



2. Defendant provides a variety of services to its members, including the maintenance of a database of past and current listings of properties for sale in the Hilton Head area. Access to the database is critical to being a successful broker. Therefore, brokers seeking to provide brokerage services in the Hilton Head area need to be members of the Hilton Head MLS.

3. By its rules, Defendant denies membership to brokers who would likely compete aggressively on price or would introduce Internet-based brokerage into the market, and imposes unreasonable membership costs on publicly-owned brokerage companies. Defendant's rules also stabilize prices by forcing member brokers to provide a certain set of brokerage services, whether or not the consumer desires to purchase those services.

4. Additionally, Defendant has authorized its Board of Trustees to adopt rules that would regulate commissions and impose discriminatory requirements on Internet-based brokers. The mere prospect that the Board might adopt such rules likely inhibits price and service competition. Their actual adoption would stabilize prices and competitively disadvantage Internet-based brokers.

5. By adopting and enforcing rules that restrict access to its database and limit members' business behavior, Defendant has restrained competition, reduced consumers' choices, and stabilized prices on Hilton Head Island.

#### **DEFENDANT AND ITS MEMBERS**

6. Defendant Hilton Head MLS is organized as a not-for-profit corporation under the laws of South Carolina with its principal place of business on Hilton Head Island, Beaufort County, South Carolina.

7. Hilton Head MLS is a joint venture of over one hundred competing licensed brokers and other licensed real estate professionals doing business in the Hilton Head area. Hilton Head MLS serves Hilton Head Island, South Carolina. Although Hilton Head MLS also serves several surrounding counties as well as Hilton Head Island, close to 85 percent of the properties listed—as measured by dollar volume of closed transactions—in the Hilton Head MLS are located on Hilton Head Island, which no other MLS serves.

8. Whenever this complaint refers to any act, deed, or transaction of the Hilton Head MLS, it means the Hilton Head MLS is engaged in the act, deed, or transaction by or through its members, officers, directors, trustees, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

9. Various others, not named as Defendants, have participated as conspirators with Hilton Head MLS in the violations alleged in this complaint, and have performed acts and made statements to further the conspiracy.

#### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. Because Hilton Head MLS maintains its principal place of business on Hilton Head Island, South Carolina and transacts business and is found within this District, venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) .

#### **TRADE AND COMMERCE**

12. Broker-members of the Hilton Head MLS provided residential real estate brokerage services to in-state and out-of-state clients seeking to buy or sell property in the Hilton

Head area. In 2005, those brokers facilitated the exchange of property worth over \$2.5 billion, and they collected fees of approximately \$170 million for their services. Interstate mortgage financing is affected by this exchange of property.

13. The Hilton Head MLS's activities and the violations alleged in this Complaint affect brokers, home buyers, and home sellers located throughout the United States. The Hilton Head MLS's real estate activities are in the flow of, and have a substantial effect on, interstate commerce.

#### **CONCERTED ACTION**

14. The rules of the Hilton Head MLS are the product of agreements or concerted action among brokers who compete in the Hilton Head area. The broker-members of the Hilton Head MLS, as a group and through the Board they elect and the staff they indirectly employ, maintain and enforce MLS rules affecting a broker's participation in the MLS.

#### **RELEVANT MARKETS**

15. The provision of real estate brokerage services to sellers of residential real property and the provision of real estate brokerage services to buyers of residential real property are relevant service markets within the meaning of the antitrust laws. In the event of a small but significant increase in the price of brokerage services, the number of buyers and sellers that would switch to another way of selling or buying a home would not be sufficient to make such a price increase unprofitable.

16. The real estate brokerage business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions. Likewise, most buyers seek to purchase property in a particular city, community, or neighborhood, and typically prefer to work

with a broker who has knowledge of the area in which they have an interest. Both home buyers and home sellers desire a residential real estate broker who is a member of the MLS that serves the area in which they are purchasing or selling a home. Even though the Hilton Head MLS's service area encompasses neighboring counties as well as Hilton Head Island, nearly 85 percent of the properties listed—as measured by dollar volume of closed transactions—in the database are located on Hilton Head Island. In the event of a small but significant increase in the price of brokerage services relating to properties located on Hilton Head Island, the number of buyers and sellers who would switch to brokerage services relating to properties located elsewhere would not be sufficient to make such a price increase unprofitable. Therefore, for purposes of this complaint, Hilton Head Island constitutes the relevant geographic market, within the meaning of the antitrust laws.

### **BACKGROUND OF THE OFFENSE**

#### **Industry Background and MLS Market Power**

17. Most prospective home sellers and buyers engage the services of a broker to purchase and sell homes. Real estate brokers formed the Hilton Head MLS to facilitate the provision of real estate brokerage services to such buyers and sellers.

