williams, Tr. 1136-1137).

Response to CCPF No. 1187:

Respondent has no specific response.

1188. Thus, even if there are thousands of buyers searching for homes, a seller must reach those buyers who are interested in the seller's particular house. (D. Williams, Tr. 1139-1140). If the potential home buyer that has preferences for the home is searching one of the websites that has been foreclosed to Exclusive Agency listings by the Website Policy, the seller could miss a sale entirely or have fewer bidders for the home. (D. Williams, Tr. 1144). More bidders generally means a higher selling price. (D. Williams, Tr. 1145).

Response to CCPF No. 1188:
Respondent has no specific response.

1189. The Website Policy therefore effects brokers on the listing side. (D. Williams, Tr. 1143). For a listing broker who is trying to market a home under an Exclusive Agency contract, the listing broker is restricted from reaching certain home buyers (whether they are represented by a cooperating broker or not) and that foreclosure may cause the listing broker to miss the few buyers who would be interested in the home. (D. Williams, Tr. 1143).

Response to CCPF No. 1189:
There is no evidence that the Web Site Policy has had such an effect on listing brokers. Complaint Counsel's expert antitrust witness did not perform any analysis with respect to Days on Market or sales price. Respondent's antitrust economist, Dr. Eisenstadt performed an analysis of sales price and Days on Market, and found that the Web Site Policy did not adversely affect either, as non-ERTS homes in the Realcomp service area sold for higher prices than comparable homes in areas without restrictions, and non-ERTS homes within the Realcomp service area sold faster than ERTS homes within the Realcomp service area. (RPF ¶¶ 157-159, 161).

C. The Effect of Realcomp's Policies on Competition and Consumers

1. Realcomp's Policies Substantially Reduced Limited Service Brokerage Activity

1190. As discussed above in Section IX, the Realcomp Policies have reduced the share of Exclusive Agency listings in the Realcomp MLS. (CCPF ¶¶ 1069-1122). The reduction in the share of Exclusive Agency listings is competitively significant because, as described above, brokers using these types of listings compete differently than do traditional brokers. (D. Williams, Tr. 1187). Limited service brokers offer unbundled listing services and unbundle commissions. (D. Williams, Tr. 1187-1188; CCPF ¶¶ 199-203).

Response to CCPF No. 1190:

Respondent incorporates its Responses to the referenced CCPF ¶¶ and notes in summary that the reduction in the percentage of non-ERTS listings in Realcomp attributable to the Respondent's Policies was, at most, 1%, which is not significant. (RPF ¶ 148).

1191. There are two ways of looking at the magnitude of an effect of Realcomp's Policies on the use of Exclusive Agency listings: the change in the share of Exclusive Agency listings as a percentage of all listings and the effect of the policies in terms of the extent to which limited-service activity is occurring. (D. Williams, Tr. 1179). Both ways should be considered. (D. Williams, Tr. 1179).

Response to CCPF No. 1191:
Respondent has no specific response.

1192. The extent to which Realcomp's Policies impact limited service activity may be measured by the percentage change in the share of Exclusive Agency listings. (D. Williams, Tr. 1180-1181; illustrated in DX 7-017). For instance, the time series analysis shows that the share of Exclusive Agency listings dropped from about 1.5% to 0.72%. (D. Williams, Tr. 1180-1181). In terms of the overall share of listings, the drop is only 0.79 percentage points. (D. Williams, Tr. 1180-1181). But in terms of limited service activity, the time series analysis shows that the Policies reduced that activity by more than half - specifically by 52%. (D. Williams, Tr. 1181).

Response to CCPF No. 1192:
It is not appropriate to look at the effect of the Realcomp policies by looking at the percentage change, since the percentage is so small to begin with. For example, if someone has $2 and loses $1, there is a 50% loss of their wealth; however, the person was not very rich to start with. (RPF ¶ 178).[1]

1193. Dr. Eisenstadt's time series analysis of the Boulder MLS shows that the imposition of a Website Policy reduced limited-service brokerage activity by 52%. (D. Williams, Tr. 1182; illustrated in DX 7-018).

Response to CCPF No. 1193:
See the Response to CCPF ¶ 1192.

1194. Using the six MLSs without any restrictions on Exclusive Agency contracts as a benchmark shows that Realcomp's Policies reduced limited-service brokerage activity by 84%. (D. Williams, Tr. 1182-1183; illustrated in DX 7-018).

Response to CCPF No. 1194:

[1]Respondent notes that here, and elsewhere, Complaint Counsel cites to DX Exhibits. Respondent objects and states that DX Exhibits are not in evidence and therefore should not be used to this context.

See the Response to ¶ 1192. Also, see above discussion concerning Dr. Williams' flaws with respect to his selection of the six control MLSs and his use of a weighted average. Dr. Williams gave undue weight to Denver, which had a 14% non-ERTS share, and gave more weight to the MSAs that were farther away from Realcomp in terms of similarity. (RPF ¶¶ 198-206, 211-215).

1195. Dr. Eisenstadt's analysis of the Ann Arbor MLS as a benchmark shows that Realcomp's Policies reduced limited-service brokerage activity by 82%. (D. Williams, Tr. 1183; illustrated in DX 7-018).

Response to CCPF No. 1195:
See the Response to CCPF ¶ 1192.

1196. Dr. Eisenstadt's analysis of the Ann Arbor MLS as a benchmark, after he made his adjustments to exclude all data from counties other than Washtenaw, shows that Realcomp's Policies reduced limited-service brokerage activity by 55%. (D. Williams, Tr. 1183; illustrated in DX 7-018).

Response to CCPF No. 1196:
See the Response to CCPF ¶ 1192.

1197. Dr. Williams' statistical analysis of the data from Realcomp, the six MLSs without restrictions, and the two MLSs with restrictions shows that Realcomp's Policies reduced limited-service brokerage activity by 86%. (D. Williams, Tr. 1183; illustrated in DX 7-018).

Response to CCPF No. 1197:
See the Response to CCPF ¶1192.

1198. Dr. Williams' statistical analysis of the data from Realcomp and the six MLSs without restrictions (taking out the other MLSs with restrictions) shows that Realcomp's Policies reduced limited-service brokerage activity by 84%. (D. Williams, Tr. 1183; illustrated in DX 7-018).

Response to CCPF No. 1198:
See the Response to CCPF ¶ 1192.

1199. All of the data tell the same story: the restrictions on Exclusive Agency listings are associated with a large reduction in the extent to which there are Exclusive Agency listing contracts and the type of competition that is associated with those contracts. (D. Williams, Tr. 1183-1184).

Response to CCPF No. 1199:
See the Response to CCPF ¶ 1192.

2. Realcomp's Policies Limit Consumer Choice By Preventing Brokers From Offering Exclusive Agency Listings With Full Internet and MLS Exposure

1200. As Dr. Williams explained, the Realcomp Policies limit consumers choices by eliminating one product -- an Exclusive Agency listing with full exposure through the Realcomp MLS. (D. Williams, Tr. 1683-1684; illustrated in DX 12-008).

Response to CCPF No. 1200:
In the Realcomp MLS, consumers can reasonably avoid this by selecting a flat fee ERTS listing for only $200 more than an Exclusive Agency Listing. (RPF ¶¶ 114(a), 176).

1201. Consumers who would have chosen Exclusive Agency listings with full exposure through the Realcomp MLS but end up purchasing Exclusive Right to Sell listings are harmed in two ways. (D. Williams, Tr. 1685). First, they are not able to purchase their preferred choice. (D. Williams, Tr. 1685). Second, these consumers are paying a higher commission than they would have but for the Realcomp Policies. (D. Williams, Tr. 1686). Although these consumers receive more services with an Exclusive Right to Sell listings, they would not have purchased those services but for the Realcomp Policies. (D. Williams, Tr. 1685).

