

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

232 044
530527

**In the Matter of
REALCOMP II LTD.,
a corporation.**

Docket No. 9320

PUBLIC

JOINT STIPULATIONS OF LAW AND FACT

In accordance with the Scheduling Order in this matter, Complaint Counsel and Respondent Realcomp II Ltd. ("Realcomp") stipulate as follows:

1. Neither Complaint Counsel nor Respondent have any objections to the admission into evidence of the documents listed in Exhibit A to these stipulations. [Joint Exhibit List]
2. Each document that is (a) generated by any party or non-party, and which comes from the producing person's files; and (b) produced, whether pursuant to a subpoena, document request or voluntarily (i) as part of discovery in the above-captioned matter, or (ii) to the Commission as part of its investigation related to the above-captioned matter, will be deemed to be authentic.

STIPULATIONS OF FACT

3. A real estate broker is a licensed real estate professional who acts as a representative for either home sellers or home buyers, and who is authorized to engage in the sale of real estate and to provide services in connection with such sales.

4. A real estate agent is a licensed real estate professional who works for, or under the supervision of, a real estate broker.

5. A listing broker is the broker hired by the seller as its agent to sell the home to an appropriate buyer.

6. A listing agreement is the contract between the seller and the listing broker that spells out the nature of their relationship concerning the sale of the home. Usually the listing agreement will include 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.

7. A cooperating broker is a broker who works with buyers interested in purchasing a home.

8. The offer of compensation is the amount of money or commission percentage that will be paid by the listing broker to any cooperating broker who is the procuring cause of the sale, i.e., finds the buyer that purchases the home.

9. The offer of compensation is unconditional except that the cooperating broker must be the procuring cause of the sale.

10. A selling broker is a cooperating broker whose fiduciary duty is to the home seller in the real estate transaction. A selling broker acts as what is called a "sub-agent" of the listing

broker.

11. A buyer's broker is a cooperating broker who has a fiduciary duty to the buyer in the real estate transaction, either through an agency disclosure or a "buyer's agency agreement."

12. 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.

13. Realcomp is owned by seven Shareholder Boards and Associations: 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 Western-Wayne Oakland County Association of Realtors.

14. A Realcomp Shareholder must be a Realtor Board or Association that is a member in good standing of the National Association of Realtors.

15. The business and affairs of Realcomp are conducted by its Board of Governors.

16. Each Shareholder Board or Association selects one Governor and one Alternate to the Realcomp Board of Governors.

17. On each listing filed with the Realcomp MLS, the listing broker must make the unilateral offer of compensation to any Realcomp member who acts as a cooperating broker and procures a buyer who purchases the listing property.

18. All members of the Realcomp MLS must agree to abide by the Realcomp II Ltd. Rules and Regulations, and the policies and procedures in the Realcomp II Ltd. Policy Handbook.

19. Only a seller who has a listing agreement with a licensed real estate broker who is a Realtor and member of Realcomp may have his or her home listed on the Realcomp MLS.

20. Each Realcomp member broker who submits a listing to the Realcomp MLS agrees to comply with the Realcomp Rules and Regulations with respect to that listing.

21. 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.

22. "Approved Websites" are those websites to which Realcomp provides information concerning Realcomp MLS listings for publication.

23. 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.

24. 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.

25. The type of listing agreement in place between a home seller and a Realcomp member listing broker is not displayed to home buyers viewing Realcomp MLS listings on the Approved Websites.

26. 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.

27. 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.

28. 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.

29. Realcomp does not require that transactions facilitated through the Realcomp MLS involve a cooperating broker.

30. Realcomp does not require that transactions facilitated through the Approved Websites involve a cooperating broker.

31. Realcomp does not require that transactions facilitated through the Realcomp MLS involve a cooperating broker who is a Realcomp member.

32. Realcomp does not require that transactions facilitated through the Approved Websites involve a cooperating broker who is a Realcomp member.

33. 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.

34. Realcomp has no rule prohibiting a cooperating broker from contacting the listing broker associated with a property listed on the Realcomp MLS prior to showing and attempting to negotiate a change in the compensation offered to the cooperating broker.

35. 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.

36. For the basic services, Realcomp charges identical dues and fees to all its members, regardless of the listing type used with their clients.

37. Realcomp's 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 or more MLSs.

38. Realcomp's data sharing arrangements were motivated, at least in part, by a desire to increase the number of listings available to Realcomp members.

39. Realcomp's data sharing arrangements were motivated, at least in part, by a desire to minimize the need for Realcomp members to pay dues to two or more MLSs.

40. Realcomp is the largest real estate Multiple Listing Service in Michigan, in terms of the number of members and the number of listings.

41. Realcomp is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan.

42. Realcomp's office and principal place business is located at 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334.

43. Realcomp is organized for the purpose of serving its members' interests.

44. The primary function of Respondent is the operation of the Realcomp Multiple Listing Service.

45. Each Realcomp member is required to hold an active real estate license, an active appraiser license, or both.

46. Realcomp services the territory within Southeastern Michigan, including Livingston County, Oakland County, Macomb County and Wayne County.

