UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. **CONSOLIDATED MULTIPLE LISTING SERVICE, INC.,** Defendant.	Case No. 3:08-CV-01786-SB

PLAINTIFF UNITED STATES' MOTION FOR ENTRY OF THE PROPOSED FINAL JUDGMENT AND MEMORANDUM IN SUPPORT

Pursuant to Section 2(e)-(f) of the Antitrust Procedures and Penalties Act (the "APPA" or "Tunney Act"), 15 U.S.C. § 16(e)-(f), with the consent of Defendant Consolidated Multiple Listing Service, Inc. ("CMLS"), the United States moves for entry of the proposed Final Judgment (copy attached) in this civil antitrust action.

I. THE UNITED STATES AND CMLS HAVE COMPLIED WITH THE APPA

Simultaneously with this motion, the United States is filing a Certificate of Compliance certifying that the parties have complied with all applicable provisions of the APPA and that the waiting periods imposed by the APPA have expired. The APPA prescribes a sixty-day period for submission of public comments, following publication, in the *Federal Register* and in newspapers of general circulation in this district and in the District of Columbia, of notice of a proposed settlement of an antitrust case brought by the United States. 15 U.S.C. § 16(b)-(d). Notice of the proposed Final Judgment was published in the *Federal Register* on May 15, 2009, in the *Washington Post*, beginning on June 7, 2009 and ending on June 13, 2009, and in *The*

State, beginning on May 23, 2009, and ending on May 29, 2009. The sixty-day comment period ended on August 13, 2009. The United States received no comments from the public.

II. THE PROPOSED FINAL JUDGMENT SATISFIES THE "PUBLIC INTEREST" STANDARD

Before entering the proposed Final Judgment, the Court must determine whether the Judgment "is in the public interest." S*ee* 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

Id.

The United States filed a Competitive Impact Statement ("CIS") on May 8, 2009. In the CIS, the United States explained how the proposed Final Judgment eliminates the harm to competition caused by CMLS's policies and restores competition to the real estate brokerage market in the Columbia area. The proposed Final Judgment requires CMLS to repeal rules that impede the ability of innovative real estate brokers to enter the Columbia market and challenge the competitive methods of CMLS's existing members. It also prohibits CMLS from adopting new rules or practices that exclude or otherwise disadvantage brokers who compete in innovative

ways. The CIS describes the meaning and proper application of the public-interest standard under the APPA, and the United States incorporates those statements herein by reference.

The public had an opportunity to comment on the proposed Final Judgment as required by law. No comments were submitted to the United States.

III. CONTINUING JURISDICTION

Under the proposed Final Judgment, the Court would retain jurisdiction, after entry, to hear motions from the United States or CMLS to modify or enforce its provisions. *See* proposed Final Judgment, ¶ VIII. While the United States will endeavor to work with CMLS to resolve any disagreements as to CMLS's obligations under the proposed Final Judgment without the involvement of the Court, the United States and CMLS already appear to have a disagreement for which a future application to the Court may prove necessary.

CMLS has communicated to the United States its plans to charge applicants for membership an initiation fee that the United States believes might "exceed the reasonably estimated cost incurred by CMLS in adding a new Member" and violate ¶ IV.B of the proposed Final Judgment. If, after entry of the proposed Final Judgment and further investigation, the United States determines that CMLS is not complying with its obligations, the United States may seek appropriate relief from this Court.[1]

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[1] CMLS has justified its fee, in part, by pointing to the initiation fee maintained by the Multiple Listing Service of Hilton Head Island, Inc., a multiple listing service ("MLS") also subject to a consent judgment entered by this Court. *See* Final Judgment in *United States v. Multiple Listing Serv. of Hilton Head Island, Inc.*, No. 9:07-CV-3435-SB (D.S.C. May 28, 2008). Counsel for the Hilton Head MLS informed the United States that the two MLSs have communicated concerning their initiation fees. Like the proposed Final Judgment in the present case against CMLS, the Final Judgment in the Hilton Head case limits the initiation fees that the MLS is permitted to impose on new members. *See id.*, ¶¶ V.A.1 (requiring the Hilton Head MLS to admit all brokers properly licensed in South Carolina) & IV.A.1 (permitting the MLS to

IV. CONCLUSION

For the reasons set forth in this Memorandum and the CIS, the United States requests that the Court find that the proposed Final Judgment is in the public interest. The United States also requests that the Court then enter the proposed Final Judgment.

Respectfully submitted,

FOR PLAINTIFF
THE UNITED STATES OF AMERICA

s/Jennifer J. Aldrich

WILLIAM WALTER WILKINS, III
United States Attorney
District of South Carolina

By:
JENNIFER J. ALDRICH (#6035)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, SC 29201
Telephone: (803) 343-3176

DAVID C. KULLY
ETHAN C. GLASS

United States Department of Justice
Antitrust Division, Litigation III Section
450 5th Street, N.W., Suite 4000
Washington, DC 20530
Telephone: (202) 305-9969

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charge new applicants "a fee equal to the reasonable set-up costs of preparing to make [the MLS's] services available"). The United States is currently investigating whether the Hilton Head MLS has imposed impermissibly high initiation fees. If so, the United States may also move this Court to require the Hilton Head MLS to adhere to its obligations. *See id.* ¶ VIII.

CERTIFICATE OF SERVICE

I, Jennifer J. Aldrich, certify that on this 17th day of August, 2009, I caused a copy of PLAINTIFF UNITED STATES' MOTION FOR ENTRY OF THE PROPOSED FINAL JUDGMENT AND MEMORANDUM IN SUPPORT to be served on the person listed below by ECF.

Edward M. Woodward, Jr.
Woodward, Cothran & Herndon
P.O. Box 12399
Columbia, SC 29211
e-mail: emwoodward@wchlaw.com

Counsel for Defendant Consolidated Multiple Listing Service, Inc.

s/Jennifer J. Aldrich
Jennifer J. Aldrich