Response to CCPF No. 1201:
Consumers end up benefitting from the Realcomp Policies. One needs to look at the net effect of the Realcomp Policies. The only economist who looked at the net effect was Dr. Eisenstadt, who found that the net effect of the Policies was procompetitive. (RPF ¶¶ 175-192, 232-248).

1202. Consumers who purchase Exclusive Agency listings despite the Realcomp Policies are also harmed. (D. Williams, Tr. 1685). They are not able to purchase their preferred choice – an Exclusive Agency listing with full exposure through the Realcomp MLS. (D. Williams, Tr. 1685). Instead, they end up with an inferior product. (D. Williams, Tr. 1685).

Response to CCPF No. 1202:
There is no evidence to support Complaint Counsel's contention that consumers who purchase homes listed as Exclusive Agency Listings in the Realcomp service area are harmed as alleged; instead, the Days on Market and sales analysis of Dr. Eisenstadt demonstrate that EA listings sell faster and for higher prices. (RPF ¶¶ 158; 161).

1203. Consumers who would have preferred an Exclusive Agency listings with full exposure but because of Realcomp's Policies decides to sell FSBO are also harmed. (Eisenstadt, Tr. 1487-1488). As Respondent's economist admitted on cross-examination, the Realcomp Policies affected the choice of these consumers. (Eisenstadt, Tr. 1487-1488).

Response to CCPF No. 1203:
Complaint Counsel's allegations of harm are unsupported by the citation.

1204. Each of these groups of consumers are harmed, even if they were fully informed of their options, because their choices were not the result of the free enterprise system and independent, individual choices of sellers. (D. Williams, Tr. 1686). Rather, these consumer choices were impacted by a collusion of competitors to restrict competition by certain rivals. (D. Williams, Tr. 1686).

Response to CCPF No. 1204:
Dr. Williams failed to analyze the consumers who had benefitted by the Policies and the net benefit of these policies. (RPF ¶¶ 175-178, 232-248. *See also*, the Responses to CCPF ¶¶ 1201-1202).

1205. Realcomp's Policies therefore place an artificial restriction on consumer choice -- consumers cannot chose to purchase an Exclusive Agency listing that will have full internet exposure and that one will be in the default MLS search. (D. Williams, Tr. 1209-1210). Thus, whether consumers are fully informed of the impact of Realcomp's Policies on Exclusive Agency listings or not, the data show that Realcomp's Policies have resulted in a decrease in the use of Exclusive Agency listings. (D. Williams, Tr. 1204-1205, 1209-1212).

Response to CCPF No. 1205:
See the Response to CCPF ¶ 1190.

1206. The consumer's choice of listing type, even if fully informed, is not a "free choice" in the sense that the options available to the consumer are not determined by a free market but by a collaboration of competitors. (D. Williams, Tr. 1213-1215). The consumer is therefore faced with an "artificial choice" of an exclusive right to sell listing with full exposure or an Exclusive Agency listing without full exposure (rather than an Exclusive Agency listing with full exposure). (D. Williams, Tr. 1214-1217).

Response to CCPF No. 1206:
Respondent has no specific response.

3. Realcomp's Policies Protect and Maintain an Effective Price Floor on Real Estate Brokerage Commissions

1207. As Dr. Williams explained, from an economic perspective, Realcomp's Website and Search Function Policies not only have harmed consumers by reducing consumer choice, the Policies have also helped to maintain higher brokerage fees. (D. Williams, Tr. 1691).

Response to CCPF No. 1207:

Dr. Williams did not analyze whether commission rates are lower on ERTS listings in MLSs without restrictions than MLSs with restrictions (Williams Tr. 1272). Dr. Eisenstadt is not aware of any evidence in the record that indicates that in no-restriction MLSs, brokerage fees of traditional brokers are lower than brokerage fees of traditional brokers in the restriction MLSs. (Eisenstadt Tr. 1459-1460). See also the Response to CCPF ¶ 1146.

1208. Given the broker compensation structure of residential real estate transactions and the structure of Exclusive Right to Sell contracts, Realcomp's Policies created an effective price floor for brokerage commissions. (CCPF ¶¶ 176-179, 188-190, 1209-1227).

Response to CCPF No. 1208:
Respondent incorporates its responses to the referenced CCPF ¶¶, and relies, in summary, on its Response to CCPF ¶ 1207.

1209. Because the home seller and the home buyer may each be represented by a broker, the total brokerage commission can be thought of as consisting of two parts—a commission paid to the listing broker (representing a home seller) and a commission paid to a cooperating broker (representing a home buyer). (CX 498-A-043; CCPF ¶¶ 155-157). The cooperating broker's commission takes the form of an offer of compensation made by the listing broker or made directly by the home seller. (CX 498-A-043; CCPF ¶¶ 166-172).

Response to CCPF No. 1209:
Respondent has no specific response.

1210. Offers of compensation are published on the MLS and are known to cooperating brokers before they schedule any appointments or devote time and effort to marketing the listed property. (CX 498-A-043; CCPF ¶¶ 166-172). As a result, a given offer of compensation must be competitive with other offers of compensation published on the MLS. (CX 498-A-043). Compensation offers to cooperating brokers are customarily {[redacted] (CX 498-043-044, *in camera*; CCPF ¶ 172). Compensation offers for less than [redacted] are commonly thought to be less attractive to cooperating brokers who can observe and compare offers associated with each listing on the MLS. (CX 498-044, *in camera*; Mincy, Tr. 368-369 (based on his experience, offers no less than 3% to cooperating brokers to ensure that properties are shown)).

Response to CCPF No. 1210:
Respondent has no specific response.

1211. As a result, the data show that offers to cooperating brokers tend to be uniform and clustered around [redacted] (CX 498-044, *in camera*; CCPF ¶ 172). More than [redacted]

[redacted] of new listings on Realcomp's MLS had offers exactly [redacted] for the period 2002 to 2006. (CX 498-044, *in camera*).

Response to CCPF No. 1211:
Respondent has no specific response.

a. The Traditional Brokers' Use of Exclusive Right To Sell Contracts Creates a De Facto Price Floor on Brokerage Commissions

1212. Under an Exclusive Right to Sell listing, the home seller negotiates and contracts for the full amount of any brokerage commissions that may be paid as part of the listing agreement. (CX 498-A-044; CCPF ¶¶ 176-182). The listing contract negotiation between the home seller and the listing broker takes into account the expectation that the listing broker will be required to compensate a cooperating broker representing a home buyer. (CX 498-A-044; CCPF ¶¶ 176-182).

Response to CCPF No. 1212:
The suggestion that a buyer and seller cannot avoid paying a commission under an Exclusive Right to Sell Contract is incorrect. Southeastern Michigan has flat fee ERTS listings where a seller can simply pay a flat fee and there is no other commission owing if there is no cooperating broker involved. *See, e.g.*, AmeriSell's model where a seller can have an ERTS listing for a flat fee of $699. (Kermath, Tr. 729-731, 791; RX 1). *See also*, Help-U-Sell, where for a flat fee of $2,950 or $4,950, a seller can have an ERTS listing (CX 525 (Adams, Dep. at 18-19; 24-25; 58-59)). See also the Response to CCPF ¶ 1207.