47. In 2001, Realcomp adopted and approved a rule that stated: "Listing information downloaded and/or otherwise displayed pursuant to IDX shall be limited to properties listed on an exclusive right to sell basis."

48. 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.

49. 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' web sites.

50. 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 are known for purposes of this case as the "Web Site Policy."

51. After adopting the Web Site Policy, Realcomp had to make certain technical changes, including changing its data extract program to pull only Exclusive Right to Sell Listings.

52. Before Respondent implemented the Search Function Policy, the Realcomp MLS search screen defaulted to all available listings, including Exclusive Agency Listings.

53. Moveinmichigan.com is the exclusive provider of real estate listing information for clickondetroit.com.

54. A for-sale-by-owner real estate transaction does not have a listing broker.

55. An Exclusive Agency Listing involves the services of a listing broker.

56. Offers of compensation to cooperating brokers are made through the Realcomp MLS, and are not displayed on public web sites.

57. Realcomp at all times pertinent to this matter has permitted agents: 1) to enter

what are referred to as “Exclusive Agency Listings” in the Complaint into the Realcomp Multiple Listing Service; and 2) who enter “Exclusive Agency Listings” to be members of Realcomp.

58. At all times pertinent to this matter, there has been another Multiple Listing Service, MiRealSource, in addition to Realcomp, servicing at least part of Southeastern Michigan.

59. MiRealSource, prior to April 2007 and prior to entering into a Consent Decree with the Federal Trade Commission, did not allow Exclusive Agency Listings to be entered into its Multiple Listing Service and as such MiRealSource did not forward its listings to public websites.

60. For Sale By Owner (FSBO) homes, where the seller does not retain a realtor, are not permitted to be listed on Realcomp’s MLS as all listings must be entered by realtors.

STIPULATIONS OF LAW

61. Realcomp is, and at all relevant times has been, a corporation as “corporation” is defined by Section 4 of the FTC Act, 15 U.S.C. § 44.

62. At all times relevant herein, Realcomp has been, and is now, engaged in commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

63. The acts and practices of Respondent have been or are in or affecting commerce as “commerce” is defined in the Federal Trade Commission Act, as amended, and Respondent is subject to the jurisdiction of the Federal Trade Commission. Among other things, the acts and practices of Respondent:

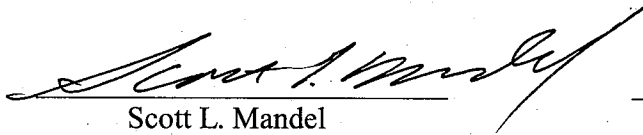
(A) affect the purchase and sale of real estate by persons moving into and out of Southeastern Michigan; and

(B) affect the transmission of real estate listing information to public real estate web sites that are intended for a national audience, including Realtor.com.

64. The elements of a combination or conspiracy of that unreasonably restrains trade are: (1) the existence of a contract, combination, or conspiracy among two or more separate entities, that (2) unreasonably restrains trade, and (3) affects interstate or foreign commerce. *See, e.g., Law v. NCAA*, 134 F.3d 1010, 1016 (10th Cir. 1998) (identifying elements of a violation of Section 1 of the Sherman Act); *Fashion Originators' Guild, Inc. v. FTC*, 312 U.S. 457, 463-64 (1941) (Section 5 of the FTC Act violations may be based on conduct that violates the Sherman Act).

65. Respondent is a combination of its members with respect to the policies at issue (the "Web Site Policy" and the "Search Function Policy"). *National Society of Professional Engineers v. United States*, 435 U.S. 679 (1978).

66. The purpose of the antitrust laws is to protect competition, not competitors. *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962).



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Dated: June 14, 2007

EXHIBIT A

JOINT EXHIBIT LIST REALCOMP DOCKET NO. 9320

Exhibit Number	Document Date	Document Title	Beginning Document Number	Ending Document Number
CX 1	3/22/06	Realcomp Part II Document Production Response		
CX 2	7/2/01	Minutes from the Board of Governors Meeting, June 22, 2001 (also used as CX 91 with Gerry Burke and Robert Gleason)		
CX 3	9/28/01	Minutes from the Board of Governors Meeting, September 28, 2001 (also used CX 92 with Gerry Burke and Robert Gleason)		
CX 4	7/03	Realcomp Rules and Regulations July 2003 (also used as CX 93 with David Elya)	RC0001	RC0024
CX 5	9/03	Realcomp Policy Handbook, September 2003	RC0079	RC0090
CX 6	1/04	Realcomp Rules and Regulations January, 2004	RC0025	RC0052
CX 7	9/05	Realcomp II Ltd. Rules and Regulations, Revised September, 2005	RC0053	RC0078
CX 8	9/05	Realcomp II Ltd. Policy Handbook, Revised: September, 2005	RC0091	RC102
CX 9	8/27/03	Minutes from the Board of Governors Meeting, August 22, 2003 (also used as CX 94 with Gerry Burke, CX 166 with Doug Hardy, CX 136 with Nead)	RC0122	RC0126
CX 10	8/28/02	Minutes from the Board of Governors Meeting, August 23, 2002 (also used as CX 95 with Alissa Nead and Gerry Burke)	RC0108	RC0111