18. The Hilton Head MLS pools and disseminates information on almost every property available for sale on Hilton Head Island. It combines its members' property listings information into an electronic database and makes this data available to all brokers who are members of the MLS. By listing information on a home in the MLS, a broker can market it to a large number of potential buyers. A broker representing a buyer likewise can search the MLS to

provide a home buyer with information about nearly all the listed properties in the area that match the buyer's housing needs.

19. Members of the Hilton Head MLS utilize the database as a clearinghouse to, among other things: communicate the listings information of the properties that they have for sale to other members; offer to compensate other members as cooperating brokers if they locate purchasers for those listings; locate properties for prospective purchasers; distribute listings to other members for advertisement purposes; and compile and distribute market statistics.

20. The Hilton Head MLS also maintains records of sold homes. These "sold data" records are very important for brokers working with sellers to set an optimum sales price. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for a home.

21. Access to the database provided by the Hilton Head MLS is critical for brokers who wish to serve buyers or sellers successfully on Hilton Head Island. By virtue of market-wide participation and control over a critically important input, the Hilton Head MLS has market power.

### **Growth of Alternative Business Models**

22. The prices consumers paid to brokers for the brokerage services associated with a typical home sales transaction have increased substantially since 2003 on Hilton Head Island and in many other parts of the country. This is because brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the home, and that percentage has tended to be relatively inflexible as housing prices on Hilton Head Island and in many other parts of the country have increased dramatically. As a result of these higher

prices, brokers offering competitively significant alternatives to traditional methods have emerged in other areas of the country.

23. *Technology-Savvy Brokers.* Some brokers in other parts of the United States use technology to automate certain tasks and to communicate more efficiently with consumers. For example, technology enables brokers to contact, communicate with, and service consumers remotely or in-person without the need for a retail office location that consumers can visit. Such technology-savvy brokers can reduce brokerage costs by operating fewer or no physical offices, and may pass cost savings on to consumers through reduced brokerage fees.

24. *Fee-for-Service Brokers.* Other brokers around the country now contract with buyers and sellers to provide a subset of services for a flat fee rather than for a percentage of the home sale price. Fee-for-service brokers provide certain enumerated services such as marketing the house or attending closings, while the buyer or seller takes responsibility for other services associated with brokerages such as making offers and counteroffers or conducting open houses on their own. Through fee-for-service packages, buyers and sellers can save money by purchasing only the services that they wish for their broker to provide.

25. *Price Discounters and Publicly-owned Brokerages.* Brokers in other areas of the country have attracted customers by offering full-service, reduced commission brokerage services. Additionally, brokers in other areas of the country have sought a competitive advantage by creating nationwide firms. These firms raise capital through public ownership, invest in nationwide brands and provide brokerage services to consumers in multiple markets.

26. These types of brokerage models have not emerged on Hilton Head Island due to Defendant's rules. As a result, the prices that consumers pay for brokerage services are higher on Hilton Head Island than in other areas of the country.

### **RESTRAINTS ON COMPETITION**

27. Defendant's rules and practices have harmed competition in a variety of ways. As a result of Defendant's rules, consumers of residential real estate brokerage services on Hilton Head Island have fewer choices among types of brokers and pay higher fees for those services than consumers in other areas of the country. Defendant's rules and practices are not reasonably necessary to achieve the procompetitive benefits of the MLS. Instead, the rules at issue here unreasonably: (1) raise entry barriers for potential competitors by imposing burdensome prerequisites for membership; (2) provide a means of identifying potentially aggressive competitors so they can be excluded from membership; (3) stabilize the price of brokerage services through the prospect of price controls; (4) deter the emergence of Internet-based brokerages; (5) stabilize the price of, and reduce consumer options for, brokerage services by dictating the services that all brokers must provide; and (6) discourage entry of potential competitors who raise funds through public ownership.

28. Defendant's rules achieve these adverse effects by requiring that broker-members: (1) maintain a physical office within the Hilton Head MLS service area; (2) reside within the area served by the Hilton Head MLS; (3) operate their offices during hours deemed reasonable by the Hilton Head MLS; and (4) hold a South Carolina real estate license as their primary license. (Bylaw Article II, Section II; Bylaw Article VII; & Rule II.) These rules allow Defendant to deny membership to brokers who operate business models that would increase competition. For



example, these rules enable Defendant to exclude technology-savvy brokers who serve their clients without a physical office and who can pass along the cost savings to consumers through reduced commission rates. These rules also deprive consumers of the benefits of competition from brokers who work part-time or who are licensed under reciprocity provisions of South Carolina law.