1213. Because the listing broker (and not the home seller) makes an offer of compensation to a cooperating broker, the (marginal) costs of the listing broker consist of the sum of the marginal costs of the services offered by the listing broker plus the expected payment of compensation to a cooperating broker. (CX 498-A-044).

Response to CCPF No. 1213:
See the Response to CCPF ¶ 1212.

1214. These aspects of Exclusive Right to Sell contracts create a de facto price floor because they ensure that the listing broker's expected marginal cost at the time when the brokerage fee is negotiated (i.e., before the property is listed and before a cooperating broker's role can be determined) includes the expected compensation to a cooperating broker, regardless of whether or not this payment ever occurs. (CX 498-A-044).

Response to CCPF No. 1214:
See the Response to CCPF ¶ 1212.

1215. As a result, the listing broker's expected marginal cost at the time of the negotiation is equal to 3% of the selling price (the competitively determined share payment to the cooperating broker) plus the marginal cost of all services provided by the listing broker. (CX 498-A-044). In this case, Realcomp's minimum service requirements add to and increase the price floor by setting a minimum level of brokerage services that must be offered by the listing broker under an Exclusive Right to Sell listing. (CX 498-A-044-045).

Response to CCPF No. 1215:
See the Response to CCPF ¶ 1212. Also, Realcomp has changed its Minimum Service Requirement, so full services are no longer required with an ERTS listing. (CX 626, Kage, Tr. 1046-1047).

1216. Competition among traditional brokers that occurs within the structure of this cooperative payment system cannot eliminate the de facto price floor because the Exclusive Right to Sell contract effectively raises the (expected) marginal costs of listing brokers. (CX 498-A-045). Price competition among traditional full service brokers can drive the price of listing services down to their marginal costs but such competition cannot compete away the expected cost of compensation to a cooperating broker. (CX 498-A-045).

Response to CCPF No. 1216:
See the Response to CCPF ¶ 1212.

1217. Moreover, the system of posting offers of compensation on the MLS such that cooperating brokers can compare these offers creates a countervailing force preventing offers of compensation from falling below the customary 3%. (CX 498-A-045).

Response to CCPF No. 1217:
This is true for every MLS, not just Realcomp.

1218. The net result is that, despite the large number of brokers that compete on traditional terms, many of which may offer discounts to home sellers when negotiating a listing contract, this form of competition cannot reduce the contractual brokerage rate to an amount that is substantially less than the expected compensation to the cooperating broker of 3% of the selling price plus the marginal cost of all services provided by the listing broker, which in this case is the marginal cost of the minimum services required by Realcomp's Rules. (CX 498-A-045).

Response to CCPF No. 1218:
See the Response to CCPF ¶ 1212.

b. Limited Service Brokers Are Not Subject To the De Facto Price Floor Because They Use Exclusive Agency Contracts

1219. Competition from limited service brokers is not subject to the de facto price floor because Exclusive Agency listing agreements do not obligate home sellers to pay to the listing broker the expected compensation to a cooperating broker regardless of whether or not a cooperating broker is the procuring cause of the sale. (CX 498-A-045).

Response to CCPF No. 1219:
See the Response to CCPF ¶ 1212.

1220. In other words, limited service brokers offer Exclusive Agency listing contracts that permit the payment of the offer of compensation to cooperating brokers to be contingent upon whether or not a cooperating broker actually contributes to the transaction. (CX 498-A-046; CCPF ¶¶ 183-187). That is, a home seller is permitted to observe whether or not a cooperating broker is the procuring cause for the sale before the home seller's obligation to pay a commission to a cooperating broker is triggered. (CX 498-A-046; CCPF ¶¶ 183-187).

Response to CCPF No. 1220:
See the Response to CCPF ¶ 1212.

1221. As a result, the expected marginal costs of a limited service broker using an Exclusive Agency contract at the time of the negotiation only depends on the marginal cost of listing services. (CX 498-A-046). Any payment of a commission to a cooperating broker is paid directly by the seller but only if the cooperating broker is the procuring cause. (CX 498-A-046; CCPF ¶¶ 183-187).

Response to CCPF No. 1221:
See the Response to CCPF ¶ 1212.

1222. The decoupling of the listing agent's commission and the cooperating broker's commission permits home sellers (and home buyers) to avoid the payment of a cooperating brokerage fee whenever it has not been earned. (CX 498-A-046). Furthermore, by unbundling the full set of services supplied by listing brokers, nontraditional brokers do not offer to home sellers an "all-or-nothing" choice but instead allow home sellers to purchase a subset of brokerage services, if they desire. (CX 498-A-046).

Response to CCPF No. 1222:
See the Response to CCPF ¶ 1212. Further, Realcomp has eliminated the Minimum Service Definition and, as such, a full set of services are not required to be supplied with an ERTS listing. (CX 626; Kage, Tr. 1046-1047).

1223. The net effect is that brokerage commissions can fall substantially below the de facto price floor created by the structure of the cooperative payment system that governs Exclusive Right to Sell brokerage contracts. (CX 498-A-046).

Response to CCPF No. 1223:
See the Response to CCPF ¶ 1222. Further, this CCPF fails to take into account the prevalent use of flat fee ERTS listings in the Realcomp service area (RPF ¶ 115), where an ERTS listing costs just $200 more than an EA listing (RPF ¶¶ 114(a), 176).

c. Realcomp's Policies Protect the Price Floor

1224. Limited service brokers do not merely intensify the rivalry that exists among joint venture members, they change the dynamics of competition in the market. (CX 498-A-047). In this sense, the suppliers of unbundled brokers are "maverick" competitors whose exclusion significantly alters the competitive landscape to the detriment of home sellers and home buyers, the consumers of brokerage services. (CX 498-A-047).

Response to CCPF No. 1224:
The reference to "limited service" is not applicable in light of Realcomp's change in its Minimum Service Definition. (CX 626; Kage, Tr. 1046-1047). Additionally, in Southeastern Michigan, agents offerng Exclusive Agency listings do not significantly alter the landscape. They are simply not much of a factor as they do not do well in a buyer's market, such as that being experienced by Southeastern Michigan. (Sweeney, Tr. 1326-1327; Eisenstadt, Tr. 1461).

1225. The evidence shows that, without restrictions, limited service brokers put price pressure on full service brokers. (CCPF ¶¶ 221-226).

Response to CCPF No. 1225:
The reference to limited service is not applicable in light of Realcomp's change in definition for minimum services. (CX 626; Kage, Tr. 1046-1047). This does not show that the Exclusive Agents put price pressure on full service brokers, because they are simply not much of a factor in Southeastern Michigan. (Sweeney, Tr. 1326-1329). Additionally, the percentage of Exclusive Agency listings declined from 15% to 8% nationally from 2005 to 2006, and they are not getting the "traction" that the industry buzz would suggest. (Murray, Tr. 289-291; CX 535-0116).

1226. By favoring Exclusive Right to Sell listings, the Realcomp Policies bolster the "take-or-pay" provision found in those contracts (i.e., that sellers must pay for a cooperating broker whether one is used or not). (D. Williams, Tr. 1189-1190).

Response to CCPF No. 1226:
See the Responses to CCPF ¶¶ 1222 to 1225.

1227. By restraining competition from limited service brokers, Realcomp's Policies protected and maintained its cooperative price-setting system and the de facto price floor on brokerage commissions to which it gives effect. (CX 498-A-047).

Response to CCPF No. 1227:
See the Responses to CCPF ¶¶ 1222 to 1225.

4. Realcomp's Policies Cause Buyers and Sellers to Pay for Brokerage Services That They Do Not Want or Need

1228. Realcomp's Policies result in more consumers using Exclusive Right to Sell contracts, which are significantly more expensive than Exclusive Agency contracts. (D. Williams, Tr. 1191-1194). For instance, a traditional Exclusive Right to Sell listing with a 6% commission for a $150,000 home would result in a payment by the seller of commissions totaling $9000, whether or not a cooperating broker was involved. (D. Williams, Tr. 1191-1192; illustrated in DX 7-020). In contrast, an Exclusive Agency listing with a limited service broker for a flat-fee payment of $499 up front, would cost the seller a total of $4,999 with a cooperating broker and only $499 if no cooperating broker involved. (D. Williams, Tr. 1192; illustrated in DX 7-020). The saving from using the Exclusive Agency listing would be $4,001 with a cooperating broker and $8,501 without a cooperating broker. (D. Williams, Tr. 1192-93; illustrated in DX 7-020).
Response to CCPF No. 1228:
The example is not the only way ERTS contracts work. AmeriSell Realty offers flat-fee ERTS listings in Realcomp's service area for $200 more than a non-ERTS listing (Kermath, Tr. 729-31, 791; Eisenstadt, Tr. 1451-1452, 1474; RPF 176). *See also*, RPF ¶¶ 114(a)-115, 176.

1229. Exclusive Agency listings result in substantial savings even compared to Exclusive Right to Sell listings offered by discount brokers such as Greater Michigan Realty. (D. Williams, Tr. 1193-1194). Greater Michigan Realty offers Exclusive Right to Sell listings for $100 to $300 more than its Exclusive Agency listings (depending on the package). (CX 435-001). But, as Denise Moody testified at trial, under an Exclusive Right to Sell listing, if no cooperating broker is involved, the offer of compensation goes to Greater Michigan Realty. (D. Moody, Tr. 490). Thus, if, for instance, an Exclusive Right to Sell listing is $699 and the Exclusive Agency listing is $499, the potential savings to the seller of using an Exclusive Agency listing for selling a $150,000 home would range from $200 (if a cooperating broker is used) to $4,700 (without a cooperating broker). (D. Williams, Tr. 1193-1194).

Response to CCPF No. 1229:
Jeff Kermath's AmeriSell Realty offers flat-fee Exclusive Right to Sell Listings for $699, and there is no additional commission paid upon sale. (RX 1; Kermath, Tr. 729, 796-797).

1230. As explained above, the Exclusive Right to Sell contract effectively contains a take-or-pay provision with respect to the commission for a cooperating broker. (CCPF

¶¶ 176-179, 198, 202-203, 1143, 1147, 1149, 1151, 1212, 1226). Exclusive Agency listings do not require the home seller to commit to an unconditional payment of the expected commission to a cooperating broker. (CX 498-A-048).

Response to CCPF No. 1230:
See the Response to CCPF ¶ 1146.

1231. By increasing the share of Exclusive Right to Sell listings purchased by consumers, Realcomp's Policies anticompetitively force consumers to pay for the services of a cooperating broker, even if the home buyer does not use such services. (CX 498-A-048).

Response to CCPF No. 1231:
See the Response to CCPF ¶ 1146.

1232. Moreover, by only allowing "full service" Exclusive Right to Sell contracts into the Realcomp MLS feed to public websites, on the Realcomp IDX, and in the default search, the Realcomp Policies favored "full service" listings, contrary to the business model of the limited service brokers. (D. Williams, Tr. 1190, illustrated in DX 8). The data show that consumers within the Realcomp market entered into more full service contracts than they would but-for Realcomp's access restrictions. (CX 498-A-047).

Response to CCPF No. 1232:
Realcomp repealed the Search Function Policy and changed the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160; CX 626; Kage, Tr. 1045-47). See also the Response to CCPF ¶ 1190.

1233. Because Realcomp's Policies required Exclusive Right to Sell listings to include a set of minimum services, by increasing the share of Exclusive Right to Sell listings purchased by consumers, Realcomp's Policies anticompetitively force consumers to purchase brokerage services they do not want or need. (CX 498-A-048; CCPF ¶¶ 327-331).

Response to CCPF No. 1233:
Realcomp's Policies have procompetitive benefits (RPF ¶¶ 183-192), and have a net benefit to consumers (RPF ¶¶ 175-178). This CCPF is also moot as indicated in the Response to CCPF ¶ 1232.

5. Realcomp's Policies Have Reduced the Quality-Adjusted Output of Brokerage Services in the Realcomp Area

1234. Realcomp's Policies have harmed competition and consumers by reducing the quality-adjusted output of brokerage services in the Realcomp area. (CCPF ¶¶ 1235-1243).

Response to CCPF No. 1234:
Respondent has no specific response.

1235. Realcomp's Policies have caused fewer home sellers in the Realcomp area to use the services of real estate brokers. Realcomp's Website Policy and Search Function Policy have caused some consumers to switch away from using Exclusive Agency listings. (Eisenstadt, Tr. 1478-1479; illustrated in DX 9-24; illustrated in DX 10).

Response to CCPF No. 1235:
Dr. Eisenstadt identified four categories of home sellers that potentially could be affected by Realcomp's Policies (Eisenstadt, Tr. 1398-1399; CX 458-018-020, ¶¶ 28-30). With respect to home sellers who elect FSBO in lieu of EA listings, Dr. Eisenstadt stated: "Neither my nor Dr. Williams' analysis provides any information about whether a putative, restriction-related decline in the share of non-ERTS listings would be attributable to sellers switching to ERTS contracts or to FSBO contracts." (CX 458-019, ¶29). Dr. Eisenstadt further determined that the likely effects of the Realcomp Policies on at least one of the other categories would be positive. (CX 458-020-023, ¶¶31-35).

1236. Some consumers who wanted to use Exclusive Agency listings instead chose to rely on for sale by owner ("FSBO") efforts to sell their homes, because of Realcomp's Website Policy and Search Function Policy. (Eisenstadt, Tr. 1486-1487; illustrated in DX 10). Realcomp's rules have affected the choices of these consumers, causing them to choose not to use the services of real estate brokers. (Eisenstadt, Tr. 1488; illustrated in DX 10).

Response to CCPF No. 1236:
See the Response to CCPF ¶1235.

1237. Multiple NAR studies have confirmed that new models of real estate brokerage services, such as Exclusive Agency listings and other unbundled service models, are likely to attract home sellers who otherwise would not use real estate brokerage services, but instead would sell their homes on their own (FSBO sales). (CX 375-027 (Consumed Services White Paper: "[e]merging competitors tend to leverage unexploited or underserved segments to obtain a foothold in the marketplace. For example, unbundled service providers realized a demand for low-service marketing, especially from potential FSBOs."); CX 533-041 (Future of Real Estate Brokerage (2003): The USP [unbundled service provider] model may be able to capture the FSBO client who would otherwise not choose to use a real estate brokerage.")).

Response to CCPF No. 1237:
Respondent has no specific response.

1238. NAR's conclusions are confirmed by the experiences of brokers in the Realcomp area. Indeed, YourIgloo specifically targeted FSBO sellers in its marketing efforts to persuade them to use brokerage services. (CX 422 (Aronson, Dep. at 19-20 (YourIgloo marketed its services in Michigan by sending postcards to FSBO sellers)).

Response to CCPF No. 1238:
Respondent has no specific response.

1239. The exclusion of brokers such as YourIgloo, and the corresponding reduction in the number of Exclusive Agency listings in the Realcomp MLS, have caused more home sellers to sell their homes without the use of real estate brokerage services. (Eisenstadt, Tr. 1486-1489).