29. Defendant's rules have enabled it to identify applicants who could be aggressive competitors and deny their application for membership. Broker-applicants are required to disclose their business history and prior employment, undergo a credit check, and obtain letters of recommendation from three current broker-members, *i.e.*, those with whom the applicant would compete. (Bylaw Article VII, Section IV; Bylaw Article VII, Section IV(a); Rule II.A.2.) These rules have allowed unreasonable denials of membership and thus deprived consumers of the benefits of competition.

30. Defendant has authorized its Board of Trustees to adopt mandatory guidelines that would regulate the commission that listing brokers offer to selling brokers in exchange for their cooperation on the home sale. (Bylaw Article XI, Section I.) The mere prospect that the Board might adopt such controls likely inhibits price competition. Their actual adoption would directly fix and stabilize prices.

31. Defendant has a rule that requires its members to provide certain services to all brokerage customers, whether or not desired by the customer. (Bylaw Article X; MLS Listing Agreement.) Embodied in the terms of Defendant's mandatory form listing agreement, this rule prevents current and prospective members from operating a fee-for-service business model. This rule decreases competition and harms consumers because it insulates Defendant's members from

the competitive pressures posed by brokers who would offer additional pricing and service choices to their customers.

32. Defendant has authorized its Board of Trustees to impose discriminatory requirements on Internet-based real estate brokers. (Bylaw Article II, Section II.) The mere prospect that the Board might adopt such controls likely deters Hilton Head brokers from developing that business model and thereby inhibits such service competition. Such requirements, if implemented, would competitively disadvantage Internet-based brokers and discourage them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice.

33. Defendant has a “change in ownership” rule that requires publicly-held brokerages to make a significant payment to the Defendant every time a share of their stock changes hands. (Bylaw Article VII, Section X; Rules II.A.3; II.B & II.E.) This rule competitively disadvantages publicly-owned companies and discourages them from joining the MLS and competing on Hilton Head Island, thereby limiting consumer choice.

34. Taken together, Defendant’s rules discourage competition on price and service, and inhibit competitive actions that would alter the status quo. As a result of Defendant’s anticompetitive rules, consumers of brokerage services on Hilton Head Island have fewer choices of service options and pay higher prices for real estate brokerage services than do consumers in other parts of the country.

#### **VIOLATIONS ALLEGED**

35. Defendant’s above-referenced rules and practices constitute a contract, combination, or conspiracy by competitors with market power that unreasonably restrains

competition on Hilton Head Island in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Defendant's rules and practices are not reasonably necessary to carry out the procompetitive purposes of a multiple listing service.

36. The aforesaid contract, combination, or conspiracy has had and will continue to have unreasonable anticompetitive effects in the relevant market, including:

- a. stabilizing and raising prices for real estate brokerage services;
- b. reducing competition on price and quality for real estate brokerage services;
- c. impeding innovation in the provision of real estate brokerage services;
- d. preventing consumers from choosing fee-for-service brokerage models;  
and
- e. creating barriers to entry into the provision of real estate brokerage services.

#### **REQUEST FOR RELIEF**

WHEREFORE, the United States prays that final judgment be entered against Defendant declaring, ordering, and adjudging:

- a. That the aforesaid contract, combination, or conspiracy unreasonably restrains trade and is illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1;
- b. That the Defendant, its officers, directors, agents, employees, successors, and assigns and all other persons acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing or attempting to engage in, carry out or renew

the combination and conspiracy alleged herein, or any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; and

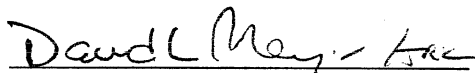
c. That the Court grant such other relief as the United States may request and the Court deems just and proper.

Dated: October \_\_, 2007

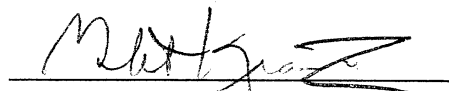
FOR PLAINTIFF  
UNITED STATES OF AMERICA



THOMAS O. BARNETT  
Assistant Attorney General



DAVID L. MEYER  
Deputy Assistant Attorney General



J. ROBERT KRAMER II  
Director of Operations



JOHN READ  
Chief, Litigation III Section  
NINA HALE  
Assistant Chief, Litigation III Section



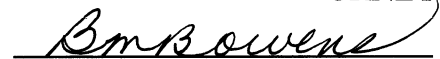
LISA A. SCANLON  
OWEN M. KENDLER  
CHRISTOPHER M. RIES

Attorneys for the United States of  
America  
U.S. Department of Justice  
Antitrust Division  
325 7<sup>th</sup> Street, N.W., Suite 300  
Washington, DC 20530  
Telephone: (202) 616-5954  
Facsimile: (202) 514-7308

Respectfully submitted,

REGINALD I. LLOYD  
UNITED STATES ATTORNEY

By:



Barbara M. Bowens (I.D. 4004)  
Assistant United States Attorney  
1441 Main Street, Suit 500  
Columbia, South Carolina 29201