Response to CCPF No. 1239:
Factors other than Realcomp caused or contributed to YourIgloo's withdrawal from Michigan, as reflected in RPF ¶ 166(E)(1-5). YourIgloo has not fully withdrawn from Michigan, as it continues to do a substantial referral business as described in RPF ¶ 166(e)(6). *See* the Response to CCPF ¶1235. Additionally, this assertion which attributed to Dr. Eisenstadt is out of context. In both his testimony and his supplemental report, Dr. Eisenstadt identified four categories of home sellers that potentially could be affected by the Realcomp Policies. (Eisenstadt Tr. 1398-1399; CX 458-18-20, 28-30). With respect to home sellers who elect FSBO in lieu of EA listings, Dr. Eisenstadt plainly stated, "Neither my nor Dr. Williams' analysis provides any information about whether a putative, restriction-related decline in the share of non-ERTS listings would be attributable to sellers switching to ERTS contracts or to FSBO contracts." (CX 458-019, 29). Dr. Eisenstadt further determined that the likely effects of the Realcomp Policies on at least one of the other categories would be positive. (CX 458-020-023, 31-35).

1240. Realcomp's Policies have reduced the quality of brokerage services provided to home sellers in the Realcomp area and reduced the efficiency of brokers providing those services. (CCPF ¶¶ 458-459, 524, 802-805, 861-1068, 1243).

Response to CCPF No. 1240:
Respondent has no specific response.

1241. As a result of Realcomp's Policies, home sellers who select Exclusive Agency listings purchase services that are of inferior quality. (CCPF ¶¶ 868-874, 893-898, 908-922, 937-940, 1007-1068).

Response to CCPF No. 1241:
Respondent has no specific response.

1242. As a result of Realcomp's Policies, home sellers who seek to avoid the reduced quality of Exclusive Agency listings by purchasing full service listings pay for real estate brokerage services that they neither want nor need. Although these home sellers purchase an increased total amount of brokerage services, on a price- and quality-adjusted basis, they are able to purchase less of the brokerage services they desire. (CCPF ¶¶ 1228-1233, 1235-1239).

Response to CCPF No. 1242:
Consumers in the Realcomp service area are not required to purchase full service listings. Instead, flat fee ERTS listings are available as evidenced by Jeffery Kermath's AmeriSell and Dreu Adams' Help-U-Sell. (RX 1; Kermath, Tr. 729-731; 791; CX 525 (Adams, Dep. at 18-19; 24-25; 58-59)). Additionally, in light of Realcomp's change in the Minimum Service Definition, full service is not required for a listing to be considered an ERTS listing. (Kage, Tr. 1046-1047; CX 626).

1243. As a result of Realcomp's Policies, brokers offering Exclusive Agency listings provide extra unnecessary services, incur unnecessary MLS costs, spend additional time entering listing data into a second MLS, and devote significant time to responding to customer complaints. (CCPF ¶¶ 881-885). Realcomp's Policies cause brokers offering Exclusive Agency listings to operate less efficiently than they otherwise would. The additional time spent on customer complaints and other consequences of Realcomp's Policies reduces the amount of real estate brokerage services that brokers are able to provide. (CX 525 (Adams, Dep. at 81-82, 89 (without the need to offer additional services, Help-U-Sell Central could direct more effort and time to selling additional homes and encouraging additional home sellers to purchase his Exclusive Agency brokerage service model); *See also* CX 422 (Aronson, Dep. at 34-37, 109-110 (YourIgloo spent time double-entering its listings on a second MLS); CX 422 (Aronson, Dep. at 44-45, 75-76, 105-110 (YourIgloo had to spend time responding to customer complaints); Hepp, Tr. 605-607, 629-634 (customer complaints resulting from Realcomp's Policies took time and cost BuySelf Realty actual money through credit card chargebacks and threats to sue); Mincy, Tr. 401-402, 419-420 (MoveInMichigan.com must deal with a half-dozen complaints per week and would incur additional cost and time to send listings to alternative websites); G. Moody, Tr. 810, 827-828 (Greater Michigan Realty must deal with customer complaints); Kermath, Tr. 741-742 (AmeriSell must spend time on customer complaints resulting from Realcomp's Policies several times per week)).

Response to CCPF No. 1243:
See the Response to CCPF ¶ 1242.

XI. REALCOMP'S POLICIES ARE NOT JUSTIFIED BY ANY PROCOMPETITIVE RATIONALE

1244. Realcomp's Policies are not justified by any procompetitive rational put forth by Realcomp. (CCPF ¶¶ 1245-1285).

Response to CCPF No. 1244:
Realcomp's Policies are justified by their procompetitive benefits. (RPF ¶¶ 183-192).

1245. As Realcomp Governor Alissa Nead admitted, the Website Policy is not necessary to the functioning of the Realcomp MLS nor does it protect the right of cooperating brokers to be compensated. (CX 42 (Nead, Dep. at 132-133)).

Response to CCPF No. 1245:
Respondent has non specific response.

1246. Mr. Elya, another Realcomp Governor, admitted that the Website Policy is not necessary for the functioning of the Realcomp MLS, and if the Realcomp did not have the Policy, the MLS would not fold "today, tomorrow, or probably not next year" nor would it be any less efficient. (CX 40 (Elya, Dep. at 75-76)).

Response to CCPF No. 1246:
Respondent has no specific response.

1247. Realcomp Governor David Elya admitted that it is not Realcomp's role to ensure that its members earn commissions. (CX 40 (Elya, Dep. at 78)). He also admitted that the Website Policy does not protect member's right to commissions. (CX 40 (Elya, Dep. at 78)).

Response to CCPF No. 1247:
Mr. Elya states, however, that Realcomp has a duty to "compensate if there is something in the sale that happens." (CX 40 (Elya, Dep. at 78-79)).

1248. Furthermore, prior to the adoption of the Website Policy, the Board of Governors did not discuss any instances of a Realcomp Realtor "being taken out of the equation" because of Exclusive Agency listing. (CX 36 (Kage, IHT at 54)).

Response to CCPF No. 1248:
Respondent has no specific response.

1249. Numerous witnesses in this case testified that there are no problems at other MLSs that do not have the Website Policy or Search Function Policy. (CX 405 (Baczkowski, Dep. at 11) (The San Diego MLS did not have any rules that treated Exclusive Agency listings differently than Exclusive Right to Sell listings and this did not effect the functioning of the San Diego MLS.); Hepp, Tr. 666-673 (The Cincinnati, Dayton, Minneapolis, Rochester, Minnesota, and St. Louis MLSs do not have any rules treating Exclusive Agency listings differently than Exclusive Right to Sell listings); CX 420 (Tucholski, Dep. at 13-15)(The Toledo MLS did not have any rules that treated Exclusive Agency listings differently than Exclusive Right to Sell listings and this did not effect the functioning of the Toledo MLS))..

Response to CCPF No. 1249:
Respondent has no specific response.

1250. Realcomp's rationale for the Website Policy-- that a seller could list a home under an Exclusive Agency contract on the Realcomp MLS, through the dissemination of that

listing to the internet sites find a buyer who does not use a cooperating broker and consummate the sale of the home without using a cooperating broker, even though brokers pay dues to Realcomp for its services--is not a procompetitive justification for a host of reasons. (D. Williams, Tr. 1217-1227).

Response to CCPF No. 1250:
Realcomp's Web Site Policy has procompetitive justifications (RPF ¶¶ 183-192) as explained in detail by Dr. Eisenstadt concerning market characteristics and problems with free riding. (*See* RPF ¶¶ 244-248).

1251. First, antitrust economics is concerned about the interests of consumers, not Realcomp or its members. (D. Williams, Tr. 1217-1218). A price fixing cartel is good for cartel members, but it is not procompetitive because it is bad for consumers. (D. Williams, Tr. 1217-1218).

Response to CCPF No. 1251:
Complaint counsel's cited testimony does not mention the effect of "a price fixing cartel." There is no claim in this case that price-fixing has occurred. Commission rates have not even been examined, as discussed above in the Response to CCPF ¶ 1207.

1252. Second, only allowing Exclusive Right to Sell listings to go to public websites and the IDX does not ensure that cooperating brokers are involved in the transaction. (D. Williams, Tr. 1218). The only thing that an Exclusive Right to Sell listing ensures is that the seller pays for a cooperating broker, whether one is used or not. (D. Williams, Tr. 1218-1219).

Response to CCPF No. 1252:
An Exclusive Right to Sell Listing does not ensure that a cooperating broker is paid, since a flat fee ERTS is available in the Realcomp service area. (RX 1; Kermath, Tr. 729-731; 791; CX 525 (Adams, Dep. at 18-19; 24-25; 58-59)).

1253. Third, brokers would benefit if Exclusive Agency listings were sent to public websites and the IDX. (D. Williams, Tr. 1220). The listing broker, who is hired to market the property, would benefit from the exposure of the listing to the public – the benefit that the listing broker pays for through dues to the MLS. (D. Williams, Tr. 1220, 1222-1223). In addition, cooperating brokers would receive the very benefit they pay for with dues to the MLS – the opportunity to earn the offer of compensation by bringing a buyer to the home. (D. Williams, Tr. 1292-1293).

Response to CCPF No. 1253:
There would be harm to cooperating brokers, who are members of Realcomp, and persons who wish to utilize cooperating brokers. There would also be a bidding advantage that would be given to buyers who were unrepresented would be subsidized and benefit from free riding at the expense of Realcomp members who pay to promote

the listing on a public website and then have a buyer deal directly with the seller who, in that instance would be a competitor, to the Realcomp member but would not be paying for the cost of the promotion. Instead, those costs would be paid by the Realcomp member. (Eisenstadt, Tr. 1401-1404; CX 133-033-034).

1254. Fourth, Realcomp's justification is contrary to its own rules and practices. (D. Williams, Tr. 1223-1227). Realcomp's rules do not require that a Realcomp cooperating broker be involved in any transaction facilitated through the Realcomp MLS or through Realcomp's feed of listings to public websites. (D. Williams, Tr. 1224-1225; JX 1-05 (Stipulations of Fact Nos. 29-32)). Moreover, Realcomp shares its listings through data sharing with non-Realcomp members in other MLSs, which increases the likelihood that cooperating brokers who are not members of Realcomp bring the buyer to the transaction, "cutting out" Realcomp cooperating brokers. (D. Williams, Tr. 1225-1227).

Response to CCPF No. 1254
Realcomp's data sharing arrangements are reciprocal, meaning that they run both ways so the Realcomp members benefit from having their listings placed onto the other MLSs. (Kage, Tr. 914).

1255. Fifth, from the MLS's point of view, it does not matter whether an Exclusive Agency or Exclusive Right to Sell listing is put onto the MLS because all listing brokers (whether full service or limited service) are paying the same dues to the MLS. (D. Williams, Tr. 1293-1294).

Response to CCPF No. 1255:
At all times, Exclusive Agency Listings have been placed on Realcomp's MLS. (JX ¶ 57.)

A. Realcomp's Policies Are Not Designed to Prevent Free Riding

1256. Free riding occurs when a customer partakes of the services of one seller and then makes a purchase from another seller. (D. Williams, Tr. 1639). The classic example is when a customer goes to a full-service retailer, learns about the product, and then goes to a discount supplier to purchase the product. (D. Williams, Tr. 1639). The economic problem with free riding is that, in the long term, there will not be sufficient incentives for the full-service retailer to provide the services. (D. Williams, Tr. 1640). Thus, free riding is a problem from an economic perspective when it adversely affects some activity that is beneficial to society. (D. Williams, Tr. 1640).

Response to CCPF No. 1256:
Respondent has no specific response.

1257. The Realcomp Website Policy does not prevent any free riding. (D. Williams, Tr. 1640-1655). Realcomp claims that the purpose of its Website Policy is to ensure that

Realcomp members participate in every transaction facilitated by the Realcomp MLS member services. (D. Williams, Tr. 1161, 1643-1644; Eisenstadt, Tr. 1401-1402).

Response to CCPF No. 1257:
The Realcomp Policies have a procompetitive benefit because they address a free riding issue, which Dr. Williams misunderstood. (RPF ¶¶ 242-245). *See also* Respondent's Proposed Conclusions of Law ¶¶ 294-298.

1258. The Realcomp Website Policy is not designed to prevent any free riding on the listing broker who lists an Exclusive Agency listing. (D. Williams, Tr. 1641). The listing broker is being paid by the seller for services, which include disseminating the listing, and the listing broker is therefore involved in the transaction. (D. Williams, Tr. 1641-1642). The fact that a limited service broker might only charge $499 for these services (rather than 6% of the selling price) does not mean that there is any free riding. (D. Williams, Tr. 1642). The fact that the listing broker is willing to accept less compensation is beneficial to competition. (D. Williams, Tr. 1642-1643).

Response to CCPF No. 1258:
The Realcomp Policies have a procompetitive benefit because they address a free riding issue, which Dr. Williams misunderstood. (RPF ¶¶ 242-245). *See also* Respondent's Proposed Conclusions of Law ¶¶ 294-298.

1259. The Realcomp Website Policy is not designed to prevent any free riding on cooperating brokers. (D. Williams, Tr. 1643-1652; CX 557-A-054-055). The Website Policy only prevents Exclusive Agency listings from going from the Realcomp MLS to public websites; the Website Policy allows Exclusive Right to Sell listings to go to those sites. (D. Williams, Tr. 1644-1645). Thus, the Website Policy favors Exclusive Right to Sell listings. But the transactions facilitated by the Realcomp MLS feed to public websites for those listings may not involve a Realcomp cooperating broker at all. (D. Williams, Tr. 1645). For instance, through the Realcomp feed to public websites, Exclusive Right to Sell listings are exposed to buyers using cooperating brokers who are not Realcomp members. (D. Williams, Tr. 1645). In addition, buyers without brokers may view those Exclusive Right to Sell listings. (D. Williams, Tr. 1645). Yet there is nothing in Exclusive Right to Sell listings that ensures that a Realcomp cooperating broker participate in the transaction. (D. Williams, Tr. 1645-1646). The fact that under an Exclusive Right to Sell listing a seller must pay the offer of compensation even if no cooperating broker is involved only benefits the listing broker; it does not ensure that a Realcomp cooperating broker be involved in the transaction. (D. Williams, Tr. 1647). Thus, disseminating Exclusive Right to Sell listings to public websites flies in the face of Realcomp's purported justification for the Website Policy. (D. Williams, Tr. 1645-1647; CX 557-A-055).

Response to CCPF No. 1259:

The Realcomp Policies have a procompetitive benefit because they address a free riding issue, which Dr. Williams misunderstood. (RPF ¶¶ 242-245). *See also* Respondent's Proposed Conclusions of Law ¶¶ 294-298.

1260. The listing contracts of nontraditional brokers are similar to those of full service brokers in important ways. (CX 498-A-046). For instance, there is typically an offer of compensation to a cooperating broker, just as is the case with a traditional brokerage contract. (CX 498-A-046). The offer is published in the MLS and competition dictates that the offer be competitive which usually implies a 3 percent offer, just as with offers by traditional brokers. (CX 498-A-046). This is confirmed by Realcomp's listing data, which shows that the percentage of compensation offers equal to 3 percent is not significantly different for Exclusive Right to Sell [redacted] and Exclusive Agency listing contracts [redacted]. (CX 498-046, *in camera*). Moreover, the cooperating broker has the same protection from the risk of nonpayment of a compensation offer because the listing broker is liable for the payment, just as is the case under the full service contract. (CX 498-A-046-047).

Response to CCPF No. 1260:
Respondent has no specific response.

1261. A buyer who is represented by a cooperating broker gets services from that broker, as does the seller. (Eisenstadt, Tr. 1537). Generally, people must pay for the services they receive. (Eisenstadt, Tr. 1538). In the residential real estate industry, payment to the cooperating broker "is built into the sales price of the home that is sold to somebody using a cooperating broker." (Eisenstadt, Tr. 1538-1539).

Response to CCPF No. 1261:
Respondent has no specific response.

1262. Under an Exclusive Agency contract, consumers of brokerage services only pay the commission for the cooperating broker (i.e., the offer of compensation) if the consumers actually receive services from a cooperating broker. (D. Williams, Tr. 1098).

Response to CCPF No. 1262:
Respondent has no specific response.

1263. Realcomp cooperating brokers would not be "subsidizing" Exclusive Agency listings if those listings were allowed to go from the Realcomp MLS to public websites. (D. Williams, Tr. 1647-1648; CX 557-A-054-055). Cooperating brokers pay dues to Realcomp to have access to the Realcomp MLS listings. (D. Williams, Tr. 1648). Whether it is an Exclusive Right to Sell listing or an Exclusive Agency listing, cooperating brokers receive the opportunity to bring a buyer to an identified property and earn a commission. (D. Williams, Tr. 1649). Exclusive Agency listings have offers of compensation, and the evidence shows that compensation is paid to a cooperating broker

in the vast majority of instances. (D. Williams, Tr. 1650-51; Eisenstadt, Tr. 1517-1519; illustrated in DX 10-04). That fact is not consistent with the notion the sellers using Exclusive Agency listings are free riding on cooperating brokers or that cooperating brokers are "subsidizing" Exclusive Agency listings. (D. Williams, Tr. 1651). Further, the statistics show that buyers using the Internet to search for homes are more likely to use a cooperating broker, which also undermines Realcomp's purported justification for its Website Policy. (D. Williams, Tr. 1651-1652). Moreover, since cooperating brokers also act as listing brokers, their membership in the Realcomp MLS entitles them to not only access listings but to list properties as well. (D. Williams, Tr. 1650).

Response to CCPF No. 1263:
As listing and selling brokers each pay Realcomp the same quarterly membership fees per agent and per office, this result prevents the situation where selling agents are forced to subsidize the marketing of sellers who use EA and other Limited Service arrangements. (CX 133-034, ¶ 50; *see also* RPF ¶¶ 190-192).

1264. The Realcomp Website Policy is not designed to prevent any free riding on the Realcomp MLS. (D. Williams, Tr. 1652-1655). The Realcomp MLS is compensated by membership fees whether brokers are involved in every transaction or not. (D. Williams, Tr. 1652). Even though cooperating brokers might not be involved in every transaction involving an Exclusive Agency listing, they will not have any incentive to leave the Realcomp MLS. (D. Williams, Tr. 1653). The Realcomp MLS is an important tool for brokers, and from the cooperating broker's perspective, the MLS increases the efficiency of searching for properties and is the only way they can efficiency obtain information about offers of compensation. (D. Williams, Tr. 1653-1654).

Response to CCPF No. 1264:
Dr. Williams misunderstood, and therefore did not refute, the free rider issue. (RPF ¶¶ 242-245).

1265. To the extent that the Realcomp Website Policy has any benefit, that benefit is only for brokers, not consumers. (D. Williams, Tr. 1654-1655). The concern of antitrust economics is the protection of competition, which generally means a benefit to consumers. (D. Williams, Tr. 1655). There a many instances, such as a price-fixing cartel, in which there is a benefit to sellers but not to consumers. (D. Williams, Tr. 1655). In this case, Realcomp is a combination of its members (competing real estate brokers) with respect to the Policies, and these Policies may benefit Realcomp members – the cartel – but they do not benefit consumers. (D. Williams, Tr. 1656).

Response to CCPF No. 1265:
The Realcomp Policies have a net benefit to consumers. (RPF ¶¶ 175-178). Dr. Williams' assertion that the Realcomp Policies benefit only cooperating brokers, and do not benefit consumers, is incorrect as Dr. Eisenstadt explained (RPF ¶ 244). The assertion

of a "price fixing cartel" is inconsistent with the Complaint (which makes no such allegation), and is unsupported by evidence. See the Response to CCPF ¶ 1251.

B. None of the Realcomp Governors Knows Why the Website Policy and Search Function Policy Were Adopted in the First Place

1266. Realcomp Governor Darralyn Bowers could not explain the Board's current reasons for maintaining the Website Policy. (CX 37 (Bowers, Dep. at 26)). Ms. Bowers explained that she cannot "defend or not defend" the Website Policy partly because she does not recall the "initial rationalization" for the Policy. (CX 37 (Bowers, Dep. at 26)).

Response to CCPF No. 1266:
Respondent has no specific response.

1267. Realcomp Governor Darralyn Bowers could not explain the Board's current reasons for maintaining the Search Function Policy. (CX 37 (Bowers, Dep. at 28)). She explained, "I can't defend it because I really don't feel a lot of relevance, so I guess I'm not cognizant enough of that argument to be able to defend it." (CX 37 (Bowers, Dep. at 28)).

Response to CCPF No. 1267:
Respondent has no specific response.

1268. Realcomp Governor Darralyn Bowers admitted that she has no idea if there would be any consequences to Realcomp if it changed its Policies. (CX 37 (Bowers, Dep. at 32)). According to her, "[I]t hasn't been analyzed like that." (CX 37 (Bowers, Dep. at 32)).

Response to CCPF No. 1268:
Respondent has no specific response.

1269. Doug Hardy, the President of Realcomp does not know from firsthand knowledge why the Realcomp Board adopted the Website Policy. (CX 43 (Hardy, Dep. at 100)). He has not been told the reason for the rule. (CX 43 (Hardy, Dep. at 100)). Nor does he know whether Realcomp faced any problems at the time it adopted the Website Policy caused by Exclusive Agency listings being fed to public websites. (CX 43 (Hardy, Dep. at 100)).

Response to CCPF No. 1269:
The Website Policy was adopted before Douglas Hardy was on the Realcomp Board. (CX 43 (Cx 43 (Hardy, Dep. at 99-100)).

1270. Mr. Hardy was not even aware of the Website Policy until the Federal Trade Commission instituted its investigation of Realcomp's conduct. (CX 43 (Hardy, Dep. at 102)).

Response to CCPF No. 1270:

Respondent has no specific response.

1271. Even after the Federal Trade Commission began its investigation, Mr. Hardy "never found out the purpose of the rule." (CX 43 (Hardy, Dep. at 103)).

Response to CCPF No. 1271:
Respondent has no specific response.

1272. With regard to the Website Policy, Mr. Hardy "can't speak to where came from or the real goal behind it." (CX 43 (Hardy, Dep. at 117)).

Response to CCPF No. 1272:
Respondent has no specific response.

1273. Mr. Hardy does not know why the Search Function Policy was adopted by Realcomp. (CX 43 (Hardy, Dep. at 117-118, 121 ("I don't know why it was adopted.")).

Response to CCPF No. 1273:
Respondent has no specific response.

1274. Although Mr. Hardy was present at the Realcomp Board of Governors' meeting on August 22, 2003, he cannot recall the meeting or any reason why the Board adopted the Search Function Policy. (CX 43 (Hardy, Dep. at 118-119)).

Response to CCPF No. 1274:
Respondent has no specific response.

1275. Mr. Hardy, the current President of Realcomp, has not had any discussions with the Board of Governors regarding the reasons for the Search Function Policy; he does not know any reason for the Search Function Policy from the Board's point of view. (CX 43 (Hardy, Dep. at 121-122)).

Response to CCPF No. 1275:
Respondent has no specific response.

1276. David Elya, a Realcomp Governor, testified that he could not remember the reason why the Realcomp Board of Governors voted to change the Realcomp MLS default search to include only Exclusive Right to Sell and incomplete listings. (CX 40 (Elya, Dep. at 64-65, 70)).

Response to CCPF No. 1276:
Respondent has no specific response.

1277. Mr. Elya admitted that he did not know the purpose of Realcomp's Website Rule. (CX 40 (Elya, Dep. at 83)).

Response to CCPF No. 1277:
Respondent has no specific response.

1278. Robert Gleason, a Realcomp Governor, does not recall any discussions about the Website Policy or the Search Function Policy, and no one brought up the reasons behind the adoption of the Website Policy in 2001. (CX 38 (Gleason, Dep. at 24-25)).

Response to CCPF No. 1278:
Respondent has no specific response.

1279. Mr. Gleason does not know why Realcomp passed the Website Policy or the Search Function Policy and does not remember any of the discussions. (CX 38 (Gleason, Dep. at 20-23)). Nor could Mr. Gleason state any problems faced by Realcomp back in 2001 because of limited service or MLS entry only listings. (CX 38 (Gleason, Dep. at 23)).

Response to CCPF No. 1279:
Respondent has no specific response.

1280. Prior to 2006, Mr. Gleason was unaware as to why Realcomp adopted the Search Function Policy. (CX 38 (Gleason, Dep. at 58)).

Response to CCPF No. 1280:
Respondent has no specific response.

C. Realcomp's Public Statement of the Reasons For the Restrictions is Not Consistent with the Reasons that Respondent Put Forth at Trial

1281. The "Realcomp Call to Action" is the only document that the Board of Governors has approved stating the justifications for the Website Policy. (CX 38 (Gleason, Dep. at 115); CX 89).

Response to CCPF No. 1281:
Respondent has no specific response.

1282. Realcomp created its "Call to Action" after the FTC filed its complaint against Realcomp. (Kage, Tr. 994; CX 89).

Response to CCPF No. 1282:
Respondent has no specific response.

1283. Karen Kage created the "Call to Action" because she wanted the Realcomp members to know the reasons for the Realcomp policies. (Kage, Tr. 995).

Response to CCPF No. 1283:
Respondent has no specific response.

1284. The Realcomp "Call to Action" does not contain any mention of the Search Function Policy. (Kage, Tr. 995; CX 89).

Response to CCPF No. 1284:
Respondent has no specific response.

1285. The "Call to Action" does not mention any of the alleged procompetitive justifications that Realcomp put forth at trial. (CX 89).

Response to CCPF No. 1285:
Respondent has no specific response.

XII. THE PROPOSED REMEDY IS NEEDED TO RELIEVE THE COMPETITIVE HARM CAUSED BY REALCOMP'S CONDUCT

1286. Complaint Counsel's proposed order prevents Realcomp from adopting or enforcing any policy, rule, practice or agreement of Realcomp to deny, restrict or interfere with the ability of Realcomp Members to enter into Exclusive Agency Listings or other lawful listing agreements with the sellers of properties. (*See* Complaint Counsel's Proposed Order).

Response to CCPF No. 1286:
Respondent has no specific response.

1287. Realcomp does not allow Exclusive Agency, Limited Service, or MLS Entry Only listings to go to MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, the Realcomp IDX websites, the Home Preview Channel, or be included in the search default on the Realcomp MLS. (CCPF ¶¶ 765-860).

Response to CCPF No. 1287:
Realcomp changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160; CX 626; Kage Tr. 1045-47). Realcomp's Counsel signed a Joint Stipulation Regarding Respondent's Search Function Policy, which has been, or will be, submitted to this Court.

1288. The evidence in this case makes clear that in order to compete effectively, it is necessary for discount brokers to have their listings on MoveInMichigan.com, ClickOnDetroit.com,

Realtor.com, and the Realcomp IDX websites and be included in the search default on the Realcomp MLS. (CCPF ¶¶ 376-412, 453-676, 890-1068).

Response to CCPF No. 1288:
Complaint Counsel failed to carry its burden of proof, and the evidence instead supports Realcomp's positions, as discussed in RPF ¶163 and the above Responses to the cited CCPF paragraphs.

1289. The proposed remedy will prevent Realcomp from adopting or enforcing a policy that precludes Exclusive Agency, Limited Service or MLS Entry Only listings from being sent to MoveInMichigan.com, ClickOnDetroit.com, Realtor.com, and the Realcomp IDX websites. (*See* Complaint Counsel's Proposed Order).

Response to CCPF No. 1289:
The proposed remedy is unjustified, as indicated in the Response to CCPF ¶ 1288, and would harm, not benefit the public. See Respondent's Proposed Conclusions of Law, ¶¶ 299-307.

1290. The proposed remedy will also prevent Realcomp from adopting or enforcing a policy that treats Exclusive Agency, Limited Service or MLS Entry Only listings differently in the search function of the Realcomp MLS, as compared to Exclusive Right to Sell listings. (*See* Complaint Counsel's Proposed Order).

Response to CCPF No. 1290:
Complaint Counsel's proposal is moot because Realcomp changed its Rules to repeal the Search Function Policy and to change the definition of ERTS, so that full services are no longer required with an ERTS listing (RX 160; CX 626; Kage Tr. 1045-47). Realcomp's Counsel signed a Joint Stipulation Regarding Respondent's Search Function Policy, which has been, or will be, submitted to this Court.

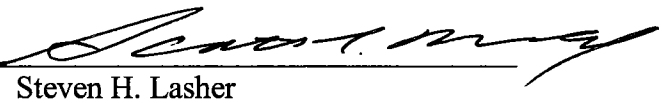
1291. The proposed remedy is carefully tailored to remedy the anticompetitive harm resulting form Realcomp's Policies, to prevent the possible recurrence of such harm in the future, and to protect customers and consumers by restoring competitive conditions to the relevant market. (CCPF ¶¶ 677-764, 1069-1285).

Response to CCPF No. 1291:
The proposed remedy (to the extent that it is not moot) is unsupported and would harm the public, as indicated in the Responses to CCPF ¶¶ 1287-1290.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Dated: August 20, 2007

By: 

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Certificate of Service

I hereby certify that on this 20th day of August, 2007, I caused a copy of the Public Version of Respondent's Reply to Complaint Counsel's Proposed Findings of Fact to be served as follows:

By electronic mail and overnight courier to:

Sean P. Gates, Esq.
601 New Jersey Ave., N.W.
Rm. NJ-6219
Washington, DC 20001

By overnight courier to:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Lorri A. Rosier